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**WRITTEN COMMENTS
OF THE EUROPEAN ROMA RIGHTS CENTRE**

CONCERNING UKRAINE

**FOR CONSIDERATION BY THE UNITED NATIONS COMMITTEE
ON THE ELIMINATION OF RACIAL DISCRIMINATION**

AT ITS 69TH SESSION, JULY 31 – AUGUST 18, 2006

1.0 Executive Summary

The European Roma Rights Centre (ERRC) respectfully submits written comments concerning Ukraine for consideration by the Committee on the Elimination of Racial Discrimination (“the Committee”) at its 69th session. The ERRC is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Since its establishment in 1996, the ERRC has established a reputation as the leading international non-governmental organisation engaged in human rights defence of Roma in Europe.

The ERRC has undertaken extensive research, policy, law and training work in Ukraine due to the very serious issues Roma face in Ukraine. The ERRC published a

comprehensive Country Report on the situation of Ukraine in 1997.¹ It followed up this report with a 2001 publication updating developments since the 1997 report.² Since 2003, with the support of the European Commission and the Swedish International Development Cooperation Agency (SIDA), the ERRC has been involved in a very large three-year human rights research, training and advocacy project in Ukraine, involving a number of local Romani organisations. ERRC publications about Ukraine as well as additional information about the organisation are available on the Internet at <http://www.errc.org>.

In 2001, the CERD made the following recommendations concerning Roma to the Government of Ukraine, following its review of Ukraine's 15th and 16th reports:

The Committee is concerned about reports of the continuing discriminatory treatment of Roma and violence against them and their property. The Committee is particularly concerned about reports of police brutality against the Roma population, including arbitrary arrests and illegal detention. The Committee recommends that the State party take immediate and effective steps to stop these abuses and that the next report contain information on human rights training for the police, investigations of complaints of abuse and disciplinary and criminal measures taken against those found guilty of committing abuses.³

The ERRC is aware of the contents of the Ukrainian government's 18th periodic report to the CERD,⁴ as well as other recent Ukrainian government policy documents of relevance to Roma. We welcome the increased attention of the Ukrainian government to policy matters regarding Roma. To date, however, measures adopted and undertaken by the Ukrainian government have been insufficient to ensure the effective implementation of the Convention. It is clear that the recommendations made by CERD in 2001 to Ukraine have either been implemented to no tangible effect, or not implemented at all in the years since then. This fact, as well as the very serious human rights issues facing Roma in Ukraine, implicates a number of the Conventions provisions:

As to Article 2 of the Convention, the government has not fully complied with its obligations to "prohibit and bring to an end, by all appropriate means, including legislation [...] racial discrimination." There are still many gaps and undeveloped areas in Ukrainian legislation that do not allow for the adequate protection of Ukrainian citizens from discrimination. Furthermore, even in areas where some legal provisions and mechanisms do exist, government authorities and the judicial system continue to be unable to utilize them to effect meaningful change in Ukraine.

¹ European Roma Rights Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Reports Series, No. 4, April 1997.

² European Roma Rights Centre, *Focus: Roma Rights in Ukraine: Published Materials 1997-2001*, June 2001.

³ United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination : Ukraine, 16/08/2001.A/56/18, para. 373.

⁴ Eighteenth Periodic Report of States Parties Due in 2004: Ukraine, CERD/C/UKR/18.

As to Article 3 of the Convention, the ERRC is concerned that the government of Ukraine has failed to prevent, prohibit and eradicate the racial segregation of Roma. Discrimination in the areas of housing, employment and education, and the continued exploitation of many Romani people's lack of official documentation continues to relegate Romani communities to a substandard, second-class existence on the margins of Ukrainian society.

As to Article 4, anti-Romani hate speech is a regular and tolerated part of public discourse in Ukraine. The continued permissiveness with which authorities treat public expressions of ethnic hatred and prejudice serves to reinforce widely held stereotypes that cause enormous harm to Romani people and ensure that their lives will continue to be fraught with tangible threats to fundamental rights in the future.

As to Article 5, in recent years, Roma have suffered repeated and regular instances of violence at the hands of both law enforcement and non-state actors in violation of "the right to security of person and protection by the State against violence or bodily harm" protected under the Convention. Research by the ERRC and partner organizations indicates a tendency on the part of state authorities to unlawfully violate in many and various ways the fundamental right of Roma to security: disproportionate targeting of Romani communities for punitive raids; ignoring or prematurely closing cases where the victim is Romani; outright extortion of money and other valuables from Roma who have little or no recourse to legal protection; and the physical abuse of Roma.

Roma also regularly experience discrimination by both state and non-state actors in the areas of employment, housing, and access to social services such as health care and education. Related harms arise from the systemic denial of services required for the exercise of certain fundamental rights – including social rights such as health care and education and civil and political rights -- justified on the grounds of the absence of official identification documents. Lack of protection from direct and indirect discrimination has relegated Roma to a substandard peripheral existence; many Roma in Ukraine live in extreme poverty under insecure and unhealthy conditions.

Article 6 of the Convention guarantees that "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." As far as Roma are concerned, Ukraine's commitment to this Article to date has been an empty one. In 2006, widespread racial discrimination against Roma in many areas of life goes unopposed and unchallenged. Indeed, as noted above, Ukrainian authorities have failed to transpose the Convention's requirements into domestic law, and currently there is a problematic absence of legal mechanisms to ensure that Convention rights are actionable in practice, and that an individual might seek and secure due remedy in the event that her Convention rights are infringed.

The present document does not aim to address all of the issues and concerns that Roma face in Ukraine. Rather, its ambition is to present the results of ERRC research in several areas of relevance to the Convention with the aim of complementing the information provided in the Ukrainian government's report to the Committee. Following a general introduction, the present submission presents concerns in the following areas:

- **Anti-Discrimination Law**
- **Anti-Romani Expression in Ukraine**
- **Police Abuse**
- **Violence by Non-State Actors**
- **Access to Health Care, Education and Housing**
- **Employment**
- **Access to Personal and Other Documents**

The submission concludes with some rudimentary recommendations for the Ukrainian government to assist the Committee in bringing concluding observations with respect to Ukraine's compliance with the ICERD.

2.0 General Introduction

The 1989 census of the (former) Soviet Union recorded 47,915 Roma living in Ukraine, constituting roughly 0.09% of the population.⁵ In 2001, the State Statistics Committee carried out Ukraine's first census since the Communist period, and found that in the intervening 12 years, the Romani population had stayed relatively stable at 47,587.⁶ Romani organisations in Ukraine, though, estimate that the number is substantially higher, up to 300,000 according to one.⁷ Population density varies throughout the country, but the largest concentrations live in the Odessa, Poltava, Donetsk, Dnepropetrovsk, Kharkov, Chernovtsy and Zakarpattia regions (oblasts). In certain areas, such as Zakarpattia in western Ukraine, Roma officially represent as much as 3% of the population.

Regardless of the relatively small size of the Ukrainian Roma population, opinion polls reported by the US State Department in 2005 showed that "social intolerance [in Ukraine] is greater toward Roma than toward any other ethnic group."⁸ The aim of this

⁵ State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: http://www.ukrcensus.gov.ua/g/d5_other.gif

⁶ State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: http://www.ukrcensus.gov.ua/eng/results/nationality_population/nationality_1/s5/

⁷ Information provided by Zefira Kondur of the Chiricli Roma Women's Fund, June 6, 2006.

submission is not to provide a sociological study of the historical, economic, political, and psychological reasons for the origins of discrimination against Roma in virtually every walk of Ukrainian life. Instead, it details several areas in which the treatment of Roma gives rise to serious concerns under the Convention, and it suggests ways in which the Ukrainian government can and must work to change this.

2.1 Human Rights in Ukraine

Ukraine's human rights record has long been a source of great concern both domestically and internationally. In 2000, Nina Karpachova, the newly instated Ukrainian Parliament Commissioner for Human Rights (Ombudsman) in her first bi-annual report stated that,

Despite democratic legislation in the sphere of human rights available in Ukraine, under the conditions of social and economic crisis, decline of a general level of culture and moral in Ukraine, the efficient mechanisms to protect human rights are non-existent, which leads to massive and regular violations of human rights and freedoms, and sometimes makes their realization impossible. The situation is worsened due to poverty, which is a violation of human rights as well.⁹

Despite some indications that the overall human rights situation in Ukraine may have improved or be on the verge of improving since the changes of 2004-2005, the same cannot be said for the situation of Roma in Ukraine. The US State Department has noted, among other things, an increase in the accountability of police officers and gradual efforts to improve prison conditions, as well as improved media freedoms, increased protection of the right to free assembly, less state control over religious institutions and a decrease in government harassment of human rights groups.¹⁰ As this submission will show, however, there is little evidence that any of these improvements have had much impact yet on reducing discrimination and social stigmatisation of vulnerable ethnic or national groups such as Roma.

Some Government officials are beginning to take greater note of the issue, however. The Parliament's Committee on Human Rights, National Minorities and Interethnic Relations, chaired by Mr. Hennadiy Udoenko, a former foreign minister, held its first official hearing on the situation of the Roma in Ukraine on April 12, 2005. At the local level, however, the situation has shown little, if any, improvement in recent years. In the words of one Romani activist interviewed by the ERRC, "We live in the 21st Century: Women are abused in the street... infant mortality is high... illiteracy is high...

⁸ United States Department of State, Bureau of Democracy, Human Rights and Labour, Country Report on Human Rights Practices 2005: Ukraine, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>

⁹ Nina Karpachova, State Observance and Protection of Human Rights in Ukraine – First Annual Report of the State Commissioner for Human Rights, (Kiyv, 2000), http://www.ombudsman.kiev.ua/de1_zm.htm

¹⁰ United States Department of State, Bureau of Democracy, Human Rights and Labour, Country Report on Human Rights Practices 2005: Ukraine, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>

Roma are abused, tortured and humiliated by state and non-state actors and forced to take the blame for crimes they don't commit... the situation is bad in Ukraine.”¹¹

2.2 Legislative Framework

Current Ukrainian laws are not sufficient to adequately protect against or punish acts of racial discrimination. This lack of legal capacity has been noted by international observers for many years. These have voiced concerns with over the lack of any comprehensive anti-discrimination legislation, procedural problems and a lack of access by victims to redress and remedies. ERRC first noted this in its 1997 Country Report on Ukraine.¹² In 1999, the US State Department observed that the judiciary and the Government were unable to properly enforce the equality provisions in the Constitution.¹³

In 2001, CERD examined Ukraine's legislative framework and made the following recommendation to the government after finding existing legal protections and remedies against racial discrimination to be inadequate:

The Committee is concerned that national legislation does not contain sufficient provisions prohibiting discrimination on the grounds of race or ethnic or national origin in conformity with the requirements of the Convention. The Committee recommends that the State party take all appropriate legislative measures to ensure that the provisions of the Convention are fully reflected in domestic law. The Committee emphasizes the importance of adequately prohibiting and penalizing acts of racial segregation and discrimination whether they are committed by individuals or associations.¹⁴

In 2006, racial discrimination against Roma is still open and widespread throughout Ukraine, in large part because for the most part the legislative framework continues to allow it to go entirely unpunished. Although the Constitution and the Criminal Code include certain provisions that condemn the violation of principles of equality, there is no effective, comprehensive anti-discrimination legislation to make the on discrimination effective. The absence of any provisions in civil or administrative law, or in related regulations, to expressly prohibit non-criminal acts of discrimination acts as an open door for people to discriminate against others on virtually any grounds, be it race, gender, age, disability, sexuality, religion or other proscribed ground. There are in practice few or no procedural mechanisms in place for a victim of discrimination to lodge

¹¹ Information provided by ERRC partner Zhuzhana Duduchava in an interview on May 23, 2006.

¹² ERRC, *The Misery of Law: The Rights of Roma in the Transcarpatian Region of Ukraine*, Country Reports Series, No. 4, April 1997, pp. 73-78.

¹³ United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Report on Human Rights Practices 1999: Ukraine*, <http://www.state.gov/g/drl/rls/hrrpt/1999/367.htm>.

¹⁴ Office of the High Commissioner for Human Rights, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine*, 16/08/2001, A/56/18, para. 369.

an effective complaint, nor are there many legal opportunities for them to seek effective redress for grievances related to discrimination, including the extreme harm of racial discrimination.

2.2.1 Anti-Discrimination Provisions in Domestic Law in Ukraine

Legal protections against discrimination in ICERD areas as they currently exist in the Ukrainian domestic legal order for the most part are confined to the Constitution and the Criminal Code. Certain provisions are included in other areas of law, such as the Labour Code. These are entirely inadequate as transposition of the ICERD, and in a number if not all areas, individuals do not enjoy domestic law protections consistent with the commitments undertaken by the Ukrainian state in its ratification of the Convention.¹⁵ A draft bill to remedy major lacuna under domestic legislation in Ukraine has not yet been adopted by Parliament.

Article 24 of the Constitution declares that citizens have equal constitutional rights and freedoms and are equal before the law. Claims of superiority or the imposition of restrictions based on race, ethnicity, skin color, political, religious and other beliefs, gender, social status, wealth, place of residence, language, or other characteristics are unlawful. There is little substantial jurisprudence on discrimination to guide lawmakers and/or legal practitioners. Government institutions also have to date been unable or unwilling to make use of these constitutional protections to effectively protect vulnerable citizens from discrimination or to change patterns of systematic discriminatory behaviour in Ukrainian society. The protections and rights in the Constitution are primarily declaratory, and would need to be supplemented by statutory legislation to clearly define discrimination in accordance with international and European standards;¹⁶ to set out what

¹⁵ The Bill “On protection against racial, national and ethnic discrimination” (Hereafter “Pending Anti-Discrimination Bill”), pending before Ukrainian Parliament since late 2005, notes, in its explanatory provisions:

“One of the main causes for the spread of discrimination in Ukrainian society is that **all manifestations of discrimination in Ukraine essentially go unpunished**. Today, the provisions of laws that guarantee equality and freedom from discrimination are little more than declarations. The government is not able of ensue adherence to the principle of equality declared in Art. 24 of the Constitution of Ukraine, as government bodies do not have any real leverage to influence offenders.”

An English-language translation of the Pending Anti-Discrimination Bill is included herewith as an Appendix to this submission.

