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**Project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries”**

## Ukraine’s hate crime, hate speech and discrimination data collection system

*Recommendations for improvement and for adopting a  
joint approach and national situational analysis*

September 2020

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## Introduction

The project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries” is part of the Partnership for Good Governance Programme.<sup>1</sup> Funded by the EU and implemented by the Council of Europe, the programme aims to strengthen governance in the Eastern Partnership region.

Among its objectives, the project has a priority focus on researching, analysing and improving national data collection systems relating to hate crime, hate speech and discrimination, in particular in Ukraine, Armenia and the Republic of Moldova. The purpose of this report is to present the national situation in Ukraine and to make practical recommendations for improvement, for the consideration of national stakeholders.

This document is comprised of two main parts.

**Part one is the Recommendations Report**, which draws on the Situational Analysis (see part two), relevant reports by the European Commission Against Racial Intolerance (ECRI), and other data to propose steps that the relevant authorities can take to improve data collection on hate crime, hate speech and discrimination, in line with international standards and good practice.

**Part two is the Situational Analysis** which presents a detailed picture of the current national situation, based on a review of national data, legislation and policy, and on interviews with key stakeholders.

Both reports propose complementary recommendations that, in combination, aim to support national stakeholders to:

- have a shared understanding of the strengths and limitations of the current system
- agree shared priority actions for improvement in national systems
- agree how the Council of Europe, within the mandate of the project, is best able to assist stakeholders in achieving their identified priorities.

The recommendations presented in the Recommendations Report build on the findings and recommendations set out in the Situational Analysis. The connections between the two reports are highlighted in the Recommendations Report, where relevant.

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<sup>1</sup> See <https://pjp-eu.coe.int/en/web/pgg2/home>

## PART ONE. THE RECOMMENDATIONS REPORT

### Executive summary

Compiled and produced within the framework of the Council of Europe cooperation project “Regional co-operation project “Strengthening access to justice for victims of discrimination, hate crime and hate speech”, this report draws on international norms and standards, practice and research, to make recommendations on improving Ukraine’s recording and data collection systems on discrimination, hate crime and hate speech. A main aim of the report is to make practical and workable recommendations that serve as a useful basis for the next stages of the work: the development of guidelines and training. The report will be shared with key stakeholders and revised in response to their feedback.

Ukraine, like many other member states of the Council of Europe faces significant issues relating to hate crime, hate speech and discrimination. Roma communities are particularly at risk, as well as LGBT communities.<sup>2</sup> There has been significant progress on improving responses to hate crime, in particular the police response.<sup>3</sup> Skilled NGOs conduct robust monitoring and victim support keeping hate crime visible and effectively advocating for improved police and criminal justice responses. There is also significant progress on understanding, addressing and monitoring discrimination with leadership from the Ombudsman’s Office of Ukraine. However, data on hate crime, hate speech and discrimination remains patchy and disjointed making it difficult for responsible institutions, affected communities and the general public to understand the prevalence and impact of these harms and the effectiveness of state responses.

This report makes recommendations targeted at the main institutions with responsibilities for recording and monitoring in the key areas covered by the project. First, a framework of principles is set out on which to develop Ukraine’s efforts. Briefly, they highlight the need for any recording and data collection system to be victim focused, transparent, inclusive, comprehensive and in-line with international norms and standards. Second, Ukraine’s current relevant law is mapped according to established international concepts (including from ECRI, OSCE-ODIHR, FRA, European Commission, etc) of ‘hate crime’, ‘hate speech’ and ‘discrimination’ to support the outcome that the data that is produced by the system is organised according to international norms and standards (see annex two).

A step-by-step guide and draft recording forms are offered to connect the key institutions and integrate their data.

The foundation for progress on hate crime recording and data collection is the proposal to adopt a shared, perception-based definition of hate crime for monitoring purposes, in line with ECRI’s GPR No 114. Concrete proposals are offered on practical ways to monitor the diverse range of protected characteristics contained in Ukraine’s law, while avoiding an onerous and unworkable burden on the police and other agencies.

Recommendations on discrimination detail the specific steps that can be taken to improve available data such as amending the recording systems of the Ombudspersons’ Office to allow more comprehensive data collection, to ensure the publication of data to raise awareness of current discrimination issues in Ukraine, appropriate training and closer cooperation with specialist NGOs.

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<sup>2</sup> See with the Fedorchenko and Lozenko v Ukraine and Burlya and Others v. Ukraine;

<sup>3</sup> See OSCE (2019) <https://www.osce.org/odihr/419891>

<sup>4</sup> ECRI (2007)

On hate speech, recommendations focus on taking stock of current data and information on the prevalence and impact of hate speech and on better coordination across the key institutions with responsibilities to monitor, counter and prevent the problem.

Stakeholders have welcomed the bulk of the recommendations and broadly agreed to establish a cross government working group and to take specific action to harmonise recording and data collection of hate crimes between the investigation and prosecutions stages of hate crime cases. The Office of the Ombudsperson has agreed to play a leading role in coordinating the establishment of an inter-institutional group that will consider the practical implementation of relevant recommendations on disaggregated data collection, and other areas as agreed.

A key aim of this report is to be most useful to the next stages of the project, namely the development of guidelines and training relating to hate crime, hate speech and discrimination recording and data collection across the main institutions.

### **Hate crime in the context of conflict**

Hate crime, hate speech and discrimination in Ukraine are taking place in the context of the current conflict. It is important to note that recommendations made in this report cannot be applicable in the affected regions due to lack of effective control by Ukrainian state authorities and no reliable data can be obtained. Reports show that certain communities, such as Roma and LGBT, have faced hate-based violence and discrimination in the non-government controlled areas<sup>5</sup>. It is also important to note that some groups, including internally displaced people (IDPs) might be more at risk of discrimination, hate speech and discriminatory violence as a result of the Russian military aggression against Ukraine.

## Methodology

This report is based on a close reading of the following documents and meetings arranged or commissioned by the Council of Europe:

- 'Situational Analysis, Ukraine' (see Part II of this report)
- 'Baseline Study, Ukraine'
- a needs analysis meeting held in Kyiv on 20 June 2019
- feedback on the draft recommendations report during a meeting on 3 March 2020 in Kyiv attended by relevant national stakeholders
- Individual meetings held on 4 March 2020 in Kyiv
- Written feedback from the Department for Equal Rights and Freedoms of the Secretariat of the Parliamentary Commissioner for Human Rights, the Coordination Centre for Legal Aid Provision, the National Police, the Prosecutor General's Office and the Ministry of Justice.

It is also based on other relevant national and international sources included in the bibliography.

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<sup>5</sup> See, for example, reports by the Anti-Discrimination Centre "Memorial" "Violation of LGBTI Rights in Crimea and Donbass: The Problem of Homophobia in Territories Beyond Ukraine's Control" ([https://adcmemorial.org/wp-content/uploads/lgbtENG\\_fullwww.pdf](https://adcmemorial.org/wp-content/uploads/lgbtENG_fullwww.pdf)), "Roma and the War" (<https://adcmemorial.org/wp-content/uploads/RomaRUwww.pdf>) etc.

## Overview of gaps and opportunities in Ukraine's hate crime, hate speech and discrimination recording and data collection system

While the police are able to record data relating to bias motive when receiving a report of hate crime<sup>6</sup>, presently, different data are collected using different systems, methods and concepts. For hate crime cases, this means that it is difficult to track cases across the system and key information about victims' needs and evidence that is central to the application of hate crime and other laws is missed or 'falls between the cracks'.<sup>7</sup> Based on the findings of the situational and baseline analysis, it is not currently possible to record the full breadth of hate crimes in Ukraine. The most commonly missed are crimes that are not specific offences within the Criminal Code, but which could fall within the Article 67 sentencing provision or Article 161. Apart from Prosecution Statistics, which are also limited, there is very limited information about hate crime and the government's efforts to address the problem in the public domain. Overall, the number of recorded, prosecuted and sentenced hate crimes remain low, indicating a lack of knowledge in frontline police relating to the recording and investigation of hate crime, a lack of confidence of victims to come forward and a lack of training for prosecutors and judges.<sup>8</sup>

While data is collected by a small number of very experienced and highly skilled NGOs, there is a mismatch between NGO and public authority data, and limited connection and trust across these institutional 'divides'.<sup>9</sup>

In terms of discrimination, several institutions play a role in recording and collecting data. The Ombudsman's Office is tasked with collecting information on discrimination for their administrative purposes, while statistical data related to discrimination is collected by the included in several statistical forms across the government. However, the Statistics Service does not collect data on discrimination. Other institutions also have discrimination-related data collection. As such there is scope for improved coordination across all agencies that collect data on discrimination in order to build the most comprehensive picture of the problem and the effectiveness of responses to it.

Ukraine's criminal and non-criminal legislative frameworks include a range of offences relating to hate speech that require a coordinated approach in terms of definition, monitoring and application.

There are several positive aspects to Ukraine's efforts. A milestone publication was issued in 2019, giving a step by step guide to investigating, categorizing and recording hate crimes by the police.<sup>10</sup> The openness of the Ukrainian authorities to input from intergovernmental organisations and agencies through training and capacity-building is also to be commended. Several of the important building blocks such as the equality institution in the form of the Ombudsman's Office, the specialist police officers and units monitoring hate crime, and a national human rights strategy are there.

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<sup>6</sup> The issue of registration of crime reports is regulated by the order of the Ministry of Internal Affairs of Ukraine dated 08.02.2019 № 100 "On approval of the Instruction on the procedure for maintaining a single record in the police statements and reports of criminal offenses and other events".

<sup>7</sup> See the expert situational analysis and appendix one of this document for information about current gaps in Ukraine's hate crime recording and data collection system. To understand how data and information on hate crime can 'fall through the cracks' in hate crime 'systems', see <https://www.facingfacts.eu/journey-of-a-hate-crime-english/>

<sup>8</sup> See Human Rights Watch (2018),

<sup>9</sup> For further information about data and information on hate crime, see the situational analysis.

<sup>10</sup> OSCE-ODIHR (2019)

This report aims to support Ukraine to move to the next level. It reframes Ukraine’s current approach to be more aligned with international norms and standards relating to the concepts of hate crime, hate speech and discrimination; draws on good practice to suggest practical steps to improve existing and to consider new ways of recording, and; suggests a cross-government working group to oversee implementation.

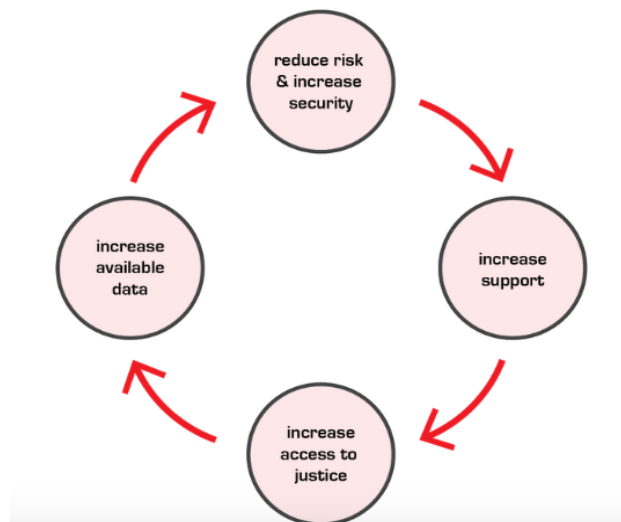
## Six principles for hate crime, hate speech and discrimination recording and data collection systems

When considering hate crime, hate speech and discrimination recording systems, it can be easy to get lost in the technical details. It is therefore recommended that relevant and useful guiding principles are adopted by stakeholders.

Recording and data collection systems should:

1. have a victim focus;
2. take a comprehensive approach: be connected to other key elements of a comprehensive approach to understanding and addressing hate crime, hate speech and discrimination;
3. seek international alignment: be aligned with international norms and standards;
4. be transparent: produce accurate data that is easily accessible to the public;
5. reflect an understanding of prevalence and context: be implemented in the context of a commitment to understand the ‘dark figure’ of the phenomena;
6. be implemented in the context of a strong commitment to cooperation across criminal justice agencies, relevant government ministries, with relevant civil society organisations and academics with relevant expertise;

**Figure one: a victim and outcome-focused approach to recording and data collection<sup>11</sup>:**



**Principle 1, A victim focus:** data collection systems should aim beyond simply recording incidents and publishing data. As set out in figure one, a victim-focused approach means that

<sup>11</sup> This image is from the Facing all the Facts project (Perry, 2019)



hate crime, discrimination and hate speech recording and data collection systems should contribute to the following outcomes for victims and affected communities:

- a reduction in risk of occurrence and seriousness of re-victimisation, and/or social breakdown escalation;
- an increase in support;
- an increase in access to justice and the effective application of relevant laws;
- an increase in available data for decision makers.<sup>12</sup>

Within this principle should be the commitment to avoid unnecessary bureaucratic burdens on operation police and prosecution staff. As far as possible, these recording systems should be integrated into existing systems.

**Principle 2, a comprehensive approach:** effective recording and data collection systems are one part of a comprehensive approach to addressing hate crimes, hate speech and discrimination.<sup>13</sup> High quality training, investigation and prosecution guidelines, and an inclusive legal framework are each equally important pieces of the puzzle.

**Principle 3, international alignment:** Hate crime, hate speech and discrimination recording and data collection, training, policy and law are supported by a relatively comprehensive international framework of norms and standards. National law, policy and training should be aligned with this framework as far as possible.<sup>14</sup> Specifically, the concepts of hate crime, hate speech and discrimination should be clearly delineated and data collected and reported separately. At the practical level, this ensures that the resulting data is more easily submitted to regular requests from intergovernmental organisations (see ODIHR annual hate crime reporting requirements in particular) and that the correct application of the law is effectively operationalised in investigation, prosecution and judicial approaches (civil, administrative and criminal)<sup>15</sup>

**Principle 4, transparency:** the general public and affected communities are key stakeholders in efforts to understand and address hate crime, hate speech and discrimination in Ukraine. It is essential that data on how agencies, including equality bodies are responding to the problem, including training and guidelines, are easily available and accessible.<sup>16</sup>

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<sup>12</sup> Perry, J. (2019)

<sup>13</sup> See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>

<sup>14</sup> see bibliography for references on key norms and standards

<sup>15</sup> See for example Hate Crime Laws, A Practical Guide, ODIHR (2009), which builds on the OSCE Ministerial Council Decision 9/09 to define hate crimes as 'criminal offences committed with a bias motivation' (as distinct from hate speech and discrimination) and the recent Guidance Note, European Commission (2018), which defines the separate concepts of hate crime and hate speech and recommends these are adopted at the national level to support the effective application of relevant law and procedure.

<sup>16</sup> See FRA Opinion, 'Collecting and publishing disaggregated hate crime data', which states, 'As FRA's reports repeatedly highlight, the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.', FRA (2018), p. 11; see also OSCE/ODIHR's Key Observation for Ukraine for 2018: 'ODIHR observes that Ukraine has not reported on cases of hate crimes separately from cases of hate speech or discrimination.' <http://hatecrime.osce.org/ukraine>. See also ODIHR's publication, Hate Crime Data collection and Monitoring Mechanisms, A practical guide (2014) p. 43. See also relevant ECRI GPRs and OSCE Ministerial Commitments.

**Principle 5, understanding prevalence and context:** Evidence suggests that only a small percentage of hate crimes and incidents of discrimination and hate speech are reported to and recorded by the authorities.<sup>17</sup> Various actions can be taken to understand the ‘dark figure’ or the actual prevalence of hate crime and discrimination including organising national surveys that explore levels of discriminatory attitudes in society and reviewing data collected by relevant civil society organisations.<sup>18</sup> This principle was reinforced in the case of *Identoba v Georgia* where the European Court of Human Rights found that, based on available civil society data, the police should have known that LGBT people were particularly at risk of violence during activities planned to mark the International Day Against Homophobia and, based on this information, should have taken due steps to protect them.

**Principle 6, commitment to cooperation:** the success of a joint approach is predicated on a commitment to cooperation across criminal justice agencies, government ministries, and with relevant civil society organisations. Securing an effective police recording system will only be of limited success if there is no connection with prosecution and judicial approaches. Likewise, failing to cooperate and regularly consult with civil society organisations that are expert in hate crime, hate speech and/or discrimination, supporting victims with their practical and legal needs will result in failing to both access crucial information and to ensure that victims have the support that they need. Such cooperation is more likely to succeed if it is underpinned by cross-government protocols and frameworks with clearly set out roles and responsibilities.<sup>19</sup> Concerning Hate Speech, ECRI GPR No 15 on “Combating Hate Speech”<sup>20</sup> recommends to state authorities to support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote cooperation in undertaking this task between them and public authorities. Concerning discrimination, ECRI GPR 2 recommends that equality bodies ‘serve as a hub around which [organisations with commitments to understand and address discrimination and intolerance can] connect and exchange’.<sup>21</sup>

## Securing a joint data collection system in line with European standards and best practices<sup>22</sup>

Securing a successful joint data collection system relies on speaking a ‘common language’ and sharing a joint *approach* on hate crime, hate speech and discrimination across Ukraine’s criminal justice, civil and administrative systems. Several specific steps need to be taken to get to this position.

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<sup>17</sup> See FRA (2018)

<sup>18</sup> See victimization surveys, including EU-MIDIS I and EU-MIDIS II; see also FRA Opinion, ‘Designing and carrying out crime victimisation surveys that include hate crime-specific questions’ in which FRA states, ‘Designing crime victimisation surveys that include hate crime-specific questions would allow authorities to shed light on the ‘dark figure’ of crime – that is, the number of crimes that are not reported to the police – and to understand victim experiences, trends and emerging issues.’, p. 12, FRA (2018); see also ODIHR’s recommendations 20-24, which detail how victimization surveys can be carried out and what they should cover, in ‘Hate Crime Data Collection and Monitoring Mechanisms: A practical guide’, (2014), pp. 33-39.

<sup>19</sup> See FRA (2018) on cooperating with civil society, and ODIHR (2014) on setting up cross government frameworks. . In this context ‘relevant civil society organisations’ includes those organisations that have a track record in robust and transparent recording and data collection on hate crime/hate speech and/or discrimination.

<sup>20</sup> <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>21</sup> ECRI (2017)

<sup>22</sup> It is recommended to read appendix one for a comprehensive review of current law and recording practice in Ukraine in the context of international norms and standards.

