

ROMA BELONG



Statelessness, Discrimination and Marginalisation of Roma in Ukraine

MARCH 2018

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



Institute on
Statelessness and
Inclusion



European
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Statelessness



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1. Introducing the Interviewees

For the purposes of this report, 15 Roma¹ individuals and families who have experienced statelessness or the risk of statelessness were interviewed. Below are short case studies presenting some of their stories.²

39-year-old Moldavian Roma **Marta** currently resides in Odessa city. She was born in a village of Odessa region. She is in an informal marriage with a Ukrainian Roma. Indeed, because she is undocumented, Marta has no chance to have the marriage recognised by the state authorities. She has two sons who are 21 and 16 years old. Marta's parents had documents and officially registered their marriage, but although they managed to get passports for their elder children, they could not do so for Marta and her younger brother. Later their birth certificates were stolen in a robbery. Consequently, Marta and her sons have no identity documents. Marta applied to the village council for documents, but she was asked to bring her mother for the application process. As her mother can barely walk and is not able to assist, Marta did not apply to any of the state or local authorities again. Because of not having documents, which is an administrative offence in Ukraine, Marta has been repeatedly detained by the police and she and her sons are forced to beg for their livelihood.

One of Marta's sons is 16-year-old **Ruslan**. Ruslan attended a Christian school, where he learnt to read, write and was baptised. However, Ruslan is deprived of the opportunity to continue his studies because he has no identity documents and has not applied for a passport. Ruslan believes that his parents will have to get documents for themselves, before he can apply for his passport. Ruslan now works as an unskilled labourer in construction, and sometimes begs with his mother. He is mocked by his teenage friends for not being a citizen of Ukraine. Ruslan has faith in the Ukrainian legal system and expects the local authorities to provide him with guidance and a solution.

Sofia lives in a village near Odessa city. Both Sofia and her father are Ukrainian Roma, but her mother is Moldavian Roma. Sofia is now in her 50s and in an informal marriage with a Kishinevets Roma. She has six children and one of her daughters has a mental health disability. Sofia works as an occasional, low-skilled labourer to support her family. Neither Sofia nor her children have any identity documents. She is not aware of the exact reason for this. She has on

¹ In Ukraine, there are various Roma ethnic groups. Members of the following groups were interviewed for this research: Kishinevtsy (whose ancestors lived in Moldova, but after serfdom was abolished, moved to Ukraine and the Russian Federation), Moldavian Roma (who also originate from Moldova, but more visibly maintain their Roma heritage and traditions); Vlahy (who live in Ukraine and the Russian Federation and speak a Romani dialect; Palamiy and Georgian Roma belong to this ethnic group); Servy (who are also referred to as Ukrainian Roma and migrated to Ukraine from Romania and Serbia - most do not speak Romani); Ruska Roma (who originate from Poland and reside in the Russian Federation and Belarus and whose dialect of Romani has incorporated many words from the German, Russian and Polish languages). Other Roma sub-groups include Kotlary, Plaschuny and Crimean Roma.

² The names of the interviewees were changed in order to keep their identities anonymous.

several occasions applied to village councils for the issuance of a certificate of residence. Due to the loss of the housing register³ while being transferred to the state archive, government officials are unable to establish her place of residence. Therefore, Sofia has no documentary proof to start the procedure for her passport to be issued, and is unable to apply for a state social pension for her disabled daughter while being deprived enjoyment of her basic human rights.

Anastasiya and her husband moved to Ukraine from Georgia in 1990, after the civil war began. Since then she has been living in Odessa region. Both she and her husband are Georgian Roma. Anastasiya has eight children, and seven of them were born in the territory of Ukraine. One of her daughters was arrested by the police for begging on the street, and Anastasiya does not know where she is. Anastasiya works as an informal, low-skilled labourer to support her family. The only document Anastasiya has is her birth certificate issued in Georgia, as her father burnt all the family's documents. Anastasiya's neighbour Sveta assisted her in getting her birth certificate translated so that she could apply to the local authorities. She is now required to receive confirmation from the Georgian Consulate in Odessa city that she has no Georgian citizenship, but Anastasiya simply has no means to travel to the consulate. She applied several times to the district office of the State Migration Service and was repeatedly told that without paying a bribe she would not succeed in getting the documents.

In 1990 at the age of ten, Georgian Roma **Mariam** moved to Ukraine with her parents. When she was fifteen, she met her future husband – also, Georgian Roma – and eloped with him before she could get a passport. They are in an informal marriage and Mariam now has eight children (aged three to sixteen) and will soon become a grandmother. Recently, after six years of trying, with the help of her mother, Mariam got a passport. She got her birth certificate reissued through the Georgian Consulate in Odessa and then applied to the court for an identification document and confirmation of permanent residence in Ukraine. Mariam's family went through great economic hardship (sometimes going without food) to pay the court fees. Her main goal now that she has her passport is to get birth certificates for her children so that they can attend school and she can receive social security. When all but her youngest child's births were registered, Mariam gave her grandmother's surname, so she must now prove that she is the mother of all her elder children.

Elina and her five siblings belong to the Kishinevtsy ethnic group. After getting married, Elina moved from Odessa city to a village in the region. Her husband died 10 years ago, leaving Elina alone with their daughter. Elina's only source of income is buying, shelling and selling nuts. Except for Elina and one of her brothers, everyone in their family has documents. Elina's documents were lost after her parents passed away and the children were taken to different foster families. Elina's daughter possesses a birth certificate as her father had a passport. Elina has applied to both local and Odessa regional migration service offices for documentation. Fortunately for her, the officials managed to find a record confirming her residence in Ukraine in 1991. As a result, she was able to establish her identity and is now awaiting a decision. Elina explains that life with no documents has been hard for her. She recalls when she had to hide

3 Housing register is a document in which all residents of the house are listed and which is kept by the house owner. It serves as evidence of legal residence in Ukraine.

from the police for three hours under a pile of blankets during extremely hot weather during a work trip to Transcarpathia. She is now insecure about travelling anywhere.

31-year-old **Oleksandr** was born in a village in Mykolayiv region to a Roma-Kishinevtsy family. Oleksandr is in an informal Roma marriage and lives in social housing in Odessa city with his wife and their daughter as well as his wife's parents and brother. Oleksandr works occasionally as a street cleaner. The only document Oleksandr has is the duplicate of his birth certificate. Since their family house was sold, no records about Oleksandr's residence were made in the housing register. Odessa migration service office recommended that Oleksandr apply for a passport in the village where he was born. Oleksandr is completely illiterate, gets confused easily, and needs support to attend his appointments with the state authorities. Although Oleksandr does not think that his life conditions are worse than other Roma, he wants to be married and employed officially, both of which require documentation.

Daria has been living in Odessa city all her life. She was married twice, both times informally as she was unable to have the marriages acknowledged due to her undocumented status. Daria has five children. Neither Daria, nor her children have documents. When Daria applied to the district state administration, she received a certificate of residence registration. However, at the migration service office, she was told to present additional identity documents bearing photographs to prove her identity. Because of the bureaucratic difficulties and her childcare responsibilities, Daria has stopped trying to apply for documentation. The whole family lives from charity, while Daria begs on the streets. Moreover, in desperate need for support, Daria registered her cousin as the mother of her youngest child in order to receive social security payments for the child, which later were split between Daria and her cousin. She has taken a big risk by doing this, as she can be penalised for providing wrongful data to the state authorities.

Due to the anti-Roma pogrom of 2002,⁴ Ruska Roma **Chrystyna** with her Moldavian Roma husband and their two sons and two daughters moved to another village in the Odessa region. Chrystyna had all her documents, including documents confirming house ownership. However, while fleeing from the pogrom, her family's documents were lost. Chrystyna first tried to get a passport at the district migration service office where she resided before the pogrom. However, the head of the office asked for 5,000 hryvnias⁵ to 'help' her. Recently with the help of the Roma social-health mediator, Chrystyna has managed to apply to the Head Office of the migration service in Odessa region and to receive a passport for herself and her pregnant daughter. Her other daughter was assisted by volunteers and got a passport as well. Her two sons remain without documents. Having received documentation, Chrystyna feels more confident to speak to the authorities and stand up for her rights.

Daryna is Ruska Roma and was born in Mykolaiv region. Later, her family moved to Odessa region, where she met her husband, **Georgiy**. He belongs to the Plaschuny ethnic group.

⁴ The pogrom started after a fight between Roma and non-Roma, in which one non-Roma person was killed and 3 others were injured. During the pogrom about 20 Roma houses were badly damaged, one of the houses was burnt.

⁵ Equivalent to 172 Euros.

Together with his family, he ran away from Georgia in 1990. Most of his family – five of his siblings with their families – live in nearby villages. Now Daryna, Georgiy and their eight children are living in a village in Odessa region with Georgiy's mother. As Daryna has a passport, all their children have their birth certificates. However, neither Georgiy, nor his mother have Ukrainian passports. Georgiy managed to get a residence permit in 1993 and is still in a legal limbo. Georgiy and Daryna applied to the local office of the migration service but received no help. In fact, Georgiy and his mother were fined for their 'illegal' residence in Ukraine. Later, Georgiy applied to the Georgian Consulate in Odessa city for a copy of Georgiy's birth certificate and confirmation that he is not a citizen of Georgia. However, he was accused of "going to run to Georgia while there was war in Ukraine". The only document Georgiy has now is his expired Soviet passport.

2. Introduction

The stories of the interviewees set out above, go to the heart of the causes and impact of (the risk of) statelessness among Roma in Ukraine - bureaucratic systems and the failure of Ukrainian authorities to address the documentation challenges that arise. The resultant lack of documentation makes it difficult for affected Roma to establish that they are Ukrainian, which can result in their children also being denied documents and nationality rights, as well as access to social security and fundamental rights.

While in general terms, the discrimination and marginalisation of Roma populations in Ukraine has received some attention, there is less awareness or information on resultant statelessness, how it is caused and whether this has an additional discriminatory impact on the rights of Roma. Consequently, this report, which draws on field research carried out in 2016-2017, looks at the nexus between statelessness and discrimination as faced by the Roma community in Ukraine. It emphasises the importance of recognising and addressing direct and indirect discrimination faced by Roma and confronting prejudicial attitudes and stereotypes that undermine their equality. It also unearths various challenges that can be addressed through greater awareness, making necessary law and policy adjustments, and scrutinising the prejudicial attitudes that Roma face when they encounter state authorities.

This report is one of the outputs of a research and advocacy project of the European Roma Rights Centre (ERRC), Institute on Statelessness and Inclusion (ISI) and European Network on Statelessness (ENS) in collaboration with partner organisations in Albania (Tirana Legal Aid Society), Bosnia and Herzegovina (Vasa Prava), Kosovo (Centre for Legal Aid and Regional Development), Macedonia (Macedonian Young Lawyers Association), Montenegro (Mladi Romi), Serbia (Praxis) and Ukraine (Desyate Kvitnya), which aims to better understand and address Roma statelessness in European Union candidate and neighbourhood countries. In particular, it aims to contribute to:

1. Strengthening understanding of Roma statelessness in the research countries; its causes and the obstacles that stand in the way of solutions;
2. Strengthening the understanding, attitudes and capacity of Roma rights NGOs and activists to effectively mobilise to end Roma statelessness; and
3. Strengthening international, regional (EU & CoE) and national responses to Roma statelessness.

Two other project outputs complement this report. Another country report which looks at the situation in Albania, and a synthesis report, which primarily focuses on the Western Balkans countries of Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, with additional anecdotal information from Albania, Kosovo and Ukraine. It synthesises research carried out in 2016 and 2017 on discrimination and statelessness in these countries, and draws

out the key issues which require further attention, awareness and ultimately, a concerted policy response and attitudinal shift.⁶

2.1 Methodology

Research for this report was carried out by the Civic Organisation “Desyate Kvitnya”⁷, through desk research including an extensive analysis of existing literature, stakeholder mapping, qualitative semi-structured interviews with Roma who are affected by statelessness, and other key stakeholders, including international agencies, national human rights institutions, NGOs, Roma rights groups, government officials, media and academics.

The Roma interviewees spoke to the research team of their own experiences and struggles in relation to the lack of documentation and (risk of) statelessness. Fifteen such interviews (with individuals and families) were conducted in which the reasons behind their situation and the consequences, both material and emotional, were discussed. The interviewees were mostly unemployed, living in poverty, and in a number of cases, had minimal formal education. Most of them worked in casual jobs or are engaged in begging. Almost all interviewed parents stated that their children had faced serious obstacles in relation to accessing education. Due to the precariousness of some of the situations of those interviewed, they are identified with pseudonyms and any potentially identifying information has been removed.

Additionally, sixteen interviews were conducted with other key stakeholders including Ukrainian government officials, social activists, Roma organisations, NGOs and UN agencies.

It is important to acknowledge at the outset some of the limitations of the research. The project considers the situation of different groups of people, encompassed here under the term ‘Roma’, who are diverse, and between whom the dividing lines are not always clear. The identification of statelessness is also very complex and the characteristics or circumstances that may put someone at risk of statelessness are difficult to generalise. In particular, the research includes those who have been denied documentation, who at the very least are at risk of statelessness, but who may not necessarily be stateless. It is also important to note that this is a qualitative study, and therefore provides an insight into the problem, and not a comprehensive overview of it. It identifies various issues which in turn could benefit from further research as part of the process of addressing them. The intention of this research was not to reach finite conclusions, but to shine a light on some of these complex issues and begin to better understand the contributing factors.

