

Non-paper
Integration of Migrants in Ukraine
Situation and Needs Assessment

PREPARED FOR
OSCE Office for Democratic Institutions and Human Rights (ODIHR)
Warsaw, 2011

This report was prepared by Piotr Kaźmierkiewicz, Migration Expert.
The views expressed in this document are the views of the author and do not necessarily reflect the views of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) or the OSCE participating States mentioned.

Table of Contents

Abbreviations and Acronyms	4
Acknowledgements	5
Executive Summary	6
1. Introduction	16
1.1. Overview	16
1.2. ODIHR's approach to the integration of migrants	16
1.3. Methodology	18
2. Immigration to Ukraine: Scale and Composition	22
2.1. Immigration flows and stock	22
2.2. Geographical Distribution	25
2.3. Major national groups	26
2.4. Asylum-seekers, refugees, and integration challenges	27
2.5. Irregular migration and integration challenges	29
3. The Legal and Institutional Framework for Migrants' Rights in Ukraine	31
3.1. Legislative framework	31
3.2. Co-operation among government agencies	35
4. Legal and Social Framework for the Integration of Migrants	37
4.1. Civil and political rights	37
4.1.1 Temporary and permanent residence	37
4.1.2. Freedom of movement	40
4.1.3. Access to justice	43
4.1.4. Participation in public affairs	45
4.1.5. Access to citizenship	49
4.2. Socio-economic rights	51
4.2.1. Access to the labour market	51
4.2.2. Social protection	57
4.2.3. Medical assistance	58
4.2.4. Housing	60
4.3. Public perception and racially motivated hate crimes	61
4.4. Enforcement of migrants' rights	66
4.4.1. Combating xenophobia and hate crimes	66
4.4.2 Ukrainian ombudsman for human rights	71
4.4.3. International and non-governmental organizations' efforts to protect migrants' rights	73
Annex: The Development of Civil Society in Ukraine	77
Bibliography	79

Abbreviations and Acronyms

CIS	Commonwealth of Independent States
ECRE	European Council of Refugees and Exiles
ECRI	European Commission against Racism and Intolerance
EEDI	East European Development Institute
EU	European Union
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-governmental organization
ODIHR	OSCE's Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
UAH	Ukrainian hryvna
UN	United Nations

Acknowledgements

ODIHR would like to thank **Mr. Piotr Kaźmierkiewicz** for researching and writing this report.

An extended thanks also goes to the following institutions and individuals who contributed materials, written input, and comments:

- Ms. Yana Tyapkina, IOM Mission in Ukraine
- Ms. Mridula Ghosh, East European Development Institute, Kyiv
- Mr. Mark Hanbury, IOM Mission in Ukraine
- Mr. Sergey Khrychikov, Council of Europe
- Mr. Tigran Karapetyan, Office of the OSCE Project Co-ordinator in Ukraine
- Mr. Yaroslav Yurtsaba, Office of the OSCE Project Co-ordinator in Ukraine

We also acknowledge the contributions made throughout the production of this report by Ms. Marta Kindler and Ms. Dace Schlentz, Migration and Freedom of Movement Advisers in ODIHR's Democratization Department, as well as Ms. Nathalie Tagwerker, Deputy Head of ODIHR's Democratization Department.

Executive Summary

In 2003, the OSCE Ministerial Council called on ODIHR to reinforce its activities in assisting participating States “to facilitate the integration of migrant workers into the societies in which they are legally residing”.¹ In response to that call, this report investigates the impact of the legal, institutional, and social framework on the integration of migrants residing in Ukraine.

The report is based on desk research and interview-based fieldwork undertaken between February and November 2010 by an ODIHR-appointed migration expert. Interviews were held with key actors, including relevant public authorities.²

The report contains four chapters: (1) an introduction; (2) a chapter on the scale of immigration to Ukraine, as well as the composition of immigrant groups; (3) a chapter on the legal and institutional framework for migrants’ rights; and (4) a chapter on the social framework for the integration of migrants.

The report shows that the majority of foreigners living in Ukraine come from countries of the Commonwealth of Independent States (CIS), with Russians being the largest group. Other immigrants, from non-CIS countries of origin, include nationals of China, Iran, and Syria, among many others. While migrants settle predominantly in large urban centres, they can also be found on the Black Sea coast. This report demonstrates that official statistics do not provide an accurate picture with respect to the origin of migrants or their whereabouts within Ukraine.

The report notes that the guarantees enshrined in various legal acts related to questions of entry, residence, citizenship, and labour do not adequately address migrants’ constitutional and statutory rights. This stems mainly from the lack of executive regulations needed to ensure the consistent enforcement of norms pertaining to foreigners by the Ukrainian authorities, as well as from an absence of effective mechanisms for co-operation among relevant government ministries and agencies. A positive step towards the protection of migrants’ rights is Ukraine’s Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015, prepared with the assistance of the Council of Europe in 2009-2010 and recently adopted.

¹ OSCE Ministerial Council, Decision No. 4/03, "Tolerance and Non-Discrimination", Maastricht, 2 December 2003, <<http://www.osce.org/mc/19382>>.

² Representatives of the following institutions were interviewed as part of the field research: the Office of the OSCE Project Co-ordinator in Ukraine, the Office of the UN High Commissioner for Refugees, the International Organization for Migration, a delegation from the European Union, the Ukrainian Ombudsman’s Office, Ukraine’s parliamentary Human Rights Committee, Ukraine’s Ministry of Labour and Social Policy, the Ukrainian State Committee for Nationalities and Religion, the East European Development Institute, the Kennan Institute, the International Centre for Policy Studies, the National Institute of International Security Problems, Kyiv Slavic University, and the National Academy of Sciences of Ukraine (Institutes of Demography and Sociology). In addition, representatives of various migrant groups were interviewed at a roundtable in Kyiv on 27 May 2010.

The report reflects the legal status for January 1, 2011, unless stated to the contrary.

The main body of the report reviews the degree to which migrants are able to enjoy their civil, political, and socio-economic rights. The following main conclusions can be drawn:

- Foreigners in Ukraine have limited access to temporary and permanent residence. A migrant can receive a temporary residence permit virtually only when entering the country on a work-related visa. A prerequisite for this is receipt of a work permit, a costly and time-consuming procedure. Permanent residence is only an option for a relatively small number of foreigners and stateless persons who are regarded as “desirable” and who fall into an annual immigration quota announced by the Ukrainian government.
- Similarly, access to citizenship is restricted. It requires, among other things, the submission of a number of documents that are often difficult for migrants to obtain.³
- The participation of migrants in public affairs, like that of Ukrainian citizens in general, is low. Permanent residents cannot take part in local or national elections.
- In general, it is rare for foreigners in Ukraine to be officially employed. The law does not guarantee equal employment conditions regardless of national origin. In order to receive a work permit, foreigners must carry out a complicated procedure, and, since 2009, more categories of foreigners are subject to the requirement to obtain a work permit. The Ukrainian state does not provide any training for migrants to develop new skills.
- While many Ukrainian citizens face certain obstacles in accessing health services, many migrants have the additional problem of lacking health insurance because they are not officially employed. In many cases, they may lack health care altogether because of a lack of financial resources.
- Access to adequate housing is limited due to high rents in urban centres.
- There is evidence of an increasingly negative attitude among Ukrainians towards newcomers, and the number of cases of violence against foreigners is increasing. Many instances of such conduct remain unpunished.
- In general, migrants are either unaware of, or unwilling to use, available protection mechanisms. The latter is primarily because of a lack of trust in state institutions or because of the insufficient attention accorded by state institutions to violations of migrants’ rights.
- Initiatives undertaken by international and non-governmental organizations have played a vital role in raising awareness of the situation of migrants and tackling some of the most pressing problems (in particular, xenophobia and violence against migrants).

³ In accordance with the Decree of the President of Ukraine of 27 March 2001, an application should be accompanied by the following attachments: a certificate of proficiency in Ukrainian; a declaration on the absence of citizenship of another country; a declaration on the rejection of citizenship of another country; a document confirming continuous legal residence in Ukraine within the preceding five years; a certificate documenting marriage to a citizen of Ukraine for more than two years and a document confirming the citizenship of the spouse; a copy of a permanent-residence permit; a copy of the applicant's passport if they are a citizen of the former Soviet Union; and a document confirming employment/regular income.

Recommendations

Ukraine's international commitments, constitutional provisions, and statutory laws grant equal access to a set of fundamental rights and entitlements for all legal residents of the country. Despite these guarantees, migrants are often unable to exercise their rights, mainly due to a lack of proper implementation mechanisms and different interpretations of the applicability of the relevant norms. As a result, migrants find themselves unprotected against economic and social marginalization. Indeed, the interviews that were conducted for this assessment indicate that many obstacles to the integration of migrants remain.

This report acknowledges the importance of obtaining the overall objective of the “Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015”.⁴ The Strategy recognizes that, for the full “integration into Ukrainian society of migrants who have resided in the country for an extended period (longer than one calendar year)” it is essential to provide them with opportunities to “be active participants in the labour market according to their qualifications and skills”, as well as to “actively participate in the social and cultural life of the country”.⁵ For this goal to be achieved, the following key issues require the attention of the Ukrainian government, international organizations, and representatives of civil society:

1. Institutional stability to ensure effective migration management

Ukraine's migration policy is handled by several state agencies, resulting in the transfer of cases from agency to agency. This, in addition to a lack of funding for state functions related to foreigners and stateless persons, results in delays in the processing of migrant cases and diminishes the effectiveness of state institutions.

It is recommended that the institutional stability of government agencies responsible for migration management be improved.

In order to achieve this objective, the following measures are recommended:

- **adopt a unified law that regulates the areas of competence of all state agencies responsible for matters related to foreigners and stateless persons;**
- introduce legislative changes to eliminate numerous conflicts between various acts regulating, in particular, eligibility and conditions for access to civil and socio-economic rights and state benefits;

⁴ “Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015” and “Action Plan for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015”, adopted by the Cabinet of Ministers on 15 June 2011. The Strategy and Action Plan were prepared with the assistance of the Council of Europe in 2009-2010.

⁵ See the Section “Aims and tasks of the Strategy”.

- implement the Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015 and the corresponding Action Plan;
- **make the State Migration Service, once it is established, responsible for coordinating the efforts of relevant government agencies to provide migrants with updates on changes in procedures and the competences of state agencies in languages they can understand, on government agencies' websites, and in print material distributed among migrants.**

2. Acquisition of temporary residence, permanent residence, and citizenship

One of the primary concerns of migrants is the acquisition of legal residence status in Ukraine, which is essential for securing protection of their civil, political, and socio-economic rights. However, difficult and non-transparent procedures for obtaining long-term residence and citizenship continue to pose significant barriers to the integration of migrants. In addition, no regularization initiative has come into effect since 2001 that would decrease the number of migrants without proper registration or documentation. Meanwhile, secure legal residence is one of the keys to creating and strengthening ties to the country of residence.

It is recommended that the legal procedures and mechanisms related to the acquisition of legal residence status for migrants be simplified and made more transparent.

In order to achieve this objective, the following measures are recommended:

- introduce a transparent, efficient, and comprehensive application system for migrants to receive temporary and permanent residence status;
- establish clear rules for acquiring long-term residence status;
- make the application for residence free of charge;
- reduce the number of required documents needed for this procedure (best practice is only to check against potential fraud and real security threats);
- simplify the application process by merging work and residence permits into a single document;
- eliminate the inconsistent application of administrative procedures for the legalization of residence by stipulating all required supporting documents;
- provide migrants with the possibility to appeal any rejection of their application for residence status;
- all involved state institutions should supply information to migrants on the application requirements for temporary and permanent residence and on the competences of various institutions in this regard in a language they understand;
- establish information hotlines for foreigners at regional registration centres;
- assure that a migrant who has permanent (or long-term) residence status has the same rights and responsibilities in most areas of economic, social, and political life as Ukrainian nationals;

- adopt a code of ethics applicable to all public officials based on international best practice;
- adopt whistleblower protection measures for public-sector employees who report suspicions of corruption within relevant institutions.

3. Access to the labour market

The number of people receiving work permits in Ukraine has decreased since 2009.⁶ Ukraine, similar to other European states, needs foreign labour due to its declining population and the extent of emigration of Ukrainian nationals.

It is recommended that migrants' ability to access the labour market be expanded, including through the simplification of procedures to acquire work permits.

In order to achieve this objective, the following measures are recommended:

- improve the efficiency and transparency of the system for granting work permits to migrants by setting up administrative posts dedicated to specific migrant issues in those locations where such needs are most pressing;
- provide targeted assistance programmes for improving migrant skills and reskilling;
- implement Ukraine's migration strategy by developing “a system for the provision of assistance to migrants in learning Ukrainian and [acquiring] knowledge of Ukrainian culture”,⁷ in particular by offering Ukrainian-language courses through employment centres;
- establish clear and comprehensive guidelines on the documentation that would be required in accordance with the strategy's aim to develop “a system of assessment and validation of the professional competences and qualifications of migrants, including those who have completed their higher education”⁸;
- grant migrant workers who stay in Ukraine for a year or more the right to bring their immediate family to the country;
- provide family members of migrant workers with access to the labour market;
- encourage the international community and government authorities to support training courses for migrant workers to improve their skills and thus facilitate their access to the labour market.

4. Tolerance and non-discrimination

⁶ Data provided by the Ministry of Labour and Social Policy the State Employment Centre of the Ministry of Labour and Social Policy, 1 March 2011.

⁷ "Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015", *op. cit.*, note 4.

⁸ *Ibid.*

Although the Ukrainian Criminal Code contains relevant provisions, few hate crimes have been successfully prosecuted so far. In order to improve on this record, the Ukrainian authorities should take actions that would encourage victims to report hate crimes. According to research published by the Woodrow Wilson International Center for Scholars and the Kennan Institute in 2004,⁹ migrants in Ukraine believe that their human rights and freedoms are protected to a lesser extent than those of citizens. Their perceived or real vulnerability implies the need for them to have access to effective redress mechanisms. There does, however, appear to be a lack of understanding and knowledge among migrants of the responsible institutions they could turn to to address violations of their rights. The Ukrainian authorities should take active measures to ensure that citizens are informed about the problems that migrants face in the country and to provide opportunities for citizens and migrants to interact with one another.

It is recommended that state institutions, the media, civil society, and international organizations work together to combat discrimination and xenophobia in Ukraine, especially with respect to racially motivated hate crimes against migrants.

In order to achieve this objective, the following measures are recommended:

- counteract discrimination and hate crimes in line with Decision No. 9/09 of the OSCE Ministerial Council¹⁰;
- collect, maintain, and publicize reliable data and sufficiently detailed statistics on hate crimes and violent manifestations of intolerance. Such data and statistics should include the number of cases reported to law-enforcement authorities, the number of cases prosecuted, and the sentences imposed. Where data-protection laws restrict the collection of data on victims, Ukraine should consider methods for collecting data in compliance with such laws;
- name a responsible state agency to monitor and record racially motivated crimes across Ukraine and inform migrant communities on available complaint mechanisms;
- promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership;
- conduct awareness-raising and education activities on hate crime with communities and civil society groups that assist victims of hate crime, and with law enforcement authorities in particular;
- **include methods for identifying and investigating racial and ethnic bias in training courses for judges and police officers;**

⁹ *Unheeded Voices – Issues of Immigration, Human Rights and Freedoms in Ukraine* (Kyiv: ICF Sphera Publishers, 2008); Olena Braichevska *et al.*, *Nontraditional Immigrants in Kyiv* (Washington: Woodrow Wilson International Center for Scholars/Kennan Institute, 2004).

¹⁰ OSCE Ministerial Council, Decision No. 9/09, "Combating Hate Crimes", Athens, 2 December 2009, <<http://www.osce.org/cio/40695>>.

- encourage the reporting of hate-motivated crimes by third parties in cases where victims are unable or unwilling to report hate crimes directly to the police and criminal justice agencies;
- diversify the membership of law-enforcement and prosecution agencies so as to increase the representation of individuals from minority groups;
- concentrate international assistance on awareness-raising campaigns targeting journalists to sensitize them to the image of migrants, relations between migrants and society, and migrants' daily concerns as reported by the media;
- continue promoting cultural diversity through the organization of events promoting the different cultures of ethnic minorities living in Ukraine;
- launch a public-awareness campaign to inform migrants of their specific rights and redress mechanisms within responsible institutions in case of the violation of those rights;
- develop and implement targeted prevention programmes and initiatives to combat hate crimes; and
- draw on resources developed by ODIHR in the area of education, training, and awareness-raising to ensure that hate crimes are tackled in a comprehensive manner.

5. Professional ethics, cultural sensitivity, and knowledge of policies and procedures applicable to migrants among state officials

Migrants' opportunities for realization of their human rights are hampered by arbitrary decisions of low-level officials and instances of abuse of authority by law enforcement officers.¹¹ In particular, migrants are often subject to arbitrary document checks by the police, carried out ostensibly for the purpose of checking individuals' residence status. Such checks can lead to unauthorized arrests and provide opportunities to extort money from foreigners through threats of detention.

It is recommended that measures be taken to tackle corruption, the arbitrary application of laws, and prejudice towards migrants among representatives of the state apparatus, especially in law-enforcement structures.

In order to achieve this objective, the following measures are recommended:

- offer dedicated training courses increasing the cultural sensitivity and and gender-sensitive communication skills for the police, the staff of regional registration centres, employment centres, and other institutions involved in the legalization of the status of foreigners;

¹¹ *Unheeded Voices, op. cit.*, note 8; Statistics on queries from foreigners and stateless persons, published in Section 1.3 of the Ombudsman's annual human rights report, "Про стан дотримання та захисту прав і свобод людини в Україні", for the period 2006-2007, available at: http://ombudsman.kiev.ua/dopovid_6/Dop6_Zmist.htm

- provide the police with clear guidelines related to non-discrimination in compliance with Ukraine's obligations under international human rights law and relevant OSCE commitments;
- introduce the requirement to provide information on the application of disciplinary measures against officials in connection with the enforcement of anti-discrimination provisions in periodic reports submitted by the police and other law-enforcement agencies;
- adopt codes of conduct for the police and prosecutors;
- adopt whistleblower protection measures for employees of law-enforcement agencies;
- consider abolishing administrative corruption offences in line with international anti-corruption conventions to which Ukraine is a party.

6. Participation in public life

According to the Law on Citizens' Associations, of 16 June 1992 (as amended), foreign nationals (above 18 years of age) have the right to form public organizations. However, according to Article 16 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, only those foreign nationals who are permanently resident in Ukraine have the right to join public associations. Foreign nationals are not allowed to form trade unions.¹² Their access to existing trade unions is also limited insofar as trade unions' charters permit them to do so. Meanwhile, migrant organizations play an important role in facilitating dialogue between migrants and the Ukrainian state and society. Migrants themselves also need to be empowered to increase their engagement in Ukrainian society and facilitate their interaction with, and involvement in, Ukraine's political and social life. Well-designed integration courses can lead to proactive migrants who become independent and active residents, as well as potential future citizens of Ukraine.

It is recommended that state authorities increase their support to, and dialogue with, civil society organizations working in the field of migration and that they support migrants in their integration efforts.

To achieve this objective, the following steps are recommended:

- facilitate the process of registration of public organizations working on issues related to migration on an equal basis for both national and migrant associations;
- extend the right to join public associations to migrants who reside in Ukraine on a temporary basis;
- under the auspices of the State Migration Service, establish a permanent forum of dialogue between state institutions, NGOs, and migrant associations to exchange views on integration policy and practice;
- offer basic Ukrainian courses (free of charge);
- offer integration courses and other services to migrants so as to introduce

¹² Part 2 of Article 6 of the Law on Trade Unions, Their Rights and Assurance of the Freedom to Operate of 15 September 1999.

them to social, economic, and political life in Ukraine.

Such integration courses should include practical information about migrants' place of residence, an introduction to the norms and traditions of Ukrainian society, an overview of available anti-discrimination measures, information about institutions providing basic services (including in the areas of education and health care), and information on legalization of residence and employment. They could be offered by local state administrations; however, international organizations could play a role in initiating this process in order to ensure the sustainability of integration courses.

7. Freedom of movement, access to social benefits, housing, and medical assistance

Although Ukrainian legislation¹³ does not unduly restrict freedom of movement, it is a challenge for many nationals, not to mention migrants, to register in their place of residence because they are not the owners of the property where they are residing. As utility costs in Ukraine are calculated on the basis of the number of people officially residing at an address, property owners are often discouraged from registering people in their properties. As a result, the inability to register their place of residence creates an obstacle for migrants trying to gain access to employment, to various social services, and to their right to choose their own residence. Access to medical services beyond emergency or basic treatment is often difficult for migrants. Migrants also find it difficult to secure affordable housing. Rent is often beyond their financial means, and, in the absence of state-subsidized housing or preferential loans, migrants are faced with a considerable problem in finding affordable accommodation.

It is recommended that migrants be guaranteed freedom of movement, thereby facilitating their access to employment, social services, and medical assistance.

To achieve this objective, the following steps are recommended:

- simplify registration procedures and eliminate the link between the calculation of utility costs and number of residents;
- provide information about the obligation to be registered at one's place of residence by including it in the explanatory materials distributed at consular posts and residence registration offices;
- include asylum-seekers and refugees in the legal and executive acts regulating access to social benefits;
- publish information materials aimed at refugees and other categories of migrants on their entitlements to social benefits;
- improve migrants' access to medical facilities and assistance;
- introduce state-subsidized housing and preferential loans for migrants.

¹³ Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine, of 13 January 1994.

1. Introduction

1.1. Overview

Migrant integration is an issue of growing interest for the OSCE participating States in the CIS region. Progress has been uneven across the region, as migrants continue to experience barriers, in terms of both legal and administrative conditions for entry and residence, as well as in the exercise of their civil and socio-economic rights, thus preventing them from integrating in the societies of receiving countries.

