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مجلس حقوق الإنسان

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البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

الزيارة إلى أوكرانيا

تقرير الخبير المستقل المعني بالحماية من العنف والتمييز القائمين على أساس الميل الجنسي والهوية الجنسية ***

موجز

يقيم الخبير المستقل المعني بالحماية من العنف والتمييز القائمين على أساس الميل الجنسي والهوية الجنسية، فيكتور مادريغال - بولوز، في التقرير المتعلق بزيارته إلى أوكرانيا، في الفترة من 30 نيسان/أبريل إلى 10 أيار/مايو 2019، تنفيذاً ما يوجد من معايير وطنية ودولية لحقوق الإنسان من أجل مكافحة العنف والتمييز على أساس الميل الجنسي والهوية الجنسية، ويعطي نظرة شمولية عن حالة حقوق الإنسان للمثليين ومزدوجي الميل الجنسي ومغايري الهوية الجنسية والمتنوعين جنسياً في أوكرانيا. ويحدد، في ضوء المعلومات التي تم جمعها قبل الزيارة وأثناءها وبعدها، الخطوات الإيجابية والتحديات المتبقية ويصوغ توصيات لتعزيز حماية الأشخاص من جرائم الكراهية والعنف القائمين على الرهاب، والحد من التمييز القائم على أساس التوجه الجنسي والهوية الجنسية والقضاء عليه في نهاية المطاف.

* أُعيد إصدارها لأسباب فنية في 30 حزيران/يونيه 2020.

* يعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعَمَّم باللغة الإنكليزية فقط.

** أُتفق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي لظروف خارجة عن إرادة الجهة التي قدمته.



الرجاء إعادة الاستعمال

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Annex

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Ukraine

I. Introduction

1. At the invitation of the Government and pursuant to Human Rights Council resolution 32/2, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity conducted an official visit to Ukraine from 30 April to 10 May 2019 to assess the situation of lesbian, gay, bisexual, trans and gender diverse persons in the country and to identify good practices and gaps in the implementation of national and international human rights standards to combat violence and discrimination based on sexual orientation and gender identity.

2. The Independent Expert visited Kyiv, Kharkiv and Lviv. He met with representatives of the executive, legislative and judiciary branches of the Government, local authorities and the Office of the Parliamentary Commissioner for Human Rights (Ombudsperson). He also visited two places of deprivation of liberty. While he regrets that he was not able to meet with representatives of the Prosecutor's Office, the Supreme Court or the State Judicial Administration, he expresses his appreciation to the Government for its invitation and for the cooperation he enjoyed before and during the visit, and thanks all the governmental agencies involved in the organization and execution of the visit for their professionalism and dedication.

3. The Independent Expert also met with a wide variety of civil society organizations, human rights defenders and lesbian, gay, bisexual, trans and gender diverse persons with lived experiences of violence and discrimination. He expresses his deep gratitude to Ukrainian civil society and the lesbian, gay, bisexual, trans and gender diverse community for their generosity in sharing their stories and the information and analysis at their disposal, and for the excellence and principled manner with which they carry out their work, which is a great source of inspiration.

4. The Independent Expert also thanks the human rights monitoring mission in Ukraine for the excellent assistance and collaboration provided in the preparation and execution of the visit.

5. During the visit, the Independent Expert received no indication of gross or massive acts of individual violence against lesbian, gay, bisexual, trans and gender diverse persons. Ukrainian legislation does not prescribe discrimination or violence on the basis of sexual orientation and gender identity: it is free from the scourge of criminalization, contains general anti-discrimination provisions and, in a few instances, explicitly includes protections. Yet, despite these achievements, it cannot be said that lesbian, gay, bisexual, trans and gender diverse persons live free and equal lives in Ukraine: societal views remain highly contaminated by stigma, public officers consider that sexual orientation and gender identity are not to be explored or talked about because "society is not ready", and lesbian, gay, bisexual, trans and gender diverse persons themselves feel that keeping their identity hidden is key to their survival.

II. Context and background

6. Since its separation from the former Soviet Union in 1991, Ukraine has endured two periods of major civil unrest. The second, sparked by what came to be known as the Maidan revolution or the revolution of dignity, led to the establishment of a new Government in May 2014. That same year, pro-Russian and anti-revolution activists protested against the change of Government in the region of Crimea and demonstrations spread to cities across eastern and southern Ukraine, including Donetsk, Luhansk, Kharkiv

and Odessa. Armed groups supported by the Russian Federation seized power in the Autonomous Republic of Crimea and the city of Sevastopol, leading to a so-called referendum on 16 March 2014 and the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.¹ In parallel, in eastern Ukraine, pro-Russian armed groups seized control of parts of the Donetsk and Luhansk regions and declared the self-proclaimed “Donetsk People’s Republic” and “Luhansk People’s Republic”, sparking an armed conflict that has so far affected 5.2 million people² and led to over 1.5 million persons being internally displaced. Since the start of the conflict, 3,046 conflict-related civilian deaths have been recorded and the number of injured civilians is estimated to exceed 7,000.³

7. In July 2017, Ukraine signed an association agreement with the European Union. In April 2019, Volodymyr Zelensky won the second round of the presidential election, and in July 2019 the Servant of the People party won a majority in parliament.

III. Legal, institutional and public policy framework

A. Legal framework

8. Ukraine is a State party to most major international⁴ and regional human rights instruments,⁵ and it has created solid institutional frameworks for the implementation of its international obligations. Ukraine decriminalized same-sex sexual practices in 1992.⁶ Sexual orientation and gender identity are not included as explicitly protected grounds of discrimination in the Constitution (art. 24) or the law “on principles of preventing and combating discrimination”. However, both instruments use open-ended lists of grounds, thus allowing for protection through judicial interpretation.

9. Sexual orientation and gender identity have been articulated explicitly as grounds for protection in two pieces of legislation: the Labour Code (art. 21) and the law on the legal status of missing persons (art. 7). In addition, these grounds have been introduced in some secondary legislation and State policies. Several articles of the Criminal Code were amended in December 2017⁷ to become more inclusive to same-sex couples and to remove imprecise wording.

10. While the Independent Expert was informed of a gradual improvement in perceptions about the lives of lesbian, gay, bisexual, trans and gender diverse persons, in more recent times a regressive trend has been identified: for example, in parliament it has become impossible to discuss gender-related issues, with parliamentary factions openly combating women’s rights, gender equality and the protection of sexual minorities, and systematically trying to deconstruct existing legal infrastructure protecting lesbian, gay, bisexual, trans and gender diverse persons from discrimination, or to introduce discriminatory legislation. According to these narratives, the term gender is ideologically

¹ In its resolution 68/262 on the territorial integrity of Ukraine, the General Assembly explicitly rejected the idea that the so-called referendum had legal force. Four other resolutions (71/205, 72/190, 73/263 and 74/168) relate to the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol.

² United Nations, Office for the Coordination of Humanitarian Affairs, “Ukraine situation report”, 4 November 2019.

³ Office of the United Nations High Commissioner for Refugees (UNHCR), Ukraine, country fact sheet, December 2019; and Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report on the human rights situation in Ukraine”, 16 August to 15 November 2019.

⁴ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (search “Ukraine”).

⁵ See https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/search/states_coe (search “Ukraine”).

⁶ Under article 121 (1) of the Criminal Code of the Soviet Union of 1934, transposed into the penal codes of all Soviet republics, male homosexuality was criminalized with a penalty of up to five years’ imprisonment.