⁶ ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, <http://www.errc.org/cms/upload/file/roma-belong.pdf>; TLAS, ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in Albania*, forthcoming (2018). Available at: <http://www.errc.org/article/roma-belong--statelessness-discrimination-and-marginalisation-of-roma-in-albania/4615>.

⁷ Civic Organization “Desyate Kvitnya” (or “The Tenth of April”) was established on 1 August 2012 and named after the birth date of the Dutch lawyer and writer, Hugo Grotius. “Desyate Kvitnya” is an implementing partner of (among others) UNHCR, ERRC, and ENS, and is located in Odessa city, Ukraine. For more information: <http://desyatekvitnya.com/>.

As will be explored in this report, there are significant challenges in Ukraine relating to the quantification of Roma statelessness. Significantly varying estimates exist, making it difficult to understand the scope of the problem and to address it through policy planning and responses. One of the reasons for these large discrepancies, is that individuals often do not dare to declare themselves as stateless Roma, as they fear negative consequences such as losing whatever social security they are entitled to receive or difficulties with finding a job. This is an example of how discrimination (and perceptions of discrimination) can further exacerbate the problem, by making it more invisible.

2.2 About Roma

‘Roma’ are known as one of Europe’s oldest, largest and most disadvantaged ethnic minorities. In fact, the term ‘Roma’ usually encompasses a wide diversity of groups with ‘*complex and multi-layered*’ identities.⁸ Some, but not all Roma speak Romanes or other languages specific to Romani communities. There are also people who do not identify as Roma at all who are nonetheless the targets of antigypsyism.⁹ For the purpose of this report, as for the “Roma Belong – Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine”¹⁰, we use the term ‘Roma’ to encompass all groups in the region who are subject to antigypsyism, in line with the Council of Europe definition.¹¹

Roma came to Europe many centuries ago in the Middle Ages from what is now India.¹² The Council of Europe estimates there to be around 10 to 12 million Roma in Europe.¹³ The majority of Roma have a nationality, but the number of stateless Roma in Europe is largely unknown, as disaggregated data on the Roma population is lacking, particularly in non-EU countries.¹⁴

Roma are widely regarded as one of Europe’s most marginalised communities. They experience discrimination and rights deprivations in various forms, including police brutality, school segregation and denial of the right to work.¹⁵ Data collected by countries

⁸ Council of Europe, *Factsheets on Roma Culture*. Available at: <http://romafacts.uni-graz.at/index.php/culture.1>.

⁹ Alliance against Antigypsyism, *Antigypsyism: a reference paper*, 2016. Available at: <http://antigypsyism.eu/wp-content/uploads/2017/07/Antigypsyism-reference-paper-16.06.2017.pdf>.

¹⁰ ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017.

¹¹ Council of Europe, *Roma and Travellers Team*. Available at: <http://www.coe.int/en/web/portal/roma>.

¹² Council of Europe, *Factsheets on Roma History: General Introduction*. Available at: <http://romafacts.uni-graz.at/index.php/history/general-introduction/general-introduction>.

¹³ Council of Europe, *Descriptive Glossary of Terms relating to Roma Issues*, p 6, 2012. Available at: <https://rm.coe.int/1680088eab>.

¹⁴ Data is particularly scarce in countries that did not participate in the Roma Decade (2005-2015). See: <http://www.rcc.int/romaintegration2020/pages/3/roma-in-the-region>.

¹⁵ ERRC, *Written Comments for Consideration by the European Commission concerning Roma Inclusion in the Western Balkans Progress Reports 2016*, 2016. Available at: <http://www.errc.org/cms/upload/file/ec-submission-on-roma-inclusion-in-the-western-balkans-july-2016.pdf>.

participating in the Decade of Roma Inclusion (2005-2015) demonstrated that Roma continue to live on the margins of societies in Europe, with poverty, inequality, discrimination, substandard housing and high rates of unemployment widespread.¹⁶ In comparison to local non-Roma populations the situation of Roma can be considerably worse in all areas of life, from education to employment, housing, and health.¹⁷ Some countries have also seen a rise in anti-Roma hate speech and hate crime in recent years, reflecting the prevalence of societal racism and discrimination.^{18 19}

Adapted from **Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine**

2.3 Discrimination and Statelessness

*One can neither tell the story of statelessness, nor seek to finish it for good, without addressing the inequality and discrimination faced by its protagonists... statelessness cannot be eradicated unless discriminatory societal attitudes which view some people as less worthy of inclusion than others are comprehensively tackled.*²⁰

A stateless person has no nationality – she is someone who is “*not considered as a national by any state under the operation of its law*”.²¹ While there are many widely recognised causes of statelessness including gender or race discriminatory nationality laws, state succession, the lack of documentation, poor administrative procedures, conflicts in laws and the inheritance of statelessness; a closer look at each of them reveals that discrimination often has a clear or more hidden role to play.²² In relation to state succession for example, “*it is vulnerable minorities who are associated with either the successor or parent State who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion*”.²³

The nexus between administrative practices, documentation and discrimination has been explored by De Chickera and Whiteman, who note that “*bad administrative practices often*

16 Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015*, 2015. Available at: <http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>.

17 *Ibid.*

18 European Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Report on the implementation of the EU Framework for National Roma Integration Strategies 2015 COM(2015) 299*, 17 June 2015, p. 9. Available at: http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf.

19 ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, pp.8-9. Available at: <http://www.errc.org/cms/upload/file/roma-belong.pdf>.

20 De Chickera A and Whiteman J, *Addressing statelessness through the rights to equality and non-discrimination*, in van Waas L and Khanna M (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016, p. 100.

21 United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

22 ISI, *The World's Stateless*, Wolf Legal Publishers, 2014, pp. 23–27. Available at: <http://www.institutesi.org/worldsstateless.pdf>.

23 *Ibid.*, p. 24.

enable discrimination and prejudice to be determinative of whether or not a person will be recognised as a citizen”, particularly where officials have discretion in decision making.²⁴ They emphasise that it is often vulnerable groups who are excluded, their statelessness a justification for their continued exclusion. The subtler form of discrimination that arises from socio-economically disadvantaged groups facing difficulties accessing centralised administrative offices and therefore being disproportionately affected by lack of documentation is another common cause of statelessness.²⁵

This is pertinent in the context of Roma statelessness in Ukraine, where the main cause of (risk of) statelessness can be identified as the lack of civil documentation and the inheritance of statelessness.²⁶

In addition to causing or heightening the risk of statelessness, discrimination can continue to undermine the enjoyment of rights of stateless persons. In the case of Roma, a minority that already suffers discrimination and exclusion, it can be difficult to identify how discrimination based on their statelessness adds to this overall experience. However, there is often a direct link between the lack of documentation and statelessness on the one hand, and barriers to accessing basic rights including healthcare, education, the right to work and move freely on the other. Addressing the statelessness of Roma will not resolve all the problems they face, but it will eradicate one of the primary arguments made to justify their exclusion: that they “*are not from here*”.²⁷

While the lack of documentation is not equal to the lack of nationality, and not every undocumented person is stateless, in Ukraine many stateless persons are also undocumented or lack important documentation. This prevents them from acquiring the citizenship of Ukraine or confirming any other citizenship. Many such people come from the Roma community.

Adapted from **Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine**

24 De Chickera A and Whiteman J, *Addressing statelessness through the rights to equality and non-discrimination*, in van Waas L and Khanna M (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016, pp. 104-105.

25 It should be emphasised that the lack of documentation is not the same as statelessness. Many citizens lack documentation. However, lack of documentation can lead to statelessness due to inability to prove citizenship. See also ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, pp.11-12. Available at: <http://www.errc.org/cms/upload/file/roma-belong.pdf>.

26 Inheritance of statelessness occurs when stateless parents or parents at risk of statelessness are unable to get civil documentation for their children, thus transferring the issue to the next generation.

27 ISI, ENS, ERRC, *Roma Belong - Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017. Available at: <http://www.errc.org/cms/upload/file/roma-belong.pdf>.

3. Roma and Statelessness in Ukraine

3.1 Roma

Under the All-Ukrainian Census of 2001, 47,600 persons self-identified as Roma. However, the real figure is likely to be much higher. In recent years, many intergovernmental and non-governmental organisations, international and Ukrainian, provided a range of estimates for the current Roma population, from 120,000 up to 400,000 persons.²⁸ OSCE experts identified three main reasons for the striking difference in the official and unofficial figures:

1. the fact that, in some areas, many Roma do not have identity documents and, thus, are not registered in the country;
2. the reluctance of Roma to declare their ethnic origin because of the fear that they will become targets of discrimination; and
3. the incorrect recording by the authorities of “Roma” as “Romanians”.²⁹

Commenting on this situation, a representative of the State Migration Service of Ukraine (SMS of Ukraine) stated as follows:

“Unfortunately, we have only the census of 2001, which is already out-dated.³⁰ I would like a new census to be conducted, but it is postponed for 4 or 5 years due to the lack of financial resources. That is why our numbers do not differ – about 50,000. However, I do not think these are the real numbers for Ukraine. Personally, I think there is no less than 100,000 Roma... Definitely more than 100,000, maybe even two or three times more.”

²⁸ As estimated by the World Romani Union and local Roma NGOs. The figures are taken from a document prepared by the Council of Europe Roma and Travellers Division, Estimates on Roma population in European countries, “ECRI Report on Ukraine (fourth monitoring cycle)” (ECRI Report on Ukraine), adopted on 8 December 2011. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>; OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014, p. 11. Available at: <https://www.osce.org/odihr/124494?download=true>; Roma Children in Ukraine: Photo Essay, 2006. Available at: https://www.unicef.org/ukraine/media_11430.html.

²⁹ ECRI, *ECRI Report on Ukraine (fourth monitoring cycle)*, adopted on 8 December 2011. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>; OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, p. 11, 2014. Available at: <https://www.osce.org/odihr/124494?download=true>.

³⁰ According to the CERD Committee in its *Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine*, the census that was due to take place in 2016 was postponed to 2020. See CERD Committee, *Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine*, CERD/C/UKR/CO/22-23, 4 October 2016. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en.

In Ukraine, there are various ethnic groups to which Roma belong.³¹ They mainly live in the western and southern parts of Ukraine (namely, Transcarpathia (Zakarpattia) and Odessa regions). Roma also live in the central parts of the country (Kyiv, Cherkassy and Poltava regions) and in the temporarily occupied territories of Ukraine (Donetsk and Luhansk regions of Ukraine and the Crimea). The Crimea annexation and the armed conflict in the east of Ukraine, has resulted in internal displacement of large groups, including Roma. Although the precise number of internally displaced Roma in Ukraine is unknown, UNHCR estimates there to be around 6,000 Roma IDPs in the country.³² The majority of Roma in Ukraine are Orthodox Christians.

While most Roma in Ukraine have citizenship, many are at risk of statelessness. In most cases, although they may have the right to Ukrainian nationality under the law, they are undocumented, and their nationality remains undetermined. The lack of documentation among Roma is widespread and long lasting, sometimes inter-generational, further heightening the risk of statelessness and raising significant human rights concerns.

3.2 Statelessness

There is no reliable data on the exact size of Ukraine's stateless population as the scope of the problem has never been thoroughly mapped. According to Ukraine's 2001 census, 82,600 persons claimed to be stateless (with the biggest groups located in the Autonomous Republic of Crimea, Odessa, Donetsk and Dnipropetrovsk regions) and another 40,400 persons did not specify their citizenship.³³ According to the SMS of Ukraine, as of 2015, 5,159 stateless persons had permanent residence permits and 574 had temporary residence permits in Ukraine. By comparison, according to the UNHCR Office in Kyiv, as of 30 June 2017, 5,463 stateless persons were legally residing in Ukraine (including 4,946 permanently). The Ukrainian Government does not keep a record of irregular stateless persons residing in Ukraine and does not have an official statelessness determination procedure in place. However, according to a Representative of the Head Territorial Office of the Ministry of Justice of Ukraine in Odessa region, *"less than 1% of people are undocumented. In general, all the other people have documents."*

In 2015, UNHCR estimates of the stateless population in Ukraine ranged from 35,228³⁴ to 45,877.³⁵ Either figure makes this one of the largest stateless populations in Europe.

³¹ See footnote 1.

³² UNHCR, *International Protection Considerations related to developments in Ukraine – Update II*, January 2015. Available at: <http://unhcr.org.ua/attachments/article/1231/UKR%20Int%20Prot%20Cons%20UPDATE%20II.pdf>.

³³ The Institute for Demography and Social Studies of the NAS of Ukraine, the State Statistic Committee of Ukraine, *First All-National Population Census: historical, methodological, social, economic, ethnic aspects*, 2004, p. 109. Available at: http://2001.ukrcensus.gov.ua/d/mono_eng.pdf.

³⁴ UNHCR, *Population Statistics*. Available at: http://popstats.unhcr.org/en/persons_of_concern.

³⁵ UNHCR, *Populations*, Available at: <http://globalfocus-interim.unhcr.org/population>.

None of the interviewed stakeholders could provide any clear figures on the rate of statelessness in the country or amongst the Roma population in Ukraine, or on the general number of Roma living in Ukraine.

“The estimation of the statelessness level can be based on the statistics. Unfortunately, the state does not know (or it is not willing to know) the exact number of the Roma population. Consequently, the scale of statelessness is impossible to determine accurately.”