Within the CIS region, Ukraine is a particularly important country on account of its growing immigrant population, which is in need of comprehensive and sustainable integration policies. Although, in terms of migration, Ukraine is predominantly a country of origin, its strategic location between the European Union and the Russian Federation has turned it into an important transit zone for migrants attempting to enter the EU, who tend to become “involuntary immigrants”.¹

The fact that there are a growing number of migrants of various ethnic backgrounds residing in Ukraine - over 250,000 according to the latest census in 2001² - and a reported increase in crimes committed against migrants raises the question of the need for effective policies for the integration of foreigners in all aspects of public life. An examination of the degree to which non-nationals can enjoy their rights is timely given the following:

- Ukraine lacks state-funded integration programmes;
- There is a general lack of awareness and understanding among the Ukrainian population about migrant issues and the problems frequently faced by migrants;
- Discussions in political circles and the media focus on the threat of migration, which undermines more constructive approaches to integration.

Although Ukraine's migration legislation provides a general framework for regulating matters related to foreigners, provisions for the exercise of migrants' rights are partly contained in sub-legislative and internal acts, leading at times to the inconsistent and arbitrary application of norms.

¹ F. Düvell, "Migrants and refugees on the fringes of Europe: Transit migration, mixed flows and new policy challenges", *Metropolis World Bulletin*, No. 8 (Oct. 2008), pp. 29-32, available at: http://canada.metropolis.net/publications/World_Bulletin_vol8_e.pdf. A report by Human Rights Watch attributes the increase in returns to Ukraine of “an increasing number of migrants and failed asylum seekers” to the EU’s “asylum and migration management policies that shift the burden of processing and hosting migrants and asylum seekers from the E.U. to countries on its borders”. (*Ukraine: On the Margins. Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*, vol. 17, No. 8(D), November 2005, p. 8 <<http://www.hrw.org/en/reports/2005/11/29/ukraine-margins-0>>).

² See Section 2.1 of this report for a discussion of the scale and composition of migration into Ukraine.

1.2. ODIHR's approach to the integration of migrants

OSCE participating States have undertaken significant commitments with regard to migration and the rights of migrants to integrate. The following are among some of the main commitments related to migrant integration:

- "adopt appropriate measures that would enable migrants to participate in the life of the society of the participating States"³;
- "encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside. To this end, they will seek to offer, inter alia, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country"⁴;
- encourage migrants to actively pursue their integration;⁵ and
- combat discrimination and violence against migrant workers.⁶

In addition, OSCE Ministerial Council Decision No. 5 of 2 December 2009 on "Migration Management" encouraged participating States to elaborate and implement effective national policy frameworks related to migration.⁷ One of the elements of such a framework is a sound migrant-integration policy.

ODIHR supports participating States by providing expertise on several key aspects related to the integration of migrants, including labour migration and the protection of human rights of migrant workers, freedom of movement, and countering discrimination, intolerance, and xenophobia against migrants and migrant workers. ODIHR is engaged in activities such as: assessing migrant-integration policies, improving systems of population registration to increase access to public services, implementing rule-of-law programmes to ensure fair-trial standards, and combating hate crimes. Through these activities, ODIHR helps states build inclusive and cohesive democratic societies.

In 2003, the OSCE Ministerial Council in Maastricht called on ODIHR to reinforce its activities with respect to the integration of migrants.⁸ In response to this call, ODIHR organized a Human Dimension Seminar on Migration and Integration in 2005 that addressed issues related to the integration of migrants from the human dimension

³ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, para. 38.2, <<http://www.osce.org/odihr/elections/14310>>.

⁴ Concluding Document of Helsinki – The Fourth Follow-up Meeting, 1992, Decisions, Chapter VI, para. 37.

⁵ Concluding Document of Budapest, 1994, Decisions, Chapter VIII, para. 31; OSCE Ministerial Council, Decision No. 10/07, "Tolerance and Non-discrimination: Promoting Mutual Respect and Understanding", para. 7, Madrid, 30 November 2007, <<http://www.osce.org/mc/29452>>.

⁶ OSCE Ministerial Council, Decision No. 4/03, *op. cit.*, note 1, para. 11; OSCE Ministerial Council, Decision No. 10/07, *ibid.*

⁷ OSCE Ministerial Council, Decision No. 5/09, "Migration Management", Athens, 2 December 2009, <<http://www.osce.org/cio/40711>>.

⁸ OSCE Ministerial Council, Decision No. 4/03, *op. cit.*, note 1, para. 11.

perspective. During this seminar, participants discussed how to best ensure the protection of the human rights of migrants and their efficient and harmonious integration, to the benefit of both the receiving society and the migrants themselves. In 2009, ODIHR followed up on this topic with expert-level meetings on migrant participation in public affairs. During these meetings, experts called for an assessment of migrant needs with regard to civil, political, and economic participation in the CIS region. They underscored that the assessment should not only address the responsibilities of migrants vis-à-vis the receiving society but should also examine the legal, political, and socio-cultural frameworks that the receiving society has created to facilitate their integration.

1.3. Methodology

In response to this call, and for the purposes of national and regional capacity-building on the issue of migration integration, ODIHR commissioned a consultant to assess the situation of migrants and their needs with respect to integration in Ukraine. The results of this assessment are summarized in this report, which is intended to support policy-makers, parliamentarians, social partners (e.g., employers organizations and trade unions), and practitioners dealing with migration by identifying areas of concern in legislation, administrative practice, and the social environment of migrants (all non-nationals) in Ukraine.

This report also complements recent initiatives by the Ukrainian government to integrate migrants. One such initiative is the adoption of the Strategy and Action Plan for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015. One of the key tasks mentioned in the Strategy is to “create and implement legal and economic mechanisms for the integration of migrants in Ukrainian society. ... For Ukraine, which is developing within the system of international relations, the issue of migration has taken on national significance and is of exceptional importance.”⁹

This assessment is based on a combination of desk and field research, undertaken between February and November 2010. The basis of the assessment is an analysis of Ukraine's legal framework and administrative practice relating to migrants resulting from direct communication with Ukrainian officials and shared with ODIHR, the Office of the OSCE Project Co-ordinator in Ukraine, the UNHCR, and the IOM. The results of this research were updated and evaluated in light of interviews with the main stakeholders¹⁰ carried out during three trips to Kyiv. These in-depth interviews, based on a standard set

⁹ See the section “General”.

¹⁰ Representatives of the following institutions were interviewed as part of the field research: the Office of the OSCE Project Co-ordinator in Ukraine, the UNHCR, the IOM, a delegation from the European Union, the Office of the Ukrainian Ombudsman, Ukraine's Parliamentary Human Rights Committee, Ukraine's Ministry of Labour and Social Policy, the Ukrainian State Committee for Nationalities and Religion, the East European Development Institute, the Keenan Institute, the International Centre for Policy Studies, the National Institute of International Security Problems, Kyiv Slavic University, and the National Academy of Sciences of Ukraine (Institutes of Demography and Sociology). In addition, representatives of various migrant groups were interviewed at a roundtable in Kyiv on 27 May 2010.

of questions, were invaluable in assessing current trends and developing a set of conclusions and recommendations.

The assessment analyses the opportunities for, and barriers to, the effective integration of migrants in Ukrainian society, and it examines in particular the legal provisions and conditions for access to socio-economic and civil rights by migrants residing in Ukraine. While the assessment focuses on migrants who are legally resident in Ukraine, it acknowledges the need to address measures for the integration of migrants lacking regular residence or declared employment status. It does not address the situation of Ukrainian citizens with an immigrant background.

The assessment defines the different categories of non-nationals in the following way:

A **foreigner** is “a person who is not a citizen of Ukraine and is a citizen (national) of another state or states”.¹¹

Irregular migration “occurs when a person does not fully satisfy the conditions and requirements set by a state other than his or her own to enter, stay or exercise an economic activity in that state’s territory”.¹²

A **stateless person** is “a person who is not considered as a national by any State under the operation of its law”.¹³

A **refugee** is here understood as “a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.¹⁴

An **asylum-seeker** is “a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application”.¹⁵

Migrants are defined as all non-nationals residing in Ukraine (other than asylum-seekers and refugees), including both foreigners and stateless persons. This definition purposefully avoids the criterion of place of birth.¹⁶

¹¹ Article 1 of the Law on Citizenship of Ukraine, of 18 January 2001, available in English at: <<http://www.mfa.gov.ua/mfa/en/publication/content/719.htm>>.

¹² R. Bilsborrow and H. Zlotnik, "The Systems Approach and the Measurement of the Determinants of International Migration", in R. van der Erf and L. Heering (eds.), *Causes of International Migration* (Brussels: Office for Official Publications of the European Communities, 1995), p. 41.

¹³ Article 1 of the Convention relating to the Status of Stateless Persons, adopted on 28 September 1954, <<http://www2.ohchr.org/english/law/stateless.htm>>.

¹⁴ Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 as amended by the Protocol relating to the Status of Refugees of 31 January 1967, <<http://www2.ohchr.org/english/law/refugees.htm>>.

¹⁵ This is the definition provided by the UNHCR. See, for instance, “Frequently Asked Questions” at: [http://www.unhcr.org/my/Resources-@-Frequently_Asked_Questions\(FAQs\).aspx](http://www.unhcr.org/my/Resources-@-Frequently_Asked_Questions(FAQs).aspx)

This assessment defines **integration** as a dynamic and long-term two-way process of mutual accommodation, involving both migrant communities and the general population, leading to civil, political, social, and economic equal opportunities for all. In civil and political terms, all residents ought to have mutual rights and responsibilities on the basis of equality. Migrants must have equal socio-economic opportunities to be able to lead dignified, independent, and active lives like the rest of society. Integration means that Ukraine should create opportunities for migrants' full economic, social, cultural, and political participation.¹⁷ This requires, among other things, the existence of the following conditions:

- a legal framework that provides non-nationals with access to rights and protection;
- integration services (such as courses providing basic knowledge of Ukraine's language, history, and institutions);
- multicultural training for employees of the state administration and teachers;
- recognition of qualifications acquired in other countries;
- training opportunities for migrants to enhance their skills;
- anti-discrimination measures during work recruitment, as well as in other areas;
- access to institutions, public and private goods and services in a non-discriminatory way (housing, schools, etc.);
- naturalization/prospects of acquiring citizenship;
- the possibility to practise diverse religions;
- the possibility to participate in public affairs;
- mainstreaming integration policies into all relevant portfolios.

Participation in public affairs is defined as involving three components:

- **participation:** the active dimension of citizenship by which individuals take part both conventionally and unconventionally in managing the affairs of a given community;
- **mobilization:** the process of building collective actors and collective identities to take part in managing the affairs of a given community;
- **representation:** the system by which a community selects a legitimate group of people to manage its affairs, and the outcomes of that system, the extent to which this group of people and their views are a legitimate reflection of the community.¹⁸

¹⁷ This definition follows the concepts developed in the Common Basic Principles for Immigrant Integration Policy in the European Union, <<http://www.enaro.eu/dsip/download/eu-Common-Basic-Principles.pdf>>.

¹⁸ Marco Martiniello, "Political Participation, Mobilisation and Representation of Immigrants and their Offspring in Europe", Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, No. 1/2005, Malmö University, 2005, <http://195.178.227.4/bitstream/handle/2043/1495/WB_1-05.pdf?sequence=1>.

These activities range from naturalization to formal participation (volunteering, membership in trade unions, political parties, voting, consultation, elected office) and informal participation (petitions, protests, and community organization).

2. Immigration to Ukraine: Scale and Composition

While there is insufficient data to produce accurate estimates of the current number of immigrants to Ukraine, or their background,¹⁹ the following sections provide an overview of the migratory situation in the country. Attention has been paid to the size of various ethnic groups among both registered and unregistered migrants. Information is also provided on the regional distribution of documented migrants and the breakdown of irregular migrants stopped at the border.

2.1. Immigration flows and stock

According to official registration records, immigration (registered residence for over six months) has been stable at around 40,000 people annually since 2002,²⁰ and Ukraine recorded a positive migration balance in 2005. As seen in Figure 1, the shift in the balance came about primarily as a result of a reported rapid decline in emigration (which decreased by more than 50 percent between 2002 and 2005 from nearly 80,000 to under 40,000). Since 2006, Ukraine has seen more immigration than emigration. In 2009,

¹⁹ Deficiencies in the quality of official data make it difficult to estimate the number of foreign residents and cross-border migration flows. Various estimates of population stocks related to international migration can be obtained in Ukraine from available databases (for example, foreign population in the census and residence-permit database; immigrants from population registers and border guards). Different numbers are also given for specific categories of foreigners by various institutions. For instance, the information on foreign students from the Education Ministry does not match the data provided by the Interior Ministry due to disparities in the methodology used for registration. See N. Perrin and M. Poulain, "An assessment of the state systems for data collection, analysis and data sharing on migration and migration statistics in Ukraine: Draft report written on the basis of the meetings organized by IOM in Kyiv, 24-26 February 2008", IOM Mission in Ukraine, 2008, p. 15. (internal)

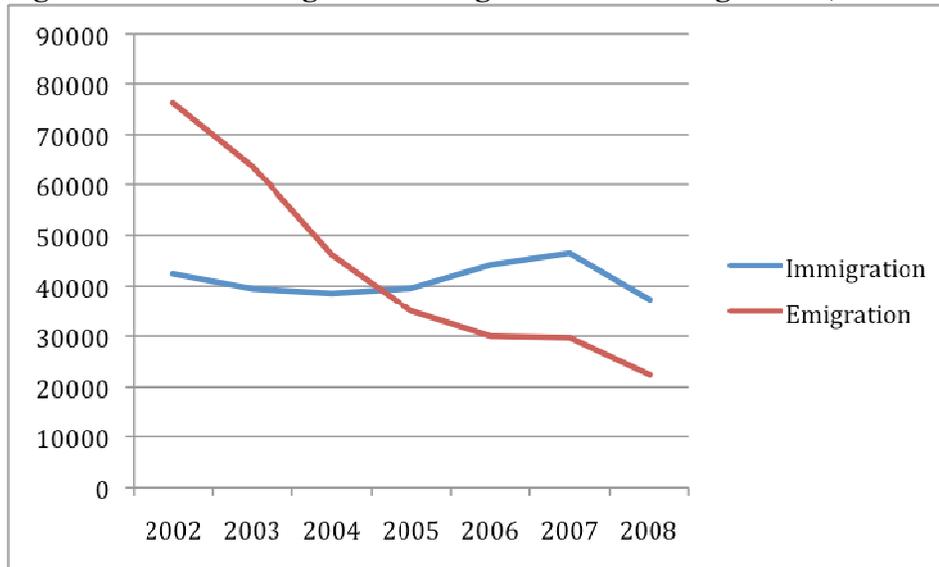
Another potential source of information could be the data collected by the State Border Guard Service of Ukraine. Every time a foreigner crosses the border, an electronic card is filled out, and the information is recorded in a computer database that is maintained at each checkpoint. However, while information on the duration of a foreigner's stay in Ukraine is analysed by border guards, it is not collected for statistical analysis. As a result, while the overall numbers of entries and exits are known, a given entry and exit cannot be linked to a certain person, making it impossible to use this data to assess the actual migratory balance. Perrin and Poulain, *ibid.*, p. 20.

²⁰ The only official source of data for estimating the migratory balance are the declarations of foreigners and citizens of Ukraine on their departure from, and arrival at, their place of residence for over six months. However, this data - submitted to local registration offices, collected by the Interior Ministry, and published by the State Statistics Committee - has limited value for estimating the actual balance. As an expert evaluation commissioned by the IOM concluded in 2008, although registration of changes in place of residence are required by law (Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine of 13 January 1994), departures of Ukrainian citizens remained underreported, producing "a major bias of demographic and migration statistics". See Perrin and Poulain, *ibid.* At the same time, the study confirmed the general reliability of the numbers regarding the entries and departures of foreigners into and out of Ukraine. The subject of limitations was raised by interviewed experts who concurred that the available statistics could not provide reliable estimates of the population stock of migrants in Ukraine. This point is elaborated in Yaroslav Pylinskyi, *Undocumented Migration: Counting the Uncountable. Data and Trends across Europe*, Clandestino, December 2008, p. 6, <http://clandestino.eliamep.gr/wp-content/uploads/2009/10/clandestino_report_ukraine_final_1.pdf>.

The above-mentioned experts also pointed out that state statistics are the sole source of available information, allowing one to draw their own conclusions as to the national composition, regional distribution, and dynamics of immigrants entering the country.

32,917 people were registered as immigrants in Ukraine, compared to 19,470 people officially emigrating, leading to a positive balance of around 13,500 people. This positive balance continued in the first eight months of 2010, with over 20,000 arrivals and 10,500 departures.²¹

Figure 1. Ukraine: Registered Emigration and Immigration (2002-2008)



Source: State Statistics Committee of Ukraine

An analysis of the results of two censuses administered in Ukraine in 1989 and 2001 indicates that the 1990s saw significant growth in the populations of a variety of ethnic groups residing in Ukraine²². In the case of nationals of CIS states, the process represented a continuation of internal migratory movements within the Soviet Union. The 1990s thus witnessed the growth of the Armenian population (by 80 per cent to reach nearly 100,000 people in 2001), the Azerbaijani population (by 20 per cent to over 45,000), and the Georgian population (by 50 per cent to more than 34,000). The 2001 census also recorded significant numbers of other nationalities residing in Ukraine, including 12,711 Koreans, 8,844 Turks, and 3,850 Vietnamese²³. The 2001 census also indicated smaller numbers (1,500-2,000) of Kurds and nationals of India and Pakistan, followed by less numerous groups, originating from China, Afghanistan, Iran, and Cuba.

With regard to legal status, the 2001 census revealed that 250,534 non-citizens of Ukraine were living in the country, including about 168,000 citizens of other states (90 per cent of whom were citizens of other CIS states), and another 83,000 stateless persons. The

²¹ Data provided by the State Statistics Committee of Ukraine. This does not include those granted residence for up to six months.

²² O. Malynovska, E. Libanova "Ukraine" in: E. Honekopp, H. Mattilla (eds.) *Permanent or Circular Migration? Policy Choices to Address Demographic Decline and Labour Shortages in Europe*, IOM: Budapest 2008, p. 326.

²³ It needs to be noted, however, that some of the Koreans had lived in Ukraine for half a century while the Meshkhetian Turks were repatriated to Ukraine. Pylynskiy, *op. cit.*, p. 30.

following table indicates the populations of various groups of non-citizens and the split between the urban and rural population within each group. It should be noted that the 2001 census recorded declared nationalities rather than countries of origin, listing Russians and Ukrainians as the top two ethnic groups among non-citizens, constituting nearly two-thirds of the total.²⁴ More than 68 per cent of non-citizens reside in urban areas, and the percentage of those in urban areas is the highest among non-CIS groups (Arabs, Vietnamese, and Chinese). At the same time, some ethnic groups are located predominantly in the countryside, such as Moldovans and Crimean Tatars.

Table 1. Distribution of Foreign Citizens and Stateless Persons by Nationality and Location (2001 Census)

	Urban	Rural	Combined	% of Total
Russians	78,375	29,616	107,991	43.1
Ukrainians	29,269	19,749	49,018	19.6
Armenians	14,059	6,789	20,848	8.3
Moldovans	3,305	7,423	10,728	4.3
Azerbaijanis	7,984	1,812	9,796	3.9
Georgians	4,632	1,050	5,682	2.3
Belarusians	3,285	1,594	4,879	1.9
Arabs	3,885	50	3,935	1.6
Crimean Tatars	1,428	2,376	3,804	1.5
Vietnamese	3,262	12	3,274	1.3
Koreans	1,417	1,578	2,995	1.2
Tatars	1,267	662	1,929	0.8
Chinese	1,699	11	1,710	0.7
Bulgarians	905	718	1,623	0.6
Turks	473	881	1,354	0.5
Uzbeks	780	481	1,261	0.5
Poles	909	316	1,225	0.5
Germans	619	581	1,200	0.5
Chechens	882	182	1,064	0.4
Other	12,245	3,464	15,709	6.3
Not specified	504	5	509	0.2
TOTAL	171,184	79,350	250,534	100

Source: Results of Ukraine's population census in 2001, State Statistics Committee of Ukraine, <
http://2001.ukrcensus.gov.ua/eng/results/nationality_population/nationality_4/n54/?box=5.4W&k_t=00&id=&botton=cens_db>

Throughout the second half of the 1990s and early 2000s, Ukraine maintained a positive

²⁴ This group can be understood to consist of individuals declaring a Russian or Ukrainian ethnic background while still holding non-Ukrainian citizenship at the time of the census. Many people belonging to this group may have obtained Ukrainian citizenship since then, either through a regular procedure (after five years of residence) or on preferential grounds (when demonstrating Ukrainian descent). See Section 3.1.6 of this report for further discussion of access to citizenship.

migration balance with the southern states and regions of the CIS (Moldova, the Caucasus, and Central Asia).²⁵ At the same time, a negative migration balance has been observed consistently since 1992 in relation to Belarus and, until 2004, Russia, motivated largely by economic factors.²⁶ Much of the migratory movement between Ukraine and the border regions of Belarus, Moldova, and Russia takes the form of short-distance seasonal trips for economic purposes (circular migration).²⁷

Since 2004, migration into Ukraine from the CIS area and the Baltic states has exceeded migration from Ukraine to those countries. The numbers of registered immigrants coming to Ukraine, although still small, have clearly outpaced those of registered emigrants. In 2008, there were twice as many immigrants to Ukraine from CIS countries and the Baltic states than there were Ukrainian citizens emigrating to the states of the former Soviet Union.