⁷ See https://base.spininform.ru/show_doc.fwx?rgn=103505# (in Russian).

biased and the notion of gender equality should be strictly interpreted as per the law of Ukraine on ensuring equal rights and opportunities for men and women.

11. The Independent Expert was informed that churches actively promote discriminatory bills and block policies and legislation aimed at protecting persons from discrimination based on sexual orientation and gender identity. The All-Ukrainian Council of Churches and Religious Organizations, for instance, successfully opposed attempts to include sexual orientation and gender identity as protected characteristics in the anti-discrimination legislation; to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; and to adopt a resolution cancelling the legislative ban on the adoption of children by HIV-positive and transgender persons.

12. Of particular importance, the Independent Expert was informed of a concerted campaign aimed at influencing all branches of Government to discriminate against lesbian, gay, bisexual, trans and gender diverse persons. Since 2018, national and local authorities, the parliament and the Ombudsperson have been the target of thousands of petitions received through their websites and supported – and sometimes initiated – by religious authorities, all demanding a ban on “homosexual propaganda” under the banner of “protecting the traditional family”. In one such petition, “on the protection of traditional family values and concept of family”,⁸ the Government was called on to take action to protect traditional family values, prohibit propaganda and the promotion of “deviant sexual behaviours” and “anti-family ideas”, “particularly in the form of so-called equality marches, pride marches, gay parades, queer culture festivals, and relevant materials in the media”. By the time of its removal from the President’s website at the request of the Ombudsperson, the initiative had received 22,837 of the 25,000 signatures required for its consideration.

13. Other petitions, however, were not withdrawn from official websites and received enough votes to be considered. Answers varied between authorities, but especially between national and local entities. The Independent Expert is particularly concerned about the reaction of some local councils which, after having reviewed petitions, adopted homophobic appeals to the Government themselves. In 2018, the Ombudsperson sent letters to several city councils requesting that they annul a decision that violated legal requirements guaranteeing the right to respect for dignity and freedom from discrimination.⁹ On 24 December 2019, in an almost unanimous decision, Rivne City Council banned the holding of equality marches.

14. Even though the campaign has not led to the adoption of homophobic or transphobic laws, it has had the desired effect of halting the consideration of laws and policies enhancing protection against violence and discrimination based on sexual orientation and gender identity, foreseen in the National Human Rights Strategy, and has created a significant risk of backlash.

B. Institutional and policy framework

15. The issue of gender equality was entrusted in March 2017 to the Vice-Prime Minister for European and Euro-Atlantic Integration and, in June 2017, the Cabinet of Ministers introduced the position of the Government Commissioner for Gender Equality Policy. In addition, in 2017 the Ministry of Internal Affairs established a human rights department, responsible for designing the human rights policy of the Ministry.

16. The Ombudsperson was established in 1998 and became the national equality body with the adoption of the law on preventing and combating discrimination in Ukraine (art. 10) in 2014.

17. In 2015, a National Human Rights Strategy was established, providing a five-year road map, an action that reveals strategic thinking regarding discrimination and violence based on sexual orientation and gender identity. The national action plan on the Strategy’s

⁸ Petition No. 22/042484-ep (author – Victor Tantsiura), 2018.

⁹ Ombudsperson, *Annual Report 2018*.

implementation (human rights action plan)¹⁰ identified some 20 measures to enhance protections for lesbian, gay, bisexual, trans and gender diverse persons from violence and discrimination. The Independent Expert observes that some key issues remain unaddressed in the legal and policy framework, including ensuring the human rights of lesbian, gay, bisexual, trans and gender diverse persons deprived of liberty. After visiting several centres of detention, the Independent Expert observed that no State bodies conduct monitoring of the situation of lesbian, gay, bisexual, trans and gender diverse persons in detention, and there are neither policies nor training relating to this issue.

18. Moreover, the Independent Expert notes that only an estimated 25 to 30 per cent of the lesbian, gay, bisexual, trans and gender diverse component of the human rights action plan had been implemented by 2019 and, with great concern, observes that the following items have not yet been implemented fully or in a significant matter:

- (a) Introduction of sexual orientation and gender identity as prohibited grounds of discrimination in the law on principles of preventing and combating discrimination;
- (b) Amendment of the Criminal Code to ensure punishment for crimes motivated by intolerance with regard to sexual orientation and gender identity and to decriminalize contagion by HIV and other infectious diseases;
- (c) Development and introduction of medical standards for intersex persons;
- (d) Legalization of registered civil partnerships for both opposite-sex and same-sex couples;
- (e) Lifting of the ban on adoption of children by transgender and HIV-positive persons;
- (f) Development and implementation of the standards of social work with teenagers and young people, and the provision of social and psychological services;
- (g) Adoption of common guidelines by the Ministry of Internal Affairs and the Prosecutor General to investigate hate crimes by the police, taking into account the methodology devised by the Organization for Security and Cooperation in Europe (OSCE) (see para. 44 (c) below).

19. The Independent Expert was told that resistance within certain ministries and weak interministerial coordination, but also strong opposition from the Orthodox churches and religious leaders and the appeals campaign, were factors hindering the implementation of the human rights action plan. In particular, the Government noted that it would not implement the item related to the legalization of civil partnership given the controversy surrounding it and the demands of society to promote family values, suggesting further study and revision instead.¹¹

20. The low implementation rate is a telling lag in the implementation of the State's strategic thinking. Until such time as actions are completed and have an impact, it remains an open question whether the formal policy framework is indeed an effective and efficient means to address violence and discrimination.

C. Data

21. No State authorities reported gathering or managing data related to sexual orientation and gender identity, a worrisome finding given the connection between data and good policy and law-making. Some recent progress with regard to data on hate crimes was nonetheless noted. Since 2012, police officers and investigators have been required to enter a brief description of the motives of the crime in the register of pretrial investigations, and statistical data on hate crimes have recently been broken down according to the specific hate motive. As a result, in 2016 for the first time the National Police published statistics on the previous year's hate crimes. Statistics cover crimes based on grounds of racial, national

¹⁰ Available from www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx.

¹¹ Ombudsperson, *Annual Report 2018*.

or religious intolerance, as well as bias-motivated crimes against lesbian, gay, bisexual, trans and gender diverse persons and persons with disabilities. Although the law does not include the last two groups as protected characteristics, the information is mined through case-by-case analysis, something that is possible because of the low numbers of cases involved. The Independent Expert regrets that the data collected does not distinguish between incitement to hatred and hate-motivated violence.

22. The Ombudsperson's Office also receives, via petitions, information about rights violations, including on discrimination and violation of the principle of equality. Since 2014, it has been collecting data on cases related to discrimination and, starting in 2018, it receives quarterly updates from the State Judicial Administration on the total number of civil, administrative and criminal proceedings that concern discrimination.¹²

IV. Root causes analysis

A. Stigma

23. Despite public support for values of democracy and equality¹³ and a shy but steady improvement in the public perception of lesbian, gay, bisexual, trans and gender diverse persons since 2015, widespread negative social attitudes concerning sexual orientation and gender identity persist. Sociological surveys conducted in 2016 and 2018 showed that 60 per cent of Ukrainians have negative attitudes towards the community.¹⁴

24. During the visit, the Independent Expert observed that strong incentives are in place not to do anything that disrupts the perception of social harmony, as doing so will expose individuals to severe discrimination in employment, education and health care. As a result, most members of the community do not dare to "come out". The main challenge of the Ukrainian State is to adopt the measures necessary to identify, analyse and ultimately dismantle the root causes of this invisibility.