¹⁶ The European Union has adopted a number of legal measures which have significantly expanded the scope of anti-discrimination law in Europe, notably the following Directives: Directive 2000/43/EC “Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” (hereafter “Race Equality Directive”; Directive 2000/78/EC “Establishing a general framework for equal treatment in employment and occupation; and Directive 2002/73/EC “On the implementation of the principle of equal treatment for men and women as regards access to employment vocational training and promotion, and working conditions”, as well as a range of other gender discrimination-related law. The

unlawful activities fall within its scope; to specify what redress and remedy are available for victims of it; to identify responsible instances to which one might present a complaint of discrimination; and to detail procedural matters.

At present, the primary locus of the ban on discrimination as it exists in the Ukrainian domestic legal order, above and beyond the declaratory provisions of the Constitution, is the Ukrainian Criminal Code. Article 161 of the Criminal Code sets out that it is an offence to violate the principle of equality on the basis of race, nationality or religious beliefs.¹⁷ Article 67 identifies racial, national or religious enmity and hostility as specific aggravating circumstances. Neither, however, are effective as protective measures because (i) they set a number of thresholds too high to ensure that victims of discrimination can secure due remedy; (ii) in practice few if any victims of discrimination have ever managed to rely on these criminal law provisions to secure justice when they have been harmed by discrimination; (iii) as well as for other reasons.

The explanatory provisions of the Pending Anti-Discrimination Bill note a number of inadequacies of the current Ukrainian criminal law ban on discrimination, some of which indeed extend to any criminal law ban on discrimination, due to the nature of criminal law:

“The Criminal Code of Ukraine, Article 67 The Criminal Code establishes responsibility for violating the principle of equality on the basis of race, nationality or religious beliefs (Art. 161). However, this article is barely effective for three reasons:

- **Intent has to be proved.** The liability written into Art. 161 of the Criminal Code can be applied only if there is intent in actions that violate

Race Equality Directive bans and defines precisely no fewer than five distinct types of act: (i) direct discrimination; (ii) indirect discrimination; (iii) harassment (on racial grounds); (iv) victimization (following a complaint of racial discrimination); and (v) instructions to discriminate.

Ukraine is not a European Union Member State and is therefore not bound by European Union law. However the Union has made full transposition of the EU *acquis communautaire* a requirement of candidate countries for European Union membership. Ukraine is not yet an EU candidate countries, but its leadership has on a number of occasions evinced a desire that it become one, and that it harmonise its laws and policies with those of Europe. To note only one example, On February 23, 2005, in a speech before the European Parliament, President Yushchenko declared that, “My country today has embarked upon a path of new reforms... For us in Ukraine, our objective... is that [Ukraine] be shaped by the new standards and new values adopted in accordance with European standards and values. European integration is the only true path open to Ukraine... We have chosen our strategic and political path in that direction.” (President Viktor Yushchenko, February 23, 2005, Strasbourg, France: <http://www.europarl.europa.eu/omk/sipade3?L=EN&PUBREF=/EP//TEXT+CRE+20050223+ITEM008+DOC+XML+V0//EN&LEVEL=3&NAV=X>).

¹⁷ The Criminal Code of Ukraine, Article 161. This Article punishes: wilful actions inciting national, racial or religious enmity and hatred; humiliation of national honour and dignity, or the insult of citizens’ feelings in respect of their religious convictions; and any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based, inter alia, on “race”, colour of skin, political, religious and other convictions, ethnic and social origin, linguistic or other characteristics.

the principle of equality. Yet the particular nature of such offences makes it nearly impossible to prove intent.

- **Responsibility can be determined only for unlawful actions against Ukrainian nationals.** Similar actions against individuals who are not Ukrainian nationals or who cannot confirm their citizenship are not seen as an offence.

- **Only a narrow base of offences related to discrimination is covered by this Article.** Many offences against members of minorities that should be treated as crimes according to international conventions are not included in Ukraine’s Criminal Code”.

The Pending Anti-Discrimination Bill includes a table on the latter matter, noting a number of areas not covered by the ban on discrimination included in the current Ukrainian Criminal Code.¹⁸

Criminal law on its own is an ill-suited legal mechanism to address many types of discrimination because it requires victims to meet criminal law standards of proof. In a criminal law context, it is difficult if not impossible for complainants to present sufficient evidence of physical acts that would constitute a breach of their equality rights, evidence which is often in the possession of the defendant. Owning entirely the burden of proof deters many potential complainants from reporting instances of discrimination. Effective prosecution of such cases would require that an appropriate burden of proof be ensured under domestic law. This can be achieved by drawing an inference from facts presented and, where an inference of possible discrimination can be adduced, shifting the burden of proof shift to the defendant. Criminal law, however, does not easily allow for this. For this and other reasons, to ensure effective protection from discrimination, there is a need to adopt comprehensive anti-discrimination legislation in civil and administrative law. In the current situation in Ukraine, with no special legislative provisions to facilitate the process of proving discrimination, victims will have little chance of securing redress when equality rights – including the ban on racial discrimination – have been transgressed.

It is further difficult to imagine in what way criminal law might be appropriate to sanction acts of indirect discrimination, the explicit reference made to indirect discrimination in the current Ukrainian Criminal Code notwithstanding.¹⁹ It is likely that whatever definition may be guiding or otherwise governing the current Ukrainian Criminal Code ban, it is not in harmony with international and/or European definitions.²⁰

¹⁸ See Pending Anti-Discrimination Bill, p.33, included as an Appendix to this submission.

¹⁹ Article 161(1) of the Criminal Code refers to, “any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.”

²⁰ The EU Race Equality Directive for example defines indirect discrimination, at Article 2(2)(b) as “taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic

The criminal law ban on discrimination on its own or joined solely by a Constitutional ban is also inadequate to provide effective protection from discrimination in that it can only offer limited, and in many cases inappropriate penal remedies in the rare event of a successful claim. Violations of Article 161 carry with it heavy fines (up to 50 minimum wages), terms of up to two years of correctional labor, or incarceration for between two and five years.²¹ These remedies – particularly depriving the liberty of the perpetrator -- may be too severe to sanction commonplace and simple acts of direct discrimination (for example refusals of service in a bar), while they may be entirely inappropriate or otherwise inadequate as remedy in, for example, cases of school segregation.

Certain other provisions of law in related areas exist, such as declaratory provisions in the Labour Code.²² Procedural elements for rendering actionable this guarantee are missing. Also, the Labour Code would not address any matters outside the field of work and several related issues, and thus would not secure most of the areas in ICERD Articles 5 under a ban on racial discrimination. Finally, the Labour Code protections are evidently ineffective, due to the fact of massive systemic exclusion of Roma from work (see section 6.4 below).

Under Ukrainian law, victims of discrimination who choose not to pursue criminal or other claims may address their complaints to the Ukrainian Commissioner for Human Rights, who in turn can then present them to the Constitutional Court or other authorities. The effectiveness of this as a remedy is seriously in doubt, however. With virtually no means of making binding recommendations, no enforcement powers of its own, and operating with a very limited budget, this office has little capacity to do more than act as a reporting body.

The absence of comprehensive anti-discrimination legislation to supplement the existing inadequate criminal law ban with civil and administrative bans, procedures and remedies is the key feature of the current inadequate transposition of the ICERD ban into domestic law in Ukraine. There are no comprehensive civil and administrative anti-discrimination provisions covering discrimination in areas such as education, housing, access to public and social services and contractual relations between individuals and/or other entities, nor are there any effective mechanisms of enforcement and redress. Currently, there is a marked absence of legislative means by which public or private offending parties might be held accountable for acts of discrimination that fall outside the ambit of the Criminal Code, including a broad range of areas banned under the ICERD

origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

²¹ The Criminal Code of Ukraine, Article 161(1)-(3).

²² The Labour Code of Ukraine, Article 2-1 states that “Ukraine shall secure the equality of the labour rights of all citizens, regardless of their descent, social and material status, race, ethnicity, sex, tongue, political views, faith, character or nature of occupation, place of residence or other circumstances.”

Convention. Furthermore, Ukrainian legislation does not clearly account for the fact that entities other than individuals, such as businesses, institutions, and, most importantly, the public sector are also capable of committing acts of discrimination. It is unclear what penalties might be applied to such offenders. Administrative and criminal responsibility under Ukrainian laws in general look for fault in private individuals and therefore cannot effectively be applied to legal entities as a whole.

Beyond these gaps and weaknesses in law, victims of discrimination in Ukraine must overcome numerous other obstacles to protect their violated rights in court. Government-sponsored legal aid is generally not available to victims of discrimination. There is no body within the Ukrainian government whose mandate it is to provide assistance and support to victims from minority groups while their cases are under review by the courts. There is no guaranteed access to low-cost or free legal aid for impoverished representatives of minorities or other destitute individuals or groups,²³ thus making legal remedies financially inaccessible for many Roma. Court costs, lawyer fees and taxes make the pursuit of justice a highly luxurious endeavour for most. Furthermore, the complicated, unduly long and in many cases hostile nature of legal proceedings can also conspire to thwart justice in such cases. All of these provide strong disincentives for Roma to pursue legal redress for discrimination harms.

Thus, for a number of reasons including the foregoing, Ukrainian law- and policy-makers have not yet brought Ukraine into the most rudimentary compliance with the ICERD Article 2 requirement to “prohibit and bring to an end, by all appropriate means, including legislation [...] racial discrimination.”

As noted above, a draft comprehensive anti-discrimination bill, appended herewith, is currently pending before Ukrainian parliament. However, at present it has no significant backing and is not yet scheduled for debate. Unfortunately, as the CERD Committee will note, even if this bill is adopted in its present form into law, there will still be serious issues related to Ukraine’s compliance with its international law requirements in the field of non-discrimination. In particular:

- (1) The Pending Anti-Discrimination Bill lacks a definition of, or indeed any form of ban on indirect discrimination;
- (2) Of perhaps far greater concern, the definition of “discrimination” included in the Pending Anti-Discrimination Bill includes an absolute requirement to demonstrate intent, and is therefore at extreme odds with the ICERD Article 1(1) definition of racial discrimination.²⁴

²³ Indeed, the only individuals who can count on free legal aid are those who are involved in criminal proceedings and who do not speak the language of the courts.

²⁴ The Pending Anti-Discrimination Bill defines “discrimination” as “Any action or omission that expresses distinctions, restrictions or privileges on a racial, national or ethnic basis, provided such action or omission is intended to restrict or make impossible the recognition, application or expression of human rights and freedoms on an egalitarian basis;” (see Article 1, Pending Anti-Discrimination Bill).

The Ukrainian government should be urged, as a matter of the highest priority, to ensure that Parliament swiftly adopts a comprehensive anti-discrimination law. A suitable basis for such a law would be the Pending Anti-Discrimination Bill, provided Ukrainian legislators remedy the two issues noted above, and proceed to (1) add to the bill a definition of indirect discrimination in conformity with international and EU law standards and (2) delete from the Pending Anti-Discrimination Bill's definition of (direct) "discrimination" the phrase "provided such action or omission is intended to restrict or make impossible the recognition, application or expression of human rights and freedoms on an egalitarian basis". In order to avoid divergence between international and European legal standards on the one hand, and domestic law in Ukraine on the other, possible suitable and appropriate resolutions to the current inadequacies in the Pending Anti-Discrimination Bill's Article 1 definition of discrimination, would be:

- To adopt verbatim the wording of ICERD Article 1(1);
- To adopt verbatim the EU Race Equality Directive's five definitions of discrimination, including definitions of "direct discrimination" and "indirect discrimination";
- To adopt as a definition of discrimination the wording of the decision of the European Court of Human Rights in the matter of *Willis v. United Kingdom*.²⁵

3.0 Hate Speech

Communications and media legislation is one of the only bodies of law outside of the Constitution and the Criminal Code containing any provisions that bear some resemblance to anti-discrimination protections. Articles 46 and 47 of the Ukrainian Law on Information prohibit the use of public information to incite national and racial hatred and states that it is unlawful to distribute untrue information that dishonours a person. There is some room in Ukrainian legislation to sue for libel and claim "moral compensation" damages to protect the honour, dignity and business reputation of victims.²⁶

The ICERD definition of racial discrimination, as set out in ICERD Article 1(1) is "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

²⁵ The European Court of Human Rights held, in *Willis v. United Kingdom*, that "a difference of treatment is discriminatory ... if it 'has no objective and reasonable justification,' that is if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realized.'" (*Willis*, 35 EHRR 21 (2002), p. 559, § 39).

²⁶ See Articles 47, 48 and 49 of the Ukrainian Law on Information, Article 41 of the Ukrainian Law on Print Media in Ukraine, Article 1167 of the Civil Code of Ukraine, and decree of the Plenum of Supreme

Despite these, however, print media continues to contribute to and reinforce anti-Romani racist stereotypes by associating Romani people with crime, drugs and general, unspecified “dangers”. Journalists regularly warn the public of Roma and of the various dangers that they are associated with, often advising their readers to avoid, be wary of, or avoid outright any contact with Romani people. The scope of this is wide, ranging from images and text in primary school textbooks, to articles in newspapers.

The overall damage that such publications causes is incalculable. They reinforce racist stereotypes commonly held by the Ukrainian public and perpetuate a public discourse that is tolerant of such racial discrimination. This in turn reflects a permissive public environment that leaves open doors to violence and other forms of abuse of Roma. Furthermore, such openly racist public speech acts are greatly harmful to Roma communities themselves by encouraging an unconscious self-identification of Romani youth with negative stereotypes as well because they foster a general climate of fear among Roma.

3.1 Hate Speech in Education

From a very early age, children in Ukraine are taught that it is appropriate to adopt suspicious and unfavourable attitudes towards Roma. Part of their educational curriculum is devoted to teaching them to view any person of Romani descent with caution for being a potential criminal. Young children are encouraged to distinguish between people based on differences in cultural practices and physical features, and learn that it is appropriate to associate those traits with fear, danger and distrust. Above and beyond widespread folk stereotypes of Roma, frequently taught to children by their parents, such as them being drug traffickers, thieves and criminals in general, work-shy, dirty, unhealthy, and immoral, such views are at times officially promoted.

