

UKRAINE:

GOVERNMENT MUST
ACT TO STOP RACIAL
DISCRIMINATION

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Amnesty International Publications

First published in 2008 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

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Index: EUR 50/005/2008
Original language: English
Printed by Amnesty International, International Secretariat,
United Kingdom

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Back cover top: Place of Joseph Bunta's murder

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Back cover bottom: Ministry of Foreign Affairs in Kyiv

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Glossary	3
1/Introduction	4
2/Ukraine's obligations under international law	7
3/Definitions	9
Discrimination and racism	9
Hate crimes	9
Direct and indirect discrimination	10
4/Government measures to combat racial discrimination and xenophobia	11
5/Background – xenophobia in society	13
6/Violent attacks by non-state actors on ethnic, religious and racial minorities	15
Failure to protect	15
Failure to acknowledge the existence of racial discrimination	18
7/Prosecuting racist crimes	19
Provisions in the Criminal and Administrative Codes	20
Failure to apply the law	23
Failure of police to respond adequately	24
Failure to keep statistics on the number of racially motivated crimes	27

8/Racial discrimination by the state	28
Racial profiling by police	28
Refugees and asylum-seekers	31
Racist attitudes among state employees	33
9/Conclusion	34
10/Recommendations	35
Endnotes	38

GLOSSARY

CERD	Committee on the Elimination of Racial Discrimination
DRC	Democratic Republic of the Congo
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	European Commission Against Racism and Intolerance
ERRC	European Roma Rights Centre
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration
NGO	Non-Governmental Organization
ODIHR	OSCE's Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
SBU	Ukraine State Security Services
UNHCR	United Nations High Commissioner for Refugees
VGIRFO	Department of Citizenship, Immigration and Registration

JOSEPH BUNTA

On 27 January 2008 at about 6pm, Joseph Bunta left the flat he shared with his sister and three other asylum-seekers in the Nyvky district of Kyiv to buy some water at a local kiosk. The 19-year-old asylum-seeker from the Democratic Republic of the Congo (DRC), was attacked near the kiosk, and received 18 knife wounds. He died of his wounds very soon afterwards. Two young men were later detained for the murder. Joseph Bunta and his sister had arrived in Kyiv in June 2007 hoping to escape a life-threatening situation in DRC,¹ but Ukraine was unable to protect his right to life.



©HIAS

Joseph Bunta in September 2007



©Private

Joseph Bunta in his coffin

1/INTRODUCTION

Joseph Bunta was just one of a number of Africans and other foreign nationals who have died in Ukraine recently after suffering racist attacks. Research carried out by Amnesty International in Ukraine reveals an alarming rise in the number of attacks on people based on their racial, ethnic or religious identity. These range from verbal abuse to serious physical attacks and even murder. Anybody who looks “different” is also liable to face frequent document checks by the police, which may result in extortion or other violations. The escalating number of these attacks has created a climate of fear and insecurity particularly among asylum-seekers and refugees. Amnesty International is concerned by the inadequate response of the Ukrainian authorities. Despite taking some measures in the face of international criticism, government spokespeople have demonstrated a bewildering lack of understanding about the nature of racial discrimination and the gravity of the problem in Ukraine.

The escalation of racist crimes during 2007 led to increased concern by foreign embassies and international organizations in Kyiv. Many foreign embassies now warn travellers about the risk of racially motivated violence in Ukraine. In April 2007 the Office of the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), Amnesty International Ukraine and other organizations set up the Diversity Initiative Group to address the issue. It has since made recommendations to the government on improvements to legislation and practice. The government has responded to this external pressure by creating structures within existing ministries that are mandated to deal with racism and xenophobia. Despite these steps, officials continue to deny that there is a problem of racial discrimination, while admitting that “everyday racism” (побутовий расизм) exists, or that there are “individual incidents”.

The authorities often describe the perpetrators of the most violent attacks as “skinheads”. It is true that there are some skinhead groups in Ukraine that profess a racist, neo-fascist and violent ideology, but not all members of skinhead groups are racist and, furthermore, racial discrimination in Ukraine is not limited to these groups and is much more widespread. While the most visible manifestations of racism in Ukraine are violent attacks carried out by young people who often subscribe to a racist subculture, many more people are subjected to harassment, discrimination and abuse from state officials and ordinary members of the public. In order to combat violent racist attacks effectively, the Ukrainian authorities must also address intolerance and xenophobia in Ukrainian society. Studies show that levels of social prejudice against certain groups are increasing. If the government does not face this problem and take decisive action, an increasing number of people will be deprived of basic rights, including the right to life.

In this report Amnesty International documents how Ukraine is failing in its obligations under international human rights law to:

- eliminate racial discrimination from state policies and practice,
- protect individuals from racial discrimination by non-state actors and public officials, and
- ensure that the right to live free from racial discrimination is enjoyed by all who live in Ukraine.

Inadequate provisions in the law, poor police responses, and a failure to acknowledge the gravity of racially motivated crimes have led to virtual impunity for the perpetrators of racist crimes. Some police practices are overtly racist; representatives of ethnic and racial minorities and anybody who looks “different” are liable to be targeted by the police for document checks.

Amnesty International does not suggest that racial discrimination is peculiar to Ukraine. In its reports on many countries – in the European context on France, Estonia, Greece, Kosovo, Macedonia, Latvia, Russia, Serbia, Slovakia, Spain, and the United Kingdom – the organization has documented the fact that people are subjected to human rights violations because of their racial, ethnic or religious identity. Amnesty International calls on the Ukrainian government to acknowledge the existence of racial discrimination and to take decisive steps to eliminate it. Amnesty International concludes this report with 17 recommendations to help Ukraine fulfil its international human rights obligations.

In preparing this report, Amnesty International carried out two fact-finding visits to Ukraine, in September 2007 and February 2008, and met with representatives of non-governmental organizations (NGOs), international organizations, the Ministry of Internal Affairs, the State Security Services, the Ministry of Foreign Affairs, victims of racist attacks, lawyers, refugees and asylum-seekers.

2/UKRAINE'S OBLIGATIONS UNDER INTERNATIONAL LAW

The idea that human rights are enjoyed without distinction as to race, sex, language, ethnic origin, nationality or religion is a fundamental principle of international human rights law, and racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights because of their colour, race, ethnicity, descent, religious beliefs or national origin. Under international human rights law, states are obliged to combat discrimination in all its forms. They have a responsibility to ensure that laws and institutions of the state address the root causes and consequences of discrimination, and secure adequate remedies for those who suffer violations of their fundamental right to equal treatment.

Ukraine is party to several human rights treaties of particular relevance to racial discrimination. These include the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the UN Convention on the Elimination of All Forms of Discrimination against Women.

Ukraine is also a party to the principal UN treaty aimed at eliminating and prohibiting such discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination (Convention on Racial Discrimination). States which are party to this Convention have committed themselves to prohibit and eliminate racial discrimination by all appropriate means and to guarantee the right of everyone, without distinction as to race, colour, descent, or national or ethnic origin, to equality before the law and to the enjoyment or exercise of their civil, political, economic, social and cultural rights on an equal footing. The Convention obliges states not only to end discrimination by government and public officials, but also to take all appropriate means to prohibit and eliminate racial discrimination by any person, group or organization. This includes protecting people from violence or bodily harm at the hands of private individuals, groups or organizations (non-state actors).² The Convention established the Committee on the Elimination of Racial Discrimination (CERD), which monitors compliance with the Convention and requires states parties to report on their compliance every two years.

The state may be accountable in several different ways for attacks by non-state actors. The Convention against Torture establishes the responsibility of the state for acts of torture inflicted "with the consent or acquiescence of a public official". For example, failure to provide protection against violent attacks may amount to consent or acquiescence in torture.³ Under

international human rights law, states have an obligation to act with due diligence to prevent, investigate and hold perpetrators accountable for abuses of human rights, including acts by private individuals. This basic principle of state responsibility is established in all the core human rights treaties to which Ukraine is a party. The ICCPR and the ECHR, for example, oblige states to ensure the rights set out in those treaties, including the right to freedom from torture and ill-treatment, and to provide an effective remedy for violations of these rights. The UN Human Rights Committee has stated that this obligation extends to acts inflicted by people acting in a private capacity.⁴ The European Court of Human Rights has also affirmed that under the ECHR, states are required to take measures to ensure that individuals are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment inflicted by private individuals.⁵

The concept of due diligence is a way to describe the threshold of effort which a state must undertake to fulfil its responsibility to protect individuals from abuses of their rights.⁶ Due diligence includes taking effective steps to prevent such abuses, to investigate them when they occur, to prosecute the alleged perpetrator and bring them to justice through fair proceedings. States are required to ensure reparation and access to effective redress for the victims. It also means ensuring that justice is imparted without discrimination of any kind. CERD has stated that, in relation to racist attacks, states parties to the Convention on Racial Discrimination should "Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially-motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence."⁷

In 1993 the Council of Europe established an independent human rights monitoring body on racism and racial discrimination, the European Commission against Racism and Intolerance (ECRI). ECRI monitors racism and racial discrimination by closely examining the situation in each of the member states of the Council of Europe. ECRI draws up reports containing its analyses and recommendations as to how each country might deal with the problems identified. Its Third Report on Ukraine was published in February 2008.