Valentina Subotenko, Ukrainian Expert on Statelessness

Given the absence of any clear data on statelessness in Ukraine and the uncertainty in the number of Roma in Ukraine, the number of stateless Roma or those at risk of statelessness is also unknown. The only statistic that provides a hint at the potential scale of the problem of Roma statelessness, is the estimate of the Ukrainian Ombudsman and Roma rights NGOs that around 10-20% of Roma in Ukraine are undocumented. This number would inevitably include stateless Roma and Roma at risk of statelessness in Ukraine.³⁶ The report on the Implementation of State Policy on Roma 2015, corroborates this information.³⁷ The study was based on interviews with 672 Roma individuals from six regions who were above the age of 16, and 10 focus groups with Roma leaders, officials, and Roma rights activists.³⁸ According to the report, among the Roma respondents, 83% had a passport or another identity document, while the remaining 17% were undocumented.³⁹ Also, 67% of respondents had residence registration and the remaining 33% did not.

Slightly more positive figures were put forward by Mr. S. Ponomaryov, manager of the Roma Program Initiative at the International Foundation “Renaissance”, who referred to a 2016 WHO Report, which is not publicly available. According to him, this report estimates that 90% of the adult Roma population have passports, and 95% of Roma children have birth certificates.

There does appear to be consensus on the fact that there is very little information on which to base any claim about Roma statelessness in the country.

“It is very difficult to say. In percentage, it is impossible to say. Considering our own experience, the number is around 10%.”

Mykola Burlutskiy, Roma social-health mediator,
Leader of the Kharkiv NGO “Chachimo

“I cannot guess the exact number as I do not have the objective data. According to my personal practice, approximately 10% to 20% of Roma are without documents.”

Maksym Dzhum, Roma social-health mediator,
Leader of the NGO “Planet of Kind People”

³⁶ International Renaissance Foundation, *Roma Program Initiative and Coalition of NGOs, The Conditions of the Implementation on the Roma State Policy*, 2015, p. 10. Available at: http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf (Ukrainian). According to the Report, 17% of Roma are undocumented.

³⁷ *Ibid.*

³⁸ *Ibid.* p. 15.

³⁹ *Ibid.* p. 10.

However, while most of the Roma rights activists understand the origins and reasons of Roma statelessness, others do not always draw a precise distinction between the lack of documentation and the risk of statelessness and statelessness as such. For example, two of the respondents from Odessa and Trans-Carpathian regions defined “stateless persons” as those without any documents or as people who cannot prove their citizenship. On the other hand, others demonstrated a more nuanced understanding:

“I think the issue is more complex, as most of the Roma living permanently in the territory of Ukraine are entitled to Ukrainian citizenship according to the law, but do not have documents determining their nationality. This is the reason I personally believe that in Ukraine some of the Roma communities are under the risk of statelessness rather than stateless. The consequence is a deprivation of access to administrative and medical services.”

Serhiy Ponomaryov, Manager of the Roma Program Initiative
at the International Foundation “Renaissance” (from Awareness of NGOs)

4. Legal Framework

4.1 International and Regional Standards and Mechanisms

According to Art. 9 of the Constitution, international treaties have direct effect in Ukraine. If there is a conflict between domestic law and an international treaty, the treaty provisions should prevail. However, the Constitution remains the supreme law, as it is impossible for Ukraine to abide by any international treaty contravening the Constitution, without first amending the Constitution.⁴⁰

Ukraine is party to nearly all the UN human rights instruments.⁴¹ In 2002, Ukraine acceded to the 1951 Convention relating to the status of Refugees. In 2013, Ukraine acceded to the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

As a full member of the Council of Europe, Ukraine ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1997. It is also party to the Framework Convention for the Protection of National Minorities. Ukraine ratified the European Convention on Nationality in 2006, with some declarations and reservations in place. It also signed but did not ratify the Council of Europe Convention on the avoidance of statelessness in relation to State succession in 2006.

4.2 National Law and Policy Framework

4.2.1 NATIONALITY

The Law of Ukraine “On the Citizenship of Ukraine” № 2235⁴², enshrines both the principles of citizenship by birth on the territory (*jus soli*) and citizenship by descent (*jus sanguinis*).

⁴⁰ Buromenskyi M.V., *International Public Law*, 2006. Available at: <http://readbookz.com/pbooks/book-34/ua/> (Ukrainian).

⁴¹ In particular, Ukraine acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1973; the International Convention on the Elimination of All Forms of Racial Discrimination in 1969; the Convention on the Elimination of All Forms of Discrimination against Women in 1981; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987; the Convention on the Rights of the Child in 1991; the Convention on the Rights of Persons with Disabilities in 2010; and the Convention for the Protection of All Persons from Enforced Disappearance in 2015.

⁴² The Ukrainian legislation that regulates other issues on nationality, status of foreigners and stateless persons in Ukraine comprises: the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” № 3773-VI of 22 September 2011, the latest amendments of 18 June 2016; the Law of Ukraine “On Immigration” № 2491-III of 07 June 2001, the latest amendments of 25 June 2016; the Law of Ukraine “On the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or its Special Status” № 5492-VI of 20 November 2012, the latest amendments of 08 December 2016; the Order of the Ministry of Internal Affairs of Ukraine “On Approval of the Rules for Preparation and Issuing a Passport of a Citizen of Ukraine” № 320 of 13 April 2012, the latest amendments of 06 October 2015; the President’s Decree “The Issues of Organising the Implementation of the Law of Ukraine “On the Citizenship of Ukraine” № 215/2001 of 27 March 2001, the latest amendment of 01 April 2016.

The latter is enshrined in Art. 7 (1): “*A person, whose parents, or one of the parents, was (were) the citizen(s) of Ukraine at the date of such person’s birth, shall be treated as the citizen of Ukraine.*” The former serves as a safeguard against statelessness. According to Art. 7 (2) (4) (5) (6), children of foreigners, stateless persons or refugees, residing legally in the territory of Ukraine, who were born in the territory of Ukraine (including foundlings) are citizens of Ukraine from the moment of their birth.

However, children born in the territory of Ukraine whose parents have no identity documents and no documental proof of their permanent residence in Ukraine, fall beyond the scope of this safeguard. For such children, this creates obstacles in obtaining documents and consequently in acquiring Ukrainian nationality by birth.

4.2.2 STATELESSNESS

A stateless person is defined in the Law “On the Citizenship of Ukraine” and the Law “On the Legal Status of Foreigners and Stateless Persons”. Both laws define a stateless person as “*a person, who is not considered as a citizen by any state in accordance with its legislation.*”

This definition is not in full conformity with the provisions of the 1954 Convention, as it omits the formula “*under the operation of its law*”, which is important for the correct interpretation and full application of the Convention. The non-inclusion of the phrase “*under the operation of its law*” means that those who under the letter of the law should have a nationality, but have been denied it due to non-implementation (or discriminatory implementation) of the law, may not be considered to be stateless in the country. In the absence of a procedure to identify and protect stateless persons, the impact of this gap may be less obvious, but it is a significant one nonetheless, as it can result in stateless people not being identified and being denied protection.⁴³

The legal lacuna that Ukraine’s lack of a statelessness determination procedure creates, constitutes a significant barrier for undocumented stateless persons living in Ukraine to access their lawful rights and freedoms under international and domestic law.

“Without the national mechanism, talking about the implementation of the conventions does not have much sense, because only for stateless people who arrive at the territory of Ukraine legally with valid documents a mechanism of naturalization and receiving a residence permit exists.”

Dmytro Pletchko, Assistant Legal Officer at the UNHCR Office in Kyiv

The positive development in this regard is the amendment to the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” prepared by the SMS of Ukraine upon its own initiative. The proposed amendment introduces provisions for the establishment of a statelessness determination procedure. If adopted by the Parliament, the law would guarantee access to this

⁴³ ENS, Protecting Stateless Persons From Arbitrary Detention: An Agenda For Change – A Report From ENS, 2017, p. 11, Available here: <http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-agenda-change>.

procedure for every individual in Ukraine irrespective of the legality of their stay.⁴⁴ However, due to various deficiencies, the draft was sent back by Parliament to the Government for review in January 2017. The timeframe for the adoption of the bill and its final text is unclear.

4.2.3 ROMA RIGHTS PROTECTION AND ANTI-DISCRIMINATION LAW & POLICY

Roma constitute one of the largest ethnic minorities in the country⁴⁵, and, as such, the protection of their rights falls under the scope of Ukraine's anti-discrimination legislation.⁴⁶

Art. 1 (1) (2) of the Law of Ukraine "On the Principles of Prevention and Counteracting Discrimination in Ukraine" № 5207-VI of 06 September 2012 defines discrimination as follows:

"discrimination is a situation, when a person and/or a group of persons based on their features of race, skin colour, political, religious and other beliefs, gender, age, disability, ethnic or social origin, citizenship, marital or financial status, place of residence, language and other features that are, have been and can be actual or assumed (hereinafter – certain features), is limited in recognition, realization or enjoyment of rights and freedoms in any form under this Law, except for cases, when such limitation has a legitimate, objectively justified aim, means of reaching which are due and necessary".⁴⁷

Furthermore, Art. 161 (1) of the Criminal Code of Ukraine criminalises intentional direct or indirect limitation of rights or establishment of direct or indirect privileges of citizens based on their features of race, skin colour, political, religious and other beliefs, gender, disability, ethnic and social origin, financial status, place of residence, language or other features. A victim of such a crime can be a citizen of Ukraine, as well as a foreigner or a stateless person. The sanction for this crime makes it a minor offence, however, the same acts committed by an official are considered to be more serious crimes, incurring a fine or imprisonment up to five years with no access to an official position for a period of up to three years. Yet, this article is rarely implemented. According to the information of UNDP in Ukraine, only three so-called hate crimes were registered in 2012, although NGOs reported 19 cases. Furthermore, there were only seven judicial decisions on hate crimes between 2012-2016.⁴⁸

⁴⁴ The Comparison Table to the Amendments on the Law of Ukraine "On Amending the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons". Available at: <http://dmsu.gov.ua/images/files/nakazy/tab.pdf> (Ukrainian).

⁴⁵ Hereinafter Roma are defined as an 'ethnic minority' in the report, except for the title of the Presidential Decree № 201/2013 of 08 April 2013 adopting the Strategy of protection and integration of Roma national minority into the Ukrainian society till 2020, where Roma are referred to as a national minority.

⁴⁶ The Law of Ukraine "On National Minorities in Ukraine" № 2494-XII of 25 June 1992, the latest amendments of 12 December 2012; the Law of Ukraine "On the Principles of Prevention and Counteracting Discrimination in Ukraine" № 5207-VI of 06 September 2012, the latest amendments of 30 May 2014.

⁴⁷ Other anti-discriminatory standards are set out by two legal acts, namely the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" № 2866-IV of September 08, 2005, last amendment of May 30, 2014; and the Law of Ukraine "On the Fundamentals of Social Security of the Disabled in Ukraine" № 875-XII of March 21, 1991, last amendment of January 01, 2017.

⁴⁸ UNDP Ukraine, *Racial discrimination in Ukraine: is there a progress?*, July 2016. Available at: <http://www.ua.undp.org/content/ukraine/uk/home/presscenter/articles/2016/07/26/racial-discrimination-in-ukraine-is-progress-evident-.html> (Ukrainian).

However, the Office of the Ukrainian Ombudsman and UN agencies report high levels of discrimination against Roma and many other groups in Ukraine.⁴⁹ In October 2016, the Committee on the Elimination of Racial Discrimination welcomed the positive steps taken by Ukraine in addressing discrimination, but underlined a whole range of further concerns and recommendations, including in relation to the persistence of discrimination, stereotypes, and prejudices against Roma, and the particularly insecure situation of Roma IDPs.⁵⁰

Since 2013, a long-term national Strategy on Roma rights has been implemented in Ukraine.⁵¹ This aims at the protection and integration of Roma in Ukrainian society and sets out far-reaching objectives related to six main issues. The objective on identity and documentation calls for “*the documentation of Roma, staying in the territory of Ukraine on legal grounds*” to be facilitated. It therefore only targets individuals legally staying in Ukraine, who have documents to prove the legality of their status. Roma without any identity documents – including those who are stateless or at risk of statelessness – fall out of the scope of this objective, thus undermining its potential impact.

In 2013, several months after the adoption of the Strategy, the Cabinet of Ministers approved a National Action Plan (NAP), which prescribes the documentation of Roma legally in the country. Planned activities include:

- (1) Joint meetings between the State Migration Service and the State Registration Service of Ukraine and Roma NGOs;
- (2) Publishing and sharing information on the documentation procedure in Roma settlements;
- (3) Providing statistical data on Roma who received identity and nationality documentation.

*The Ministry of Culture of Ukraine initiated an Interagency Working Group to implement the NAP. In November 2016, the Interagency Working Group held its first meeting, the main result of which was the creation of several sectoral sub-groups, including one on legal issues.*⁵²

⁴⁹ For more details, see Ombudsman of Ukraine, *The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine*, 2015, p.552. Available at: www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2015_10b.pdf (Ukrainian); *The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine*, 2016, p. 537. Available at: www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2016_final.pdf, p. 156 (Ukrainian); CERD Committee, *Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine*, CERD/C/UKR/CO/22-23, 4 October 2016. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en; CERD Committee, *Ukraine combined twenty-second to twenty-third periodic report*, CERD/C/UKR/22-23, 2016. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20318&LangID=E#sthash.By19x2Q2.dpuf>.

