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Yuriy Lutsenko
Minister of Internal Affairs of Ukraine

Oleksandr Medvedko
Prosecutor General of Ukraine

March 6, 2009

Dear Interior Minister Lutsenko,
Dear Prosecutor General Medvedko,

Since 2002, Human Rights First has fought discrimination by seeking to reverse the tide of racist, antisemitic, anti-immigrant, and anti-Muslim violence and other bias crimes across the OSCE region. Most recently, in September 2008, we released our *2008 Hate Crime Survey*, which documented a rise in hate crimes across many parts of Europe and North America. Our web-based Hate Crime Report Card tracks official reporting systems as well as hate crime laws and their implementation in all fifty-six OSCE states.

We are writing now to commend you for instructing law enforcement personnel to begin to register crimes committed on the basis of racial, ethnic or religious intolerance, as stipulated in Instruction No. 11/121 that you jointly issued on February 6, 2009. If fully implemented, this instruction is an important step for the government to combat acts of violence with an apparent bias motivation that have been on the rise for the past several years. To build on this step, as well as the action plan adopted last year by the Interministerial Commission on Combating Racism, Xenophobia, and Discrimination and other recent actions taken by the government, Human Rights First urges you to strengthen your efforts by taking the further steps described below.

Until now, the only monitoring efforts have been conducted by civil society organizations whose focus has been limited to the largest metropolitan areas, but who nonetheless reported a six-fold increase in the number of attacks with an apparent bias motivation in the period from 2006-2008. On top of that, it is generally recognized that there were undoubtedly many other violent incidents that went unreported and/or undocumented.

HEADQUARTERS
333 Seventh Avenue
13th Floor
New York, NY 10001
Tel: 212.845.5200
Fax: 212.845.5299

WASHINGTON D.C. OFFICE
100 Maryland Avenue, N.E.
Suite 500
Washington, DC 20002
Tel: 202.547.5692
Fax: 202.543.5999

www.humanrightsfirst.org

While NGO monitoring is a most useful source of information, consistent and comprehensive official monitoring of such violent incidents is essential to ensure that the law enforcement agencies are investigating and responding to them to the full extent of the law. The monitoring will help improve public policy by identifying emerging trends or hate crime hotspots and determining which types of violent hate crimes are most prevalent. This information will prove invaluable in developing strategies for prevention and protection and ensuring that adequate legal tools and resources are in place to investigate and prosecute such crimes and to reassure the public that efforts are being made to provide protection from violent forms of discrimination.

A number of senior government officials in Ukraine have shown a willingness to recognize the problem of violent hate crimes and to work toward developing solutions to this problem. Regional authorities can also be credited for taking some positive steps. In Kyiv, for example, the city administration was recently praised by Jewish leaders for quickly reacting to antisemitic graffiti and removing antisemitic materials from markets and kiosks.

However, despite the efforts and initiatives undertaken by the government, the January 18, 2009, murder of a 24-year-old Nigerian national in Lviv—widely thought to be racially motivated—serves as a dreadful reminder that more needs to be done to ensure that adequate measures are in place to address violent hate crimes. The victim died after being stabbed at a tram stop, leaving behind a Ukrainian wife and two children. Since then, there have been encouraging media reports noting the progress of the investigation, which has resulted in the identification of several witnesses to the murder. It is important that the authorities provide regular public updates about their about their efforts to bring perpetrators to justice in this case. In general, the authorities need to be particularly vigilant in the months ahead—the ongoing global economic crisis has the potential to give rise to increased xenophobic sentiments and higher levels of racist violence.

We encourage the implementation of the following further practical steps that will complement the efforts already undertaken to strengthen the government's overall response to escalating hate crimes in Ukraine.

- Law enforcement agencies should publicly commit to investigate allegations of bias motives in specific violent crimes committed against people of other races and creeds, including foreigners and migrants, and to provide regular public updates into the investigation and prosecution of such crimes. In only a handful of the dozens of cases of violence in which a bias motive is suspected has anyone been brought to justice.
- In implementing the current instruction, law enforcement and criminal justice authorities should analyze the experience of other countries who engage in such monitoring, seeking to institute the most efficient and up-to-date monitoring systems that track bias-motivated attacks, as well as the investigations into and prosecutions of those attacks.

- The authorities should provide training for police and prosecutors in identifying and recording bias motivations, and in bringing evidence of bias motivations before the courts. They should commit to take advantage of training opportunities available by international organizations, such as the OSCE’s Law Enforcement Officer Program on Combating Hate Crimes, as well as through international and local nongovernmental organizations working in Ukraine.
- Law enforcement officials should take steps – including by reaching out to community and other nongovernmental groups – to increase the confidence of hate crime victims to report crimes to the police. The authorities should ensure thorough investigation and prosecution of any reports of police harassment of hate crime victims.
- The authorities should ensure that the provisions of the Interministerial Commission’s action plan are fully implemented and that the implementation process is transparent and includes representatives of civil society.
- The authorities should work to pass legislation to strengthen the criminal law on violent hate crimes. In particular, consideration of racial motivation under Article 67 should be mandatory rather than discretionary. The article, which regrettably has never been invoked, allows for a motive of “racial, national, or religious hatred” to be considered an aggravating circumstance by a judge in determining the sentence.

We would welcome the opportunity to communicate further with you on these recommendations and would be glad to provide you with additional information – such as materials on best practices from other OSCE countries – that may be useful to you as you continue in your efforts to combat hate crime in Ukraine.

Sincerely,



Director, Fighting Discrimination Program
Human Rights First

CC:

Aleksandr Sagan, Chairman of the Ukrainian State Committee on Nationalities and Religions
Oleh Shamshur, Ambassador of Ukraine to the United States
Nina Karpachova, Ukrainian Parliament Commissioner for Human Rights