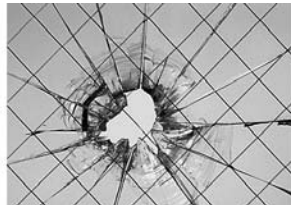


# Ukraine



**2008 Hate Crime Survey**

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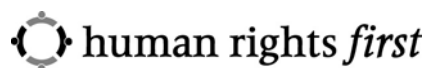
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## HRF's Fighting Discrimination Program

The Fighting Discrimination Program has been working since 2002 to reverse the rising tide of antisemitic, racist, anti-Muslim, anti-immigrant, and homophobic violence and other bias crime in Europe, the Russian Federation, and North America. We report on the reality of violence driven by discrimination, and work to strengthen the response of governments to combat this violence. We advance concrete, practical recommendations to improve hate crimes legislation and its implementation, monitoring and public reporting, the training of police and prosecutors, the work of official anti-discrimination bodies, and the capacity of civil society organizations and international institutions to combat violent hate crimes. For more information on the program, visit [www.humanrightsfirst.org/discrimination](http://www.humanrightsfirst.org/discrimination) or email [FD@humanrightsfirst.org](mailto:FD@humanrightsfirst.org).

## 2008 Hate Crime Survey

*Ukraine* is an excerpt from Human Rights First's 2008 *Hate Crime Survey*, which includes sections examining six facets of violent hate crime in the 56 countries that comprise the Organization for Security and Cooperation in Europe (OSCE): *Violence Based on Racism and Xenophobia*, *Antisemitic Violence*, *Violence Against Muslims*, *Violence Based on Religious Intolerance*, *Violence Against Roma*, and *Violence Based on Sexual Orientation and Gender Identity Bias*. The Survey also examines government responses to violent hate crimes in sections on *Systems of Monitoring and Reporting* and *The Framework of Criminal Law* and includes a Ten-point Plan for governments to strengthen their responses. The Survey also includes an in-depth look at the *Russian Federation*, *Ukraine*, and the *United States* and contains a *Country Panorama* section that profiles individual hate crime cases from more than 30 countries within the OSCE.

## Acknowledgements

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# Ukraine

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## Executive Summary

Racial and other bias motivated violent crimes are dramatically on the rise in Ukraine. Individuals of non-European origin, immigrants and minorities are most vulnerable to violent attacks, many of which occur in broad daylight. Sizeable Jewish communities and the predominantly Muslim Crimean Tatars are among the targets of bias-motivated crimes. Several Jewish religious leaders have been violently assaulted, and attacks on property and places of worship are commonplace. The Ukrainian Roma communities have been the victims of mob violence in the past. A burgeoning movement of skinheads continues to be responsible for the most violent hate crimes.

Although monitoring efforts by civil society organizations are limited and mainly focus on the largest metropolitan areas, at least 86 attacks with a suspected bias motivation were reported by nongovernmental monitors in 2007, including 5 murders. In the first six months of 2008, there were at least 4 murders of foreigners and numerous serious attacks in which there was a suspected racist or other bias motivation. There were undoubtedly many other violent incidents that went unreported and/or undocumented. The government does not currently collect statistics or publicly report on violent hate crimes. Incidents, when they are reported, are most often registered as hooliganism rather than as bias-motivated crimes.

The government's response to the rise in hate crimes has been insufficient and inconsistent. A small group of politicians, including President Yushchenko, has spoken out against racist and xenophobic violence. However, these statements have been undermined by the rhetoric of other key law enforcement officials whose remarks have suggested a denial of the problem.

Nonetheless, the Ukrainian authorities did take several steps in 2007: the Interior Ministry adopted an action

plan on combating racism and created a special unit that deals with ethnic crimes; the State Security Service created a special unit on combating xenophobia and intolerance; and the Foreign Ministry appointed a special envoy to address racism, xenophobia, and discrimination. In April 2008, an interministerial commission was created and its plan to combat xenophobia was adopted by the Committee of Ministers in August 2008.

In early 2008 there were unprecedented guilty verdicts handed down in three cases of violence in which incitement to racial and ethnic hatred were among the charges. However, these verdicts were exceptions to a pattern in which violent crimes with an apparent bias motivation are more often treated as minor offenses. Law enforcement officials lack training and experience in recognizing and recording the bias motivations behind attacks, limiting the ability of prosecutors to pursue hate crime cases in court. Many instances of violence with a suspected racial motivation go unreported, as many victims fear harassment by law enforcement officials, among other factors.