For example, on page 81 of *Osnovy Zdorovya* (“Basic Health”), a 4th grade textbook recommended by the Ministry of Science and published in 2004, children around the age of 10 are taught what to do when ‘strangers’ appear outside the door of their home. The picture accompanying the text reveals a white Ukrainian boy peering through the eyepiece in the door at a darker-skinned young girl who has her hands up pleading for something. Meanwhile, a large, menacing woman dressed in stereotypical ‘Gypsy’ clothing (headscarf, hoop earrings and flower-print dress) lurks in the shadows around the corner outside of the vision of the Ukrainian child. The text gives the following advice to children:

“do not open (the door) to unfamiliar people. Look at the child. What should the boy do? Why do you think so? If you see a woman or a child you do not know, don’t panic, call your neighbours, grandparents or your parents at work. Ask them for advice before opening the door. Call the police and speak loudly so that the people

Court on the judicial practice in cases of “moral damage compensation” dated March 31, 1995 and amended May 25, 2001.

outside the door can hear you. If you have no phone, call for help from your neighbours out your window.”²⁷

3.2 Hate Speech in the Media

Media in Ukraine publish material inciting racial discrimination, causing direct harms to minorities including Roma, and fostering pernicious stereotypes among the population at large. A media environment where openly discriminatory references to negative stereotypes surrounding Roma are tolerated and accepted reinforces the racist perspectives that are learned in youth. In the following examples, one can see the concerns learned by children regarding ‘strangers’ having matured into concrete beliefs about a linkage between Roma and crime, attitudes about labour and employment (they’ll never get jobs) and what is best for Roma (send them back to their caravans). Government inaction in the face of such acts constitutes complicity with such views. Some examples of recent cases follow:

- On March 24, 2006 *Selskiy Chas*, a Kiev-based newspaper founded by the Ministry of Agriculture, ran an article entitled, “Beware of Drug Trafficking” (“*Ostorozhno narkomania*”) that explicitly made the link between Romani ethnicity and drug dealing. The article, entitled “The Gypsy Factor,” was based on a statistical analysis provided to the journalist by the Counter-Narcotics Unit of the Ministry of Internal Affairs. The article states that,

“a colourful chapter in illegal drug trafficking is gypsy drug-crimes. The proof of this lies in the control, supervision and operative measures taken by the law enforcement authorities for the identification and neutralization of drug dealers of Roma nationality. According to the Counter-Narcotics Unit, gypsies usually involve drug users in their criminal activities and pay them with drugs. Usually, these people who work with Roma have no social networks and are dependant on these drug dealers. This is why they are often also exploited as domestic labourers in addition to dealing drugs. When these people are arrested, they usually take responsibility and admit their guilt and do not betray their bosses. It is common that Romani women are the ones who sell the drugs. When they are arrested they are often given a suspended sentence because Article 79 of the Criminal Code states that pregnant women or women who have children under 7 years of age cannot be punished with more than a suspended sentence... It almost looks as if this article [of the Criminal Code] was created especially for Romani women because that gives them the freedom to deal drugs without fear of being sentenced. You hardly find any Romani women without children or who are not pregnant... Usually the judges do not sentence these women with prison terms.”

- On April 27, 2005, “Your Chance”, a newspaper from the northern city of Sumy, Sumy oblast, published an article by Maxim Novikov entitled “Magyars in Sumy” that focused on a group of Roma who had arrived and settled in tents just outside the

²⁷ Pavlechko, L. P. ed., *Osnovy Zdorovya* (“Basic Health”), (Donetsk: Novaya Pechati, 2004) p. 81. This text was brought to the attention of ERRC by Aleksandr Mischiariakov, President of Amaro Deves.

Sumy town limits. In his analysis, Novikov writes that “everybody knows what the Roma do,” apparently suggesting that Roma are involved solely in criminal activity and never or rarely undertake gainful activity. According to Novikov, such camps appear next to Sumy every year and that the main occupation of their inhabitants is fortune-telling, begging and fraud or trickery and that these Roma–nomads increase the level of crime within the city. He warns his readers to be cautious, sarcastically stating that “wherever these [people] move, we want to warn you: rest assured, they are looking for ‘work’.”

- On October 6, 2004 “Levoberezhnaya” a local newspaper in the town of Zolotonosha, Cherkassy oblast, published an article entitled, “Militia warns: attention – burglary”. The article advised people not to engage in conversations with any Roma who they did not know personally. Earlier that year, on June 16, 2004, the same newspaper published an article titled, “Roma Invasions with Mournful Stories”, that advised the majority population not to let Roma into their homes, give them water, or show them the way if ask for directions. This was followed a week later on June 22 with an article warned readers about Roma who “produce false vodka. The newspaper is not known to have published such advice about any other nationalities.”²⁸

The ERRC is unaware of any instances in which any persons have been held formally or even informally accountable for published statements of this kind. The ERRC is similarly unaware of any occasion upon which a government official condemned such statements as degrading of persons or of the commonweal.

Finally, the State Party Report provided to the CERD as part of the current review of Ukraine’s ICERD compliance includes material which arguably infringes the ICERD’s Article 4 ban on propaganda promoting racial superiority and/or incitement to discrimination. The Government states, in the State Party Report, the following:

In many cases, we face outrageous facts of non-observation by the Roma of the basic rules of conduct, violations of community life’s laws... People do not know their rights, and, what is more surprising, even do not try to know them... It is not a singular case when parents in Romani families do not consider it necessary for their children to go through the medical check-ups, the observance of a calendar of vaccinations, etc. Also, these parents do not aspire to provide their children with education, even with an elementary one.²⁹

The foregoing speaks volumes about the government’s sense of justification for total inaction on all fronts in protecting the fundamental rights of Roma and acting positively to secure the rights in the ICERD Convention.

²⁸ Information provided by Ame Roma, a Zolotonosha-based Roma NGO.

²⁹ Eighteenth Periodic Report of States Parties Due in 2004: Ukraine, CERD/C/UKR/18, para. 87.

4.0 (In)Equality Before the Law and Racially Motivated Violence by Law Enforcement Officials

Police abuse of power has been extensively documented as one of the leading human rights issues for Ukraine ever since its independence in 1991.³⁰ Urging the Ukrainian government to take a more “structural approach” to this problem, Human Rights Watch in 2005 reported that “torture and ill-treatment continues to be a significant problem in police detention and... has resulted in permanent physical damage to many victims, and in the most severe cases, resulted in death. In the vast majority of cases, the perpetrators of torture are not investigated nor prosecuted for their crimes.”³¹ Roma and other ethnic minorities are particularly vulnerable because policing strategies and practices are often based on stereotypes that associate them with criminality.

Discrimination on the part of police and prosecutorial authorities denies Roma access to justice and equality before the law in several ways. At one extreme, Romani communities are significantly more policed than others, which subject Romani people more intensely to police investigations and all of the abuse that comes with them, than the majority population. Disproportionately greater adverse contact with the police on a regular basis greatly increases Romani vulnerability to extra-judicial punishment (often physical) with no little or proof of wrongdoing. Roma are often sentenced for crimes solely on the basis of confessions extracted by force, via cruel and degrading treatment by public officials. At the other extreme, there is abundant persuasive evidence to show that in cases where Romani people are the *victims* of violence or other crimes, rather than the *suspects*, that they are not provided equal consideration when it comes to police decisions to investigate. Ways are often found to prevent police resources from being allocated to such cases, either by closing cases prematurely or by ignoring complaints outright.

One indicator of the extent issues in this area is in willingness to file complaints against race-based and/or other abuses, including violent abuses, and rates of withdrawals of such complaints. In the course of the current three-year project currently undertaken by the ERRC and partners in Ukraine, with European Commission and Swedish government support, most persons reporting abuses have not been willing to bring complaints to the police. Of the approximately 50 persons who have undertaken police complaints with the assistance of the ERRC and partners, over half have subsequently withdrawn these.

³⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Ukrainian Government on the visit to Ukraine, CPT/Inf (2004) 34, p. 13.

³¹ Human Rights Watch, 2005 World Report, p. 442. <http://hrw.org/english/docs/2005/01/13/ukrain9884.htm>.

4.1 Compilation of Race-Based Identity Databases

The most compelling evidence of systemic racial discrimination in the Ukrainian criminal justice system lies with police investigatory practices that blatantly target Roma as a whole and subject entire communities to rigorous investigation, apparently entirely or primarily on the basis of racial profiling. The manner in which Ukrainian police authorities employ policing tools and methods clearly indicates that they hold the stereotypical presumption of an intrinsic connection between Roma ethnicity and criminality to be true enough to base entire policing strategies around them. The ERRC knows of no other country in the region where the police have made as concerted an effort as those in Ukraine to compile detailed identity databases including fingerprinting and photographic records of as many people as possible from one particular ethnic group. Such forced documentation of members of an ethnic community where there is no reasonable suspicion of criminal activity attributable to the individual concerned on the basis of compelling evidence is a flagrant and wanton violation of international norms.³²

Mandatory fingerprinting of Roma is a police practice that is common throughout Ukraine. The ERRC is not aware of any other ethnic or social group targeted in such a comprehensive manner. The following is one of several instances of the approach taken by the police.

- According to Romani Yag, on January 20, 2005, at approximately 6:00 AM, police officers, accompanied by members of the “Berkut” special police force wearing masks and carrying rubber and wooden truncheons, broke into the homes of nearly every Romani family in the Radvanka and Telman Street Romani neighbourhoods in Uzhgorod, Zakarpatia oblast, to round up the men and take their fingerprints. Police officers reportedly forcefully broke into the homes and upon entering ordered all teenage boys and adult men, including the elderly and ill to dress themselves and get on a waiting bus. When challenged by one of the Romani men who asked for an explanation, one of the police officers replied, “If you fail to get dressed before I count to three, you will get what you deserve for not complying.” The officer then beat the man when he did not move quickly enough. When another man demanded to know the reason for the raid, one of the officers said that, “This raid is for ‘processing’ Gypsies”. Approximately forty Romani men were taken to the Uzhgorod City Police Station and were beaten by officers with truncheons as they entered the building. Once inside, the Romani men were finger- and hand-printed with some officers reportedly even examining their mouths and teeth. On January 20, Romani Yag visited the chief of the Uzhgorod City Police Station and wrote a letter expressing its concern to the head of Zakarpatia regional police. On February 17, 2005, Romani Yag received a letter from the head of the regional police, notifying

³² Including but not necessarily limited to ICERD Article 5 (a,b); International Covenant on Civil and Political Rights (ICCPR), Article 9(1); European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 5(1)(c).

Romani Yag that an internal investigation found all actions of the police in the raid on January 20 to have been lawful.³³

This event is not isolated or unique to Uzhgorod. Police in other Ukrainian localities and regions use similar practices. Between March and April 2005, Romani people, regardless of age and gender, were detained on a mass scale throughout Chernihiv oblast and forcibly taken to police stations and fingerprinted. In April 2006, in one town in Sumy oblast, the police conducted warrant-less mass searches of almost every home of the local Romani community. Many Roma were arrested without reason or explanation. The police took fingerprints, photo and video records of all of those arrested. All of the homes targeted and all of the people arrested were Roma.³⁴

International observers have noted this practice repeatedly. ERRC first observed the practice in its 1997 *Country Report on Ukraine*, when police officers in Uzhgorod confirmed the practice, defending it as a “prophylactic” measure to combat crime. Roma were targeted as potential criminals, therefore, one police officer argued, the measures were a response to a social problem, not a racial one.³⁵ It appears that such thinking continues to guide police tactics almost a decade later. Other international bodies have reported on the issue. In 1999 and 2002, for instance, the European Commission Against Racism and Intolerance expressed concern with Ukrainian police’s race-based policing tactics.³⁶ Mass round-ups for documentation purposes together with the mass searches of Roma communities described below not only violate international norms against explicit racist policing, but even the most basic rights to respect for one’s private life.³⁷

4.2 Mass Searches

The widely-held stereotype in Ukraine that Romani people are associated with drug trafficking has often been the cause behind arbitrary mass searches of Romani neighbourhoods by Ukrainian authorities. Romani communities are regularly subjected to warrant-less mass searches when the police, acting on scant information, have no suspects or leads that would otherwise preclude action. The Ukrainian Constitution does not effectively protect citizens from such searches. Article 30 declares that unwarranted intrusions into homes or the confiscation of property without the substantiated court orders are unlawful, but that this protection may be overridden by authorities in “urgent

³³ Case information provided by Romani Yag. For more details on this case, please see <http://www.errc.org/cikk.php?cikk=2203&archiv=1>.

³⁴ Information provided ERRC partner Union of Roma Culture, based in Sumy.

³⁵ European Roma Right Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Report Series No. 4, April 1997, pp. 26-28.

³⁶ ECRI, *Report on Ukraine*, CRI (99) 10, 13 March, 1999, p. 15; *Second Report on Ukraine*, CRI (2002) 23, 23 July, 2002, para. 58.

³⁷ ICCPR, Article 17(1,2); ECHR, Article 8.

cases related to the preservation of human life and property or to the direct pursuit of persons suspected of committing a crime.” Police are thus relatively free to conduct racially motivated or race-influence mass searches under a veneer of legality, and on any documented occasions police authorities have in fact violently raided Romani homes and communities on these pretexts. For example, on March 8, 2004, Ukrainian officials undertook a violent raid in a Romani community in Chernihiv oblast, ostensibly to uncover narcotic substances. There was no indication that the police were looking for specific individuals in connection with the suspected drugs, but they rather targeted the entire community as suspect.³⁸ Often, police will conduct searches with no explanation, such as on October 19, 2005, when a group of policemen forced their way into the home of Vasilij Lakatosh. Without identifying themselves and with no warrants or explanation, the police gathered the family together, sent them outside onto the street while they searched the house, verbally abusing and threatening them at the same time. Finding nothing, they left shortly thereafter.³⁹

Police have also evidently used such searches as a mode of intimidating human rights defenders. For example, on June 19, 2006, the ERRC sent a letter to the Ukrainian Prime Minister, urging action after police arbitrarily searched in detail around 9AM on June 13 the house of Mr. Volodimir Bambula of the Zolotonosha-based NGO Ame Roma, one of the partner organisations in the ongoing project involving the ERRC and Ukrainian partners noted above. Eight officers reportedly took part in the search, while a further unknown number remained outside in the street. Police evidently objected to Mr. Bambula’s human rights activities. The pretext for the search was a killing in the town, for which there is reportedly no evidence indicating Mr. Bambula’s involvement.

4.3 Physical Abuse / Torture

In 2000, Ukraine’s first parliament-appointed Commissioner for Human Rights published her first report and was blunt in her assessment of the Ukraine’s human rights record regarding torture and prisoner abuse. Stating that the majority of appeals to her office by citizens concerned offences committed by state authorities, she added that,

The analysis of the appeals to the Commissioner for Human Rights proves that the largest number of violation of rights through torture occurs during the detention of people and investigation. Citizens, NGOs and the mass media communicate such facts to the Commissioner almost every day... Although there are constitutional rules on the inviolability of the person and respective provisions are contained in the Criminal Code and the Code of Criminal Procedure, the mechanism

³⁸ Case information provided by Mr. Aleksandr Movchan, legal counsel for Romani Yag.