Ukraine's current framework of hate crime recording and its criminal, administrative and civil offences are not fully aligned with international concepts of 'hate crime', 'hate speech' and 'discrimination'.<sup>23</sup> To support stakeholders to adhere to principle 3: 'international alignment', appendix one maps Ukraine's framework against international concepts. Taking this approach will facilitate the sharing of information with international agencies, and clarify stakeholders' role in successfully implementing a joint hate crime, hate speech and discrimination recording and monitoring framework at the national level.

**Recommendation 1:** adopt the framework set out in appendix one as the national 'map' of hate crime, hate speech and discrimination provisions.

The report is then organised according to the three, internationally aligned concepts of hate crime, hate speech and discrimination. In order to 'operationalise' this new framework, and to allow effective cooperation across the system, each section proposes shared definitions of hate crime, hate speech and discrimination to be adopted by the relevant agencies with responsibility to record and collect data on these phenomena, followed by practical recommendations on the type, form and timing of coordination.

## Part I: Hate Crime

At the moment, different data is collected using different systems, methods and concepts. For hate crime cases, this means that it is difficult to track cases across the system and key information about victims needs and evidence that is central to the application of hate crime and other laws is missed or 'falls between the cracks'.<sup>24</sup> Based on the findings of the situational and baseline analysis, it is not currently possible to record the full breadth of hate crimes in Ukraine. The most commonly missed are crimes that are not aggravated offences within the Criminal Code, but which could fall within the Article 67 sentencing provision, or Article 161. Apart from Prosecution Statistics, which are also limited, there is very limited information about hate crime and the government's efforts to address the problem in the public domain. Overall, the number of recorded, prosecuted and sentenced hate crimes remain low, indicating a lack of knowledge in frontline police relating to the identification, recording and investigation of hate crime, a lack of confidence of victims to come forward and a lack of training for prosecutors and judges.<sup>25</sup>

Ukraine's hate crime legislative framework is a mix of specific and general sentencing provisions, plus a specific offence of Article 161, 'violation of equality'.<sup>26</sup> The framework is relatively strong in terms of the offences that it covers, however there is variation in the definition of bias motive, which might cause confusion for practitioners and which can influence the practicability of a shared definition on hate crime. Further, while article 161 includes disability and sex and 'other characteristics', other hate crime laws are limited to the protected characteristics of race, nationality and religion. There is no data sharing framework based on shared hated crime definitions in place. However, a couple of factors could support progress in this area including the implementation of the Human Rights Strategy and Action

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<sup>23</sup> This report incorporates and builds upon recommendations from the Situational Analysis.

<sup>24</sup> See the expert situational analysis and appendix one of this document for information about current gaps in Ukraine's hate crime recording and data collection system. To understand how data and information on hate crime can 'fall through the cracks' in hate crime 'systems', see <https://www.facingfacts.eu/journey-of-a-hate-crime-english/>

<sup>25</sup> See Human Rights Watch (2018)

<sup>26</sup> See appendix one

Plan and the development of a professional network of specialists, particularly in the police service.<sup>27</sup>

Ukraine has a relatively strong but small network of NGOs that specialize in hate crime recording and support, with expertise that has been built up over several years. NGOs record hate crimes and support victims, however, unsurprisingly there is a mismatch with public authority data, and limited connection and trust across these institutional 'divides'.<sup>28</sup> There is an opportunity to build and strengthen cooperation between specialist NGOs and the police in the area of developing joint guidance on identifying bias indicators and on sharing data and information. These points are further discussed below.

### Adopting a joint definition of hate crime

Adopting and implementing a joint definition of hate crime for monitoring purposes is one of the most significant steps that can be taken to generate reliable data and, more importantly, to ensure access to justice, safety and security for victims. Being 'on the same page' across the police, prosecution service and courts helps ensure that vital evidence pointing to the possibility that a crime might be a hate crime, and information about victims' safety and support needs is passed from one agency to another, allowing the highest quality, most detailed evidence to be presented to the court for its consideration.

Of course, it is important to remember that effective training, leadership and joint-working with relevant civil society organisations are all essential to ensure that this vital information is actually acted upon.

There are two main issues to highlight before considering an interagency definition of hate crime for recording and monitoring purposes. First and as already indicated, most of Ukraine's hate crime provisions exclude a number of grounds commonly covered in hate crime laws and therefore also excludes several communities that are common targets of hate crime, such as LGBTI communities. The broadest range of protected characteristics is contained in article 161 of the Criminal Code.<sup>29</sup> Importantly the term 'other characteristics' offers the possibility of including sexual orientation and gender identity (SOGI) within hate crime monitoring definitions (see below). This approach is also supported by the fact that elements of Ukraine's anti-discrimination legislation include a broad range of grounds, including sexual orientation and disability.

The second issue is that the criminal code provisions that relate to hate crime use slightly different language to define the threshold of bias that must be evidenced for the criminal provision to apply. For example, parts of specific offences on aggravating circumstances<sup>30</sup> uses the term 'based on racial, national or religious **intolerance**'. Article 161, the violation of equality provision uses the language 'national or religious **enmity, humiliation** of national honour and dignity or **insult** of citizens' feelings in respect to their religious conviction'. Finally, article 67, the general sentencing provision uses the term 'based on racial, national or religious **enmity and hostility**'.

The following recommendations take these issues into account.

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<sup>27</sup> See part II for more detail on the Human Rights Strategy and Action Plan.

<sup>28</sup> For further information about data and information on hate crime, and data collated by NGOs see the situational analysis.

<sup>29</sup> Race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or **other characteristics**

<sup>30</sup> Articles 115, 121, 122, 126,127,129

**Recommendation 2:** It is recommended that decision makers adopt the lowest threshold of ‘bias’ provided by the specific sentencing provisions.<sup>31</sup> The purpose of taking this approach is to widen the net as far as possible, while still being underpinned by the current legal framework. It is also recommended that the protected grounds listed in article 161 are used and that ‘other characteristics’ is interpreted as including sexual orientation, gender identity and sex characteristics.<sup>32,33,34</sup> Considering this background, it is recommended that the following joint approach to the definition of ‘hate crime’ should be adopted by the police, MIA, prosecution service, MoJ, the Ombudsman’s Office, the judiciary, and the non-governmental organizations.

‘Any crime in the Criminal Code of Ukraine that is committed based on intolerance towards race, color of skin, political, religious and other convictions, disability, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, which include sexual orientation, gender identity and sex characteristics’

This definition also incorporates offences motivated **in whole or in part** by intolerance and based on **actual or perceived** membership of a protected group.<sup>35</sup>

The next step is to ‘operationalise’ this definition in the work of the police, prosecutions service and the courts. Specific monitoring definitions are proposed below.<sup>36</sup>

It is important to note that the Situational Analysis has recommended that the hate crime provisions of the UCC should be reviewed and updated in line with international standards, including an expanded list of protected characteristics and the mandatory application of Article 67(1)(3). It is further proposed that a review should consider adopting consistent language defining the threshold of motive. These developments would clarify and consolidate Ukraine’s hate crime legislative framework and better support the implementation of the proposed monitoring definition.

**Recommendation 3:** for the police and Ministry of Internal Affairs to adopt the following definition of potential hate crime for recording purposes:

‘Any crime in the Criminal Code of Ukraine that is perceived by the victim or any other person to be committed based on intolerance in whole or in part towards real or perceived race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, which include sexual orientation, gender identity and sex characteristics’

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<sup>31</sup> Articles 115,121,122, 126, 127, 129

<sup>32</sup> It is already recommended in “Categorizing and Investigating Hate Crimes in Ukraine: A Practical Guide” (ODIHR, 2019) that 161 should be used in conjunction with provisions defining the base offence, allowing a broader prosecution of hate crimes. This point also applies to efforts to monitor the broadest range of potential hate crimes.

<sup>33</sup> This would cover intersex hate crimes.

<sup>34</sup> This is also supported by the existing practice of the police recording demographic information of victims, including sexual orientation and disability (see situational analysis).

<sup>35</sup> See Hate Crime Laws: a practical guide, ODIHR (2009) and European Commission, 2018;

<sup>36</sup> It is also recommended that the police record sub criminal hate incidents, in other words, any incident that is due to ‘intolerance towards’ the listed protected characteristics but that does not reach the threshold of a criminal offence. This approach has the following benefits: it allows the authorities, and the police in particular to monitor patterns before they escalate in seriousness, it also allows closer cooperation with relevant civil society groups that are also monitoring such incidents. This point is referred to again in Part IV.

Must be recorded as a 'potential hate crime'.

Commentary: This definition is based on and takes into account ECRI's General Policy Recommendation 11 to incorporate the perception of the victim and any other person into the recording of hate incidents. In order to ensure equality and consistency, the definition proposed in this paper extends beyond 'race' to all protected characteristics. Further, the term 'potential hate crime' is introduced to allow for the fact that most police services are reluctant to automatically record a crime as a 'hate crime' based on the perception of the victim/any other person alone.<sup>37</sup>

This approach recognises the centrality of a perception-based approach, is aligned with ECRI's GPR No. 11 and allows for flexibility at the national level.

However, this is an important discussion point for stakeholders. It is recommended that relevant stakeholders should discuss and agree which of the three options presented under recommendations 10 below should be adopted.

**Recommendation 4 for the police and Ministry of Internal Affairs:** stakeholders should decide on the following options for police-recorded hate crime.

Option one: full adoption of ECRI General Policy Recommendation No. 11<sup>38</sup> to record all crimes perceived by the victim or any other person to be due to intolerance in whole or in part towards real or perceived membership of a protected characteristic set out above as a **hate crime**.

Option two: adoption of '**potential hate crime**' definition at least for the first stage of police recording, to be confirmed upon review by the relevant officer and/or unit. This would also include offences where the victim or investigator perceived it to be motivated by intolerance.

Option three: do not take a victim-focused approach and record based on police-perception only. Require the recording of victim and witness perception as a **bias indicator**.

Whatever definition is adopted, all recorded 'hate crimes' should trigger existing guidelines for the investigation of hate crime cases and passed onto the prosecution service as a hate crime. If the incident is confirmed to be a hate crime by the reviewing entity, then it should be included in crime statistics under that classification.

It is important to note that whichever option is adopted, evidence of victim perception alone is not sufficient for a hate crime **prosecution** to be taken forward, and normal rules of evidence apply. As a result, current prosecutor guidelines should be reviewed to ensure that they clearly specify the range of bias indicators that, taken together, can serve as evidence that a crime is committed 'based on intolerance towards...' towards a protected

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<sup>37</sup> The United Kingdom is currently the only country in the world that has fully adopted a perception-based policy for hate crime recording.

<sup>38</sup> [ECRI General Policy Recommendation N°11 on combating racism and racial discrimination in policing](#), Recommendation No. 14

characteristic. It is always for the courts to decide if the relevant hate crime provision applies on a case by case basis.

**Recommendation 5, for the prosecution service:** The police have a strong argument for adopting a monitoring definition that includes grounds that are not explicitly mentioned in the criminal code. For example, recording these incidents could make a specific contribution to meeting its crime prevention obligations.<sup>39</sup> However, relying on the wording of article 161, the prosecution also has the possibility to monitor the same grounds as the police and any flexibility on this point should be explored with Ukrainian partners.

It is recommended that

any offence identified by the police to the prosecution service as perceived by the victim or any other person to be based on intolerance in whole or in part towards real or perceived race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, which include sexual orientation, gender identity and sex characteristics

Must be recorded as a 'hate-based criminal offences'.

It is recommended that the prosecutor's office records the number of cases marked by investigators as 'Potential Hate Crimes' as this could provide useful comparative data for executives to consider the gap between victims perception and those cases with tangible evidence to proceed to a court.

The data for 'Hate Crime Prosecutions' should be provided by the National Point of Contact, to International Government Organisations such as the Organisation for Security and Cooperation in Europe.

#### **Recommendation 6 for the courts**

The Ukrainian judicial authorities and courts service face a similar limitation to the prosecution service. It is therefore recommended that the following approach is taken:

Any conviction of a crime committed based on intolerance towards race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, which include sexual orientation, gender identity and sex characteristics will be recorded as a hate crime conviction.

These definitions, alongside the mapping in Appendix 1, provide a conceptual framework to allow cases to be traced across the criminal justice process, within the limitations of Ukraine's criminal code, and incorporated into existing and planned electronic crime recording systems. The following section considers the practical steps that should be taken to implement a joint approach.

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<sup>39</sup> See *Identoba and others vs Georgia*

## Implementing a joint definition of hate crime<sup>40</sup>

A number of issues to consider when deciding how to implement a joint definition of hate crime. These are set out below. They are then followed by a proposed step by step framework bringing together the actions for each stakeholder.

### Disaggregation

International norms and standards guide states to ensure that hate crime data can be disaggregated by bias motivation and crime types.<sup>41,42</sup>

The basis for disaggregation could be as follows:

Crime type: any criminal offence in the Ukraine Criminal Code (UCC), including the specified offences in table one annex one. These could be further grouped under more general crime categories, including homicide, serious assault, property damage, etc.<sup>43</sup>

Bias motivation: all bias motivations set out in Article 67 and expanded as explained above.

### **Recommendation 7 for all agencies to adopt the following meta categories of protected characteristics**

Category set out in UCC (see appendix one for specific provisions)	Characteristics included and definition, where available.
Race	Race, skin colour, ethnic origin
Linguistic	Nationality, language, citizenship
Sex	(includes gender as male or female but excludes Transgender which is recorded separately). Includes sex characteristics
sexual orientation	Lesbian, gay, bisexual, heterosexual
gender identity	Transgender people
religion	Christians (all denominations, including Jehovah's witnesses), Jewish people, Muslims, etc. This should be 'universal' protecting the religious views of all including no faith/ atheism.

<sup>40</sup> This section takes into account recommendations from the baseline study and situational analysis commissioned by the Council of Europe in preparation for this project to identify the steps that need to be taken to implement this approach. It should be read in conjunction with those reports.

<sup>41</sup> See relevant OSCE Ministerial Council Decisions, ECRI GPRs, and FRA (2018)

<sup>42</sup> Crime types should mirror existing categories used to distinguish crimes particularly identifying levels of violence homicide etc.

<sup>43</sup> In determining crime categories, stakeholders should follow established crime categories already established in Ukraine's general crime recording system



disability	'any physical or mental impairment'
other discriminatory ground	Definition and/or examples needed

It is further recommended that the National Point of Contact to the OSCE agrees with the Office of Democratic Institutions and Human Rights which meta-categories should be reported as part of Ukraine's annual data return and which excluded categories should be recorded nationally but not to the OSCE.

It is also recommended that the 'Hate Crime Strategic Group' (as recommended below) agree with the State Statistics Service, develop a 'Memorandum of Understanding' to agree consistent reporting schedules from relevant state actors and the agreed timing and method of publication of the data to provide transparency. It might be the case that publications would be provided annually but that state officials would wish to see more regular data, in order to inform operational planning and to measure evidence of hostility emerging in communities.

#### Prioritising reporting, recording and data collection

It is important that the policies have a human rights framework that seeks to protect everyone from targeted abuse free from hierarchy or preferential treatment. It is equally vital, however, that authorities have the information to enable them to prioritise efforts to protect the most vulnerable sections of society and that policies encourage proactive efforts to prioritise prominent hostilities at any time whether they be long or short-term hostilities.

**Recommendation 8 for all stakeholders:** Evidence presented in the Base Line Study and Situational Analysis strongly suggests that the Ukrainian authorities should currently prioritise improvements to their responses to specific types of hate crime, including LGBTI and Roma communities and foreign students.

#### Guidance and guidelines

**Recommendation 9 for all stakeholders:** Develop guidance on recording, reviewing and compiling information on hate crimes, including:

- specific examples of hate crimes based on intolerance towards all protected characteristic set out above co-developed with relevant civil society organisations. This will help ensure that the police and prosecutors are clear about what type of cases can be considered within the article and increases the accuracy of recording and the chance that the courts will accurately apply this provision.
- future discussions with Ministries and Prosecutors should agree whether monitoring should include all categories or whether specific 'monitored' categories that have the greatest impact on communities, should be prioritised for monitoring, in line with recommendation 7 above. For example:

- Evidence suggests that crimes based on intolerance or bias towards LGBT and Roma communities and foreign students are a particular problem. At a minimum, there should be a particular focus on developing comprehensive case examples of and bias indicator sets relating to these groups.
- clearly designated responsibilities at each level (see the proposed recording forms and table two below, which sets out the current and proposed recording and monitoring framework).
- a list of bias indicators<sup>44</sup> that must be identified by any party to identify and record hate crimes, and that can be used as evidence to prove that a crime was committed ‘based on intolerance towards’ agreed protected characteristics, based on existing case law, where available,<sup>45</sup>
- specific definition of the term ‘based on racial/national/ religious intolerance’ to be incorporated into relevant guidance, guidelines and training,<sup>46</sup>
- language and guidance that specifically address evidenced incorrect practice

In developing recording and data collection guidelines, current examples of good practice can be drawn upon:

- ‘Hate Crime Data Collection Guidelines and Training Manual’, prepared by the Law Enforcement Support Section and the Crime Statistics Management Unit of the US Federal Bureau of Investigation.<sup>47</sup> This document sets out proposed roles and responsibilities for all law enforcement agencies in the US on hate crime recording and data collection. It includes specific examples of each type of monitored hate crime to support law enforcement to identify the diverse range of hate crimes covered by legislation and proposed a ‘two tier’ review system. Frontline law enforcement are responsible for identifying potential hate crimes and crime management personnel are responsible for reviewing and confirming or revising the initial classification.<sup>48</sup>
- The United Kingdom’s College of Policing guidance for the police explains hate crime recording policy, which takes a perception based approach, in line with ECRI’s policy

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<sup>44</sup> Bias indicators are objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender’s actions were motivated in whole or in part by bias, prejudice or hostility. For example, if a perpetrator uses racial slurs while attacking a member of a racial minority, this could indicate a bias motive and be sufficient for the responding officer to classify a crime as a likely hate crime. By the same token, the desecration of a cemetery or an attack on a gay pride parade may be bias indicators of anti-religious or anti-LGBT motivation (p. 15, Hate Crime Data Collection and Monitoring Mechanisms: A practical Guide, ODIHR, 2014). It is also important to note that the recommendations on hate crime investigation published by the Academy of Internal Affairs and the National Police itself do suggest using the ODIHR indicators.

<sup>45</sup> See also FRA (2018)

<sup>46</sup> Take into account current approach recommended in PAHCT and in ODIHR’s Hate Crime Laws, a Practical Guide (2009).

<sup>47</sup> <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

<sup>48</sup> <https://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>

recommendation 11. It also includes illustrative examples of all hate crimes covered by UK law to aid the police in identifying potential hate crimes.