The Organization for Security and Co-operation in Europe (OSCE) is an inter-governmental organization that focuses on conflict prevention, crisis management and post-conflict rehabilitation. The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) is the organization's foremost body for promoting human rights.⁸ In 2004 it launched a Tolerance and Non-Discrimination Programme focusing on the areas of hate crime, racism and xenophobia, anti-semitism, intolerance and discrimination against Muslims, and freedom of religion or belief. It compiles an annual publication on hate crimes in the OSCE area.

3/DEFINITIONS

DISCRIMINATION AND RACISM

Article 1 of the Convention on Racial Discrimination defines racial discrimination as:

“...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The definition does not refer to religious discrimination but CERD's concluding observations on Ireland in 2005 recognized that religious discrimination falls under the Convention on Racial Discrimination and considered access to education for different religious groups.⁹ In its General Recommendation No 30 CERD also made clear that the obligation to combat discrimination applies to non-citizens, regardless of their immigration status in the country.

ECRI defines racism as “the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons”.

HATE CRIMES

Racially motivated crimes which fall under the definition of “hate crimes” are the most insidious manifestation of intolerance and discrimination.

The OSCE defines “hate crimes” as:

“A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B.”

“B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.”¹⁰

DIRECT AND INDIRECT DISCRIMINATION

The European Commission against Racism and Intolerance (ECRI) recognizes two distinct forms of discrimination, direct and indirect.¹¹ Direct discrimination may be explicit in the text of a law or an instruction, such as a law banning the use of minority languages, or regulations banning the use of buses by black people. Indirect discrimination does not explicitly target a certain group, but has the effect of discriminating against them. In General Recommendation No 14, CERD explained that: “In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or nation or ethnic origin.”

Even where a state formally prohibits direct discrimination through enacting legislation and administrative measures, vigilance must be maintained against what the UN Human Rights Committee calls “discrimination in fact” as practised “...by public authorities, by the community, or by private persons or bodies”. Definitions of discrimination must always include “indirect” abuses of the right to freedom from discrimination – those distinctions, exclusions, restrictions or preferences which may not be codified in any way but which may still be a significant impediment to the realization of equality in any society. In its General Comment No 18 (1989), the Human Rights Committee noted that it is frequently the case that when states report on their implementation of relevant articles contained in the ICCPR, they “...usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons”. The Committee recognizes that this helps in obtaining a picture of progress toward the elimination of various forms of discrimination in a society, but insists that reporting on legal or policy developments should also always be accompanied by a detailed account of “problems of discrimination in fact”.

4/GOVERNMENT MEASURES TO COMBAT RACIAL DISCRIMINATION AND XENOPHOBIA

Article 24 of the Ukraine Constitution guarantees citizens the right not to be discriminated against on the basis of “race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics”. Article 26 of the Constitution also grants foreigners and stateless persons “who are in Ukraine on legal grounds” the same rights and freedoms as citizens of Ukraine. In its Third Report on Ukraine, ECRI recommends extending the right to be free from discrimination to all persons under Ukrainian jurisdiction, not just citizens.

The Ministry of Internal Affairs, the Prosecutor General's Office and the State Security Services (SBU) all have a role to play in investigating racist crimes. Starting in September 2007, in response to international pressure, a number of new departments were created and given the task of tackling racism. In May 2007, the Ministry of Internal Affairs developed a Plan of Action to Combat Racism and Xenophobia. The plan includes: analysing the legislation in order to suggest improvements; holding regular meetings with students to encourage racial and ethnic tolerance; producing training materials and organizing training on racism and xenophobia for employees of the Ministry in cooperation with NGOs; and setting up a special subdivision to investigate crimes committed by foreigners as well as a subdivision to combat racism and xenophobia. In September 2007, the Ministry set up a Department for Ethnic Crimes. When first appointed in September, Sergiy Novikov, the director of the new department, stated that most of his time would be taken up with solving crimes committed by foreigners against Ukrainians.¹² However, there has been a shift of understanding within the Ministry of Internal Affairs in the past six months. By February 2008, Sergiy Novikov told Amnesty International that 80 per cent of his time would be taken up with investigating crimes against foreigners. However, the department continues to release only statistics on the number of crimes committed by foreigners in Ukraine.

One of the SBU's priority tasks is to protect tolerance in Ukrainian society and to prevent expressions of xenophobia.¹³ During 2007 the SBU set up a department to combat racism and xenophobia. This new department's main task was to investigate and prevent crimes by organized racist groups.¹⁴ In December 2007, the Ministry of Foreign Affairs appointed Oleksandr Horin as Special Ambassador on Racism, Xenophobia and Discrimination. So far

only the Ministry of Internal Affairs has developed an action plan to combat racism, and there is no central coordination of these new structures.

The State Committee for Nationalities and Religion, which is responsible for government policy towards ethnic minorities, religious groups, refugees and asylum-seekers, appears to prioritize the cultural and ethnic needs of the various indigenous ethnic communities in Ukraine. In response to Amnesty International's question as to what steps it is taking to combat xenophobia and intolerance in society, the State Committee replied that "Ukraine does not hide the existing problem of the declining level of social tolerance in the country. However, it is not an exclusively Ukrainian phenomenon. Unfortunately, it is a general European trend, and in order to fight it, efforts must be made not only by governments but, first of all, by the public. An effective mechanism for control and prevention of these phenomena can only be established by joint efforts".¹⁵

These government initiatives demonstrate that, while awareness is growing, these are just the first steps towards addressing the problem of racial discrimination. The government has yet to take effective and decisive action to combat racial discrimination, xenophobia, and intolerance. People of ethnic, religious and racial minorities in Ukraine are frequently unable to exercise the rights guaranteed to them by the Constitution and other laws.

5/BACKGROUND – XENOPHOBIA IN SOCIETY

People don't know how to behave towards people who don't look like them.

Asylum-seeker from Zaire

Ukraine is a diverse society composed of 22 ethnic groups.¹⁶ In its 18th Periodic Report to the CERD, the Ukrainian government stated: “There are not many countries in the world where, as in Ukraine, one can find 11 million people from various ethnic groups with different spiritual needs living together, with such a degree of integration into the common society.”

Since 1991 the populations of major cities in Ukraine, particularly Kyiv, have grown, although the overall population of the country has decreased. While most of this growth is accounted for by people moving to Kyiv from other parts of Ukraine, some is due to migration from Asia and Africa. The State Committee for Nationalities and Religions informed Amnesty International that in 2001 there were 168,000 foreigners permanently resident in Ukraine, approximately 83,000 stateless persons and 40,000 people who did not identify their nationality. According to the Kennan Institute, the migrant population of Kyiv more than trebled between 1991 and 2001.¹⁷

Many migrants work in the open-air markets in Ukraine, where conditions are hard. A stroll through Troyeshchina or Shulyavska markets in Kyiv reveals huge ethnic diversity. Ukraine's refugee population is also growing. According to government statistics there were 2,275 recognized refugees resident in Ukraine in January 2007, of whom 300 were from African countries and 1,825 from Asia (mostly from Afghanistan). According to the UNHCR, in 2007 2,300 asylum-seekers were awaiting a decision on their status in Ukraine. Most refugees and asylum-seekers live in Kyiv, Kharkiv and Odessa. In addition, there are many foreign students in the major cities, and

Bangladeshi traders in
Troyeshchina market



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this has become a significant source of income. In 2006, Ukrainian universities earned 0.5 billion hryvnias (approximately €73 million) from foreign students.¹⁸

Despite the ethnic diversity and growing migration to Ukraine, there are no government programmes to promote tolerance. Studies by the Kyiv International Institute of Sociology show that levels of xenophobia and anti-semitism are rising. The Institute questioned more than 25,000 people throughout Ukraine between 1994 and 2006. The respondents were asked to mark on a scale of one to seven the degree of closeness they would tolerate with 13 ethnic and linguistic groups, including Jewish people, “gypsies” and “negroes”.¹⁹ They were asked if they would tolerate a representative of a given national group as a member of their family, as a close friend, as a neighbour, as a colleague, as a resident in Ukraine, as a visitor to Ukraine or not allow them into Ukraine at all. The reactions to various ethnic groups were then ranked. The most positive reactions were shown towards Ukrainians, Russians and other Slavs; Jewish people ranked in the middle; and the most negative reactions were towards “negroes” and “gypsies”. The report showed that levels of anti-semitism increased during this period. Whereas in 1994, 38 per cent of those questioned were willing to have a Jewish person as a close family member or friend, in 2006 only 20.5 per cent were willing to have such close relations. The change in attitudes towards “negroes” and “gypsies” was not analyzed.²⁰

On 18 February 2007 vandals painted swastikas on 302 graves in a Jewish cemetery in Odessa. A statue of the Jewish doctor **Leon Pinsker** and a memorial to victims of Nazism in the centre of the city were vandalized. Vandals scrawled “Happy Holocaust” on the memorial.