³⁹ Case information provided by the family’s lawyer, Mr. Aleksandr Movchan. On behalf of his client, Mr. Movchan submitted a complaint to the regional office of the Ministry of Interior Affairs. In their written response to the complaint, the police refused to initiate any investigation against the perpetrators and provided supporting statistics about crimes committed by Roma, stating that almost every second Roma is a potential criminal. With assistance from ERRC, Mr. Movchan has submitted an official complaint to the Ministry of Internal Affairs, pending which he will supervise the criminal investigation.

of their exercise is ineffective... A joint study by the Commissioner and public prosecution bodies on compliance with citizens' constitutional rights and freedoms by employees of the Ministry of Internal Affairs showed that in the overwhelming majority of oblasts physical violence and degrading treatment of citizens are practiced by the militia on point duty, by precinct inspectors, highway patrol militia and employees of criminal investigation departments.⁴⁰

In 2005, five years into her mandate, the Commissioner reported that torture and ill-treatment in police detention continued to be widespread. Her office received 1,518 complaints about torture and ill-treatment at the hands of the police in 2003 alone while the Ministry of Internal Affairs reportedly received 32,296 complaints about police mistreatment in 2002 and 2003.⁴¹

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Ukraine in 1998, 2000 and 2002 and found that little had changed over the years. In its 2002 report it observed that,

In light of the information at its disposal, the CPT can only reach the same conclusion as it had in 1998 and 2000, namely that persons deprived of their liberty by the Militia run a significant risk of being physically ill-treated at the time of their apprehension and/or while in the custody of the Militia (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture.⁴²

Since the elections and change in Presidential administration in 2004-05, the government appears to be willing to acknowledge that this problem exists and to pay more attention to it than its predecessor. It is too early to know how much of a positive impact high-level intentions will have for Roma people in the future. What is clear, though, is that Roma continue to be subjected to these abuses. Generalised intense anti-Romani sentiment prevailing also in the police services, as well as the absence of effective institutional protections, has exacerbated this problem by giving police a *carte blanche* to abuse their powers with even more impunity than they do with other Ukrainian citizens. A non-exhaustive list of recently-documented cases of extreme abuse of Roma by police officials follows:

⁴⁰ Nina Karpachova, State Observance and Protection of Human Rights in Ukraine – First Annual Report of the State Commissioner for Human Rights, (Kiyv, 2000) http://www.ombudsman.kiev.ua/de_04_4.htm

⁴¹ Amnesty International, Ukraine: Time for Action: Torture and ill-treatment in police detention, EUR 50/004/2005, <http://web.amnesty.org/library/index/engEUR500042005>

⁴² Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002, CPT/Inf (2004) 34, p. 18, para. 20. The CPT has yet to release its report on its 2004 visit.

- In January 2006, P.S.,⁴³ a teenage Romani youth, was detained by two policemen while walking on the street in his town in Odessa oblast. The police identified themselves, took him into custody and escorted him to the local police station. Once there the police performed an identity check on him, searched him and then asked him to identify others. Shortly after this, police officers drove him 20 km outside of the city and abandoned him on the side of the road, forcing him to walk back to town on his own in freezing -20 degree weather. P.S. has decided to not pursue legal action against the authorities.⁴⁴
- In April 2005, Mr. I.P. was taken into custody suspected of having stolen a horse in his village in Poltava oblast. The woman who brought the theft to the attention of the police specifically said that Mr. I.P. could not have been the thief as he had arranged her purchase of the horse in the first place and was well known to her. Nevertheless, the regional court immediately ordered that he be taken into guarded custody. Although the horse was located two days after the arrest in another village, Mr. I.P. was held in custody for 14 days, during which time he was beaten repeatedly and taunted with derogatory remarks and threats such as, “You Gypsies - I will exterminate all of you!” Mr. I.P. was allowed no contact with his relatives and was not told of the reasons for his detention. Mr. I.P. was eventually released after a sustained effort on the part of his family, neighbours and a Romani human rights NGO. Mr. I.P. chose not to file a complaint for moral and material damages in order to avoid retaliatory attack.⁴⁵
- During one night in April 2003, several uniformed police officers forcibly entered the house of Mr. V.N., a 32-year old Romani man, in Chernigiv oblast. Providing no warrant nor explanation, the police dragged Mr. V.N. out of his home and threw him into a waiting police car. His wife and relatives later learned that he had been sent a police station in another town where he was detained for the next two nights. While in custody he was severely beaten by police officers (whom he later was able to identify by name) who unsuccessfully tried to force him to sign a confession to a crime of which he had no prior knowledge. In addition to the beating, these police officers repeatedly used plastic bags to suffocate Mr. V.N., causing him to faint several times during the ordeal. Mr. V.N. was eventually released, but had to be immediately hospitalized because of the injuries he had sustained while in custody. He remained in the care of the local city hospital for three weeks 3 having suffered closed cranial trauma and a cerebral concussion. Mr. V. N. filed several complaints with the regional prosecutor, who eventually launched a criminal investigation into the matter.

⁴³ In some instances in this submission, the name of victims, witnesses or others has been withheld, either at the request of the person concerned, or because the ERRC has taken an independent decision not to reveal the identity of the person concerned. The ERRC is prepared to release names if the interests of justice so require.

⁴⁴ Case information provided by Aleksandr Movchan, legal counsel for Romani Yag and the ERRC.

⁴⁵ Case information provided by I.P.’s lawyer, Mr. Vadym Akimenko, provided by the ERRC.

On May 5, however, once the case was sent to court, the prosecutor's office of Sumy oblast requested that the case be closed and the case was dismissed.⁴⁶

- In December 2004, Y.Z., a 12-year-old Romani boy, was assaulted and beaten by a police officer in his town in Poltava oblast after the boy after having allegedly pulled a non-Romani girl's hair earlier in the day. At approximately one o'clock in the morning, Police Major Y.P of the municipal police station burst into the house where he was staying, struck him twice in the face before kicking him in the head and body after he had been knocked down. A relative who stepped in to protect the boy was punched twice. The police officer then used a knife to slash the tires of two bicycles found in the yard of the house. Y.Z. sustained a concussion, haematoma of the skull, numerous abrasions and bruises from the attack and was treated at the city Hospital's children's traumatic in-patient department for sixteen days following the attack. A forensic medical examination taken on January 13, 2005 revealed that the boy had received physical injuries that were certain to cause long-term health disorders. Criminal proceedings only commenced in February 2005 after an application was filed with the Prosecutor-General of Ukraine. Attempts to launch criminal proceedings at the local level were made impossible by regional prosecutors' extreme delays and reluctance to investigate. Once the claim was filed with the Prosecutor-General however, criminal proceedings began immediately and the policeman in question was transferred to another district. The case went to trial on October 6, 2005 and the outcome is still pending.⁴⁷
- According to the testimony of Mr. Jurij Fedorchenko, at approximately 7:30 AM on October 28, 2002, while leaving his house while the rest of the family was sleeping, he was confronted by three men, including Police Major Ivanov of the Kryukov area Police Department. The three men shoved Federchenko inside, sprinkled a flammable liquid throughout the house, and set it on fire. They then fled, barring the door from outside. Shortly afterwards, there was a large explosion, blowing both the door and Fedorchenko outside. The attack was in alleged retaliation for failing to pay a bribe to the police. Five members of the Fedorchenko family were admitted to hospital in Malaya Kahnivka, suffering from extensive burns and smoke inhalation. Zukhra Fedorchenko suffered burns to 65 percent of her body and died two days later. 6-year-old Snezhana Fedorchenko died 40 minutes after arrival and 3-year-old Misha Fedorchenko died the next day. Two other family members - 25-year-old Vladimir Fedorchenko, Zukhra's husband, and their 6-year-old son Jura - were found dead in the house. Zukhra's brother, 15-year-old Takhar, suffered burns to 70 percent of his body, and 50-year-old Jurij Fedorchenko suffered burns to 18 percent of his body, but both survived. In the weeks following the incident, both prosecutorial officials and the media reportedly denied any police involvement in the arson. Local counsel filed several complaints with the prosecution authorities asking them to investigate Ivanov's involvement in the arson attack. Despite frequent appeals from the lawyer

⁴⁶ Case information from Mr. V.N.'s lawyer, provided by the ERRC, Ms. Maria Ivanova.

⁴⁷ Case information from Mr. Vitalij Pedorych, lawyer for the claimant provided by the ERRC.

and Fedorchenko's identification of Ivanov in a line-up, the Ukrainian prosecuting authorities have failed to take any concrete steps to further investigate or charge Ivanov. On June 30, 2003, the ERRC filed an application with the European Court of Human Rights in Strasbourg against the Republic of Ukraine and to date is still pending.

Further recent cases of physical abuse by police taking place in June 2006 have been reported to the ERRC in a number of regions of Ukraine.

In a speech to the Ukrainian Ministry of Internal Affairs in 2005, President Yushchenko demanded that the Ministry “make sure that within six months nobody will be able to use the word ‘torture’... I would like you to understand that the people [in prisons and in custody] are citizens of Ukraine, not people from the moon, not animals.”⁴⁸ For Ukrainian Roma, the double burden of being policed by law enforcement bodies that have a predilection for excessive violence as well as being a dangerously stigmatized ethnic minority is a heavy one. Whether President Yushchenko’s desires and efforts to protect individuals from police abuse will extend to Roma is not yet clear. To date, these exhortations have proven ineffective.

4.4 Presumption of Guilt

Often pre-trial abuse of Roma during detention is based on race-based presumptions of the guilt of the suspects. Between 2003 and 2006, ERRC and its partners have documented a number of cases of physical abuse of detained Romani suspects where law enforcement officers, without evidence, prematurely draw conclusions of the culpability of the suspect and search for evidence to support this conclusion. In the absence of direct or conclusive evidence, police officers often exert physical and psychological pressure to force suspects to sign confessions to incriminate themselves. The frequent use of offensive, racist language when dealing with Roma suspects clearly indicates that race bias is an active part of the police’s investigative procedures. In some localities, standard methods for investigating certain categories of crime – such as petty theft – involve detaining a random assortment of Romani males and holding them, often physically abusing them in the process, until one confesses. Example of racially discriminatory and/or otherwise abusive detention practices by Ukrainian authorities where Roma are concerned follow:

- In August 2005, at about 6 PM, two Romani men, P.A. and his cousin M.N. were detained by police in their hometown in Poltava oblast. P.A. later revealed that he was arrested after his non-Romani girlfriend complained to her friend, a police

⁴⁸ Pro UA website, 18 July, 2005, "Yushchenko napomnil MVD, chto v izolyatorakh sidyat ukrainsy i ne zhivotnye", taken from Amnesty International, Ukraine: Time for Action: Torture and ill-treatment in police detention, EUR 50/004/2005, <http://web.amnesty.org/library/index/engEUR500042005>

officer, that he had sold one of her gold rings to settle a debt without her consent. She was encouraged to file a report, which she did, whereupon the same police officer, together with another police officer searched for and eventually arrested P.A. and M.N. According to the parents of P.A. as well as according to the testimony of a few neighbours who observed the arrest, the two Romani men were forcibly pulled out of their car, handcuffed, pushed forcibly into the police car, and taken to the district police station. No explanation or reason for the arrest was given. At the police station, the two men were placed in separate rooms. M.N. was released later that evening while P.A. was taken for interrogation. This consisted of severe beatings with truncheons, suffocation using a gas mask, and demands that he confess to having stolen money and a mobile phone. Passing in and out of consciousness and unable to stand the pain, P.A. eventually agreed to sign the confession. Later that evening, he was taken to another police station in another town, where the police chief and the judge in charge of his case immediately called for an ambulance upon seeing the extent of his injuries. The woman who filed the complaint said that she never accused him of stealing money or a mobile phone, only of selling her ring. Those original charges were dropped the day following P.A.'s arrest, once his parents paid off his debt to the woman in question. Several days following the arrest, one of the two police officers reportedly approached P.A.'s father and threatened to close a local business employing Roma if any local newspaper wrote about the incident. Regional prosecutors proved to be extremely reluctant to investigate and pursue a criminal investigation against the police officers in question. The investigation was opened and closed prematurely twice until December 2005 when the Prosecutor-General of Ukraine ordered that the case be re-opened and investigated for the third time.⁴⁹

- Mr. S.N., a Romani man from the Zakarpatia oblast, solicited the assistance of a Romani NGO after being wrongfully accused of a theft in May 2005. Two non-Romani men approached him and proposed trading his motorcycle for a cheaper motorcycle and some scrap metal. Mr. S.N. agreed and asked for the whereabouts of this scrap metal. He was informed that the scrap metal was an old industrial engine located in the courtyard of an old farm and that it had been pre-arranged with the owners of the farm to remove it. The two men subsequently delivered the engine to S.N.'s home. Shortly thereafter, several policemen arrived and conducted a search of S.N.'s property, suspecting him of possessing what he then learned was a stolen engine. Upon finding the engine, the police filed a report, confiscated the engine and immediately commenced criminal proceedings against S.N. despite his pleas of his innocence. The records of his police interrogation erroneously declare that S.N. had an attorney present when he had none and the records were signed by somebody else.⁵⁰

⁴⁹ Case information from Mr. Vadim Akimenko, Mr. P. A.'s lawyer, provided by the ERRRC.

⁵⁰ Case information from Mr. S.N.'s lawyer, provided by the ERRRC and Romani Yag, Mr. Aleksandr Movchan.

- On February 23, 2005 Mr. V.M. and his relative Mr. G.P. were stopped by two police officers in plain clothes while riding in a farm cart, ordered to get into a waiting car and were then driven to the local police station. Once there, they were locked in a cell and not allowed to speak to each other. At one point, two persons entered the cell, one of them with bruises on his face, who pointed at V.M., and stated that he was the one who beat and stole money from him. V.M. denied the allegation, saying that it was the first time he had ever seen this man, but the police ignored his pleas and once releasing his relative, the policemen began to beat him. V.M., being handcuffed at the time, had little chance to protect himself. He was later hung from a metal pipe and the beaten all over his legs and feet. During this time, the policemen repeatedly cursed V.M., saying things such as, “You are a “Gypsy” and “You are lying to us. We will kill you and nobody will help you.” They then demanded that he confess to robbing the complainant. Unable to endure the pain of his injuries, V.M. agreed to do so and he signed some papers that were put before him, despite being illiterate and having no knowledge of what was written on them. He was subsequently released. V.M.’s attorney has since filed a criminal complaint with the regional prosecutor’s office and the case is still pending.⁵¹

The extreme social and economic disadvantage of Roma in Ukraine along with general societal stigmatization and the absence of Roma from the political arena have made Roma particularly vulnerable to illegal acts by law enforcement officials. Roma are particularly vulnerable to often violent policing practices because of prevalent stereotypes of criminality and drug trafficking that are widely-held by law enforcement officials. Such stereotyping results in ubiquitous racial profiling practices by the police where ethnicity is used as substantive criteria to place particular groups under suspicion. In a cruel circular logic, such racial prejudice opens the door to further ill-treatment of Roma suspects, who are seen as legitimate targets because of their ethnic origins. Social pressures on police to fight endemic crime encourage law enforcement bodies to make use of brutal investigative practices against those who are powerless to prevent it

4.5 Failure to Investigate Complaints

When Roma are victims of crimes, they are commonly denied protection by police authorities. When confronted with Roma complainants who are seeking protection or redress, the police often choose to either not believe them or simply not expend resources in investigating them.

