

VIOLENT HATE CRIME IN UKRAINE

Introduction

This report is a submission by Human Rights First to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for Ukraine's second appearance before the fourth Universal Periodic Review session, scheduled for October 2012. This submission is consistent with the guidelines approved by the Human Rights Council and the Civil Society Unit of the OHCHR. This submission focuses primarily on the situation of hate crimes in Ukraine, which is of particular relevance to sections I.(C), I.(F), and I.(G) of the Human Rights Council's Guidelines, and to sections 7 (c), (f), and (g) of the Civil Society Unit's Guidelines.

Executive Summary

In addition to the recommendations contained in the final section, this submission makes the following key points:

Racial and other bias-motivated crimes have risen dramatically in Ukraine during the past decade. Although the level of hate crime violence had peaked in 2008, attacks continue to occur while government struggles to enact and implement policies for addressing the problem in the longer term. Nongovernmental monitors have recorded another rise in incidents recently, following a dramatic increase after 2008. Individuals of non-European origin, immigrants, and minorities are most vulnerable to violent attacks in Ukraine. Refugees and asylum seekers have been targeted for violence, discrimination, and harassment. Sizeable Jewish communities and the predominantly Muslim Crimean Tatars are among the targets of bias-motivated crimes. Several Jewish religious leaders have been violently assaulted, and attacks on property and places of worship are commonplace. The Ukrainian Roma communities have been the victims of mob violence in the past. A burgeoning movement of skinheads continues to be responsible for the most violent hate crimes. The Ukrainian constitution does not explicitly include protections against discrimination based on sexual orientation, and lesbian, gay, bisexual, and transgender individuals are also victimized by bias-motivated violence.

The government's response to the rise in hate crimes has been insufficient and inconsistent. A small group of politicians has spoken out against racist and xenophobic violence. However, these statements have been undermined by the rhetoric of other key law enforcement officials whose remarks have suggested a denial of the problem. Nonetheless, the Ukrainian authorities did take several steps: the Interior Ministry adopted an action plan on combating racism and created a special unit that deals with ethnic crimes; the State Security Service created a special unit on combating xenophobia and intolerance; and the Foreign Ministry appointed a special envoy to address racism, xenophobia, and discrimination. In April 2008, an interministerial commission was created and its plan to combat xenophobia was adopted by the Committee of Ministers in August 2008.

There are considerable obstacles and challenges to a better overall response to hate crime: significant underreporting of hate crimes; limiting data collection mechanisms; low rates of criminal prosecutions in which hate crime statutes are applied. Law enforcement officials lack training and experience in recognizing and recording the bias motivations behind attacks,

limiting the ability of prosecutors to pursue hate crime cases in court. Many instances of violence with a suspected racial motivation go unreported, as many victims fear harassment by law enforcement officials, among other factors. An inadequate legal framework also hinders the ability of criminal justice officials to prosecute hate crimes as such.

Violent Hate Crimes—Serious Human Rights Abuses

Violent attacks on individuals on account of their race, ethnicity, religion, national origin, sexual orientation, gender, gender identity, disability, or other similar attributes, or a combination thereof are serious abuses of the rights to life, liberty and security of the person, threatening the equal enjoyment of fundamental rights and freedoms. States have an obligation to respond to such abuses by recording, adequately investigating bias motives and prosecuting the perpetrators of these abuses, thereby prohibiting discrimination and upholding the equal protection of the law in accordance with the Universal Declaration of Human Rights and state obligations under the International Covenant on Civil and Political Rights.

In its 2005 judgment in the case of *Nachova and Others vs. Bulgaria*, the European Court of Human Rights for the first time noted that the states “have the additional duty to take all reasonable steps to unmask any racial motive and to establish whether or not ethnic hatred and prejudice may have played a role in the events.” Two other subsequent decisions in 2007—*Angelova and Iliev vs. Bulgaria* and *Šečić vs. Croatia* made similar points regarding cases of racially motivated violence.

Hate Crime in Ukraine

Since 2005, nongovernmental monitors in Ukraine have documented a dramatic rise in violent crimes with a suspected bias motivation. While incidents occurring in Kyiv have been most accurately documented, there is evidence that incidents of violence are taking place throughout the country, including the cities of Cherkasy, Chernivtsi, Kharkiv, Luhansk, Lutsk, Lviv, Mykolaiv, Odessa, Sevastopol, Simferopol, Ternopil, Vinnytsia, and Zhytomyr.

A leading nongovernmental monitor documented 48 bias-motivated attacks on persons in 2011 and 18 in 2010, including 1 murder. The peak of attacks with a suspected bias motivation was recorded in 2007 (88 attacks and 6 murders) and 2008 (84 attacks and 6 murders). Thus, according to the Eurasian Jewish Congress’s expert Vyacheslav Likhachev, there were at least 300 victims of hate crime attacks in Ukraine during 2006-2010, including 13 murders.