African asylum-seekers and refugees interviewed by Amnesty International reported that they were frequently subjected to racist abuse by members of the public. Many Africans told Amnesty International how they had been pelted with bananas and subjected to verbal abuse when walking down the street. Amnesty International Ukraine carried out a survey among 37 foreign students at the National Aviation University in Kyiv, in 2007, and found that every one of those questioned had suffered racist abuse in public places or in the university and all but two of them said that they were physically abused during such incidents.

Ukraine cannot afford to ignore such expressions of xenophobia and social prejudice, or dismiss them as just “everyday phenomena”. Such attitudes can permeate official structures and become entrenched as institutional racism. They can lead to a climate where graver human rights abuses are perpetrated and tolerated.

6/VIOLENT ATTACKS BY NON-STATE ACTORS ON ETHNIC, RELIGIOUS AND RACIAL MINORITIES

FAILURE TO PROTECT

All states parties to the Convention on Racial Discrimination have the obligation “to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization” (Article 2). Furthermore, states are obliged to uphold “the right to security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution” (Article 5).

In November 2007, the UN Committee on Economic, Social and Cultural Rights considered Ukraine’s fifth periodic report on its implementation of the ICESCR. The Committee expressed concern about “reports of police abuse and denial of effective protection against acts of discrimination and violence against ethnic and religious minorities especially Roma, Crimean Tatars, Asian and African asylum-seekers as well as Muslims and Jews”.

The Ukrainian authorities do not keep official statistics on the number of reported racist incidents, nor on the number of convictions for racially motivated crimes. However, monitoring carried out by the press and by international NGOs working with refugees, migrants and Jewish communities in Ukraine indicates that there has been an alarming rise in violent attacks against foreign nationals and ethnic and religious minorities over the last two years. The government recognizes that this is a growing problem, but is still reluctant to admit that racism exists. In April 2007, in a letter to the Prosecutor General, the Head of the SBU, and the Minister of Internal Affairs, President Viktor Yushchenko asked that measures be taken to arrest and punish anybody defacing Jewish and other memorial sites, and he noted the rise of “extremist groups” in Ukraine. In June 2007, following the murder of an Iraqi asylum-seeker in Kyiv, the UNHCR publicly expressed concern, at a press briefing in Geneva, that racist attacks against asylum-seekers, refugees and other foreigners were increasing. In a letter to the Ministry of Foreign Affairs in May the UNHCR expressed concern at growing racism, and the use of racial profiling by the police. The Ministry of Foreign Affairs replied: “At present there are no grounds for any statement about the mass character of the growing scale of violence on the basis of ethnic or racial intolerance in Ukraine.”²¹

According to monitoring carried out by the Diversity Initiative Group, there were 60 racist attacks in Ukraine in 2007. In six of these, the victims died; by 8 March 2008 there were 29 racist incidents, including two murders. In March 2008, the Deputy Minister of the Interior stated that there were 1,000 crimes against foreigners in 2007, including 22 murders, and five murders up to March 2008. However, he stated that only one of these crimes was motivated by racism.²² The following case was not considered to be racially motivated.

Charles Asante-Yeboah, Director of the African Centre in Kyiv, a recognized refugee from Ghana who has lived in Ukraine for nine years, was attacked on 10 January 2008 at a bus stop near Shulyavska metro station in Kyiv. He told Amnesty International that he was attacked by a group of about 10 young men aged between 16 and 25. They struck him on the back of his head with a metal object and then kicked him until he fell to the ground. The attackers beat him with metal bars and bottles. He told Amnesty International he heard one of the attackers say: "Where is the knife?" and then they discussed whether they should cut his throat or not. He suffered several knife wounds to his face and head, before the group was scared off by the headlights of a minibus. Charles Asante-Yeboah was taken to a hospital where he was treated for his injuries. He reported the attack to the police and, at the time of writing, the police had detained four suspects. The police told Charles Asante-Yeboah that the attack was not racist and that he was attacked because he was carrying a briefcase which may have contained something valuable.

According to the Eurasian Jewish Congress, there were seven violent attacks against Jews and 22 attacks against Jewish properties or buildings in 2007 in Ukraine. There were several attacks against Jews and Jewish property in Zhytomyr (150km west of Kyiv) in 2007:

On 6 August 2007 at 10pm, **Nahum Tamarin**, Director of the Zhytomyr branch of the Federation of Jewish Communities of Ukraine, and his wife **Barak Tamarin**, Director of the Jewish girls' school, were attacked near a synagogue by two young men. The couple, originally from Israel, have lived in Ukraine for 10 years. They were attacked from behind and pushed to the ground; one of the attackers then punched Barak Tamarin in the face, causing her to lose several teeth and to suffer concussion. In a telephone conversation with Amnesty International, Nahum Tamarin explained that they were so shocked by the incident that they were unable to see who the attackers were. He told Amnesty International that he believed that the incident was racially motivated, because "there was no other possible explanation for the attack".

Many of these attacks have been carried out by young people who are identified as "skinheads" by their victims. Africans appear to have suffered the most brutal assaults, and the escalating number of these attacks has created a climate of fear and insecurity among African asylum-seekers and refugees.

Tomas Lukayi, the Director of an African Association in Kyiv, told Amnesty International that his organization advises its members not to go out in the evenings or weekends, as those are the times when neo-Nazi skinhead groups are active. There is growing panic among Africans resident in Ukraine, as these e-mails received by Amnesty International illustrate:

"The most dangerous issue is that now we fear for our children who are going to schools and kindergarten. We have no guarantee for our children; they can be attacked or killed at any time. We know that the racist groups have the address of all refugees, asylum-seekers, immigrants, other non-white individuals living in Kyiv and we are just waiting for our turn. At the moment we are afraid to stand at bus stops and wait for a bus, minibus or at a metro station. Every day we are intimidated by members of racist groups."

"The police only watch while my brothers are being slaughtered like goats here. They call them illegal immigrants but all those who have been killed have Ukrainian wives and children."

"We are living under stress and we ask you to try and make an effort to find a solution."

Despite the growing number of violent attacks, the Ukrainian authorities have been slow to take the necessary action to protect potential victims. Foreign students in Kyiv have complained to Amnesty International that requests to university authorities to provide protection from neo-Nazi skinheads, who often target university residences where foreigners live, are ignored. In its Third Report on Ukraine, ECRI called on the Ukrainian government: "to ensure that university authorities take appropriate measures to provide foreign students with a safe environment by, inter alia, organizing adequate on-campus security. ECRI recommends that the students be consulted and involved in any measures taken to improve their safety both on and off campus. ECRI also recommends that the Ukrainian authorities organize awareness campaigns aimed at, inter alia, increasing knowledge of foreign students' presence and contribution to Ukrainian society."

On 23 March 2008, a militarist nationalist group called "Patriot Ukraine" (Ukrainian Patriot) organized a torch-lit march at the Kyiv Polytechnical Institute to protest that foreign students are given better accommodation than Ukrainian students. They chanted slogans such as: "Migrants go home", "Ukrainian students should have the best hostels", and "Alien, remember: Ukrainians are masters here". In a press statement the Parliamentary Human Rights Commissioner, Nina Karpacheva, expressed surprise that the university authorities had not banned the march despite the fact that political activity is banned on campus. In fact, the Ministry of Internal Affairs and SBU forces ensured that participants in the event were able to march through the campus twice. When a group of students started to protest against the demonstrators, Ministry of Internal Affairs troops forced them on to the pavement so that they could not obstruct the march. In her statement, Nina Karpacheva pointed out that double standards in human rights were unacceptable. She urged Ukraine to remember that there are 5-7 million Ukrainian migrants and students in other countries who could also be the victims of xenophobia, racism and intolerance.²³

FAILURE TO ACKNOWLEDGE THE EXISTENCE OF RACIAL DISCRIMINATION

“The Council of Europe has been too hasty in stating that racism in Ukraine is commonplace.”

Justice Minister, Mykola Onyshchuk, speaking in February 2008

A first step towards dealing with hate crimes and racial discrimination is to acknowledge the problem, but Ukrainian officials have so far been very reluctant to admit the existence of racial discrimination in Ukraine.