- On November 5, 2004 at 8:30 in the morning in the market of the village of Zolotonikovo, Mr. R.L. struck a Romani woman, Ms. R.S., with an automobile. R.S. suffered an internal compound fracture to her right foot as a result. Witnesses to the

⁵¹ Case information from Mr. V.M.’s lawyer, provided by the ERRC and Romani Yag, Mr. Aleksandr Movchan.

accident called for an ambulance and she was taken to hospital where she was given a full examination and treated. The following day the doctors informed the police about the accident. An official police report calling for the arrest of the perpetrator was not filed until a full ten days after the incident. The delay in the case was directly linked to the fact that R.S.'s Romani ethnicity encouraged officials to downplay the seriousness of the incident. One investigator working on the case reportedly remarked to the victim, "that [the broken leg] will heal fast, Gypsies are used to it". It was only after R.S.'s attorney sent a letter to the regional prosecutor demanding that action be taken, that documents were delivered to the court's medical experts to determine the extent and nature of the victim's injuries. The location of the incident was later investigated without contacting the victim. The case has been delayed as the accused has since been called up for military service.⁵²

- At around 16:00 in January 2004, 15-year-old V.R. lost control while driving his mother's Volkswagen Passat in the town of Zolotonosha and hit two female Romani pedestrians, Ms. K.R. and Ms. V.T. Ms. K.R. died at the scene of the accident and Ms. V.T. was rushed to the hospital with multiple bone fractures. A month later, on February 16, a criminal case was started against V.R., with V.T. and the family of K.R. suing for both material and punitive damages. After a preliminary investigation by the regional prosecutor, the chief of police closed the case in July 2004, citing a lack of evidence. The case was reopened shortly thereafter, when a formal complaint was sent to the regional prosecutor, arguing that the case had been unlawfully and prematurely closed due to the Romani ethnicity of the victims and noting the fact that the officials in charge of the case were apparently friends with the parents of the driver. A further letter of complaint was sent to the Minister of Internal Affairs, after which regional prosecutors met with the lawyers for V.T. and the family of K.R., assuring them that the case would be handled properly. An appeal and two official complaints have been filed with the Ministry of Internal Affairs.⁵³

4.6 Police Inaction in the Face of Mob Violence

Instances of community violence against Roma have taken place in a number of communities in Ukraine in recent years.⁵⁴ Such attacks can take the form of random

⁵² Case summary based on information from ERRC partner Ame Roma as well as information provided by Ms. R.S.'s attorney, Mr. Vladimir Bakaj.

⁵³ Case information from Mr. Vladimir Bakaj, legal counsel for ERRC partner Ame Roma, a Zolotonosha-based Roma NGO who is representing Ms. V. T. ERRC has provided material and expert support in the case.

⁵⁴ A number of further attacks are summarised below. Cases included in this submission include only those occurring since the previous review of Ukraine by CERD. A number of cases of massive community violence, taking place in the 1990s and previously detailed to CERD remain to date entirely without judicial remedy. Further information on these cases is available by contacting the offices of the ERRC.

violence against individual homes or pogrom-like assaults against entire communities. The purposes behind such violence are manifold, be they to terrorize, to force a move out of a neighbourhood, or vigilante acts of vengeance for crimes associated with Roma. When such mass crimes occur, police rarely interfere to prevent perpetrators from carrying out these violent attacks. This lack of protection creates an environment in which people are free to violate rights secured by the Convention and do so with impunity. Through its partners as well as independently, the ERRC has documented a number of cases where police officers not only were present at the time of violent mob attacks, but that their blatant disinterest in interfering incited assailants to cause even greater damage.

- According to ERRC research, from January 10, 2004 until January 2, 2005, Ms Olena Stefanko's family was the subject of systemic attacks of violence by non-Romani inhabitants of the village of Komjaty in Zakarpattia oblast. On August 10, 2004 around 8:00 PM several people attacked the Stefanko family home and broke the eardrum of Ms Stefanko's son. Calls made to the police by the family were ignored. The second attack occurred in the evening of November 21, 2004. The attackers severely damaged the house, including the fence and the electrical system leaving the family with no electricity until it was fixed at their own cost. On January 2, 2005, at about 12:00 PM. Ms Stefanko was in her house with three of her children when six persons broke down her gate while verbally assaulting and threatening to kill Ms Stefanko and her children. The attackers also threatened to rape the females of the family. A shot was fired but none of the members of the family were injured. On January 3, 2005 Ms Stefanko submitted a written application to Vynogradiv police reporting the incident. Two days later on January 5, however, the family was informed that Police Junior V. Kovbasko refused to begin a criminal investigation. With the assistance of the ERRC a lawyer has been appointed to represent Ms Stefanko in action against police treatment of the family as well as the police's failure to initiate criminal proceedings. Results of an internal investigation launched by the Minister of Internal Affairs are pending as of July 4, 2005.⁵⁵
- In September 2002, at around one o'clock in the morning, a fight broke out between a large number of ethnic Ukrainian and Romani youths in the village of Petrovka in the Odessa oblast, near a local café. During the fight, two Romani men severely beat a 17-year-old Ukrainian boy, who later died from his injuries. The two men were held criminally liable for the death and are now serving time in prison. The funeral of the victim on incited a group of local residents to take measures to expel the Romani residents of the village. Intimidated by the threats and violence from their neighbours, and with their utilities cut off by the local representative of state utilities, the 19 Romani families residing in the village fled their homes and the village. The local police authorities, fully aware of the situation, did nothing to prevent the violence, and in some cases assisted in the expulsion of the families from the village. After the Romani families had fled, their homes were robbed and set on fire. Several days later, when a few of those who fled returned to the village, they were advised by the local

⁵⁵ Case information from Mr. Aleksandr Movchan, Ms. Stefanko's lawyer, provided by the ERRC and Romani Yag. For more details on the case, see http://www.errc.org/Archivum_index.php

authorities to move away to a different region. The families who fled their homes currently have no permanent residences and no documents, which means that nobody in the community can access state healthcare, no children can attend primary school, and none of the elderly can receive their pensions. With the assistance of Ame Roma, a Roma NGO and an ERRC partner, applications were collected from 19 victims of the attack and sent to the regional prosecutor's office requesting that a criminal investigation be initiated. To date, the case is pending in the court of first instance. Mr. Yaschuk, attorney for the 19 complainants, sent letters of complaint to the Prosecutor-General of Ukraine, the President of Ukraine and the Minister of Internal Affairs, which ultimately resulted in a written promise by the Odessa regional prosecutor's office to supervise the investigation. To date, there has been no justice in the case.⁵⁶

4.7 Extortion

Anti-Romani sentiment in Ukraine, stereotypes about Romani criminality and the absence of viable legal remedies or other forms of protection, leave Roma people defenceless in the face of law enforcement officials who try to extort money or services from them. Extortion often comes in the form of threats of bringing criminal charges, incarceration and/or physical violence if victims do not pay a certain amount of cash to win their release. Some recent examples of various extortion practices follow:

- On May 19, 2006 around 12 noon, a Roma man, Mr. Yuri Roznachuk was arrested by three police officers (two in uniform, one plainclothes) in the centre of the town of Rakhiv, Zakarpatia oblast, and driven to a police station in an unmarked car. Mr. Roznachuk was given no explanation on what charges he was being arrested for and was forced to abandon his open car in the middle of the city. En route to the station, he repeatedly demanded an explanation from the arresting officers until one of them replied, "You dirty Gypsy, are you going teach us how to drive?" Once at the police station, Mr. Roznachuk asked the police to let him go saying that he had not committed any crimes. In response, four police officers began to beat him violently on his head, feet, chest, stomach and feet for about 20 minutes. He was searched and the policemen confiscated the equivalent of 3,000 USD in cash that they found on his person. Observing one of the policemen placing the money in his own pocket, Mr. Roznachuk demanded that his money be returned, at which point the policemen began to beat him again. The money belonged to Mr. Roznachuk's mother who had just sold her apartment, and at the time of the arrest he had been on his way to buy materials to laminate the floor with. When his mother and brother went to the police station to find him, they saw Mr. Roznachuk's condition and immediately submitted a complaint to the Rakhiv district prosecutor, Mr. Konar. Shortly thereafter, Mr. Roznachuk was ordered to come to the prosecutor's office for a medical expert

⁵⁶ Case information provided by ERRC partner Ame Roma, and Mr. Yuri Yaschuk, attorney for the 19 claimants.

examination to determine the gravity of the injuries he received while in custody. The expert concluded was that Roznachuk received 'light' injuries to his face, chest and right shoulder and the investigation into the complaint was dropped. On May 22, Mr. Roznachuk's lawyer submitted a further complaint, this time to the Zakarpatia oblast prosecutor. On May 30 Mr. Roznachuk was informed that he had been found guilty of an infringement of Article 185 of the Ukrainian Code of Administrative Offences. The police arrest report claimed that the arrest had taken place earlier than had been the case and did not have Mr. Roznachuk's signature. On June 2, the oblast prosecutor ordered the Rakhiv district prosecutor to investigate the complaint and report to the oblast prosecutor. Mr. Roznachuk approached Romani Yag for legal assistance. Currently, both the alleged offence and the complaint of police abuse are under investigation.⁵⁷

- In October 2004, a group of seven Roma people sought legal assistance from a local legal aid centre after various police officers from the "Illegal Drug Trafficking" unit of the municipal police department systematically and repeatedly harassed them from July to October 2004 in Zhytomyr oblast. The most serious instance came when drugs were planted in the car of Y.Z., which then led to the arrest of his nephew and K. A., one of the seven complainants. Threatened with physical violence and criminal charges for drug possession, the two men submitted to the demands of the arresting police officers and paid them the equivalent of 1,500 USD. In return, they were released from custody.⁵⁸
- According to testimony provided by Mr. Petro Sandulenko, Mr. Josip Sandulenko and Mr. Vladimir Markovskij to the Korosten-based Romani organization Romano Kham, on July 9, 2004, four military officers on July 9 stopped Mr. Sandulenko and Mr. Markovskij, who were on their way to weigh their seven horses at the outskirts of the village of Ivanika, Zhytomyr oblast, prior to selling them. The officers impounded the vehicle holding the horses on suspicion that the horses were stolen and drove them to the District Police Station despite protests by Mr. Sandulenko and Mr. Markovskij that they legally owned the horses. Mr. Sandulenko, Mr. Markovskij and Mr. Markovskij's 27-year-old son Ruslan brought ownership papers for the horses to the District Police Department later that day. The police refused to listen and instead detained the men for twenty-four hours without charge or even an explanation. The following day, while still in custody, police officers informed Mr. Markovskij and Mr. Sandulenko that a woman had filed a complaint that two of her horses had been stolen. After being released from custody, Mr. Markovskij reportedly returned to the District Police Station with the person from whom he had bought the horses to corroborate his and Mr. Sandulenko's claims. On July 11, officers reportedly demanded that Mr. Sandulenko to pay 7,000 Ukrainian hryvnya (approximately 1,400

⁵⁷ Case information provided by Mr. Aleksandr Movchan, legal counsel for Romani Yag. The ERRC has provided funding to cover the legal costs of the case.

⁵⁸ Case information provided by Mr. Aleksandr Movchan, legal counsel for Romani Yag and attorney for one of the seven victims, the only one to step forward to make a formal complaint. The ERRC has provided funding to cover the legal costs of the case.

USD) for the return of the horses. The men managed to gather 4,000 Ukrainian hryvnya (approximately 800 USD), which they paid as a “voluntary contribution” to the police department. When Mr Markovskij then went to pick up the horses officers demanded he make an additional “voluntarily contribution” of 350 hryvnya (approximately 70 USD) to a senior officer at the station. Only on July 12 were the horses finally returned to Mr Sandulenko and Mr Markovskij after three days of no food or water. The ERRC and Romani Yag, together with lawyer Aleksandr Movchan, are pursuing legal action against the officers involved in the case.⁵⁹

Finally, in another variant the police have been known to delegate policing responsibilities to the communities themselves by threatening to prosecute innocent persons in the community unless it collectively finds and turns in a suspect.⁶⁰

The extreme degree of racist stigmatization of Roma in Ukraine, together with a police force that takes for granted its own immunity for racist and other abusive practices, make Romani people particularly vulnerable to abuse at the hands of law enforcement officials. This comes in the form of forced bribes, property ransoms, or simple outright robbery. In many cases, the amounts demanded by police from Roma individuals are exorbitant, forcing them to pool cash from friends and families to pay. This redirects already scarce resources away from communities, increasing communal hardship and lowering their capacity to meet even basic needs.

4.8 Coercion to Crime

Finally, there are widespread allegations that police in some localities and/or regions, particularly in rural areas, are involved in drug trafficking and/or drug dealing, and force Roma to work with them in this using various forms of coercion.

5.0 Violence by Non-State Actors

The combination of an (i) inadequate legislative framework, (ii) impunity for perpetrators, (iii) a completely inactive administrative and governing sector completely tolerant of expressions of racial hatred, (iv) a public promoting racist discourse and (v) police officials demonstratively involved in human rights abuse of Roma creates an open space for citizens to abuse others with almost complete impunity. Some examples of extreme acts of racially motivated violence undertaken in Ukraine against Roma in recent years follow here:

⁵⁹ Case information provided by Mr. Sandulenko’s attorney, Mr. Aleksandr Movchan and Romano Kham. For more information see: <http://www.errc.org/cikk.php?cikk=2202&archiv=1>.

⁶⁰ According to Zemfira Kondor of the Chiricli Roma Women’s Fund in an interview on June 6, 2006.