2.2. Geographical distribution

Using registration data, one can conduct an analysis of the distribution of foreigners in various locations in Ukraine. Since 2007, around two-thirds of foreign arrivals were concentrated in nine out of 27 regions and metropolitan areas (see Table 2). One-fifth of migrants have settled in four areas on the coast of the Black Sea: the Odessa Oblast, the Autonomous Republic of Crimea, the urban area of Sevastopol and the Mykolayiv Oblast. Other regions with a significant inflow of migrants include Kyiv and other major urban and industrial areas in the centre and east of the country, such as Donetsk, Kharkiv, and Dnipropetrovsk.

Table 2. Distribution of Immigrants in Regions of Ukraine

Region	2007		2008		2009		Jan.-Aug. 2010	
	Arrivals	Net increase	Arrivals	Net increase	Arrivals	Net increase	Arrivals	Net increase
Odessa	12,420	10,981	4,852	3,966	3,793	2,951	2,338	1,890
Autonomous Republic of Crimea	4,798	2,421	4,239	2,535	3,354	2,132	2,122	1,473
Kyiv	3,776	2,170	3,618	2,055	3,970	2,716	2,119	1,395
Donetsk	4,698	902	3,962	986	3,118	709	1,872	669
Kharkiv	3,563	1,311	4,018	1,733	2,490	523	988	427
Dnipropetrovsk	1,943	115	1,789	476	1,580	351	1,295	623
Zaporizhya	1,535	243	1,557	591	1,482	602	851	443

²⁵ I. Pribytkova, *Analysis of Migration Situation in Ukraine: at the Base of State Statistics and Agency-specific Statistical Data 2002-2003*, IOM Mission in Ukraine, Kyiv 2004, p. 18 (unpublished).

²⁶ *Ibid.*

²⁷ Pirozhkov, S. I. (ed.) *Миграция и пограничный режим: Беларусь, Молдова, Россия и Украина* Сборник научных трудов, National Institute of International Security Problems, Kyiv, 2002.

Vinnitsya	1,299	506	1,196	644	1,376	790	707	403
Sevastopol metropolitan areas	1,028	541	1,054	682	772	453	554	400
Mykolayiv	877	245	868	443	927	498	485	239
Other	10,570	-2,597	10,128	768	10,055	1,722	6,692	3,197
Ukraine	46,507	16,838	37,281	14,879	32,917	13,447	20,024	10,520

Source: State Statistics Committee of Ukraine

Although the difference between the number of new registrations and de-registrations (due to departure) cannot be used to estimate the actual number of migrants, an analysis of the net changes in the numbers of registered migrants may serve as a useful proxy for measuring the growth of migrant communities. The registration data suggests that three locations (the Odessa Oblast, the Crimea, and the city of Kyiv) record a consistent positive balance of foreign migration. The Odessa Oblast is clearly the leader in terms of net increases in the number of migrants since 2004: 1,258 in 2004, 2,103 in 2005, and peaking in the two following years at 7,830 and 10,981, respectively. Although the rate of increase has declined recently (down to 3,966 in 2008 and 2,951 in 2009), the Odessa region continues to be the leader in national statistics²⁸.

2.3. Major national groups

Data provided by the Interior Ministry on registered foreigners residing in Ukraine shows a consistent trend in terms of the countries of origin of migrants entering Ukraine. The data shows that migrant inflows are dominated by nationals from CIS countries. This trend can be explained by historic and cultural affinities with other Eastern Slavic nations (Russians and Belarusians) and the persistence of migratory patterns established within the Soviet Union. After an initial population exchange, resulting in the repatriation of ethnic Ukrainians from other republics of the former Soviet Union, movements to and from other post-Soviet states gradually abated²⁹.

Nationals of the Russian Federation consistently make up the largest group of migrants to Ukraine, representing around 40 per cent of residence registrations for periods above six months since 2003.³⁰ Other groups are far less numerous, and their numbers fluctuate significantly on an annual basis. While CIS nationals still represent the majority of immigrants, a dynamic increase can be observed in the scale of non-CIS immigration. The highest growth was observed recently in the influx of nationals from China (7.2 per cent in 2008 compared to 3.7 per cent in 2006). When comparing figures for the period of 2003-2006 and 2007-2008, significant increase was noted with regard to nationals of Turkey (up from 1.6 to 5.3 per cent), Iran (from 1.2 to 2.8 per cent) and Syria (from 1.6 to 2.7 per cent).

²⁸ Data are available online for the period since January 2003 on the website of the State Statistics Committee of Ukraine [<http://www.ukrstat.gov.ua/>]

²⁹ *Labour Migration Assessment for the WNIS Region*, IOM Ukraine 2007, p. 44.

³⁰ According to statistics provided by Ukraine's Interior Ministry.

2.4. Asylum-seekers, refugees, and integration challenges

Ukraine has developed dedicated assistance programmes for refugees and undertaken specific commitments to aid in their integration. In preparing this report, the author was able to use data on asylum-seekers and refugees and their integration needs in assessing how the integration challenges faced by these groups may be similar to those of migrants and whether the experience gained by targeted integration assistance towards refugees may be extended to migrants.

Between 2003 and 2006, the majority (58 per cent) of asylum applications in Ukraine were received from nationals of four South Asian countries: Afghanistan, Bangladesh, India, and Pakistan. In 2007, more than 70 per cent of all asylum applications were filed by citizens of only five countries. The sharpest increase in applications was seen in cases of nationals of Pakistan and India. Overall, between 2004 and 2008, the number of applications for asylum filed in Ukraine increased by nearly 75 per cent (see Table 3).

Table 3. Asylum Applications Received in Ukraine by Nationality (2003-2008)

Country of origin	2003	2004	2005	2006	2007	2008	2003-2008	%, 2003-2008
India	100	103	451	473	453	177	1,757	17.8%
Pakistan	36	146	224	359	535	579	1,879	14.7%
Afghanistan	283	320	187	129	233	432	1,584	13.0%
Bangladesh	114	120	195	194	181	123	927	9.1%
Iraq	190	69	54	102	206	107	728	7.0%
Russia	101	126	165	85	84	61	622	6.3%
Somalia	72	34	42	66	126	177	517	3.8%
Palestine	21	72	83	128	34	54	392	3.8%
Georgia	25	22	39	46	49	71	252	2.0%
Iran	69	36	33	19	18	22	197	2.0%
Uzbekistan	1	4	23	84	48	46	206	1.8%
Armenia	54	36	29	18	14	8	159	1.7%
Nigeria	37	31	20	35	17	0	140	1.6%
Syria	33	38	25	18	16	29	159	1.5%
Sri Lanka	56	15	8	19	19	68	185	1.3%
Azerbaijan	3	21	45	15	20	13	117	1.2%
Vietnam	13		1	26	56	85	181	1.1%
Other	159	171	141	285	163	NA	919	10.4%
TOTAL	1367	1364	1765	2101	2272	2373	11,242	100%

Source: State Statistics Committee of Ukraine

In the period between 2003 and 2007, Ukraine accepted 3 per cent of asylum applications, while this figure rose to 5 per cent in 2008. Out of the 415 people who were

granted refugee status between 2003 and 2008, 215 were nationals of Afghanistan. In fact, 13.5 per cent of all asylum applications from Afghans were accepted during this period.³¹ In 2009, the rate of acceptance of asylum applications rose to 10 per cent, though this was accompanied by a sharp decrease in the number of submitted applications (1,255 in 2009). Nearly 75 per cent of asylum seekers in 2009 came from Asia, while about 15 per cent came from Africa.³²

The UNHCR reported that, in 2009, apart from a total of 2,334 recognized refugees, another 5,000 foreigners and stateless persons who were residing in Ukraine faced “protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained”. Thus, in the view of the UNHCR, there were as many as 7,334 persons of concern in Ukraine in 2009, 421 of whom received assistance from the UNHCR. At the same time, there were 2,059 asylum cases pending review.³³

The integration problems faced by refugees and asylum-seekers indicate that there are certain challenges that other groups of non-nationals who have fewer rights than refugees have to cope with. The 2009 European Council on Refugees and Exiles (ECRE) country report on the situation of refugees and asylum-seekers in Ukraine highlights several barriers to social integration facing these groups in Ukrainian society, including the absence of state actions to facilitate their access to public services. Problems cover a whole range of issues, including:

- **housing:** the lack of state-run social housing programmes targeting recognized refugees;
- **employment:** refugees’ inability to register as unemployed and, as a consequence, their inability to participate in vocational training;
- **education:** the requirement to pay fees for university-level education.³⁴

2.5. Irregular migration and integration challenges

According to official data, irregular migration constitutes merely a fraction of the total number of registered cross-border movements.³⁵ A substantial number of people reported

³¹ Information provided by the State Statistics Committee of Ukraine.

³² "Ukraine Country Report 2009: Situation for refugees and asylum seekers", European Council on Refugees and Exiles, p. 3, <http://www.ecoi.net/file_upload/90_1290515761_ecre-report-eng-with-cover-preview.pdf>.

³³ 2009 *Global Trends. Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* (Geneva: UNHCR, 2010).

³⁴ *Ukraine Country Report 2009*, op. cit., pp. 15-17.

³⁵ State statistics cannot be used to properly estimate the actual scale of irregular migration. Estimating irregular migration flows into Ukraine is fraught with difficulties. Following Pylynskyi (*Undocumented Migration: Counting the Uncountable. Data and Trends across Europe*, Clandestino, December 2008), it must be stressed that the primary obstacle is the absence of “studies with the main aim of estimating the extent of irregular migration”, based on comprehensive quantitative or qualitative analyses. The gap has been only partly bridged by references in general works providing an overview of migration phenomena in Ukraine and surveys or case studies on certain segments of immigrants to Ukraine. Pylynskyi, op. cit., p. 21. See, for instance, publications within the framework of the Kennan Kyiv Project,

as irregular migrants include those who were denied entry by immigration authorities. In 2007, for instance, 86.7 million legal entries were recorded, while 36,612 people were denied entry and 12,651 were stopped for breaching migration legislation (86 per cent at the border).³⁶ Three-quarters of decisions regarding a breach of migration regulations resulted in a denial of entry, and refusals of admission were reported by border services as a tool to combat irregular migration³⁷. This raises concern as to the possibility that such measures may amount to *refoulement* of people in need of international protection.

It is worth noting in this context that, as a member of the Council of Europe, Ukraine is advised to “ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.”³⁸

Due to their lack of legal residence or declared employment status, irregular migrants are at a particular disadvantage in terms of integration, making them by definition ineligible for state support. It ought to be stressed that the change between regular and irregular status of migrants is fluid. First, some people may enter Ukraine legally, such as nationals of CIS countries who do not need a visa, but fail to leave the country within the required time, thus losing the legal right for their continued stay. Second, the prevalence of unregistered economic activities, including irregular employment, in Ukraine, combined with very limited state assistance to migrants residing in Ukraine, is an incentive for legal migrants to seek unregistered jobs.

While opportunities for the legalization of residence have been extended recently by several European states, no comprehensive regularization scheme has so far been offered by the Ukrainian authorities to migrants who arrived in Ukraine following the country’s independence and then lost or failed to obtain legal status. This constitutes a fundamental obstacle with regard to access to civil rights or to state services, which are generally available only to legal residents.

<<http://kennan.kiev.ua>>: *Nontraditional Immigrants in Kyiv* (Washington, DC: Woodrow Wilson Center, 2003); “*Netraditsiyini*” *Immigranti u Kievi: sim rokiv potomu* (Kyiv: Kennan Institute/Stilos, 2009); Blair A. Ruble, *Establishing a New Right to the Ukrainian City* (Washington, DC: Kennan Institute, 2008); the Soderkoping Process <<http://soderkoping.org.ua>>: O. Poznyak, *Migratsiyini protsesi v Ukraini: suchasni stan i perspektivi* (Uman: National Academy of Sciences/IOM, 2009), T. Leonicikas, K and Zibas, *Migration Trends 2006-2008 in Soderkoping Process Countries* (Brussels: European Commission, 2009).

³⁶ *Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe in 2007. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States* (Vienna: ICMPD, 2008), pp. 218-220.

³⁷ *Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe in 2007. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States*, ICMPD: Vienna 2008, pp. 218-220.

³⁸ Resolution on Asylum to Persons in Danger of Persecution, adopted by the Committee of Ministers of the Council of Europe on 29 June 1967. For the scope of the notion of *non-refoulement*, see “UNHCR Note on the Principle of Non-refoulement”,

<<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=438c6d972>>.

Although the country has signed a range of international agreements regulating migration matters,³⁹ a 2008 study of irregular migration in Ukraine notes that the “Ukrainian legislative basis on labour does not have any articles on employment of illegal immigrants”.⁴⁰ Irregular migrants are prevented from receiving social or pension benefits because of a lack of identification documents or legal grounds for residence.

³⁹ For example, the European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe and the ILO’s Convention Concerning Discrimination in Respect of Employment and Occupation, and the Migration for Employment Convention.

⁴⁰ Pylynskyi, *op. cit.*, note 33, pp. 13-14.

3. The Legal and Institutional Framework for Migrants' Rights in Ukraine

As Ukraine becomes more and more a country of destination for migrants, the state faces the task of ensuring the adequate protection of the rights of those entering the country, respecting its international commitments, and securing guarantees of equal treatment vis-à-vis nationals. Foreigners are particularly vulnerable (on account of, *inter alia*, their inability to speak Ukrainian, in many cases, and their potential lack of knowledge of Ukrainian culture) to the abuse of their rights. Thus, the European Union called on Ukraine to pay particular attention to foreigners' relative position in Ukrainian society by adopting a comprehensive migration policy.⁴¹

The need for dedicated regulations governing all migrant-related issues is recognized in the Ukrainian Constitution, which requires that all aspects related to a foreigner's stay in Ukraine be governed by primary legislation (i. e. parliamentary statutes).⁴² Issues related to the treatment of foreigners and stateless persons by state agencies have taken on an added significance, as they are covered by the country's international commitments under a number of legal instruments (e.g., the Geneva Conventions), as well as Ukraine's participation and membership in multilateral organizations such as the OSCE and the Council of Europe.

However, despite several attempts at legal and institutional reform in the field of migration policy, this area still requires attention. Norms and standards regulating the conduct of state agencies towards foreigners are scattered among acts of secondary legislation (often by executive regulations or internal instructions). Mechanisms for effective inter-agency co-ordination are lacking, and progress towards establishing a central executive body in charge of all migration issues has been halted. This legal and institutional vacuum could result in the arbitrary application of legal norms and in indirect discrimination against migrants.

3.1. Legislative framework

The Ukrainian legislative framework contains many essential elements of a modern migration management system. Since the late 1990s, Ukraine has been aligning its migration legislation with international and European standards to be able to respond to the growing challenge of both regular and irregular migration. Basic procedures for verifying the purpose of entry were introduced at visa- and border-control points, and standards for identifying migrants and handling counterfeit or falsified documents were

⁴¹ For instance, the Action Plan towards Visa Liberalization for Ukraine, adopted on 22 November 2010, calls for the "adoption of a legal framework for migration policy providing for an effective institutional structure for migration management, rules for entry and stay of foreigners" and in the longer term "provision of administrative structures with adequate human resources with clear and relevant competences for all aspects of migration management". See the text of the Action Plan at <<http://www.kyivpost.com/news/nation/detail/91142>>.

⁴² Article 92 of the Constitution of Ukraine states that "the status of foreigners and stateless persons" is to be "determined exclusively by the laws of Ukraine".

established, as were sanctions for unauthorized border crossings. Other necessary mechanisms such as carrier liability and standard visa types were added through successive legislative amendments.

Ukraine's migration policy is determined, *inter alia*, by the following laws and executive regulations:

- Law on the Legal Status of Foreign Nationals and Stateless Persons (No. 3929-XII) of 4 February 1994;
- Law on Immigration (No. 2491-III) of 7 June 2001;
- Law on Citizenship of Ukraine (No. 2235-III) of 18 January 2001;
- Resolution No. 1074 of the Cabinet of Ministers of 29 December 1995 on the Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine.

The Laws on the Legal Status of Foreign Nationals and Stateless Persons and on Citizenship of Ukraine contain definitions of the terms *foreigners* and *stateless persons*. The Law on Citizenship of Ukraine defines a foreigner as “a person who is not a citizen of Ukraine and is a citizen (national) of another state or states” and a stateless person as “a person who is not considered to be a citizen by any state in compliance with its legislation”.⁴³ The Law on Citizenship of Ukraine also contains articles on how to become a naturalized Ukrainian citizen.

The conditions that must be met for foreigners and stateless persons to enter Ukraine and reside there legally have been laid down in a variety of legislative acts adopted or amended in the past decade, thus establishing the foundations for Ukraine's migration policy. Other mechanisms related to migration control are elaborated in the Law on the Legal Status of Foreign Nationals and Stateless Persons. Carrier liability for failure to ensure that travellers possess the necessary documents enabling them to enter Ukraine was introduced by the Law on Liabilities for Air Transportation of Passengers through the State Border of Ukraine without the Necessary Documents for Entry into Ukraine, of 10 January 2001.

Subsequent decisions of the Cabinet of Ministers specify the list of documents needed to enter the country, as well as sanctions against foreigners and their hosts for failure to meet entry requirements. Other Cabinet regulations have introduced standard types of visas; defined categories of visa-holders; stipulated grounds for issuing, denying, and cancelling visas; and described procedures for processing visa applications.⁴⁴

An important instrument for monitoring entry was the introduction in 2007 of a requirement that foreigners demonstrate sufficient financial means for their period of stay

⁴³ Article 1 of the Law on Citizenship of Ukraine, <<http://www.mfa.gov.ua/mfa/en/publication/content/719.htm>>.

⁴⁴ Decree No. 227 of the Cabinet of Ministers on the Introduction of New Procedures of Processing Entry Visa Documents of Ukraine, of 20 February 1999 (amended by decrees of the Cabinet of Ministers of 5 May and 1 September 2000, and 7 February, 28 February, and 9 August 2001).

in Ukraine.⁴⁵ In May 2009, an amendment⁴⁶ introduced a requirement at the time of entry for nationals of 92 states to present a set of documents and certificates and demonstrate that they had in their possession at least UAH 12,000, or 20 times the Ukrainian minimum wage, to be allowed residence in Ukraine for the duration of a month or less. Concerns were raised in a 2009 ECRE report as to whether this amendment did not seriously hamper freedom of entry into Ukraine, making it prohibitive for many people.⁴⁷

Mechanisms for collecting and processing data on migrants were introduced as well. Article 3 of the Law on the Legal Status of Foreign Nationals and Stateless Persons provides for the registration of all foreigners upon their entry into Ukraine. Executive regulations abolished the requirement for registration with agencies belonging to the Interior Ministry, authorizing only border-control services to perform registration at points of entry.⁴⁸ However, only data on foreigners from non-CIS countries is processed electronically, and a separate system for the registration of newcomers from other CIS states is in force, involving the processing of paper-based forms.

According to Article 2 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, foreign nationals and stateless persons shall enjoy the same rights and liberties and have the same obligations as Ukrainian nationals, unless the Constitution, the above-mentioned law or other laws, or international agreements of Ukraine provide otherwise. Foreign nationals and stateless persons are equal before the law without discrimination on any grounds such as origin, social or property status, race or national origin, sex, language, religion, occupation, or any other status.

Progress and good practices

It is widely recognized that national migration policy needs to be guided by a strategic document. Beginning in 2002, several bills were submitted to the Ukrainian parliament proposing a concept for a migration policy, but work proceeded slowly for several years. The impetus for more intensive legislative work was provided by Presidential Decree No. 657 of 20 July 2007 requiring that “the basis for a national migration policy in Ukraine [be established] immediately”. This was enacted in 2010 through the Law on a Concept for Migration Policy in Ukraine on the basis of two parliamentary bills, submitted in late 2009. The next steps in the elaboration of migration legislation included the revision of two fundamental legal acts regulating migration and asylum: on the Legal Status of Foreign Nationals and Stateless Persons and on Refugees and Persons who Have the Right to Supplementary and Temporary Protection.⁴⁹

⁴⁵ Decree No. 917 of the Cabinet of Ministers of 11 July 2007.

⁴⁶ Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine (No. 1074), approved by the Cabinet of Ministers on 29 December 1995.

⁴⁷ "Ukraine Country Report 2009", *op. cit.*, note 47, p. 5.

⁴⁸ Decree No. 435 of the President of Ukraine on Additional Measures for Materialization of Human Rights for Freedom of Movement, of 16 June 2001.

⁴⁹ V. Chumak, P. Kazmierkiewicz, and O. Lvova, "Coordinating migration policy in Ukraine: Lessons from Poland", Institute of Public Affairs and the International Centre for Policy Studies, 2009, pp. 16-17, <http://www.icps.com.ua/files/articles/55/1/Migration_UP_ENG_Last.pdf>.

Work is also continuing on the elaboration of the state migrant-integration policy. A crucial step in this direction was the recent adoption of the Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015 and its corresponding Action Plan. These documents were drafted by several ministries in dialogue with the Council of Europe, which provided comments and pointed out several shortcomings.⁵⁰ According to the Action Plan, the following are among the steps to be taken by 2012:

- passing legislative amendments to ensure the harmonization of acts on education, health, social security, and pensions with the laws on Immigration and on Refugees (see Sections 4.2.1 and 4.2.2 of this report for a discussion of existing problems that this step seeks to remedy);
- working out a system of assessment and recognition of migrants' educational and professional qualifications (see Section 4.2.1 of this report for instances of problems in this area);
- establishing requirements and a procedure for evaluating competence in the state language for applicants for Ukrainian citizenship (see Section 4.1.6 of this report for a review of related issues); and
- producing and circulating informational material for migrants on their rights in the fields of education, social protection, and health care.