Available information indicates that the perpetrators of the most serious hate crimes are coming from loosely organized groups of skinheads—young people united by extreme nationalist and racist ideology. In 2008, The Interior Ministry has put the number of such skinheads at 500, although nongovernmental monitors suggest that, while this may accurately represent the strength of the core groups, the total number, including those loosely affiliated with such groups, is likely to be much higher.

The Victims of Hate Crimes

Bias-motivated violence has been largely committed against people of African and Asian origin and Jews, as well as people from the Caucasus and the Middle East. Asylum seekers, refugees, and labor migrants are among the victims, who have also included diplomats, expatriate employees of foreign companies, members of visible minorities in Ukraine, and Ukrainians who have assisted hate crime victims. Foreign students, of which there are some forty thousand, have been among the principal victims of hate crimes.

Small populations of citizens and immigrants of African origin are highly visible and particularly vulnerable targets of racism and xenophobia. Although relatively few people of African origin reside in Ukraine, the rate of violence against this group has been extraordinary. African refugees, students, visitors, and the handful of citizens and permanent residents of African origin have lived under constant threat of harassment and violence.

Apart from the arrival of foreigners of diverse backgrounds to work, study, and live in Ukraine, tens of thousands of Ukrainians have returned to the country since the breakup of the Soviet Union. Significantly, more than 250,000 Crimean Tatars have returned to their homeland following Ukrainian independence, shifting the ethnic composition of the Autonomous Republic of Crimea. The return of Tatars, who belong to a different ethnicity, speak a separate language, and are predominantly Muslim, has resulted in increased ethnic and religious tensions in the Crimea and contributed to an increase in bias-motivated attacks against Crimean Tatars and their property.

Ukrainian Jews have been the object of some of the worst government-led persecutions in history, including Tsarist pogroms, Nazi genocide, and Stalin's anti-Semitic campaigns. The problem of anti-Semitism has remained despite massive immigration of Jews to Israel, Europe, and the United States following the disintegration of the Soviet Union. In recent years, Ukraine has seen a revival of anti-Jewish prejudice in the form of an increase of anti-Semitic attacks and incidents.

Moreover, the disintegration of the Soviet Union has had profound effects on the freedom of conscience in Ukraine. Although people are now free to worship the religion of their choice, the introduction of several western forms of Christianity, new to Ukraine, has resulted in some tensions with the well-established Orthodox communities. The government has done little to address the "sectarian" rhetoric used by some members of the Orthodox Church, the media, and general public against Baptist, Jehovah's Witnesses, Pentecostal, and other denominations that operate in Ukraine.

Similarly, the breakdown of the Soviet Union—during which time homosexuality was criminalized—has allowed lesbian, gay, bisexual, and transgender/transsexual people (LGBT) to be more open about their identity. However, the Ukrainian constitution does not explicitly include protections against discrimination based on sexual orientation; laws concerning bias-motivated violence do not cover incidents involving bias on the basis of sexual orientation or gender identity. Many Ukrainians remain intolerant toward LGBT persons. According to one recent poll by the Institute of Sociology, almost 35 percent of Ukrainians disagreed strongly or disagreed with the statement that "gay men and lesbians should be free to live their own life as they wish."

Roma, too, have been subjected to human rights abuse and personal violence. The European Commission against Racism and Intolerance (ECRI), for example, continues to receive reports that police "illegally arrest and harass members of Roma communities," and that "Roma do not receive an adequate response from the police when they are the victims of crime." Roma people continue being one of the most vulnerable groups affected by bias motivated crime.

United Nations Reporting

The United Nations Committee Against Torture in 2007 expressed "concern about incitement and acts of violence against persons, belonging to ethnic and national minorities, including acts against Roma, anti-Semitic attacks, and violence against persons of African and Asian origin and

noncitizens,” and pointed to “persistent allegations of failure to investigate and reluctance on the part of the police and authorities to provide adequate protection to the victims or to conduct prompt, impartial and effective investigations of such reports.”

In April 2008, the Office of the United Nations High Commissioner for Human Rights offered a summary of stakeholder submissions, which provided additional information about hate crimes in Ukraine. Several key nongovernmental organizations and intergovernmental bodies raised the problem of racist and other bias-motivated violence in Ukraine, calling for improvements in the government’s policies for combating hate crime. During the first periodic review of Ukraine, the governments of Belgium, Brazil, Canada, Cameroon, Cuba, Germany, the Netherlands, Portugal, Switzerland, Turkey, and United Kingdom discussed the problem of racist, xenophobic, and other bias-motivated violence and discrimination in Ukraine, offering a variety of recommendations many of which were accepted by Ukraine.