- On April 29, 2006, around 7 PM, Mr. Albert Kondi, a Romani man, was attacked while walking to his home in Uzhgorod, Zakarpattia oblast. Not far from his house, a group of around six people approached him and demanded that he give them money and any other valuables he had. Mr. Kondi refused and was then attacked by the group, who beat him with metal rods and poles. He attempted to escape, but his attackers caught and beat him further in front of his house, shouting, “you dirty gypsy, if you don’t pay us money we’ll destroy all of you.” Ms. Szylwia Fontos, hearing Mr. Kondi’s cries, arrived at the scene to help and was herself attacked by one of the group who smashed a glass bottle over her head and knocked her unconscious. Soon, more people began to rush to intervene, at which point the attackers stopped and fled in a black car. Many children from the community witnessed the attack, including Mr. Kondi’s children. Mr. Kondi’s lawyer has filed a complaint with the police and investigation was ongoing as of the date of this submission.⁶¹
- According to the Uzhgorod-based Romani organization Romani Yag, just before 9:00 PM on October 8, 2004, a taxi driver with the company Citi Taxi physically assaulted Ms. Tereza Latsko, 78-year-old Romani woman from Uzhgorod. On the evening in question, Ms. Latsko ordered a taxi to drive her to her brother’s house in the neighboring village of Storozhnitsa. On the way to Storozhnitsa, the driver asked Ms Latsko if she had money to pay for the trip. Ms. Latsko reportedly responded that she would get money from her brother to pay upon arrival at his house. The driver began to swear at Ms Latsko and she told him to stop. The driver then punched Ms. Latsko in the face, knocking out one of her teeth. He stopped the car, pulled Ms. Latsko out of the vehicle, kicked her hard and then drove off, leaving her lying next to the road. Ms. Latsko reportedly walked home and went to the hospital in an ambulance the following day. Following the incident, a complaint was filed by a lawyer on behalf of Ms. Latsko with the prosecutor’s office in Uzhgorod. The prosecutor’s office redirected the complaint to the local police office for investigation of the alleged abuse. The police office sent a letter to Romani Yag in mid-January 2005 rejecting prosecution on any criminal or civil grounds. On February 24, 2005, Ms. Latsko’s lawyer filed a criminal complaint on her behalf to the Uzhgorod city court.⁶² The case is currently pending.
- According ERRC partner Romani Yag, at around 7:00 AM on August 16, 2004, two ethnic Ukrainian men, Mr V. and Mr I. beat and set on fire Mr Yaroslav Shugar, a 20-year-old Ukrainian Romani man, in Uzhgorod, Zakarpattia oblast. He had spent the morning washing the neighbours’ three cars for payment, but once he finished he was accused by them of having stolen hemp plants from their yard. The two neighbours then began to punch and kick and beat Mr. Shugar with a canister, tying his hands

⁶¹ Case information provided by Mr. Kondi’s attorney, Aleksandr Movchan, Romani Yag, Uzhgorod.

⁶² Case information provided by Romani Yag and Ms. Latsko’s attorney Mr. Vasiliy Dydichin. For a reason unknown to ERRC, Ms. Latsko subsequently dropped the case. For further details, please see <http://www.errc.org/cikk.php?cikk=2200&archiv=1>.

behind his back, and pouring paint thinner over his head. The solvent began to burn Mr. Shugar's eyes so the men cut the rope with which they had tied his hands together and Mr. Shugar proceeded to wash the solvent from his eyes. At this time, Mr. V. put a lighter to the liquid on him and set him on fire. Mr. Shugar managed to extinguish the flame with his shirt and ran away,. At the regional hospital he was treated for first, second and third degree burns to his face and neck. Mr. Shugar did not initially file a complaint with the police for fear of a revenge attack, however, on August 31, 2004, Mr. Vasyl Didychyn, an attorney with Romani Yag, sent a request to the Ministry of Internal Affairs, demanding that an investigation be opened and action be taken against the perpetrators. On September 1, 2004, Mr. Shugar was called in to testify before the Uzhgorod Police Department and underwent a forensic medical examination. However, more than one and a half years later, investigation by the Uzhgorod city police department is apparently still open.⁶³

- On August 10, 2004 riot police in Krasnoyilsk, Chernivtsi Region, had to be deployed to protect a Roma camp from mass vigilante violence at the hands of local residents who were seeking revenge on the alleged killers of an eight-year-old girl.⁶⁴

Police throughout Ukraine have failed to protect Roma from extreme forms of violence, including pogroms. When such acts have taken place, police and prosecutorial and judicial authorities have failed to provide due remedy to victims. These failures are long-standing. In 2002, after noting the inadequacy of police response to crimes against Romani people, the Council of Europe's European Commission Against Racism and Intolerance (ECRI) urged the Ukrainian government to take measures to ensure that the police react promptly and effectively to all crimes, including those committed against Roma/Gypsies and... to ensure that the racist element of such offences is duly taken into account."⁶⁵ There is little indication that these and related recommendations have been effectively acted upon. The ERRC knows of no instance where any perpetrators of terrorising violence against a Roma person have ever been adequately prosecuted. The absence of any relevant information provided by the government of Ukraine indicating the degree of implementation of Criminal Code provisions on racially-based violence is demonstrative of the fact that the Ukrainian government cannot show progress in this area.

⁶³ Case information provided by ERRC partner Romani Yag and Mr. Vasyl Didychyn. ERRC has provided funding help cover the legal costs of this case.

⁶⁴ United States Department of State, Bureau of Democracy, Human Rights and Labour, Country Report on Human Rights Practices 2005: Ukraine, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>.

⁶⁵ ECRI, Second report on Ukraine, CRI (2002) 23, July 23, 2002, para. 58.

6.0 Discrimination in Access to Social and Economic Rights and Services Crucial for their Realisation

A major segment of the Romani communities of Ukraine live in conditions of extreme poverty with little or no access to basic social services. A poverty assessment carried out by the World Bank in 2005 found that the general rate of poverty in Ukraine has been decreasing since 2001 due to economic growth in the country,⁶⁶ yet Roma appear to have not benefited from such prosperity. Although ethnic-specific data is deficient or lacking entirely, there are widespread indications that very large segments of Ukrainian Roma live in poverty, if not extreme poverty. Unlike others in Ukraine suffering from poverty, Roma are forced to bear the additional burdens of extreme social prejudice and racial discrimination which deny them fundamental human rights as well as access to already scarce social and economic resources and opportunities.⁶⁷

Ukrainian Roma face regular systemic discrimination in virtually all sectors, including but not necessarily limited to access to personal and other documents, education, housing, health care, employment and social services. Discrimination against Roma takes two broad forms. Direct discrimination against Roma most often arises through less favourable treatment on grounds expressly related to their ethnicity and the general contempt in which many non-Roma hold them. Most often this involves direct, explicit, race-based refusals to provide access to or facilitate access to documentation or basic social and economic rights. Indirect discrimination arises with the denial of their access to social and economic rights for reasons specifically related to their pariah status in Ukraine.

6.1 Housing

Roma in Ukraine face serious obstacles in the exercise of the right to adequate housing.⁶⁸ Many live in substandard conditions in settlements or ghettos that are often segregated from mainstream society with little access to public transportation or public utilities like power or sanitation. Public services or improvements such as road repairs or garbage disposal are thoroughly absent. The extreme poverty under which many Roma live is exacerbated by widespread discriminatory treatment that prevents access to adequate housing and the improvement of living conditions. Many Roma have testified to

⁶⁶ The World Bank, *Ukraine: Poverty Assessment – Poverty and Inequality in an Growing Economy*, (Washington: 2005), p. viii.

⁶⁷ Article 5 of the ICERD obliges State parties to, “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” in the enjoyment of a number of social and economic rights.

⁶⁸ Article 11 (1) of the ICESR declares that States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.”

ERRC partners that local authorities continuously refuse to provide eligible Romani families with decent housing or to provide the proper documentation or permission for them to legalize their current homes or build improvements. Local authorities are either personally moved to refuse to register and legalize property possessed by Roma or are pressured by non-Roma residents to do so. Maintaining a hope that Roma residents may someday leave, authorities deny Roma any form of goods and services that would encourage them to make their unofficial homes permanent. Such treatment leaves many vulnerable to abusive forced evictions and, at times, the destruction of entire settlements, leading to an even harsher and perilous existence. Summaries of some cases follow:

- In May 2006, in the village of Grebenki, Kiev oblast, the local village authorities cut electrical supply to the Romani community on the outskirts of the village in response to crime committed by a Romani man. A fight had earlier broken out between a Roma and non-Roma man from the village, which left the latter dead. The family of the murdered man gathered supporters from within the village and approached the village authorities declaring their intention to forcibly expel all Roma from the village and to burn their houses down. The village mayor assuaged their concerns by calling on the police to intervene to protect the village from violent criminals. The police arrived, located the suspect, made the arrest and transported him to the local precinct. The village mayor then ordered that the Romani community be severed from the electric grid. An ERRC partner organisation confronted the mayor to ask why this had been done. The mayor explained that the Romani community was suddenly discovered to have been squatting on public land with no official registration of their property, and thus illegally connected to the regional electric supply. According to the mayor, Roma had been living in that settlement for over 50 years and until then had always enjoyed access to electric power. He also acknowledged that electricity was the only public utility that reached the community. A village town-hall meeting was held shortly thereafter in response to the complaints of a number of non-Romani residents that cutting off the electrical power was not enough and that a better response would be to evict the Roma permanently by force. In the end, the village council reportedly decided against this course of action, because it would be illegal. The electricity had yet to be re-connected to the settlement as of June 14, 2006.⁶⁹
- In September 2005, a Romani woman from Kremenchug, began legal proceedings against her employers for refusing to provide her and her family with decent accommodation. It is common practice in Ukraine for publicly-owned companies to provide accommodation to their employees. Ms. Kutsenko first registered for a new flat in 1985, the first year that she began to work at the southern railway station in Kremenchug, where she continues to work today. In that first year, she was provided with a small, one-room wooden barrack in poor condition with no electricity or running water that she was told would temporarily suffice until a proper flat became available. After six years, Ms. Kutsenko was ostensibly placed at the top of the

⁶⁹ Case information provided by Zemfira Kondur of the Chiricli Roma Women's Fund in an interview with ERRC on June 6, 2006.

company's accommodation list but as of yet, she has been given no new home and continues to live in the sub-standard wooden barrack. In the meantime, other employees of the company have been given new flats. Ms. Kutsenko made numerous complaints to her managers in the past, but to no avail. After 1995, jurisdiction over her housing situation came under the Local Housing Agency of Kremenchung and during a preliminary investigation, an officer from the housing authority, Mr. Victor Shkurat, told Ms. Kutsenko that, "all Gypsies should live in Gypsy caravans and tents. You (Ms. Kutsenko) are the only one who capriciously demands a separate apartment with all conveniences." According to municipal by-laws, single mothers such as Ms. Kutsenko should be given first priority in the local authority's distribution and repair of housing. Ms. Kutsenko is currently trying to raise the funds necessary to cover the cost of a 'forensic building inquiry', and for legal assistance to defend her rights. The ERRC is engaging a local lawyer to file a civil complaint on behalf of Ms Kutsenko.⁷⁰

- At the beginning of September 2005, Ms. Lili Adam was prevented from finishing construction on a Roma Cultural Centre in her community in Uzhgorod after having invested her savings in it. According to Ukrainian laws, once the exterior of a building is built, the structure as a whole must be approved by specialized government authorities before work can continue on the inside. For unknown reasons, the woman's repeated requests for approval were ignored and no inspectors ever visited the building site. The woman then went in person to the office of the authorities to complain but the director refused to meet her. With ERRC assistance, Ms. Adam has hired legal representation to file a formal complaint against the local authorities in question.⁷¹
- On February 2005, a thirty-year old Romani woman, Ms. Silvia Ignativa Surmai, and her four children were issued an eviction notice from their home. The primary occupant of the flat had been Ms. Yoala Bazho, the mother of Ms. Surmai, until her death on December 17, 2004, but because the flat had never been privatized, the flat at the time of her death technically belonged to the municipality of Uzhgorod. While she was alive, Ms. Bazho never officially transferred her tenancy to her daughter Ms. Surmai. Two months following Ms. Bazho's death, Ms. Surmai, received notice from the municipality informing her that she had to "voluntarily vacate" the flat before March 22 because by law she no longer had the right to occupy it.⁷² It was irrelevant to the municipality that all bills and rent had always been paid faithfully and on time or the Ms. Surmai and her children had no place else to go. Ms. Surmai then received a further letter informing her that as of August 8, 2004 she and her family had been placed in the "high priority" category of the municipal housing list. However, with no

⁷⁰ Case information provided in a report sent to ERRC on May 25, 2005 from Ms. Kutsenko's lawyer and corroborated by According to information provided the ERRC by Kremenchug-based Romani organisation Amaro Deves.

⁷¹ Case information provided by Mr. Aleksandr Movchen, legal counsel for Romani Yag. ERRC has provided legal support in the case.

⁷² According to Article 99 of the Housing Code of Ukraine and Article 823 of the Civil Code of Ukraine.

new flats being constructed in Uzhgorod and considering the discrimination that Romani women regularly face from municipal officials in the city, Ms. Surmai is certain that the prospects of her ever being given a flat any time soon are extremely slim. It is not uncommon for persons in the “high priority” category of the housing list to wait for 10-15 years before accommodation is made available for them. Ms. Surmai, wishing to stay as a proper tenant and having no other place to go, has not “voluntarily vacated” the flat and, with the assistance of the ERRC, has begun legal proceedings to try to conclude a further tenancy agreement for the flat with the municipality.⁷³

- In 2005 in a village in the Mykolaiv oblast, a single mother of five was refused financial assistance from local authorities to repair the roof of her house. The house is a very old one-room dwelling with practically no utilities and a roof that leaks. This woman is unemployed and receives no social assistance. When she approached the local administration offices for help to make her flat more inhabitable, officials told her that, “You are Roma. You have lots of money from international donors and NGOs, so go ask them for help, not us.” Unable to afford legal representation, she is unable to file a formal complaint or push a claim for funding and continues to live in her home as it is.⁷⁴
- In October 2003, Ms. Latsko, a 49-year old Romani woman, and her family were unlawfully prevented from registering their home as their permanent place of residence in the town of Uzhgorod because of their ethnicity. The home in question was originally constructed without permission from the municipality. Ever since its construction, Ms. Latsko and her family have occupied the building. In 2003 she began to request various officials to register her and her family as permanent residents at that address, but permission was never granted. On October 4, the building agency of the municipality of Uzhgorod imposed a fine upon Ms. Latsko for the administrative violation of unlawfully constructing a home, which she paid. In the municipality of Uzhgorod it is standard procedure that once such a fine is paid the building agency declares the building to be lawful and permits the owner to apply for permanent resident status at it. Despite having paid the fine, the local authorities have since ignored or perpetually delayed Ms. Latsko’s application, at one time telling her that, “You Gypsies, your place is in tabor (camp) not in the city. Go and live there. You are not people. Go away.” With ERRC assistance, Ms. Latsko hired a lawyer in May 2005 to assist with processing the formal registration of the property and, if need be, file a formal complaint of a violation of her rights, and launch a suit for damages.⁷⁵

⁷³ Case information provided by Ms. Surmai’s lawyer, Mr Didychyn Vasilji. ERRC has provided legal support in the case.