In their comments, experts from the Council of Europe suggested that the Strategy and Action Plan give more prominence to preventing discrimination in access to rights, as well as to combating xenophobia and violence against migrants.⁵¹ They also noted the need to distinguish more clearly among various groups of migrants, highlighting in particular the specific needs of refugees. They also suggested that the document "envisage the provision of trainings in diversity management, non-violent conflict resolution, communication skills for relevant groups of civil servants".⁵²

Challenges

Ukraine's legislative framework lacks a transparent, consistent, and comprehensive structure. Unlike most European systems, which are based on statutory laws enforced through executive regulations, Ukrainian legislation is based on acts of various origins and legal force. Problems include the unclear distribution of power, the codification of fundamental norms through executive orders, and a general absence of a hierarchy of laws in which executive regulations do not create, but rather enforce, the existing primary legislation. A number of specific gaps and inconsistencies, potentially leading to the unequal treatment of various groups of foreigners, have emerged as a result of the absence of a clear and consistent legislative process for adopting new norms.

⁵⁰ "Comments to the Strategy and Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants in 2011-2015", Council of Europe.

⁵¹ *Ibid.*, Point 4.

⁵² *Ibid.*, Point 12.

At the same time, despite progress in approximating European and international standards, the lack of clear implementation mechanisms results in uneven enforceability, as shown by the existence of challenges in the exercise of migrants' civil, political, and socio-economic rights (discussed in detail in Chapter 4 of this report).

3.2. Co-operation among government agencies

A number of government agencies are charged with implementing Ukraine's migration policy. These used to include at least seven central-level state institutions: the State Committee for Nationalities and Religion,⁵³ the Interior Ministry, the Foreign Ministry, the Health Ministry, the Ministry of Labour and Social Policy, the State Border Guard Service, and the Security Service. Some of these are required by law to co-operate in carrying out specific procedures, such as the State Border Guard Service and the Security Service in combating irregular migration. This state of affairs requires close co-operation and the establishment of transparent and consistent co-ordination mechanisms. To ensure effective policy co-ordination in this area, the question of which institution holds ultimate authority needs to be answered. Attempts to answer this question have so far resulted in continued institutional instability.⁵⁴

A potentially important step towards greater inter-agency co-ordination was taken in July 2009 with the establishment of the State Migration Service. It was founded to serve as "the specially authorized central executive body in charge of migration, citizenship, immigration and registration of individuals".⁵⁵ However, the Service did not even have a chance to commence its operations due to the lack of required secondary executive legislation establishing its specific competences and functions. The Service was eventually suspended in July 2010.⁵⁶ The functions that had been handed over to the Service were returned to the original institutions, putting the Interior Ministry again in charge again of citizenship, registration, and migration and making the State Committee for Nationalities and Religion responsible for asylum issues. On 9 December 2010, the Service was re-established by a presidential decree, but its operational capacity still remains unclear.⁵⁷ Meanwhile, the State Committee for Nationalities and Religion has been dissolved and the State Migration Service was charged with responsibility for asylum issues.

These changes are another symptom of the inherent institutional instability in the field of Ukrainian migration policy, which makes the operation of state institutions responsible

⁵³ The State Committee for Nationalities and Religion was dissolved following a decision of the Cabinet of Ministers of 16 December 2010. See <http://www.scnm.gov.ua/control/uk/publish/article?art_id=135950&cat_id=45925>.

⁵⁴ P. Kazmierkiewicz and V. Chumak, *Readmission in Ukraine: Legal-Institutional Analysis and Lessons from EU Experience* (Kyiv: European Commission/IOM, 2010), pp. 23-24.

⁵⁵ The document that currently defines the role of the State Migration Service is Resolution No. 750 of the Cabinet of Ministers on Issues of the State Migration Service of Ukraine, of 17 July 2009.

⁵⁶ For a more extensive discussion of the institutional development of Ukraine's migration policy and the process of the formation of the State Migration Service and an assessment of the current Ukrainian institutional system of migration management, see Kazmierkiewicz and Chumak, *op. cit.*, note 69.

⁵⁷ Presidential Decree No. 1085/2010 on Optimization of the System of Central Executive Bodies, <<http://www.president.gov.ua/documents/12584.html>>.

for foreigners non-transparent and unpredictable.⁵⁸ Frequent changes in the competence of institutions in charge of migration and asylum affairs result in protracted procedures (as evident in the amount of time needed to reach decisions on status determinations) and at times even to a halt of operations. An example of the latter happened in 2007 when the State Committee on Nationalities and Religions had to cease processing all status decisions for eight months, as it had been deprived of the legal basis for making such decisions.⁵⁹

According to the Council of Europe's comments on the Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015 and the corresponding Action Plan, there is no explanation as to how the Strategy and Action Plan will be implemented and their activities co-ordinated.⁶⁰ It is also not fully clear which of the ministries will take the overall responsibility for assuring that the anticipated outcomes are reached.⁶¹ The Council of Europe, thus recommended that the Strategy and Action Plan elaborate mechanisms for inter-agency co-ordination.

⁵⁸ See, for instance, the case of Ukraine's naturalization procedure presented in Section 4.1.6 below.

⁵⁹ Oldrich Andrysek and Tarja Rantala, *The Local Integration of Refugees in the Republic of Belarus, the Republic of Moldova and Ukraine: "A Strategy for Action"* (Kyiv: Soderkoping Cross Border-Cooperation Process, 2008), p. 54, <http://soderkoping.org.ua/files/integration/LocalIntegration_FINAL_eng.zip>.

⁶⁰ "Comments to the Strategy and Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015" *op. cit.*, note 65, Point 1.

⁶¹ *Ibid.*

4. Legal and Social Framework for the Integration of Migrants

This chapter reviews the opportunities for, and barriers to, the integration of migrants in Ukraine with respect to the legal provisions and the realities of their enforcement, as ascertained through an analysis of published reports and interviews with experts, practitioners, and migrants. To analyse the integration of migrants, one has to address the following issues:

- the civil, political, and socio-economic rights of migrants;
- barriers to exercising those rights;
- the attitude of Ukrainian society and behaviour towards foreigners;
- the framework for the protection of migrants' rights.

4.1. Civil and political rights

4.1.1 Temporary and permanent residence

Legislation

Specific legislation on foreigners focuses on the conditions for the legalization of residence (as well as entry and exit) in Ukraine, as outlined in the laws on Immigration and on the Legal Status of Foreign Nationals and Stateless Persons.⁶² The fundamental procedures governing the legality of the residence in Ukraine of foreigners and stateless persons (and conditions for their entry and exit) are included in an executive regulation implementing a statutory law: the Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine, approved by the Order of the Cabinet of Ministers.

According to Article 3 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, non-nationals may reside in Ukraine on the basis of a temporary or permanent residence permit. Temporary residence permits are granted, *inter alia*, by regional migration services to foreigners taking up employment who have entered the country on the basis of a work-related visa and who have obtained a work permit from the local employment centre.

Between 2006 and the first half of 2008, there were 421,384 foreigners residing in Ukraine on the basis of temporary residence.⁶³ Russian nationals make up the largest group of such foreigners. Foreigners falling under other categories besides migrant workers may either stay in Ukraine for up to 90 days on the basis of a visa (or visa-free movement) or apply for an immigration permit.

⁶² However, separate regulations have been adopted to cover the conditions of entry for a number of categories of foreigners. In 2005, five presidential decrees were issued to introduce visa-free entry for nationals of the United States (No. 1008); Japan (No. 1107); the EU, Switzerland, and Liechtenstein (No. 1131); Canada (No. 1134), and Andorra, Iceland, Monaco, Norway and San Marino (No. 1663).

⁶³ See the Table “Temporary residence. Number of foreign citizens registered with the Ministry of Interior per year by country of origin”, <<http://soderkoping.org.ua/page23667.html>>.

On 6 May 2009, the Cabinet of Ministers amended the Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine. According to the new wording of Article 19 of the Rules, except for holders of certain limited types of visas (e.g., student visas, work visas), regulations on legal residence now cover two categories of foreigners:

- foreigners from a country whose citizens require a visa may stay for the term of the validity of their visa but not for more than 90 days within 180 days from the date of their first entry; and
- foreigners from a country whose citizens do not require a visa may stay for up to 90 days within 180 days from the date of their first entry unless otherwise stipulated by a bilateral agreement to which Ukraine is a party.

A permanent residence (or immigration) permit may be issued to foreigners or stateless persons who fall under either category. Priority is given to people who are desirable for immigration to Ukraine and are included in a so-called immigration quota. The Law on Immigration defines an immigration quota as the planned maximum "number of foreigners and stateless individuals who can obtain immigration permits within a calendar year".⁶⁴ Article 4 of the Law on Immigration enumerates a number of categories of foreigners and stateless persons who can immigrate under an immigration quota,⁶⁵ while Article 5 lists those categories of foreigners who are able to receive an immigration permit *beyond the quota*.⁶⁶

Progress and good practices

The Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015 defines the objectives of Ukraine's integration policy. The document stipulates that measures for the integration of migrants into Ukrainian society should allow migrants "to play their part in the country's development through the payment of taxes, insurance and other statutory payments, to be active participants in the labour market according to their qualifications

⁶⁴ Article 1 of the Law on Immigration.

⁶⁵ "[S]cientists and cultural workers whose immigration is in line with the interests of Ukraine; specialists and workers with higher qualifications who are acutely needed for the economy of Ukraine; individuals who made a foreign investment into the economy of Ukraine in a foreign convertible currency in the amount of at least one hundred thousand (USD 100,000) US dollars, registered according to the procedure specified by the Cabinet of Ministers of Ukraine; individuals who are a full brother or sister, a grandfather or grandmother, or a grandchild of citizens of Ukraine; individuals who were citizens of Ukraine earlier; parents or spouses of an immigrant and their minor children; individuals who have resided without interruption on the territory of Ukraine for three years since the date of their obtaining refugee status in Ukraine or asylum in Ukraine, as well as their parents, spouses, and minor children residing together with them."

⁶⁶ These include: spouses, children and parents of citizens of Ukraine; individuals who are guardians or trustees of citizens of Ukraine or those under guardianship or trusteeship of citizens of Ukraine; individuals entitled to citizenship of Ukraine by virtue of their territorial origin; individuals whose immigration is in Ukraine's national interest

and skills, and to actively participate in the social and cultural life of the country".⁶⁷ It also indicates the target group for state activities: "migrants who have resided in the country for an extended period (longer than one calendar year)".⁶⁸ In their official comments on the document, Council of Europe experts suggested that the target group might also include "newly arrived migrants who manifest their intention to stay and work in the country for a long time".⁶⁹

Challenges

The Law on Immigration is not sufficiently clear as to the exact conditions for receiving temporary residence status for other categories besides migrant workers. It states in Article 3 that: "Aliens staying in Ukraine on other legal grounds shall be considered [in the same manner] as those who are temporarily staying in Ukraine. They shall be obliged, in the manner established by the Cabinet of Ministers of Ukraine, to register their national passports or equivalent documents and to depart from Ukraine after the expiration of their term of stay." More detailed provisions can be found in a catalogue of documents for the implementation of so-called immigration permits, which is referred to in the Law on Immigration (Article 9).

The Law on Immigration also fails to define the degree to which the Ukrainian economy needs experts and specialists. Overall, the full list of categories falling under the quota is rather limited. The conditions that need to be met to apply under an immigration quota are relatively restrictive, as is demonstrated by the statistics published by the Soderkoping Process,⁷⁰ which showed that, in the first half of 2008, only one out of five non-nationals immigrated within categories for which a quota was assigned.⁷¹ The quota for 2011 was set by the Cabinet of Ministers at 7,595 people.⁷² Regarding immigration beyond the quota, the requirement that immigrants be married for at least two years seriously limits the possibility of family reunion. Again, it is not clear how the national interest of Ukraine is defined with regard to immigration beyond the quota.

Recommendations

⁶⁷ See the Section "Aims and tasks of the Strategy".

⁶⁸ *Ibid.*

⁶⁹ "Comments to the Strategy and Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants in 2011-2015", *op. cit.*, note 65.

⁷⁰ The Soderkoping Process is an inter-state co-operation initiative that was launched in 2001 and is currently being funded by the Swedish Government, which focuses on "sharing experiences on asylum, protection, migration and border management issues between Estonia, Latvia, Lithuania, Hungary, Poland, Romania, the Slovak Republic and Sweden on the one hand, and Belarus, Moldova and Ukraine on the other". In December 2010, Armenia, Azerbaijan, and Georgia joined the process. The website of the process contains national and comparative border, migration, and asylum statistics for all the participating states. More information on the process is available at <http://soderkoping.org.ua/files/en/Information%20Soderkoping%20Process.doc>.

⁷¹ See the Table "Number of immigrants residing on the territory of Ukraine per year by country of origin", available at <http://soderkoping.org.ua/page21095.html>.

⁷² Ordinance of the Cabinet of Ministers of 9 March 2011 on the Establishment of the Immigration Quota for 2011, http://www.dmsu.gov.ua/index.php?option=com_content&view=article&id=416%3Aprovstanovlenna-kvoti-immigraciji-na-2011-rik&catid=1%3Alatest-news&Itemid=1&lang=uk.

- introduce a transparent, efficient, and comprehensive application system for migrants to receive temporary and permanent residence status;
- establish clear rules for acquiring long-term residence status;
- make the application for residence free of charge;
- reduce the number of required documents needed for this procedure (best practice is only to check against potential fraud and real security threats);
- simplify the application process by merging work and residence permits into a single document;
- eliminate the inconsistent application of administrative procedures for the legalization of residence by stipulating all required supporting documents;
- provide migrants with the possibility to appeal any rejection of their application for residence status;
- all involved state institutions should supply information to migrants on the application requirements for temporary and permanent residence and on the competences of various institutions in this regard in a language they understand;
- establish information hotlines for foreigners at regional registration centres;
- assure that a migrant who has permanent (or long-term) residence status has the same rights and responsibilities in most areas of economic, social, and political life as Ukrainian nationals;
- adopt a code of ethics applicable to all public officials based on international best practice;
- adopt whistleblower protection measures for public-sector employees who report suspicions of corruption within relevant institutions.

4.1.2. Freedom of movement

Legislation

OSCE participating States are committed to upholding the principles of freedom of movement.⁷³ However, throughout the 1990s, a major obstacle to internal mobility in Ukraine was the requirement to obtain residence registration (termed *propiska*), a practice carried over from the Soviet period. *Propiska* functioned as far more than a registration system: without valid registration, one could not secure accommodation, health care, education, or social benefits. On 14 November 2001, Ukraine's Constitutional Court ruled *propiska* unconstitutional. Since then, the government, assisted by the OSCE, has amended legislation and worked out a new registration system to replace *propiska*, the objective of which was to bring the system into line with international standards.

The Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine, of 13 January 1994 is the main piece of legislation regulating matters relating to

⁷³ According to ODIHR's *Guidelines on Population Registration*, "the population-registration system should facilitate freedom of movement and avoid managing population movements by putting limits on the free choice of place of residence". *Guidelines on Population Registration* (Warsaw: ODIHR, 2009), p. 20, <<http://www.osce.org/odihr/39496>>.

freedom of movement in Ukraine. Freedom of movement is defined in the law as "the right of the citizens of Ukraine, as well as of foreigners and stateless persons who legally reside in Ukraine, to freely choose the administrative unit on the territory of which they wish to reside temporarily or permanently".⁷⁴ This provision is in line with Article 12 of the International Covenant on Civil and Political Rights of 1966, which grants all legal residents "the right to freedom of movement and freedom to choose [their] residence" within the territory of the country in which they reside.

Challenges

However, certain restrictions on freedom of movement and choice of place of residence apply. These are permitted for a broadly defined set of reasons: national security, public order, and public health or for the protection of the rights and legitimate interests of Ukrainian nationals and other people residing in Ukraine.⁷⁵ In effect, despite legislative changes, current administrative regulations still oblige foreigners who permanently reside in Ukraine to register their residence, and once they change their residence, they must de-register from their prior location and re-register at their new residence.⁷⁶

Some instruments used by Ukraine to monitor residence status have come under the scrutiny of NGOs and international organizations concerned with migration issues, which have pointed to abuse by the police of monitoring procedures, resulting in discrimination against foreigners. One practice that was generally found to amount to racial profiling was the inordinately frequent apprehension of foreigners belonging to visible minorities for document checks on the grounds of a suspected violation of the legality of their residence (Article 203 of the Code of Administrative Offences) or of the suspected perpetration of a crime (Article 11 of the Law on the Police). Interviews with NGO workers, foreign residents, and asylum-seekers confirmed that document checks, the official rationale for which is migration control, could "lead to arbitrary detention, extortion or other abuses at the hands of the police".⁷⁷ The latest annual Amnesty International report on violations of human rights concluded that in 2010 "asylum-seekers in Ukraine continued to be at risk of arbitrary detention."⁷⁸ This practice was widely viewed by representatives of migration-related NGOs as grounds for foreigners' unwillingness to report violations of their rights to the police, and their general mistrust towards the law-enforcement system.

The practice of arbitrary document checks by the police, carried out ostensibly to check individuals' residence status, but potentially providing an opportunity for the police to

⁷⁴ Article 3 of the Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine.

⁷⁵ Part 1 of the Law on the Legal Status of Foreign Nationals and Stateless Persons.

⁷⁶ Article 32 of the Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine, approved by Decree No. 1074 of the Cabinet of Ministers of Ukraine.

⁷⁷ *Ukraine: Government Must Act to Stop Racial Discrimination* (London: Amnesty International, 2008), p. 29, <<http://www.amnesty.org/en/library/asset/EUR50/005/2008/en/836170ae-4392-11dd-a1d1-2fa8cc41ebbd/eur500052008eng.pdf>>.

⁷⁸ Amnesty International, *Annual Report 2011. The state of the world's human rights. Country Report Ukraine*, available at <<http://amnesty.org/en/region/ukraine/report-2011>>

extort money from foreigners through threats of detention, constitutes a major obstacle to the exercise of the right to free movement. According to a report by the Amnesty International, published in 2008, this practice extends to all members of ethnic minorities regardless of the duration of their residence in the country.⁷⁹ This practice amounted to actual discrimination, as the report noted the fact that Ukrainian citizens were not legally bound to carry their internal passports at all times, while identity checks were reported by many foreigners, as shown in the survey of 37 foreign students at the Kyiv National Aviation University, where as many as 17 of the respondents reported having gone through such checks at least once a week.⁸⁰

Refugees

An inquiry into the conditions related to the integration of refugees undertaken within the Soderkoping Process revealed that the registration procedure could be a source of corruption, as evidenced by reports of bogus registration of refugees in places of accommodation. In such cases, refugees would pay to be registered at a particular address, which represented an additional significant financial burden for them of up to USD 200 a year, on top of the already high cost of rent, as refugees have to rent apartments at market prices.⁸¹

Recommendations

- simplify registration procedures and eliminate the link between the calculation of utility costs and number of residents;
- provide information about the obligation to be registered at one's place of residence by including it in the explanatory materials distributed at consular posts and residence registration offices.

4.1.3. Access to justice

Legislation

Ukrainian legislation grants foreigners and stateless persons equal rights to those of Ukrainian nationals to challenge, in court, the decisions, acts, or omissions of central and local government authorities and of public officials. This constitutional guarantee (Article 55) is specifically applied to those categories of persons in Part 1 of Article 22 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, which grants them the right to seek protection of their personal property or other rights in courts or through other government authorities.

Foreign nationals and stateless persons are also assured equality in terms of certain procedural rights in court proceedings. Under Article 6 of the Law on Court Organization in Ukraine, no one shall be deprived of the right that his or her case be duly reviewed by

⁷⁹ *Ibid.*, p. 7.

⁸⁰ *Ibid.*

⁸¹ Andrysek and Rantala, *op. cit.*, note 74, p. 67.

a competent court or of the right to participate in court proceedings in accordance with procedural laws. They are also entitled to submit petitions to the Constitutional Court regarding official interpretations of the Constitution and laws of Ukraine.⁸² Further guarantees to court protection are contained in Ukraine's Code of Administrative Procedure: equality of judicial protection with Ukrainian citizens is enshrined in Article 6 of the Code.⁸³

Progress and good practices

The application of constitutional norms was clarified by a decision of the Constitutional Court of 25 November 1997, which broadened legal protection against abuse to include foreign nationals and stateless persons. The ruling required that the courts accept all complaints under Article 55 of the Constitution from nationals of Ukraine, foreign nationals, or stateless persons against any decisions, acts, or omissions of government authorities, local authorities, public officials or officers if there was a suspicion that they had violated or prejudiced the claimant's rights or liberties. Such complaints are subject to a direct court review, which runs parallel to other appeal procedures. Thus, foreigners and stateless persons are entitled to court review regardless of the outcome of the internal or administrative procedure.

Another constitutional guarantee extending to foreigners and stateless persons is that of legal assistance (Article 59), which may be granted free of charge in cases provided for by law. Free choice of a defence lawyer is provided in both criminal and administrative procedures.⁸⁴

Challenges

An administrative case must be reviewed and a judgment passed within a reasonable period but no longer than two months from the beginning of the proceedings unless the Code of Administrative Procedure provides otherwise.⁸⁵ An issue of concern that has been raised by advocates of migrants' rights is the quality of administrative review.

Foreign nationals and stateless persons residing in Ukraine may also resort to administrative means in order to defend their rights. In line with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, they may seek protection of their human rights by extrajudicial means. Such remedies are provided by Article 55 of the Ukrainian Constitution.⁸⁶ A person who disagrees with a

⁸² Articles 13, 42, 43, and 55 of the Law on the Constitutional Court of Ukraine.

⁸³ According to Article 6, para. 4, "Foreigners, stateless persons and foreign legal entities in Ukraine have the same right to judicial protection as citizens and legal entities of Ukraine."

⁸⁴ Article 8 of the Law on Court Organization of Ukraine, Article 21 of the Code of Criminal Procedure, Article 48 of the Code of Administrative Court Proceedings.