The State’s Challenges in Addressing Hate Crimes

The government took a series of positive steps aimed at improving government response to violent hate crime, including adopting a national plan to combat racism and xenophobia, reacting publicly to incidents of violence, and issuing an official instruction to law enforcement to begin collecting data.

However, the country appears to lose the momentum in confronting hate crime amidst rising levels of bias-motivated violence. The Instruction No 11/121 lacks implementation, and the Ukrainian authorities are still not engaged in any official data collection or public reporting on the incidence of violent hate crimes. Without this, it is difficult for the authorities to assess the extent of the violence, as well as the extent to which law enforcement officials are responding. Legislative base for prosecuting such offenses need further improvements as current laws are very difficult to apply in practice. In addition, the disbanding of both the State Committee for Nationalities and Religion and the Interior Ministry’s Human Rights Monitoring Department significantly weakened government’s efforts to combat racist and bias-motivated incidents.

Civil Society Response: the Diversity Initiative

In 2006, the Ukraine Offices of UNHCR and IOM partnered with a number of concerned civil society groups to coordinate a uniform response to hate crime impacting refugees, migrants, and other populations in Ukraine. In April 2007, the “Diversity Initiative”—a coalition of dozens of entities, including domestic and international NGOs and agencies—was launched to coordinate efforts to raise awareness of the problem, provide assistance to victims, and advocate a more robust government response.

The Diversity Initiative’s participants have provided direct medical and legal assistance to victims of hate crime; engaged with the Ukrainian government, bringing attention to individual cases of hate crime and pressing for accountability through law enforcement and prosecutions; produced legal analyses of relevant antidiscrimination and hate crime legislation; and engaged the general public directly through conferences, roundtables, public events, and publications. The ability of international institutions to reengage NGOs with the same commitment and interest that existed when this coalition first came together will determine the future of the Diversity Initiative’s lobbying and data collection efforts. This framework of cooperation has provided a useful model for combating hate crime, elements of which could be replicated elsewhere.

Recommendations for Combating Hate Crimes in Ukraine

Senior government officials should speak out to publicly condemn crimes of racist violence and other violent bias crimes whenever they occur, and take action to ensure that such crimes are thoroughly investigated, perpetrators prosecuted, and bias motivations are taken into account in the investigation and prosecution.

Law enforcement and criminal justice agencies should publicly commit to investigate allegations of bias motives in specific violent hate crimes, and to provide regular public updates into the investigation and prosecution of such crimes.

The Interior Minister should ensure that the ministry's special unit responsible for combating ethnic crimes has clear guidelines to address crimes—including those committed against foreigners—that are motivated by racism and xenophobia. If the ministry deems necessary to specifically monitor crimes committed by foreigners (as this unit also does), this should be undertaken by a separate unit.

The Interior Ministry should develop an internal protocol mandating police officers and investigators to record bias motives in the commission of a crime. The Interior Ministry should commit to making data on the incidence of violent hate crimes public—an important step toward improved public policy on combating hate crime.

Law enforcement officials should take steps—including by reaching out to community and other nongovernmental groups—to increase the confidence of hate crime victims to report crimes to the police. The authorities should ensure thorough investigation of any reports of police harassment of hate crime victims and ensure the prosecution of offenders.

The Ukrainian authorities should reach an agreement with the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), identifying specific areas in which ODIHR would provide technical support and assistance to combat violent hate crimes, including through expanded law enforcement training. The Ukrainian authorities should extend an invitation to ODIHR's Training against Hate Crimes for Law Enforcement (TAHCLE) program.

The Ukrainian authorities should ensure regular public reporting of the concrete actions, achievements, and shortcomings of the special units on combating racism and xenophobia created in the Interior Ministry and the State Security Service, State Committee for Nationalities and Religion, the Foreign Ministry's special envoy and the recently created Interministerial Commission on combating racism, xenophobia, and discrimination. The Commission should be entrusted with adequate authority and sufficient resources to address the problem. These bodies should formalize outreach to civil society, including by meeting on a regular basis with nongovernmental organizations in the framework of the Diversity Initiative, a coordination group of organizations based in Ukraine and dealing with the problem of hate crimes.

The Ukrainian authorities should work to pass legislation to strengthen the criminal law on violent hate crimes. In particular, consideration of racial motivation under Article 67 should be mandatory rather than discretionary. The article, which regrettably has never been invoked, allows for a motive of "racial, national, or religious hatred" to be considered an aggravating circumstance by a judge in determining the sentence. The systematic use of such penalty enhancement provisions in appropriate cases will send a strong message of condemnation of hate crimes.