⁷⁴ Case information provided by Zemfira Kondur of the Chiricli Roma Women’s Fund.

⁷⁵ Case information provided by Ms Latsko’s lawyer, Mr. Vasilji Didichin.

The ERRC knows of no occasions on which direct discrimination in the field of housing have been the subject of any form of redress or punishment by any Ukrainian authority. The Ukrainian government has no programs that address the uniquely problematic housing concerns of Roma that arise directly from their stigmatization by non-Romani Ukrainians. Some Romani NGOs have recently begun trying to organize committees to cooperate with local authorities to study and document living conditions of Romani communities throughout Ukraine. There are no known examples of slum settlement upgrade in Ukraine.

6.2 Health Care

In recent years, the ERRC and partner organizations have documented a number of extreme racially motivated acts by health care providers. These acts exacerbate an existing state of *de facto* exclusion from care that arises from factors such as the often great distances between Romani settlements and health care institutions, the widespread lack of documentation that is needed to secure health care, as well as other related issues.⁷⁶ The poverty of Roma health care seekers can also be a catalyst for direct acts of discrimination. Low salaries and relatively poor working conditions for public officials, including doctors, teachers, and civil servants, has created widespread shadow economies in many public sectors. Roma are denied access for services when they lack funds for ‘tips’. In the health care sector doctors routinely seek compensation for their low wages and often resort to substandard treatment, or simply refuse to treat those who are unable to pay.⁷⁷ In addition to this, doctors regularly refuse to treat Roma patients because out of racial prejudice. Doctors rarely make house calls when they receive requests for them from Romani communities.

- In February 2005, a pregnant Romani woman was nearly killed by the negligent medical intervention of a gynaecologist in Chop, Zakarpatia oblast. On February 1, the woman went to hospital for a check-up, after feeling ill. After examining her, the gynaecologist told her that she was in fact pregnant and advised her to have an abortion and have no more children in the future, saying that “you Gypsies should not multiply like cockroaches.” As the woman was only in the second term of the pregnancy, the doctor decided there was no need to perform the abortion in a proper surgical environment. Instead, the doctor immediately began the surgery in the same out-patient ward that the examination took place in. The doctor concerned apparently undertook none of the required preliminary medical tests before commencing and continued the operation even when the woman began to complain of a sharp pain and pleaded with her to stop. It was only when she began to bleed profusely that the gynaecologist realized that a mistake had been made and she was immediately sent to the local hospital where three doctors struggled for three hours in surgery to save her

⁷⁶ Article 49 of the Ukrainian Constitution states that “Everyone has the right to health protection, medical care and medical insurance.”

⁷⁷ Valeria Lekhan et al. Health Care Systems in Transition: Ukraine 2004, (Copenhagen: World Health Regional Office for Europe, 2004) p. 101.

life. Once her condition stabilized, the gynaecologist offered her family money (less than 10 USD) so that they would not lodge a complaint.⁷⁸

- On October 20, 2005, Ms. Lidiya Semasheva, a disabled Roma woman living in the northern city of Kharkiv was denied services and benefits appropriate to her condition by municipal and health officials on discriminatory grounds. Ms. Semasheva lives alone and survives on her disabilities pension. Several years prior, the city administration provided her with a flat on the fifth floor of a building with no working elevator. Although the city clearly did not pay much attention to her condition when they assigned the flat to her, Ms. Semasheva nevertheless feels fortunate and refuses to risk losing it by requesting one that is wheelchair-accessible. The city has been equally inconsiderate in its stubborn refusal to grant her a discount on her utilities bills, which is common for people with disabilities and the elderly. The final straw for Ms. Semasheva came when she applied to the medical council to ask for social assistance, in particular a car that is outfitted for a disabled person to drive. According to her testimony, the interviewing committee barely even looked at her, treated her in a highly contemptuous manner and, after giving her a cursory and clearly incomplete examination, told her “No, no, you don’t need this, you can go away.” The committee never provided reasons for the refusal.⁷⁹
- According an ERRC partner, in 2004 a Roma woman in Uzhgorod was refused treatment by a doctor after her newborn child became ill with a fever. The mother, living in a largely Roma neighbourhood with no telephone connection, made contact with the doctor through a friend, asking him to visit her home and examine the baby as the baby was too sick to travel. The doctor in question is reported to have told her friend, “I won’t go there. Tell [the mother] she can come when her child is dead.” Two weeks later, the baby died and the mother, distraught and enraged, went to the doctor in person to tell him that her baby had died. The doctor responded by giving her the equivalent of 15 USD to help pay for the child’s funeral.⁸⁰
- On May 2, 2004, at about 8 p.m., a group of young Roma and ethnic Ukrainians started a fight in the town of Irpenj.⁸¹ Three Romani men, Mr Andrey Balanov, Mr Leonid Grigorash and Mr Boris Tatarov sustained serious knife wounds as a result. One of Mr. Tatarov’s lungs was punctured, Mr. Grigorash’s stomach was slashed open, and Mr. Balanov received four wounds to his left arm that have left it unusable

⁷⁸ Case information provided by ERRC partner Romani Yag and the woman’s lawyer, Mr. Aleksandr Movchan. ERRC has provided legal support the case. To date, both a criminal and civil complaint have been filed against the hospital and the doctor in question.

⁷⁹ Information provided by Zemfira Kondur of the Chiricli Roma Women’s Fund in an interview on June 6, 2006.

⁸⁰ Information provided by Zemfira Kondur of the Chiricli Roma Women’s Fund in an interview on June 6, 2006.

⁸¹ According to Ludmila Brovari of Terni Zor, an Irpenj-based Roma NGO.

ever since. When the three men were taken to hospital that same night, the examining doctor registered their injuries as being “trivial,” and they were forcibly released from the hospital three days later in “satisfactory condition”.

- In September 2003, Miroslava Savitskaya, a Romani woman from Kremenchung gave birth to a baby girl.⁸² Attending nurses took the child away from her shortly after the birth. After several requests to see the baby, Ms. Saviskaya was informed that it had suffered third-degree burns due to careless handling by the medical staff at the hospital and that her daughter would likely live the rest of her life as an invalid. The doctors at the hospital threatened Ms. Savitskaya, saying that if she filed an official complaint that no Romani mothers would again be accepted into the maternity ward of the hospital. Nevertheless, Ms. Savitskaya contacted an attorney and filed an official complaint with the regional prosecutor’s office.

As a result of discriminatory refusals to treat Roma, as well as other abuses implicating the ICERD Convention, such as those outlined above, the health status of a large segment of the Romani community is worse than comparable segments of the non-Romani community. Health conditions including heart trouble, stress and infectious diseases, particularly tuberculosis are widespread throughout many Romani communities and no effective government policies exist to address them.⁸³

6.3 Education

Regular direct refusal to enrol Romani children in mainstream and/or elite primary schools is a regular occurrence in Ukraine, although adequate documentation on the extent of the problem is to date lacking, in large part because the Ukrainian government has never undertaken to determine the scope and nature of this issue. At a partners meeting in June 2006 involving the ERRC and nine local Romani NGOs from various parts of Ukraine, only one of the organisations present did not have direct awareness of instances of refusal to enrol Romani children in schools as a result of racial discrimination, and several of the persons present had experienced direct discrimination in this area in the week preceding the meeting, when they themselves had been refused while trying to enrol children or grandchildren in schools.

As a result of the refusal by schooling authorities to enrol Romani children in mainstream schools, undertaken at their own initiative or as a result of pressure by non-Romani parents, Romani children in Ukraine are frequently educated in partially or entirely segregated school environments. A 2005 study by the editor of *Romani Yag* (a Roma newspaper published by the organization of the same name) identified twelve fully segregated Roma-only schools in the Zakarpattia oblast.⁸⁴ The authors conducted

⁸² Case information provided by ERRC partner Amaro Deves.

⁸³ Information provided by ERRC partner Zhuzhana Duduchava in an interview on May 23, 2006.

interviews with members of Romani communities throughout Zakarpatia and found that of those they interviewed, 69% of Roma could hardly read and another 68% had difficulties with writing and 59% did not know how to count properly and 25% could do neither of the three. They identified three reasons why Romani parents opt to send their children to segregated Roma schools: a) because they were where the parents studied, b) because parents are worried of their children being discriminated against in integrated schools, and c) because segregated schools are not as stringent about documentation requirements as other schools are.⁸⁵ Most of the segregated schools examined by the authors were located in old buildings with none of the facilities that regular schools have, few libraries, no sport facilities, no cafeteria or dining hall, minimal furniture in states of disrepair, few and outdated books, no other learning materials, and used outside toilets with no running water.⁸⁶

On a research mission to Izmail in the Odessa oblast in 2005, ERRC collaborator Zhuzhana Duduchava observed that practically no Romani children in the region were enrolled in preschool. The majority of the older children attended Izmail Special General School No. 5, while a small minority were integrated in standard state schools. Of the 165 students at the Izmail Special General School No. 5, 23 were Roma, all of whom study in one classroom. Ms. Duduchava further observed that in the village of Nyerubayskoye, also in Odessa oblast, the local high school segregated its 19 Romani students away from other students by placing all of them, irrespective of age, in a single classroom with one teacher in a building separate from the newer main school building. These children come from the poorest families in the town whose parents were often unable to send them to school for lack of money for clothing, school supplies or even to cover the costs of travel. In many areas of Ukraine, poverty often forces Romani families to withdraw their children from school so that they can work to supplement the family income.⁸⁷ Romani activist Zemfira Kondur has observed that some impoverished Romani families are often eager for their children to attend the special schools for the disabled because by doing so their children are guaranteed one hot meal a day and sometimes even free clothing. However, she also observed that the curricula at these schools are entirely unsuited to the mental aptitude of many Romani children attending who have no learning impairment. These children are completely unchallenged in their education and from an early age learn not to expect much from it. Graduating from a special school for the mentally

⁸⁴ Adam, A. E., Navrotska E. M., "Monitoring zabezpechenya prav romskoi molodi v galuzi osviti," (paper presented at a conference in Uzhgorod in 2005 entitled *Osvita I Romi: Stan, Problemi, Perspektivi* (Uzhgorod: 2005) p. 2. The study identified the following General Schools as having entirely Roma student bodies in the Zakarpatia oblast: Uzhgorod No. 13 (257 students), Uzhgorod No. 14 (127 students), Mukacheva No. 14 (464 students), Beregov No. 7 (305 students), Pidvinogradov (127 students), Sobatin (54 students), Poroskiv (280 students), Bikiv (51 students), Svalyavska No. 5 (89 students), Serednyanska (162 students), Pavshinska (35 students), Viskivska (64 students) and Roztotska (80 students).

⁸⁵ *Ibid.* p. 3. This practice was observed in the following localities: Beregiv, Poroshkovie, Perechenyi, Bereznom, Mukacheve, Rakhov.

⁸⁶ *Ibid.* p. 5.

⁸⁷ Information provided by ERRC partner Zhuzhana Duduchava in an interview on May 23, 2006.

disabled effectively guarantees a life of exclusion and marginalisation, following the completion of non-schooling.⁸⁸

According to data gathered by the Ukrainian Institute for Social Research (UISR), some 50% of Roma children throughout the country do not regularly attend school,⁸⁹ with attendance rates being the lowest in the Odessa, Donetsk, Dnepropetrovsk, Cherkassy, Kremenchug, Zakarpatia and Kharkiv oblasts. According to ERRC partner Romani Yag, 83.7% of Roma children living in Zakarpatia oblast fail to finish high school, 14.5% have a basic high-school diploma, 1.4% are graduates from technical-vocation schools, 0.3% have completed a specialized secondary⁹⁰ education program, and only 0.2% have any higher education. In comparison with the national average, these figures are stark. The 2001 All-Ukrainian census recorded that only 0.6% of the population is functionally illiterate, 6.8% had failed to finish primary school, 33.3% completed high school, while 12.4% completed some form of higher education.⁹¹

According to Romani activist Zemfira Kondur, one key event that consistently hinders the educational development of Romani children occurs early in their lives when they are regularly refused or simply unable to access preschool education. This lack of access is sometimes the result of factors internal to Romani communities, such as a lack of transportation to take children to school, no money for supplies, a lack of awareness on the part of parents of the critical importance of preschool. It is also often the result of discriminatory factors such as parents of non-Romani children pressuring preschools not to admit Roma children or teachers not wishing to teach them.⁹² Romani children who do not attend preschool find themselves wholly unprepared when they apply to attend primary school. Lacking the basic skills they should have learned in preschool, and often not functionally conversant in either Russian or Ukrainian, they are unable to pass the entrance tests, nor do they understand what is expected of them, and they are often segregated immediately from the regular stream of children. The state provides no facilities or trained teachers who are able at this critical juncture to provide specialized education to get new Romani students up to the same starting level as their Ukrainian counterparts. Rather, they are shunted off to separate schools, which often are for the learning disabled. Whereas with preschools, Roma children are regularly excluded outright, at the primary level they are excluded for the additional reason that they lack the skills they were earlier denied. Once in such schools, Romani children have little hope of

⁸⁸ Information provided by Zemfira Kondur of the Chiricli Roma Women's Fund in an interview on June 6, 2006.

⁸⁹ Sehed, Serhiy and Oleksandr Tatarevskiy, "The Bill 'On protection against racial national and ethnic discrimination'", Kyiv: International Center for Policy Studies, 2005, p. 31.

⁹⁰ http://www.ukrcensus.gov.ua/eng/results/education_population/s3/?box=3.1W&out_type=&id=&rz=1_1&rz_b=2_1&k_t=00&id=&botton=cens_db

⁹¹ Romani Yag, No. 9, p. 51.