An inadequate legal framework also hinders the ability of criminal justice officials to prosecute hate crimes as such. In 2008, there were several proposed packages of amendments to the criminal legislation dealing with incitement and violent hate crimes, yet none of the introduced bills fully addressed the weaknesses in the current legislation.

Human Rights First has made a number of concrete recommendations to the Ukrainian authorities for addressing the problem of violent hate crimes in 2008, calling for the following steps to be taken:

- A public commitment by law-enforcement agencies to vigorously investigate violent crimes with a suspected racial or other bias motivation.
- The development of clear guidelines mandating police officers and investigators to record bias motives in the commission of a crime.
- Concrete steps by law enforcement officials—including reaching out to community and other nongovernmental groups—to increase the confidence of hate crime victims to report crimes to the police.

# I. Violent Attacks on Individuals

## A. The Extent of Bias-Motivated Violence

Since 2005, nongovernmental monitors in Ukraine have documented a dramatic rise in violent crimes with a suspected bias motivation. While incidents occurring in Kyiv have been most accurately documented, there is evidence that incidents of violence are taking place throughout the country, including the cities of Cherkasy, Chernivtsi, Kharkiv, Luhansk, Lutsk, Lviv, Mykolaiv, Odessa, Sevastopol, Simferopol, Ternopil, Vinnytsia, and Zhytomyr.

Leading nongovernmental monitors documented 86 bias-motivated attacks on persons in 2007, including 5 murders, as compared with 14 attacks, including 2 murders in 2006.<sup>1</sup> In the first six months of 2008, there were at least 4 murders of foreigners and numerous serious attacks in which there was a suspected racist or other bias motivation.

The International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) have also been a reliable source of international monitoring of attacks against foreigners in which there is a suspected bias motivation. In the framework of the Diversity Initiative, a coalition of some 40 NGOs, which was created in April 2007 in response to the unprecedented increase in the number of suspected racially motivated assaults, the UNHCR and the IOM have documented a rising number of attacks on the basis of evidence from victims, as well as information from media sources and nongovernmental organizations. According to the Diversity Initiative's monitoring, in 2005, there were 4 reported attacks suspected to be racially motivated; in 2006, there were 11 such attacks (including 3 murders); in 2007, there were 68 (including 9 murders); and through the first

three months of 2008, the Diversity Initiative had documented some 40 violent incidents.<sup>2</sup>

The numbers documented by nongovernmental organizations likely represent only a small portion of suspected hate crime incidents, and the government releases no statistics on hate crimes.

Intergovernmental and international human rights organizations have similarly taken note of the negative trend:

- In the *Third Report on Ukraine*, released in February 2008, the European Commission against Racism and Intolerance (ECRI) included a special section on “racially motivated violence,” in which it reported on “a worrying increase in racist violence by youth belonging to skinhead and neofascist groups.”<sup>3</sup>
- The Council of Europe Commissioner for Human Rights Thomas Hammarberg has articulated similar concerns, most recently in a July 2008 article on violent hate crimes in Europe, in which he specifically highlights concerns about the situation in Ukraine.<sup>4</sup>
- The United Nations Committee Against Torture in 2007 expressed “concern about incitement and acts of violence against persons, belonging to ethnic and national minorities, including acts against Roma, antisemitic attacks, and violence against persons of African and Asian origin and noncitizens,” and pointed to “persistent allegations of failure to investigate and reluctance on the part of the police and authorities to provide adequate protection to the victims or to conduct prompt, impartial and effective investigations of such reports.”<sup>5</sup>

- In July 2008, Amnesty International released *Ukraine: Government must act to stop racial discrimination*, a report that documented an alarming increase in attacks on foreigners and members of ethnic and religious minorities in Ukraine.<sup>6</sup>

Available information indicates that the perpetrators of the most serious hate crimes are coming from loosely organized groups of skinheads—young people united by extreme nationalist and racist ideology. The Interior Ministry has put the number of such skinheads at 500, although nongovernmental monitors suggest that, while this may accurately represent the strength of the core groups, the total number, including those loosely affiliated with such groups, is likely to be much higher.<sup>7</sup>

## **B. The Victims of Intolerance and Violence**

Bias-motivated violence has been largely committed against people of African and Asian origin and Jews, as well as people from the Caucasus and the Middle East. Asylum seekers, refugees, and labor migrants are among the victims, which have also included diplomats, expatriate employees of foreign companies, members of visible minorities in Ukraine, and Ukrainians who have assisted hate crime victims. Foreign students, of which there are some forty thousand, have been among the principal victims of hate crimes.