⁵⁰ CERD Committee, *Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine*, CERD/C/UKR/CO/22-23, 4 October 2016, para. 19. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en.

⁵¹ By the Decree of the President of Ukraine № 201/2013 of 08 April 2013, the Strategy of protection and integration of Roma national minority into the Ukrainian society till 2020 was adopted. Available at: <http://zakon5.rada.gov.ua/laws/show/201/2013>.

⁵² About the first meeting of the Interagency working group on implementation of the Strategy of protection and integration of Roma ethnic minority into the Ukrainian society till 2020, 07.11.2016, The Ministry of Culture of Ukraine. Available at: http://www.kmu.gov.ua/control/uk/publish/article?art_id=249465726&cat_id=244277212 (Ukrainian).

However, both the Strategy and NAP fall short of making clear commitments.⁵³ Moreover, the issues of challenging anti-Roma prejudice and the promotion of inter-cultural dialogue are not addressed⁵⁴, and both processes have had little impact to-date. Many Roma rights activists stress that the improper implementation of the Strategy is due to a lack of coordination at the central level and the absence of an effective monitoring mechanism.⁵⁵

Furthermore, the implementation of the Strategy and NAP was never financed under the national budget. Instead, there was an expectation that local budgets – which are always stretched – would cover implementation.

⁵³ Navrotsky V, *Still un-integrated: Ukraine's Roma Integration Strategy leads nowhere*, February 2017. Available at: <http://www.errc.org/blog/still-un-integrated-ukraines-roma-integration-strategy-leads-nowhere/155>.

⁵⁴ *Ibid.*

⁵⁵ International Renaissance Foundation, Roma Program Initiative and Coalition of NGOs, *The Conditions of the Implementation on the Roma State Policy*, 2015, p. 64. Available at: http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf (Ukrainian).

5. Causes of Roma Statelessness

5.1 Roma Statelessness as a Consequence of the Exercise of the Right to Self-Determination

5.1.1 THE LEGACY OF THE DISSOLUTION OF THE USSR

Until its independence on 24 August 1991, Ukraine was part of the Union of Soviet Socialist Republics (USSR). After the USSR's dissolution on 26 December 1991, 15 new independent States appeared on the European map. For citizens of the USSR, this meant a sudden change of their nationality, as their citizenship of the Soviet Union was no longer in force.

While over 25 years have passed, there are still many people in Ukraine with no identity documents, except for their passport or birth certificate of the former USSR. There are various reasons for this. There were no outreach campaigns or simplified procedures targeting individuals with outdated passports of the former USSR. At the individual level, inaction is usually caused by personal circumstances, such as a low level of education and knowledge of the procedures, or residence in rural areas far from administrative centres. This problem is not unique to Roma. However, given the deeply rooted social exclusion Roma suffer and the fact that many are compelled to live in informal communities, their claim to Ukrainian nationality (and the evidence they need) is likely to be disproportionately affected by state succession. As explained by Ms. V. Subotenko:

“Most Roma have no documents to prove their identity and citizenship, although Roma actually lived in Ukraine at the time of determining the initial aggregate of the citizens of Ukraine, but they do not have any documents proving the facts of title to establish they belong to the citizenship of Ukraine.”

Under the Ukrainian nationality law, a person with a passport of the former USSR is entitled to Ukrainian citizenship if they can prove their permanent residence in the territory of Ukraine at the time of independence.⁵⁶ In practice, this condition is difficult for many to meet, and those who cannot do so have to go through a court procedure. The situation is even more difficult for the children of people holding outdated documents, as they are often denied birth certificates. In a still worse position, are those who moved to Ukraine from another (former) Soviet republic in the early 1990s. Many of these people are victims of conflicts in nationality laws of the independent successor states.

Anastasiya and Georgiy arrived in Ukraine from Georgia in 1990. At the time of the adoption of the first Citizenship Law of Ukraine, they were permanently residing in the Ukrainian territory.

⁵⁶ The Law of Ukraine “On Citizenship of Ukraine” of 2001, Art. 2 establishes the affiliation to the Ukrainian citizenship for all former USSR citizens, who at the moment of declaration of independence of Ukraine (24 August 1991) or the entry into force by the Citizenship Law of Ukraine (13 November 1991), resided permanently in the territory of Ukraine.

However, both Anastasiya and Georgiy have not yet obtained Ukrainian citizenship. Georgiy managed to get a residence permit in 1993 but Anastasiya does not have any documentation to prove her residence in Ukraine since 1990. They are not recognised as citizens of either Ukraine or Georgia (under Georgian law the requirement for obtaining nationality is permanent residence in Georgia as of 1993). The only documentation Georgiy has is his Soviet Georgian passport and Anastasiya, her birth certificate.

5.1.2 ROMA OF TRANSNISTRIA

Since 1992, after the conflict in neighbouring Moldova, a separatist region, known as Transnistria (or the Pridnestrovian Moldavian Republic or Trans-Dniester) was established on the narrow strip of land between the Dniester River and the Ukrainian border.⁵⁷ The international community, including Ukraine, does not recognise the independence of Transnistria, perceiving the territory as an integral part of Moldova. Because of this non-recognition, documents issued by the Transnistrian authorities are not recognised by other States, including Ukraine. At the individual level, the outcome is that even documented persons holding a passport or birth certificate issued by the self-proclaimed Transnistrian authorities will be *de jure* undocumented in the territory of Ukraine (unless they also hold Moldovan documents). This is often the case for people born within the territory of Transnistria in the early 1990s who now reside permanently in Ukraine. The issue is particularly acute in Odessa region, which borders Transnistria. According to unconfirmed data, Roma constitute less than 1% of the Transnistrian population, but some Roma are likely to be impacted.⁵⁸ The Transnistrian population has decreased over the past 10 years by more than 14% and is now around 475,000 people.⁵⁹ Experts recognise this group of people who hold only Transnistrian documents as being stateless.⁶⁰

While the Transnistria question is one of self-determination, it is also creating a risk of statelessness. It is important to note though, that most Transnistrians also have citizenship of another state – most often Russia or Moldova (or both).⁶¹ However, for those who have only Transnistrian ‘citizenship’, the problem of statelessness will remain until the territorial dispute over Transnistrian territory is settled legally at the international level. Under Ukrainian nationality law, the 1989 Convention on the Rights of the Child and the 1961 Statelessness Convention, children born in Ukraine who would otherwise be stateless, including because their parents hold only Transnistrian documents, have the right to acquire Ukrainian citizenship by birth.

⁵⁷ For more information about Transnistria see: Trans-Dniester profile, 13 December 2016. Available at: <http://www.bbc.com/news/world-europe-18284837>.

⁵⁸ The preliminary results of Transnistrian population census. Available at: <http://www.olvia.idknet.com/ol37-09-05.htm> (Russian).

⁵⁹ The figure is based on comparison between the results of two population censuses of 2004 and 2015 and published on the official website of the self-proclaimed Government of Transnistria: Brief preliminary results of Transnistrian population census in 2015, Ministry of the Economic Development of the Transnistrian Moldovan Republic. Available at: <http://mer.gospmr.org/novosti/kratie-predvaritelnye-itogi-perepisi-naseleniya-pridnestrovya-2015-goda.html> (Russian).

⁶⁰ Government, UN, academic and media representatives interviewed for this research.

⁶¹ Brynosh, I, Legal Ghosts, *Monitoring Report*, 2015, p. 7. Available at: <https://www.izbirkom.org.ua/upload/izbirkom-report2015.pdf> (Ukrainian).

5.1.3 INFLUENCE OF THE ANNEXATION OF CRIMEA AND THE ARMED CONFLICT IN THE EAST

The Maidan protests in 2013-2014 (also known as the Euromaidan) in Kyiv, were followed by the occupation and annexation by the Russian Federation of the Autonomous Republic of Crimea, armed conflict in the Eastern regions of Ukraine (in particular Luhansk and Donetsk oblasts⁶²), and the rise of the self-proclaimed Luhansk People's Republic (LNR) or Donetsk People's Republic (DNR).

As a result, the Ukrainian state lost control over a part of its territory. Furthermore, these events fuelled massive internal displacement, with many Roma among the displaced. Based on NGO figures, UNHCR reported that around 6,000 Roma were displaced as of January 2015.⁶³ WHO, estimates this figure to be around 10,000 as of April 2015.⁶⁴ This amounts to approximately 1-1.5% of the total 642,861 IDPs, 97% of whom were from Eastern Ukraine.⁶⁵ While this percentage is very low, Roma IDPs are particularly vulnerable due to their marginalised position in society.⁶⁶ According to a needs assessment of Roma IDPs in Kharkiv, Luhansk, and Odessa, the vast majority of respondents had lost their personal documents or had never had any.⁶⁷

In response to the displacement crisis, the Ukrainian Parliament adopted the Law of Ukraine “On Ensuring the Rights and Freedoms of the internally displaced persons” № 1706-VII of 20 October 2014, that established a procedure to issue certificates to IDPs. However, only IDPs with an identity document can obtain the certificate, making it of no use to undocumented IDPs or those who lost their documents in flight. As reported by UNHCR, many Roma IDPs did not have any documents before the conflict in the East of Ukraine, or lost them.⁶⁸ Furthermore, as explained by Mykola Burlutskiy, a Roma social-health mediator and leader of the Kharkiv NGO “Chachimo”:

⁶² Hereinafter, the term ‘oblast’ is used interchangeably with ‘region’ to refer to the administrative and territorial division of Ukraine.

⁶³ UNHCR, *International Protection Considerations related to developments in Ukraine – Update II*, January 2015. Available at: <http://unhcr.org.ua/attachments/article/1231/UKR%20Int%20Prot%20Cons%20UPDATE%20II.pdf>.

⁶⁴ WHO and partners increase focus on Roma population in Ukraine, April 2015. Available at: <http://www.euro.who.int/en/countries/ukraine/news/news/2015/04/who-and-partners-increase-focus-on-roma-population-in-ukraine>.

⁶⁵ UNHCR, *International Protection Considerations related to developments in Ukraine – Update II*, January 2015. Available at: <http://unhcr.org.ua/attachments/article/1231/UKR%20Int%20Prot%20Cons%20UPDATE%20II.pdf>.

⁶⁶ OHCHR, *Report on the human rights situation in Ukraine*, 15 November 2014. Available at: http://www.un.org.ua/images/stories/FINAL_OHCHR_seventh_report_Ukraine_20.11.14_before_launch.pdf.

⁶⁷ WHO and partners increase focus on Roma population in Ukraine, April 2015. Available at: <http://www.euro.who.int/en/countries/ukraine/news/news/2015/04/who-and-partners-increase-focus-on-roma-population-in-ukraine>.

⁶⁸ UNHCR, *Recommendations on International Protection regarding the events in Ukraine – Updated version II*, January 2015. Available at: <http://www.refworld.org.ru/docid/54eb03664.htm> (Russian). According to the information received by UNCHR from the NGOs in Kharkiv region, among 486 Roma IDPs coming from Donetsk region, 42% were undocumented (p. 13).

“Especially now, when there are many IDPs from the territories of the active armed conflict. Some databases are in the territory of so-called self-proclaimed Donetsk and Luhansk People’s Republics. Therefore, sometimes there is no possibility to prove certain information. Such situations remain in limbo.”

Ukraine does not recognise the independence of either LNR or DNR. All documents issued by these self-proclaimed authorities are invalid in the territory of Ukraine. In practice, it means that children born in the territory of LNR or DNR are at risk of statelessness unless they apply for a birth certificate in the government-controlled territory of Ukraine. Similarly, for children born in the occupied Crimea, which is also regarded as an integral part of Ukraine, parents must apply for birth certificates in the territories under the Ukrainian Government’s control. The amendments to the Civil Procedural Code of Ukraine of 4 February 2016 introduced a special court procedure to establish the facts of birth in the temporarily occupied territories of Ukraine.⁶⁹ In practice, the procedure is effective, although it can be lengthy and costly, as parents have to travel to the areas controlled by the Government of Ukraine and pay a court fee. For Roma families with low incomes these costs may constitute a serious obstacle to documenting their children.

An important legal development has been the listing of IDPs and those who have applied for registration as IDPs as a separate category entitled to free legal aid on issues related to registration. However, the requirement to present evidence before a court is still in place. Widespread discrimination faced by Roma, including previous bad experiences with authorities can result in fewer Roma going down this route. Even those who wish to do so would need a passport or identity document to travel from the occupied territory of Crimea to the government-controlled area. Many undocumented Roma are trapped in the occupied territories without any option to legally enter Government-controlled areas of Ukraine. Some of them attempt to enter Russian territory and apply there for protection as asylum-seekers, however, this option may be even more challenging and risky.⁷⁰ The sad reality is that currently there is no straightforward solution to this problem.

5.2 National Legal Procedure: Gaps and Complexity

5.2.1 ISSUES OF BIRTH REGISTRATION

As a State Party to the Convention on the Rights of the Child (CRC) and the 1961 Statelessness Convention, Ukraine bears an international obligation to ensure immediate registration of every child born on its territory, as well as the right to acquire a nationality from birth. Art. 144 of the Family Code of Ukraine imposes an obligation to register the birth of a child within one month of the birth. However, there are hidden obstacles in various bylaws.