⁸⁵ Articles 2(10) and 3(11) of the Code of Administrative Procedure.

⁸⁶ This guarantee is further enshrined in the Law on Citizens' Appeals of 2 October 1996, according to which complaints may be lodged against actions or decisions of government or local authorities, institutions or organizations, as well as non-state entities.

determination of the superior state authority that has reviewed their complaint may challenge it in court within the period prescribed by law.

The arbitrary nature of the enforcement of laws was noted by migrants interviewed for this study, whose main complaint centred on the conduct of law-enforcement officers. State officials are seen as unhelpful and at times hostile. A survey conducted among migrants in Ukraine revealed that the majority of them (from 71 to 85 per cent in various cities) felt that their rights had been violated by law-enforcement officers.⁸⁷

Refugees

In particular, a 2009 ECRE report pointed out that administrative courts paid insufficient attention to asylum-seekers' testimonies and complaints against the conduct of state institutions while processing refugee claims. In response, the Supreme Administrative Court adopted regulations requiring administrative courts to inquire into the extent to which the asylum-granting authority had reviewed the situation in the country of origin, shifting some of the burden of proof from the asylum-seeker to the authorities.⁸⁸

Recommendations

- **make the State Migration Service, once it is established, responsible for coordinating the efforts of relevant government agencies to provide migrants with updates on changes in procedures and the competences of state agencies in languages they can understand, on government agencies' websites, and in print material distributed among migrants.**

4.1.4. Participation in public affairs⁸⁹

Legislation

According to the Law on Citizens' Associations, of 16 June 1992, foreign nationals and stateless persons above 18 years of age may form public organizations, while those who are above 15 years of age may form youth or children's organizations. There is no requirement for them to be permanent residents of Ukraine. The law requires that the state provide "equal conditions" for citizens' associations" and declares its support to "the development of political and public activities".⁹⁰

The Law on Citizens' Associations defines a citizens' association as "a voluntary public organization created on the principle of unity of interests in order to jointly exercise civil

⁸⁷ *Unheeded Voices, op. cit.*, note 8, p. 68.

⁸⁸ Decision of the Supreme Administrative Court No. 1 of 25 June 2009 on Judicial Practice in Disputes Concerning Refugee Status, Expulsion of a Foreigner or a Stateless Person from Ukraine and Disputes Relating to the Stay of a Foreigner or Stateless Person in Ukraine, discussed in "Ukraine Country Report 2009", *op. cit.*, note 47, p. 6.

⁸⁹ For context on civil society in Ukraine, please see the annex to this report.

⁹⁰ Preamble to the Law on Citizens' Associations.

rights and freedoms".⁹¹ Besides trade unions and political parties, the law recognizes another form of association: volunteer organizations whose purpose is to "satisfy and to protect their legitimate social, economic, creative, age, national, cultural, sports and other common interests".⁹²

Several migrant and refugee organizations exist in Ukraine,⁹³ and specialized non-governmental organizations represent migrants and refugees (such as the Helsinki Committee of Ukraine), but they have no or few foreigners on their board and/or among their staff.⁹⁴ Some of these are implementing partners of international organizations, while a few NGOs that represent migrants and refugees have migrant and refugee representatives.⁹⁵

Challenges

The author discovered two main types of obstacles to the effective participation of migrants in Ukraine's public life: (1) difficulties in enforcing their civil, political, and socio-economic rights as a result of inadequate administrative mechanisms and a lack of trust between migrants and officials; and (2) an unfavourable social environment for integration, which can be traced to the negative attitudes of Ukrainian society towards migrants and to the weakness of Ukrainian civil society in general. Foreign students face barriers to establishing student unions. In addition, there is a lack of space for interaction with the local community. Many migrants have insufficient knowledge of Russian or Ukrainian to engage in dialogue with Ukrainians, and many simply lack the time to participate, having to take care of more basic needs, such as working in order to support themselves and their families.

(1) Difficulties in enforcing civil, political, and socio-economic rights

⁹¹ Article 1 of the Law on Citizens' Associations.

⁹² Article 3 of the Law on Citizens' Associations.

⁹³ For example, the Odessa Association of African Refugees, Berkat (a Chechen charitable foundation), Afghan Motherland (a migrant and refugee organization), the Community of Angolan Refugees in Ukraine, the Nigerian Community in Kyiv, the Nigerian Students Association (Ternopil), the African Centre (Kyiv), and ARRAID, otherwise known as the Ukrainian Association of Social Organizations (the Ukrainian member organization of the Federation of Islamic Organizations in Europe). There are also rather informal unions of African migrants of various nationalities active in Kyiv.

⁹⁴ For example, the charitable foundation Rokada and the Legal Protection Services Program HIAS in Ukraine (both in Kyiv); the Legal Advice Centre of the Trade Union Solidarity, Human Rights Have No Borders, and the Centre for Migrant Advice (both with branches in various cities); the European Council of Refugees and Exiles, the Refugee Council of Ukraine, the Foundation for Naturalization and Human Rights Assistance (Simferopol); Social Service of Assistance and the Memorial Association (both in Kharkiv); the International Charitable Foundation for the Protection of Health and Environment, Region Karpat NEEKA (Mukachevo); the Border Monitoring Project, the Committee for Medical Aid in Zakarpattia and Caritas (Uzhgorod), the Human Rights Group (Vinnitsya); the South Ukrainian Centre of Young Lawyers and the Charitable Foundation for Refugees and Migrants, Sympathy (both in Odessa); the Chernigiv Public Committee of Human Rights Protection; and the Chernivitsy Regional NGO Human Rights.

⁹⁵ For example, Amnesty International/Ukraine, the new Refugee Council, and the Social Action Centre/Kyiv.

NGOs representing migrants or migrants' associations face similar problems to other civil society organizations in Ukraine. This opinion was echoed at the roundtable of NGO activists and representatives of migrant communities in May 2010 and in interviews with a member of a human rights organization and with a representative of a migrant organization, carried out as part of this assessment.

Even though Ukraine is a party to the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, and has ratified the European Convention on the Legal Status of Migrant Workers, Ukrainian legislation does not accord to foreign nationals or stateless persons the right to form trade unions. According to Part 2 of Article 6 of the Law on Trade Unions, Their Rights and Assurance of Freedom to Operate, of 15 September 1999, foreign nationals or stateless persons may not form trade unions but may only join trade unions when this is permitted by a trade union's charter.

Ukraine's Constitution does not guarantee foreign nationals or stateless persons the right to participate in public associations. Instead, according to Article 16 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, foreign nationals and stateless persons who are permanent residents in Ukraine have the same right as Ukrainian nationals to join authorized public associations unless otherwise provided by Ukrainian legislation and when the association's charter permits non-nationals to join. However, foreigners and stateless persons may not become members of Ukrainian political parties. The latter provision is compatible with Article 36 of the Ukrainian Constitution, which stipulates that only nationals of Ukraine may become members of political parties. Regarding access to other political rights, only Ukrainian citizens have the right to vote and run for office.⁹⁶ Permanent residents do not have the right to vote in national or local elections.

The Law on Citizens' Associations restricts the formation and activities of citizens' associations. Associations of citizens may not be authorized, and authorized associations of citizens may be prohibited by a court order, when they pursue the following goals: forcible change of the constitutional order or, in any unlawful manner, of the territorial integrity of the state; undermining of state security by carrying out activities to the benefit of foreign states; propaganda for war, violence or cruelty, fascism or neo-fascism; instigation of national or religious hostility; formation of unlawful paramilitary organizations; restriction of universally recognized human rights.⁹⁷

Similarly related to the formation of non-governmental organizations, Ukrainian legislation on the environment poses several barriers to the development of a robust non-governmental sector. In the case of *Koretskyy and Others vs. Ukraine*, on 3 April 2008, the European Court of Human Rights found the Ukrainian Law on Citizens' Associations wanting insofar as it placed excessive regulatory restrictions on the aim, legal personality,

⁹⁶ Law of Ukraine on Elections of Deputies of Local Radas, and of Village, Settlement, City Chairmen, <<http://www.legislationline.org/documents/action/popup/id/7112>>.

⁹⁷ Article 4 of the Law on Citizens' Associations.

activities, territorial scope, and membership of NGOs.⁹⁸ In response, the government submitted a draft Law on Civic Organizations, which was judged by the NGO community to be "a significant step towards ensuring freedom of association". However, following the change of government in March 2010, the bill was withdrawn, meaning that many of the points raised by the Court remained valid.⁹⁹

(2) Unfavourable social environment for integration

In terms of civic participation, citizens of Ukraine are among the least active in engaging in public life compared to other European nations.¹⁰⁰ Between 2005 and 2007, a further deterioration of interest in public activity could be observed, as the results of the European Social Survey clearly indicate (Table 4). Following public disillusionment with the promises of a clean slate in national political and social life following the Orange Revolution, rates of participation took a sharp downward turn.

Table 4. Civic Participation of Ukrainian Nationals (Percentage of Respondents Answering in the Affirmative)

During the last 12 months, have you:	2005	2007
Taken part in a lawful public demonstration?	21.6	7.1
Signed a petition?	9.3	5.1
Contacted a politician, government, or local government official?	8.8	8.4
Worked in a political party or action group?	3.6	4.0
Worked in another organization or association?	2.2	1.4

Source: European Social Survey 2005 and 2007

Data from the State Committee for Statistics appears to give a reason for optimism related to the state of civil society. Between January 2006 and May 2010, the number of NGOs rose by 40 per cent from over 46,000 to over 65,000. However, different conclusions can be reached when one considers two other indicators: first, the ratio of Ukrainian population active in non-political organizations (1.4 per cent in 2007) is far lower than, for instance, in the countries of Central and Eastern Europe: according to the

⁹⁸ Y. Zakharov and V. Yavorsky, "Human Rights in Ukraine – 2008: Human Rights Organisations Report", Ukrainian Helsinki Human Rights Union, 2009, p. 130, <<http://www.helsinki.org.ua/files/docs/1246102509.pdf>>.

⁹⁹ Proekt Zakonu pro gromadski organizatsii, website of the Ukrainian parliament, <http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=33677>.

¹⁰⁰ E. Golovakha and A. Gorbachyk, *Social Change in Ukraine and Europe: Outcomes of European Social Survey 2005-2007* (Kyiv: National Academy of Sciences of Ukraine, Institute of Sociology, 2009). The results of the 2005 survey are available online at: http://www.i-soc.com.ua/institute/Ukr_ta_Evro_eng.pdf

European Social Survey, 9.5 per cent Czechs, 8.4 per cent Slovaks and 5.5 per cent Poles reported such activity.¹⁰¹ Second, the Counterpart Creative Center, which monitored the activities of NGOs between 2002 and 2010, has shown that only a small share of registered NGOs implemented projects.¹⁰² In fact, the estimated figure of active NGOs declined between 2009 (when it ranged between 4,000 and 5,000) and 2010 (down to 3,000-4,000). As the 2010 report concluded, this was due to the fact that “every year many CSOs cease functioning without providing formal notification”.¹⁰³

Recommendations

- facilitate the process of registration of public organizations working on issues related to migration on an equal basis for both national and migrant associations;
- extend the right to join public associations to migrants who reside in Ukraine on a temporary basis;
- under the auspices of the State Migration Service establish a permanent forum of dialogue between state institutions, NGOs, and migrant associations to exchange views on integration policy and practice;
- offer basic Ukrainian courses (free of charge);
- offer integration courses and other services to migrants so as to introduce them to social, economic, and political life in Ukraine.

4.1.5. Access to citizenship

Legislation

Foreigners and stateless persons may be granted Ukrainian citizenship upon meeting certain conditions, which are stipulated in the Law on Citizenship of Ukraine. An applicant has to fulfil a set of requirements: "recognition of, and adherence to, the Constitution and the laws of Ukraine ... the obligation to terminate foreign citizenship or not to have foreign citizenship ... continuous residence within the territory of Ukraine on legal grounds for the last five years ... obtaining a permanent residence permit in Ukraine ... having legal means of subsistence and knowledge of the state language or its understanding to an extent allowing communication".¹⁰⁴ With the exception of the last requirement, the above conditions do not apply to refugees who can be naturalized after two years of residence since they received refugee status. As a rule, Ukrainian legislation requires the termination of foreign citizenship within one year of naturalization.¹⁰⁵

¹⁰¹ M. Wenzel, J. Kubik, *Civil Society in Poland: Case Study*, paper prepared for international conference “The Logic of Civil Society in New Democracies: East Asia and East Europe”, 5-7 June 2009, Institute of Political Science, Academia Sinica, Taipei, p. 22, <http://www.cbos.pl/PL/wydarzenia/04_konferencja/Civil%20society%20in%20Poland.pdf>

¹⁰² L. Palyvoda, S. Golota, *Civil Society Organizations in Ukraine. The State and Dynamics (2002-2010)*. Kyiv, Publishing house „Kupol” 2010. <http://ccc-tck.org.ua/en-default/file/biblioteka/CSO2010_Eng.pdf>

¹⁰³ *Ibid.*

¹⁰⁴ Article 9 of the Law on Citizenship of Ukraine of 18 January 2001. An English translation is available at <<http://www.mfa.gov.ua/mfa/en/publication/content/719.htm>>.

¹⁰⁵ Law on Citizenship of Ukraine.

Progress and good practices

Ukraine ratified the European Convention on Nationality¹⁰⁶ on 21 December 2006.¹⁰⁷ The adoption of the Convention led to a fine-tuning of provisions. While maintaining a commitment to the principle of single citizenship, Ukraine allowed exceptions to the requirement that individuals renounce their foreign citizenship as a precondition for acquiring Ukrainian citizenship.

According to the Action Plan for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015, Ukrainian ministries should develop relevant requirements and a system for assessing the necessary language requirements for individuals applying for Ukrainian citizenship.¹⁰⁸ Experts from the Council of Europe who reviewed the document recommended that these requirements be based on the Common European Framework for References for Languages.¹⁰⁹

Challenges

From November 1991 to August 2008, more than 752,000 foreigners acquired Ukrainian citizenship.¹¹⁰ In the case of migrations, naturalization is often hindered because of the absence of a valid passport, documents confirming their country of origin or the registration of their birth, as well as because of differences in the spelling of the applicant's name in different documents. The process of applying for Ukrainian citizenship is a costly and lengthy procedure, requiring the applicant to formally renounce their former citizenship. Overall, this increases the risk that migrants will fall into the category of irregular migrants or even stateless persons.¹¹¹

Refugees

An assessment of the conditions of integration of refugees in Ukraine undertaken in 2008 within the framework of the Soderkoping Process found that, in the period from 2002 through 2006, only 927 out of an estimated 2,264 refugees remaining in the country were naturalized. Interviews with refugees carried out as part of that assessment revealed their dissatisfaction with the process of naturalization as protracted,¹¹² unpredictable, and discriminatory.¹¹³ The assessment found a lack of transparency and arbitrary decisions in

¹⁰⁶ European Convention on Nationality, 6 November 1997, <<http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>>.

¹⁰⁷ See <http://conventions.coe.int/Treaty/EN/Notifications/v3Liste_12Jan07.asp?CM=3&CL=ENG#>.

¹⁰⁸ Section 2.3 of the Action Plan.

¹⁰⁹ The Common European Framework for References for Languages, <http://www.coe.int/t/dg4/linguistic/cadre_en.asp>.

¹¹⁰ Oxana Shevel, *Country Report: Ukraine* (San Domenico di Fiesole: European University Institute, 2010), <<http://eudo-citizenship.eu/docs/CountryReports/Ukraine.pdf>>.

¹¹¹ *Ibid.*

¹¹² Instead of the prescribed six months, the procedure could last up to a year.

¹¹³ Andrysek and Rantala, *op. cit.*, note 74, p. 71.

the interpretation of the criteria for acquisition of citizenship. For instance, the authors of the assessment noted that "some refugees obtained certificates confirming their knowledge of the Ukrainian language without difficulty, while others had to demonstrate considerable fluency".¹¹⁴ Another difficulty stemmed from the fact that applicants were seldom provided with receipts for lodging their applications, which prevented them from tracking the progress of the procedure and at times resulted in the need to re-apply.¹¹⁵ These problems discouraged the interviewed refugees from seeking naturalization, and as many as 40 per cent of them said that they were no longer interested in the procedure, opting instead for long-term residence. The assessment recommended, *inter alia*, the publication of uniform and transparent procedures for passport offices, based on a set of required documents and obligatory confirmation of receipt, and that these documents be made accessible to applicants.

Recommendations

- make the application for citizenship free of charge;
- provide migrants with the possibility to appeal any rejection of their application for residence status;
- adopt a code of ethics applicable to all public officials based on international best practice;
- adopt whistleblower protection measures for public-sector employees who report suspicions of corruption within relevant institutions.

4.2. Socio-economic rights

4.2.1. Access to the labour market

Legislation

In the field of employment, Ukrainian legislation recognizes the principle of non-discrimination on the basis of ethnicity or race. In fact, Ukraine is party to a number of international conventions that ban such forms of discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966; the International Covenant on Civil and Political Rights of 16 December 1966; the International Covenant on Economic, Social and Cultural Rights of 16 December 1966; and several ILO conventions.¹¹⁶ Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms on 17 July 1997, and, as a consequence of its membership in the Council of Europe, signed the European Social

¹¹⁴ *Ibid.*, p. 72.

¹¹⁵ *Ibid.*

¹¹⁶ Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents, 1925 (No. 19); Convention concerning Maintenance of Migrants' Pension Rights under Invalidity, Old-Age and Widows' and Orphans' Insurance, 1935 (No. 48); Convention concerning Migration for Employment (Revised), 1949 (No. 97); Convention concerning Equality of Treatment (Social Security), 1962 (No. 118); and the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143).

Charter on 7 May 1999. On 16 March 2007, Ukraine's parliament ratified the European Convention on the Legal Status of Migrant Workers. This represented an important step towards safeguarding protection of migrants' rights, as Article 28 of the Convention binds contracting parties to grant migrant workers "the right to associate for the protection of their economic and social interests on the conditions provided for by national legislation for its own nationals". However, this right is limited insofar as Ukraine made a reservation banning migrants from establishing trade unions or political parties.¹¹⁷

However, Ukraine is not party to a number of significant UN and ILO conventions that deal specifically with migrant workers and their social protection, including the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, ILO Convention No. 97 concerning Migration for Employment (Revised 1949), ILO Convention No. 143 on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers of 1975.

According to the Law on the Employment of the Population, foreign nationals and stateless persons are required to obtain a permit from a regional office of the the State Employment Centre before taking up employment. Moreover, Article 13 of the law authorizes the government to institute measures regulating the recruitment and employment of foreigners, such as quotas and licences, in the interest of safeguarding Ukrainian nationals' right to work. The right to employment of foreigners and stateless persons is also regulated by other laws.¹¹⁸

The requirements for issuing visas, including work visas, are established in a lower-level legal act: the Cabinet of Ministers Order on the Introduction of New Rules for Issuing Visa Documents for Entry into Ukraine. There are two categories of visa that allow foreigners to work in Ukraine:¹¹⁹ one requires an invitation from the employer in Ukraine, who has to prove the need for the services of a foreigner at a state employment centre, while the other requires permission from the Labour Ministry. Guidelines on the content of employment contracts can be found in an instruction that implements another governmental order.¹²⁰

Progress and good practices

¹¹⁷ "Convention on migrant workers ratified by the Parliament of Ukraine", 19 March 2007, <<http://soderkoping.org.ua/page13429.html>>.

¹¹⁸ The Law on the Legal Status of Foreign Nationals and Stateless Persons, the Law on Immigration, and the Law on Refugees.

¹¹⁹ Type B visas are granted to "individuals who enter Ukraine as co-founders of joint ventures or representatives of companies (firms, associations), and employees of foreign commercial representative offices in Ukraine", while type IM-1 visas are issued to those who enter Ukraine in order to take up employment.

¹²⁰ Instruction for the Procedure of Signing Contracts for the Acceptance (Hiring) of Employees, implementing the Cabinet of Ministers Order on Regularizing the Use of Contractual Forms of Employment Agreements.

The amendments to the Labour Code considered in 2010 by the Ukrainian parliament¹²¹ are a step in the right direction, but they require further elaboration. Article 8 of the draft amended Labour Code regulates the employment of foreign nationals and stateless persons. Under this article, foreign nationals or stateless persons who lawfully reside in Ukraine have the right to take up work when this does not contradict the national legislation of Ukraine or of the state of origin of the person in question. If these amendments are passed, such individuals will have the same rights and obligations as Ukrainian nationals with respect to employment, unless Ukrainian laws or international agreements provide otherwise.

The Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015 and corresponding Action Plan also envision developing a system for assessing and recognizing migrants' educational and professional qualifications.¹²² According to experts from the Council of Europe, it is also important to develop appropriate tools to assess the competencies and professional skills acquired in informal and non-formal settings.¹²³

Challenges

While Ukrainian national legislation grants the right to work, there are no references in statutory law that require equal employment terms and conditions regardless of national origin. Instead, a foreigner may only seek redress under general regulations, applying to all workers, regulated in various acts of secondary legislation.¹²⁴ In effect, the employment of foreigners and their socio-economic and political rights are only secured implicitly by references to national regulations in respective areas. The conditions that need to be met for a foreigner to exercise the right to work are referred to in the Law on the Employment of the Population. Article 6(2) of the law applies general labour legislation to foreigners and stateless persons residing permanently in Ukraine. In addition, Article 8 of the Labour Code stipulates that "the work relations of foreign nationals working for entities in Ukraine are regulated by the national legislation of the

¹²¹ The Labour Code was expected to be amended in November 2010, but the vote was postponed until 2011.

¹²² Section 2, Point 1 of the Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants in 2011-2015.

¹²³ "Comments to the Strategy and Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants in 2011-2015", *op. cit.*, note 65.

