



**Ukraine's Compliance with the International Covenant on Civil and Political Rights
Suggested List of Issues Relating to Domestic Violence**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

Center "Women's Perspectives," a non-governmental organization based in Lviv, Ukraine

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence.

Center "Women's Perspectives" (Women's Perspectives) is a women's non-governmental organization that during its 19 years of existence has become one of the leading third sector organizations in Ukraine. The Center registered as an NGO at the Lviv Department of Justice on 6 April 1998. The organization's aims are to protect women's rights and ensure equal rights and opportunities for women and men in all spheres of life. The organization provides direct services for women victims of violence and discrimination, in particular domestic violence; works with law enforcement, the judiciary, and governmental bodies to improve the state response to issues of violence against women and gender discrimination; conducts research and monitoring; works on preventing violence against women and gender discrimination; actively works on legislation and policies on combatting violence against women and ensuring gender equality development and implementation.

EXECUTIVE SUMMARY

1. Domestic violence and other forms of violence against women constitute a violation of women's rights under the ICCPR. Domestic violence violates a woman's rights to life and security of person (Articles 6 and 9), freedom from torture and inhumane or degrading treatment (Article 7), equality before the courts (Article 14), equal protection before the law (Article 26), and protection of the family and equality in marriage (Article 23), among others. When a State fails to ensure that its criminal and civil laws adequately protect women and consistently hold perpetrators accountable, or that its agents – such as police and prosecutors – fail to implement the laws that protect victims of domestic violence, that State has not acted with due diligence to prevent, punish, investigate or redress such violations of women's civil and political rights.
2. Domestic violence remains a serious problem in Ukraine. Despite inadequate data collection, sources describe rates of domestic violence as “widespread,” “common,” and the number of women victims as “high.” According to the Ukrainian National Police, there were 115,473 complaints of domestic violence in 2018, of which nearly 90,000 were from women.¹ Most of the claims of domestic violence in 2018 led to an official police record under Article 173-2 of the Code on Administrative Offences.² Prevalence data is also lacking; however, a 2014 national survey found that 22% of Ukrainian women have experienced physical or sexual violence in their lifetime.³ An earlier survey found that at least 33% of Ukrainian women have experienced some form of domestic violence.⁴ However, most survivors never report their abuse; one survey found that 75% of victims of violence in Ukraine did not seek any help.⁵ Another 15% sought help only from friends and family, leaving just 10% of victims who reported any incidents of domestic violence to the police or other authorities.⁶ This accords with a 2015 report that found women rarely applied for psychological, medical or legal assistance or registered a complaint with the police due to several factors, including a lack of awareness of the availability of services, mistrust of authorities, and cultural attitudes and stereotypes about domestic violence as a private, family matter.⁷ Women only sought help in “extreme cases which ... may lead to severe injury.”⁸ Thus, reported cases are really the tip of the iceberg when it comes to the actual extent of domestic violence in Ukraine and the impact it has on women's ability to exercise their rights under the ICCPR.

¹ Personal Communication from NGO to The Advocates for Human Rights, via email, Aug. 24, 2019 (on file with authors).

² Id.

³ UNITE and UN Ukraine, 16 Days of Activism against Gender-Based Violence in Ukraine, Factsheet (2018), available at <https://ukraine.unfpa.org/sites/default/files/pub-pdf/2018-11-20%20UNFPA%20Factsheet%20eng2.pdf>. National representative survey on prevalence of violence against women and girls

⁴ UN Development Program in Ukraine, *Monitoring of National Court Practice of Criminal, Civil Cases and Administrative Relations Related to Courts* (2014) (in Ukrainian), available at https://www.undp.org/content/dam/ukraine/docs/%d0%9b%d0%9a/Monitoring_final.pdf.

⁵ Id.

⁶ Id.

⁷ Ukrainian Centre for Social Reforms, *Gender-Based Violence in the Conflict-Affected Regions of Ukraine* (2015), available at https://ukraine.unfpa.org/sites/default/files/pub-pdf/gbv%20in%20the%20conflict-affected%20regions%20of%20ukraine_eng.pdf.