In its 18th periodic report to the CERD in 2004, the Ukrainian government stated: “Observance of these rights and freedoms at the State level confirms that all forms of discrimination based on race and nationality have been eliminated in Ukraine.” Speaking to a meeting of embassy officials and referring to statistics for crimes against foreigners in 2007 and 2008, the Deputy Minister of Internal Affairs stated: “Racist or xenophobic motives were practically absent from all these crimes except for the murder of a citizen of Congo in Kyiv. The main reason for such incidents were hooliganism, criminal intent and trivial everyday grounds.” When asked by Amnesty International, in meetings in September 2007, whether there was racism in Ukraine, employees of the Ministry of Internal Affairs and the SBU denied that there was any. In February 2008, during a meeting with Amnesty International, an employee of the Ministry of Internal Affairs said that there was no racism “but there are racist incidents”. During a press conference in March 2008, Oleksandr Horin, Special Ambassador on Racism, Xenophobia and Discrimination of the Ministry of Foreign Affairs, told a journalist: “We have manifestations of racism though there is no racism as a phenomenon.” These denials may be due to a lack of understanding about the nature of hate crimes and racism. During a meeting with Amnesty International in September 2007, an employee of the SBU stated that racism is a “policy pursued by a state aiming at the eradication of a race and guided by an ideology”. Most officials denied that there was any “state racism” but that there was “everyday racism”. When given examples of a typical incident when members of the public threw bananas at an African student and shouted: “You monkey. Why don’t you go and live in the zoo,” Amnesty International was told that this was not racism, but “hooliganism”.

There can no longer be any doubt that racially motivated attacks are escalating in Ukraine. The Ukrainian authorities must publicly acknowledge the existence of racial discrimination and take effective action to combat racism and xenophobia and to protect potential victims before the violence escalates further.

7/PROSECUTING RACIST CRIMES

According to Article 4 of the Convention on Racial Discrimination, states parties “shall declare an offence punishable by law ... all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin”.

The ECHR holds that:

“Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment.”²⁴

Furthermore, in the case of *Nachova and others v Bulgaria*, the European Court of Human Rights held that governments have a duty to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in criminal acts:

“Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of the acts that are particularly destructive of fundamental rights.”²⁵

In this case, the Court ruled that there had been a violation of Article 14 of the ECHR because Bulgaria had failed to investigate whether or not discrimination may have played a role in the killing of two Roma by military police in 1996.

Amnesty International is concerned that the Ukrainian authorities continue to prosecute racist crimes as ordinary crimes, despite the existence of provisions in the Criminal Code which specifically refer to racist crimes.

PROVISIONS IN THE CRIMINAL AND ADMINISTRATIVE CODES

Persons suspected of racist crimes may be prosecuted under a range of provisions in Ukrainian law, and there are two articles of the Criminal Code which refer specifically to racist crimes: Article 161 and Article 67.

RACIST CRIMES

Article 161 of the Criminal Code (Violation of citizens' equality based on their race, nationality or religious preferences) criminalizes "deliberate actions whose aim is inciting ethnic, racial or religious animosity as well as hatred aimed at humiliating the national honour and dignity of a person or offending citizens' feelings based on their religious views". Under Part 1 of this Article, such actions are punishable by a fine, correctional labour of up to two years, or restriction of liberty (open prison) for up to five years. Under Part 2 of the Article, such actions when accompanied by violence, deception or threats or when carried out by an official carry a sentence of up to two years' correctional labour or imprisonment for up to five years. Under Part 3 any actions that fall under Part 1 and 2 and, in addition, are carried out by an organized group or which lead to the death of the victim or other grave consequences, are punishable by a prison sentence of two to five years.

According to information received by Amnesty International, this provision has been used infrequently on its own: in 2007 charges were made using Article 161 in only two cases, once in connection with the desecration of graves and once in connection with the murder of Kunuon Mievi Godi in 2006 (the sentence was pronounced in 2008).

Kunuon Mievi Godi, a 44-year-old Nigerian man, had been living in Ukraine for many years, and was married to a Ukrainian. He was stabbed and killed by a group shouting racist slogans near Poznyaky metro station in Kyiv on 25 October 2006. The attackers did not steal the US\$400 that the victim was carrying. Three people were detained in connection with this murder. In March 2008, one of the three was granted an amnesty as he was a minor, and on 17 April 2008, Darnytskyi district court in Kyiv delivered its verdict. One person was sentenced for murder and for "inciting ethnic, racial or religious animosity" under Article 161 and received a combined sentence of 11 years. The second person was accused under Article 161 Part 2, and received a sentence of four years and six months.

Sentences have been passed using Article 161 in two cases in 2008. On 17 April 2008 a far-right "activist", Vjacheslav Dmytruk, was sentenced to three years' imprisonment in accordance with Article 161 Part 2, for taking part in the beating of a Japanese tourist on 27 October 2007 after a neo-Nazi march, and Article 161 was applied in the conviction of the four young men who fatally attacked a Korean citizen, Jeong Kwon Kang, in April 2007 (see below). Article 161 is almost always used in conjunction with other articles of the Criminal Code. NGOs informed Amnesty International that they believed that this article was rarely used because of the need to prove that actions were specifically aimed at inciting racial hatred. However, in meetings with

Amnesty International, Ministry of Internal Affairs employees disagreed with this assessment; they said: “We work on them [the suspects] and they soon tell us.” Instead, the Ministry of Internal Affairs attributed the low application of this provision to the fact that under the law only the Prosecutor can charge a person under this provision, and is responsible for investigating the crime.²⁶ This makes the process more time-consuming for the police and adds to the obstacles preventing the use of this article because prosecutors are very reluctant to invoke this article (see below).

RACIST MOTIVATION AS AN AGGRAVATING FACTOR

The Criminal Code allows for any crime to be prosecuted with the aggravating circumstance of racial hatred by applying Article 67 of the Criminal Code on aggravating circumstances. This article does not stipulate any punishment and only serves to qualify the crime and possibly increase the sentence within the boundaries given in the article according to which the crime is charged. Paragraph 1 of Article 67 lists 13 possible aggravating factors, such as grave consequences, the commission of an offence as a result of conspiracy, the commission of an offence against a minor, an elderly or helpless person, the commission of an offence against a pregnant woman, the commission of an offence by a person in a state of intoxication, and paragraph 1(3) refers to racial, national or religious enmity and hostility.

The Diversity Initiative Group considers that there are four problems with Article 67:

- most of the aggravating factors listed in Article 67 are obligatory but judges may choose to ignore some aggravating factors, including racial, national or religious enmity;
- the Article gives no definition or explanation of a racially motivated offence;
- the Article does not mean that the punishment is increased in view of the racial motivation;
- Article 67 paragraph 1(3) is very rarely used.²⁷

The fact that racial, national or religious enmity and hostility is one of the aggravating factors that a judge may choose not to apply would seem to demonstrate an inadequate understanding of the dangers of racial discrimination. In fact, Amnesty International has not come across a single case in which Article 67 paragraph 1(3) was used. Interestingly, in the case of the murder Kunuon Mievi Godi, the judge applied Article 67 paragraph 1(13) referring to intoxication with alcohol, but not paragraph 1(3).

OTHER PROVISIONS OF CRIMINAL AND ADMINISTRATIVE LAW

Rather than applying the above-mentioned provisions, Amnesty International’s research indicates that racially motivated crimes are usually prosecuted under other articles of the Criminal and Administrative Codes such as murder, grievous bodily harm or hooliganism.

In most cases, the other articles carry heavier sentences than Article 161. Murder (Article 115 of the Criminal Code) carries a penalty of 10 to 15 years' imprisonment, and up to life imprisonment if there are aggravating factors, such as murder committed by a group of people who have previously conspired, murder coupled with rape, or murder based on hooligan motives.

Intentional grievous bodily injury (Article 121) carries a sentence of five years' and up to 10 years' imprisonment if committed by a group, if it is the result of torture, if it is for the purpose of intimidating the victim or if the victim dies.

Hooliganism (Article 296) is defined as "a serious disturbance of public order based on motives of explicit disrespect for the community in a most outrageous or exceptionally cynical manner", and is punishable under the Criminal Code by a fine or up to three years' imprisonment or five years' restriction of liberty (open prison). If committed with firearms or other offensive weapons, it carries a sentence of up to seven years. Minor hooliganism, which encompasses "swearing in a public place, insulting citizens or other actions that disturb social order and peace", is punishable under the Code on Administrative Infractions (Article 178) by a fine or administrative detention of up to 15 days.

PROPOSED AMENDMENTS TO THE LAW

In 2001 ECRI called on the Ukrainian authorities to strengthen the criminal legislation against racially motivated crimes, and in 2007 it expressed disappointment that no measures had yet been taken. However, there have been four recent proposals to amend legislation in relation to anti-semitism and racial discrimination.

In January 2008, President Yushchenko proposed increasing the maximum prison sentence under Article 161 from five to 10 years.

A second proposal currently before parliament suggests adding an article to the Administrative Code to outlaw "public support and propaganda of the ideas of Nazism and similar ideologies" by wearing badges and symbols and disseminating literature. The Bill also proposes adding a paragraph to Article 161 to outlaw the participation in and setting up of neo-Nazi organizations. A third proposal by the People's Defence Party (Narodna Samooborona), initiated by Deputy Gennady Moskal, proposes changes to Article 173 of the Code on Administrative Infractions to impose greater sanctions for the production and distribution of anti-semitic and xenophobic leaflets, the use of fascist symbols and insignia, and the distribution of printed, audio and audio-visual materials. This draft law also suggests a number of amendments to Article 161, including adding a provision which would criminalize discrimination, and a paragraph specifically criminalizing violence against national minorities and foreigners.