¹²⁴ The other legislative acts that regulate issues related to employing foreign nationals and stateless persons include the following laws and principles: Law on Pension Security, of 5 November 1991 (as amended); the Fundamental Principles of Ukrainian Legislation on Public Health, of 19 November 1992 (as amended); Law on Remuneration, of 24 March 1995 (as amended); Law on Insurance, of 7 March 1996 (as amended); Law on Vacation, of 15 November 1996 (as amended); the Fundamental Principles of Ukrainian Legislation on Mandatory State Social Insurance of 14 January 1998; Law on Trade Unions, Their Rights and Assurance of Freedom to Operate, of 15 September 1999; Law on Mandatory State Social Insurance for Industrial Accidents or Occupational Diseases that Result in a Disability, of 23 September 1999 (as amended); Law on Mandatory State Social Insurance for Unemployment, of 2 March 2000 (as amended); Law on the State Registration of Legal Entities and Private Individual Entrepreneurs, of 15 May 2003 (as amended); Law on Work Safety (new version), of 21 November 2002; Law on Mandatory State Pension Insurance, of 9 July 2003 (as amended); and Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine, of 13 January 1994 (as amended).

state of employment in addition to Ukraine's international agreements".

There are no specific sections on the employment of foreigners or stateless persons in the Labour Code or in statutory laws regulating various aspects of employment (e.g., the Law on Remuneration or the Law on Work Safety). Ukraine's statutory legislation also does not provide clear regulations on the conclusion of employment agreements between employers and foreign nationals or stateless persons. Instead, the requirements for a valid labour contract are provided in a secondary legal act, the Instruction for the Procedure for Signing Contracts for the Acceptance (Hiring) of Employees, which was introduced by an order of the Cabinet of Ministers of Ukraine.¹²⁵ A cabinet decree introduced a model employment contract that requires that the description of the relevant position follow a standard established by national occupational classifications, and that it include the wage rate and required qualifications.¹²⁶

It is still relatively rare for foreigners to have declared employment in Ukraine. Following a change of regulations in 2009, preliminary data on the number of issued work permits indicates a decline of over 70 per cent in 2010, down to 6,192 compared to more than 21,000 in 2009.¹²⁷ As of 1 January 2011, 7,801 foreigners were registered as employed in Ukraine. In terms of their countries of origin, the highest number came from the Russian Federation (1,148), followed by Turkey (1,108), Vietnam (560), Poland (419), Germany (356), Azerbaijan (307), Belarus (293), Moldova (205), and Uzbekistan (204).¹²⁸ The overwhelming majority of declared workers are men; women constitute only one-seventh of the registered labour force. Nearly half of declared foreign workers are concentrated in Kyiv.¹²⁹

Resolution of the Cabinet of Ministers No. 322 on Approval of the Issuance, Extension, and Cancellation of Work Permits for Foreigners and Stateless Persons, of 8 April 2009, made the procedure for obtaining a work permit time-consuming and difficult. Under the current regulations, Ukrainian employers may only obtain permits for foreign workers if they cannot identify a suitable Ukrainian national for employment. Employers are required to spend one month searching for a suitable Ukrainian employee, while, in practice, this period can take up to a month longer, according to a Kyiv-based foreign law firm.¹³⁰

An application for a work permit for a foreign worker has to be submitted to a regional office of the State Employment Centre and reviewed for 30 days by the Work Permit

¹²⁵ Order of the Cabinet of Ministers No. 170 on Regularizing the Use of Contractual Forms of Employment Agreements, of 19 March 1993, amended by Order No. 1038 of the Cabinet of Ministers of 27 June 2000.

¹²⁶ By Order of the Ministry of Labour of 15 April 1994 (No. 23), as amended by the Order of the Ministry of Labour of 12 April 1995 (No. 20) and Law on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine of 13 January 1994 (as amended).

¹²⁷ Information provided by the Ministry of Labour and Social Policy, the State Employment Centre of the Ministry of Labour and Social Policy, 1 March 2011.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Memorandum of Frishberg & Partners, "New Ukrainian Work Permit Procedure for Foreigners"

< <http://www.hg.org/article.asp?id=6472> >

Commission, which is made up of representatives of the State Employment Centre, the Interior Ministry, the Security Service, the State Border Service, and the State Tax Administration. The procedure is further complicated by the requirement to submit as many as 12 additional documents along with the application and two photographs of the worker. The documents include a certificate attesting to the fact that the worker has not been convicted of a crime, issued by the police in the country where the foreigner is currently resident, or a statement confirming that the workplace does not require Ukrainian citizenship and does not require access to state secrets.¹³¹ It is also the employer who is responsible for paying for the work-permit application.¹³²

Resolution No. 322 also extended the obligation to apply for work permits to new categories of foreigners. Until 2009, the requirement was restricted to employees of Ukrainian legal entities or foreigners commissioned to perform limited-scope services under contracts between foreign and Ukrainian companies. Now, however, workers under intra-company transfers and service providers without a corporate presence in Ukraine are also obliged to apply for work permit.

An analysis of the preliminary results with respect to the issuance of work permits suggests that the resolution introduced barriers to the labour market that are proving to be excessive for most workers except for top professionals hired by large companies.

Refugees

Human rights NGOs in Ukraine have pointed out that there is no mechanism to enforce asylum-seekers' right to work. Although Articles 18 and 20 of the Law on Refugees grant the right of temporary employment during the period when an asylum application is being reviewed, executive regulations are lacking for enforcement of these guarantees and asylum-seekers are not mentioned in Ukraine's labour legislation. Employers often are unaware of asylum-seekers' right to employment and refuse to hire them, claiming absence of legal grounds for doing so. Another problem is the vague wording of the Law on Refugees regarding the responsibility of the State Employment Centre for providing assistance to asylum-seekers in their job search. According to some NGOs, this responsibility is limited by the wording "where possible", which has been used to justify virtually no activity by officials of regional units of the State Employment Centre in this regard.¹³³

Although refugees can be employed without a permit and are eligible for all but a few public-service positions, enumerated in the Law on Civil Service of 1993, they still find it hard to compete for jobs suitable for their level of education and qualifications. A survey

¹³¹ Appendix B, "Reasons for foreign work permit refusal" of the Resolution No. 322 of the Cabinet of Ministers of Ukraine "On Approval of the Procedure of the Issuance, Extension and Annulment of Work Permits for Foreign Citizens and Stateless Persons" of 8 April 2009." Unofficial translation available at: <http://www.worldlawdirect.com/forum/law-wiki/25096-ukrainian-work-permit-procedure-foreigners.html>

¹³² The fee for issuing a work permit has increased to four minimum salaries, or UAH 2,500, about 250 euros.

¹³³ Zakharov and Yavorsky, *op. cit.*, note 112, p. 234.

of 60 refugees who held jobs in 2008 revealed that "nearly no one [had] work that correspond[ed] to his/her educational qualifications". Forty-two people worked as traders or loaders at a market and another 12 respondents had UNHCR-sponsored jobs.¹³⁴

There are several factors that account for this. Some refugees lack sufficient proficiency in Ukrainian or Russian or their skills and qualifications do not match the needs of the local market. Others do not have the documentation required to demonstrate their qualifications. Unfortunately, the regulations on recognition of qualifications, which comply with international standards,¹³⁵ do not take into account the specific situation of refugees, who find the procedure expensive¹³⁶ and usually impossible to complete, as it requires them to submit not only an original diploma but also a certificate of accreditation for a school of higher learning in their home country, which in effect asks them to contact the authorities of their country of origin in contravention of Article 25 of the 1951 Convention Relating to the Status of Refugees.¹³⁷

These factors are exacerbated by the passivity of employment offices, which, according to the Soderkoping Process query, published in 2008, did not undertake any initiative raising refugees' capacity for access to the labour market beyond those carried out in partnership with the UNHCR.¹³⁸ The two UNHCR-run projects that were identified as part of the survey demonstrated difficulties in locating and securing employment for refugees. In one of the projects, for instance, of the 166 initial beneficiaries, only 11 found a job in the first year and another five received vocational training. Of the 238 beneficiaries in the second year, only four found a job. Project staff interviewed about this attributed the failure to the general unwillingness of employers to employ refugees.¹³⁹

Recommendations

- improve the efficiency and transparency of the system for granting work permits to migrants by setting up administrative posts dedicated to specific migrant issues in those locations where such needs are most pressing;
- provide targeted assistance programmes for improving migrant skills and reskilling;
- implement Ukraine's migration strategy by developing "a system for the provision of assistance to migrants in learning Ukrainian and [acquiring] knowledge of Ukrainian culture", in particular by offering Ukrainian-language courses through employment centres;
- establish clear and comprehensive guidelines on the documentation that would be required in accordance with the strategy's aim to develop "a system of assessment and validation of the professional competences and

¹³⁴ Andrysek and Rantala, *op. cit.*, note 74, p. 63.

¹³⁵ Ukraine is a party to the Convention on Recognition of Qualifications Concerning Higher Education in the European Region of 1997. See Andrysek and Rantala, *op. cit.*, note 74, p. 60, for further discussion.

¹³⁶ The cost is between UAH 300 and 960, or about 30-90 euros.

¹³⁷ See Andrysek and Rantala, *op. cit.*, note 74, p. 60.

¹³⁸ *Ibid.*, p. 64.

¹³⁹ *Ibid.*, p. 65.

qualifications of migrants, including those who have completed their higher education";

- grant migrant workers who stay in Ukraine for a year or more the right to bring their immediate family to the country;
- provide family members of migrant workers with access to the labour market;
- encourage the international community and government authorities to support training courses for migrant workers to improve their skills and thus facilitate their access to the labour market.
- pursue the aim of the Strategy to provide migrants with advice and information on social issues.¹⁴⁰

4.2.2. Social protection

Legislation

Ukraine is a party to the European Convention on the Legal Status of Migrant Workers, which guarantees migrant workers the right to social protection. Under Article 18, "each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families, equality of treatment with its own nationals, in the matter of social security, subject to conditions required by national legislation and by bilateral or multilateral agreements". The right to social security and social insurance is further enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights, to which Ukraine is a signatory. Article 10 of the Covenant pays particular attention to maternal and child benefits.

The right to social protection is reaffirmed by Ukrainian national legislation. According to Article 11 of the Law on the Legal Status of Foreign Nationals and Stateless Persons, foreign nationals and stateless persons enjoy the right to pensions and other types of social assistance. Equality of insurance protection is further stipulated in Article 44 of the Law on Insurance of 7 March 1996 (as amended).

The right of foreign citizens and stateless persons, as well as their family members, to mandatory social insurance is enshrined in the Fundamental Principles of Ukrainian Legislation on Mandatory State Social Insurance, of 14 January 1998. Mandatory state social insurance involves the provision of social protection, including benefits for illness; full, partial, or temporary disability; loss of a provider; unemployment for reasons beyond one's control; old age; or in other cases provided for by the law, using insurance contributions paid by the owner or by another entity authorized by the owner, private individuals, or using budgetary or other sources provided for by law.¹⁴¹

¹⁴⁰ Strategy for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015

¹⁴¹ Article 3 of the Fundamental Principles of Ukrainian Legislation on Mandatory State Social Insurance, of 14 January 1998.

The scope of social-insurance benefits for foreign nationals and stateless persons, as well as their family members, is enumerated in a range of laws. For example, Article 4 of the Law on Mandatory State Social Insurance for Temporary Disability and Birth or Burial Expenditures extends to these categories of individuals the right to receive benefits and social services under the mandatory state social insurance for temporary disability and birth or burial expenditures. Part 4 of Article 8 of this law grants them the same rights as Ukrainian nationals to receive pension payments and social benefits from the mandatory state pension insurance system. According to Article 9 of this law, individuals who are subject to coverage by the mandatory state pension insurance programme have the right to social protection, including retirement pensions, pensions for disability due to illness, survivor's pensions, assistance for the burial of a pensioner, etc. Equal rights to pensions are also guaranteed in Article 1 of the Law on Pension Security.

Progress and good practices

According to the Action Plan for the Development of a National Policy on the Integration of Migrants in Ukraine and Re-integration of Ukrainian Migrants for 2011-2015, legislative amendments ought to be made to ensure harmonization of legal acts on education, health, social security, and pensions with the laws on Immigration and on Refugees.¹⁴² In the Council of Europe's comments on the Strategy and Action Plan, it was suggested that the Ukrainian authorities focus on issues of non-discrimination and access to the most important social rights, as well as on the introduction of mechanisms to develop special programmes to ensure effective access to these rights.¹⁴³

Challenges

Article 3 of the Law on State Social Assistance to Disadvantaged Families stipulates that low-income families who are permanent residents of Ukraine are entitled to social assistance. Therefore, the provisions of this law do not apply to the families of foreign nationals or stateless persons who take up temporary employment in Ukraine.

Recommendations

- include asylum-seekers and refugees in the legal and executive acts regulating access to social benefits;
- publish information materials aimed at refugees and other categories of migrants on their entitlements to social benefits.

4.2.3. Medical assistance

Legislation

¹⁴² Section 1, item 1 of the Action Plan.

¹⁴³ "Comments to the Strategy and Action Plan for the Development of a National Policy on the Integration of Foreigners in Ukraine and Re-integration of Ukrainian Migrants in 2011-2015", *op. cit.*, note 65.

In line with Article 12 (d) of the International Covenant on Economic, Social and Cultural Rights, Ukraine has committed itself to "the creation of conditions which would assure to all medical service and medical attention in the event of sickness". Article 11 of the Fundamental Principles of Ukrainian Legislation on Public Health, of 19 November 1992, guarantees foreign nationals and stateless persons residing permanently in Ukraine the same rights and obligations in the area of health care as Ukrainian nationals. These categories, as well as people who have applied for, or have been granted, refugee status in Ukraine, are entitled to equal access to medical services with Ukrainian nationals.¹⁴⁴ It should be noted, however, that executive regulations distinguish among various groups of foreigners.¹⁴⁵ Refugees and asylum-seekers are accorded the right to use medical services free of charge, while other non-nationals have access to health care on a paid basis.¹⁴⁶

Foreign nationals and stateless persons may seek emergency medical services from any state or community medical institution in Ukraine.¹⁴⁷ The costs are determined by the providers of the medical service but must not exceed limits set by the Health Ministry. Ukraine has concluded bilateral agreements that allow the citizens of several states to receive emergency medical assistance free of charge. Other medical services are provided to foreign nationals or stateless persons on the basis of insurance agreements or, in the absence of proof of coverage, they are offered at rates within the limits determined by the Health Ministry.

Challenges

A survey of migrants carried out in 2008 in three major Ukrainian cities points to the problem of insufficient access to health care. A majority of respondents (53 per cent in Kharkiv, 57 per cent in Odessa, and as many as 72 per cent in Kyiv) reported that they did not have health insurance for themselves or their families. A significant number of migrants (37 per cent in Kyiv, 39 per cent in Kharkiv, and 71 per cent in Odessa) admitted that neither they nor their families had regular medical examinations. One of the reasons for this may be the cost - access is most difficult in Kyiv, where as many as 19 per cent of the respondents claimed that they had paid state doctors unofficially, and another 17 per cent resorted to private health care.¹⁴⁸

Foreigners receive inadequate health care for a number of reasons. First, the state health-care system, which ought to provide at least for those foreigners who are eligible for medical assistance free of charge, faces serious financing problems. It is a regular occurrence that patients (both Ukrainians and non-nationals) are asked to cover a portion

¹⁴⁴ Part 1 of Article 10 of the Law on the Legal Status of Foreign Nationals and Stateless Persons.

¹⁴⁵ Procedure for the Provision of Medical Assistance to Foreign Nationals Who Are Present Temporarily in Ukraine, approved by Order No. 79 of the Cabinet of Ministers of 28 January 1997 (as amended).

¹⁴⁶ *Ibid.*, Article 10, Part 2.

¹⁴⁷ Resolution No. 1021 of the Cabinet of Ministers of 17 September 1997 (amended by Resolutions No. 1926 of 4 December 1998, No. 35 of 13 January 1999, No. 555 of 23 May 2001, and No. 673 of 26 June 2001). Further information on the procedure for foreigners and stateless persons to gain access to emergency medical assistance can be found on the website of the Government of Ukraine at <http://www.kmu.gov.ua/control/en/publish/article?art_id=10256718&cat_id=10256799>.

¹⁴⁸ *Unheeded Voices, op. cit.*, note 8, pp. 37-40.

of the cost of services or medication. Second, access to medical services beyond emergency or basic treatment is often difficult, and in order to receive comprehensive treatment within a reasonably short time, patients need to purchase voluntary medical insurance that covers care at both state facilities and private hospitals.¹⁴⁹

Recommendations

- improve migrants' access to medical facilities and assistance.

4.2.4. Housing

Legislation

As a signatory to the International Covenant on Economic, Social and Cultural Rights, Ukraine recognizes the right of everyone to adequate housing.¹⁵⁰ Despite this, Ukraine's legal framework distinguishes among categories of residents in terms of how it secures appropriate housing for them. National laws dealing with housing issues apply only to those foreign nationals and stateless persons who are permanent residents of Ukraine. It does not mention foreign nationals or stateless persons who are present in Ukraine temporarily for employment.

The Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, their Departure from Ukraine and Transit Travel via the Territory of Ukraine (para. 4) stipulate that foreign nationals and stateless persons who are present in Ukraine temporarily may take up accommodation in hotels or other places. Thus, they are responsible for resolving their own housing issues. They may stay at hotels, rent space in a house or apartment, or purchase a home.

In general, foreign nationals and stateless persons who reside permanently in Ukraine are entitled to housing on the same basis as Ukrainian nationals.¹⁵¹ In line with Article 31 of the Housing Code, people who require improved housing conditions are entitled to receive housing from the state or public housing stock. Housing (usually one apartment per family) is granted to those who are permanent residents in a given locality. Usually, people who require improved housing conditions are registered in their place of residence by the local executive authorities or at their place of work by the enterprises, institutions, and organizations that own housing stock or build houses. However, because access to permanent residence is difficult for migrants, it seems that few may be eligible for state housing assistance.

Challenges

¹⁴⁹ The author wishes to thank Professor Franck Duvell of the University of Oxford for highlighting these points.

¹⁵⁰ Article 11 of the International Covenant on Economic, Social and Cultural Rights.

¹⁵¹ Part 1 of Article 12 of the Law on the Legal Status of Foreign Nationals and Stateless Persons.

As noted by experts and NGO activists interviewed for this assessment, the existing legal guarantees are hard to uphold, as migrants find it hard to secure affordable housing. Rent is often beyond their financial capability, and in the absence of state-subsidized housing or preferential loans, migrants (in particular those lacking personal contacts or family ties in Ukraine) are faced with the considerable problem of finding affordable accommodation. As a result, they are often forced to seek housing in overcrowded premises that lack appropriate amenities.¹⁵²

Refugees

Refugees are deprived of access to low-cost or social housing. According to a report by the UNHCR, one of the cities with the largest concentrations of migrants, Kharkiv, as well as its surrounding region, lacks a temporary accommodation centre, and the city also fails to provide adequate information about government assistance concerning housing.¹⁵³ Refugees stay in very small apartments (often sharing rooms with other people) located in remote areas of the city. Housing in Kharkiv is expensive, and refugees have to spend most of their income on rent. The living conditions in rural areas are even worse than in cities. Refugees lack running water and sanitary facilities, and houses are heated with wood-burning stoves. However, these conditions are comparable to those of Ukrainian nationals in rural areas.

Recommendations

- introduce state-subsidized housing and preferential loans for migrants.

4.3. Public perception and racially motivated hate crimes

Surveys of Ukrainian citizens suggest that there is a widening gap between Ukrainian society and newcomers. This is evident from the results of the Ukrainian component of the European Social Survey, conducted on samples of around 1,700-2,000 people in 2005 and 2007.¹⁵⁴ During this period, Ukrainians had an increasing negative attitude regarding the impact of foreigners on the national economy, cultural life, and living standards (see Table 5). It should be noted that Ukraine is one of only two European states¹⁵⁵ where a significant decrease could be observed for all three areas.

¹⁵² A review of conditions for the integration of refugees in Ukraine revealed that affordable housing is particularly difficult to come by in urban centres. Depending on the location, rent for one room in substandard housing could range from USD 200 to 400, making it the most costly item in the family budget. Interviews carried out in 2007 showed instances of extreme overcrowding, with more than 10 people sharing a one-room apartment. Refugees also lack security of accommodation (which is also a problem for Ukrainian citizens), as landlords typically refuse to conclude written rental agreements, which robs them of protection against eviction at short notice. Andrysek and Rantala, *op. cit.*, note 74, pp. 66-67.

¹⁵³ "Listening to the Voices of Refugees and Stateless Persons in Ukraine: A Report on the Participatory Assessments in The Autonomous Republic of Crimea, Kharkiv and Kyiv", UNHCR, 2010, <http://soderkoping.org.ua/files/research/en/mf44_e.pdf>.

¹⁵⁴ Golovakha and Gorbachyk, *op. cit.*, note 114.

¹⁵⁵ The other being Hungary.