25. The Independent Expert was informed of initiatives aimed at fostering tolerance, raising awareness and debunking myths and stereotypes around marginalized groups, including lesbian, gay, bisexual, trans and gender diverse persons, noting in particular educational activities initiated by non-State actors and the Free and Equal Campaign run by the United Nations in June 2019. These are, unfortunately, not sufficient given the scope of the problem.

B. Attitudes of the public and elected officials

26. The period following the revolution of dignity is marked by the emergence of nationalism, patriotism and a strong sentiment of national identity. Some nationalist battalions fighting in the east of the country have affiliated themselves with far-right groups that oppose issues related to sexual orientation and gender, and have gained popularity due to their role in the military conflict. Radical nationalist and religious conservative groups have implemented narratives portraying lesbian, gay, bisexual, trans and gender diverse persons as being anti-patriotic, destroying the moral fabric of the society or the "natural family", and threatening the survival or the sovereignty of the nation.

27. In general, central executive authorities have acted in a manner that reflects respect for the rights of lesbian, gay, bisexual, trans and gender diverse persons. Since 2016, the President's Office and some political appointees have taken a public stand for equality, including for lesbian, gay, bisexual, trans and gender diverse persons, hence contributing to creating a more inclusive environment for sexual and gender diverse persons.

¹² Ibid.

¹³ See www.ua.undp.org/content/ukraine/en/home/library/democratic_governance/humanrightsresearch-2018.html.

¹⁴ Tetiana Pechonchyk, ed., "What Ukrainians know and think of human rights: a progress study (2016–2018)", research summary (Kyiv International Institute of Sociology, 2018).

Unfortunately, not all high-ranking officials demonstrate such unequivocal and public support or unbiased approaches to sexual orientation and gender identity. During the visit, the Independent Expert received reports of heads of district and state administrations, mayors, members of parliament and professors from public universities engaging in hate speech while exercising public functions and utilizing public resources. This is most noticeable through the campaign calling on Ukrainian authorities to ban “homosexual propaganda” under the banner of protecting the traditional family and homophobic bills submitted regularly.

28. When high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected persons, communities and populations, but also trust in State institutions and, thus, the quality and level of their participation in democracy.

C. Role of churches

29. The Independent Expert is concerned by the role played by Orthodox churches and religious leaders as well as extreme right-wing groups in demonizing and portraying lesbian, gay, bisexual, trans and gender diverse persons as sinful, immoral and unpatriotic. To date, these actors remain the main opponents to equality for lesbian, gay, bisexual, trans and gender diverse persons, and while Orthodox churches and religious leaders now refrain from inciting violence and discrimination against such persons, extreme right-wing groups continue to use violent means, putting their safety at risk.

30. Most recently, leading Ukrainian churches – except for the Moscow Patriarchate – have shifted their focus from calling openly for discrimination against lesbian, gay, bisexual, trans and gender diverse persons towards appeals for the “protection of the traditional family” and the fight against “gender ideology” and the use of concepts of sexual orientation, gender and their derivatives in the Ukrainian legislation, including through petitions and appeals, and active lobbying of elected officials, as well as involvement in marches and festivals throughout the country.

31. In this context, the Independent Expert notes that the consultative status granted to the All-Ukrainian Council of Churches in government ministries and in most parliamentary committees – not enjoyed by any other association or non-governmental entity – offers this institution an exclusive opportunity to influence law and policymaking that is questionable in a secular State.

32. On 5 January 2019, the Orthodox Church of Ukraine was granted autocephaly (independence), formalizing the formation of a new Church, independent from the Russian Orthodox Church. According to some analyses,¹⁵ this move will likely reduce the influence of the Russian Orthodox Church in Ukraine and adds another dimension to the country’s efforts to build its national identity.

D. Extreme right-wing groups

33. In the post Maidan period, there has been an increase of violence against lesbian, gay, bisexual, trans and gender diverse persons by extreme right-wing groups promoting hatred, putting these persons and human rights defenders, among others, at risk. The emergence of the extremist groups coincides with the rising visibility of the lesbian, gay, bisexual, trans and gender diverse community and the adoption of State measures aimed at its increased protection.

34. Reportedly, there are at least 20 far-right informal groups currently active in Ukraine that commit homophobic and transphobic crimes, and some of them stalk lesbian, gay, bisexual, trans and gender diverse persons, use social media to lure members of this community and organize “gay safaris” during which they attack lesbian, gay, bisexual, trans and gender diverse persons, beat them up, humiliate them, film the event and extort them or upload footage to the Internet.

¹⁵ See [www.europarl.europa.eu/RegData/etudes/BRIE/2019/635525/EPRS_BRI\(2019\)635525_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635525/EPRS_BRI(2019)635525_EN.pdf).

35. Members of the extreme right-wing groups (such as C14, Right Sector, National Corps, Tradition and Order, Katekhon, Carpathian Sich and others) have consistently tried to disrupt or prevent lesbian, gay, bisexual, trans and gender diverse events, public assemblies, educational and commemorative events and, most recently, even private meetings targeted to specific audiences, often resorting to violent means. The Independent Expert is concerned that the lack of effective investigations by law enforcement officials into attacks on such events and outspoken members of the community result in impunity and fuels further violence – sending a signal that hatred and violence against lesbian, gay, bisexual, trans and gender diverse persons is acceptable.

V. Violence

A. Institutional violence

36. Non-governmental actors expressed concern at abuses by law enforcement personnel. They have recorded 96 cases since 2016, most of them related to the refusal by police and investigators to take into consideration and to record homophobic or transphobic motives of crimes or the qualification of the crimes as lesser offences, delays in investigation and homophobic and unprofessional behaviour towards lesbian, gay, bisexual, trans and gender diverse victims. Other complaints pertain to the lack of effective protection of participants in peaceful assemblies, blackmail, threats of disclosure or disclosure of confidential information by police officers, arbitrary detention, ill-treatment, extortion of bribes for release and insults, threats and humiliation.¹⁶ However, civil society actors note that, since 2016, the attitude of the reformed Ukrainian police has substantially changed and that the treatment of the lesbian, gay, bisexual, trans and gender diverse community in the provision of services and protection has improved, in particular in Kyiv. Positive changes have been particularly striking in the management of events and peaceful demonstrations.

B. Hate crimes

37. Lesbian, gay, bisexual, trans and gender diverse persons have seen a deterioration of their security situation since 2014, with an increase in the number of serious crimes committed against them, such as murder and grievous bodily harm, the use of explosives and attacks on lesbian, gay, bisexual, trans and gender diverse organizations and events. Equality marches and public gatherings organized by the community have been particularly targeted by extreme right-wing nationalist groups, which consistently tried to disrupt these events, often resorting to violent means.¹⁷

38. Human rights defenders, especially those working on the human rights of lesbian, gay, bisexual, trans and gender diverse persons and women's equality, have seen a sharp surge in violent attacks against them throughout 2018.¹⁸ This trend seems, unfortunately, to have continued in 2019 with data showing that approximately 30 per cent of incidents targeting human rights defenders were committed against activists in these areas.¹⁹

39. Data collected by non-State actors for the first half of 2019 suggest a slight decrease in the violence suffered by lesbian, gay, bisexual, trans and gender diverse persons and in attacks on lesbian, gay, bisexual, trans and gender diverse events, perhaps due to police training and increased protection measures. The Independent Expert notes, however, a sharp increase in non-violent offences, with mercenary motives recorded, such as extortion, blackmail and disclosure of personal information on a person's sexual orientation and

¹⁶ Nash Mir Center, *Overcoming Obstacles: LGBT Situation in Ukraine in 2018* (Kyiv, 2019).

¹⁷ Ibid.