⁹² As observed by Zemfira Kondur of the Chiricli Roma Women's Fund while conducting research in the city of Cherkassy.

being able to return to the mainstream and have even fewer chances of ever being accepted for post-secondary schooling anywhere.⁹³

The complete failure of the state to provide educational services to Romani children, or to undertake effective measures to ensure that Romani children realise the right to education on an equal footing with other children in Ukraine, has prompted some segments of civil society in some areas to respond. Over the foregoing ten years, with the support of the Soros Foundation, some Romani NGOs have been organizing “Sunday Schools” to supplement -- and in some cases act as a replacement for -- inaccessible or substandard state education. Romani children visit these schools once or twice a week to either work on basic skills such as reading and writing, or to develop skills such as dancing and singing. There are more than 20 such schools throughout the country. The lack of full support and proper pedagogical guidance for such programs prevents these compensatory efforts from being able to fully prepare children with the skills needed to enter mainstream schools. Such schools, while important, cannot act as a replacement for quality, mainstream schooling in the public school system.

6.4 Employment

Unemployment in Ukraine has been a serious problem in the transition period, and Roma have been among those groups most seriously affected. Ukrainian Roma frequently cannot find work due both to the difficult economic situation, and to racial discrimination. Field research by the ERRC and partners indicates that racial discrimination is among the most serious factors burdening Roma on the labour market. Where qualifications are equal, many potential employers reject Romani applicants if there is a choice of hiring a non-Romani person, and thus far authorities in Ukraine have not taken effective measures to combat racial discrimination in the field of employment. The lack of a valid residence permit has also deprived many Roma of the possibility of employment in their hometown or anywhere else for that matter. Until recently, work was tied to legal residence permits. Until the relevant criminal code provision was abolished in 1997, prospective employers were required to check residence permits before hiring an individual. The labour code was amended the same year to the effect that employers are now prohibited from requesting residence permits as a condition of employment, but previous effects of this strict legal regime do not appear yet to have been overcome.

According to information provided by ERRC NGO partners, the majority of employed Roma work in unskilled, often seasonal forms of work such as agricultural and construction labourers, and in a few low-skilled service sectors as hairdressers or market vendors. The vast majority do not have regular jobs. The rate of unemployment among Ukrainian Roma is extraordinarily high. The Roma Congress of Ukraine estimates that about 90% have no regular employment.

⁹³ Information provided by Zemfira Kondur of the Chiricli Roma Women’s Fund in an interview on June 6, 2006.

As a result of the extreme duress created by generalised poverty and the additional burdens caused by racial animus, many Roma make their living by collecting scrap metal or wood. However, since the latter, when engaged in on public land, is illegal, such practices can expose Roma to serious human rights abuses. The ERRC has documented abuses as extreme as shooting deaths by forest wardens of Roma gathering wood. Other Roma try to support their families by engaging in industrial or agricultural day work or by begging on the streets of cities and in railway stations. Day work can be fraught with hazards in Ukraine, as the employee frequently has little guarantee of payment. Roma are particularly exposed to abuses in day labour relations, since such a high proportion of the Romani community is dependent on day labour for income, as well as because in general, Roma are widely perceived as less sheltered by legal protections. Begging exposes many Roma to arbitrary treatment by police and other law enforcement authorities, including physical abuse which can rise to the level of torture.

Part of the problem is linked to the low educational level of many Roma, which prevents Roma from accessing better paid work opportunities. A high rate of illiteracy within the Roma community prevents many from knowing where or how to access information regarding employment opportunities. However, low levels of education effectively mask the core issue of racial discrimination in the labour market.⁹⁴ The ultimate barrier to gainful employment for Roma in Ukraine is their skin colour, ethnic origin and/or other markers of ethnicity giving rise to stigma and pariah status. Stereotypes of violence and criminality, as well as views of Roma as work-shy and/or incompetent, make directors of companies wary of hiring Roma.⁹⁵ A number of Romani NGOs are attempting to counter this by acting as character references for job-seekers, but even then many consider themselves lucky if they find any work at all.

Roma are for the most part excluded from access to credit and/or bank loans, with the exception of informal support provided by loan-sharks. Those who do manage to gather enough capital to start small businesses, such as kiosks in marketplaces, their ability to earn a living from them and be successfully self-employed is tempered by discrimination experienced on a daily basis from the general public. It is not uncommon for directors of marketplaces to expel all Roma merchants, as happened in 2005 in Dniprodzerzhynsk, Dnipropetrovsk oblast, in response to a media story of a Roma man in the city having raped a non-Roma woman.⁹⁶

. The prospects of Romani women to secure gainful employment are even worse. Irrespective of the barrier of racial discrimination, they are also discriminated against by employers based on their gender. Human Rights Watch in 2005 reported that gender discrimination in the Ukrainian workforce, in both the public and private sectors, is

⁹⁴ European Commission Against Racism and Intolerance, Second Report on Ukraine, CRI (2002) 23, para. 59.

⁹⁵ Information provided by Zemfira Kondur of the Chiricli Roma Women's Fund in an interview with ERRC on June 6, 2006.

⁹⁶ Ibid.

widespread, with most women forced into lower paying jobs if any at all. Fully 80% of Ukraine's unemployed population is female.⁹⁷

On no occasion of which the ERRC is aware has the government ever acknowledged that Roma face forces leading to racial discrimination in employment. Both the Constitution and the Labour Code contain provisions guaranteeing the equal rights of citizens to labour.⁹⁸ These protections have been to date ineffective in challenging the near-total exclusion of Roma from the mainstream labour market and/or employment in the regular economy.

Finally, the ERRC has additionally received reports from partner organisations in Moldova that a number of Roma from Moldova travel to Ukraine, particularly Eastern Ukraine, to engage in agricultural day labour, as a result of the fact that although such work is extremely poorly paid, it is among the only legal work opportunities available. Such persons are in a state of raw exposure to abuses by employers, due in particular to the fact that not only are they regarded as "Gypsies" -- and therefore frequently not considered due treatment as privileged as non-Roma -- but also that they are foreigners in Ukraine. Such persons also report having to pay significant parts of saved income to Ukrainian border authorities while travelling back to Moldova, and can be exposed to harassment and abuse by other Ukrainian authorities.

6.5 Personal and Other Documents

The lack of personal identification documents, as well as other documents necessary for accessing services crucial for realising fundamental human rights, is a systemic problem among Roma in Ukraine. Many currently live without any personal documents, including an unidentified number who immigrated during the former Soviet period and who are, effectively, stateless. The ERRC has gathered substantial evidence that indicates that many Roma are regularly denied a range of basic civil rights, including freedom of movement, the right to respect for private and family life, the right to vote, and the right to redress as a direct result of their not possessing personal documents. Personal document requirements for utilising public services, such as health care, unemployment insurance, education and pensions deny many Roma basic social and economic rights.

Roma often experience great difficulty in acquiring proper registration documentation for their homes or places of work. This fact can enforce the *de facto* segregation of many Romani communities away from desirable locations and decent

⁹⁷ Human Rights Watch, 2005 World Report, p. 444. <http://hrw.org/english/docs/2005/01/13/ukrain9884.htm>

⁹⁸ The Labor Code of Ukraine, Article 2-1 states that "Ukraine shall secure the equality of the labour rights of all citizens, regardless of their descent, social and material status, race, ethnicity, sex, tongue, political views, faith, character or nature of occupation, place of residence or other circumstances." Article 43 of the Constitution guarantees the equal right to labour.

living conditions. Lacking one or more personal documents and/or official local residence permits, many Roma are often unable to secure legal aid, from being recognized by the courts and from being able to submit complaints to the police. This, in effect, denies them their fundamental right to be recognized as individuals before the law.⁹⁹ In the health sector, lack of documentation can provide the justification for refusals to provide public health services to Roma. Romani children without documents are particularly vulnerable to illness and disease since they require them to receive vaccinations and other preventative health measures.¹⁰⁰ A lack of one or more documents or local residence permission many serve as a pretext for racially discriminatory refusals to enrol children in school.

Acquiring documentation is a process fraught with arbitrary barriers. In one case, in the village of Ribionki, near Bila Tserkva, Kiev oblast, a local Romani organization in February 2006 compiled a list of all Roma in the community who were in need of personal identity documents. They went to the local administration responsible for issuing documents such as these and, presenting the list, asked for assistance to process them. The employees at the office demanded the processing fee of approximately 20 USD for each person on the list and refused to issue the standard discounted fee of approximately 5 USD for the elderly. Four months later, there was still no progress made. Local administrators refused to talk or deal further with the Romani community, and with no funding available to cover the required fees, they were not obliged to do so.¹⁰¹

Cases such as the village of Ribionki demonstrate that despite the hardship that a lack of documentation imposes on Roma, many obstacles exist that prevent them from acquiring them. The generally low level of education of many Roma make it difficult for them to fully understand how to navigate a complex bureaucratic requirements needed to register property or secure individual identity documents. Furthermore, the administrative processing fees are simply unaffordable for people living in conditions of extreme poverty. Race, though, constitutes the most insurmountable obstacle. Direct discriminatory refusals to provide assistance in securing documentation, or sometimes even an outright refusal to do so on the part of officials and administrators are frequent and make the process virtually impossible. There are no government programs in place to assist an impoverished, uneducated and highly stigmatized population with obtaining the documentation they need.

The Ukrainian State Party Report to the CERD Committee addresses this matter, but thrusts responsibility for a lack of personal and other documents entirely and rigidly onto Roma themselves, and proceeds to derive from the fact of widespread exclusion of Roma from personal documents a sweeping denial of the possibility of racial discrimination against Roma in Ukraine:

⁹⁹ Information provided by ERRC partner Zhuzhana Duduchava in an interview on May 23, 2006.

¹⁰⁰ Ibid.

¹⁰¹ Information provided by Zemfira Kondur of the Chiricli Roma Women's Fund in an interview on June 6, 2006.

Roma often lack identity documents, but this fact speaks about their non-observance of elementary rules for societal behaviour and their civil duties, not about their discrimination... Such conduct leads to the situation, when both adults and children from Romani families initially have lower social status in comparison to representatives of other ethnic groups. They have more difficulties in finding employment, which is often underpaid, because the worker does not have general secondary and professional education. Therefore, accusations that Roma are deprived of their civil rights, practically, do not have any grounds.¹⁰²

Here as elsewhere, the Ukrainian government demonstrates conclusively that it has not yet acquired the ability to understand the forces facing Roma in Ukrainian society, nor to grasp what is at issue in the ICERD positive requirements to end all forms of racial discrimination. Flagrantly disregarding the Convention's specific provisions, as well as the spirit of its content, the Ukrainian government holds to – and indeed flaunts grandly – the view that victims of racial discrimination have only themselves to blame for their pariah status. The ERRC urges the CERD Committee to undertake any and all measures available to it to begin to change these deeply worrying and very widespread views, apparent even here, at the level of government.

7.0 Recommendations

In light of the above, the *ERRC* recommends that the Government of Ukraine undertake the following measures:

- As a matter of the highest priority, ensure that Parliament swiftly adopts a comprehensive anti-discrimination law. A suitable basis for such a law would be the Pending Anti-Discrimination Bill, provided Ukrainian legislators (1) add to the bill a definition of indirect discrimination in conformity with international and EU law standards; and (2) delete from the Pending Anti-Discrimination Bill's definition of (direct) "discrimination" the phrase "provided such action or omission is intended to restrict or make impossible the recognition, application or expression of human rights and freedoms on an egalitarian basis". In order to avoid divergence between international and European legal standards on the one hand, and domestic law in Ukraine on the other, possible suitable and appropriate resolutions to the current inadequacies in the Pending Anti-Discrimination Bill's Article 1 definition of discrimination, would be:
 - To adopt verbatim the wording of ICERD Article 1(1);
 - To adopt verbatim the EU Race Equality Directive's five definitions of discrimination, including definitions of "direct discrimination" and

¹⁰² Eighteenth Periodic Report of States Parties Due in 2004: Ukraine, CERD/C/UKR/18, para. 87. Translated into English by ERRC staff.

“indirect discrimination”, as well as definitions of victimization, harassment, and instruction to discriminate;

- To adopt as a definition of discrimination the wording of the decision of the European Court of Human Rights in the matter of *Willis v. United Kingdom*.¹⁰³

- Without any further delay, investigate and provide due remedy to Romani victims in the matter of the pogroms occurring in Ukraine since 1991, as well as the very serious instances of other forms of physical abuse and cruel and degrading treatment to which Roma have been subjected in the period following Ukrainian independence;

- Investigate promptly and impartially incidents of violence against Roma and prosecute the perpetrators of such crimes to the fullest extent of the law; make public guidelines to law-enforcement and judicial authorities on identifying, investigating, and punishing racially-motivated crime.

- Adopt effective measures to prevent, identify and, where occurring, punish manifestations of racial bias in the judicial system.

- Ensure effective remedy for cases of discrimination against Roma in the fields of education, employment, housing, health care, social services and access to public accommodation.

- Abolish the practice of race-based segregation of Romani children in special schools and classes, including special remedial classes for mentally disabled and other separate, substandard educational arrangements, as well as other forms of racial segregation in the school system. Implement a comprehensive school desegregation plan, such that all Romani children may fully realise their right to education; integrate all Romani students into mainstream classes, and, when necessary, design and implement adequately funded and staffed programmes aimed at easing the transition from segregated to integrated schooling. Design pre-school programmes for Romani children to learn the primary language of schooling and attain a level of preparation ensuring an equal start in the first class of primary school. Develop and implement catch-up or adult education programmes aimed at remedying the legacies of substandard education and non-schooling of Roma.

- Provide security of tenure for residents of Romani communities and settlements, and protect the inhabitants from forced and arbitrary evictions, as well as segregationist local practices.

¹⁰³ The European Court of Human Rights held, in *Willis v. United Kingdom*, that "a difference of treatment is discriminatory ... if it 'has no objective and reasonable justification,' that is if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realized.'" (*Willis*, 35 EHRR 21 (2002), p. 559, § 39).

- Ensure that all persons in Ukraine are in possession of all personal and other documents necessary for the realisation of fundamental civil, political, social and economic rights. Develop programmes to ensure the provision of legal residence to all persons factually resident in a given area, and to ensure that local authorities do not arbitrarily refuse to register Roma as locally resident.
- Remedy the current dearth of statistical data on the situation of Roma in sectoral fields key for social inclusion, including statistical data comparing the situations of Roma with non-Roma in areas such as education, employment, housing, health care, access to social services and access to justice.
- Provide free legal aid to members of weak groups, including Roma and the indigent.
- At all levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.