- Guidance on recording and data collection included in the OSCE-ODIHR Publication *Categorizing and Investigating Hate Crimes in Ukraine: A Practical Guide*.<sup>49</sup>

It is important to note that adopting this recommendation can involve a significant time commitment. It can also be extremely beneficial to all parties involved and significantly increase understanding on all sides about the nature and impact of hate crime and the powers and limitations of the agencies involved in recording, monitoring and responding.<sup>50</sup>

Table of current and proposed hate crime recording and data collection process and roles and responsibilities

This table sets out Ukraine’s current approach to hate crime recording and data extraction and brings together recommendations in this section to propose an amended framework, including roles and responsibilities. It can be used as a basis for recording and data collection guidelines. It should be read in conjunction with the attached recording forms. It aims to serve as a basis for discussion across stakeholders who should consider the extent to which the proposed approach can be incorporated into current and proposed crime recording processes and procedures (See recommendation one).

Current approach	Proposed approach
Police	
<p>Step one: Incident recorded by the police according to the ‘Protocol on acceptance of the statement of criminal offense and other event’.<sup>51</sup> In addition, record victim categories, including disability.</p> <p>Question 5 states “[...] indicating circumstances of the criminal offence that may indicate the motive of intolerance”</p> <p>No drop down tabs/ categories to indicate bias motivation or crime type.</p>	<p>Step one: incident recorded by police using agreed definition of a (potential) hate crime, disaggregated by crime type and bias motivation, as agreed by stakeholders. Police use guidelines to identify potential hate crime and record bias indicators.</p>

<sup>49</sup> See <https://www.osce.org/odihr/419891>

<sup>50</sup> See FRA (2018) for an overview of this approach. See Perry (2019b) for an example of how this work was undertaken in Hungary.

<sup>51</sup> the Ministry of Internal Affairs, on the initiative of the Main Investigation Directorate of the National Police of Ukraine, amended the Order of the Ministry of Internal Affairs of 06.11.2015 No. 1377, registered with the Ministry of Justice of Ukraine 01 December 2015 under No. 1498/27943 "On approval of the Instruction on the procedure for maintaining a single record in the police of statements and notifications of criminal offenses and other events", according to which the standardized form of the protocol of acceptance of a statement on a criminal offense or being prepared (Appendix 3 to the Instruction), supplemented by a new paragraph indicating the circumstances of the commission of a criminal offense, which may testify to the motives of intolerance (racial, nationality, religion or belief etc.)

<p>Step two: Data entered onto police database, within the integrated information system, in accordance with the form - <a href="https://zakon.rada.gov.ua/laws/show/z0680-16#n291">https://zakon.rada.gov.ua/laws/show/z0680-16#n291</a><a href="https://zakon.rada.gov.ua/laws/show/z0680-16#n291">https://zakon.rada.gov.ua/laws/show/z0680-16#n291</a>,</p>	<p>Step two: data entered onto database by police and relevant MoI units according to categories agreed by stakeholders (see attached sample recording forms). Note on information that should be recorded about risk: MIA/ police should indicate where there is evidence of a risk of repeat victimisation and/ or escalation. Taken or planned remedial action should also be summarised.</p>
<p>Step three: The police, MIA and other state authorities, conduct information search and analytics and cooperate with regard to information with other state authorities, law enforcement agencies and international organizations.</p> <p>Regional representatives for monitoring hate crimes have been appointed to monitor proceedings in hate crime cases and report to the Main Department of Investigations on the progress. The Main Department of Investigations is also monitoring the Unified Register of Pre-Trial Investigations to identify crimes of this category, however, the Register does not reflect the array of categories, under which hate crime falls in Ukraine.</p>	<p>Step three:</p> <p>In addition, police send spread sheet to Human Rights Department of the National Police within an agreed timescale (for example, 48 hours) from the time of initiation of investigation. Also consider possibility of electronic system allowing for electronic, not manual transfer.</p>
<p>Step four: The Human Rights Unit of the National Police of Ukraine is collects data on hate crime (disaggregated by types of crime, protected characteristics) from the investigation department and the Unified Register. The national contact point on hate crime also communicates with civil society and communities, as well as monitors media reports to identify hate crime</p>	<p>Step four:</p> <p>The Human Rights Unit reviews and collects data from information completed by police, including confirming whether the recorded incidents are hate crimes within the meaning of the joint definition. The unit generates statistics using proposed headings set out in the spreadsheet (See appendix three).</p>

	<p>Step five: The Human Rights Unit or other appropriate body performs a quality assurance review of data to reduce the risk that hate crimes are missed. This can include word searches for common terms associated with hate crime, 'dip samples' where cases flagged as hate crimes are randomly reviewed, etc. Where there is evidence that a victim or witness perceives an incident to be a hate crime and/or incidents are mis-flagged, the flagging is corrected and missing information is added retrospectively to the analysis.</p>
<p>Prosecution Office</p>	
<p>Step six: Investigators, prosecutors record cases in the Unified register of pre-trial investigations according to criminal code provision. Information about the finalization of pre-trial investigation is entered into the Register by the prosecutor in accordance with the Unified Register Entry Form<sup>52</sup></p>	<p>Step six: prosecutors receive flagged cases from the police and apply a flag based on the agreed definition of a 'hate crime prosecution'. Information is recorded according to the proposed prosecution service recording form. It could be included under 'motive'</p>
<p>Step seven: According to the Prosecutor General's Office of Ukraine, information on criminal offenses committed on grounds of racial, national or religious intolerance, in particular, under Form 1 "Single Report on Criminal Offenses" is gathered. For example, in 2019, 100 such criminal offenses were taken into account, of which 4 were sent to court (3 - with an indictment, 1 - with a request for the use of compulsory medical measures).</p>	<p>Step seven: keep the same and add obligation for Prosecutors to send/electronically transfer the completed information to the police department within an agreed timeframe (for example, 3 days)</p>

<sup>52</sup> Annex 2 here <https://zakon.rada.gov.ua/laws/show/z0680-16#n29>

<p>Step eight: The prosecution service produces and publishes a monthly report on hate crime. (<a href="https://old.gp.gov.ua/ua/statinfo.html">https://old.gp.gov.ua/ua/statinfo.html</a>). It is important to note that while the number of crimes charged under an aggravating provision or article 161 can be found in the reporting forms, these are not disaggregated in the public domain and have to be identified in accordance with the qualification. Moreover, the data for Article 161 would include both hate speech related prosecutions, and hate crimes. The Human Rights Unit, however, collects disaggregated data, but, as mentioned in the SA, it is only transferred to the ODIHR and not published regularly in an accessible manner. Also, no results are reported.</p>	<p>Step eight: Data is collected by the appropriate body using the proposed forms attached. The appropriate body monitors cases in real time and provide specialist direction to support effective prosecutions. Disaggregated statistics on the number of prosecutions and sentences imposed is published.</p>
<p>The Courts</p>	
<p>Step nine: When registering the case which includes mention of Article 161, or “religious, racial or ethnic intolerance” the court employee ticks a box (in the Form 1K for reporting on the outcomes of criminal proceeding by first instance courts, which includes hate crime categories), which is then reflected in the court statistics on criminal offences. However, the data is not disaggregated by bias motivation.</p>	<p>Step nine: criminal courts (judges’ assistants) receive flagged cases from the Prosecutors Office, which are registered by the courts as a ‘hate crime prosecution’ and disaggregated by crime type and bias motivation.</p>

<p>Step ten: The court administration also informs the Prosecutor's Office on the results of investigation</p>	<p>Step ten: Following the sentencing stage, the court records the outcome of the case. If a hate crime provision was applied, the case should be recorded as a 'sentenced hate crime' on the joint system (proposed spreadsheet/ electronic). If a hate provision is not applied, this should also be recorded, including any available information on the court's reasoning for why a provision was not applied.</p> <p>Prosecutor's Office, Human Rights Unit reviews court data to quality check the recording of hate crime sentences according to jointly agreed definitions. This could include reviewing the text of court rulings to identify whether a case involved elements of discrimination even if it wasn't reflected in the court ruling (or were not flagged by the prosecution Office).</p>
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### Training

**Recommendation 10 for all stakeholders:** Successful implementation of Ukraine's hate crime recording system depends on having fully skilled police officers who are capable of and encouraged to identify, record and respond to each type of hate crime and having prosecutors and judges with the relevant skills and knowledge to do the same within their mandate. In line with the general principles set out above, training – including the use of national case studies - should be fully aligned with existing and planned police, prosecutors and judicial guidelines and policy.

### Cross government cooperation

**Recommendation 11 for all stakeholders:** Set up a cross government working group to oversee the implementation of a joint approach to disaggregated data collection as well as other elements of a comprehensive approach to understanding and addressing discrimination, hate crime, and hate speech.

It is recommended that the group is formalised, with membership from all relevant government agencies or departments dealing with any aspect of discrimination, hate crimes, and hate speech, and the Office of the Ombudsman (EB), and civil society representatives that are skilled, knowledgeable and constructive in this area.<sup>53,54</sup>

<sup>53</sup> Based on the baseline and situational analysis reports, it is recommended that the recently established Greece protocol can be drawn as a reference - <https://www.osce.org/odihr/402260?download=true>

<sup>54</sup> Bodies that record information related to discrimination, hate crimes, and hate speech should be a member of any inter-institutional framework relating to recording and data collection. They should be a part of a joint approach and consider developing a protocol allowing for referral mechanisms, where possible.

In agreeing the work and composition of the group, it is recommended that stakeholders review a recently established working group and inter-agency agreement in Greece.<sup>55</sup>

Stakeholders should also consider nominating one body to lead on organising meetings and agendas. It is recommended that the Ombudsman's Office takes this role. For example, in Spain, the national human rights institution, OBERAXE plays this function. Stakeholders might also consider agreeing a rotating chair for the group. This means that stakeholders would take turns in chairing the meetings, and working with the coordinator on the agenda, providing the budget and ensuring any follow up. This ensures that accountability is shared, and political leadership is engaged across government departments and agencies.

It is further recommended that the Cross-Government Working Group should establish a number of, possibly time-limited, working sub-groups to develop specific areas of this policy. For example, a training sub-group could consider specific learning needs arising from the implementation of this policy

The response from stakeholders and the Ombudsperson's Office in particular was very positive with regard to setting up an inter-agency working group. The proposal to establish such working group has been put forward and accepted at the meeting of the Coordination Council organized by the Department of Equal Rights and Freedoms of the Human Rights Commissioner on 16 June 2020.

**Recommendation 12 for all stakeholders:** when considering the form and structure of a national working group and inter-agency agreement, stakeholders should consider learning from other contexts. For example, a country visit to Greece to meet colleagues at the Ministry of Justice, Transparency and Human Rights in Greece, or the equivalent group in Georgia who are also at a relatively early stage in improving responses to hate crime could be considered. Colleagues can share lessons learned and good practice in setting up new and comprehensive systems that are in line with international and European standards and norms.<sup>56</sup>

#### Cooperation with relevant civil society organisations

**Recommendation 13 for all stakeholders:** seek and implement opportunities for effective cooperation with civil society organisations that monitor and record hate crimes.

Recent research found that civil society data is and should be understood as an integral part of any national hate crime recording and data collection system.<sup>57</sup> This has been given effect at the national level in *Identoba and others v Georgia* when the court held that the Georgian authorities should have been alive to the threat posed to LGBT+ communities based on available civil society data. As a result, those civil society organisations that record and monitor hate crime based on clear, transparent and robust methodologies should be treated as equal partners to the police, prosecution service and judiciary in Ukraine's efforts to

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Those NGOs that have robust and transparent methodologies for recording discrimination, hate crimes, and hate speech should be members of any inter-institutional framework relating to recording and data collection. Stakeholders should consider issues involved in the possibility of developing a protocol allowing for referral mechanisms, where possible.

<sup>55</sup> <https://www.osce.org/odihr/402260>

<sup>56</sup> Ukrainian colleagues can also consider liaising with counterparts in Spain who have also set up successful hate crime recording and data collection systems in recent years.

<sup>57</sup> Perry, J. (2019)



understand and address hate crime, discrimination and hate speech. Stakeholders should consider ways to deepen cooperation in the area of hate crime recording and data collection. In addition to the benefit of accessing civil society data (in accordance with relevant protections for victim data and confidentiality) this cooperation can increase the quality and depth of relationships, which, in turn can increase the chance that victims will remain engaged in the criminal justice process and develop confidence in the authorities. It is also necessary to work closely with relevant civil society organisations to review, develop and adopt specific awareness-raising and victim-outreach strategies that also address evidenced barriers to reporting including poor police responses and lengthy delays in investigations.<sup>58</sup>

On other occasions, ECRI has recommended that specialised hate-crime liaison focal points or units are set up in police forces. These should be specifically trained on the issue and reach out to relevant vulnerable communities in order to build positive relationships and enable victims of hate crime to come forward because they have a trusted contact person to report incidents to<sup>59</sup>.

However, this approach requires resources and the commitment to develop the capacity of civil society organisations that are currently not able to conduct monitoring and victim support to a sufficiently high standard.

The EU Fundamental Rights Agency identifies four types of cooperation with civil society, which are built on by the recommendations in this report:

- exchanging relevant data and information;
- working together to uncover the 'dark' figure of hate crime;
- setting up working groups;
- Establishing working groups on how to improve the recording of hate crime.<sup>60</sup>

As set out above, it is recommended that stakeholders work together to co-develop guidelines on recognising key bias indicators in the process of recording hate crimes.

#### Other considerations

Stakeholders will need to acknowledge that a measure of successful implementation will be a significant increase in recorded hate crimes. It takes leadership to welcome this development as an indicator of improvements in recording by the police and other authorities and an increase in confidence of victims and communities to report them. Adopting this approach should be part of a wider strategy to improve transparency, including regularly publishing data and information about the steps that the authorities are taking to understand and address the problem. This issue should be acknowledge and fully discussed as early as possible.<sup>61</sup>

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<sup>58</sup> See above footnote for a list of Ukrainian NGOs. See also opinions from FRA in and specific section on cooperation with civil society, p17 and p. 27.

See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>; see also ECRI GPR No. 11 in relation to the police, 'To establish frameworks for dialogue and co-operation between the police and members of minority groups'.

<sup>59</sup> See for example: ECRI 4th report on Georgia (2016), priority recommendation contained in § 68, <https://rm.coe.int/fourth-report-on-georgia/16808b5773>.

<sup>60</sup> See FRA, 2018.

<sup>61</sup> Draw on the work of the UK in this regard. This can involve reviewing examples of press releases from senior leaders explicitly welcoming increases in recorded hate crime.

## Part II: Hate Speech

Ukraine's legislative framework on hate speech is limited as it excludes hate speech on any grounds other than national, racial or religious hatred.<sup>62</sup> According to the Situational Analysis, there is no systematic data collection process on hate speech in Ukraine.<sup>63</sup> Criminal hate speech offences as defined in Section 161 are not disaggregated from hate crimes contained within the same provision. Non-criminal hate speech offences are defined under laws relating to media content and advertising with limited strength, such as self-regulation, with limited data about cases. However there are specific institutions with responsibilities in this area, and potential to connect law enforcement (including the Cyber Police, the Prosecutor's Office), agencies responsible for media content regulation (the National TV and Radio Council), advertising content regulation (State Consumer Rights Service), hate speech monitoring (Ombudsman's Office), and non-state actors (Women's League, Industrial Gender Committee of the Ukrainian Marketing Association, Committee for Journalism Ethics).

Specific data on the number of hate speech incidents, the impact and responses is very limited. Criminal data is not disaggregated. The NGO Nash Mir reported 8 incidents in 2018. The Ombudsman's Office mentions specific incidents as opposed to quantitative data, and the Journalist Ethics Commission reported 12 complaints.

There is a particular role to play by the police cybercrime unit, which according to ECRI's latest country report was set up in response to Ukraine's ratification of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI was informed that the cybercrime unit monitors the Internet. However, ECRI was also informed by NGOs that, 'complaints of threats and incitement to hatred online, in particular in social networks, which mostly target Roma and LGBT persons, are usually dismissed or not investigated properly by the police, mainly due to lack of capacity or because they are considered insignificant'.

According to ECRI's latest country report, 'the conflict appears to have had a negative effect on vulnerable groups in general. Reports indicate that there has been an increase in racist hate speech and discriminatory statements in public discourse, including by political figures, directed against Roma, asylum seekers and refugees, internally displaced persons (IDPs), foreign students and LGBT persons.'<sup>64</sup>

There is no official, established hate speech recording mechanism. The efforts of civil society organisations also lack coordination. The lack of a common definition or conceptual understanding of hate speech, suggests that work is to be done with stakeholders to identify and agree what hate speech reaches the criminal threshold, while ensuring the fundamental right to freedom of expression is protected, the role of the law enforcement authorities and the type and methods of cooperation with online platforms, the media and civil society.

**Recommendation 14: with several parallel mechanisms of sanctions (from criminal to self-regulation) for hate speech, and uncoordinated efforts to record and monitor incidents,**

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<sup>62</sup> See ECRI (2017b)

<sup>63</sup> This conclusion is supported by a recent report by the Minority Rights Group, 'Xenophobia in Ukraine, 2018'

<sup>64</sup> ECRI (2017b), paragraph 23

**it is necessary to map current efforts, develop a clear mechanism of referrals and to identify the areas of responsibilities of stakeholders.**

In doing this consider:

- engaging with police, cyber police, NGO leagues of Equal, the Industrial Gender Committee of the Ukrainian Marketing Association, State Consumer Rights Service, the National TV and Radio Broadcasting Council, the Minority Rights Monitoring Group, Nash Mir, Ombudsman's Office, Journalist Ethics Committee and other relevant bodies.
- using the definition of hate speech from ECRI GPR No 15 as a monitoring definition <sup>65</sup>:

Hate speech ... entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement, or the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.

- that the proposed definition of hate speech is interpreted to include online hate speech.
- any further civil or administrative offences that should be included in the system
- the roles and responsibilities of NGOs, broadcasters, social media companies, schools, the Ombudsperson Office, law enforcement and the courts in recording and monitoring incidents of hate speech.

Considering the number of bodies potentially involved, a first step could be to organize a roundtable to identify the current situation, relationships and next steps, including those listed above.

The recently published Council of Europe 'Models of Governance of Online Hate Speech'<sup>66</sup> to develop a hate speech governance and action plan is an excellent resource for national stakeholders to consider and identify national strategic governance issues and to implement the necessary frameworks at the levels of moderation, oversight and regulation .

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<sup>65</sup> See ECRI GPR No. 15 in full, which defines the key elements of the definition; this is also aligned with the definition set out in 'Guidance on the Framework Decision' prepared for the High Level Group on Racism and Xenophobia, published by the European Commission, 2018.