⁶⁹ According to the information provided to UNHCR by the Ministry of Justice of Ukraine, based on court decisions under Article 257-1 of the Civil Procedural Code of Ukraine, 14, 692 facts of birth that took place in the temporarily occupied territory of Ukraine between 21.02.2016 to 30.06.2017, have been registered.

⁷⁰ For more on the topic of Roma refugees from the East of Ukraine in the Russian Federation, see ADC Memorial, *ROMA and WAR in Eastern Ukraine: Refugees, Displaced Persons, Victims of Violence, Human Rights Report*, 2015. Available at: <http://adcmemorial.org/wp-content/uploads/RomaENGwww.pdf>.

The main pieces of legislation on birth registration are the Law of Ukraine “On State Registration of Civil Status Acts” № 2398-VI of 1 July 2010, and the Ordinance of the Ministry of Justice of Ukraine “On adopting the Rules for the state registration of acts of civil status in Ukraine” № 52/5 of 18 October 2000. The latter act contains two main barriers to birth registration.

First, undocumented parents are not allowed to register the births of their children, leading to the inheritance of lack of documentation and risk of statelessness. This is contrary to the principles of non-discrimination and best interests of the child, which are enshrined in Articles 2 and 3 of the CRC respectively, resulting in a violation of the child’s right to birth registration and a nationality, enshrined in Article 7 CRC.

An undocumented parent wanting to register the birth of a child must first apply to establish their own citizenship. Only successful applicants to either the SMS of Ukraine or a Ukrainian court will be entitled to register the births of their children. For some Roma, the problem is especially acute due to the lack of awareness of state registration procedures, their fear of applying to state authorities and their residency in isolated tabors.⁷¹ Under the present legal framework, younger generations are penalised for their parents’ lack of documents.

Ruslan is 16 years old. Although he has reached the age at which he can apply for a passport, he still does not have one. He also has no birth certificate. As his parents do not have identity documents, Ruslan cannot get them. He has not applied for any documents explaining that his parents need to get them first. However, his mother stopped trying after the village council told her that her own mother’s presence was required at the registry office for her to be documented. Ruslan’s situation is not going to change. He wants to study and learn to play musical instruments, but instead he has to do hard labour or beg with his mother at the cemetery due to their lack of documents.

Another prerequisite for birth registration is a medical certificate confirming the fact of a child’s birth, or in the case of a birth outside of a medical institution, a document issued by a specially established medical and consultative commission.⁷²

Romani women sometimes give birth at home due to factors such as the distance between their homes and health institutions, fear of being charged for giving birth in hospitals, and the discriminatory treatment of Romani women by medical personnel. While some Romani women acknowledge positive experiences of receiving medical care and treatment in Ukraine⁷³, cases of ill-treatment and refusals by doctors to provide medical assistance to Romani women have been repeatedly reported by international organisations.⁷⁴ Such discriminatory practices

⁷¹ Tabors are self-organised Roma settlements.

⁷² Art. 13 of the Law of Ukraine “On State Registration of Civil Status Acts” and Regulation of the Cabinet of Ministers of Ukraine № 9 of 9 January 2013.

⁷³ ERRC, *Submission to the United Nations Committee on the Elimination of all forms of Discrimination Against Women at its 45th Session*, p. 6. Available at: <http://www.errc.org/cms/upload/media/04/3D/m0000043D.pdf>; OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014, p. 22. Available at: <https://www.osce.org/odihr/124494?download=true>.

⁷⁴ *Ibid*, p. 22.

in the provision of healthcare create a vicious circle in terms of documentation: one of the obstacles to healthcare is the lack of documentation among Roma, but Romani women's lack of access to healthcare creates barriers to the documentation of Roma children, thus passing on the problem to the next generation.

“Another situation is when Roma give birth to their children in tabors. As tabors are usually closed to strangers, staff of the migration service cannot get there, even policemen find it difficult.

Representative of the State Migration Service of Ukraine

Anastasiya gave birth to three of her children at the maternity hospital and to five at home. She has medical certificates from the maternity hospital for the three children born there. Only these three children are able to go to school.

If there is no medical proof of the child's birth, a court decision on the establishment of the fact of the child's birth is required for birth registration. Application to a court is time-consuming and requires legal expertise to file an application, payment of a court fee and evidence. Quite often, driven by poverty, a lack of knowledge of the procedure, residence in areas far from administrative centres, and unwillingness to appear before the court, Roma are unable to access this procedure.

Anna has been applying to the local office of the migration service, the village council and to the local deputy for five years, trying to get documents for herself and her sons. She needs evidence of her residence in Ukraine in order to get a passport. With proper legal assistance, she could have requested such evidence from the archive. However, as she is trying to get the document by herself, she is not aware of this possibility.

There is also a fine for late birth registration more than a month after the date of birth, of 17.00 – 51.00 UAH⁷⁵ (as of January 2017), which can be prohibitive for many Roma families.

5.2.2 LEGALISATION OF STAY OF UNDOCUMENTED PERSONS

The current legislation of Ukraine overlooks undocumented persons. Every legal provision regulating the acquisition of identity documents requires proof of legal stay in Ukraine, implying that the person already has at least one identity document. This means that stateless persons or those at risk of statelessness with no documents, legally do not exist in Ukraine. These people are absent from any registry of the Ukrainian authorities. With no documents, they cannot apply to any state authority or resolve their legal non-existence. The situation is even more precarious for Roma, as they not only suffer from these legal lacunas, but also from discriminatory implementation of the law.

The current national law of Ukraine lacks a procedure to determine statelessness. As current domestic practice demonstrates, without bylaws establishing procedures, the law cannot be comprehensively implemented. Thus, the newly adopted legal amendments to identify stateless persons in Ukraine will most likely be postponed until regulations are adopted.

⁷⁵ Equivalent to 0,6 – 1,8 Euros.

Under the Law of Ukraine, the only document available and prescribed specifically to stateless persons is a travel document. However, undocumented persons cannot receive a travel document due to the prerequisite of submitting a permanent residence permit in Ukraine.⁷⁶ The only exception is that undocumented persons who have had permanent residence in the country as of 1991 can file a court application to legalise their stay. However, as clarified by Valentina Subotenko:

“The applicant bears the burden of proof of the facts that are related to the establishment of citizenship. Many Roma cannot submit the required documents due to the lack of sufficient knowledge [of the procedure].”

A further barrier is that stateless persons are currently not eligible for legal aid from the state. Without legal assistance, it is extremely difficult to navigate legal procedures.

Of the 15 Roma respondents, only one had attended school or any other educational institution. Illiteracy can be a crucial barrier when applying to the state authorities. For example, Oleksandr, a 31-year-old Roma man living in Odessa, gets easily confused even with the names of streets where offices of the state agencies are located. He does not understand where the local authority representatives tell him to go and what he is advised to do. Without proper legal assistance, he is at risk of remaining undocumented for the rest of his life.

The applicant must also gather evidence to submit an application to the court and pay a court fee of 320,00 UAH.⁷⁷

“The situation sometimes becomes absurd that Roma even cannot receive the court decision in their case because of the requirement to present an identity document. The right to receive the decision on behalf of the applicant cannot be transferred to a lawyer, as the passport is needed for the attorney agreement to be written and signed. Other opportunities to receive the court decision are necessary in such situations.”

Maksym Dzhum, Roma social-health mediator,
Leader of the NGO “Planet of Kind People”

The SMS of Ukraine does not take on the burden of dealing with cases of undocumented persons, even if they have evidence of their residence in Ukraine as of 1991. Instead, it redirects them to the Court.

Mariam was born in Georgia and moved with her family to Ukraine in 1990 when she was 10 years old. When she was 15, Mariam got married informally and left her home to live with her husband. In 2016 with the help of her mother, Mariam got a Ukrainian passport through the court procedure, but it took them six years. They had to obtain a reissued birth certificate for Mariam through the Georgian Consulate and then apply to the court procedure. Mariam had to save money for court fees and she could not buy any food for her children. Finally, she received the passport, but another problem remains: she needs to birth certificates for her children. Some of her children were

⁷⁶ The Regulation of the Cabinet of Ministers of Ukraine № 153 of 7 May 2014.

⁷⁷ Equivalent to 11 Euros.

born at home and Mariam also provided a different surname at the maternity hospital, which can complicate the procedure further.

***Elina**, on the other hand, lost her documents when she was a child after her parents' death. She and her five siblings were taken to different families, who did not really care for them. Last year Elina applied to both the local and Odessa regional offices of the migration service. Fortunately, enough evidence to confirm her residence in Ukraine in 1991, was found in the archive and a decision on her case is now pending.*

Even when an application to the SMS of Ukraine is admitted for immediate consideration, there is a financial obstacle. Under the Code of Ukraine on Administrative Offenses, Art. 203, living in Ukraine with invalid or outdated documents, constitutes an administrative offence, for which a fine of 510.00 – 850.00 UAH⁷⁸ is imposed.

*Despite living in Ukraine her whole life, the only identity document **Viktoriya** had was an invalid residence permit of Ukraine, which she had held for five years – the term of permanent residence required to apply for Ukrainian nationality. She applied to the local centre for homeless people in Odessa where she was told that she could get documents, but only after paying a fine for her illegal stay in Ukraine after her residence permit had expired. Viktoriya refused to pay the fine and she still does not have any identity documents*

⁷⁸ Equivalent to 18-29 Euros. Parliament adopted Bill 5442 at its first reading on 23.02.17, which proposes to significantly increase the fine to the equivalent of 56-170 Euros.

6. Exacerbating Factors

6.1 The Lack of Coordination and Awareness of State Authorities

Some of the key authorities responsible for addressing statelessness in Ukraine include the Ministry of Justice of Ukraine, the SMS of Ukraine, the National Police and the Ombudsman. The Ministry of Culture and the Ministry of Social Policy also hold some responsibilities in this area. The courts, as independent state institutions, also have a role to play. Notwithstanding the scale of the issue of statelessness among Roma in Ukraine, authorities interviewed for this research did not demonstrate a full awareness of the extent of the problem.

“We mostly have never linked the issues of documentation and social protection of Roma with the issue of statelessness, before you raised this question. This topic should be discussed.”

Aksana Filipishina, Representative of the Ombudsman for observance of the rights of children, non-discrimination and gender equality

While agreeing on the issue of the lack of documents among Roma, the authorities have not raised the concern that this could lead to statelessness. Neither have they comprehensively addressed other possible causes of statelessness among Roma in Ukraine. Whilst officials consider the lack of documentation and statelessness among Roma as an individual problem, they overlook the systemic nature of the problem, amounting to structural discrimination, which affects many Roma living in Ukraine.

One challenge is that there is no central agency responsible for statelessness in the country. While the competencies are divided among government agencies, they are also shared. This creates an environment of fragmentation, in which agencies can assume that others are responsible for dealing with the problem. As each agency deals with a limited number of issues that undocumented Roma face, and as there is poor inter-agency communication, the respective state organs have not developed a comprehensive understanding of the problem. Consequently, there is no common approach to solving it. As a result, the perception of the issue of the lack of documents and statelessness differs at central and local levels as well as in different regions of Ukraine.

“If you meet with representatives of the Ministry of Culture, they will give you more details about it [on the implementation of the Strategy].”

I think you should address this question to the responsible ministry and to the State Migration Service of Ukraine [on the question if the absence of documents can lead to statelessness].

Perhaps, it would be better to talk with the responsible ministry or all-Ukrainian NGOs, which deal with Roma issues. Human rights activists can name obstacles they face in their activities [on raising the level of awareness about Roma problems].”

Representative of the Ministry of Justice of Ukraine

Authorities also appear to be of the position that the national legal framework is adequate. They are unable to identify the various ways in which the law falls short of international standards. There also appears to be a misconception that the law is implemented properly for all, without discrimination.

“Even before implementation of the UN Conventions on statelessness, the national Law on citizenship was already drafted in full correspondence to provisions of the conventions.”

Representative of the SMS of Ukraine

“The level of implementation is very high. So if we do not take into account the personal factor and excesses, Ukraine is almost ahead of the rest.”

Representative of the Head Territorial Office of the Ministry of Justice of Ukraine in Odessa region

In contrast, civil society actors have a very different perspective:

“The situation is the same as with the mentioned Strategy on Roma in Ukraine, which was adopted but not implemented. I think it relates not only to statelessness, today it is one of the main problems of our state that many documents are de jure signed but are not actually implemented [on the fulfillment of international obligations in the sphere of statelessness].”

Mykola Burlutskiy, Roma social-health mediator,
Leader of the Kharkiv NGO “Chachimo”

“It is clear that due to the conflict and lots of social difficulties, the issue of compliance with the international conventions on human rights by Ukraine is not a priority now. However, obviously, Ukraine does not fulfill its international obligations.”

Olga Vesnianka, Journalist of the Roma radio “Chiriklo” and “Hromadske Radio”,
Roma rights activist

It is also important to note that institutional racism towards Roma is pervasive, with many authorities viewing Roma through stereotypical and prejudiced lenses. Such prejudice might be among the reasons for the inadequate number of joint initiatives among government agencies and Roma communities as well as Roma rights activists. There are positive examples in certain regions as well as on separate issues, however, no central-level initiatives have been launched recently on closer cooperation between different stakeholders and Roma themselves.