⁸ Id. at 6.

Ukraine fails to uphold its obligations under the International Covenant on Civil and Political Rights

3. In its last review of Ukraine, the Human Rights Committee (Committee) expressed concern over the continued prevalence of domestic violence.⁹ It urged Ukraine to adopt a new law on domestic violence, take steps to encourage victim reporting, undertake investigations and prosecutions of perpetrators, and ensure that victims can avail themselves of effective remedies and protections, including shelters.¹⁰ The Committee further recommended trainings on domestic violence for systems actions as well as public education measures.¹¹
4. In its most recent State Report to the Committee, submitted 30 January 2019, the Government of Ukraine states that it adopted a new law on Preventing and Combatting Domestic Violence in 2017. The State also references updates to its Criminal Code that strengthen penalties for perpetrators of domestic violence, as well as new State policies and administrative procedures aimed at improving access to legal aid and other services for survivors of violence.¹²
5. **Since its last review by the Committee and as noted in its 2019 State Report, Ukraine has taken some significant steps towards improving women's access to justice and relief in cases of domestic violence and in holding perpetrators accountable, in fulfillment of its obligations under the ICCPR.** In January 2018, the Law of Ukraine № 2229 on Preventing and Combating Domestic Violence came into force. The law defines domestic violence broadly to include physical, sexual, psychological, and economic violence; it stipulates measures to prevent domestic violence and provide efficient assistance to its victims; and imposes criminal penalties for domestic violence crimes. Importantly, the law introduces urgent prohibitive (emergency) orders and restraining orders as ways to protect the victim.¹³
6. **However, resistance from certain organizations and groups opposed to gender equality threaten to undermine Ukraine's progress in protecting women from violence, contrary to Ukraine's own Constitution and the ICCPR.** Additionally, challenges in implementing Ukraine's new domestic violence laws indicate that there are several areas where the Ukrainian government is not in compliance with its obligations under the ICCPR. There is a large gap between the number of women survivors of violence reportedly helped by the State's new and existing laws, policies and procedures (between approximately 700 and 1100 women, according to the State Report, who have applied or qualified for legal aid or similar) and the reported number of domestic violence cases in Ukraine (over 100,000 per year), not including the many violent incidents that recent surveys find are never shared with the authorities or service providers.¹⁴

⁹ Concluding Observations on the Seventh Periodic Report of Ukraine, ICCPR, Aug. 22, 2013, U.N. Doc. CCPR/C/UKR/CO/7, at para. 14.

¹⁰ Id.

¹¹ Id.

¹² Eighth periodic report submitted by Ukraine, ICCPR, Jan. 30, 2019, U.N. Doc. CCPR/C/UKR/8, at paras. 36-41.

¹³ Law of Ukraine on Prevention and Combating Domestic Violence, No. 2229-VIII, VRU, 2017.

¹⁴ Eighth periodic report submitted by Ukraine, ICCPR, Jan. 30, 2019, U.N. Doc. CCPR/C/UKR/8, at paras. 38, 40; Personal Communication from NGO to The Advocates for Human Rights, via email, Aug. 24, 2019 (on file with authors).

I. The Ukrainian Government has withdrawn its support for ratification of the Istanbul Convention and adopted a new law on domestic violence only with the approval and support of the Ukrainian Council of Churches, weakening State support for protecting women from violence.