A fourth proposal puts forward changes to the Administrative Code and to Article 121 (intentional grievous bodily injury), Article 115 (murder) and other articles of the Criminal Code, to add racial and national hatred as a motivation. The proposal also suggests increasing the maximum sentence under Article 161 to 10 years.

As of May 2008, all of these proposals for legislative reform remain pending.

FAILURE TO APPLY THE LAW

Amnesty International's main concern with legislation against racist crimes in Ukraine is that those articles which relate specifically to racist crimes, in particular Articles 161 and 67, are very rarely applied. As a result, the racist nature of the crime remains unacknowledged. One reason for this is that these articles allow for less severe sentences than other articles of the Criminal Code, and this issue is addressed in some of the amendments that are currently before parliament. Another issue is that the articles do not offer a clear enough definition of what constitutes a racist crime or a racist motivation. This is compounded by a lack of understanding among police officers of what racial discrimination is (see section on Failure of police to respond adequately, below).

The Diversity Initiative Group report has also identified reluctance by prosecutors to bring cases under the relevant provisions as a problem: "For Prosecutors, whose career advancement is tied to their records of success, it is all too easy to simply avoid such Articles of the code rather than to risk bringing a case that they may lose."²⁸

Victims of racist attacks complained to Amnesty International that if they report an attack to the police and the case goes to court, the charges often do not reflect the gravity of the crime. In some cases, extreme acts of violence have been prosecuted as "hooliganism". In one case it was only after intervention by the South Korean Ambassador that a case of murder was tried as murder rather than as grievous bodily harm and hooliganism.

Jeong Kwon Kang had been in Kyiv with his wife for one year, studying Russian and Ukrainian. He was killed in April 2007 by four young men, one of them a minor. The Consul of the Embassy of the Republic of Korea told Amnesty International that his attackers wore spiked boots and stamped on Jeong Kwon Kang's head "until his brains came out". According to the prosecutor's statement, the attackers had been drinking when they noticed Jeong Kwon Kang come out of the supermarket near his home in the Holosiivskiy district of Kyiv at about 10pm on 23 April. According to the prosecutor's statement, one of the group stated that he wanted to kill Jeong Kwon Kang because of his nationality and encouraged the other two to attack him. The attackers followed Jeong Kwon Kang, kicked him until he fell to the ground, and then started to kick him in the head. A witness testified that he saw one of the group leap on to Jeong Kwon Kang with both feet. The attackers ran away and a passer-by called an ambulance. Jeong Kwon Kang died on 17 May 2007 as a result of the severe head injuries he received during the attack.

Four young men were arrested in April 2007, and in May 2007, before Jeong Kwon Kang had died, they were charged with grievous bodily injury that does not lead to the death of the victim (under Article 121 Part 1) and hooliganism (under Article 296 of the Criminal Code). In a meeting with Amnesty International in February 2008 the South Korean Consul expressed his view that to prosecute such a serious crime as hooliganism shows “a very relaxed attitude towards racism that is very dangerous for the reputation of Ukraine”. He also said that in a meeting with himself and the South Korean Ambassador in October 2007, the Kyiv city prosecutor said: “I believe that this is a case of hooliganism. Why should foreigners receive special treatment?”

In November 2007, after prolonged lobbying by the South Korean Embassy, the accused were also charged with murder and with “hatred aimed at humiliating the national honour and dignity of a person” under Article 161. The charge of grievous bodily harm was also amended to reflect the death of the victim as a result of his injuries (thus, rather than being charged under Part 1 of Article 121, the accused were charged under Part 2 of this provision). On 23 April 2008 four young men were sentenced to 13 years’ imprisonment each for the murder of Jeong Kwon Kang.

The Ukrainian authorities must end the practice of classifying racially motivated crimes as “hooliganism”, and must ensure that the relevant articles of the Criminal Code are applied in cases of racist crimes. Prosecutors and police must be trained to recognize racist crimes and apply the relevant legislation.

FAILURE OF POLICE TO RESPOND ADEQUATELY

“We are experienced because we have been here a long time and we know that there is no point in complaining (to the police). They just take your telephone number and say: “We will call”, but they never call. They just say: “What are you doing here? Don’t you like it here? Go back to your country!” It can be dangerous, too.”

Samuel, refugee from Angola

Many Africans told Amnesty International that the police often ignored their reports of racist attacks. One asylum-seeker from Zaire told Amnesty International that, in November 2007, he was coming out of a football match in Odessa with three other Africans when a group of eight “skinheads” attacked them and beat one of them up. A police car happened to drive past, at which point the attackers ran away. When the victims told the police what had happened they were reportedly told: “What do you want us to do about it? If you don’t want to be beaten you should stay at home.”

During the first week in July 2007, Jews in Zhytomyr were subjected to verbal abuse, threats and insults every day as they left the synagogue after evening prayers. Members of the Jewish community reported the incidents to the Ministry of Internal Affairs and the SBU, asking them to take action before the young men acted on their threats. On 9 July a group of young people attempted to attack the Chief Rabbi of Zhytomyr, Central and Western Ukraine, Shlomo Wilhelm, but were prevented from doing so by the synagogue security guard. After the rabbi

had left, the young men attempted to break into the residence of a Jewish girls' school located on the synagogue grounds. The police arrived after the youths had left.

Members of the Jewish community complained again about these events on 10 July to the Ministry of Internal Affairs and the SBU. The SBU first replied that the events were disturbances of public order and did not fall within the competency of the SBU because there was no racist element to the crime. Only after Jewish community representatives wrote again, pointing out the anti-semitic nature of the acts, was an investigation opened. However, it was closed again because the events were not considered to constitute a crime, and because "objective analysis showed that there were no anti-semitic or xenophobic groups active in the Zhytomyr area".

In some cases, the victims of racist attacks may find themselves the subject of prosecution for having defended themselves.

Daniel Osaemor, a Nigerian market trader, was attacked on 19 February 2008 at about 2pm as he came out of the Silpo supermarket near Shulyavska metro station. A group of youths reportedly insulted him and called him a "big black ape". Daniel Osaemor could see that there were three of them and suspected that there were more nearby. They reportedly followed Daniel Osaemor to the door of the supermarket where they surrounded him and knifed him in the chest. Daniel Osaemor ran outside to attract the attention of passers-by and saw the three men running away. He ran after the man who was still holding the knife. He had a metal table leg in his pocket which he had been using to mend his market stall and reportedly hit the attacker on the head with the table leg. Daniel Osaemor was subsequently charged with hooliganism, and the investigator denied that there had been any racial motive in the attack. Daniel Osaemor's lawyer has no information that any charges have been laid against the attackers.

Victims and friends of victims have told Amnesty International that police investigation methods made them feel that they were under suspicion. The friends and flatmates of Joseph Bunta, who was killed on 27 January 2008, told Amnesty International that they were interrogated by police until late at night after the murder, and that police investigators questioned every black person that they saw in the neighbourhood about their whereabouts at the time of Joseph Bunta's murder. The murder took place at a local kiosk near the flat where Joseph Bunta lived, and there was no particular reason to suspect that Africans were the perpetrators. In fact, two white youths were eventually detained and charged with the murder.

On 20 February 2008, two asylum-seekers from the DRC were attacked by a group of young men in leather jackets and military style boots near the Festivalnyi shopping centre on Mayakovskiy Boulevard. The Africans managed to break away from the attackers. When the police arrived they were reportedly more interested in the shopping centre's broken door, which had been damaged in the attack, than in the welfare of the victims or the whereabouts of those responsible for the attack itself. The police questioned the victims about the attack and kept them in custody until 4am.



Soviet Arc of Friendship of the Peoples

In many cases, police officers dealing with racist attacks have shown a lack of understanding of what constitutes racial discrimination.

On 28 March 2008, **Henry Asimota**, a Nigerian national, was stabbed by two young men as he came out of a trolley bus near Lisova metro station in Kyiv. Despite loss of blood he was able to catch hold of one of the attackers, and another passenger caught the other attacker. According to Andriy Sadchikov, a police investigator, the crime was not motivated by racism but by hooliganism:

Journalist: “Did they just pick him by chance?”

AS: “No, because he is a Negro.”

Journalist: “So, you say this is hooliganism...”

AS: “Yes, it is more like hooliganism. I do not think that they caused the injuries because of some racial problems.”³⁰

The Ministry of Internal Affairs must develop guidelines on the nature of racist attacks and train police to respond adequately to reports of racist attacks. The response of the police to victims must encourage people to report crimes, and seek to ensure a thorough investigation of abuses of individuals' rights rather than further undermine confidence in the justice system's willingness or ability to protect them.