<sup>66</sup> Alexander Brown, (2020) 'Models of governance of online hate speech', Strasbourg: Council of Europe, available online at- [https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d?fbclid=IwAR1kBiSQcZo9bLaonb-td3Azfc\\_OqpWoaDJ71AJE2IZq0XybK5f1vuljHw](https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d?fbclid=IwAR1kBiSQcZo9bLaonb-td3Azfc_OqpWoaDJ71AJE2IZq0XybK5f1vuljHw), accessed on 31 May 2020.

## Part III: Discrimination

Applying international concepts and frameworks, and based on the information available to the drafter of this report to date, Ukraine's anti-discrimination framework is comprised of a mix of criminal and non-criminal provisions. These have been grouped according to the international framework on discrimination in appendix one, table 3.

As explained in the situational analysis (see part two), Ukraine's anti-discrimination framework is relatively recently established and not yet fully embedded. The Office of the Ukrainian Parliamentary Commissioner for Human Rights (the Ombudsman's Office) performs the role of the national equality body. According to the situational analysis,

'Official authorities do not have sufficient means and mechanisms to sanction discrimination. There is a lack of relevant provisions in the administrative code, and the inability of the equality body ...to impose sanctions for discrimination. This shortcoming is partially addressed by a draft bill 0931 (former 3501), which has been submitted to the Parliament for second reading, but has been delayed and returned to the relevant committee for amendments. However, the bill does not address the absence of SOGI among protected characteristics, which will delay the amendment of the list following its adoption.

The potential change in the law has implications for this project. In the context of the relatively narrow aims of this project, the absence of SOGI grounds could be partially addressed by adopting an inclusive monitoring definition of discrimination (See annex one, table three).

Overall, there are several bodies that play a role in collecting data and information on discrimination. There are also several opportunities to improve available data and to improve cooperation. The first set of recommendations are based on the situational analysis and relate to the overall improvement of available data and coordination across the several agencies that have responsibilities in this area.

The second set of recommendations address the specific and technical recording and data sharing process across relevant agencies.

### Available data and cooperation

At the national equality body, the Ombudsman's Office has defined obligations to collect information on discrimination in Ukraine. Its Department for the Observance of Equal Rights, collects data on discrimination, hate crimes, and hate speech through the following channels:

- Citizen complaints received directly. According to the baseline study, these incidents are qualified, 'due to the issue and the authority, entity, etc.; their responses (answers, copies of documents on measures taken, etc.) are subject to automated

registration<sup>67</sup>. There are electronic forms of record which are used and kept in the Secretariat of the Commissioner: 1/ system of records of appeals/complaints; 2/ system of records of requests for information; 3/ system of records of service documentation' (p. 61). It is recommended that stakeholders assess whether the proposed discrimination recording forms add value to the current system<sup>68</sup>

- Data is collected and analysed from all other departments of the Secretariat and regional representations. Quarterly and annual reports are produced. Data is broken down by discriminatory ground (see p. 67 of Baseline study).

Available data is summarized below:

- 616 applications, with 90% success in implementation of recommended or required remedies within the correct timeframe and 10% still ongoing.<sup>69</sup>
- 106 through independent monitoring by the Ombuds office.<sup>70</sup>
- very limited information on disability
- NGO monitoring through a coalition shows significant discrimination experienced by Roma communities
- NGO monitoring – Ukrainian Helsinki Human Rights Union handling 88 complaints in 2018<sup>71</sup>
- data from other state authorities (State Court Administration (please see comment about this source below), the National Police)
- MoJ conducted survey finding that 49% of young people aged 12-35 have reported experiencing discrimination<sup>72</sup>; there are plans to lead to public awareness campaign.
- The Commissioner (Ombudsman) does not conduct any public surveys on peoples' perception of discrimination in Ukraine.
  - o In 2018 the Ilko Kucheriv Democratic Initiatives Foundation in cooperation with the NGO "Human Rights Information Center" held the

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<sup>67</sup> The Instruction on the office work in the Secretariat of the Parliament's Commissioner on Human Rights, approved by the Order of the Parliament's Commissioner on Human Rights of 27.08.2012 No. 9/8-12. URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/organizacijno-rozporyadchi-dokumenty/>

<sup>68</sup> See 'discrimination recording form'

<sup>69</sup> 13 notifications (1.44%) in applications of internally displaced persons; 38 (6.17%) gender-based; 152 (24.68%) on the ground of religious beliefs; 57 (9.25%) on the ground of disability and the state of health; 29 (4.7%) on the ground of sexual orientation and gender identity; 43 (7%) on the ground of ethnic (national) origin, race, color of skin; 297 (48.2%) on other grounds. In terms of disaggregation according to criminal and non-criminal discrimination, it is important to note that data relates to both categories.

<sup>70</sup> visits (48 monitoring visits were conducted, including to 14 social institutions, 7 educational institutions, 7 cultural and leisure establishments, 9 medical institutions, 8 courthouses, 3 transport infrastructure objects).

<sup>71</sup> The majority of the applicants were persons living with HIV/AIDS – 20, persons under the HIV/AIDS risk – 18, IDPs – 17, foreigners and stateless persons – 9, pensioners – 9, etc. [...] The most frequent motive for discrimination met in applications to the UHHRU – state of health, gender identity, national/ethnic origin" (see situational analysis and baseline study for detail).

<sup>72</sup> The survey was organized by UNICEF U-Report project in 2019. There were 10 022 respondents aged 12-35 in Ukraine. Detailed results: <https://ukraine.ureport.in/opinion/3743/>

nationwide poll “What Ukrainians know and think about human rights: assessment of change” (2016-2018)<sup>73</sup>. The work was supported by the United Nations Development Program in Ukraine. This type of work meets recommendations of the ECRI general policy recommendation no. 4

Data is gathered through specific requests from the Ombudsman’s Office, in line with its duties and through ‘monitoring visits’, which it reports on through its annual report.<sup>74</sup> However, there is no established interagency mechanism for this process. It is also unclear whether there is a set questionnaire or schedule for interagency requests. The data is supplied to outside organisations (e.g. ECRI, US Dept of State) and used to inform the Office’s legislative recommendations.

The State Court Administration collects data ‘in various forms for different types of cases-criminal, administrative, economic, etc.) and stages of proceedings. As explained in the above section on hate crime, Form 1k is used to reports outcomes of criminal proceedings (including criminal discrimination) by first instance courts, which include violation of equality. Data on criminal discrimination is provided also to the Prosecutor’s office. Data are reported by the Ombudsperson’s office in their annual report, which is the only publicly available source of information on ‘complaints disaggregated by type of protected characteristics’.

Statistics on discrimination are not produced by the State Statistics Service. The Situational Analysis recommends that such statistics for discrimination and hate crime are collated taking into account the established good practice set by the Interagency Working Group on Harmonization of the National Gender Equality Indicators with International Standards (established in March 2019).

**Recommendation 15 for the Ombudsman’s Office and other relevant stakeholders:**<sup>75</sup> support the Ombudsman’s Office in expanding its data collection and reporting activities through, inter alia, best practice examples from the work of Equality Bodies internationally and development of monitoring and data collection methodology. Possible actions can include:

- where possible, include questions related to protection against discrimination throughout monitoring processes of the Ombudsman’s Office and other state bodies (i.e. visits for other purposes);
- amend provisions pertaining to the data collection process and classification of cases to include categories and definitions that reflect discrimination and hate crime;

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<sup>73</sup> [http://www.ua.undp.org/content/ukraine/uk/home/library/democratic\\_governance/humanrightsresearch-2018.html](http://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/humanrightsresearch-2018.html)

<sup>74</sup> According to the Regulation on the Parliamentary Commissioner for Human Rights and terms of reference for the staff

<sup>75</sup> This is adapted from recommendation in the situational analysis.

- provide training for identification and recording of discrimination cases in the electronic court records;
- develop a comprehensive approach to implementation of the Human Rights Strategy Action Plan indicators related to discrimination and hate crime; provide input for the next Action Plan with concrete suggested outcomes and indicators;
- raise awareness about data collected by NGOs by including in annual and quarterly reports;
- develop a strategy for easy-to-access publication of data on discrimination, hate crime and hate speech (including special reports, dedicated web resources etc.);
- while a joint approach and working definition is an important step towards informed policy and decision-making, the issues of discrimination should be mainstreamed in the monitoring processes of state bodies, including the Ministry of Justice (unit responsible for monitoring of the implementation of the Human Rights Strategy), the State Labor Service, the State Court Administration, among others. Importantly, data on discrimination should be collected and reflected then in strategic planning processes.
- currently, another window of opportunity is the SDG monitoring process. Collection of data on discrimination is also in line with the implementation of SDGs in Ukraine - in 2017, in its National Baseline Report, Ukraine has identified a national target for Goal 10, namely Target 10.2 “Preventing discrimination in Ukraine” with Indicator 10.2.1 - “Share of people who reported that in the last 12 months they had personally faced discrimination or harassment based on discrimination in total population, %”. A recent Presidential Decree “On the Sustainable Development Goals for Ukraine until 2030” requires that a monitoring system should be established in 2020.
- a possible area for research could be the mechanism of citizen’s complaints to the state authorities: the classification of appeals was amended to include “discrimination” as a category. Further research could identify the potential of this mechanism for identifying the nature of complaints and making relevant policy decisions, if possible.
- A Plan for Gender Equality (2021) foresees collection of data on court cases and identification state and local officials responsible for responding to complaints about discrimination and supporting victims of gender discrimination.<sup>76</sup> A similar mechanism could be used for all cases of discrimination, as an example.
- The Coordination Center for Legal Aid Provision has developed extensive and high-quality guidelines on supporting persons seeking assistance in case of gender discrimination.<sup>77</sup> Moreover, the Center collects and publishes real-time data on the types of requests for legal assistance, which is publicly available<sup>78</sup>.

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<sup>76</sup> See <https://zakon.rada.gov.ua/laws/main/273-2018-%D0%BF>

<sup>77</sup> See <https://zakon.rada.gov.ua/rada/show/v0033419-19>

<sup>78</sup> See <https://legalaid.gov.ua/ua/statystychni-dani/2506-mistsevi-tsenyry-2019-rik>. While the Center does not disaggregate data by discrimination/hate crime/bias motivation etc., according to the interview, such information can be received upon

- As to *prohibition of discrimination in employment*, the competent entity – the State Labor Service (SLS) - only monitors specific provisions (such as prohibitions of firing a pregnant woman under Article 184 of the Labor Code), rather than prohibition of discrimination in general. This is despite the specifically stated tasks of the SLS to “monitor job advertisements” and “observation of labor laws” in official regulations on the work of the Service, and while the Act of Inspection includes a section entitled “Equality of Labor Rights of Citizens”, corresponding to Article 2<sup>1</sup> of the Labor Code. While certain disaggregated data is collected (number of female employees, violations of Article 184), and reflected in reports of the Service, in the interview, the representative of the Service explained there was a lack of specific instructions in the regulations on the SLS work on assessment of situations of discrimination.

**Recommendation 15a for the State Labour Service:** develop instructions and provide training elaborating on the duties of the State Labor Service with regard to monitoring discrimination in the workplace.

### **Recommendation 16 (second set) Adopting a monitoring definition**

As in the previous sections, it is recommended that a monitoring definition of discrimination is adopted by the relevant Ukrainian authorities to allow for the recording and tracking of cases across the criminal and/or civil system.<sup>79</sup> The proposed definition is based on ECRI GPRs while recognising the potential difficulties in applying the definition across all incidents and institutions.

"Discrimination" shall mean any differential treatment based on the grounds set out in Ukrainian law<sup>80</sup> which has no objective and reasonable justification.

It is recommended that the definition allows monitoring of the following discriminatory acts, even if they are not currently covered by Ukrainian law, in line with the ECRI recommendations:

- Acts of segregation, discrimination by association, and announced intention to discriminate, as recommended in ECRI’s GPR No. 7, §6.

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request. Importantly, the Center has recently published recommendations for supporting cases of multiple discrimination of women from vulnerable groups ([https://legalaid.gov.ua/images/docs/2019/nakaz\\_20.11.2019.pdf](https://legalaid.gov.ua/images/docs/2019/nakaz_20.11.2019.pdf)).

<sup>79</sup> One issue, highlighted by the Baseline Study is the ‘inconsistency of terminology and provisions in concern to prevention and combating discrimination’.

<sup>80</sup> race, color, political, religious and other beliefs, membership in trade unions or other associations of citizens, gender, age, ethnic and social origin, property status, place of residence, linguistic characteristics, sex, gender identity, sexual orientation, foreign origin, state of health, disability, suspicion or presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other association, participation in the strike, application or intention to apply to the courts or other authorities to protect their rights or supporting other workers in defence of their rights, language or other characteristics not related to the nature or conditions of work.



- Harassment, including sexual harassment, related to one of the enumerated grounds, as recommended in ECRI's GPR No. 7, §15.

#### Review and amend recording and reporting forms

**Recommendation 17, for all stakeholders:** Current recording and reporting forms used by the relevant ministries and agencies should be modified and updated to reflect the above operational definitions and bias motivation categories.

In addition, police recording forms should include the capacity to record:

- the type of base or ordinary criminal offence based on Ukraine's criminal code (e.g. assault, property damage, etc.)
- the bias motivation/ 'intolerance ground' (referring to the above 'meta' categories)
- a brief description about what happened, including reference to specific bias indicators and the perception of the victim or any other person.
- risk indicators and relevant action
- victim needs, including whether they are facing a high risk of repeat victimisation or escalation, and if they have been or need to be referred to support<sup>81</sup>
- the connection between the victim/witness and alleged perpetrator,
- location of crime
- age, and other related data.

To improve recording of citizen's complaints on discrimination, amendments should be developed and introduced to the relevant regulations, including the State Classification of Citizen's Appeals.

It is important that, where possible, the recording systems are embedded into existing recording processes that are designed to trigger consideration of recording and create the least possible bureaucratic demands on operational staff. The attached recording forms can be used as a basis for a joint manual or electronic system, to be incorporated, as far as possible within existing or proposed recording systems.<sup>82</sup>

**Recommendation 18 to the relevant institutions:** jointly clarify the current process for recording and monitoring cases of discrimination and identify actions for improvement, including creating a joint database. Within this piece of work, develop a referral protocol between police and Ombudsperson office that allows for the easy referral of hate crime cases from the discrimination body to the police and of non-criminal discrimination cases from the police to the EB.<sup>83</sup>

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<sup>81</sup> See draft recording form

<sup>82</sup> When seeking to integrate an electronic recording and data collection system across the police, prosecution and courts, it is important to note that the court service does not share systems with other institutions (PGO or NPU).

<sup>83</sup> In developing this protocol, stakeholders can draw on the Observatory against Acts of Discrimination (OSCAD) in Italy as an example of good practice.

## Part IV: Hate incidents, administrative offences and other

There is no unified system for recording sub-criminal incidents in Ukraine. Sub-criminal hate-motivated incidents that do not reach the threshold of a criminal offence can still cause significant harm and be indicators of risks of escalation in violence. For these reasons, they should be monitored by the authorities.

**Recommendation 19: Stakeholders should establish a working sub-group to develop an agreement to** record and monitor sub-criminal hate incidents according to the following definition.

“any **incident** that does not reach the threshold of a criminal offence and is perceived by the victim or any other person to be based on intolerance in whole or in part towards real or perceived race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, which include sexual orientation, gender identity and sex characteristics”

This approach allows the authorities, and the police in particular, to monitor incidents that have a high impact on victims and affected communities, and address them before they escalate in seriousness. It also allows closer cooperation with relevant civil society groups that are also monitoring such incidents.

The proposed working groups should also develop policy that defines the relationship between hate speech and non-crime hate incidents, specifically to recommend on whether all non-crime hate speech reports should be de-facto recorded as non-crime hate incidents or be reported as a sub-category.

This would involve adding a category of ‘hate incident’ to police and other agency recording methods. It would also involve regular review of the data to identify patterns, trends and outcomes, which could be done within the framework of the proposed inter-agency working group.

It is important to note that incidents of discrimination can fall within this definition.

## Appendix one: Relevant law and information about recording and data collection practices in Ukraine in the context of international norms and standards

### Background and general approach

To assist in understanding how Ukraine’s recording and data collection system can be better aligned with international norms and standards, and shared definitions adopted at the national level, the tables below map Ukraine’s legal provisions against internationally agreed definitions. This should help Ukraine’s legal framework to better integrate with international conceptual definitions. The main document builds on this and proposes specific definitions for Ukraine and the various criminal justice agencies and government ministries.

The main recommendations document sets out in detail how Ukraine can set up and implement a joint hate crime, hate speech and discrimination recording and data collection system by agreeing joint definitions, guidelines and training, shaped by overarching principles. This appendix sets out relevant provisions in Ukraine’s criminal code, as well as relevant administrative and civil code provisions according to internationally agreed definitions of the hate crime, hate speech and discrimination concepts. The fit is awkward in places, splitting single criminal code provisions and there is room for discussion across stakeholders on the best approach. For the first draft, the aim is to illustrate how legal provisions might be organised in Ukraine’s proposed recording and data collection system in a way that meets international norms and standards.