7. In November 2011, Ukraine signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (**Istanbul Convention**).¹⁵ However, the treaty is still not ratified in Ukraine. The draft law on ratification was submitted to the Ukrainian Parliament in November 2016. It was returned for further development, which was never completed. **In May 2019 the draft law was withdrawn due to the art.105 Law of Ukraine “On Verkhovna Rada (Parliament of Ukraine) Regulations.**¹⁶
8. The main obstacle to the ratification of the Istanbul Convention has been the **opposition from the Ukrainian Council of Churches and initiatives opposed to gender equality in Ukraine.** The Council of Churches has stated it is especially concerned about the word “gender” used in the Convention. In the opinion of the Council of Churches, the Convention may become an instrument of promoting new gender roles and same-sex relationships. Those, according to the Council, would threaten the traditional institution of the family in Ukraine. Prior to consideration of ratification of the Istanbul Convention by the Ukrainian government, initiatives promoting an “anti-gender” message undertook several lobbying campaigns aimed directly at undermining any support for the Convention.¹⁷
9. As a result, the Istanbul Convention has not been ratified by the Government of Ukraine. In August 2019, newly elected Members of Parliament from the Presidential party stated that they will take consultations with the Ukrainian Council of Churches regarding any future ratification of the Istanbul Convention.¹⁸
10. Additionally, **stakeholders in Ukraine note that there is a growing trend in State policies to emphasize the “preservation of family and family values” over the protection of women’s rights or combating domestic violence.** Certain initiatives currently promote the establishment of special government bodies on “family protection issues” and other legislative initiatives, national and regional “family forums”, and the incorporation of “family values” into school agendas, among other things.¹⁹ This could have the effect of prioritizing the preservation of the family unit and a father’s or husband’s control of the family over a woman’s right to equality before the law and in marriage, the security of her person or that of her children, or even her life, in violation of Ukraine’s obligations under the ICCPR.
11. There are also growing trends on **governmental (national, regional, local level) support to organizations, groups and political parties that openly oppose equality for women or**

¹⁵ Chart of signatures and ratifications of Treaty 210, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Status as of 30/08/2019, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=wISD7T2D, last visited August 29, 2019.

¹⁶ Personal Communication from NGO to The Advocates for Human Rights, via email, Aug. 19, 2019 (on file with authors).

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

gender equality, including support for programs such as military camps and other activities that promote militarization, traditional patriarchal gender roles, use of weapons, and similar, among children and youth, particularly boys.²⁰

12. **Suggested questions** relating to ratification of the Istanbul Convention and gender stereotypes:

- Will the Government of Ukraine ratify the Istanbul Convention?
- Will the Government of Ukraine seek input from civil society, survivors of domestic violence and service providers as well as the Ukrainian Council of Churches in consultations about the ratification of the Istanbul Convention?
- How does the Government of Ukraine justify recent policy changes with the Ukrainian Constitutional requirement of separation of church from the State and school, as well as equal rights and non-discrimination for all citizens, without regard to their religious beliefs?
- Please provide specific information on any efforts by the Government of Ukraine to promote traditional, patriarchal stereotypes and gender roles that could undermine women's rights, equality and security from violence?

II. Despite the adoption of a new law on the prevention of domestic violence, a lack of effective implementation and significant loopholes expose women to a high risk of continued violence.

13. The Law on Preventing and Combating Domestic Violence came into force in 2018. As noted above, the law included provisions for urgent protective orders and restraining orders to shield survivors from continued violence. An **urgent prohibitive order** against the perpetrator is a special measure taken by police in response to domestic violence and aimed at the immediate cessation of domestic violence, eliminating the danger to the life and health of victims, or preventing future violence. An urgent prohibitive order is issued to the perpetrator by police officers in the event of an immediate threat to the life or health of the victim based on a risk assessment. The order may last up to 10 days. An **urgent prohibitive order** can include the following measures: an obligation to leave the victim's place of residence; prohibition of entering and staying in the victim's place of residence; and, prohibition of any contact with the victim.²¹
14. In April 2019, the Ministry of Justice together with the Ministry of Social Policy adopted the **Procedure of Risk Assessment of Domestic Violence (Procedure)**, which is essential for issuing urgent protective orders. Before this date, the provision on urgent protective orders was not implemented. The Procedure involves assessing the probability of a continuation or recurrence of domestic violence and the probability of grave consequences resulting from such violence, including the death of the woman. If the risk is high, the police are required to issue the protective order immediately. The Procedure includes a **Form for Risk Assessment of Domestic Violence**. However, the form **lacks a space for the survivor's signature**. This means that the police officer can fill in the form as he/she considers appropriate and not show it to the survivor for confirmation. This may lead the police officer to fill in the form in a way

²⁰ Personal Communication from NGO to The Advocates for Human Rights, via email, Aug. 19, 2019 (on file with authors).