FAILURE TO KEEP STATISTICS ON THE NUMBER OF RACIALLY MOTIVATED CRIMES

ECRI has stated that, in view of the grave nature of racially motivated crimes, states must ensure that the police thoroughly investigate such crimes by taking the racist motivation of ordinary offences into account and by establishing systems for recording and monitoring racist incidents, and how these incidents are prosecuted.³¹ ECRI recommends that "any incident which is perceived to be racist by the victim or any other person" should be recognized as a racist incident.

There are no accurate statistics on the number of racially motivated crimes committed in Ukraine. There are many reasons for this. In a reply to the UNHCR,³² the Ministry of Foreign Affairs explained that the ethnic origin of the victims of crime could not be recorded because that would be in violation of Article 24 of the Constitution (the right not to be discriminated against on the basis of race, colour of skin, political, religious and other beliefs). Articles 161 and 67 of the Criminal Code, which would mark a crime as racially motivated, are rarely applied. In addition, police frequently fail to characterize incidents as racially motivated, and police or other officials do not keep registers of reports made about racist incidents.

Officials frequently point to the high levels of racist crimes reported in Western Europe as proof that the problem is worse there than in Ukraine when, in fact, racist incidents simply go unrecorded in Ukraine. The newly created Department for Ethnic Crimes in the Ministry of Internal Affairs provided Amnesty International with statistics, but these show the number of crimes against foreigners with no indication of the motivation.

In order to analyze the extent of the problem and to develop solutions it is essential to monitor and record accurately all incidents of racially motivated crimes across Ukraine. This information must be made available to all government departments, NGOs and the wider public.

8/RACIAL DISCRIMINATION BY THE STATE

All states parties to the Convention on Racial Discrimination “undertake to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”.

Racial discrimination by the state does not necessarily take the form of direct or overt intentional discrimination, but it may occur indirectly when a law or procedure has a disproportionate impact on a particular group. Amnesty International is concerned that state officials practise both direct and indirect racial discrimination in Ukraine.

RACIAL PROFILING BY POLICE

“The police just look to your pocket.”

NGO worker in Odessa

“The police very often ask to see my passport on the street and they are very rough and impolite. I always carry my passport with me. If you don’t have your documents on you, you can be detained.”

A South Asian resident in Kyiv

The ECRI calls on states to clearly define and prohibit racial profiling by law,³³ and defines racial profiling by the police as follows:

“The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.”

According to Article 11 of the Law on the Police of Ukraine, the police have the right to ask for identification documents from any person they suspect of having committed a crime, but many people are stopped by the police for no other reason than their appearance, which clearly falls within the definition of racial profiling. The police have been known to justify their actions by saying that they stopped a person with dark skin because they suspected them of violating Article 203 of the Code on Administrative Offences which refers to violations of the regulations of staying on Ukrainian territory.

In its Concluding Observations on the 17th and 18th periodic reports of Ukraine in 2006, the CERD expressed concern about “arbitrary arrests and pre-trial abuse based on racially motivated presumptions of guilt” targeting minorities, asylum-seekers and non-citizens of different ethnic origins. The Committee urged Ukraine “to further intensify its human rights training for the police and to facilitate the reporting of cases of police abuse of Roma and other persons of different ethnic origin, effectively investigate complaints and bring those found guilty of such acts to justice”.³⁴

Anyone who belongs to an ethnic minority or who looks “different” is vulnerable to document checks by the police. These checks are carried out ostensibly to control illegal migration, but they can lead to arbitrary detention, extortion or other abuses at the hands of the police. According to a survey carried out among 37 foreign students at the National Aviation University in Kyiv by Amnesty International Ukraine in 2007, 17 of those questioned said that they had been subjected to police identity checks more than once a week.

Vyacheslav Manukyan is a lawyer and a Ukrainian of Armenian ethnic origin. He has lived in Kharkiv for 20 years and yet he is regularly stopped by the police for document checks. He complained to the NGO, the Kharkiv Human Rights Group, that he is sometimes stopped for document checks by the police as often as three times a month: “I am regularly stopped for no reason by the police on the streets of the city and in the metro. As there is usually no objective reason for this systematic checking of my identity, I am forced to assume that it is because of my nationality and that it is caused by my appearance.” His supposition was confirmed by the response he received from the police authorities after he complained about one incident. The police authorities replied that he was stopped “because his appearance made it necessary for the police to check the legality of his presence on the territory of Ukraine”. Finally in November 2006, Vyacheslav Manukyan lost patience and filed a civil suit against the policeman who stopped him, the police department at the metro station and the Kharkiv office of the Ministry of Internal Affairs. He accused them of having discriminated against him on the grounds of his nationality for having illegally asked for his identity documents when there was no reason to suspect he had committed a crime. His civil suit was rejected by the court which stated that the police had acted in accordance with the Constitution and laws of Ukraine and that they had acted “impartially, conscientiously and thoughtfully in accordance with the principle of equality before the law and avoiding any unfair discrimination”.³⁵

There is no legal requirement for citizens of Ukraine to carry their internal passports with them at all times, yet if Vyacheslav Manukyan did not have his passport with him he would be taken to the police department at the nearest metro station where his name would be put in a register of people apprehended by the police. During a hearing on his case in 2008 the police department provided a copy of the relevant page of the register where Vyacheslav Manukyan’s name appears. Of the names on the register at the police department in one metro station for that particular period, 75 per cent were Georgian or Armenian. Vyacheslav Manukyan has lived and worked in the Netherlands and in Hungary and, despite his foreign appearance in those countries, he said he was never once stopped by the police. He told Amnesty International: “I did not file the civil suit for my own sake, but because we have a real problem in Ukraine.”

According to the European Roma Rights Centre (ERRC): “police investigatory practices blatantly target Roma, and subject entire communities to rigorous intrusive supervision, apparently entirely or primarily on the basis of racial profiling.”³⁶ The ERRC believes that the Ukrainian police have made a concerted effort to compile a detailed identity database, including fingerprints and photographic records, of as many Roma as possible.

In September, a representative of the Roma organization, Chirikli (Bird), told Amnesty International that police frequently carry out identity checks in Romani villages, often photographing and fingerprinting whole communities. According to Chirikli, such discriminatory practices had been carried out in Brovary in Kyiv region, in Odessa, Vynnytsya and Kherson regions. In September 2007, police detained the Romani population of the village of Chyhyryn in Odessa region, took their fingerprints and photographed them. The police explained that they were doing this for passports, although none of those fingerprinted and photographed had applied for passports, and fingerprints are not required for passports in any case. When Amnesty International raised this issue with the Ministry of Internal Affairs in September 2007, it was told that these activities can only have been carried out in connection with the investigation of a specific crime.

Amnesty International is also concerned that the practice of checking documents has no practical purpose and only facilitates extortion and corruption. Studies by the Open Society Institute on racial profiling in the Russian Federation have shown that document checks on the basis of race do not contribute to solving crimes. According to a survey it carried out in 2006, only three per cent of those stopped by the police in the Moscow metro were actually charged with an offence, usually a minor offence.³⁷ Vyacheslav Manukyan believes that such practices are counter-productive and only lead to further violations:

*“Thus the checking of documents, detentions, interrogations, collecting evidence according to ethnic characteristics is not only illegal, but, as research has shown, is ineffective and damaging to the law enforcement agencies themselves. It opens the way for corruption and violations which, in any case, have already reached fantastical proportions in the Ukrainian police.”*³⁸

Those who work in markets or fast food kiosks, where there is usually a concentration of foreign nationals, are particularly vulnerable to such document checks and extortion at the hands of the police:

Paul (not his real name), an asylum-seeker from Zaire, was selling shoes with other Africans at Sedmoi Kilometer (Seventh Kilometre) Market near Odessa in February 2008. An argument broke out when two officials, one an employee of the Prosecutor’s Office, and the other a member of the Tax Police, started to bargain for shoes. When the traders would not sell the shoes as cheaply as he wanted, the prosecutor asked for their documents, showed his gun and said “Don’t forget you are our guests”. He called the police, and the traders were detained from 10am until 5pm that day. Their documents were held by the police for three days and when Paul went back to get his documents he was detained again and forced to pay 50 hryvnya (€7) to be released.

Racial profiling by the police in Ukraine is a violation of Ukraine's obligations as a state party to the Convention on Racial Discrimination not to engage in any act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

REFUGEES AND ASYLUM-SEEKERS

Refugees and asylum-seekers are particularly vulnerable to the human rights violations associated with frequent document checks. The complex system of documentation for asylum-seekers and refugees is poorly understood by the police. The UNHCR has stated:

"Asylum-seekers are not provided with timely and proper documentation. They are therefore often subject to detention and are at risk of refoulement."

UNHCR, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, para 40.

Amnesty International has encountered cases where asylum-seekers have been detained because the police did not understand the documents they were shown or had little or no understanding of what an asylum-seeker was. In some cases, asylum-seekers do not have the necessary registration stamp to show their place of residence. If their claim has been refused and they are in the process of appealing against the refusal, they may not have any documents at all.