Small populations of citizens and immigrants of African origin are highly visible and particularly vulnerable targets of racism and xenophobia. Although relatively few people of African origin reside in Ukraine, the rate of violence against this group has been extraordinary. African refugees, students, visitors, and the handful of citizens and permanent residents of African origin have lived under constant threat of harassment and violence.

Apart from the arrival of foreigners of diverse backgrounds to work, study, and live in Ukraine, tens of thousands of Ukrainians have returned to the country

since the breakup of the Soviet Union. Significantly, more than 250,000 Crimean Tatars have returned to their homeland following Ukrainian independence, shifting the ethnic composition of the Autonomous Republic of Crimea.<sup>8</sup> The return of Tatars, who belong to a different ethnicity, speak a separate language, and are predominantly Muslim, has resulted in increased ethnic and religious tensions in the Crimea and contributed to an increase in bias-motivated attacks against Crimean Tatars and their property.

Ukrainian Jews have been the object of some of the worst government-led persecutions in history, including Tsarist pogroms, Nazi genocide, and Stalin's antisemitic campaigns. The problem of antisemitism has remained despite massive immigration of Jews to Israel, Europe, and the United States following the disintegration of the Soviet Union. In recent years, Ukraine has seen a revival of anti-Jewish prejudice in the form of an increase of antisemitic attacks and incidents.

Moreover, the disintegration of the Soviet Union has had profound effects on the freedom of conscience in Ukraine. Although people are now free to worship the religion of their choice, the introduction of several western forms of Christianity, new to Ukraine, has resulted in some tensions with the well-established Orthodox communities. The government has done little to address the "sectarian" rhetoric used by some members of the Orthodox Church, the media, and general public against Baptist, Jehovah's Witnesses, Pentecostal, and other denominations that operate in Ukraine.

Similarly, the breakdown of the Soviet Union—during which time homosexuality was criminalized—has allowed lesbian, gay, bisexual, and transgender/transsexual people (LGBT) to be more open about their identity. However, the Ukrainian constitution does not explicitly include protections against discrimination based on sexual orientation; laws concerning bias-motivated violence do not cover incidents involving bias on the

basis of sexual orientation or gender identity. Many Ukrainians remain intolerant toward LGBT persons. According to one recent poll by the Institute of Sociology, almost 35 percent of Ukrainians disagreed strongly or disagreed with the statement that “gay men and lesbians should be free to live their own life as they wish.”<sup>9</sup>

The Roma, too, have been subjected to human rights abuse and personal violence. In the *Third Report on Ukraine*, the European Commission against Racism and Intolerance (ECRI), said it had continued to receive reports that police “illegally arrest and harass members of Roma communities,” and that “Roma do not receive an adequate response from the police when they are the victims of crime.”<sup>10</sup> The Roma people continue being one of the most vulnerable groups affected by bias motivated crime.

## C. Murders

There have been a number of probable bias-motivated murders among the incidents recorded by NGO monitors in 2007 and early 2008. The viciousness of the acts, the indifference of the assailants to the victims’ possessions, and the rhetoric used during the attacks suggest that these incidents were motivated by hatred. The lack of police expertise and insufficient reporting often leads to the inability to properly categorize and investigate violent hate crimes. Thus, racial motivation is often overlooked. Nevertheless, examples of murder cases, in which a racial motive is likely, include:

- On June 9, 2008, a Congolese immigrant Atunga Luwila was found dead on a neighborhood street in Kyiv. Despite the fact that Luwila suffered serious head injuries and a broken neck, law enforcers declined to investigate the incident as a crime, much less a potential hate crime; instead, the police concluded Luwila’s death was accidental, resulting from his falling down after an epileptic fit. A Kyiv City Court refused to open a criminal case, disregarding requests made by Luwila’s relatives and NGOs.<sup>11</sup>
- On May 29, 2008, in Kyiv, Joel Taye Olubayode, a Nigerian national was found in the Solomenskiy district of the city with numerous knife wounds. Police initially stated that the motive in the murder was unknown. The UNHCR, the IOM, and some 30 other nongovernmental organizations urged the authorities to conduct a thorough investigation of the murder, including the possibility that it was racially motivated. As of the end of July 2008, police were still searching for Olubayode’s killers.<sup>12</sup>
- On March 8, 2008, in Kyiv, Gbenda-Charles Victor Tator, a 39-year-old refugee from Sierra Leone, was walking with his wife near the Obolon market when he was set upon by two youths who stabbed him some ten times. He died on the spot. Four days after the incident, Interior Minister Yuriy Lutsenko announced that police detained a minor in connection to the murder. The youth was reportedly a member of a skinhead group. As of the end of July 2008, the investigation was still underway and no charges were yet brought.<sup>13</sup> Tator’s funeral turned into a march against racism. In an act of protest over the worsening conditions for foreigners in Ukraine, friends and family of the victim as well as antiracist activists—as many as 100 people—walked in procession through the streets of Kyiv from the morgue to the cemetery.
- On January 27, 2008, in Kyiv, the body of Joseph Bunte, a 19-year old asylum seeker from the Democratic Republic of the Congo, was found with 17 knife wounds in the head, chest, and back.<sup>14</sup> In response, the UNHCR and the IOM expressed grave concern and urged the authorities to investigate the possibility that the murder was motivated by racism.<sup>15</sup> The police investigation led to the arrest of two 16-year-olds, reportedly members of an informal skinhead group. The youths were charged with

a premeditated murder, although hate motivation was not included as an aggravating circumstance.<sup>16</sup>

- On October 14, 2007, a citizen of Bangladesh died after being severely beaten and stabbed by a group of young men in Kyiv. Police subsequently arrested four suspects—trade school students—but said nothing about the possibility of a racial motivation of the attackers, who took the victim’s belongings.<sup>17</sup>
- On June 3, 2007, in Kyiv, an Iraqi national was found dead near the Nivki metro station with multiple knife wounds. He came to Ukraine seeking asylum. On June 11, 2007, police announced that four suspects had been detained in connection with the murder.<sup>18</sup>
- On March 31, 2007, a 36-year-old Bengali national Abu Bakar was assaulted in the Dnipro district of Kyiv. Bakar suffered fatal wounds to his head and stomach and died within hours of the attack. The police reportedly made an attempt to investigate the racial motives behind this crime, although charges were ultimately filed under article 121 (intentional severe bodily harm leading to death) without reference to any hate motivation.<sup>19</sup>
- On March 17, 2007, Oleksandr Alaveranov, a Ukrainian citizen of Iranian descent, was stabbed six times by an unidentified young man. The witnesses said the attacker was a skinhead, and the victim identified him as a neo-Nazi. Unfortunately, Alaveranov never recovered from the injuries and passed away a month later. The police detained an individual—a known drug addict—in connection with the murder. Witnesses have maintained that the murderer was clearly a skinhead.<sup>20</sup>

### Special Case: The Shuliavska Market

The Shuliavska Market has regrettably become a site of frequent violent hate crimes and other abuses in recent years. The working class Shuliavska district of Kyiv’s vibrant city center is home to immigrants from Asia, Africa, and elsewhere, some of whom work at the market.

Apart from the derogatory verbal abuse and occasional ultranationalist rallies, the market’s non-Slavic vendors, laborers, and customers have been subjected to severe acts of violence, including personal assaults and arson attacks. According to the Shuliavska merchants, conflicts between immigrants and skinheads have periodically occurred and have on occasion evolved into large-scale fights, similar to a brawl of thirty people that took place at the market on August 14, 2006.<sup>21</sup> In another incident, on March 3, 2007, approximately 50 ultranationalists held a rally to protest the presence of African traders. The police reportedly arrested an organizer of the rally, who was charged with hooliganism.<sup>22</sup>

In April 2007, the market had almost completely burnt down. The Kyiv Mayor Leonid Chemovetskyi announced that the market would be shut down after the incident, the causes of which are still unknown.<sup>23</sup> The Deputy Mayor Irena Kilchitskaya did not entertain the possibility of a malicious act, instead attributing the April incident to “ethnic quarrels between representatives of Caucasian nationalities and African countries, who are constantly engaged in scandals and hooliganism against each other.”<sup>24</sup>