¹⁸ Amnesty International, "Ukraine: human rights under pressure, their advocates under attack", public statement, 8 February 2019.

¹⁹ See https://zmina.ua/content/uploads/sites/2/2020/04/situationofhumanrightsdefendersinukraine2020-briefen_web.pdf

gender identity. He is concerned that, pushed into secrecy, a person's sexual orientation and gender identity may increasingly be used for the purposes of blackmail and extortion by both police and private actors. The Independent Expert is greatly concerned about the extreme violence of homophobic and transphobic hate crimes compared with crimes motivated by other reasons. The State reported, for example, that hate crimes against lesbian, gay, bisexual, trans and gender diverse persons represented 40 per cent of all physical assaults and homicides recorded by the police in 2018.²⁰

40. Underreporting of homophobic and transphobic incidents is a serious problem. For 2018, the police registered 15 criminal offences against lesbian, gay, bisexual, trans and gender diverse persons, compared with 358 cases of violence, discrimination and other violations motivated by homophobia and transphobia recorded by civil society organizations.²¹ This discrepancy may indicate that hate crimes motivated by bias against such persons are either not reported to the police, or not recognized as such by it. Reasons invoked for underreporting include a lack of legal literacy among the community, the fear that the victim's sexual orientation and gender identity will be disclosed and a lack of trust in the police and the judiciary and, particularly, that an investigation will be carried out with objectivity and independence, or result in any charges.

41. Indeed, the Independent Expert notes that incidents of homophobic and transphobic violence are rarely investigated or prosecuted by the authorities. Motives of homophobia and transphobia are often not taken into consideration by investigators or qualified as lesser offences without aggravating circumstances. In addition, very few criminal proceedings for hate crimes against lesbian, gay, bisexual, trans and gender diverse persons have been brought to court, and the vast majority of the perpetrators are indicted for ordinary offences rather than hate crimes.

42. All the interlocutors the Independent Expert met with concur in saying that the existing criminal legislation is not suitable to adequately qualify hate crimes on grounds other than those explicitly stated in the Criminal Code of Ukraine – that is, on the basis of race or national or religious intolerance.²² The vast majority of crimes in which the police see motives of bias are classified under article 161 of the Criminal Code (“Violation of citizens’ equality based on their race, nationality, religion, disability and other grounds”), which has an open-ended list of grounds; however, there are no general or specific references to grounds of sexual orientation or gender identity.

43. As a result, crimes that should be considered as hate crimes, in the event they are investigated, are often characterized as lesser offences, such as hooliganism or infliction of injuries. Some amendments to the Criminal Code envisaged in the human rights action plan were meant to address this gap. The Independent Expert was nonetheless informed that, even though the relevant bill had been developed by the National Police, it has not yet been submitted to the Cabinet of Ministers for approval.

44. Yet, a number of measures implemented through the human rights action plan and other public policies are positively impacting on the number of hate crimes recorded by the police,²³ the number of cases registered under article 161 of the Criminal Code,²⁴ and the number of cases prosecuted,²⁵ including:

(a) Adoption of rules of ethical behaviour of police officers in 2016, which stipulate that staff should respect the dignity of every person, and treat everyone fairly and impartially regardless of their sexual orientation;

²⁰ See <http://hatecrime.osce.org/ukraine?year=2018>.

²¹ Nash Mir Centre, *LGBT Situation in Ukraine in 2018*.

²² See arts. 115, 121–122, 126–127 and 129.

²³ See <https://hatecrime.osce.org/ukraine>.

²⁴ According to information provided during the visit, for the first quarter of 2019, there had been 85 such cases, including 3 involving sexual orientation, compared with only 3 cases in 2012.

²⁵ Prosecutions for hate crimes have seen a sharp increase in the past three years, rising from 76 in 2016 to 149 in 2018.

- (b) Nomination of contact points on hate crime at the national and regional levels;
- (c) Development of internal guidelines on investigating hate crimes²⁶ and their implementation through a practical guide, accompanied by plans to deliver police training;²⁷
- (d) Amendment of the police crime report form to include the possibility to indicate motives of intolerance;
- (e) Training of employees of the human rights department of the Ministry of Internal Affairs on the principles of tolerance and non-discrimination;
- (f) Training of police officers on the principles of tolerance and non-discrimination and awareness-raising sessions to counter misconceptions related to sexual orientation and gender identity;
- (g) Production of posters to encourage reporting of hate crime with the slogan: “Being yourself is not a crime – attacking people for who they are, is a crime”;
- (h) Adoption by the National Police of a hate crime prevention plan for 2019, and the establishment of hate crime monitoring groups in police units.²⁸

45. In addition, during the visit, the Independent Expert was informed that the Ministry of Internal Affairs envisages integrating training on discrimination and equality in compulsory police training.

46. The Independent Expert welcomes these initiatives and is pleased to see that the measures taken in the past three to four years are starting to positively impact on the categorization and investigation of hate-related incidents. However, the current situation remains suboptimal: despite some improvements, the number of hate crimes motivated by bias against lesbian, gay, bisexual, trans and gender diverse persons recorded²⁹ and investigated by the police remains very low.

47. In addition, the Independent Expert is concerned that the number of sentences handed down for hate crimes remains extremely low, with only two sentences handed down in 2016, three in 2017 and six in 2018. Due to the absence of categorization of homophobic and transphobic crimes in the Criminal Code and the lack of disaggregated data available, he was unable to assess potential progress in prosecuting and sentencing such hate crimes. The impunity resulting from the absence of an effective investigation and relevant legal categorization of these offences as hate crimes sends a clear message: violence against lesbian, gay, bisexual, trans and gender diverse persons is tolerated.

48. The Independent Expert notes that Ukraine is under a particular obligation to act decisively to end impunity for crimes perpetrated on the basis of sexual orientation and gender identity. This obligation extends to all of the elements in the chain of justice: the police, prosecution, courts and penitentiary system, as well as all connected State services, including systems of legal aid.

C. Attacks against public events and assemblies

49. The Independent Expert notes that, despite the risks, civil society members remained determined to assemble and express themselves through events in public spaces. Over the past few years, this has led to attacks by extreme right-wing groups throughout the country and, initially, to police responses that ranged from inadequate to simply non-existent.

²⁶ Main Department of Investigations, National Police of Ukraine and Lviv University of Internal Affairs, “Methodological recommendation on investigating hate crimes” (2017).

²⁷ OSCE Office for Democratic Institutions and Human Rights, *Categorizing and Investigating Hate Crimes in Ukraine: A Practical Guide* (Warsaw, 2019).

²⁸ See <http://hatecrime.osce.org/ukraine?year=2018>.

²⁹ According to police records there were 9 such crimes in 2018, 17 in 2017 and 13 in 2016.

50. In 2019, KyivPride, KharkivPride and OdesaPride events were celebrated without major security incidents, with police securing the assemblies and their participants. In Kharkiv and Kyiv, however, law enforcement failed to provide sufficient security before and after marches, resulting in several attacks on participants and those perceived as such by perpetrators. In addition, smaller events organized by the lesbian, gay, bisexual, trans and gender diverse community have frequently been disrupted by extreme right-wing groups, which acted with impunity. A smaller march in Kryvyi Rih had to be cancelled after the police stated that it would not be able to provide security for the participants.