Table one: Integrating Ukrainian law on hate crime, hate speech and discrimination with the internationally agreed definition of hate crime

<b>Hate crime defined as,</b>	<b>Comments</b>
<b><i>A criminal act committed with a bias motivation (list of crime types and protected characteristics)</i></b>	

<p><b>Specific penalty enhancements</b></p> <p><b>Article 115. Murder</b>  1. Murder, that is willful unlawful causing death of another person, - shall be punishable by imprisonment for a term of seven to fifteen years.</p> <p>2. Murder:</p> <p>(1)-(13) ...</p> <p><b>(14) based on racial, national or religious intolerance.</b>- shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment with forfeiture of property in the case provided for by subparagraph 6 of paragraph 2 of this Article.</p>	<p>Racial, national or religious intolerance only.</p>
<p><b>Article 121. Intended grievous bodily injury</b>  1. Intended grievous bodily injury, that is a willful bodily injury which is dangerous to life at the time of infliction, or resulted in a loss of any organ or its functions, or caused a mental disease or any other health disorder attended with a persisting loss of not less than one-third of working capability, or interruption of pregnancy, or permanent disfigurement of face, - shall be punishable by imprisonment for a term of five to eight years.</p> <p>2. Intended grievous bodily injury committed by a method characterized by significant torture, or by a group of persons, and also for the purpose of intimidating the victim or other persons, <b>or based on racial, national and religious intolerance</b>, or committed as a contracted offense, or which caused death of the victim, - shall be punishable by imprisonment for a term of seven to ten years.</p>	<p>Same 'intolerance' word construction.</p>

<p><b>Article 122. Intended bodily injury of medium gravity</b></p> <p>1. Intended bodily injury of medium gravity, that is a willful bodily injury which is not dangerous to life and does not result in the consequences provided for by Article 121 of this Code, but which caused a lasting health disorder or a significant and persisting loss of not less than one-third of working capability,- shall be punishable by correctional labor for a term up to two years, or restraint of liberty for a term up to three years, or imprisonment for a term up to three years.</p> <p>2. The same actions committed for the purpose of intimidating the victim or his/her relatives, or coercion to certain actions, <b>or based on racial, national or religious intolerance</b>, - shall be punishable by imprisonment for a term of three to five years.</p>	
<p><b>Article 126. Battery and torture</b></p> <p>1. Intended blows, battery or other violent acts which caused physical pain but no bodily injury, - shall be punishable by a fine up to 50 tax-free minimum incomes, or community service for a term up to 200 hours, or correctional labor for a term up to one year.</p> <p>2. The same acts characterized by torture, committed by a group of persons or for the purpose of intimidating the victim or his relatives, <b>or based on racial, national or religious intolerance</b>, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term</p>	
<p><b>Article 127. Torture</b></p> <p>1. Torture, that is an willful causing of severe physical pain or physical or mental suffering by way of battery, martyrizing or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions, including receiving from him/her or any other person information or confession, or for the purpose of punishing him/her or any other person for the actions committed by him/her or any other person or for committing of which</p>	

<p>he/she or any other person is suspected of, as well as for the purpose of intimidation and discrimination of him/her or other persons, - shall be punishable by imprisonment for a term of three to five years.</p> <p>2. The same actions repeated or committed by a group of persons upon prior conspiracy, <b>or based on racial, national or religious intolerance</b>, - shall be punishable by imprisonment for a term of five to ten years.</p>	
<p><b>Article 129. Threat to kill</b></p> <p>1. Any threat to kill, if there was a reasonable cause to believe that this threat may be fulfilled, - shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to two years.</p> <p>2. The same act committed by a member of an organized group <b>or based on racial, national or religious intolerance</b>, - shall be punishable by imprisonment for a term of three to five years.</p>	
<p><b>Article 161. Violation of citizens' equality based on their race, nationality, religious preferences or disability</b></p> <p>1. Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, disability sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, - shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p> <p>2. The <b>same actions accompanied with violence, deception or threats</b>, and also committed by an official, - shall be punishable by a fine of 500 to</p>	

<p>1000 tax-free minimum incomes, or restraint of liberty for a term of two to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p>	
<p><b>Article 67. Circumstances aggravating punishment</b></p> <p>1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:  (1), (2) ....  <b>(3) the commission of an offense based on racial, national or religious enmity and hostility;</b>  (4) – (13) ...</p> <p>2. Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraphs 2, 6, 7, 9, 10, and 12, not to be aggravating, and should provide the reasons for this decision in its judgment.</p> <p>3. When imposing a punishment, a court may not find any circumstances, other than those defined in paragraph 1 of this Article, to be aggravating.</p> <p>4. If any of the aggravating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as an aggravating circumstance when imposing a punishment.</p>	

Table two: Hate speech

Ukraine’s hate speech provisions allow for a mix of criminal and non-criminal sanctions.

<p><b>International definition of hate speech:</b> ECRI GPR No. 15</p> <p>Hate speech ... entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.</p>	<p><b>Comments/ recommendations</b></p>
<p><b>Legal provisions</b></p>	
<p><b>Criminal Code</b> <b>Article 161</b></p> <p>1. Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions....</p> <p>shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p> <p>...</p> <p>3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by an organized group of persons, or where they caused grave consequences, -</p> <p>shall be punishable by imprisonment for a term of five to eight years.</p> <p>(Article 161 in version of Law No 1707-VI (1707-17) of 05.11.2009)</p>	<p>This is a criminal provision.</p> <p>There is limited information about criminal investigations and prosecutions. Hate crime and hate speech data falling within this provision are not disaggregated (see also <a href="#">OSCE Ukraine country page</a>).</p>



<p><b>Law on Advertising, article 8(1)</b>  Advertising shall not include:  ... statements that are discriminatory based on origin, social and property status, racial and national belonging, sex, education, political views, religious views, language, type of occupation, place of residence, or those discrediting the good of other persons.</p>	<p>While this provision regulates hate speech in the media, it also can be used as discrimination provision if applied to a job advertisement (see table on Discrimination)</p>
<p><b>Law on Television and Broadcasting</b>  Article 6. Inadmissibility of abuse of freedom of activity of broadcasting organizations  <b>calls for an outbreak of aggressive war or propaganda and / or incitement to national, racial, or religious enmity and hatred;</b>  8. The National Council may decide to impose fines specified in this part, regardless of the application of sanctions to the offender in the form of a warning, only in the case of the following violations:  by broadcasting organizations -  25 percent of the license fee for:  ... calls for an outbreak of aggressive war or propaganda and / or incitement to national, racial or religious enmity and hatred;  promotion of the exclusiveness, superficiality or inferiority of persons on the basis of their religious beliefs, ideology, belonging to a particular nation or race, physical or property status, social origin;  ... In the case of calls for a violent change of the constitutional order of Ukraine, an outbreak of an aggressive war or its propaganda and / or incitement to national, racial or religious hatred and hatred, propaganda of the exclusiveness, superficiality or inferiority of persons on the basis of their religious beliefs, ideology, belonging to a particular nation or race, physical or property status, social origin were broadcast, distributed, distributed without prior record, and contained in speeches, replicas of a non-working person with broadcasters, TV and radio is not responsible for these violations, except where</p>	<p>Hate speech provisions (non-criminal)</p> <p>The National Council on Television and Broadcasting imposes sanctions for violations of these provisions</p> <p>This does not preclude criminal liability under article 161</p> <p>According to the National TV and Radio Broadcasting Council, “the current provisions of Article 6 of the Law on Television and Radio Broadcasting are quite general, so it is extremely difficult to apply them in practice and to defend one's position in the courts [...]. The National Council [...] supports and expects the adoption of a law by Parliament as soon as possible to respond more effectively to manifestations of hate speech and to apply” (2018 Report of the Council).</p> <p>NGO League of Equals collects data and submits complaints in cases of discriminatory (sexist) advertisement. Results of their work include fines and</p>

<p>broadcasting staff did not take measures to stop violations on air</p>	<p>sanctions imposed by the official authorities.</p> <p>The Industrial Gender Committee of the Ukrainian Marketing Association receives complaints about advertisements; issue opinions based on professional standards, as well as provides expert opinions on request of the State Consumer Rights Service.</p>
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Table three: Discrimination

<p><b>International definition of discrimination (adapted from ECRI GPR No. 6 to cover all forms of discrimination):</b> "discrimination" shall mean any differential treatment based on the grounds set out in Ukrainian legislation, which has no objective and reasonable justification.</p> <p><b>Grounds currently covered in aggregated law:</b> race, color, political, religious and other beliefs, membership in trade unions or other associations of citizens, gender, age, ethnic and social origin, property status, place of residence, linguistic characteristics, sex, gender identity, sexual orientation, foreign origin, state of health, disability, suspicion or presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other association, participation in the strike, application or intention to apply to the courts or other authorities to protect their rights or supporting other workers in defence of their rights, language or other characteristics not related to the nature or conditions of work</p>	<p><b>Comments/ recommendations</b></p>
<p><b>Law on the Principles of Preventing and Counteracting Discrimination in Ukraine</b> Article 1, Law on Discrimination: <b>Discrimination</b> - a situation in which a person and / or group of persons by their race, color, political, religious and other beliefs, sex, age, disability, ethnic and social background, citizenship, family and property, place of residence, language or other characteristics that have been, are, and may be actual or perceived (hereinafter</p>	<p>Discrimination provision (while the law provides for criminal, administrative and civil liability, there are no provisions yet in the administrative Code to enforce it; violations can be challenged directly in court by plaintiffs)</p>

<p>referred to as certain characteristics) is <b>subjected to restrictions in the recognition, exercise or enjoyment of rights and freedoms in any form prescribed by this Law</b>, except where such restriction has a legitimate and objectively justified aim, and the means of achievement thereof are relevant and necessary.</p>	
<p><b>Law on Employment of Population</b> Article 11.</p> <p>1. The State guarantees a person the right to be protected from any discrimination in employment in the field of employment on grounds of race, color, political, religious and other beliefs, membership in trade unions or other associations of citizens, gender, age, ethnic and social origin, property status, place of residence, by linguistic or other characteristics.</p> <p>2. It is prohibited in job advertisements (advertisements) to specify the age limit of candidates, to offer work only to women or only men, except for specific work that can be performed exclusively by persons of a particular gender, to make requirements that favor one of the articles, and to require from job seekers, providing personal information.</p> <p>Restrictions on the content of advertisements (advertisements) on vacancies (recruitment and employment) and liability for violations of the established order of their distribution are set by the Law of Ukraine "On Advertising" (see "Hate Speech" table)</p>	<p>Non-criminal discrimination</p> <p>The state body responsible for oversight - State Labor Service (see recommendations with regard to the SLS involvement)</p>
<p><b>Labor Code - Article 2<sup>1</sup></b> all forms of discrimination in the field of labour, including <b>violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights</b> of workers on the grounds of race, colour, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other association, participation in the strike, application or intention to apply to the courts or other authorities to protect their rights or supporting other workers in defence of their rights, language or other characteristics not related to the nature or conditions of work</p>	<p>Non-criminal discrimination, other articles of the Labor Code specify prohibition of firing a pregnant woman, rules on employment of persons with disabilities etc.</p> <p>See also recommendations for the State Labor Service</p>
<p><b>Law on the Rights and Freedoms of Internally Displaced Persons</b></p>	

<p><b>Article 14. Prohibition of Discrimination</b></p> <p>1. Internally displaced persons shall enjoy the same rights and freedoms in accordance with the Constitution, laws and international treaties of Ukraine as other citizens of Ukraine resident in Ukraine. They shall not be discriminated against in the exercise of any rights and freedoms on the ground that they are internally displaced persons.</p>	
<p><b>Criminal Code, article 161</b></p> <p>... and <b>also any direct or indirect restriction of rights, or granting direct or indirect privileges</b> to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics</p> <p>shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p>	<p>Criminal discrimination</p> <p>(see “Hate Crime” table for the second part of this article)</p>
<p><b>“On Ensuring Equal Rights and Opportunities for Women and Men”<sup>84</sup></b></p> <p>Sexual discrimination is action or inaction that expresses any difference, exception or privileges based on sex, if they are aimed at restricting, making it impossible to recognize, use, or implement on an equal footing human rights and freedoms for women and men.</p>	
<p><b>Law “On the basics of social protection of persons with disabilities in Ukraine”, article 2.</b></p> <p>Disability discrimination is prohibited.</p> <p>The terms "reasonable accommodation" and "universal design" are used in the meaning of the Convention on the Rights of Persons with Disabilities, and the term "discrimination on the basis of disability" is used in the meaning of the Convention on the Rights of Persons with Disabilities and the Law of Ukraine "On the Principles of Preventing and Counteracting Discrimination in Ukraine.»</p>	<p>These are positive obligations (e.g. the need to take action for reasonable accommodation), not only negative obligations (e.g. the prohibition of unfair or differential treatment).</p>

<sup>84</sup> Fedorovych, 2016, notes, “according to 2016 data, in the ten years since the law’s adoption, only 145 court rulings mentioned this law, and most of these cases were state initiated claims on gender discrimination in advertisements”.

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## Appendix three. Potential hate crime reporting form

Form xx (confidential when completed)

### Part One for police

Unique reference number	... /year
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#### 1. Crime details

A. Main offence type (use existing crime recording categories):

B. Date of offence/incident:

a. reported at ....

b. time of offence from ..... to .....

C. Location of offence: *complete address*

D. Description of the crime: Briefly describe the incident including the timing, number of offenders, location, whether any bias indicators were present (e.g. language such as racist slurs or symbols) and any other relevant information.

#### 2. Officer recording the potential hate crime

A. Rank/name:

B. ID No.

C. Work location:

D. Telephone No.:

E. Email address:

#### 3. Type of hate crime (*mark all the answers that apply with an X*)

A. Race

Which racial group: .....

B. Sex

Male

Female

Other

C. Sexual orientation

Heterosexual

Lesbian

Gay

Bisexual

D. Gender Identity

E. Age

Specify age range:

F. Religion

Specify which religion:

G. Political or other opinion

Which opinion?

H. Disability

Specify which type:

I. Property, social status of residence

J. Other discriminatory grounds:

#### 4. Victim details

A. Name:

B. Date of birth:

C. Address:

D. Telephone No.:

E. Email address:

F. Self-defined ethnicity:

F. Sex:

G. Communicates in the national language: (Y/N)

If not, indicate language:

H. Name, relationship to victim and contact details of parent/carer/representative (when appropriate)



I. How does the victim wish to be communicated with? Any method Through  
carer/representative Other

*Some victims may need sensitivity if they are to trust authorities to report crimes. Examples would include, but are not limited to;*

- *A gay victim who has not disclosed his sexual orientation to family or work colleagues.*
- *A victim of racism from neighbours who may face further hostility if the police are seen to visit their address.*

J. Specific needs of victim

*Record here any needs the victim may have in order to give evidence. This could include, but is not limited to that they fear they will be intimidated by the perpetrator, have communication needs such as interpreters or have physical limitations to access courts etc.*

K. Injuries received (including psychological harm)

L. Statement obtained YES/NO and date: .....

### **5. Bias indicators**

A. Which Bias Indicators have been noted by the recording officer? *(include all the numbers from the list below that apply and explain if there are also others)*

B. Evidence attached to file? (Y/N)

C. The victim perceived the crime was, in part, at least motivated by hostility or bias towards a protected characteristic: (Y/N)

D. A police officer perceived it to be so: (Y/N)

F. Another person perceived it to be so (specify who):

#### **Guidance on bias indicators: non-exhaustive list**

##### **Comments, Written Statements, Gestures or Graffiti**

1. Did the suspect make comments, written statements or gestures regarding the victim's community?
2. Were drawings, markings, symbols or graffiti left at the scene of the incident?
3. If the target was property, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery?

##### **Racial, Ethnic, Gender, and Cultural Differences**

4. Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
5. Is there a history of animosity between the victim's group and the suspect's group?
6. Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
7. Was the victim engaged in activities promoting his/her group at the time of the incident?
8. Did the incident occur on a date of particular significance (e.g. a religious holiday or national day?)

##### **Organized Hate Groups**

9. Were objects or items left at the scene that suggest the crime was the work of a paramilitary or extremist nationalist organization?
10. Is there evidence that such a group is active in the neighborhood (e.g., posters, graffiti or leaflets?)

##### **Previous Bias Crimes/Incidents**

11. Have there been similar incidents in the same area? Who were the victims?

12. Has the victim received harassing mail or phone calls or been the victim of verbal abuse based on his/her affiliation or membership of a targeted group?
13. Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship).

## 6. Suspect details

- A. Has one or more suspects been identified? (*If YES, move to section 7*) (Y/N)
- B. If all enquiries are complete and no suspect is identified, the victims was notified by .....  
*If enquiries are completed without a suspect being identified, there is no need to send a copy to the Prosecutor's Office, but a copy must be sent to the police investigative centre and relevant coordinating ministry.*
- C. Complete the below if no suspect known
- C.1 Is the ethnicity of the offender known from witnesses? (Y/N)  
Provide details:
- C.2 Is the sex of the offender known from witnesses? (Y/N)  
Provide details:
- C. 3 Is the religion of the offender known from witnesses? (Y/N)  
Provide details:

**Name, date:**

## 7. Suspect details

*Add the below information for each suspect.*

- A. Name:
- B. Date of birth:
- C. Address:
- D. Self-defined ethnicity:
- E. Sex:
- F. Communicates in the national language: (Y/N). If not, specify which language.
- G. Criminal records identity:

## 8. Completion

Signature of the officer completing the enquiry

Name and date

*Append copy of this form to the file sent to the Prosecutor's office. Also a copy must be sent to the Ministry of Internal Affairs at the relevant contact point.*

Form xx (confidential when completed)

**Part 2 for prosecutors**

Unique reference number	... /year
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**1. Reviewing Lawyer for the potential hate crime**

- A. Name:
- B. Work address:
- C. Telephone No.
- D. Email:

**2. Review of investigators**

- A. Date of the first review:
- B. Did the review find sufficient evidence to pass the evidence threshold test? Yes / No / Returned for further enquiring
- C. Date of final review (if more than one review of file):
- D. Did the file meet the evidence threshold test to prosecute: (Y/N)  
*If not, then proceed to the Courts section*
- E. Did the file meet the public interest test to prosecute? (Y/N)
- F. Is there sufficient evidence to ask the Court to consider Article 63 sentencing powers? (Y/N)
- G. If not, provide the reason here:
- H. Approved charges:

**3. Completion**

- A. Victim informed of prosecution decision on:
- B. Investigating officer informed on:

Signature and name of lawyer completing case and date:

*Note to completing lawyer: send completed copy to the Courts Administration at this email and send copy of this completed form to the relevant Ministry.*

Form xx (confidential when completed)

**Part 3 / Court Section**

Courts Office Reference Number	... /year
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**1. Court results**

- A. Support for Victim: were any measures taken to support the victims' specific needs? (for example, an interpreter)
- B. Was the case heard by a Court? (Y/N)
- C. If not, provide reason:
- D. Date to final Court hearing:
- E. Finalising Court:
- F. Court result:
- G. Did the Court consider article 63 applied? (Y/N)
- H. If not considered and/or applied, provide reason:
- I. Sentencing details:

**2. Completion**

- A. Victim informed of outcome on:

Signature and name of official recording completion and date

Note to completing official: send the completed copy to the .....

## PART TWO. SITUATIONAL ANALYSIS ON DATA COLLECTION ON DISCRIMINATION, HATE SPEECH AND HATE CRIME IN UKRAINE

### Introduction

The report was prepared within the framework of the project “Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries” in order to develop recommendations for the improvement of disaggregated data collection activities. The key focus of the research were the actual mechanisms of data collection among different stakeholders, the legislative framework and gaps therein, as well as the possibilities for improvement and ways forward. The report aims to look beyond what is stated in the legislative framework and look at the practical implementation of data collection, as well as further, how this data is used in the policymaking, for the advancement of the rights of those affected by discrimination and hate violence in Ukraine.