“In relation to Roma, the situation is only deteriorated by stereotypes and the absence of respect to Roma nationality. Especially, when an uneducated Roma comes to state authorities, this person could be asked immediately to leave. There were cases when our staff members accompanied the persons who were before asked to leave. When Roma come accompanied, the tone would be changed, the rhetoric and the attitude would be different because the authorities would see educated people, with whom they can make references to law.”

Mykola Burlutskiy, Roma social-health mediator,
Leader of the Kharkiv NGO “Chachimo”

In contrast to the level of understanding and sensitivity portrayed by state officials, the Office of the Ombudsman demonstrated high awareness and commitment. Moreover, the related issues of discrimination, documentation and statelessness of Roma are persistently addressed in the annual reports of the Office of the Ombudsman.⁷⁹

6.2 Discriminatory Implementation of Legislative Provisions

“I suppose the mere fact of the state’s inaction on the issue of statelessness and considering this problem as of individual character to a certain extent constitutes discrimination. If people who are de facto citizens of Ukraine do not enjoy the protection of the state, this already indicates the discrimination.”

Mykola Burlutskiy, Roma social-health mediator,
Leader of the Kharkiv NGO “Chachimo”

Discrimination is both a cause and a consequence of statelessness. It also creates additional barriers to accessing fundamental rights and freedoms of Roma, particularly those who are stateless or at risk of statelessness.

The majority of interviewed stakeholders (11 out of 16) named discrimination to be one of the main factors contributing to the absence of documents among Roma. They provided examples of direct discrimination at different levels, sometimes referring to multiple discrimination, for instance against Roma IDPs. Notably, there are no provisions in the legislation of Ukraine that directly discriminate against Roma or any other ethnic minority. However, there is serious concern related to discriminatory implementation.

“I can tell you that the results of the research conducted by UNDP Ukraine will soon be published. According to its results, the lowest level of tolerance in Ukraine is to the Roma. At the second place – members of the LGBT community.”

Aksana Filipishina, Representative of the Ombudsman for
observance of the rights of the child, non-discrimination, and gender equality

As Ms. A. Filipishina proceeded to clarify, public intolerance towards Roma is unacceptably high even among the most educated members of society such as judges, prosecutors, and teachers. She also referred to Roma as a group subjected to multiple discrimination based on ethnicity, gender, age, socio-economic disadvantage, and even place of residence in the case of Roma IDPs.

Overall, stakeholders tend to agree that Roma face high levels of discrimination at the hands of police officers, and on the role of mass media in perpetuating negative stereotypes. Perhaps most harmful, are the discriminatory attitudes of state authorities whose

⁷⁹ Ukrainian Parliament Commissioner for Human Rights, *The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine*, 2015. Available at: http://www.ombudsman.gov.ua/files/Dopovid/Dopovid_2015_10b.pdf (Ukrainian); Ukrainian Parliament Commissioner for Human Rights, *The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine*, 2016. Available at: http://www.ombudsman.gov.ua/files/Dopovid/Dopovid_2016_final.pdf (Ukrainian).

decisions can result in Roma being denied documentation. Receiving a rejection by state authorities based only on the fact of a person's Roma ethnicity has a negative impact on the individual as well as the community, as others are discouraged from applying to what they rightly perceive as discriminatory institutions.

Chrystyna had all her documents including passport, birth certificate, and property documents, before the pogrom of 2002. When her family had to flee their home and move to another village, all their documents were lost. Later Chrystyna tried to apply to the local office of the migration service for the re-issuance of her lost documents, but was asked for a bribe of 5,000 hryvnias.⁸⁰ Fortunately, with the help of the Roma social-health mediator, Chrystyna managed to get documents for herself and her daughter through the regional Head Office of the Migration Service. Now she waits for her sons' birth certificates to be issued so she can apply for their passports.

One case of refusal to issue a passport by the senior management of the SMS of Ukraine was reported by Roma rights activist, Mr. M. Dzhum. He also said that some Roma hide their ethnicity (Roma nationality) to avoid discrimination.

"There are certainly cases of hidden discrimination. When a person with Roma nationality says they are Moldavian or Bulgarian in order to hide his/her ethnic origins, which can lead to refusal in employment, education, etc. Definitely, in some of the communities, their representatives clearly and openly state that they do not want Roma among them.

In addition, the governmental servants usually act very politely and correctly, but then they refuse to provide the service referring to certain regulations in the legislation. However, due to the low level of education Roma cannot question them.

There is a certain negative attitude toward them, too. I experienced the situation when one of the heads of the State Migration Service refused to issue passports for Roma."

Maksym Dzhum, Roma social-health mediator,
Leader of the NGO "Planet of Kind People"

6.3 Socio-Economic Status

The challenging living conditions of the Roma community in Ukraine are closely connected to the widespread and deeply rooted discrimination and social exclusion of Roma in the country. As demonstrated by the numerous conclusions of the UN Human Rights Committee⁸¹, Committee on

⁸⁰ Equivalent to 172 Euros.

⁸¹ UN Human Rights Committee, *Concluding observations on the seventh periodic report of Ukraine*, CCPR/C/UKR/CO/7, 22 August 2013. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsmmmCeqXycPDov5Gxrp8KtsHy5GodES9JN160zvbTpKt9tFNcLy3Ufj8sprv1qKbOuTFE fz8FwX%2BJW7yhAVTY8h%2BmdQjf2Ov6ZqsZ1azOcbe>.

Economic, Social and Cultural Rights⁸², Committee on the Elimination of Racial Discrimination⁸³, and the OSCE⁸⁴, the level of discrimination and social exclusion in Ukraine against the Roma community remains disturbing and requires a comprehensive response from the Ukrainian Government.

The overwhelming majority of Roma in Ukraine live sedentarily with minor exceptions in the western parts of the country.⁸⁵ Yet, Ukrainian authorities often highlight the fact that Roma live compactly and sometimes separately from the rest of the country's population in self-organised settlements, as a justification for their failure to address documentation issues. These settlements are known as 'tabor', which are perceived as closed communities that cannot easily be accessed by outsiders.

"There are lots of reasons for the lack of documentation among Roma and historically parents of today's young Roma used to live without documents. Negligence is also a reason. Previously, Roma used to live nomadically and some of them sustain this way of living. For 10 years, they are staying in one place, and then move to another. Each family can tell their own story."

Myroslav Horvat, Deputy of the Uzhgorod City Council,
Leader of the NGO-Union of the Roma of Trans-Carpathia "Romani Cherhen"

A representative of the State Migration Service of Ukraine, journalist Ms. E. Genova, and Roma rights activist, Mr. S. Ponomaryov, all mentioned the closed nature of Roma communities as one of the main obstacles to solving Roma documentation problems in Ukraine.

"I talked to Roma and lots of them expressed the fear of leaving the tabor and applying to some governmental agencies, as state officials there are strangers to them. So they particularly need the legal assistance of NGOs."

Representative of the SMS of Ukraine

The representative of the SMS of Ukraine also said the practice of giving birth in tabors was a cause of the lack of birth certificates. But such self-organisation is primarily a result of continuous exclusion of the Roma community and discrimination against them.

⁸² CESCR Committee, *Concluding observations on the sixth periodic report of Ukraine*, E/C.12/UKR/CO/6, 13 June 2014. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWxT7OYZyYjGL8qwRLmzDL8tc2STIEn3t8KwBM0jpDvbVM%2BzIo6xCBUMU4OgfAJWTZTHXUCy5ZJQqtbDmr9XTsIOFshkr9IYHy%2BIA9pSLIew>.

⁸³ CERD Committee, *Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine*, CERD/C/UKR/CO/22-23, 4 October 2016. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsISEby%2BgeUDwTlJrN%2BvxKXdrKjLH500J%2F4qhjepfztqYzWA33nKWZuT54ddrOtiOFCMqY%2FyXo6X7jRagvTdy082frA%2FXg97yPKm2dGTpq50zA8RtKL4K16mKkWvZvAA%3D%3D>.

⁸⁴ OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014. Available at: <https://www.osce.org/odihr/124494?download=true>.

⁸⁵ ERRC, *Ukraine: Country Profile 2011-2012*, 2013, p. 7. Available at: <http://www.errc.org/cms/upload/file/ukraine-country-profile-2011-2012.pdf>; Bunescu, I, *Roma in Europe: The Politics of Collective Identity Formation*, Routledge, April 2016, p. 66. Available at: <https://books.google.com.ua>.

“It is hard to imagine that in a poor distant village, where very different people without citizenship have been living for 20 years already, exactly a Roma family (who are usually illiterate and with little formal education) living below the poverty line applies to the local migration service (usually in the nearest territorial-administrative centre) for getting citizenship for their child. This is almost a fantastic story, as this does not happen in real life. And Roma community has their special attitude to the documents in general.”

Olga Vesnianka, Journalist of the Roma radio “Chiriklo” and “Hromadske Radio”,
Roma rights activist

While most Roma live sedentary lifestyles, some do have a higher mobility. According to Roma rights activists Mr. S. Ponomaryov and Mr. M. Horvat, the high mobility of some of the Roma communities creates additional difficulties for the documentation of Roma.

Even when living sedentarily, quite often Roma live in rural areas far from administrative centres, which makes applying for identity documents more burdensome. As a representative of the UNHCR Office in Ukraine, Mr. D. Pletchko pointed out, in such areas, Roma do not have access to legal assistance. Moreover, living in rural areas creates additional financial burdens for Roma, as transport fares can be an obstacle to resolving documentation issues.

“The main obstacle [in assisting stateless people/people at risk of statelessness] is residence of these people in the distant districts and there is no free legal aid for them, in such cases these people bear expenses for transportation to cities where legal aid is provided.”

Dmytro Pletchko, Assistant Legal Officer at the UNHCR Office in Kyiv

Thus, the mere living conditions of Roma communities complicates the documentation process. Nationwide, there is no comprehensive data on the socio-economic situation of Roma. Yet, the economic and social situation of Roma in Ukraine has been the subject of several studies. In its 2011-2012 Country Profile, ERRC found that Roma in Ukraine face everyday discrimination and social exclusion.⁸⁶ The research indicates that many Roma communities in Ukraine live in conditions of extreme poverty, often in segregated settlements with little or no access to basic social services such as education, healthcare and other essential services; and that within the communities there prevails a low level of formal education (in particular among women), high level of unemployment, deplorable living conditions and bad health status.⁸⁷ Most of the houses visited by ERRC for its research lacked basic amenities, such as heating, water and gas, while some of the communities were situated close to rubbish dumps.⁸⁸

In this context, the financial implications related to documentation and registration can be prohibitive. Quite often, applying to state agencies implies certain expenses such as: paying a fine (for instance, for illegal stay in Ukraine, or late application for a birth certificate); a court fee (if a person can establish his/her affiliation to the Ukrainian nationality only through a court

⁸⁶ ERRC, *Ukraine: Country Profile 2011-2012*, 2013. Available at: <http://www.errc.org/cms/upload/file/ukraine-country-profile-2011-2012.pdf>.

⁸⁷ *Ibid*, p. 8.

⁸⁸ *Ibid*, p. 17.

procedure); or a fee for certain administrative services (for example, issuance of a certificate of the registration of a person as a citizen of Ukraine by the State Migration Service of Ukraine).

Both as a result and a consequence of financial difficulties, the level of literacy and formal education remains very low among Roma communities in comparison to the rest of the Ukrainian population. Ukrainian law and administrative procedures, which are often bureaucratic and conflicting, are not always clear to professionals, and therefore often inaccessible to those with no or limited formal education. As a result, many Roma face significant challenges when applying to procedures and are often unsuccessful without the provision of crucial legal assistance.

“Most of Roma do not have the knowledge on how a lawsuit should be filed, how to apply to the State Migration Service, to civil registry offices. Therefore, they cannot complete this procedure on their own. They need the proper assistance, professional legal aid of lawyers competent on the questions of citizenship.”

Maksym Dzhum, Roma social-health mediator,
Leader of the NGO “Planet of Kind People”

7. Marginalisation, Poverty and Exclusion

7.1 Access to Education

Article 53 of the Ukrainian Constitution guarantees the right to education and primary and secondary education is both compulsory and free to all. While the general level of education in Ukrainian society is high with almost 100% literacy⁸⁹, the literacy rate among Roma is dramatically lower. According to a report of the Ukrainian Institute of Social Studies, possibly over 50% of Romani people lack formal education, with 68% of research respondents stating that they cannot read or write, or only read and write with difficulty; 59% state they have no or limited numeracy skills. Only 2% had received higher education, 6% secondary or technical education, 10% had begun but not completed secondary education and 49% had completed primary education. 34% of the respondents had never attended school.⁹⁰ These findings are corroborated by a 2016 UNICEF report, which also found that IDPs have better access to education than Roma in Ukraine.⁹¹

Romani children claim to suffer from stigmatisation and discrimination due to their ethnicity and their families' financial situation⁹², both from fellow students and from their classmates' parents.⁹³ Segregation of Roma children in schools is also a problem.

“In Odessa region, sometimes separate classes with only Roma pupils are created to fulfil the legal obligations on providing secondary education. For example, such class were created in the Berezhivka village of Berezhivskiy district, Odessa region. The pupils are Roma children of different ages. However, if Roma are well-integrated into Ukrainian society, like in Poplavka village of Velykomykhailivskiy district, they usually attend classes together with pupils of other nationalities”.

Maksym Dzhum, Roma social-health mediator,
Leader of the NGO “Planet of Kind People”

⁸⁹ UNICEF Country Statistics on Ukraine. Available at: https://www.unicef.org/infobycountry/ukraine_statistics.html.