51. The violence reported during attacks by extreme right-wing groups has included forceful entry into places of assembly, destruction of property, attacks by smoke grenades or gas, and beatings. Participants and police officers have suffered significant damage, including spray burns and other injuries; it is also possible that these groups, communities and individuals may suffer long-lasting psychological damage and mental health issues. Most importantly, the violence has caused both a fracture in the trust that the community has in the State and the police, and a chilling effect in communities and among persons that wish to exercise their right to freedom of peaceful assembly and expression. The Independent Expert was indeed informed that some activists decided not to organize all the festivals of equality foreseen throughout the country, fearing attacks by extreme right-wing groups.

52. The Independent Expert is of the opinion that the problem does not lie with the legislation – the Constitution guarantees the right to peaceful assembly – but rather the implementation of it. In this regard, he notes a positive trend in the reported response of the authorities, apparently owing to the unprecedented and effective security measures taken by the police with the direct involvement of the senior management of the Ministry of Interior. Among the measures taken, the Independent Expert commends in particular the enhanced cooperation with civil society organizations prior to events, the identification of tolerance contact points and the training of police to increase their awareness, sensitivity and tolerance.

53. The Independent Expert believes that public statements in support of major lesbian, gay, bisexual, trans and gender diverse events and the participation of elected and State officials in pride marches are important, as they send a strong message of support and inclusion. He welcomes, in this regard, the publication, by the President's Office of a post on social media on the eve of the equality march in Kyiv in June 2019, stating that the President was the guarantor of the rights and freedoms of all Ukrainian citizens, and calling on the National Police of Ukraine to ensure the safety of all Ukrainians in the days of the equality march. He also welcomes the call for tolerance issued by the Deputy Mayor of Kyiv, and the participation and support of representatives of the State Office for Public Health, the Deputy Minister of Economic Development and military offices at the 2019 KyivPride equality march.

54. For the first time, in 2019, a group of lesbian, gay, bisexual, trans and gender diverse veterans and soldiers openly participated in KyivPride with the message that lesbian, gay, bisexual, trans and gender diverse persons were among those fighting against separatists and Russian forces in the east of Ukraine. The Independent Expert welcomes such an initiative, which plays an important role in countering the nefarious rhetoric that try to portray lesbian, gay, bisexual, trans and gender diverse persons as anti-patriotic. He notes with concern, however, that two of the military personnel who participated in the KyivPride events were subsequently attacked on the basis of their sexual orientation, in separate incidents. He notes that a criminal investigation has been initiated and welcomes the fact that it takes into account the hate motives of the attack.

55. Despite these positive developments, the vast array of incidents that have been described have all one element in common: the total impunity of the perpetrators.

D. Lesbian, gay, bisexual, trans and gender diverse persons affected by the conflict³⁰

56. Conflict and humanitarian disasters affect lesbian, gay, bisexual, trans and gender diverse persons in highly specific ways. While the Independent Expert did not visit the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, or territory controlled by the self-proclaimed Donetsk and Luhansk People's Republics, he has received reports of increased violence and discrimination against lesbian, gay, bisexual, trans and gender diverse persons in Crimea and non-government-controlled areas of Ukraine, and of homophobic propaganda being spread by the occupying authorities.

57. Since March 2014, Federal Law No. 135-FZ of 2013 of the Russian Federation, On the Protection of Children from Information Harmful to their Health and Development,³¹ has been in effect in Crimea, and similar legislation has been enacted in non-government-controlled areas of Ukraine: prohibiting the distribution to minors of information “rejecting family values” and “promoting non-traditional sexual relations” in the self-proclaimed Donetsk People's Republic since 2015³² and in the self-proclaimed Luhansk People's Republic starting in 2018.³³ The Independent Expert is concerned that such laws may be used to prohibit and sanction the dissemination of information regarding lesbian, gay, bisexual, trans and gender diverse persons and their human rights, and restrict the activities of individuals working to defend them. Such laws also contribute to creating a hostile environment in which lesbian, gay, bisexual, trans and gender diverse persons and human rights defenders are prone to be victims of acts of intimidation.³⁴

58. Hate speech and incitement to hatred that spread in Crimea and non-government-controlled areas of Ukraine have reportedly had a profound impact on societal perception of lesbian, gay, bisexual, trans and gender diverse persons and the level of stigma associated with them. Lesbian, gay, bisexual, trans and gender diverse persons reported having experienced increased acts of hatred, discrimination and violence, including by neighbours, colleagues and relatives. In Crimea, aggressive groups reportedly moved from threats to violence, with lesbian, gay, bisexual, trans and gender diverse persons frequently being subjected to beatings in public spaces and entrapped by organized groups through social networks. Reports also indicate acts of violence committed by armed fighters in the self-proclaimed Donetsk and Luhansk People's Republics, especially at the onset of the armed conflict and the subsequent state of anarchy and lawlessness.

59. This environment created an atmosphere of fear and terror for members of the community, with related adverse impacts on their mental health and well-being. Many decided to flee Crimea and non-government-controlled areas of Ukraine. Those staying went into hiding, concealing their sexual orientation and gender identity and entering into heterosexual relationships to avoid suspicion and to conform to societal expectations. Fearing they would be “outed”, lesbian, gay, bisexual, trans and gender diverse persons isolated themselves and stopped communicating with each other. In order to avoid persecution, activists refrained from making public appearances, carrying out advocacy or organizing public events aimed at raising awareness about sexual orientation and gender identity.

³⁰ Sources for this section include the testimonies collected during the visit and the following reports: Anti-Discrimination Centre Memorial and the Center for Civil Liberties, “Violation of LGBTI rights in Crimea and Donbass: the problem of homophobia in territories beyond Ukraine's Control”, 2016; Protection Cluster Ukraine, “LGBTI displaced and conflict-affected people in Ukraine”, June 2017; and OHCHR, “Report on the human rights situation in Ukraine from 16 August to 15 November 2019”.

³¹ Russian Federation, Federal Law No. 135-FZ of 2013.

³² Law No. 79-INS of 2 October 2015.

³³ Law No. 218-II of 14 March 2018.

³⁴ See, e.g., communications made to special procedures of the Human Rights Council, JAL RUS 8/2012 and UA RUS 7/2017.

60. Trans persons living in non-government-controlled areas are at constant risk of arbitrary arrest, detention and connected abuses due to regular identity checks in the territories and when crossing the line of demarcation. The lack of identity documents matching their gender identity affects the ability of trans persons to leave the conflict zones or heightens the risk of abuse, given that identity documents are systematically checked when crossing the demarcation line. The discrepancy between the legal name and the appearance of some trans persons has also led to difficulties accessing humanitarian aid. Due to the lack of medicines, including for gender-affirming treatment, trans persons who started to gender transition before the conflict either had to discontinue the process or obtain hormones from the black market.

61. Lesbian, gay, bisexual, trans and gender diverse persons who fled the conflict zone are often victims of double discrimination – on the basis of their status as internally displaced person and owing to their sexual orientation and gender identity. As a result, it has been particularly difficult for them to access work and housing, and they face acute social isolation and compounded discrimination when accessing social or health services. Again, internally displaced transgender persons have been the most vulnerable in this context. The Independent Expert visited a non-governmental organization-run shelter for lesbian, gay, bisexual, trans and gender diverse persons in Kyiv, which has since started welcoming the most marginalized and excluded members of the community. He was able to witness how crucial and necessary such initiatives are for lesbian, gay, bisexual, trans and gender diverse persons who have lost everything and have to start a new life in a generally unfriendly environment.

VI. Discrimination

62. The Independent Expert was informed that discrimination against lesbian, gay, bisexual, trans and gender diverse persons takes place in almost every area of life, and in particular in the areas of employment, education, health care and access to justice. However, complaints are rarely lodged with State authorities and victims seldom resort to legal proceedings.