### Summary of key findings and recommendations

The report found a lack of coordination and cooperation in the data collection process, as well as inconsistency in definitions of discrimination, hate crimes, and hate speech in the legal framework. While different stakeholders do collect data on hate crime (police, CSOs), discrimination (Ombudsman’s Office, CSOs, the President’s Commissioner for the Rights of Persons of Disabilities), only a few analyse and publish such data or include it in the policy planning process.

At the same time, interviewees have noted that data collection creates awareness and understanding of the problem, helps support the individuals affected by discrimination and hate crimes, as well as helps prevent future violations. Many have noted the lack of expertise and the need to develop guidelines to improve data collection.

The recommendations in this report both reemphasize the importance of a holistic approach, i.e. working to improve the legal framework for data collection, but also using better data to advocate for specific legislative and policy measures. The possible interventions should aim at improving the coordination in the data collection process, building capacity of stakeholders in identifying discrimination, hate crimes and hate speech, and providing concrete tools for improving data collection.

Most importantly, the project should aim at creating buy-in among stakeholders in terms of their interest in the outcome. It is important to demonstrate the practical use of data in policymaking processes, and the good practice examples that exemplify the need for data collection.

## Methodology

The report comprised of the desk research component, and the interview/inquiry component, conducted in parallel to ensure that intermediate findings are taken into account to design the next steps.

The desk research included an analysis of the following sources:

- Legal documents available in public domain, including the legislation regulating issues of discrimination, hate crimes, and hate speech;
- Responses to written requests from the official authorities and stakeholders;
- Information available in public domain, such as reports of the Ombudsman's Office, reports of civil society organizations (CSOs), OSCE hate crime data, state and alternative reports to treaty bodies, such as the CERD, CEDAW, and CRPD.
- Analysis of Legislative Framework (baseline study prepared by the PGG consultant for Ukraine);
- Report on the data collection meeting.

However, the report would be far from comprehensive and complete without the interviewees who kindly agreed to share their experiences and understanding, as well as their thoughts on the potential for improvement in the field.

The consultant has conducted 9 interviews with 13 individuals; in addition, 10 more experts from state and CSO field have responded to written requests or provided comments and recommendations. See the list of interviewees and experts consulted during research in Annex 2.

The research included open-ended semi-structured interviews based on a general questionnaire (attached hereto, with a specific version developed for the law enforcement agencies). In addition, a specialized (abridged questionnaire) was sent out to the Strategic Planning Directorate of the Ministry of Justice of Ukraine.

The interview results were then compared and verified against the legal framework and available data. This report presents an overview of the situation and practices, as well as key recommendations. It is an attempt to summarize and identify priorities among many improvements that are necessary to achieve data collection process reflecting the actual situation.

## Legislative framework

### Discrimination

The Constitution of Ukraine contains a general equality provision (Article 24); a similar general provision was used in the Labor Code Article 2-1, which ensured the equality of workers' rights. Discrimination was first specifically mentioned in the Law on the Equal Rights of Men and Women, adopted in 2005, which defined gender-based discrimination, and later a term of "discrimination on the grounds of disability" was introduced in the national legal framework, including the term "reasonable accommodation" in the understanding of the Convention on the Rights of Persons with Disabilities. Yet Ukraine's first framework

discrimination law, the Law of Ukraine on Combating and Preventing Discrimination was adopted only in 2012. It assigned the role of the National Equality Body to the Office of the Ukrainian Parliamentary Commissioner for Human Rights (hereinafter - the Ombudsman's Office), defined forms of discrimination (direct discrimination; indirect discrimination; incitement to discrimination; aiding in discrimination; harassment), as well as led to amendments of several other legislative acts. For a comprehensive overview of the framework Law, please see the Baseline Study (on file). A number of other laws include discrimination provisions (see below).

In addition, the anti-discrimination expertise introduced by the Law is formalistic. Official authorities do not have sufficient means and mechanisms to sanction discrimination. There is a lack of relevant provisions in the administrative code, and the inability of the equality body (in this case, the Ombudsman's Office) to impose sanctions for discrimination. This shortcoming is partially addressed by a draft bill 0931 (former 3501), which has been submitted to the Parliament for second reading but has been delayed and returned to the relevant committee for amendments. However, the bill does not address the absence of SOGI among protected characteristics, which will delay the amendment of the list following its adoption.

**Table 1. Discrimination provisions**

Provision	Comment
<p><b>Law on the Principles of Preventing and Counteracting Discrimination in Ukraine</b></p>	<p>Discrimination provision (while the law provides for criminal, administrative and civil liability, there are no provisions yet in the administrative Code to enforce it; violations can be challenged directly in court by plaintiffs)</p>
<p><b>Law on Employment of Population</b> Article 11. 1. The State guarantees a person the right to be protected from any discrimination in employment in the field of employment on grounds of race, color, political, religious and other beliefs, membership in trade unions or other associations of citizens, gender, age, ethnic and social origin, property status, place of residence, by linguistic or other characteristics. 2. It is prohibited in job advertisements (advertisements) to specify the age limit of candidates, to offer work only to women or only men, except for specific work that can be performed exclusively by persons of a particular gender, to make requirements that favor one of the articles, and to require from job seekers, providing personal information. Restrictions on the content of advertisements (advertisements) on vacancies (recruitment and employment) and liability for violations of the established order of their distribution are set by the Law of Ukraine "On Advertising" (see "Hate Speech" table)</p>	<p>Non-criminal discrimination  The state body responsible for oversight - State Labor Service (see recommendations with regard to the SLS involvement)</p>
<p><b>Labor Code - Article 2<sup>1</sup></b></p>	

<p>all forms of discrimination in the field of labour, including violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of workers on the grounds of race, colour, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV/AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other association, participation in the strike, application or intention to apply to the courts or other authorities to protect their rights or supporting other workers in defence of their rights, language or other characteristics not related to the nature or conditions of work</p>	<p>Non-criminal discrimination, other articles of the Labor Code specify prohibition of firing a pregnant woman, rules on employment of persons with disabilities etc.</p> <p>See also recommendations for the State Labor Service</p>
<p><b>Law on the Rights and Freedoms of Internally Displaced Persons</b>  <b>Article 14. Prohibition of Discrimination</b>  1. Internally displaced persons shall enjoy the same rights and freedoms in accordance with the Constitution, laws and international treaties of Ukraine as other citizens of Ukraine resident in Ukraine. They shall not be discriminated against in the exercise of any rights and freedoms on the ground that they are internally displaced persons.</p>	
<p><b>Criminal Code, article 161</b></p> <p>... and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics</p> <p>shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p>	<p>Criminal discrimination</p> <p>(see “Hate Crime” table for the second part of this article)</p>
<p><b>“On Ensuring Equal Rights and Opportunities for Women and Men”<sup>85</sup></b>  Sexual discrimination is action or inaction that expresses any difference, exception or privileges based on sex, if they are aimed at restricting, making it impossible to recognize, use, or implement on an equal footing human rights and freedoms for women and men.</p>	
<p><b>Law “On the basics of social protection of persons with disabilities in Ukraine”, article 2.</b>  Disability discrimination is prohibited.  The terms "reasonable accommodation" and "universal design" are used in the meaning of the Convention on the Rights of Persons with Disabilities, and the term "discrimination on the basis of disability" is used in the meaning of the Convention on the Rights of Persons with Disabilities and the Law of Ukraine "On the Principles of Preventing and Counteracting Discrimination in Ukraine.»</p>	

## Hate Crime

The term “hate crime” or “bias crime” describes a type of crime, rather than a specific offence within the Criminal Code of Ukraine (CCU). However, the National Police collects data on and

<sup>85</sup> Fedorovych, 2016, notes, “according to 2016 data, in the ten years since the law’s adoption, only 145 court rulings mentioned this law, and most of these cases were state initiated claims on gender discrimination in advertisements”.



monitors “hate crimes” that can be qualified under different provisions of the CCU as one category of offences. This category of crimes in CCU could be indicated by the use of terms “hostility”, “hate” and “intolerance”. In addition, the legislation includes an outdated term “discord”. Other offences (listed below) are also subject to monitoring based on the nature of the offence (e.g. an attack on a religious building).

**Specific penalty enhancement provisions in the CCU (aggravation formulated as “on the motive of religious, national and ethnic intolerance):**

- murder (art. 115[2][14])
- intended grievous bodily injury (art. 121[2])
- intended bodily injury of medium gravity (art. 122[2])
- battery and torture (art. 126[2])
- torture (art. 127[2])
- threat to kill (art. 129).

The second group of provisions refers to crimes where **bias is a defining element of the offence:**

- article 161 (violation of citizens’ equality based on their race, nationality or religious preferences)
- article 178 (damage of religious architecture or houses of worship)
- article 179 (illegal retention, desecration or destruction of religious sanctities), and 180 (preclusion of religious ceremonies).

Article 161 has been widely used by the police in Ukraine in hate crime qualification. The list of protected characteristics in this provision is open-ended and broader than in other hate crime provisions in the CCU, and explicitly includes, for example, sex, disability or place of origin. Art. 161 addresses primarily hate speech and discrimination. Until changes are introduced to expand the lists in aggravating clauses of other articles, however, using article 161 in conjunction with the provisions defining the “base offences” enables prosecuting a broader range of hate crimes (for detailed explanation, please refer to the ODIHR Publication “Categorizing and Investigating Hate Crimes in Ukraine: A Practical Guide”).

**Recommendation: hate crime provisions of the Criminal Code should be reviewed and updated in line with international standards, including an expanded list of protected characteristics and mandatory application of aggravating provisions by courts in accordance with Article 67.**

### Hate Speech

Similar to hate crimes, there is no definition of hate speech in Ukrainian legislation. Prohibition of hate speech and sanctions for violating regulations often contain references to other types of information, such as calls for violating constitutional integrity, promoting war, violence, terrorism etc. For example, Article 28 of the Law on Information includes the above categories along with the prohibition of incitement to interethnic, racial or religious enmity. Similarly, the Law on Public Morals also prohibits the production and dissemination of items

that “propagate war, national and religious enmity, violence change of constitutional order or territorial integrity of Ukraine”.

In the criminal realm, acts that could constitute hate speech are defined under the following Criminal Code articles:

- Article 161 (“incitement to hatred”, open list of protected characteristics)
- Article 300 (the importation into Ukraine of works for sale or distribution, or motion pictures or films, where those works or films propagandize violence and cruelty, racial, national or religious intolerance and discrimination)

Cases available in the public register of court decisions show that Article 300 is indeed invoked in criminal proceedings related to materials promoting hate (see <http://reyestr.court.gov.ua/Review/38840977>), however, due to the broad variety of categories mentioned in Article 300, an in-depth analysis need additional resources to identify these specific cases manually.

Notably, there has been heavy criticism by international bodies, including the OSCE Representative on Freedom of the Media, related to Ukraine’s criminal provisions regulating hate speech, the lack of balanced approach, as well as incoherence of legislation. The proposed law 0931 will amend part 1 of article 161, reducing it to “willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions." This amendment will reduce the number of protected characteristics in the Criminal Code in general, which might have a negative impact on prosecution of hate crimes in the current version of the Criminal Code.

**Recommendation: hate speech provisions of the Criminal Code should be reviewed and updated through an inclusive process (beyond the Ministry of Internal Affairs, including experts on freedom of expression and hate speech), in line with international standards.**

During interviews on the topic of hate speech, interviewees did not mention criminal sanctions; instead, there were several examples provided of non-criminal sanctions for violations of the laws regulating areas such as broadcasting, advertising etc. (please see section on data recording below for examples of monitoring in this area).

### *Hate Speech Provisions*

Definition (which law, article)	Comment
<p><b>Criminal Code</b> <b>Article 161</b></p> <p>1. Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions....</p> <p>shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.</p> <p>...</p>	<p>Criminalized hate speech</p>

<p>3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by an organized group of persons, or where they caused grave consequences, - shall be punishable by imprisonment for a term of five to eight years.</p> <p>(Article 161 in version of Law No 1707-VI (1707-17) of 05.11.2009)</p>	
<p><b>Law on Advertising, article 8(1)</b> Advertising shall not include:</p> <p>... statements that are discriminatory based on origin, social and property status, racial and national belonging, sex, education, political views, religious views, language, type of occupation, place of residence, or those discrediting the good of other persons.</p>	<p>While this provision regulates hate speech in the media, it also can be used as discrimination provision if applied to a job advertisement (see table on Discrimination)</p>
<p><b>Law on Television and Broadcasting</b> Article 6. Inadmissibility of abuse of freedom of activity of broadcasting organizations <b>calls for an outbreak of aggressive war or propaganda and / or incitement to national, racial, or religious enmity and hatred;</b> 8. The National Council may decide to impose fines specified in this part, regardless of the application of sanctions to the offender in the form of a warning, only in the case of the following violations: by broadcasting organizations - 25 percent of the license fee for: ... calls for an outbreak of aggressive war or propaganda and / or incitement to national, racial or religious enmity and hatred; promotion of the exclusiveness, superficiality or inferiority of persons on the basis of their religious beliefs, ideology, belonging to a particular nation or race, physical or property status, social origin; ... In the case of calls for a violent change of the constitutional order of Ukraine, an outbreak of an aggressive war or its propaganda and / or incitement to national, racial or religious hatred and hatred, propaganda of the exclusiveness, superficiality or inferiority of persons on the basis of their religious beliefs, ideology, belonging to a particular nation or race, physical or property status, social origin were broadcast, distributed, distributed without prior record, and contained in speeches, replicas of a non-working person with broadcasters, TV and radio is not responsible for these violations, except where broadcasting staff did not take measures to stop violations on air</p>	<p>Hate speech provisions (non-criminal)</p> <p>The National Council on Television and Broadcasting imposes sanctions for violations of these provisions</p> <p>This does not preclude criminal liability under article 161</p>

## Available data on hate crime, hate speech and discrimination at the national level

Data on discrimination, hate crime, and hate speech is not consolidated, nor is it available in many instances, thus the assessment of situation requires looking at various domains where such data exists.

### *Discrimination*

Among official sources, the Ombudsman's Office report is nearly the only source of official information about the number of complaints disaggregated by type of protected characteristics, which is available openly. According to the interview with a representative of the Office, there is no set mechanism for collecting data from other agencies, but rather the Office sends official requests for information. The exception is cooperation with the State Court Statistics, which sends data, but the court data currently does not reflect the situation due to the shortcomings in methodology and collection framework.

In 2018, the Ombudsman's Office accepted 616 applications with claims of discrimination, including: 13 notifications (1.44%) in applications of internally displaced persons; 38 (6.17%) gender-based; 152 (24.68%) on the ground of religious beliefs; 57 (9.25%) on the ground of disability and the state of health; 29 (4.7%) on the ground of sexual orientation and gender identity; 43 (7%) on the ground of ethnic (national) origin, race, color of skin; 297 (48.2%) on other grounds.

According to the Annual Report, in 2018, the Commissioner considered 616 notifications of cases of discrimination and violation of the principle of equality. Following the results of the monitoring of mass media, social networks and other open sources, the Commissioner opened 106 proceedings on her initiatives in concern to the incidents that had signs of discrimination. The Commissioner and the Secretariat provide the monitoring of implementation of the recommended or required remedies. The Commissioner's Representative on observance of equality of rights and freedoms reports about 90% of implementation of the recommended or required remedies within the term prescribed by the law; 10% of such recommended or required remedies are being implemented within a longer timeframe, provided it is connected with more complex decisions or budget allocations.

#### *Rights of persons with disabilities*

According to a representative of the Presidential Commissioner for the Rights of Persons with Disabilities, they use several sources to collect data about discrimination based on disability, including the official crime statistics (however, they use requests to the Prosecutor General's Office), the Ombudsman's information, media, and information from individuals. Unfortunately, there is no comprehensive statistics on this type of discrimination in Ukraine.

#### *Non-governmental monitoring efforts*

Several reports compiled by human rights organizations describe issues related to protection from discrimination. While this report does not aim to provide an in-depth analysis of all available non-state reports, this information should be reviewed carefully and taken into account in the policy development work.

#### *Coalition of Roma Organizations of Ukraine*

A study on the observance of the rights of Roma in Ukraine, which included a survey and questionnaires for the community members, shows a significant number of respondents who faced issues in housing, access to healthcare, employment, and education. Among the

respondents who faced such issues, 81.4% of community members stated that the problems were connected with the ethnic background. The report was prepared by a coalition of human rights NGOs; according to a representative of the coalition, the plan is to continue and improve monitoring and statistics methodology.

#### *Social Action Center*

The Center works on strategic litigation in cases of discrimination and hate crimes, and works to promote successes and raise awareness about the possibility of combating discrimination. In particular, the Center maintains a social media *Campaign against Discrimination*, which provides consultations, offers advice, and publishes latest news related to equality and non-discrimination.

#### *Ukrainian Helsinki Human Rights Union*

As one of the largest human rights organizations, the Union “keeps records of applications against discrimination in 9 oblasts of Ukraine. 88 persons from 9 oblasts applied in 2018 for assistance of its lawyers via the Network of public receptions in concern with discriminatory actions against them. The majority of the applicants were persons living with HIV/AIDS – 20, persons under the HIV/AIDS risk – 18, IDPs – 17, foreigners and stateless persons – 9, pensioners – 9, etc. [...] The most frequent motive for discrimination met in applications to the UHHRU – state of health, gender identity, national/ethnic origin” (see baseline study for detail).

#### *Non-governmental surveys*

In 2016, a non-governmental entity conducted a survey called “Ukrainian Landscapes of Discrimination”. Interestingly, the survey also included questions about the definition of discrimination by the respondents, and the majority of respondents described discrimination as “infringement of rights” not connected with any special characteristic. In addition, in some regions, interviewees reported being “discriminated by their neighbors”, which falls outside of the scope of the definition of discrimination according to legislation.

With regard to discrimination, a study reflecting the progress of perceptions in 2016-2018, does show that discrimination is widespread. The study notes,

*Meanwhile, perceptions of discrimination are quite widespread in Ukrainian society, with 55 per cent of respondents believing that it exists. According to the respondents, the most common reasons for discrimination are age (40 per cent), disability (32 per cent), sexual orientation (24 per cent), health status (25 per cent) and sex (25 per cent). In addition, every fifth respondent believes that there discrimination occurs in Ukraine on the basis of political views and property status.*

The Human Rights Directorate of the Ministry of Justice has recently held a survey in cooperation with UReport (UNICEF initiative for polling youth), regarding discrimination <https://ukraine.ureport.in/v2/opinion/3743/>. 49% of respondents said they had faced discrimination over the previous 3 years, and 23% more said they were not sure it was

discrimination. Out of 10 000 respondents, a prevalent majority (88 percent) did not ask for assistance when faced with discrimination. This initiative aims to identify baseline data before engaging in a public awareness campaign concerning discrimination (campaign is potentially scheduled for 2020, according to the Directorate representatives).