Table 5. Ukrainians' Opinions on the Impact of Foreigners on the National Economy, Cultural Life, and Living Standards

	2005	2007
Is it generally bad (0) or good (10) for Ukraine's economy that people come to live here from other countries?	4.81	4.42
Is Ukraine's cultural life generally undermined (0) or enriched (10) by people coming to live here from other countries?	4.90	4.55
Is Ukraine made a worse (0) or a better (10) place to live by people coming to live here from other countries?	4.85	4.23

Source: Questions B38-B40 of the European Social Survey 2005 and 2007

Between 2005 and 2007, the number of people who were against allowing foreigners of a different ethnicity into Ukraine also rose. In 2005, 18.6 per cent of respondents were totally opposed to Ukraine allowing the entry of "people from the poorer countries outside Europe". This figure rose to 26.8 per cent in 2007. This should be seen, however, against a wider European backdrop. In 2005, the percentage of Ukrainians who would allow the entry of "many" people of a different ethnic group or from poorer non-European countries was among the highest in Europe, at 25.6 and 20.1 per cent respectively.¹⁵⁶ This is corroborated by a report by a number of Ukrainian human rights NGOs that states that "up till 2005 the level of xenophobia in Ukraine was relatively low and did not exceed that in other post-totalitarian states. It was lower than in other Central and East European states ... and considerably lower than in Russia."¹⁵⁷

The negative portrayal of migrants in the media observed by NGO activists and scholars at the beginning of the decade has also fuelled anti-foreigner sentiments, especially in Kyiv. As a 2009 study notes, the press discourse concentrated on "the activities of illegal migrants, emphasizing criminality and disease".¹⁵⁸

The changing climate around migrants in Kyiv, erupting in a series of gang attacks and racially motivated murders, eroded much of the earlier perception of the city where "formal acceptance was the rule on the street, in schools, in hospitals, and in shops".¹⁵⁹ A rise in hostility towards foreigners, especially towards those of a different ethnic background than that of the majority, was also noted. U.S. State Department 2010 human rights report on Ukraine noted that "mistreatment of minority groups and harassment of foreigners of non-Slavic appearance remained a problem, although NGO monitors reported that hate crime incidents continued to decrease".¹⁶⁰

¹⁵⁶ Tables B36-B37 in Golovakha and Gorbachyk, *op. cit.*, note 114, pp. 120-121.

¹⁵⁷ Zakharov and Yavorsky, *op. cit.*, note 112, p. 130.

¹⁵⁸ *Ibid.*, p. 10.

¹⁵⁹ Zakharov and Yavorsky, *op. cit.*, note 112.

¹⁶⁰ U.S. State Department, Bureau of Democracy, Human Rights, and Labor, *2010 Country Report on Human Rights Practices*, April 8, 2011, p. 45 available at

< <http://www.state.gov/documents/organization/160481.pdf>>

The number of crimes against foreigners nearly doubled between 2002 and 2007 (from 604 to 1,178). Notably, cases of murder on racist grounds - 10 reported cases between January 2007 and July 2008 - were a major cause of concern for immigrant communities. The state took a number of measures that succeeded in reducing, somewhat, the number of crimes against foreigners (to 403 in 2008 and 445 in 2009).¹⁶¹ Crimes disproportionately targeted people originating from regions of a different ethnicity or culture, as over one-third of the cases involved non-CIS nationals.¹⁶²

Monitoring by NGOs and press reports point to a significant number of racially motivated assaults on migrants and asylum-seekers. Independent monitoring registered 157 attacks in the period between January 2007 and December 2009.¹⁶³ The groups that were the most frequent targets of attacks in 2007 were nationals of China (nine cases with 16 victims) and India (five cases with nine victims). In 2008, migrants from China (five cases with 14 victims), Nigeria (12 cases), and other African states (nine cases with 11 victims) were the most often victimized. In 2009, nearly half of all victims (17 of 35) came from Africa, with the largest groups of victims being citizens of Nigeria (five), as well as Ghana and Ethiopia (three each). Between January 2007 and December 2009, foreign students were the most frequent victims of assault, accounting for 37 per cent of all cases (59 cases).¹⁶⁴

Apart from physical assaults, hate crimes involved cases of vandalism targeting religious symbols. For example, the Jewish Foundation of Ukraine reported six cases of vandalism and as many as 20 instances of anti-Semitic graffiti. In addition, the Congress of National Communities reported two cases of arson involving Jewish facilities and several incidents of vandalism on Jewish (17) or Muslim premises (six), including places of worship, schools, and cemeteries.¹⁶⁵

However, the scale of this phenomenon is not adequately reflected in the number of cases of hate crimes, incitement to hatred, and discrimination reported by the Ukrainian police. According to an OSCE regional report, only two cases were recorded by the police in 2007, and only eight in 2008. Out of these 10 recorded cases, a sentence was imposed in only one of them. These figures are among the lowest in the OSCE region. By comparison, Georgia reported a total of 36 recorded cases in 2007-2008 (with 36 sentences passed), Belarus reported 163 cases in this period, while Kazakhstan and Kyrgyzstan reported 80 and 262 cases, respectively.¹⁶⁶

It is also disturbing that not all incidents were brought to the attention of the police: according to the report, nine out of 26 assaults recorded by the Diversity Initiative were

¹⁶¹ Information obtained from a report on the results of the activities of the Human Rights Monitoring Department of the Foreign Ministry in 2009.

¹⁶² *Ibid.*, p. 131.

¹⁶³ See the Diversity Initiative Network's incident reports for 2007, 2008, and 2009.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report for 2009* (Warsaw: ODIHR, 2010), pp. 62, 69, <<http://www.osce.org/odihr/73636>>.

¹⁶⁶ *Ibid.*

not reported to the police.¹⁶⁷ This disparity may be attributed to migrants' unwillingness to contact law-enforcement officials, as a result of certain discriminatory practices (for more on this, see Section 4.1.3 of this report).

Foreign students were recognized by the most recent (2007) European Commission against Racism and Intolerance (ECRI) country report on Ukraine as a group vulnerable to a wide range of threats, including violent assaults by organized neo-fascist or skinhead groups and inadequate response to reported violations by law-enforcement officials, as well as regular police harassment.¹⁶⁸ The report recommended that university authorities "take appropriate measures to provide foreign students with a safe environment" and that the Ukrainian authorities investigate and prosecute cases of racially motivated attacks and also punish any police officers found guilty of harassment of foreigners.¹⁶⁹

A survey of foreign students conducted in 2008 in several Ukrainian cities revealed that they tend to remain in the country for five or six years.¹⁷⁰ This group faces particular integration problems in Ukraine, as they are under the exclusive jurisdiction of university authorities. As the study notes, "all their security is vested in the university authorities and there are no independent authorities to appeal in case of any violation".¹⁷¹ Personal security is a concern for this group, as 40 per cent of surveyed foreign students reported that they or their friends had been victims of an attack. They also said that they were generally reluctant to report violations to the police – three-quarters believed that "it was no use" to make official complaints. Those who did report violations claimed that police reports were written only in Ukrainian and were not translated into their language. Moreover, as many as 85 per cent of the respondents reported harassment by the police during document checks, and, in two-thirds of the cases, they needed to bribe the police to retrieve their documents or end the case.¹⁷² Students also reported that certificates, medical forms, and other vital documents were taken away from them in some educational institutions, thus making them unable to verify personal information or take legal action.¹⁷³

In addition to mistrust of law-enforcement institutions, other barriers to integration arise because of foreign students' limited knowledge of Ukrainian or Russian and their lack of interest in staying in Ukraine after graduation. As many as 45 per cent of respondents in

¹⁶⁷ The Diversity Initiative Network, *op. cit.*, note 176.

¹⁶⁸ According to official data provided by the Education Ministry, the number of foreign students is increasing every year. In 2007, 39,675 foreign students were enrolled at Ukrainian schools, which represented an 80 per cent rise relative to the 2002 figures (22,022). The countries that send the largest numbers of foreign students to Ukraine are China (46 per cent), Turkey (13 per cent), Lebanon (10 per cent), and Vietnam (8 per cent). See Braichevska *et al.*, *op. cit.*, note 8, p. 9.

A 2004 study of non-CIS migrants in Kyiv reported that, during the 2000-2001 academic year, 4,900 foreigners studied in the capital, 76 per cent of whom were from Asia and Africa.

¹⁶⁹ "Third Report on Ukraine", European Commission against Racism and Intolerance, 29 June 2007, pp. 17-18, <http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/UKR-CbC-III-2008-4-ENG.pdf>.

¹⁷⁰ *Unheeded Voices*, *op. cit.*, note 8.

¹⁷¹ *Ibid.*, p. 88.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, p. 91.

this category admitted that they did not know what rights Ukrainian citizens enjoyed. The problem lies in the recruitment process, during which students sign a contract in Ukrainian and "are not given any briefing materials, which may introduce them to the way of life, rules, customs and cultural aspects of the Ukrainian society, not to speak of the rights and duties of foreigners".¹⁷⁴ As noted in the above-mentioned ECRI report, Ukrainian universities often focus on earning revenue by attracting foreign students,¹⁷⁵ but they fail to provide integration assistance to this group. According to reports collected by the East European Development Institute (EEDI), the process of arranging invitations and providing accommodation has been prone to abuse. Universities resort to the services of commercial agents (often consisting of graduates from students' countries of origin), which results in a process that is insufficiently transparent. The Education Ministry has been notified of this problem by several embassies.¹⁷⁶

The vulnerability of migrants is also clear from an analysis of a survey of migrants in three cities with a high concentration of foreigners (Kyiv, Kharkiv, and Odessa),¹⁷⁷ which noted that a majority of migrants (59 per cent) believed that their human rights and freedoms were observed to a lesser extent than in the case of citizens. An even higher percentage (62 per cent) stated that foreigners were less protected with regard to their personal security, which is clearly a reflection of the fact that between 79 and 84 per cent of respondents admitted that they or their family members or friends had been victims of a violent assault.¹⁷⁸

In general, migrants are not particularly willing to contact the authorities to report violations, to sign petitions, or to seek support for their activities. This could be attributed to the rather negative perception of the attitudes of local government officials. Between 4 and 7 per cent of respondents in three surveyed cities regarded such officials as "friendly", while between 10 per cent (Kharkiv) and a staggering 36 per cent viewed them as "unfriendly", "suspicious", or "rude and hostile". It is hard to expect migrants to turn to local governments for assistance when as many as between 27 per cent (Kyiv) and 53 per cent (Kharkiv) view officials as "indifferent".¹⁷⁹

These findings correlate with earlier research, suggesting a widening gap between migrants and the host community. A report published in 2004 compared the levels of integration of two groups of Asian and African immigrants to Kyiv, those arriving between 1991 and 1998 and those arriving between 1999 and 2001.¹⁸⁰ The report concludes that the later newcomers were less prone to interact with the receiving society than the first group of immigrants. While as many as 41 per cent of those arriving in the period between 1991 and 1998 found extensive integration a viable option, less than 7 per cent favoured separation from Ukrainian society. The ratio was reversed with the group

¹⁷⁴ *Ibid.*

¹⁷⁵ "Third Report on Ukraine", *op. cit.*, note 182. The report estimates that universities might have earned as much as 73 million euros in 2006 from foreign students.

¹⁷⁶ Information provided by Ms. Mridula Ghosh of the EEDI.

¹⁷⁷ *Unheeded Voices, op. cit.*, note 8.

¹⁷⁸ *Ibid.*, p. 71.

¹⁷⁹ *Ibid.*, p. 70.

¹⁸⁰ Braichevska *et al.*, *op. cit.*, note 8.

arriving in 1999-2001, with only 9 per cent reporting integration, and over 36 per cent declaring a preference for separation from the majority. This process was clearly observed in the area of cultural interaction: the percentage of those reporting cultural marginalization rose from 3 per cent in the period 1991-1998 to 23 per cent by 1999-2001.¹⁸¹

Recommendations

- concentrate international assistance on awareness-raising campaigns targeting journalists to sensitize them to the image of migrants, relations between migrants and society, and migrants' daily concerns as reported by the media;
- continue promoting cultural diversity through the organization of events promoting the different cultures of ethnic minorities living in Ukraine.

4.4. Enforcement of migrants' rights

The legal framework related to the protection of foreigners from discrimination is rooted in the guarantees set out in Ukraine's Constitution, which provides norms and principles for the laws on the emigration and immigration. Articles 24 and 26 refer to equality of rights between nationals and non-nationals and the prohibition of discrimination on the basis of, *inter alia*, race, ethnic origin, or language.¹⁸²

However, as noted in ECRI's country reports in 2002 and 2007, the state's commitment to protection from discrimination could be more strongly expressed in the Constitution. In particular, the reports found the wording of Article 24, guaranteeing non-discrimination to "citizens", which is understood to also cover foreigners and stateless persons, to be ambiguous. It was recommended that the Constitution guarantee protection from discrimination to everyone within Ukrainian jurisdiction regardless of their citizenship and that it "enshrine the principle of equal treatment, the state's commitment to promoting equality, as well as the right of individuals to be free from discrimination".¹⁸³ In 2006, Ukraine ratified Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁸⁴

4.4.1. Combating xenophobia and hate crimes

ODIHR's hate-crime definition

¹⁸¹ See Table 3.2, "Distribution of Cultural Interaction Strategies among Respondents with Different Periods of Entry into Ukraine, in % (N=236)", in Braichevska *et al.*, *op. cit.*, note 8., p. 97.

¹⁸² Article 26 of the Ukrainian Constitution states that, "Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine".

¹⁸³ "Third Report on Ukraine", *op. cit.*, note 182.

¹⁸⁴ The Protocol can be seen here:

<<http://www.humanrights.coe.int/Prot12/Protocol%2012%20and%20Exp%20Rep.htm>>.

ODIHR defines a hate crime as: a criminal act committed with a bias motive.¹⁸⁵ ODIHR uses this definition as the analytical filter through which the data submitted by participating States, NGOs, international organizations, and others is considered and presented for its annual report on hate crime.

Every hate crime has two elements. The first element is that an act is committed that constitutes a criminal offence under ordinary criminal law. The second element is that the offender intentionally chose a target with a protected characteristic. A protected characteristic is a characteristic shared by a group, such as race, language, religion, ethnicity, nationality, or any other similar common factor.¹⁸⁶

Incidents of hate speech generally fall outside ODIHR's working definition of hate crime. This is because speech acts alone are not a criminal offence without a bias motivation. Therefore, such incidents do not contain the first element of the hate-crime definition. In addition, there is no clear consensus among OSCE participating States about which, if any, aspects of hate speech should be criminalized.

However, hate speech can provide the backdrop and even the spark for hate crimes to occur. For these reasons, it is important to monitor and address incidents of both hate crime and hate speech, ensuring as far as possible that the data is reported and monitored separately.

Legislation

As a result of international commitments, Ukraine is obliged to take vigorous action against racial and ethnic discrimination, to address its root causes, and to provide effective recourse in cases of violations of fundamental human rights by both state and non-state actors. It is party to numerous international treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As Amnesty International notes in a 2008 report, international treaties place an obligation on the Ukrainian government to protect foreigners against violent assaults perpetrated by non-state actors.¹⁸⁷ The report cites a statement by the UN Committee on the Elimination of Racial Discrimination, which calls on all states to "take action against racially-motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage".¹⁸⁸

¹⁸⁵ This language is included in the preamble to OSCE Ministerial Council Decision No. 9/09, "Combating Hate Crimes", Athens, 2 December 2009, <<http://www.osce.org/cio/40695>>.

¹⁸⁶ *Hate Crime Laws: A Practical Guide* (Warsaw: ODIHR, 2009), p. 16, <<http://www.osce.org/odihr/36426>>.

¹⁸⁷ *Ukraine: Government Must Act to Stop Racial Discrimination*, *op. cit.*, note 92, p. 7.

¹⁸⁸ *Ibid.*, p. 8.

The Criminal Code of Ukraine contains articles addressing both hate speech and hate crime:

- **hate-crime legislation:** Article 67 lists, among other things, "the commission of an offence based on racial, national or religious enmity and hostility", when it comes to aggravating factors to be taken into consideration by a judge when deciding the punishment for a crime;
- **hate speech and other related laws:** Article 161: a violation of citizens' equality based on their race, nationality, or religious preferences is an incitement-to-hatred provision that extends to cover violence in Article 161 (2).

Progress and good practices

The rise in crimes against foreigners observed since 2005 has raised concerns among a number of NGOs (in particular the Congress of National Communities of Ukraine, which monitors attacks on foreigners) and the Ukrainian government. In 2007, the Interior Ministry approved the Action Plan to Counteract Racism, which concentrates on tracking the activities of radical youth organizations and increasing security in areas where foreigners concentrate. Following recommendations contained in the Action Plan, dedicated police units investigating offences involving foreigners and ethnicity-based crimes were established in Kyiv, Lviv, Luhansk, and Odessa, and a section within the State Security Service was tasked with countering activities inciting ethnic and racial hatred.¹⁸⁹ In 2009, the Interior Ministry and the Office of the Prosecutor-General issued a joint instruction to law-enforcement agencies requiring that all crimes perpetrated on the grounds of ethnic, racial, or religious intolerance be recorded.¹⁹⁰

In parallel, a biannual Action Plan for Countering Xenophobia, Racial and Ethnic Discrimination in Ukrainian Society was adopted by the Ministry for Family, Youth and Sport.¹⁹¹ To co-ordinate the activities of Ukrainian state bodies, an Inter-departmental Working Group on Countering Xenophobia, Inter-ethnic and Racial Intolerance was created, and the post of a special ambassador on combating racism, xenophobia and discrimination was set up within the ranks of the Foreign Ministry. However, recent institutional changes called into question the effectiveness of these measures. The Interior Ministry's Human Rights Monitoring Department, created in 2008 with a mandate to combat racism and xenophobia, was dissolved in June 2010. In August 2010, the same ministry disbanded its hate-crimes investigations unit.

Challenges

Statistics on hate crimes are not systematically collected or published in Ukraine. According to a 2008 white paper called "Ukraine's Legal Response to Bias-Motivated Violent Crime", by the Diversity Initiative Legal Sub-group, Ukrainian police are not trained to identify bias motivation in crimes, which, in general, they classify as

¹⁸⁹ Zakharov and Yavorsky, *op. cit.*, note 112, p. 131.

¹⁹⁰ *Hate Crimes in the OSCE Region*, *op. cit.*, note 178, p. 51.

¹⁹¹ Order No. 3716 of 10 September 2008.

"hooliganism". Another problem is that, due to an administrative division, the Prosecutor-General's Office¹⁹² and the police¹⁹³ avoid actual responsibility for investigating hate crimes. The white paper recommends that Ukraine develop "a consistent, standardized mechanism for law enforcement agents to report bias motivation in crimes, which does not have an overly restrictive burden of proof", as well as "train law enforcement agents to recognize and investigate bias motivation in crimes".¹⁹⁴

Representatives of migrant groups interviewed for this report noted a decline of violent attacks against foreigners since mid-2008. While they welcomed more vigorous prosecution of violent attacks under Article 161 of the Criminal Code, they also noted that, on many occasions, clear instances of hate speech and xenophobic behaviour went unpunished. On the whole, they highlighted the fact that, whenever decisive actions were taken by top authorities (e.g., presidential initiatives), they helped curtail outbursts of anti-immigrant sentiment. However, they concurred with the conclusions of the NGO report on the state of human rights in Ukraine¹⁹⁵ that the small number of prosecuted cases is a result of the reluctance of victims to report incidents (due to mistrust of law-enforcement agencies and little hope of success) and the poor formulation of the law, which sets very high requirements for proving a crime.

Nevertheless, an analysis of the results of surveys of foreign residents of Kyiv, carried out by the Kennan Institute in 2007, shows that the majority of all questioned foreigners said that they would still have moved to the city even if they had known about incidents of violence against migrants. It is worth noting, though, that despite a gradual rise in the rate of positive responses, it is the lowest among those who feel most vulnerable, i.e., African and Pakistani migrants (44 and 33 per cent, respectively) and among those who are unemployed (only 14 per cent).¹⁹⁶

Recommendations

- counteract discrimination and hate crimes in line with Decision No. 9/09 of the OSCE Ministerial Council;
- collect, maintain, and publicize reliable data and sufficiently detailed statistics on hate crimes and violent manifestations of intolerance. Such data and statistics should include the number of cases reported to law-enforcement authorities, the number of cases prosecuted, and the sentences imposed. Where data-protection laws restrict the collection of data on

¹⁹² The Prosecutor-General's Office is responsible for investigating crimes that come under Article 161 of the Criminal Code.

¹⁹³ The police are responsible for investigating other crimes and potential aggravating circumstances, in accordance with Article 67 of the Criminal Code.

¹⁹⁴ "Ukraine's Legal Response to Bias-Motivated Violent Crime", white paper by the Diversity Initiative Legal Sub-Group, March 2008, <http://www.xenodocuments.org.ua/files/library/diversity/Diversity_Initiative-Legal_Sub-Group_white_paper.pdf>.

¹⁹⁵ Zakharov and Yavorsky, *op. cit.*, note 112, p. 132.

¹⁹⁶ Ruble, *op. cit.*, note 50, p. 12.

victims, Ukraine should consider methods for collecting data in compliance with such laws;

- name a responsible state agency to monitor and record racially motivated crimes across Ukraine and inform migrant communities on available complaint mechanisms;
- promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership;
- conduct awareness-raising and education activities on hate crime with communities and civil society groups that assist victims of hate crime, and with law enforcement authorities in particular;
- **include methods for identifying and investigating racial and ethnic bias in training courses for judges and police officers;**
- encourage the reporting of hate-motivated crimes by third parties in cases where victims are unable or unwilling to report hate crimes directly to the police and criminal justice agencies;
- diversify the membership of law-enforcement and prosecution agencies so as to increase the representation of individuals from minority groups;
- concentrate international assistance on awareness-raising campaigns targeting journalists to sensitize them to the image of migrants, relations between migrants and society, and migrants' daily concerns as reported by the media;
- continue promoting cultural diversity through the organization of events promoting the different cultures of ethnic minorities living in Ukraine;
- launch a public-awareness campaign to inform migrants of their specific rights and redress mechanisms within responsible institutions in case of the violation of those rights;
- develop and implement targeted prevention programmes and initiatives to combat hate crimes; and
- draw on resources developed by ODIHR in the area of education, training, and awareness-raising to ensure that hate crimes are tackled in a comprehensive manner.

In response to a wave of assaults on minorities and migrants, ECRI recommended that amendments be made to Article 161 of the Criminal Code to facilitate the prosecution of all individuals (not only Ukrainian citizens) inciting racial hatred.¹⁹⁷

The sections below describe the activities of the Ukrainian state, NGOs, and international organizations aimed at combating this phenomenon.