A. Health

63. The Independent Expert is greatly concerned at the lack of data and information about the health situation of lesbian and bisexual women in Ukraine. He also notes that, besides HIV-related studies, very little is known about the health of gay men. As a result, the health needs of lesbian and bisexual women, and to a certain extent those of gay men, are not considered at all in the health strategy of the country, in which these population groups are completely invisible.

64. The Independent Expert nonetheless welcomes a number of legislative reforms that have positively impacted on the provision of treatment and access to health-care services by trans persons and on access to stigma-free health services for lesbian, gay, bisexual, trans and gender diverse persons, in particular:

(a) The Concept of Public Health System Development of 2016, stipulating that the right to health and health care is a basic human right regardless of sexual orientation and gender identity;

(b) The approval in 2016 of a unified clinical protocol of medical care for trans persons;

(c) The adoption of HIV programmatic planning and intervention efforts tailored towards men who have sex with men and their sexual partners;

(d) The recent health reform that allows persons to choose their own doctor, which has improved the experience of lesbian, gay, bisexual, trans and gender diverse persons in accessing health-care services by allowing them to select tolerant practitioners.

65. As a result, bias among health professionals affecting access to health care by lesbian, gay, bisexual, trans and gender diverse persons has steadily declined. Much remains to be done, however, and a number of discriminatory legal provisions remain on the books, such as the prohibition against persons having “homosexual relations”³⁵ donating blood and the ban against the adoption of children by persons living with HIV and persons diagnosed as having a gender identity disorder in accordance with the tenth revision of the International Classification of Diseases. During the visit, the Independent Expert heard several accounts of lesbian women, and trans persons in particular, who had to endure patriarchal and discriminatory attitudes from their doctor and gynaecologist. As part of the health reform, patients now have more flexibility to choose their own primary care doctor, but this does not yet extend to specialists who may subject lesbian, gay, bisexual, trans and gender diverse patients to homophobic or transphobic comments and attitudes. In the wake of the health reform, a civil society organization created an online platform of services offered by family doctors who were friendly to the community. The Independent Expert welcomes that initiative, which should be expanded to all regions, as friendly services are mainly available in Kyiv for the time being. In other parts of the country, information about such doctors and tolerant specialists is mainly shared by word of mouth.

66. Since 2016, important measures have been adopted to facilitate access to gender-affirming treatment by trans persons. The approval of a unified clinical protocol of care for gender dysphoria by the Ministry of Health in September 2016,³⁶ developed with the participation of civil society organizations, has significantly simplified the procedure of gender transition and repealed several abusive requirements, such as mandatory assessment in a psychiatric treatment facility and divorce. Pursuant to the Protocol, the treatment now includes mandatory psychotherapy for at least two years as well as hormone therapy for individuals who want to change their gender identity.

67. Importantly, the protocol states that transsexuals, transgender persons and gender non-conforming persons cannot be considered as sick, and that they have to receive support for the distress caused by gender dysphoria. It also explicitly specifies the inadmissibility of bullying of transgender individuals, as this can result in development of chronic depression, anxiety and suicidal thoughts, and states that patients with gender dysphoria must not be refused the right to use modern reproductive technologies or the right to adopt.

68. The unified clinical protocol has somewhat simplified the procedure to change legal gender and removed abusive requirements such as sterilization, divorce and extensive psychiatric examination. The Independent Expert remains nonetheless concerned that the requirement to undergo medical diagnosis and mandatory medical procedures related to transition, including psychological appraisal and hormonal therapy, violate the principles of bodily autonomy and self-determination of trans persons. These requirements are unnecessary and delay the gender recognition procedure: several trans persons explained that they were not able to find a job, rent an apartment, or were facing obstacles when travelling due to the discrepancy between their appearance and their legal documents during the transition period. Furthermore, the Independent Expert is concerned that the request to undergo “irreversible medical intervention” may be interpreted by some medical experts as a requirement of sterilization.

69. During the visit, the Independent Expert also visited an HIV clinic and learned about the work that it – and others – are doing to reach out to key populations, including men having sex with men. Ukraine remains one of the countries with a high HIV prevalence, and it has the second-largest HIV epidemic in Eastern Europe and Central Asia. In 2018, 240,000 persons were living with HIV and new infections decreased by 11 per cent since 2010. The epidemic is concentrated in key populations, and estimates suggest that there are around 179,400 men who have sex with men (and transgender women)³⁷ in Ukraine, with an HIV prevalence of 7.5 per cent compared with 1 per cent of the general population. However, the high level of stigma – both in relation to sexual orientation and gender

³⁵ Ministry of Health order No. 385 (2005).

³⁶ Ministry of Health order No. 972.

³⁷ Because of the way data are collected in Ukraine, transgender women are included in the population group of men who have sex with men.

identity, and HIV³⁸ – means that the majority keep their sexual orientation and gender identity hidden, suggesting the population estimate for this group is underreported. Behavioural surveys³⁹ show that men who have sex with men have the highest rate of new infections among key populations, the lowest knowledge of their HIV diagnosis, the lowest coverage by antiretroviral therapy and the lowest rates of prevention coverage.⁴⁰

70. Ukraine has committed to the Joint United Nations Programme on HIV/AIDS (UNAIDS) 90-90-90 targets – fast-track commitments to end AIDS by 2030 – and adopted a patient-oriented strategy combined with a focus on prevention programmes targeted at key populations and increased access to treatment through the National HIV/AIDS Programme for 2014–2018. As a result, the rate of new infections has started to slow and the number of people accessing treatment to increase – due, in part, to civil society and community engagement. In 2017, Ukraine also committed to taking over the prevention programme among key populations, and to funding and gradually implementing the basic prevention package.

71. Ukraine has also adopted a strategy to provide a comprehensive response to human rights-related barriers to accessing HIV and Tuberculosis prevention and treatment services until 2030 and a related strategic plan for the period 2019–2022, which was approved by the National Council on Tuberculosis and HIV/AIDS in 2019. The Independent Expert is pleased to note that it envisages the adoption of new policies and the reform of laws and regulations to address human rights-related barriers to HIV services and he commends the important programmatic measures adopted to take into consideration men who have sex with men – a population that overlaps significantly with gay men – in the fight against the AIDS epidemic. However, he cautions against excluding other members of the lesbian, gay, bisexual, trans and gender diverse community from counselling, testing and treatment services.

B. Education

72. Based on usual global estimates, the number of lesbian, gay, bisexual, trans and gender diverse students in Ukraine would account for between 120,000 and 240,000 persons. However, there seems to be a total absence of knowledge within the State about their needs, their well-being, the abuses and challenges they face and the impact on their educational achievements, despite what appears to be a very concerning state of affairs: according to a survey conducted by a non-governmental organization in 2017, 49 per cent of students feel unsafe at school because of their sexual orientation and gender identity, 88.5 per cent of lesbian, gay, bisexual, trans and gender diverse students and pupils suffered from verbal harassment in schools and 53.5 per cent from physical abuse in the course of the last year.⁴¹ In 2016, a global poll on bullying in Ukraine conducted by the United Nations Children's Fund (UNICEF) youth initiative showed that 5 per cent of respondents claimed to have experienced bullying due to sexual orientation.⁴²

73. A civil society organization recorded 23 cases involving students in 2018, including cases of bullying, threats, insults, humiliation, violence, disclosure of confidential information and hate speech, among others. For the first six months of 2019, the same organization had already registered 19 cases.⁴³ The Law on Education of 2017 and Law on Higher Education of 2014, however, do not make explicit provision for discrimination based on sexual orientation and gender identity in education and to date there is no connected jurisprudence.