### *Hate Crime*

The actual data on prevalence of hate crimes in Ukraine is difficult to assess due to several factors, which concern both the general obstacles to recording/reporting hate crime, as well as the lack of clear methodology and coordination between relevant bodies.

Main sources of information on hate crime:

- Official data of the National Police of Ukraine (the Human Rights Observance Department) submitted to OSCE ODIHR (disaggregated by type of bias, type of crime)
- Information from the reports of the Ombudsman's Office (provide examples of hate crime incidents, no disaggregation, <http://www.univ.kiev.ua/content/upload/2019/-697223196.pdf>)
- Information collected by nongovernmental organizations:
  - international reports (ECRI, OSCE, OHCHR)
  - regular:
    - Group for Monitoring the Rights of Minorities, monthly updates (open source and information from communities) <https://www.facebook.com/KnguUa/>
    - "Nash Svit" LGBT Human Rights Center
  - ad hoc or thematic reports (Minority Rights Group [https://minorityrights.org/wp-content/uploads/2019/05/MRG\\_Rep\\_Ukraine\\_EN\\_Apr19.pdf](https://minorityrights.org/wp-content/uploads/2019/05/MRG_Rep_Ukraine_EN_Apr19.pdf), Equal Rights Trust [https://www.equalrightstrust.org/sites/default/files/ertdocs/Equal%20Rights%20Trust%20Submission%20to%20CERD%20on%20Ukraine\\_0.pdf](https://www.equalrightstrust.org/sites/default/files/ertdocs/Equal%20Rights%20Trust%20Submission%20to%20CERD%20on%20Ukraine_0.pdf), Memorial Center and Kharkiv Human Rights Protection Group <https://adcmemorial.org/www/publications/alternative-report-on-the-implementation-of-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination-by-ukraine?lang=en>)

Official data reported to OSCE by the police contact point shows a steady increase in the number of *recorded* hate crimes in Ukraine (see <http://hatecrime.osce.org/ukraine>). However, given the different methodology, focus, and approach in the reports of nongovernmental entities, it is not possible to confirm or disprove this trend:

- for example, the Minority Rights Monitoring Group has recorded 149 offences in 2018 as opposed to 85 in 2017 (marking an increase of anti-Roma incidents and a decrease in anti-Semitic acts)

- Nash Mir NGO data showed that “the highest number of cases (221) was related to homophobia and transphobia. 96 of them can be described as hate crimes, 121 as incidents of hate speech, and 8 as manifestations of hate speech”.

There are also significant discrepancies between official data and NGO data in the type of crimes reported: nongovernmental entities have recorded 155 physical attacks in 2018, while the police data shows 8 physical assaults and 2 homicides.

Baseline study reports the following figures for 2018, according to the National Police:

*111 criminal offenses - violation of equal rights of citizens on the grounds of race, nationality, religious beliefs, disability and other, as qualified by Article 161 of the Criminal Code of Ukraine, were committed, registered and proceeded. 12 crimes related to the religious rights and freedoms (Articles 178-180 of the Criminal Code of Ukraine). 59 offences concerned import, production or distribution of works that propagate the cult of violence and cruelty, racial, national or religious intolerance and discrimination (Article 300 of the Criminal Code of Ukraine). When to take into account the motive for committing a crime, the biggest number – 19, relates to intolerance of ethnic/national and racial origin.*

With no victimization survey in place, the prevalence of hate crime victimization remains hidden, and the experiences of victims continue to be unrecognized. Among these are the victims of racist murders, assaults and pogroms against Roma communities; violent attacks on LGBT persons and participants of Pride events by association; as well as reports of crimes against the homeless that go unrecognized as hate crimes in Ukraine.

A vivid example of impact and escalation of hate incidents unfolded in 2015-2018 through a series of attacks against the Roma community in Ukraine. Here, the escalation of the situation and lack of official response has created an atmosphere of impunity where even a murder case lacks proper investigation and violence continues.

On the contrary, it seems that specific attention to the Pride events and improved cooperation with the law enforcement has led to a decrease in incidents during events of LGBT community.

Investigation of hate crimes remains unsatisfactory with number of convictions in single digits over the last few years. Several international and national reports (including <https://www.hrw.org/news/2018/06/14/joint-letter-ukraines-minister-interior-affairs-and-prosecutor-general-concerning>, ECRI and others) reported that investigations do not take into account the motive, are ineffective, and lack result. Similar observations are noted by the Ombudsman’s Office in their report.

ECtHR case law related to hate crime include the case of Fedorchenko and Lozenko v. Ukraine, where the court recognized Ukraine’s failure to properly investigate an attack on Roma men as a violation of the Convention. In 2018, the Court issued a decision in the case of Burlya and Others v. Ukraine, where it found violations of Articles 3 (for some applicants), 8, and 14 with regard to pogroms and failure to protect Roma residents of Petrivka village in Ukraine. The award of compensation came 16 years after the incident, while pogroms took place again in the village of Loshchynivka in the same region in 2016.

### *Hate Speech*

There is no disaggregated or systematic data collection process on hate speech.

For example, the Minority Rights Monitoring Group writes, “[t]he manifestations of “language of hostility” in the media and on the Internet have almost remained beyond the scope of this report, primarily due to the lack of resources and the lack of a real opportunity to systematically monitor the entire information space. Only a few manifestations of xenophobia towards Jews, Roma and the LGBT community, due to broad public outreach and attention, which this topic attracts, we found it possible to give the relevant sections” (*Xenophobia in Ukraine 2018*).

Nash Mir includes issues of hate speech in its reports (in 2018, 8 incidents were reported). However, it is important to note that there were 134 threats and insults reflected in the report, and it is not clear whether they fall under hate speech or hate crime provisions in this instance.

Similarly, the annual report of the Ombudsman’s Office does not include a specific breakdown by categories of racist speech, rather mentioning separate examples.

A search on the website of the Journalist Ethics Commission can help find specific complaints about violations of Ethics Code and the Commission’s decisions. In 2015-2019, the website shows 12 complaints submitted under para. 17 of the Code. No monitoring efforts are reported under this article.

## The current recording and data collection framework for hate crime, hate speech and discrimination

### *Discrimination*

According to the State Statistics Service correspondence, data on discrimination is “administrative data”, i.e. data that is collected by state authorities in the process of their work. While the State Statistics Service is responsible for producing statistical data in accordance with a set plan (see, for example, Plan for Statistical Observations 2019, Draft Plan for Statistical Observations 2020), the Service can use administrative data to produce statistics; however, issues of discrimination or hate crime are not included in the plan.

**Recommendation: the State Statistics Service shall be consulted for the purpose of reviewing and amending regulations on statistics on discrimination and hate crimes.**

A mechanism that could be used as a model for such review is the Interagency Working Group on Harmonization of the National Gender Equality Indicators with International Standards (established in March 2019).

### *Equality Body data*

*The Ombudsman’s Office*, in particular the Department for the Observance of Equal Rights, collects data on discrimination, hate crimes, and hate speech through the following channels:



- citizen complaints
- information from NGOs
- information in public domain (media, social networks)
- data from other state authorities (State Court Administration (please see comment about this source below), the National Police)

The official duties to monitor the situation are prescribed by the Regulation on the Parliamentary Commissioner for Human Rights and terms of reference for the staff. There is no protocol or regulations on the data collection process. The Office has also developed a Procedure for monitoring visits regarding nondiscrimination and equal rights (available publicly here <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/organizacziino-rozporjadchi-dokumenti/>), and reported on the monitoring visits conducted in 2018 in their Annual Report.

Information collected by the Office is requested by international entities (US Department of State), national authorities for periodic reporting and country assessment. Moreover, the Office is also responsible for recommendations in legislation.

#### **Recommendations:**

- **support the Ombudsman’s Office in expanding its data collection and reporting activities through, inter alia, best practice examples from the work of Equality Bodies internationally and development of monitoring and data collection methodology**
- **where possible, mainstream questions related to protection from discrimination throughout monitoring processes of the Ombudsman’s Office (i.e. visits for other purposes).**

#### *Judiciary data*

Also, while officially the Ombudsman’s Office report does refer to discrimination cases in courts, this data is derived from a simple search “discrim” in the database, which in no way reflects the actual number of cases concerning discrimination.

According to an official of the State Court Administration, data is collected with the use of an automated system (operated by State Enterprise “Sudovi Systemy” [Court systems]), the content of which is determined by the orders of the State Court Administration (type of official document). During an interview, it was suggested that a list of criteria to identify discrimination in court cases for different categories should be developed and implemented based on best international practices and concrete examples.

Statistics is formed based on the data in various forms for different types of cases (criminal, administrative, economic, etc.) and stages of proceedings. For example, Form 1k for reporting on the outcomes of criminal proceedings by first instance courts includes categories of domestic violence and crimes committed based on racial, national or religious intolerance. According to the interviewee, these changes were introduced by a specific order of the

Cabinet of Ministers (“doruchennia”) mandating that this category of cases is included in the reporting form.

The SCA then publishes data and provides information about the outcome of judicial proceedings to the Prosecutor General of Ukraine. In addition, the SCA provides information to the Ombudsman’s Office about number of cases related to discrimination; however, the data is recognized as inaccurate as it only contains the number of returns in a “discrim” search in the court decisions database. No disaggregated data is available.

**Recommendation:**

- **amend the provisions pertaining to the data collection process and classification of cases, to include categories and definitions that reflect discrimination and hate crime**
- **provide training for identification and recording of discrimination cases in the electronic court records.**

*Hate crime data*

On behalf of the state, the Police and the Prosecutor General’s Office record and collect data on criminal offences. The Law on Police stipulates that police “creates databases within the integrated information system of the Ministry of Internal Affairs (hereinafter - MIA), utilized the databases of the MIA and other state authorities, conducts information search and analytics, cooperates with regard to information with other state authorities, law enforcement agencies and international organizations”. The Prosecutor General’s Office is the holder of the Unified Register of Pre-Trial Investigations and an entity, which publishes crime statistics on their website.

In order to take into account the opinion of the victim during the adoption of the statement of crime and to determine the criminal legal qualification when registering the crime in the ERDR, the Ministry of Internal Affairs, on the initiative of the Main Investigation Directorate of the National Police of Ukraine, amended the Order of the Ministry of Internal Affairs of 06.11.2015 No. 1377, registered with the Ministry of Justice of Ukraine 01 December 2015 under No. 1498/27943 "On approval of the Instruction on the procedure for maintaining a single record in the police of statements and notifications of criminal offenses and other events", according to which the standardized form of the protocol of acceptance of a statement on a criminal offense or being prepared (Appendix 3 to the Instruction), supplemented by a new paragraph indicating the circumstances of the commission of a criminal offense, which may testify to the motives of intolerance (racial, nationality, religion or belief)<sup>86</sup>.

According to the official response from the Main Department of Investigations of the National Police of Ukraine, regional representatives for monitoring hate crimes have been appointed to monitor proceedings in hate crime cases and report to the Main Department of

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<sup>86</sup> However, the number of protocols that reflect bias motivation, according to the National Police, is low - approximately twenty protocols.

Investigations on the progress. The Main Department of Investigations is also monitoring the Unified Register of Pre-Trial Investigations to identify crimes of this category, however, the Register does not reflect the array of categories, under which hate crime falls in Ukraine.

The Human Rights Unit of the National Police of Ukraine is collecting data on hate crime (disaggregated by types of crime, protected characteristics) from the investigation department and the Unified Register. The national contact point on hate crime also communicates with the civil society and communities, as well as monitors media reports to identify hate crime.

According to the Prosecutor General's Office of Ukraine, they taken into account information on criminal offenses committed on grounds of racial, national or religious intolerance, in particular, under Form 1 "Single Report on Criminal Offenses". For example, for the 10 months of the current year, 107 such criminal offenses were taken into account, of which 2 were sent to court (1 - with an indictment, 1 - with a request for the use of compulsory medical measures).

The Prosecutor's Office publishes data on crime on its official website in the form of monthly reports ([https://www.gp.gov.ua/ua/stst2011.html?dir\\_id=113897&libid=100820](https://www.gp.gov.ua/ua/stst2011.html?dir_id=113897&libid=100820)). The report published by the PGO includes the following categories:

Category	2019 data (January - October)
Row 24. Crimes motivated by racial, national and religious intolerance	107
Row 119. Murder (Article 115), motivated by racial, national and religious intolerance;	0
Row 137. Threat of murder (Article 129), motivated by racial, national and religious intolerance.	0
Row 217. Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics (art. 161)	106
Row 496. Importation into Ukraine of works for sale or distribution, or motion pictures or films, where those works or films propagandize violence and cruelty, racial, national or religious intolerance and discrimination	36

In addition, similar categories are repeated in tabs specifying crimes and investigation process, as well as crimes registered in the previous years.

### *Judiciary and hate crime data*

When registering the case, which includes mention of Article 161, or “religious, racial or ethnic intolerance” the court employee ticks a box, which is then reflected in the court statistics on criminal offences (see 2018 reports for different categories of courts here [https://court.gov.ua/inshe/sudova\\_statystyka/rik\\_2018](https://court.gov.ua/inshe/sudova_statystyka/rik_2018)).

This data is not disaggregated, nor there is on registering such cases. Provided the difference between this data for 2018 and police hate crime data, there is a need for improving the recording methodology here.

**Recommendation: develop methodology and deliver training for court officials on registering criminal cases that manifest bias, expand the category to reflect official police statistics.**

### *Recording/reporting hate crime*

Stage	Entity
<i>Initial reporting</i> If the offence is reported in person by an applicant, the Protocol on Recording a Crime Report provides specific space for recording these facts: Question 5 states “[...] indicating circumstances of the criminal offence that may indicate the motive of intolerance”	Police
<i>Investigator enters data into the database</i> In accordance with the form <a href="https://zakon.rada.gov.ua/laws/show/z0680-16#n291">https://zakon.rada.gov.ua/laws/show/z0680-16#n291</a>	Police
Information about the finalization of pre-trial investigation is entered into the Register by the prosecutor in accordance with the relevant form (Annex 2 here <a href="https://zakon.rada.gov.ua/laws/show/z0680-16#n29">https://zakon.rada.gov.ua/laws/show/z0680-16#n29</a> ), which includes line 15. “Motive” (including sub-categories, such as = racial (7), national (8) or religious (9) intolerance)	Prosecutor’s Office
Prosecutor’s Office produces a report on crimes in Ukraine (monthly) and publishes it online	Prosecutor’s office
<b>Courts</b> When registering the case which includes mention of Article 161 or “religious, racial or ethnic intolerance” the court employee ticks a box, which is then reflected in the court statistics on criminal offences The court administration also informs the Prosecutor’s Office on the results of investigation.	

### *Hate speech*

Some of the hate speech incidents are recorded as crimes under Article 161, 300 of the Criminal Code. However, there is no publicly available data disaggregated by protected characteristics, types of hate speech (or even whether it was accompanied by hate violence, as Article 161 can also include the use of violence).

There is no official definition or process for recording statistics on hate speech.

According to the National TV and Radio Broadcasting Council, “the current provisions of Article 6 of the Law on Television and Radio Broadcasting are quite general, so it is extremely difficult to apply them in practice and to defend one's position in the courts [...]. The National Council [...] supports and expects the adoption of a law by Parliament as soon as possible to respond more effectively to manifestations of hate speech and to apply” (2018 Report of the Council).

There are also initiatives that collect information about sexist hate speech in advertising, provide expert opinion and advocate for relevant sanctions:

- NGO League of Equals collects data and submits complaints in cases of discriminatory (sexist) advertisement. Results of their work include fines and sanctions imposed by the official authorities.
- The Industrial Gender Committee of the Ukrainian Marketing Association receives complaints about advertisements; issue opinions based on professional standards, as well as provides expert opinions on request of the State Consumer Rights Service.

This specific example can be scaled and tested in other areas, where civil society (including private sector experts) exchange data with the authorities. It appears that the component leading to successful monitoring here is the effective mechanisms, where complaints are addressed and action is taken.

## Discussion and analysis

### *Discrimination*

There are significant gaps in the recording of data on discrimination, including major flaws that prevent a clear understanding of the situation, such as lack of coordination between key agencies and other stakeholders, lack of strategic approach to data collection, lack of evidence-based approach, inconsistency of legislative framework etc.

Overall, official data on discrimination is fragmented, collected by different entities, and far from being comprehensive. As such, it does not reflect the situation, nor does it allow for assessing progress and determining policy needs. Several interviewees have mentioned that the current legislation also creates difficulties in proper recording due to lack of coherent approach.

**Recommendation: for monitoring and statistics purposes, working definitions of discrimination, hate speech and hate crime should be developed.**

The Action Plan for the Implementation of Human Rights Strategy includes a number of provisions mandating the statistics on discrimination and hate crimes (please see attachment), however, an overview of responses about implementation shows the lack of implementation and impact of such actions. The responses on implementation progress show individual actions on behalf of different agencies, formalistic approach, and lack of follow up.

**Recommendation: develop a comprehensive approach to implementation of the Action Plan indicators related to discrimination and hate crime; provide input for the next Action Plan with concrete suggested outcomes and indicators.**

While there is a number of administrative data sets and new developments introduced in the Action Plan that could support the collection of data on discrimination, there is a lack of comprehensive approach that would involve all relevant stakeholders in the process.

**Recommendation:**

- **develop a mechanism for exchange of information about the needs in collection of data on discrimination and hate speech, with possible thematic or ad hoc groups (as a possibility, under the auspices of the coordination council at the Ombudsman's Office).**
- **Include the data collected by NGOs into the official reporting, map best practices and implement them in cooperation between the state and NGOs.**
- **Develop a strategy for easy-to-access publication of data on discrimination, hate crime and hate speech (including special reports, dedicated web resources etc.)**

The work of such mechanism should focus on identifying the gaps and possibilities in the data collection, analysing the available data and providing recommendations to relevant stakeholders, as well as initiating joint research for policy making purposes. While a joint approach and working definition is an important step towards an informed policy and decision-making, the issues of discrimination should be mainstreamed in the monitoring processes of state bodies, including the Ministry of Justice (Human Rights Directorate, Strategic Planning Directorate), the State Labor Service, the State Court Administration, among others. Importantly, data on discrimination should be collected and reflected then in the strategic planning processes. During the interview, for example, the Ministry of Justice Human Rights Directorate noted that monitoring initiatives could be considered for the purposes of improving access to justice.