The Migration Service, the subdivision of the State Committee for Nationalities and Religions (SCNR) that processes asylum applications, issues six different identity documents for asylum-seekers and refugees depending on the stage of the asylum application. The Migration Service will only issue asylum-seekers with official identity documents once the claim has been officially registered, and registration can take a long time, although the procedure has become more efficient recently. Before they apply to Migration Services, asylum-seekers may approach the UNHCR or one of its partner organizations, and in some cases in order to protect them from arbitrary detention and other violations at the hands of the police, the UNHCR and its partner organizations may issue so-called "Referral Letters" explaining that the person has applied to the UNHCR for assistance. In fact, these letters offer little protection and have no legal status in Ukraine. They are often not accepted or not understood by the police. One lawyer working for a refugee organization told Amnesty International that she had heard police officers at local police stations in Kyiv say: "All those with such letters are illegal migrants."

In addition, recognized refugees and asylum-seekers must register their place of residence with the Ministry of Internal Affairs' local Department of Citizenship, Immigration and Registration (VGIRFO). This system has been simplified recently as asylum-seekers now no longer need to have their place of residence confirmed by their landlord

(many landlords were reluctant to declare that they were renting flats) and can now be registered according to their own statement of where they live. However, according to one NGO worker, the VGIRFO office receives copies of all notifications of rejection of asylum claims in their area and it is not unknown for VGIRFO employees to use this information to extort money from asylum-seekers.

Once an asylum-seeker has been refused status and starts the process of appeal, he or she may be left without identity documents certifying their right to stay in Ukraine. The documents that were initially issued are taken away and they are issued with a "notification of rejection". According to the Law on Refugees asylum-seekers have the right to remain in Ukraine as long as they are appealing, and they have a right to submit an appeal to a court or to the SCNR within one year of receiving the notification of rejection. However, the "notification of rejection" is not an official identification document that certifies their right to remain in Ukraine, and is not accepted by the police. Once their appeal is registered with the court, a notification is sent to the State Committee for Nationalities and Religions that then gives the order to the local migration service to issue an official identity document confirming that their appeal is registered. This process can take months and during this time asylum-seekers are most at risk of arbitrary detention and other violations at the hands of the police. The Young Lawyers Association, a UNHCR partner organization working in Odessa, told Amnesty International that they usually warn people not to go out during this period as they risk becoming victims of police abuse. They described how one asylum-seeker, who had just had his claim refused, came to see the NGO to start the appeal process. He went out to the bank to pay the required minimal court fees and did not return. He had been detained by the police, was held for two hours and had to pay to be released. According to a lawyer working with refugees in Kyiv, there are at least two incidents a week when asylum-seekers are detained because of the lack of proper documentation during this period. The migration services in Odessa explained that they try to help by issuing asylum-seekers with a copy of their original documents with a stamp.

As a result, refugees, and particularly asylum-seekers are at increased risk of extortion and arbitrary detention at the hands of police. They may also decide not to report racially motivated crimes by members of the public because they fear that they will be penalized for omissions in their documentation.

Sasi (not her real name) and **Nadia** (Nadia is the sister of Joseph Bunta who was murdered) were both stopped and detained by police on Saturday 9 February 2008 when they were buying food in Nyvky district in Kyiv. Sasi's application for refugee status had been rejected and her appeal had been registered with the court, but she had not yet been issued with a document confirming this by the Migration Services. The day after her detention a lawyer from a refugee organization brought a copy of the appeal to the police station, but this did not help as it did not confirm her identity according to Ukrainian law. Sasi was detained for two nights before being released.

RACIST ATTITUDES AMONG STATE EMPLOYEES

As among the general public, racist attitudes can also be found among state employees, including those who deal with refugees and ethnic minorities. At the temporary accommodation centre for refugees in Odessa there seemed to be little consideration of religious and cultural differences. One resident told Amnesty International that the tinned meat supplied was either pork or cooked in pork fat. This fact was denied by the staff.

Samuel, a refugee from Angola, told Amnesty International: “Excuse me, but the police are racists themselves.” He told Amnesty International how on one occasion the police asked for his documents as they were sitting in a police car. They told him: “We will check your documents now,” and when they returned his refugee passport, they had drawn a picture of a monkey over his photograph. He complained to the Migration Services who issued him with a new passport and told him not to complain to the police.

Another refugee from the DRC told Amnesty International that she had been subjected to racist treatment and sexual violence by a police department in Kyiv. In June 2007, she was approached by a policeman in a drunken state outside her apartment block. He asked to see her documents, queried her registration, and invited her to a café. When she refused, he demanded sex, and assaulted her. She was bruised and scratched in the ensuing struggle. When she tried to report the incident to the local police station, no one would take her statement, and the same policeman who had assaulted her offered to accompany her home. She reported the incident at a different police station, and a criminal investigation was started. At the trial, the policeman denied the allegations and was acquitted. She also said that, in a previous incident, when police officers had detained her to check her documents, they forced her to undress, calling other officers “to come and see what a monkey’s body looks like”.

9/CONCLUSION

Amnesty International concludes that Ukraine is failing to comply with its obligations under international law to ensure that human rights are enjoyed without distinction as to race, religion or ethnic origin. Representatives of racial, ethnic and religious minorities are exposed to the risk of racially motivated verbal abuse and physical attacks from members of the public and public officials. In the face of growing racism and xenophobia, the Ukrainian government continues to deny the extent to which they are prevalent and fails to face up to its responsibility to eliminate racial discrimination in all its forms.

Hate crimes are the most extreme form of discrimination, and have a more devastating effect upon society than ordinary crimes. According to the OSCE: "Hate crimes revive old, or may serve to create new, biases, prejudices, and negative imaging of others, and also create cycles of mistrust and tension within society. As a result, crimes motivated by hate are particularly aggravating, potentially much more dangerous, and, as such, have a potential to threaten security and stability within and between communities and states."⁴⁰ For this reason it is imperative that the Ukrainian authorities prosecute racially motivated crimes as such, and ensure that there can be no impunity for racial discrimination.

The failure to apply existing legislation, combined with the failure of the police to acknowledge the gravity of racially motivated crimes and to respond adequately, have led to a situation of virtual impunity for the perpetrators. In many cases victims do not report crimes because they have no confidence that they will get justice. If victims do complain, the authorities may be reluctant to take action, and if the case goes to court the perpetrators are usually prosecuted for "hooliganism" while the racist nature of the crime goes unacknowledged and unrecorded.

The police must play a positive role in combating racial discrimination, yet in Ukraine people are at risk of human rights violations at the hands of the police because of their racial, ethnic or religious identity. Anyone who looks "different" is vulnerable to document checks, and may be exposed to extortion or arbitrary detention or both. Refugees and asylum-seekers are particularly vulnerable to such abuses because of the complicated system of documentation issued to asylum-seekers.

The Ukrainian authorities must take decisive action to combat xenophobia and racially motivated crimes by non-state actors as well as by public officials, and to encourage tolerance in society. If it is to live up to European and international human rights standards, the Ukrainian government must strive to create a society in which diversity is viewed not as a threat, but as a source of enrichment for society as a whole. The following recommendations are intended to help Ukraine fulfil its international human rights obligation to eliminate racial discrimination.

10/RECOMMENDATIONS TO THE UKRAINE GOVERNMENT

SHOW CLEAR POLITICAL WILL TO COMBAT RACISM

- Speak out frequently, strongly and at all levels of government against racism and xenophobia in all its forms.
- Publicly acknowledge the seriousness of the issue and the need to take concerted action to address it.
- Create an inter-agency government body with the authority to combat racial discrimination in line with international standards, and to coordinate the activities of different ministries.
- Implement the recommendations of the CERD and other relevant UN and regional bodies and mechanisms (including ECRI) relating to racial discrimination in Ukraine.

END IMPUNITY FOR RACIALLY MOTIVATED CRIMES

- Monitor and record accurately the incidents of racist attacks across Ukraine and make this information available to government agencies, NGOs and the wider public; the monitoring should follow a clear methodology of what constitutes a racist attack, in accordance with international standards.
- End the classification of racially motivated crimes as “hooliganism” or motivated by “hooliganism” and ensure that public officials desist from making statements following a violent and apparently racist attack that the attack was carried out by “hooligans” or motivated by “hooliganism”.

- Ensure that crimes which are racially motivated are effectively and thoroughly investigated and prosecuted as such.
- Conduct a review of all legislation relating to racially motivated crimes and ensure that they are in accordance with international standards.
- Develop clear guidelines and training for police, prosecutors and judges who deal with cases of racial discrimination. Guidelines should be informed by and comply with Ukraine's obligations under international human rights law. (See for example Amnesty International's 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials and CERD's General Recommendation XIII on training of law enforcement officials.)
- Ensure that victims of racially motivated crimes enjoy an enforceable right to reparations including fair and adequate compensation.