³⁸ See www.avert.org/professionals/hiv-around-world/eastern-europe-central-asia/ukraine#footnote71_sfnh0hw.

³⁹ Integrated bio-behavioral surveys of 2013 and 2015.

⁴⁰ UNAIDS, Ukraine, country fact sheet, 2018.

⁴¹ Fulcrum UA, National School Climate Survey, 2017, available at: <https://issuu.com/fulcrumua/docs/doslidzhennya> (in Ukrainian).

⁴² UNICEF, Youth initiative U-Report (2016), available from <http://www.ukraine.ureport.in/> (in Ukrainian).

⁴³ Nash Mir Center, *LGBT Situation in Ukraine in 2018* and *LGBT Situation in Ukraine in 2019 (January–August)*.

74. During the visit, State authorities explained that it had been impossible to include issues related to sexual orientation and gender identity as “society is polarized” and the Ministry of Education and Science is under the scrutiny of some groups who fear that schools may subject children to “gay propaganda”. In this context, the Independent Expert is concerned that religious institutions are given the opportunity to influence State policies in the field of education through a council for cooperation with religious organizations, in operation by the Ministry of Education and Science since 2008.

75. The Ministry has nonetheless taken a number of measures in recent years to counter discrimination and increase tolerance in school, including through the revision of textbooks, the appointment of advisers on gender equality and non-discrimination in each oblast and the introduction of training on these issues in schools. Since 2017, Ukraine has also launched an inclusive education policy, which, however, focuses solely on persons with disabilities.

76. The Independent Expert also notes recent positive developments to combat bullying. A law on combating bullying, which entered into force in January 2019, is expected to help identify and respond to cases of bullying and oblige schools to adopt and implement anti-bullying policy. He hopes that such policy will be developed in cooperation with lesbian, gay, bisexual, trans and gender diverse organizations and will be inclusive of lesbian, gay, bisexual, trans and gender diverse students. In addition, he welcomes the very positive project to counteract bullying in schools in 2018, launched by the department for juvenile prevention of the National Police jointly with the Ukrainian Institute of Research of Extremism.

77. The Independent Expert notes that none of the State policies is inclusive of lesbian, gay, bisexual, trans and gender diverse pupils or protects them from homophobic or transphobic violence and discrimination in educational settings. In addition, none of these measures has led to the introduction of information related to sexual orientation and gender identity in school programmes. This is a missed opportunity, which the Independent Expert deplores, especially in view of the general lack of understanding about diversity in sexual orientations and gender identities among the general population. He also regrets that, according to non-governmental sources, the standards of social work for school psychologists and social workers envisaged in the human rights action plan to support lesbian, gay, bisexual, trans and gender diverse teenagers and youths have not yet been developed.

78. The Independent Expert notes that some civil society organizations have taken the initiative to provide teachers, school psychologists and parents with objective information on sexual orientation and gender identity, with a view to supporting lesbian, gay, bisexual, trans and gender diverse students and creating an inclusive environment conducive to their well-being and development. He welcomes such initiatives and encourages the Ministry of Education and Science to support them, including financially, and to facilitate access to such training by school professionals.

C. Economic well-being

79. The Labour Code is one of the only laws in Ukraine that specifically protects persons from discrimination based on sexual orientation and gender identity, but it does not seem to be effective due to a lack of implementation. Despite the legal protections in force since 2015, courts have never been presented with a case of discrimination based on these grounds, allegedly due to poor legal literacy and implementation mechanisms.

80. According to human rights organizations, discrimination in employment remains one of the biggest problems, especially for trans persons. An organization recorded 24 cases of violations against lesbian, gay, bisexual, trans and gender diverse persons in the field of work in 2018 and 17 cases for the first six months of 2019.⁴⁴ Another source documented 10 cases of discrimination against and mobbing and stigmatization of lesbian and bisexual

⁴⁴ Ibid.

women at their workplace in the Kherson region from 1 December 2018 to 1 March 2019.⁴⁵ The Independent Expert also heard several testimonies of lesbian, gay, bisexual, trans and gender diverse persons who had been dismissed or denied employment because of their sexual orientation and gender identity.

81. During the visit, the Independent Expert was pleased to hear about civil society initiatives to engage with the business sector with a view to fostering inclusiveness in the workplace, including for lesbian, gay, bisexual, trans and gender diverse employees, but also to creating spaces and services free of stigma and discrimination. In addition, since 2013, a coalition of civil society organizations created the Ukrainian Corporate Equality Index. The Index is a national survey of corporate policies, rules and practices of private companies to prohibit discrimination at the workplace and support the principle of equality and respect for diversity of employees based on sex, disability, sexual orientation and gender identity.⁴⁶ The Independent Expert salutes such initiatives, which can play a key role in fostering inclusion of lesbian, gay, bisexual, trans and gender diverse persons in the workplace and beyond.

D. Family life

82. Many lesbian, gay, bisexual, trans and gender diverse persons remain invisible for fear of being rejected by their family. Each and every lesbian, gay, bisexual, trans or gender diverse person the Independent Expert met in Ukraine underscored how important it is to be able to live a happy and fulfilling life, to be accepted and loved by one's family, and to be able to create a family of one's own. During the visit, he heard testimonies of teens and young adults who had been rejected by their family and thrown out of their homes, but he has also heard testimonies of parents who showed support, love and acceptance⁴⁷ through initiatives that are as moving as they are inspiring. Such initiatives are important to create an environment that is inclusive and to signal to lesbian, gay, bisexual, trans and gender diverse persons that they have the right to live openly and freely.

83. The Constitution (art. 51) and the Family Code (art. 21) define marriage as a union between a woman and a man. The institution of marriage is therefore not open to same-sex couples in Ukraine, and registered partnerships are not recognized either. As a member of the Council of Europe, Ukraine is, however, obliged to comply with standards set by the Convention for the Protection of Human Rights and Fundamental Freedoms and must therefore provide legal recognition (such as civil unions or registered partnerships) for same-sex couples. In order to fulfil this requirement, the State had planned to legalize registered civil partnerships for both opposite-sex and same-sex couples through the human rights action plan. This item has, however, been exploited for sociopolitical ends and ended up polarizing and dividing the society. Following numerous complaints from local authorities, civil society members and religious organizations, the Ministry of Justice concluded that the implementation of this action was currently impossible.

84. According to a 2009 research study,⁴⁸ two thirds of the lesbian, gay, bisexual, trans and gender diverse persons interviewed had same-sex partners; about half of these couples were living together and had a joint household, and about one tenth were bringing their children up together with a partner. Lesbian couples were raising children together twice as often as gay couples, and the Independent Expert heard numerous testimonies of lesbian women who expressed great concern at the vulnerability of their family. Many of them had entered into a heterosexual marriage before, due to social and family pressure, and were now raising their children with their same-sex partner. As a result of the lack of legal protections, same-sex couples face numerous problems, such as the impossibility of acquiring or registering joint ownership of property, resolving property disputes, making

⁴⁵ Fulcrum UA, "Report on the implementation of the Sustainable Development Goals by Ukraine, 2019".

⁴⁶ See <https://issuu.com/fulcrumua/docs/index-2017-a5-eng>.

⁴⁷ See in particular the work of the Tergo initiative in this regard: <http://tergo.org.ua/en/>.

⁴⁸ Nash Mir Center, "Policy brief on the introduction of a registered (civil) partnership for same-sex couples in Ukraine", 12 March 2017.

vital decisions on behalf of their partner, disposing of joint property and inheriting after the death of a partner.