²¹ Id.

that precludes issuing the urgent protective order despite the information provided by the survivor regarding the acts/behaviour of the perpetrator that indicate a high risk.²²

15. **A restraining order** temporarily restricts the rights of, or imposes duties on, a person who has committed domestic violence and is aimed at ensuring the safety of a survivor of domestic violence. A restraining order may include: 1) a ban against the perpetrator staying in the place of cohabitation with the survivor; 2) an elimination of any obstacles created by the perpetrator to a survivor's use of property, which is the subject of the right of joint ownership or is the personal private property of the survivor; 3) a limitation on communication with a child-survivor of violence; 4) a prohibition against approaching a certain distance to the place of residence (stay), study, work, or other places that the survivor may frequently visit; 5) a prohibition on the perpetrator personally or through third parties, searching for or trying to communicate with the survivor if she is at a place unknown to the offender; 6) a prohibition on any correspondence, telephone conversations with the survivor or contact with her through other means of communication personally or through third parties.²³
16. A court decides on specific measures to limit the rights or duties of the perpetrator, in accordance with the circumstances of the case and the statement filed by the survivor. The decision to issue a restraining order or to refuse to issue a restraining order is made on the basis of a risk assessment. **Restraining orders are issued by the court and can last 1-6 months.**²⁴
17. **Restraining orders** and urgent protective orders are critical to ensuring the safety of survivors of domestic violence. However, such orders or any provisions for such orders, are useless if they **lack effective implementation**. Ukraine's law does not envisage how the perpetrator should be evicted in cases where the perpetrator does not willingly agree to leave a shared residence. The law imposes criminal responsibility for non-compliance with a restraining order. However, during the time in which the court hears these cases, the perpetrator often continues to live with the survivor. The law contains no mechanism to force a perpetrator leave a common place of residence, as the State Executive Service is not a responsible body for implementation of the domestic violence law and is not entitled by law to execute the court decision on a restraining order.²⁵
18. When the court considers domestic violence cases such as whether to issue a restraining order, determining visitation and custody rights, and similar, it notes whether the perpetrator was held accountable for an **administrative offence of domestic violence**. The court decision on administrative liability for domestic violence under art.173-2 Code of Ukraine on Administrative Offences is an important and often the only evidence for facts of domestic violence, and the grounds for the court decision. For the court to find there was an administrative offence of domestic violence, it needs to consider an official report drawn up by the police. Often, though, the report completed by the police is of a very low quality. The court cannot make a decision based on such report, so it returns it to the police for revision. By the time the police send the revised report back to the court, the two-months period for holding the perpetrator accountable often has passed. Therefore, **the court dismisses the**

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

case without establishing the perpetrator's guilt. Obviously, a survivor cannot use this as evidence when she files for a restraining order or in any other civil case related to domestic violence.²⁶

19. Implementation of domestic violence legislation and policy documents do not take into account the needs of vulnerable groups of women who are also victims of domestic violence - women with disabilities; homeless women; older women; ethnic minorities (Roma, Crimean Tatars), and others.²⁷

20. Suggested questions relating to Ukraine's laws and policies on domestic violence:

- What will the Government of Ukraine do to ensure that urgent prohibitive orders and restraining orders are effective in protecting women from violence?
- Will the Government of Ukraine approve amendments to legislation to ensure the enforcement of court decisions on restraining orders, particularly with regard to the eviction of a perpetrator from shared housing?
- Will the Government of Ukraine disregard the two-month limitation on establishing administrative liability in domestic violence cases, to allow courts to establish a perpetrator's guilt and impose a penalty?
- Will the Government of Ukraine amend the requirements for risk assessment forms in domestic violence cases to ensure that survivors have read and signed the form?
- What will the Government of Ukraine do to increase its focus and resources on preventing and combating domestic violence against vulnerable groups of women, including women with disabilities and ethnic minorities?

²⁶ Id.

²⁷ Id.