COMBAT RACISM AND XENOPHOBIA IN SOCIETY

- Adopt a comprehensive government plan of action coordinating the activities of various ministries and government departments to combat racial discrimination in all areas of Ukrainian society, including among state officials. The plan of action should include urgent measures to address and counter sentiments of hostility and prejudice against ethnic or national minorities. Implement initiatives to counter racist ideologies and xenophobia and promote tolerance in schools and in the media. Civil society organizations should be involved in developing and implementing the plan of action, and adequate state funding should be allocated.
- Ensure that teachers and other school staff receive training aimed at eliminating negative stereotyping and racial prejudice, and at sensitizing them to the need to combat racial harassment and bullying in schools.

END RACIAL DISCRIMINATION BY STATE OFFICIALS

- Review police procedures and guidelines and their implementation in relation to identity checks to ensure that they are not carried out in a discriminatory manner, and investigate and prosecute all allegations of police extortion which exploits a person's lack of appropriate documentation.

- Put in place a system which ensures that complaints of discriminatory behaviour exhibited by the police and other officials are investigated thoroughly, promptly, transparently and independently, and publicize this system widely.
- Suspend any officials under investigation for racial discrimination from their positions of responsibility, pending the outcome of the investigation and any disciplinary and/or judicial proceedings against them. Those who lodge complaints of racial discrimination, witnesses, and others involved, should receive protection against any form of intimidation, harassment or abuse, and victims should be kept informed of the progress of the investigations.
- Ensure that victims of racial discrimination by state officials have access to means of redress and enjoy an enforceable right to reparations, including fair and adequate compensation.
- Ensure that asylum-seekers are issued with valid identification documents as soon as they apply for asylum, and as soon as they register an appeal if their claim is rejected so that they are not exposed to police harassment.

ENDNOTES

1 Joseph Bunta and his sister had been forced to leave their village in Bandundu Province in Southwest DRC when the village head ordered them to marry each other. They were told that they would be killed if they refused. Forced marriages are common in that part of the country and it is possible that this particular order was made to preserve the family assets, since both their parents were dead.

2 Article 2(1)(d) and Article 5(b).

3 Amnesty International considers that acts of violence by private individuals can constitute torture or ill-treatment when they are of the nature and severity envisaged by the concept of torture or cruel, inhuman or degrading treatment or punishment in international standards and when the state has failed to fulfil its obligation to provide effective protection.

4 Human Rights Committee, General Comment 20, 1992.

5 *A v United Kingdom*, judgment of the European Court of Human Rights, 23 September 1998, www.cirp.org/library/legal/A_v_UK1998/

6 The standard of due diligence was applied by the Inter-American Court of Human Rights in its judgment in 1988 on the Velásquez-Rodríguez case: "An illegal act which violates human rights and which is initially not directly imputable to the State (for example, because it is an act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention." This standard has been incorporated into international instruments and elaborated on by human rights experts and mechanisms of the UN as well as by national courts.

7 CERD General Comment 30, UN Doc CERD/C/64/Misc.11/rev.3, para 18.

8 For more information visit: www.osce.org/odihr/

9 Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland. 14/04/2005. CERD/C/IRL/CO/2 [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4a7e825d4ffcd99c12570110047d568?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4a7e825d4ffcd99c12570110047d568?OpenDocument)

10 OSCE/ODIHR, *Hate Crimes in the OSCE Region: Incidents and Responses: Annual Report for 2006*, p.9.

www.osce.org/publications/odihr/2007/09/26296_931_en.pdf

11 ECRI general policy recommendation No 7 on national legislation to combat racism and racial discrimination, Adopted by ECRI on 13 December 2002.

www.coe.int/t/e/human_rights/ecri/I-ECRI/3-General_themes/I-Policy_Recommendations/Recommendation_N7/3-Recommendation_7.asp

12 "Криминальний Інтернаціональ", Korrespondent, 15 September 2007.

13 Marina Ostapenko, press secretary of the Head of SBU quoted in "Вони йдуть! Бритоголові починають ходу Україною", *Glavred*, No 6, 11 February 2008.

14 As above.

15 Reply to Amnesty International enquiry from the State Committee for Nationalities and Religion dated 28 March 2008.

16 According to the 2000 census, the largest group are Russians who number 8.3 million. There are also Crimean Tatars (248,200), Moldovans (258,000), Bulgarians (204,600), Hungarians (156,000), Jews (103,600), Armenians (99,900) and Roma (47,600).

17 *Moscow and Kyiv: Changing cities and migrant magnets*, Kennan Institute, 2008, p.4. www.wilsoncenter.org/topics/pubs/KI_CUSP_Migration_brochure.pdf

18 Government statistics quoted from ECRI, *Third Report on Ukraine*, adopted on 29 June 2007 [CRI (2008)], p.17.

19 The inaccurate and outdated language may have been used to ensure that respondents understood which groups the questions referred to.

20 Vladimir Paniotto, Paper for 12th Annual Conference of the Association for the Study of Nationalities, Columbia University, "Динамика антисемитизма в Украине (1994-2006)", Kyiv, 2007.

21 Reply to the UNHCR dated 16 June 2007.

22 Ministry of Internal Affairs website, "В МВС України побували офіцери зв'язку іноземних посольств", 28 February 2008, <http://mvs.gov.ua/mvs/control/main/uk/publish/article/88619>

- 23** Press release of the Parliamentary Human Rights Commissioner, 26 March 2008. "Xenophobia, racism and intolerance are unacceptable in a civilized European country", www.ombudsman.kiev.ua/pres/releases/rel_08_03_26_2.htm
- 24** European Court of Human Rights, *Nachova and others v Bulgaria*, Judgment, 6 July 2005, p.30.
- 25** *Nachova and others v Bulgaria*, p.34.
- 26** Article 112 of the Criminal Procedural Code.
- 27** *Ukraine's Legal Response to Bias Motivated Violent Crime*, The Diversity Initiative Legal Sub-Group, Kyiv, March 2008.
- 28** Diversity Initiative Group report, p.14.
- 29** Letter from the SBU to the Chief Rabbi of Ukraine, Azriel Haikin, dated 21 September 2007 on the website of the Chief Rabbinate, www.rabbinate.org.ua/ua/index.php?show_news=57
- 30** Podrobnosti.ua, "Расизм в Украине: Милиция опустила руки", 2 April 2008, www.podrobnosti.ua/podrobnosti/2008/04/02/510721.html
- 31** ECRI General Policy Recommendation No 11 on combating racism and racial discrimination in policing, adopted by ECRI on 29 June 2007, www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n11/1-recommendation_11.asp#P89_5096
- 32** Reply from Ministry of Foreign Affairs to a UNHCR enquiry about racist attacks, 16 June 2007, made available to Amnesty International by the UNHCR.
- 33** ECRI General Policy Recommendation No 11.
- 34** Committee on the Elimination of Racial Discrimination, 69th session, 31 July-18 August 2006, concluding observations, Ukraine, CERD/C/UKR/CO/18, [www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5a855cc45d65082dc1257214005d3c77/\\$FILE/G0740377.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5a855cc45d65082dc1257214005d3c77/$FILE/G0740377.doc)
- 35** Judgment of Kharkiv District Administrative Court, Case No 2a-188/08, 27 March 2008.
- 36** European Roma Rights Centre, 'Proceedings Discontinued: The inertia of Roma rights change in Ukraine', Country Report Series, No 16, December 2006 www.errc.org/cikk.php?cikk=2713&archiv=1.
- 37** Open Society Institute, *Ethnic Profiling in the Moscow Metro*, New York, 2006 p.34.
- 38** Vyacheslav Manukyan, "Антропологи в погонах" (Anthropologists in police uniform), *Yuridicheskaya praktika*, No 4 (526), 22 January 2008.
- 39** UNHCR, *UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers*, October 2007, para 40.
- 40** OSCE ODIHR, *Hate Crimes in the OSCE Region: Incidents and responses, Annual Report for 2006, 2007*, www.osce.org/odihr/item_11_26296.html



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UKRAINE: GOVERNMENT MUST ACT TO STOP RACIAL DISCRIMINATION

There has been an alarming rise in the number of racially motivated crimes against foreign nationals in Ukraine in recent years, and a number of Africans have died as a result of racist attacks. Xenophobic and racist attitudes in society at large mean that many more people are subjected to harassment, discrimination and abuse from state officials and ordinary members of the public because of their racial, ethnic or religious identity. The Ukrainian authorities continue to deny the existence of racial discrimination and their response remains inadequate.

The failure to apply existing legislation and the failure of the police to acknowledge the gravity of racially motivated crimes has led to a situation of virtual impunity for the perpetrators.

African asylum-seekers and refugees no longer feel safe in Ukraine: "We have no guarantee for our children; they can be attacked or killed at any time."

In this report Amnesty International documents how Ukraine is failing in its obligations under international human rights law to:

- eliminate racial discrimination from state policies and practice,
- protect individuals from racial discrimination by non-state actors and public officials, and
- ensure that the right to live free from racial discrimination is enjoyed by all who live in Ukraine.

Amnesty International urges the Ukrainian government to act now to combat racism and xenophobia in society at large, and to end racial discrimination by state officials.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

Index No: EUR 50/005/2008
July 2008

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