85. Individuals in same-sex couples are currently unable to adopt the child of their partner, and transgender people are prohibited by law from adopting. The latter prohibition is clearly discriminatory against transgender persons, and the Independent Expert regrets that the lifting of this ban, which was foreseen in the human rights action plan, has still not been implemented. In addition, he notes that the impossibility of adopting a partner's child also makes the child extremely vulnerable, for example in case of the death of the child's biological parent. In a position paper, UNICEF noted that legal recognition of family relationships is important in fighting discrimination against lesbian, gay, bisexual, trans and gender diverse parents and children, as parents without legal recognition are prevented from making decisions concerning fundamental aspects of their child's life, such as education and health care. UNICEF also highlights that the lack of recognition causes problems if the couple separates or if the biological parent dies.⁴⁹

VII. Conclusions and recommendations

86. The Independent Expert is encouraged by legal and historical developments concerning the protection of the human rights of lesbian, gay, bisexual, trans and gender diverse persons in Ukraine, and he believes that the State is at a juncture where it can take action to make significant progress in that connection.

87. Political leadership is crucial in this area. Sexual orientation and gender identity issues have never been irrelevant for society, and they have always been the object of heated debate. But the extent to which a society is ready to embrace diversity should never be determined by the fear of that debate, or the acceptance that the rights of some should be unduly limited.

88. The Independent Expert recommends that the Ukrainian authorities take a decided stand for equality on the basis of sexual orientation and gender identity, and the adoption of the measures connected to that equality. In that connection, he is of the view that the human rights action plan is an excellent blueprint and that the effective adoption of the measures described therein would be a significant step to bring Ukraine in full conformity with its international obligations in this field.

89. The Independent Expert recommends in particular that Ukraine take the actions detailed below.

A. Legislative, institutional and policy framework

90. With regard to its legislative, institutional and policy framework, Ukraine should:

(a) Ensure that items of the human rights action plan related to sexual orientation and gender identity that have not yet been implemented are reiterated in the new action plan and are speedily implemented, in line with its commitments under the National Human Rights Strategy;

(b) Ensure the strict separation of powers and withdraw the privileged status currently granted to some Ukrainian churches consulting with State institutions;

(c) Include comprehensive data, disaggregated by key populations, including lesbian, gay, bisexual, trans and gender diverse persons, when highlighting efforts made by Ukraine to combat institutional and legal discrimination in the context of its voluntary national review in 2020 of progress in achieving the Sustainable Development Goals;

⁴⁹ See www.unicef.org/videoaudio/PDFs/Current_Issues_Paper_Sexual_Identification_Gender_Identity.pdf.

(d) Undertake a study on lesbian, gay, bisexual, trans and gender diverse persons in detention and develop related policies and guidelines to ensure their protection and well-being.

B. Stigma and hate speech

91. To address stigma and hate speech Ukraine should:

(a) Urgently undertake a nationwide educational and sensitization campaign aimed at countering misinformation, harmful myths and stereotypes about lesbian, gay, bisexual, trans and gender diverse persons, and eliminating stigma associated with sexual orientation and gender identity;

(b) Refrain from disseminating hateful expressions against lesbian, gay, bisexual, trans and gender diverse persons, and formally denounce hate speech. The State should also consider the imposition of disciplinary measures on State agents involved in hate speech. A preventive policy should include the collection and analysis of data on hate speech, with the purpose of assessing different forms of hate speech, the perpetrators involved, the reasons and circumstances for its emergence and the intended audiences;

(c) Establish an adequate framework for enforcement of measures against hate speech and discriminatory actions by authorities and clerics of churches – and a framework for discussion with all faith-based groups to promote their cooperation in the eradication of violence and discrimination based on sexual orientation and gender identity.

C. Hate crimes

92. With regard to hate crimes, Ukraine should:

(a) Specifically include sexual orientation and gender identity as grounds in article 161 (1) and (2) of the Criminal Code, as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under article 67 (1) (3);

(b) Adopt the legislative measures envisaged in the human rights action plan to ensure that homophobic and transphobic hate crimes are effectively investigated, accurately categorized and prosecuted, and that those found guilty are punished with sentences commensurate with the gravity of the offence and victims are provided with effective remedy;

(c) Establish liaison officers between the police and the lesbian, gay, bisexual, trans and gender diverse community; integrate issues related to sexual orientation and gender identity into police curricula to ensure the sustainability of such training; ensure that the newly adopted guide on recognizing, recording and investigating hate crimes in Ukraine is speedily put into practice by the police and deliver connected training; and fully implement the police hate crime prevention plan for 2019.

D. Health

93. Concerning health, Ukraine should:

(a) Swiftly implement the elements in the eleventh revision of the International Classification of Diseases that relate to the removal of the trans categories from the chapter on mental and behavioural disorders, including the adoption of all measures conducive to eradicating the conception of gender diversity as a pathology from all aspects of everyday life (A/73/152, para. 77 (a));

(b) Eliminate all abusive requirements as prerequisites for change of name and legal sex or gender, including medical procedures related to transition and undergoing medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment. The process to change name and gender markers on identification documents of trans persons should be based on self-determination of the applicant and be a simple administrative process exempt from requirements such as medical, psychological or other certifications that could be unreasonable or pathologizing (*ibid.*, para. 81);

(c) Undertake a comprehensive assessment of the health needs of lesbian, gay, bisexual, trans and gender diverse persons and adjust public policies to take the uniqueness of each of these populations into consideration and address their needs in a tailored manner;

(d) Speedily implement the strategic plan for a comprehensive response to human rights-related barriers to accessing HIV and tuberculosis prevention and treatment services for 2019–2022, which will be key to achieving the UNAIDS 90-90-90 targets.

E. Education

94. With regard to education, Ukraine should:

(a) In partnership with United Nations agencies, conduct a survey to learn about the challenges and the needs of lesbian, gay, bisexual, trans and gender diverse pupils and students, and use this information to inform legislative actions and policies;

(b) Consult and engage with civil society organizations to design measures to make educational settings inclusive of lesbian, gay, bisexual, trans and gender diverse students. In view of the low level of awareness regarding diverse sexual orientations and gender identities among the general population:

(i) Introduce trainings for school staff and school psychologists, as well as awareness-raising measures among parents and students;

(ii) Establish lesbian, gay, bisexual, trans and gender diverse-friendly complaints and referral mechanisms;

(iii) Create a network of trained teachers and school psychologists as first contact points in cases of homophobic or transphobic bullying, harassment and violence;

(iv) Speedily implement the standards of social work for school psychologists and social workers envisaged in the human rights action plan, with a view to adequately support lesbian, gay, bisexual, trans and gender diverse teenagers and youths;

(c) Ensure that the anti-bullying policy is inclusive of lesbian, gay, bisexual, trans and gender diverse students and its implementation is monitored to ensure its effectiveness to reduce homophobic, biphobic and transphobic bullying.

F. Employment

95. Ukraine should raise awareness about legal protections against discrimination in the field of employment based on sexual orientation and gender identity, inform lesbian, gay, bisexual, trans and gender diverse persons about their rights at the workplace and provide legal aid services free of stigma and discrimination.

G. Family life

96. In the area of family life, Ukraine should:

(a) Implement the measures envisaged in the human rights action plan, including the introduction of the institution of registered civil partnership and the speedy adoption of the draft order prepared by the Ministry of Health to lift the ban on adoption by persons living with HIV and transgender persons;

(b) Take into consideration the best interests of the child when discussing issues related to diverse families, with a view to optimizing the protection of all children and parents.