4.4.2 Ukrainian ombudsman for human rights

Legislation

¹⁹⁷ "Third Report on Ukraine", *op. cit.*, note 182.

According to the Ukrainian Constitution, everyone has the right to seek protection of their rights from the parliamentary ombudsman for human rights.¹⁹⁸ According to the law, the ombudsman for human rights is responsible for parliamentary oversight of the observance of constitutional rights and liberties in Ukraine. The Law on the Parliamentary Ombudsman for Human Rights of 23 December 1997 provides that foreign nationals and stateless persons or their representatives have the right to seek protection of their rights and liberties proclaimed by the Constitution, laws, and international agreements of Ukraine.¹⁹⁹ The ombudsman's tasks are outlined in Article 3 of the above-mentioned law.²⁰⁰

One of the ombudsman's legal rights is to respond to violations of the provisions of the Constitution, laws, or international agreements of Ukraine with respect to individual rights and liberties. The law mandates the ombudsman to "submit to respective bodies documents containing the response of the ombudsman to instances of violations of human and civil rights and freedoms, for use in taking respective measures".²⁰¹

Challenges

There are no publicly available statistics on the number and type of complaints to various Ukrainian state institutions. Migrants surveyed in 2008 said that they would be more likely to turn to higher-ranking officials in the police or the Justice Ministry in case of a violation of their rights. Only rarely did they name the ombudsman, the parliamentary Human Rights Committee, NGOs, or international organizations or embassies. The majority of respondents did not know who to turn to to address their grievance.²⁰²

In the case of the ombudsman, however, information on complaints from foreigners and stateless persons is available. Nonetheless, even in this agency, such groups are not specifically targeted. For instance, in the latest monitoring report²⁰³ submitted to the Ukrainian parliament in 2010 by the Ukrainian government, local authorities, and other entities, the ombudsman does not provide a separate set of data for these groups. Foreigners and stateless persons were also not included in the list of groups that are

¹⁹⁸ Article 55.3.

¹⁹⁹ Articles 1, 2, and 16.

²⁰⁰ They include: protecting human and civil rights and freedoms proclaimed by the Constitution of Ukraine, the laws of Ukraine, and international agreements of Ukraine; observing and respecting human and civil rights and freedoms through entities indicated in Article 2 of the Law on the Parliamentary Ombudsman for Human Rights; preventing violations of human and civil rights and freedoms or the facilitation of their renewal; facilitating the process of bringing Ukraine's legislation on human and civil rights and freedoms into line with Ukraine's Constitution and international standards in this area; improving and further developing international co-operation in the area of the protection of human and civil rights and freedoms; preventing any form of discrimination with regard to a person's implementation of his or her rights and freedoms; encouraging legal knowledge among the population and protecting confidential information about each person. See Article 3 of the Law on the Parliamentary Ombudsman for Human Rights.

²⁰¹ Article 13.12 of the Law on the Parliamentary Ombudsman for Human Rights.

²⁰² *Unheeded Voices, op. cit.*, note 8, p. 69.

²⁰³ "The State of Observance of the European Standards on Human Rights and Freedoms in Ukraine: Special Report of the Ukrainian Parliament Commissioner for Human Rights", Kyiv, 2010, <<http://ombudsman.kiev.ua/Binder1.pdf>>.

particularly vulnerable to abuses of their rights. This conspicuous absence may be explained by the fact that complaints from migrants constitute a small fraction of all submitted cases.

The following table presents the most recent statistics of people who contacted the Office of the Ombudsman through official channels, including letters, visits, and hotline calls between 2006 and 2008. It is apparent that, while Ukrainian citizens are more and more willing to contact the Office of the Ombudsman (with nearly 60 per cent more queries in 2008 compared to 2006), it seems that migrants and refugees are less likely to contact the Office of the Ombudsman. Thus, the percentage of queries from non-nationals dropped from an already low level of 0.65 per cent in 2006 to 0.35 per cent in 2008.

Table 6. Citizens and Non-nationals Turning to the Ukrainian Ombudsman, 2006-2008²⁰⁴

	2006	2007	2008
Citizens of Ukraine	52,876	77,018	84,108
All non-nationals	347	407	298
- foreigners	302	354	275
- stateless persons	30	36	6
- refugees	15	17	17
TOTAL	53,223	77,425	84,406

Source: Website of the Office of the Ombudsman <<http://ombudsman.kiev.ua>>

The information available on the ombudsman's website points to the kinds of issues raised by foreigners in their 1,137 complaints between 2004 and 2007.²⁰⁵ A review of the type of queries reveals that, until 2005, the majority of questions concerned conditions of acquisition of Ukrainian citizenship, followed by the procedure or the legalization of residence (see Table 7). While these questions remained valid, a major shift could be observed in 2006-2007, when the abuse of freedom and personal inviolability and complaints against unauthorized arrest and methods of investigation became the most pressing concerns, accounting for nearly a third of the total. In fact, in 2007 complaints against abuse of procedures became the top issue. A separate category consisted of questions of social protection, pensions, and housing.²⁰⁶

²⁰⁴ The latest publicly available statistics of queries from foreigners and stateless persons was published in Section 1.3 of the ombudsman's annual human rights report, "Stan dotrimannya ta zakhistu prav i svobod liudini v Ukraini", for the period 2006-2007.

²⁰⁵ *Ibid.* The report also identifies gaps in legislation concerning the protection of individual rights and liberties. The annual report covers: 1) cases of violations of individual rights and liberties with respect to which the ombudsman has taken necessary measures; 2) the results of investigations carried out during the year; and 3) conclusions and recommendations to improve the assurance of individual rights and liberties. Annual reports are available on the ombudsman's website at <http://ombudsman.kiev.ua>.

²⁰⁶ "Про стан дотримання та захисту прав і свобод людини в Україні", *op. cit.*, note 217, Table 1.3.2, <http://ombudsman.kiev.ua/dopovid_5/d_05_1_3.htm>.

Table 7. Complaints to the Ukrainian Ombudsman from Foreigners and Stateless Persons (by Category of Rights), 2004-2007²⁰⁷

Topic	2004	2005	2006	2007	2004-2007
Abuse of the right to liberty and personal inviolability, unwarranted arrest, irregularities of investigation, complaints against the conduct of law-enforcement officers	38	19	63	75	195
Acquisition of citizenship	203	187	83	74	547
Legalization of residence (including registration)	15	39	13	22	89
Deportation, transfer, extradition, and denial of entry	3	5	13	20	41
Acquisition of refugee status	4	6	20	16	46
Conditions of detention, freedom from torture	--	5	14	14	33
Social protection, pensions	14	30	10	8	62
Right to work	3	6	2	3	14
Right to housing	1	2	1	3	7
Other	18	26	27	32	103
TOTAL	299	325	246	267	1,137

Source: Website of the Office of the Ombudsman

Recommendations

- produce and distribute informational material about the specific rights of migrants and which government institutions to address in case of violation of rights;
- inform migrant communities about the possibility to file a complaint and collect separate data on problems relating to foreigners.

4.4.3. International and non-governmental organizations' efforts to protect migrants' rights

Apart from their role in monitoring the development of Ukrainian legislation, as noted in the case of the Strategy and Action Plan, international organizations play a significant role in defending migrants' rights in key areas such as combating xenophobia and hate crimes, assisting victims of trafficking, and providing socio-economic assistance to refugees. They are assisted in their efforts by several human rights NGOs, including the Helsinki Foundation for Human Rights and lawyers associations.

The country profile elaborated by the IOM in 2008 lists a number of international and local organizations and donors working on behalf of migrants' rights, including the European Union; the governments of several European states, Canada, and the United States; the Open Ukraine Foundation; and international organizations, most notably

²⁰⁷ *Ibid.* The latest publicly available statistics of complaints from foreigners and stateless persons were published in Section 1.3.

agencies of the UN system, the OSCE, and the International Committee of the Red Cross.²⁰⁸ The list is not exhaustive, as it needs to be extended to include, *inter alia*, the Council of Europe, the ILO, and the UN Development Programme, as well as specialized agencies such as the International Centre for Migration Policy Development and intergovernmental initiatives such as the Soderkoping Process.

Responding to an increase in the number of suspected racially motivated attacks, the IOM, the UNHCR, Amnesty International, and at least 65 other organizations from the international, civil, corporate, and government sectors, including representatives of various embassies and diplomatic missions, all working to combat racially motivated crimes in Ukraine, formed the Diversity Initiative Network in April 2007. Its impact is ensured by close collaboration with key governmental institutions, the State Committee for Nationalities and Religions, the Interior Ministry, the State Security Service, and the Foreign Ministry.²⁰⁹

Through inter-agency co-operation and networking with the Ukrainian government, the Diversity Initiative Network established a system for tracking suspected racially motivated crimes in Ukraine, co-ordinating activities and training courses, holding awareness-raising events, and disseminating information among the stakeholders, including the media and the government. In 2007, an action plan on combating racism was established at the Interior Ministry, and in 2008 an inter-agency working group was launched to combat xenophobia, co-ordinated by the State Committee for Nationalities and Religions. Focal points were set up at the State Committee for Nationalities and Religions, the Interior Ministry, the State Security Service, and an ambassador was appointed at the Foreign Ministry. Reports of suspected racially motivated crimes collected by the Diversity Initiative Network were shared and verified with special units at the Interior Ministry and the State Security Service. However, as a 2011 report by the Human Rights Watch notes, the activity in this field lost its momentum when the Ministry of Interior's Human Rights Monitoring Department was disbanded in June 2010, followed by the dissolution of the unit mandated to investigate crimes under Article 161 of the Criminal Code in August 2010.²¹⁰

NGO involvement has also been particularly significant in countering human trafficking. Over 70 civil society organizations have been involved in various prevention initiatives (information campaigns or research), while 31 of them have been active in providing reintegration support to victims of trafficking in collaboration with the IOM.²¹¹ Their local reach, stretching from the western to eastern borderlands of the country, forms a crucial element of the victim-referral framework in Ukraine.²¹² UNHCR Ukraine also

²⁰⁸ *Migration in Ukraine: Country Profile 2008* (Kyiv: IOM, 2008, p. 54).

²⁰⁹ Information provided by the IOM office in Kyiv.

²¹⁰ Human Rights Watch, *World Report 2011: Ukraine*, January 2011, section "Events 2010: Hate Crimes and Discrimination", available at <<http://www.hrw.org/en/world-report-2011/ukraine>>

²¹¹ "Ukrainian Counter-Trafficking NGO Newsletter", No. 5, April 2008, IOM Ukraine, <http://www.iom.org.ua/img_collection/file/NGOnewsletterengfinal52008.pdf>.

²¹² Information from IOM Ukraine materials, September 2008.

relies on NGO partners to provide legal assistance to asylum-seekers through a network of 17 NGOs throughout the country.²¹³

According to IOM Ukraine, between January 2000 and March 2010, as many as 6,559 victims of trafficking requested assistance. The vast majority consisted of Ukrainian citizens, e.g., between 2003 and 2010, 392 foreigners requested assistance compared to 5,539 Ukrainians. Nearly three-quarters of foreign victims of trafficking who benefited from IOM services were nationals of Moldova.

Most NGOs acting in defence of migrants' rights or providing assistance to migrants and refugees serve as implementing partners of international organizations. A welcome trend is the use of partnerships in which local organizations tackle problems facing migrants in collaboration with relevant state institutions, thus building foundations for dialogue and reducing marginalization of migrant communities.

A good example of a pioneering initiative to facilitate conditions for integration of non-nationals in Ukraine is the Local Integration of Refugees Project, implemented by the UNHCR and funded by the European Union and the UNHCR.²¹⁴ The three-year project has been carried out in Belarus, Moldova, and Ukraine since 2009, and it aims to assist refugees (especially those who recently obtained Ukrainian citizenship). Importantly, the project is based on the principle of partnership between the government and NGOs (relying on the network of NGOs that implement aid on behalf of the UNHCR). Moreover, it recognizes the significance of raising awareness of integration issues and building support for the presence of refugees in Ukraine among decision-makers and the public. A public-awareness and communication strategy is an integral part of the project, acknowledging the primacy of dialogue with several key state agencies (the Ministry of Labour and Social Policy, the Education Ministry, and the State Employment Service) and their regional units, as well as with NGOs, local communities, and employers.²¹⁵

Nevertheless, the opinions of NGO activists expressed at the roundtable in Kyiv in May 2010 and during subsequent interviews point to some limitations of the model of partnership with international organizations. One issue is the dependence of NGOs on international funding and the resulting image of organizations as local implementers of international activities. Another problem is that few NGOs among those providing assistance feature migrants themselves in their management or involve them in planning of project activities. Unfortunately, the author of this report could not verify this assertion through any quantitative studies on the impact of aid activities on migrants' willingness or capacity to participate in the life of local communities.

²¹³ See the full list at <http://www.unhcr.org.ua/unhcr_ukr>.

²¹⁴ For a description of the project, see <http://unhcr.org.ua/main.php?part_id=32>.

²¹⁵ "Public awareness and communication activities: Local Integration of Refugees in Belarus, Moldova and Ukraine", UNHCR presentation, <<http://unhcr.org.ua/img/uploads/docs/7%20Communication%20strategy.ppt>>.

Annex

The Development of Civil Society in Ukraine¹

Civil society in Ukraine is a viable mechanism for strengthening democracy and enabling citizens' participation in public life, and it has evolved slowly but steadily in the past two decades of transition. The stages of this evolution can be divided into three periods: 1992-2000, 2000-2004, and 2005-2009. The first and second periods were characterized by legislative and institutional development and capacity-building: through adoption of the Law on Citizens' Associations on 16 June 1992 (amended six times by 2004), and the adoption of the Law on Political Parties in 2001, which clearly differentiated NGOs from trade unions and political parties. Insufficient interaction between the state and civil society led to discontent and outrage among Ukraine's population, which culminated in the so-called Orange Revolution of November 2004.

The post-Orange Revolution period of 2005-2009 witnessed a further serious qualitative and quantitative shift in the development of civil society, from the tightly state-controlled Soviet type of social organizations to independent citizens' initiatives at the grassroots level. By their number and variety, civil society and free media in Ukraine are among the most active and richest in the former Soviet countries. However, this has not left a long-standing imprint on policy-making and had less than the desired impact on changing the quality of people's lives. This is due to certain key factors: ambiguous connotations of the term *civil society*; cumbersome registration procedures leading to confusion in statistical accounting; growing inequality and weak development of the middle class; incoherent state policy and acceptance of civil society; funding and staffing problems; relations with business, religious organizations, and the media; relations with donors; and a low level of acceptance by society in general to name a few.

As of today, civil society has come to realize that it has common interests with, and demands towards, the state and the private sector. During the years 2009-2010, several grassroots initiatives showed that participation and empowerment has deepened, such as: 1) in April 2010, a movement to protect trees and the Kharkiv park pushed UEFA and Ukraine to review the need for roads for Kharkiv as a host city for the Euro2012 football championship; 2) a no-censorship journalists movement in June 2010 stopped alleged attempts by media owners to introduce censorship; 3) demonstrations held by grassroots groups in June 2010 helped investigations against the police in the Solomyanskiy district of Kyiv, where on 21 May 2010, a 20-year-old man died in police custody; and 5) the most recent draft of the new tax code made grassroots groups and small and medium-sized businesses force the government to amend the law. However, the low inclusion policy within civil society leads to a perpetuation of the vulnerability of minority groups, as well as reduced access to information. Apart from the fact that many more legislative and institutional changes need to be introduced to improve the functioning of civil

¹ This annex on civil society in Ukraine was written by Mridula Ghosh, EEDI. The full version of this paper is available at: <http://diversipedia.org.ua/eng/your-rights/publications.html>.

society, 2011 marked the adoption of the Law on Access to Public Information, which demonstrates a major step in enabling civil society to function.

Bibliography

Amnesty International, *Ukraine: Government Must Act to Stop Racial Discrimination*, London, 2008),

<<http://www.amnesty.org/en/library/asset/EUR50/005/2008/en/836170ae-4392-11dd-a1d1-2fa8cc41ebbd/eur500052008eng.pdf>>.

Andrysek, Oldrich, and Tarja Rantala, *The Local Integration of Refugees in the Republic of Belarus, the Republic of Moldova and Ukraine: "A Strategy for Action"*, Kyiv Soderkoping Cross Border-Cooperation Process, 2008, <http://soderkoping.org.ua/files/integration/LocalIntegration_FINAL_eng.zip>

Bilsborrow, R. and H. Zlotnik, "The Systems Approach and the Measurement of the Determinants of International Migration", in R. van der Erf and L. Heering (eds.), *Causes of International Migration* (Brussels: Office for Official Publications of the European Communities, 1995)

Braichevska, Olena, *et al.*, *Nontraditional Immigrants in Kyiv*, Washington, Woodrow Wilson International Center for Scholars/Kennan Institute, 2004.

Chumak, V., P. Kazmierkiewicz, and O. Lvova, "Coordinating migration policy in Ukraine: Lessons from Poland", Institute of Public Affairs and the International Centre for Policy Studies, 2009, <http://www.icps.com.ua/files/articles/55/1/Migration_UP_ENG_Last.pdf>.

Chumak, V., and P. Kazmierkiewicz, *Readmission in Ukraine: Legal-Institutional Analysis and Lessons from EU Experience*, Kyiv, European Commission/IOM, 2010.

Düvell, F., "Migrants and refugees on the fringes of Europe: Transit migration, mixed flows and new policy challenges", *Metropolis World Bulletin*, No. 8 (Oct. 2008). <http://canada.metropolis.net/publications/World_Bulletin_vol8_e.pdf>

East European Development Institute, *Unheeded Voices – Issues of Immigration, Human Rights and Freedoms in Ukraine*, Kyiv, ICF Sphera Publishers, 2008.

European Commission against Racism and Intolerance, "Third report on Ukraine", 29 June 2007, <http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/UKR-CbC-III-2008-4-ENG.pdf>.

European Council on Refugees and Exiles, "Ukraine Country Report 2009: Situation for refugees and asylum seekers", <http://www.ecoi.net/file_upload/90_1290515761_ecri-report-eng-with-cover-preview.pdf>.

Golovakha, E., and A. Gorbachyk, *Social Change in Ukraine and Europe: Outcomes of European Social Survey 2005-2007*, Kyiv, National Academy of Sciences of Ukraine, Institute of Sociology, 2009.

Human Rights Watch, *Ukraine: On the Margins. Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union*, vol. 17, No. 8(D), November 2005

< <http://www.hrw.org/en/reports/2005/11/29/ukraine-margins-0>

International Organization for Migration Mission in Ukraine, *Labour Migration Assessment for the WNIS Region*, Kyiv, 2007.

International Organization for Migration Mission in Ukraine, "Ukrainian Counter-Trafficking NGO Newsletter", No. 5, April 2008, <http://www.iom.org.ua/img_collection/file/NGOnewsletterengfinal52008.pdf>.

International Centre for Migration Policy Development, *Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe in 2007. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States*, Vienna, 2008.

Malynovska, O., and E. Libanova, "Ukraine" in E. Honekopp and H. Mattilla (eds.), *Permanent or Circular Migration? Policy Choices to Address Demographic Decline and Labour Shortages in Europe*, Budapest, IOM, 2008.

Martiniello, M., "Political Participation, Mobilisation and Representation of Immigrants and their Offspring in Europe", Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, No. 1/2005, Malmö University, 2005, <http://195.178.227.4/bitstream/handle/2043/1495/WB_1-05.pdf?sequence=1>.

OSCE Office for Democratic Institutions and Human Rights, *Guidelines on Population Registration*, Warsaw, 2009, <<http://www.osce.org/odihr/39496>>.

OSCE Office for Democratic Institutions and Human Rights, *Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report for 2009*, Warsaw, 2010, <<http://www.osce.org/odihr/73636>>.

Palyvoda, L., and S. Golota, *Civil Society Organizations in Ukraine. The State and Dynamics (2002-2010)*. Kyiv, Publishing house „Kupol” 2010. <http://ccc-tck.org.ua/en-default/file/biblioteka/CSO2010_Eng.pdf>

Perrin, N., and M. Poulain, "An assessment of the state systems for data collection, analysis and data sharing on migration and migration statistics in Ukraine: Draft report written on the basis of the meetings organized by IOM in Kyiv, 24-26 February 2008", IOM Mission in Ukraine, 2008.

Pirozhkov, S. I. (ed.), *Миграция и пограничный режим: Беларусь, Молдова, Россия и Украина. Сборник научных трудов*, Kyiv, National Institute of International Security Problems 2002.

Pribytkova, I., *Analysis of Migration Situation in Ukraine: at the Base of State Statistics and Agency-specific Statistical Data 2002-2003*, Kyiv, IOM Mission in Ukraine 2004.

Pylynskyi, Yaroslav, *Undocumented Migration: Counting the Uncountable. Data and Trends across Europe*, Clandestino, December 2008, <http://clandestino.eliamep.gr/wp-content/uploads/2009/10/clandestino_report_ukraine_final_1.pdf>.

Ruble, Blair A., *Establishing a New Right to the Ukrainian City*, Washington, DC, Kennan Institute, 2008.

United Nations High Commissioner for Refugees, *2009 Global Trends. Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, Geneva, 2010.

U.S. State Department, Bureau of Democracy, Human Rights, and Labor, *2010 Country Report on Human Rights Practices*, April 8, 2011.

< <http://www.state.gov/documents/organization/160481.pdf> >

Zakharov, Y., and V. Yavorsky, "Human Rights in Ukraine – 2008: Human Rights Organisations Report", Ukrainian Helsinki Human Rights Union, 2009, <<http://www.helsinki.org.ua/files/docs/1246102509.pdf>>.