⁹⁰ Institute for Social Studies of Ukraine, International Foundation “Renaissance”, *Analysis of the real problems and needs of Roma in Ukraine*, 2003. Available at: <http://res.in.ua/zvit-analiz-realenih-problem-ta-potrebr-romiv-v-ukrayini-kiyiv.html> (Ukrainian).

⁹¹ UNICEF, *Out of School Children in Ukraine: A Study on the Scope and Dimensions of the Problem with Recommendations for Action*, 2016, p. 24. Available at: https://www.unicef.org/ukraine/OOSC_report_Engl_f.pdf.

⁹² *Ibid*, p. 7.

⁹³ *Ibid*, p. 27.

While Roma rights activists advocate against segregation, school administrations often argue that segregation is necessary to preserve the Romani language and cultural traditions.⁹⁴

Poverty further deteriorates the situation, as many Roma parents cannot afford clothes and school supplies for their children.⁹⁵ The severity of the issue is illustrated by the fact that more Romani children attend school during warm seasons than in winter due to the lack of warm clothes.⁹⁶ The situation is even worse for children living in rural areas, who cannot afford transport costs to school.

The combined effect of poverty, discrimination and segregation means that there is little motivation for Romani children to attend school, particularly when the alternative is to contribute towards the family income. Further exacerbating the situation, is the impact of the lack of documentation and related (risk of) statelessness.

Ruslan did not attend state school as he had to take care of his ill mother. Later he attended a Christian school where he learnt to read and write. However, Ruslan was deprived of the opportunity to continue his studies as he has no identity documents. Until his documentation issue is resolved, Ruslan has to work in construction, and beg with his mother.

Without a birth certificate a child cannot obtain an education certificate, and as already established, the children of undocumented parents cannot obtain birth certificates. Thus, even if an undocumented child is admitted to school, they will not receive a certificate, which means they will not be able to continue their education or join a profession.

Conversely, according to Roma rights activists, documented Roma children have higher chances of successfully integrating in schools and society⁹⁷, as is the case in Poplavka village in Odessa region.

⁹⁴ For more on the discriminatory character of segregation of Roma children in education, see: Art. 1 of the UNESCO Convention against Discrimination in Education 1960; ECtHR decisions: CASE OF D.H. AND OTHERS v. THE CZECH REPUBLIC (Application no. 57325/00), 13 November 2007; CASE OF HORVÁTH AND KISS v. HUNGARY (Application no. 11146/11), 29/04/2013; CASE OF LAVIDA AND OTHERS v. GREECE (Application no. 7973/10), 30/08/2013; CASE OF SAMPANIS AND OTHERS v. GREECE (Application no. 32526/05), 05/09/2008; CASE OF SAMPANI AND OTHERS v. GREECE (Application no. 59608/09), 29/04/2013; CASE OF ORŠUŠ AND OTHERS v. CROATIA (Application no. 15766/03), 16 March 2010.

⁹⁵ UNICEF, *Out of School Children in Ukraine: A Study on the Scope and Dimensions of the Problem with Recommendations for Action*, 2016, p. 27. Available at: https://www.unicef.org/ukraine/OOSC_report_Engl_f.pdf.

⁹⁶ *Ibid.*

⁹⁷ Several Roma rights activists interviewed for this report, including Mr. V. Matushenko, Mr. M. Burlutskiy, Mr. M. Horvat and Mr. M. Dzhum, stated that documentation becomes one of the crucial factors for integration of children to schools and Ukrainian society.

7.2 Access to Employment

In 2016, the overall unemployment rate for Ukraine was estimated to be 9%.⁹⁸ The unemployment rate among the Roma population is unknown. However, relying on the estimates of Roma NGOs, a 2014 OSCE Report estimates that 38% of Roma are employed. The ERRC has issued a far lower estimate of 15%.⁹⁹ While there are no comprehensive figures, it is clear that Roma unemployment is a significant concern.

Just as with education, unemployment is closely interconnected with the lack of documentation. Without an identity document, Roma cannot officially work or register their own businesses. As a result, many Roma in Ukraine are unemployed or work unofficially, without the protection of labour rights.

The typical livelihood activities of Romani people include buying, shelling and re-selling nuts, collecting and peeling mushrooms for sale, collecting scrap metal for recycling, hard labour in construction etc. and the provision of unskilled services. For example, Sofia cleans houses and Andriy weeds gardens in exchange for food or money. Some Roma, like Oleksandr, work unofficially, under another person's name. Many Roma, without other options, also beg to survive.

Roma also face acute discrimination in the field of employment. When entering the labour market Roma immediately find themselves disadvantaged due to deeply-rooted discrimination and prejudice. Romani women are further disadvantaged, facing multiple discrimination based on their ethnicity and gender. For example, the entrenchment of traditional gendered roles and the prevalence of early marriages and maternity limit the educational and professional opportunities of Romani women.

Research has also found that few Roma work in the public sector, and many prefer concealing their ethnic origin due to the fear of being refused employment or promotion.¹⁰⁰ Due to the lack of documentation, Roma are also denied social security. Thus, an undocumented Roma family would be deprived of both official employment and state social security entitlements. While the situation is better for those undocumented Roma who have documented relatives, this creates an environment for dependency and abuse within families.

As Georgiy cannot work without documents, the family's main source of income consists of social security payments for the children and money that Georgiy is able to earn by working informally. The family has access to social security because the children have birth certificates and they are aware of their

⁹⁸ Ukraine: Unemployment rate from 2010 to 2020. See: <https://www.statista.com/statistics/296132/ukraine-unemployment-rate/>.

⁹⁹ OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014, p. 23. Available at: <https://www.osce.org/odihr/124494?download=true>.

¹⁰⁰ *Ibid*; ECRI, *ECRI Report on Ukraine (fourth monitoring cycle)*, adopted on 8 December 2011, p. 37, para 145. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>.

rights. Roma without documents are deprived of any rights to social security. One of Sofia's daughters was born disabled. However, she does not receive a disability pension due to her lack of documentation.

The rise of civil society in Ukraine, including Roma-led organisations, is creating some employment opportunities for Roma. Many of these individuals are role models, whose example empowers other members of Roma community. Roma-led NGOs include the International Roma Women Fund "Chirikli", the Kharkiv national cultural society "Romain", the Kharkiv NGO "Chachimo", and the NGO-Union of the Roma of Trans-Carpathia "Romani Cherhen".

"I do not hide my [Roma] nationality, I am even proud of it, and I would like to change the attitude of people by the positive examples. There are a lot of Roma who achieved a lot, and they can serve as examples. However, successful Roma are most frequently afraid of exposing their Roma nationality, because of the suspicion that this could somehow affect their further development."

Vadim Matyushenko, President of the Kharkiv national cultural society "Romain"

"We conduct certain trainings, such as for volunteers, social workers, police officers, on the issues of stereotypes and discrimination, with an aim of demonstrating the other side of Roma people, the peculiarities of this people, historical aspects of the development of Roma mentality and culture, demonstrating that most of Roma not corresponding to the stereotypes, by which all Roma are prejudiced."

Mykola Burlutskiy, Roma social-health mediator, Leader of the Kharkiv NGO "Chachimo" (from Awareness of NGOs)

However, such opportunities of employment are usually only accessible to documented Roma, whose identity and nationality are officially established. Roma without documentation, including those who are stateless or at risk of statelessness, have less options.

7.3 Housing Conditions

The lack of documentation among Roma also affects their right to a home. Many Roma live in houses below the general and acceptable standards of shelter in Ukraine. This is particularly true for those living in Roma settlements, which in most cases are cut off from utilities and communication infrastructure.¹⁰¹

Very often, Roma live in houses without any ownership or rental agreements, and therefore, at risk of eviction. Without identity documents, Roma cannot solve this problem, as they cannot enter into official housing agreements. Furthermore, the acquisition of ownership documents is a time-consuming and costly procedure, which even those with documents can face difficulties accessing.

¹⁰¹ OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014. p. 21. Available at: <https://www.osce.org/odihr/124494?download=true>; CESCR Committee, *Concluding Observations on Ukraine*, E/C.12/UKR/CO/6, 23 May 2014, para 18, p.7. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FUKR%2FCO%2F6&Lang=en.

*Housing problems are common for Roma as, due to a lack of means and identity documents, they tend to occupy empty houses or enter into unofficial rent agreements. For example, **Anastasiya** has no documentation to establish ownership of the house she lives in, which leaves her unprotected from possible eviction. She constantly receives eviction threats from her neighbours.*

The lack of property ownership documentation also contributes to difficulties with residence registration. Without proof of the legal grounds for stay at a certain address, it is impossible to be registered there. In Odessa there are two centres for registration of homeless persons – at the city and regional levels. Such centres are not aimed at providing housing but, primarily, at identification and registration of homeless persons, including stateless persons. Roma can register at the centres, subject to the establishment of their right to stay in Ukraine, which they cannot prove without documentation. Neither can undocumented Roma access social housing, which requires proof of Ukrainian citizenship.

*Only few Roma are aware of the opportunity to live in social accommodation, which requires the provision of identity documents. **Oleksandr**, together with his wife and their daughter, lives in social accommodation in Odessa, which they share with his wife's brother and parents. However, this was possible only because Oleksandr's wife and her family – unlike Oleksandr – have Ukrainian passports.*

7.4 Access to Healthcare

The Constitution of Ukraine guarantees every person's right to healthcare free of charge (Art. 49(1)). However, in reality, it is not possible to access healthcare without paying for medical services and medicines. While the limitations of the Ukrainian healthcare system impact on everyone, discriminated minorities such as Roma are disproportionately affected.

Without documents, Roma do not have access to adequate medical treatment. Under the law of Ukraine, only emergency medical assistance is provided to all persons free of charge, regardless of whether they have identity documents. Those who cannot establish Ukrainian citizenship can access healthcare only if they establish the legality of their stay in Ukraine. Consequently, undocumented Roma must pay for healthcare.

***Viktoriya's** daughter attended hospital with serious oedema of the legs. Her condition was treatable, but she could not afford the required medication. She was discharged from hospital, and later died.*

Many Roma, even those with documents, are unaware that they are entitled to free healthcare, meaning they are less likely to seek the healthcare they need.¹⁰²

¹⁰² OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014, p. 22. Available at: <https://www.osce.org/odihr/124494?download=true>; ERRC, *Submission to the UN Committee on Economic, Social and Cultural Rights*, March 2014, pp. 3-4. Available at: <http://www.errc.org/article/errc-submission-toun-cescr-on-ukraine-march-2014/4249>.

Discrimination against Roma by healthcare practitioners is also prevalent, with some Roma reporting that doctors have refused to treat them based on their Roma ethnicity.¹⁰³ Furthermore, there have been incidents in which emergency services have refused to respond to calls from Roma.

“In the Radvanka district in Uzhgorod the ambulance often ignores calls from the Roma settlement. So, Roma living in settlements are denied all basic rights that citizens of Ukraine enjoy.”

Olga Vesnianka, Journalist of the Roma radio “Chiriklo” and
“Hromadske Radio”, Roma rights activist

In order to counter this pervasive institutional racism, Roma health mediators have emerged. Their aim is to improve the access of Roma to medical and social services. 55 Roma mediators work in 12 regions in Ukraine, including Odessa, Transcarpathia, Kharkiv, and Kyiv.¹⁰⁴ However, there is an urgent need for reform at national level to address systemic problems.

7.5 Social Exclusion

All of the key challenges highlighted above contribute to and are exacerbated by the social exclusion and stigmatisation endured by Roma. This particularly concerns Roma who are stateless or at risk of statelessness, as in most cases their lack of documentation reinforces prejudicial stereotypes and is used to justify the exclusion they face.

While in formal documents, legislation, policy, speeches and statements, the language of inclusion and tolerance is used, in practice Roma experience prejudice from state officials at national and local level, a predictable consequence of a society heavily burdened by social prejudices and outdated stereotypes. Prejudices run deep, and while those without documentation face exclusion on a daily basis, even more integrated Roma regularly face stereotypes and discrimination.

“I am a former employee of the State Tax Service; I was the head of the control and revision department over legal entities. However, when I just started working for the Tax Service, I was called by the Head of Department and asked about my nationality. My father has worked with the ERRC, so I was well-prepared, well-educated, I stood up for my opinion. Still I was told that I would be carefully watched because I am Roma.”

– **Vadim Matyushenko**, President of
the Kharkiv national cultural society “Romain”

The media further aggravates Roma social exclusion. An example of how prejudices and stereotypes are fuelled by the media, causing significant harm to society and individuals,

¹⁰³ OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014. p. 22.

Available at: <https://www.osce.org/odihr/124494?download=true>. ERRC, *Written Comments of the European Roma Rights Centre and the International Charitable Organization Roma Women Fund “Chirikli” Concerning the Republic of Ukraine*, p. 6. Available at: <http://www.errc.org/cms/upload/media/04/3D/m0000043D.pdf>.

¹⁰⁴ OSCE ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, 2014. p. 22.

Available at: <https://www.osce.org/odihr/124494?download=true>.

was a 2016 case in Loschinovka, where the local population badly damaged the houses of Romani people due to an accusation that a young Roma man murdered a nine-year-old girl.¹⁰⁵ For approximately one month after this incident, many articles on the topic were published, many of them inciting prejudice against Roma. While Roma rights activists try hard to counter these stereotypes, many media outlets continue to exacerbate the prejudice that underpins the social exclusion of Roma.