**Recommendation: develop recommendations for mainstreaming the use of data on discrimination across monitoring and policy planning processes for different state stakeholders.**

Currently, another window of opportunity is the SDG monitoring process. Collection of data on discrimination is also in line with the implementation of SDGs in Ukraine - in 2017, in its National Baseline Report, Ukraine has identified national target for Goal 10, namely Target 10.2 "Preventing discrimination in Ukraine" with Indicator 10.2.1 - "Share of people who reported that in the last 12 months they had personally faced discrimination or harassment based on discrimination in total population, %". A recent Presidential Decree "On the Sustainable Development Goals for Ukraine until 2030" requires that a monitoring system should be established in 2020.

**Recommendations: integrate the suggested discrimination data recording mechanism in the SDG reporting process**

A possible area for research could be the mechanism of citizen's complaints to the state authorities: the classification of appeals was amended to include "discrimination" as a category. It has not been mentioned in interviews, further research could identify the potential of this mechanism for identifying the nature of complaints and making relevant policy decisions, if possible.

A Plan for Gender Equality (2021) foresees collection of data on court cases and identification of persons responsible for responding to complaints about discrimination (<https://zakon.rada.gov.ua/laws/main/273-2018-%D0%BF>). A similar mechanism could be used for all cases of discrimination, as an example.

**Recommendation: identify the possibilities of using the appeals Classification data for baseline assessment of the number of complaints concerning discrimination to the state authorities.**

*Legal Aid System*

The Coordination Center for Legal Aid Provision has developed extensive and high-quality guidelines on supporting persons seeking assistance in case of gender discrimination (see <https://zakon.rada.gov.ua/rada/show/v0033419-19>). Moreover, the Center collects and publishes real-time data on the types of requests for legal assistance, which is publicly available here <https://legalaid.gov.ua/ua/statystychni-dani/2506-mistsevi-tsentry-2019-rik>.

While the Center does not disaggregate data by discrimination/hate crime/bias motivation etc., according to the interview, such information can be received upon request. The data in the system is used for strategic planning of the legal aid services, the work of the Human Rights Directorate of the Ministry of Justice, improvement of legal service (including training, methodological support).

According to the interview with the Ombudsman's Office, the latter has not contacted the Coordination Center for information about the number of cases of discrimination. Importantly, the Center has recently published recommendations for supporting cases of multiple discrimination of women from vulnerable groups ([https://legalaid.gov.ua/images/docs/2019/nakaz\\_20.11.2019.pdf](https://legalaid.gov.ua/images/docs/2019/nakaz_20.11.2019.pdf)). **This is also an opportunity to consider the category of multiple discrimination in the monitoring system.**

**Recommendation: develop a methodology for identifying cases of discrimination through the mechanisms of the Free Legal Aid system; include exchange of information about the legal needs of population regarding discrimination/hate crimes/hate speech on a regular basis.**

As to *prohibition of discrimination in employment*, the competent entity - State Labor Service - in the interview said that their inspectors are only monitoring specific provisions (such as prohibitions of firing a pregnant woman under Article 184 of the Labor Code), rather than prohibition of discrimination in general. This is despite the specifically stated tasks of the SLS

to “monitor job advertisements” and “observation of labor laws” in official regulations on the work of the Service, and while the Act of Inspection includes a section entitled “Equality of Labor Rights of Citizens”, corresponding to Article 2<sup>1</sup> of the Labor Code. While certain disaggregated data is collected (number of female employees, violations of Article 184, and reflected in reports of the Service, in the interview, the representative of the Service explained there was a lack of specific instructions in the regulations on the SLS work on assessment of situations of discrimination.

**Recommendation: develop instructions and provide training elaborating on the duties of the State Labor Service with regard to monitoring discrimination in the workplace.**

#### *Hate crime*

Data on hate crime differs among different stakeholders, which makes it impossible to determine the actual scale and nature of situation. However, stakeholders point to the lack of information about the outcome of investigations, as well as low effectiveness of hate crime prosecution.

According to their response, the Prosecutor’s Office does not have specialized staff working on hate crime. While prosecutors are no longer have investigative powers, their role as supervisors in criminal proceedings means they could help identify cases where bias motive is omitted and improve investigation. Here, cooperation between the Police and the Prosecutor’s Office, the use of common methodology and understanding of hate crime is crucial in achieving better investigation results.

The Action Plan (Human Rights Strategy) provides for development and approval of a joint instruction by the Ministry of Internal Affairs and the Prosecutor General's Office of Ukraine on investigating crimes against intolerance by law enforcement agencies, which would take into account the OSCE methodology (para. 109(3)).

#### **Recommendation:**

- **review forms for recording crime data and introduce changes to reflect types of bias motivation recorded by the police in the Unified Register (Police and Prosecutor General’s Office)**
- **ensure implementation of the Action Plan tasks regarding investigation of hate crime in Ukraine, including recording aspects**
- **encourage reporting on the outcomes of investigation to ensure deterrence effect for future perpetrators.**

On a positive note, data on hate crime collected by the police is desegregated by victim categories, including categories such as disability and sexual orientation, which are not mentioned in aggravation clauses of the Criminal Code articles. This **practice should be mainstreamed** across the criminal justice system to ensure coherent recording from the



moment of registration of the victim's complaint to the final verdict. For this, a joint instruction, as suggested by the National Action Plan

### *Hate speech*

Provided the lack of clear definition of hate speech in laws, regulations and professional codes, a monitoring definition should be developed to distinguish cases of discrimination, hate speech and hate crimes.

Moreover, guidelines on hate speech should be developed in cooperation between the law enforcement (including the Cyber Police, the Prosecutor's Office), agencies responsible for media content regulation (the National TV and Radio Council), advertising content regulation (State Consumer Rights Service), hate speech monitoring (Ombudsman's Office), and non-state actors (Women's League, Industrial Gender Committee of the Ukrainian Marketing Association, Committee for Journalism Ethics).

**Recommendation: with several parallel mechanisms of sanctions (from criminal to self-regulation) for hate speech, it is necessary to develop a clear mechanism of referrals and identify the areas of responsibilities of stakeholders.**

## Recommendations

**Recommendation for law enforcement, Ombudsman's Office:** hate crime provisions of the Criminal Code should be reviewed and updated in line with international standards, including an expanded list of protected characteristics and mandatory application of aggravating provisions by courts in accordance with Article 67.

**Recommendation for law enforcement, Ombudsman's Office:** hate speech provisions of the Criminal Code should be reviewed and updated through an inclusive process (beyond the Ministry of Internal Affairs, including experts on freedom of expression and hate speech), in line with international standards.

**Recommendation for the Ombudsman's Office:** consult the State Statistics Service for the purpose of reviewing and amending regulations on statistics on discrimination and hate crimes.

**Recommendations for all stakeholders:** support the Ombudsman's Office in expanding its data collection and reporting activities through, inter alia, best practice examples from the work of Equality Bodies internationally and development of monitoring and data collection methodology

**Recommendation for the Ombudsman's Office:** where possible, mainstream questions related to protection from discrimination throughout monitoring processes of the Ombudsman's Office (i.e. visits for other purposes).

**Recommendation for the judiciary and relevant stakeholders:** develop methodology and deliver training for court officials on registering criminal cases that manifest bias, expand the category to reflect official police statistics.

**Recommendation for all stakeholders:** for monitoring and statistics purposes, working definitions of discrimination, hate speech and hate crime should be developed.

**Recommendation for all stakeholders:** develop a comprehensive approach to implementation of the Action Plan indicators related to discrimination and hate crime; provide input for the next Action Plan with concrete suggested outcomes and indicators.

**Recommendation for all stakeholders:** develop a mechanism for exchange of information about the needs in collection of data on discrimination and hate speech, with possible thematic or ad hoc groups (as a possibility, under the auspices of the coordination council at the Ombudsman's Office).

**Recommendation for all stakeholders:** Include the data collected by NGOs into the official reporting, map best practices and implement them in cooperation between the state and NGOs.

**Recommendation for all stakeholders:** develop recommendations for mainstreaming the use of data on discrimination across monitoring and policy planning processes for different state stakeholders.

**Recommendation for all stakeholders:** integrate the suggested discrimination data recording mechanism in the SDG reporting process.

**Recommendation for all stakeholders:** identify the possibilities of using the appeals Classification data for baseline assessment of the number of complaints concerning discrimination to the state authorities.

**Recommendation to the State Labor Service, Ombudsman's Office, and relevant stakeholders:** develop instructions and provide training elaborating on the duties of the State Labor Service with regard to monitoring discrimination in the workplace.

**Recommendation for the free legal aid system, all stakeholders:** develop a methodology for identifying cases of discrimination through the mechanisms of the Free Legal Aid system; include exchange of information about the legal needs of population regarding discrimination/hate crimes/hate speech on a regular basis.

**For the Ombudsman's Office, law enforcement:** develop a strategy for easy-to-access publication of data on discrimination, hate crime and hate speech (including special reports, dedicated web resources etc.)

**Recommendation for the Ombudsman's Office and relevant stakeholders:** identify the possibilities of using the appeals Classification data for baseline assessment of the number of complaints concerning discrimination to the state authorities.

**Recommendation for the law enforcement (PGO, NPU, Mol):** review forms for recording crime data and introduce changes to reflect types of bias motivation recorded by the police in the Unified Register (Police and Prosecutor General's Office).

**Recommendation for the law enforcement (PGO, NPU, Mol):** ensure implementation of the Action Plan tasks regarding investigation of hate crime in Ukraine, including recording aspects.

**Recommendation for the law enforcement (PGO, NPU, Mol):** regularly report on the outcomes of investigation to ensure deterrence effect for future perpetrators.

**Recommendation for all stakeholders:** with several parallel mechanisms of sanctions (from criminal to self-regulation) for hate speech, it is necessary to develop a clear mechanism of referrals and identify the areas of responsibilities of stakeholders.

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## Annex 1

### Progress in the implementation of the Action Plan (National Human Rights Strategy), as of 3rd quarter 2019 (indicators related to statistics and discrimination/hate crimes)<sup>87</sup>

Ministry of Justice (MoJ)	111 Preparation of statistics on breaches of legislation in the field of prevention and counteraction of discrimination and prosecution of perpetrators	1) adoption of a normative legal act on implementation of the system of keeping records of discrimination complaints by central and local bodies of executive power	I quarter 2016 beginning: 01.01.2016 completion: 31.03.2016	<p>The Government adopted a resolution of the Cabinet of Ministers of Ukraine from 01.06.2016 No. 359 «On Amendments to Section II of the Classifier of Citizens' Appeals». According to information from the consolidated report of the Ministry of Justice for the fourth quarter of 2017. Currently, the State Statistics Committee collects information on compliance with the requirements of the administrative legislation in Ukraine in the framework of the state statistical observation in the form No. 1-AP "Report on consideration of cases of administrative offenses and persons brought to administrative responsibility". Generalized data on the form No. 1-AP in the context of articles of the Code of Administrative Offenses (hereinafter referred to as the Code of Administrative Offenses) of the bodies authorized to hear cases of administrative offenses, regions are published in the statistical bulletin "Administrative Offenses in Ukraine". In case of amendments to the Code of Administrative Offenses of Ukraine with regard to supplementing its article on administrative responsibility for violation of legislation in the field of prevention and combating discrimination, the State Statistics Committee is ready to publish data on violation of legislation under this article in the mentioned edition. At the same time, we note that the State Statistics Service does not collect or develop information on criminal offenses. The Prosecutor General's Office of Ukraine (hereinafter - the GPU) is the manager of this information. Pursuant to Article 149 of the Law of Ukraine "On Judiciary and Status of Judges", judicial statistics are maintained by the State Judicial Administration of Ukraine (hereinafter - the SJC of Ukraine). In case of receiving to the State Statistics Committee draft normative acts on the necessity of amendments to the current forms of administrative reporting of the GPU, SAS of Ukraine or introduction of additional administrative reporting on violations of legislation in the field of prevention and combating discrimination, the State Statistics Committee will consider them in due course. We also note that in accordance with Article 10 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", the Commissioner of the Verkhovna Rada of Ukraine for Human Rights records and generalizes cases of discrimination in different spheres of life.</p>	Completed
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<sup>87</sup> Source: <http://hro.org.ua/> (data based on official progress reports of the Ministry of Justice of Ukraine).

State Statistics Service	111 Preparation of statistics on breaches of legislation in the field of prevention and counteraction of discrimination and prosecution of perpetrators	2) development and approval of comprehensive national statistical indicators and appropriate statistical forms to assess the status of compliance with the principles of equality and non-discrimination	I quarter 2016 beginning: 01.01.2016 completion: 31.03.2016	<p>The State Statistics Service of Ukraine collects information on compliance with the requirements of the administrative legislation in Ukraine in the framework of the state statistical observation in the form No. 1-AP "Report on the consideration of cases of administrative offenses and persons brought to administrative responsibility".</p> <p>Generalized data on the form No. 1-AP in the context of articles of the Code of Administrative Offenses (hereinafter referred to as the Code of Administrative Offenses), of the bodies authorized to hear cases of administrative offenses, of regions are published in the statistical bulletin "Administrative Offenses in Ukraine". The Prosecutor General's Office of Ukraine is the manager of information on criminal offenses. Pursuant to Article 149 of the Law of Ukraine "On Judicial System and the Status of Judges", judicial statistics are maintained by the State Judicial Administration of Ukraine. <b>In case of receiving to the State Statistics Service draft normative acts regarding the need to amend the current forms of administrative reporting of the General Prosecutor's Office of Ukraine, the State Judicial Administration of Ukraine or introducing additional administrative reporting on violations of legislation in the field of prevention and counteraction of discrimination, the State Statistics Service of Ukraine will review them in accordance with the law.</b> In order to implement the system of keeping records of discrimination complaints by central and local executive authorities, the Ministry of Justice and Ukraine drafted and on March 16, 2016, a draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to Section II of the Classifier of Citizens Appeals" published on its official website. The changes concern the addition of the specified Classifier to the position on the facts of discrimination.</p>	Not completed
State Court Administration (SCA)		3) inclusion in the categories of generalized court statistics of the category of discrimination cases	I quarter 2016 beginning: 01.01.2016 completion: 31.03.2016	<p>Pursuant to Article 16 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", criminal liability for violation of the legislation on prevention and counteraction of discrimination is provided.</p> <p>At the same time, the Criminal Code of Ukraine does not provide for a separate composition of the crime related to discrimination. The crime scenes provided for in Articles 127, 300 of the Criminal Code of Ukraine contain discrimination. In this regard, the courts do not individually discriminate in the compilation of statistical reports unless they constitute an independent crime. Thus, after making appropriate changes to the criminal law, it is possible to introduce appropriate records of the cases of the specified category by courts. At the same time, we inform that in the case of bringing the offenders to administrative responsibility, provided by Article 1663 "Discrimination of Entrepreneurs by Authorities and Administration" of the Code of Administrative Offenses, the results of the case are accounted in the reporting form # 3</p>	Not completed
Supreme Court of Ukraine		generalization of case law in discrimination cases	IV quarter 2016 beginning: 01.10.2016 completion: 12/31/2016	According to the order of the Chief of Staff of the Supreme Court of Ukraine dated July 7, 2016 No. 31/0 / 18-16, the statistical report of the form 31K was amended. In particular, section B of the said report form is supplemented by annex 3 "On the Review of Criminal Judgments (Cases of Violation of Anti-Discrimination and Prevention of Legislation)".	Partially completed

Supreme Court of Ukraine		5) development of recommendations / clarifications on the application of legislation to prevent and combat discrimination in cases	I quarter 2017 beginning: 01.01.2017 completion: 31.03.2017	According to the order of the Chief of Staff of the Supreme Court of Ukraine dated July 7, 2016 No. 31/0 / 18-16, the statistical report of the form 31K was amended. In particular, section B of the said report form is supplemented by annex 3 "On the Review of Criminal Judgments (Cases of Violation of Anti-Discrimination and Prevention of Legislation)".	Partially completed
Ministry of Internal Affairs of Ukraine, State Security Service of Ukraine		6) introduction of statistical data collection and publicity (reporting) on intolerance crimes	I quarter 2016 beginning: 01.01.2016 completion: 31.03.2016	Pursuant to the requirements of the National Police of Ukraine Order No. 299 of April 8, 2016, a report in the form of 1-RD "Report on Criminal Offenses Based on Racial, National or Religious Intolerance, Pre-trial Investigation Pursued by Investigators of the National Police of Ukraine" was introduced. The information is reported on the official website of the National Police of Ukraine <sup>88</sup> .	Completed

<sup>88</sup> Information request sent to the National Police to provide links to the publication of such data and the Form. Awaiting response at the time of completing the report. Once received, the information to be considered in the development of recommendations.

## Annex 2

### List of interviewees and experts

1. Alina Kuts-Karpenko, Directorate for Human Rights, Access to Justice and Legal Awareness, Ministry of Justice of Ukraine
2. Antonina Polishchuk, department of records and archives, Department of information and judicial statistics, State Court Administration
3. Ihor Dehnera, Department of Labor, State Labor Service
4. Irene Fedorovych, Director, Social Action Center
5. Iryna Lylyk, Ukrainian Marketing Association, Industrial Gender Committee on Advertising
6. Iryna Pavlova, Prosecutor General's Office
7. Iryna Polishchuk, Public Relations Unit, State Employment Service
8. Iulian Kondur, Chiricli Foundation
9. Ivan Shemelynets, Directorate for Human Rights, Access to Justice and Legal Awareness, Ministry of Justice of Ukraine
10. Kostiantyn Tarasenko, Human Rights Office, National Police of Ukraine
11. Liudmyla Fursova, Human Rights NGO
12. Maksym Petrov, Ukrainian Helsinki Human Rights Union
13. Oksana Vasyliaka, Coordination Center for Legal Aid Provision
14. Oleksandr Deineko, Coordination Center for Legal Aid Provision
15. Oleksandra Holub, Women's Rights Protection League "Harmony of Equals"
16. Olga Karmazina, Department of Service Statistics, State Statistics Service.
17. Pavlo Zhdan, Office of the President's Commissioner for the Rights of Persons with Disabilities
18. Serhii Havrylenko, Directorate for Human Rights, Access to Justice and Legal Awareness, Ministry of Justice of Ukraine
19. Taras Leshkovych, Directorate for Human Rights, Access to Justice and Legal Awareness, Ministry of Justice of Ukraine
20. Viacheslav Likhachov, Minority Rights Monitoring Group
21. Viktoriia Parubok, Unit on protection and prevention of discrimination, Parliament Commissioner for Human Rights
22. Volodymyr Kondur, Roman Rights Center
- 23. Yuliia Sachuk, Fight for Right NGO**