“The mass media also tends to discriminate Roma people. Some of the mass media can use discriminative article titles, underlying the ethnicity and making unreasoned assumptions. Such articles influence the way of thinking among the public.”

Evgenia Genova, journalist and contributing editor at “IzbirKom”
(From Awareness of mass media)

¹⁰⁵ On 28 August 2016, the body of the 9-year-old girl was found in the Loschinovka village, Izmail district of Odessa region. After a primary investigation, the police announced that a young Roma man in his early 20s was the prime suspect. In reaction, locals demanded that all the Roma population leave the village. By the evening, they began attacking the homes of Roma residents. Six to seven houses were badly damaged. Fortunately, the Roma managed to leave the settlement before the pogrom started. OHCHR, *Report on the human rights situation in Ukraine*, 8 December 2016. Available at: <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>.

8. Conclusions and Recommendations

This report set out to better understand the nexus between discrimination, statelessness and its consequences for Roma in Ukraine, so that the human rights challenges they face can be effectively addressed. The report drew on interviews with affected persons and key stakeholders, to identify and analyse the main contributing factors and consequences of (the risk of) statelessness.

There have been some underlying themes that have come out of the research. Firstly, while the legal framework in Ukraine is largely non-discriminatory, pervasive negative stereotypes against Roma continue to undermine social and official attitudes towards Roma. Consequently, there is a pattern of institutional racism against Roma, which is reflected both in the way the inclusion of Roma is perceived and pursued by state authorities and by the lack of urgency to address some of the most critical challenges that are disproportionately faced by this community. Despite this situation and the obvious links, discrimination is not necessarily perceived in Ukraine as a cause and consequence of Roma statelessness.

A further challenge relates to the gap between Ukraine's legal framework (including its international obligations which have the force of law) and the rules, procedures and practices that contribute to a very different implementation reality. Ukraine's international and national legal obligations related to non-discrimination, birth registration, the right to nationality, the prevention of statelessness and the identification and protection of stateless persons are all undermined by an inadequate policy framework and a burdensome bureaucracy. Indeed, it is fair to say that statelessness is not recognised as a significant issue by authorities and many stakeholders in Ukraine. It is significant for example, that there is no one state entity with the mandate to address statelessness, but instead, that various entities are responsible for different aspects of the issue. Due to poor coordination and communication, each has a compartmentalised and limited perspective of the issue.

Many of the bureaucratic procedures disproportionately disadvantage Roma, as they do not take into account their specific circumstances. This indirect discrimination heightens the barriers to documentation and birth registration faced by Roma. No systemic solutions are being implemented to address the lack of documentation and permanent residence that many Roma live with, and under the current system, are condemned to pass on to their children. The failure to uphold basic principles of non-discrimination and the best interests of the child, to ensure that children are not penalised or disadvantaged as a result of the imposition of requirements that cannot be met by their parents, is of significant concern.

Another challenge relates to the lack of data related to both statelessness and Roma populations. This is symptomatic of the invisibility that accompanies structural discrimination. It further exacerbates the problem at hand, makes it more difficult to plan a suitable policy response, and makes it easier to deny the scale or seriousness of the issue. Consequently, even though Ukraine

has strong international treaty accession records, and a reasonably strong legal framework (with some significant gaps), these national, regional and international norms and standards are not universally and equally applied to protect Roma from discrimination and statelessness.

It is important that a clear distinction be drawn between lack of civil registration (and/or being undocumented) and being stateless. However, it is equally important to be mindful of the heightened risk of statelessness faced by undocumented persons and their children, particularly when they also lack an abode of permanent residence.

Lack of documentation is the biggest cause of (risk of) statelessness of Roma. Roma are considered to be the largest undocumented group in Ukraine. In most cases, such persons have the right to Ukrainian nationality under the Law, but without documents, cannot evidence their right. Therefore, under the current national legal framework of Ukraine, a child born to undocumented parents would inherit the lack of documentation, and, as a result, (risk of) statelessness.

Due to the lack of a statelessness determination procedure and the absence of any alternatives to register undocumented persons, those who are undocumented have very few options, and their undocumented status is also inherited by their children, thus creating a vicious cycle.

Discrimination is both a cause and a consequence of statelessness among Roma in Ukraine. Discrimination creates additional barriers to the access of fundamental rights and freedoms particularly for Roma as an ethnic minority and especially for those among them who are stateless or **at risk of statelessness**. **The highest level of intolerance amongst Ukrainians is towards Roma**, with an unacceptably high level of intolerance towards Roma among all sections of society. Receiving a rejection by state authorities based only on the fact of a person's Roma ethnicity has a negative impact on the individual but, most importantly, on the community too, as other members of the discriminated group have no incentive to apply to regularise their legal status. Therefore, discrimination against Roma only deteriorates the widespread and intergenerational lack of documentation among Roma.

Roma face direct and multiple discrimination not only in the documentation procedure but also in accessing education, employment, and other fundamental rights. Roma experience social prejudice on an everyday basis.

These common themes point both to specific challenges of discrimination faced by Roma communities and individuals, and a more general bureaucratic challenge to effective governance and human rights in Ukraine. Importantly, addressing these structural issues will benefit not only Roma, but society as a whole.

Recommendations

Drawing on the research findings presented in this report, the following recommendations are made:

1. **Compliance with international obligations, including through law reform.** The Ukrainian Government should ensure that all international and regional obligations related to the right to nationality, prevention and reduction of statelessness, identification and protection of stateless persons, non-discrimination, and birth registration are fully incorporated into domestic law and implemented in practice. In doing so, the Ukrainian Government should engage in necessary law reform to bring Ukraine's legal framework into full compliance with its obligations under the 1954 and 1961 Conventions. In particular, Ukraine should introduce a procedure in law to identify and protect stateless persons in line with the 1954 Convention and UNHCR's Handbook on Protection of Stateless Persons.
2. **Simplified procedure for Ukrainian citizenship confirmation.** The Ukrainian Government should put in place a simplified, cost-free procedure to establish Ukrainian citizenship of all persons who face barriers to accessing documentation, including those who hold documents of the former USSR, IDPs, those residing in the temporarily occupied territories, and those who cannot access documentation or proof of citizenship for other reasons.
3. **Identification of stateless persons and awareness-raising.** The State Migration Service of Ukraine should be mandated with the primary role of addressing statelessness in Ukraine by leading and coordinating efforts to identify and protect stateless persons and prevent and reduce statelessness in Ukraine. This role should include raising awareness about Roma statelessness among various other government institutions that may encounter this challenge.
4. **Access to legal aid services.** The Ukrainian Government should ensure that all Roma, in particular those denied documentation and at risk of statelessness have equal and fair access to high quality legal aid services, and that they are not required to provide the very documentation they have been denied and evidence of their low income, in order to access legal aid.
5. **Tackling prejudice and discrimination.** The Ukrainian Government should address structural discrimination, prejudices and negative stereotypes against Roma, to ensure that Roma are not directly or indirectly discriminated against in their access to documentation, enjoyment of their right to a nationality and the enjoyment of all other human rights. In particular, it should ensure that the Ukrainian legal framework is equipped to identify and remedy multiple discrimination faced by stateless Roma.
6. **Access to fundamental rights.** The Ukrainian Government should ensure that stateless and undocumented Roma are able to exercise their rights such as access to health-care, education, freedom of movement, liberty and security of the person and to equally participate in the social and political life of the country.
7. **Accessibility of birth registration and documentation procedures.** The State Migration Service of Ukraine and Ministry of Justice of Ukraine should ensure that all birth registration and documentation procedures are universally and easily accessible, including by eliminating all bureaucratic, cost and distance related barriers. The Ministry of

Justice of Ukraine should establish a computerised system for birth registrations, which enables the direct reporting of births from healthcare centres to the registry, thereby eliminating underreporting and the risk of human error.

8. **Professional training and capacity building for the authorities.** The Ukrainian Government should conduct rigorous and continuous professional training for all relevant officials, including the staff of registry offices and healthcare centres, who have a legal role to play in the registration of births. The Ukrainian Government should strengthen the capacity of these officials, decision makers and other key actors to address statelessness and discrimination, through the provision of training and continuous capacity development on key issues including equality and non-discrimination, statelessness, gender, human rights and public law.
9. **Enhancing cooperation with Roma communities.** The Ukrainian Government should enhance relations and ties between Roma leaders and community groups and relevant government officials, to facilitate the civil registration process. The Ukrainian Government should conduct outreach campaigns to directly learn from Roma communities about their specific needs and the barriers they face, to share information with them, and to provide them with access to mobile registration.
10. **Data collection on scope of stateless persons and Roma population.** The Ukrainian Government should strengthen disaggregated data collection and monitoring, including by conducting comprehensive mapping, on statelessness, the risk of statelessness and Roma populations.
11. **Capacity building for Roma-led NGOs.** The Ukrainian Government should protect the independence of Roma Associations by supporting them to lead capacity building, empowerment and awareness raising activities within the community; provide legal and other services to Roma, strengthen Roma voices, critique and influence national law and policy.
12. **Initiatives for Roma community development.** The Ukrainian Government and Roma rights activists and NGOs should undertake initiatives to tackle societal prejudice and discrimination, including community development support, strengthening and listening to Roma voices, opening more spaces for dialogue between Roma community and wider society as well as government and officials.
13. **EU Cooperation.** European Union institutions should ensure that Roma discrimination and statelessness in Ukraine is comprehensively addressed as a matter of priority within the framework of the Association Agreement between the EU and Ukraine, and with particular reference to the cooperation aimed at reinforcing the rule of law and respect for human rights and fundamental freedoms.
14. **Other regional and global processes.** The Council of Europe, OSCE/ODIHR, UN-HCR, UNICEF, Human Rights Council, UN treaty bodies and other regional and global actors should ensure that Roma statelessness is addressed through all relevant human rights procedures in Ukraine as a matter of concern.

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This report is dedicated to all Romani people whose lives are impacted by discrimination, lack of documentation and statelessness. We hope this will be a useful tool in their continuing struggle for justice and inclusion.

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The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" № 3773-VI of 22 September 2011, the latest amendments of 18 June 2016.

The Law of Ukraine "On the Principles of Prevention and Counteracting Discrimination in Ukraine" № 5207-VI of 06 September 2012, the latest amendments of 30 May 2014.

The Law of Ukraine "On the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or its Special Status" № 5492-VI of 20 November 2012, the latest amendments of 08 December 2016.

The Decree of the President of Ukraine "The Strategy of protection and integration of Roma national minority into the Ukrainian society till 2020" № 201/2013 of 08 April 2013.

The Decree of the President of Ukraine “The Issues of Organising the Implementation of the Law of Ukraine “On the Citizenship of Ukraine” № 215/2001 of 27 March 2001, the latest amendment of 01 April 2016

The Ordinance of the Cabinet of Ministers of Ukraine “The National Action Plan on the implementation of the Strategy of protection and integration into Ukrainian society of the Roma national minority for the period till 2020”, № 701-p of 11 September 2013

The Order of the Ministry of Internal Affairs of Ukraine “On Approval of the Rules for Preparation and Issuing a Passport of a Citizen of Ukraine” № 320 of 13 April 2012, the latest amendments of 06 October 2015.

United Nations Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/RES/39/46, 1984

Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. A/RES/34/180, 1979

Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006

Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989

International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. A/RES/61/177, 2006

International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. A/RES/51/80, 1965

International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966

International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 1966

United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961

United Nations Convention relating to the Status of Refugees, G.A. Res. 2198 (XXI), 1951

United Nations Convention relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954

Regional Treaties

European Convention for the Protection of Human Rights and Fundamental Freedoms

European Convention on Nationality

The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development and training of Romani activists. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

The European Network on Statelessness (ENS) is a civil society alliance with over 100 members in 40 countries committed to addressing statelessness in Europe. ENS believes that all human beings have a right to a nationality and that those who lack nationality altogether are entitled to full protection. ENS aims to achieve its mission through awareness-raising, law & policy and capacity-building activities.

The Institute on Statelessness and Inclusion (ISI) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy.

NGO “Desyate Kvitnya” (“The Tenth of April”) is an independent, voluntary and non-profit organisation, which was established on 1 August 2012 and named after the birthday of one of the founders of international law – Hugo Grotius de Groot. “Desyate Kvitnya” was founded by a team of activists with more than 20 years of experience in the sphere of human rights protection with the aim to support the development of civil society in Ukraine, to enhance legal awareness, and to protect rights of particularly vulnerable social groups. Since its foundation, “Desyate Kvitnya” has been carrying out different projects aimed at human rights protection with the support of the international organisations including UNHCR, ERRC, ENS, ISI, USAID, and others.

The #RomaBelong project is a joint initiative by the European Roma Rights Centre (ERRC), the Institute on Statelessness and Inclusion (ISI) and the European Network on Statelessness (ENS) in collaboration with partner organisations in Albania (Tirana Legal Aid Society), Bosnia-Herzegovina (Vaša prava BiH Association), Macedonia (Macedonian Young Lawyers Association), Montenegro (Mladi Romi), Serbia (Praxis) and Ukraine (Desyate Kvitnya). The project aims to better understand and address Romani statelessness (and risk of statelessness) in European Union candidate and neighbourhood countries in the Western Balkans (Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia), and Ukraine.

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



European
Network on
Statelessness