The most recent fatal victim of apparent bias-motivated attacks at Shuliavska was Atunga Luwila, an asylum seeker from the Democratic Republic of Congo (DRC), in June 2008.<sup>25</sup> In February 2008, another Nigerian citizen required hospitalization after being stabbed by a group of skinheads.<sup>26</sup> In yet another incident in the vicinity, also in February 2008, three young men confronted and harassed a group of four Africans.<sup>27</sup>

An immediate measure to combat violent hate crimes in and around the Shuliavska Market is within the capacity of Ukrainian law enforcers. More and better police protection in the vicinity would increase security for those living and working in and around the market.

- On February 16, 2007, a group of Georgian citizens was attacked in Kyiv. As a result, 34-year-old Moris Yugashvili died of wounds suffered in the attack. His brother was hospitalized with serious injuries. While the police acknowledged the possibility of nationalist motivation of the attackers, charges were ultimately brought under article 121 (intentional severe bodily harm leading to death), without reference to any hate motivation.<sup>28</sup>

## D. Serious Assaults

Far more frequent than murders are serious physical assaults committed by both skinheads and members of the general public, which have targeted a wide range of persons. Some examples from 2007 and early 2008 include the following:

- On February 16, 2008, in Kyiv, a group of about a dozen men, all dressed in neo-Nazi attire, assaulted a Chinese and an Iranian student near the International Academy of Management, a commercial business college popular with foreign students. A 16-year-old teenager of Iranian origin was walking by and became involved in the fight as well. The skinheads knocked all three foreigners to the ground, kicking them with their army boots. The Chinese required hospitalization for head concussion injuries, while an ambulance team responding to the scene treated the two Iranians for cuts and bruises. Police moved quickly, detaining 17 attackers, but then released 12 of them. As of the end of July 2008, the other 5 remained in detention and were awaiting charges.<sup>29</sup>
- On January 24, 2008, a rabbi was severely beaten on a main street in the Ukrainian city of Dnipropetrovsk. Rabbi Dov-Ber Baitman, a teacher at the Jewish educational center Shiurey Torah, was assaulted by four men who shouted antisemitic epithets.<sup>30</sup>
- On January 11, 2008, in Kyiv, some ten assailants attacked Marcus Faison, an African-American basketball player, while screaming racist epithets (“Blacks—get out of Ukraine!”). According to the victim, he ran toward a police car for help, but the officers drove off, after which the skinheads continued beating Faison.<sup>31</sup> He required stitches for multiple lacerations in the arm.<sup>32</sup>
- On January 10, 2008, in Kyiv, over a dozen young men attacked Charles Asante-Yeboah, a citizen of Ghana and the president of the country’s African Center. Charles was on his way home from a visit with a man from Nigeria who had been a victim of a violent attack a few days earlier. While waiting at a bus stop near the Shuliavska metro station in the early evening, Charles was attacked from behind by a group of young men. One of the attackers first hit him with a metal bar in the back of the head, as others—up to 15 persons—joined in kicking and beating the victim with a variety of objects. Asante-Yeboah was also stabbed in several places, including one deep wound in the back of his head. He heard his attackers say “let’s slit his throat” and “no, let’s cut his head in two.” The attackers eventually fled when a car approached. He was taken to the hospital in serious condition. As of August 2008, no charges have been brought against the perpetrators in this case.
- On January 10, 2008, in Lviv, in a pizzeria located on the ground floor of a building that houses foreign students, a young man attacked a patron with dark skin, beating him in the head with a wooden chair. According to students, similar racist attacks in the vicinity of the university are a frequent occurrence.<sup>33</sup>
- On November 3, 2007, in Dnipropetrovsk, a group of youths attacked two Asian students, one of whom required an emergency kidney operation as a result. Police detained four teenage suspects on

November 20 and charged them with armed robbery and “group hooliganism.”<sup>34</sup>

- On October 14, 2007, in Kyiv, unknown assailants attacked three women from China, students at the Kyiv University of Technology and Design. The women were stabbed and required hospitalization. Three suspects were detained, as police initially qualified the attack as an act of hooliganism. The incident attracted the attention of the Chinese Ambassador to Ukraine, who met with a police delegation to discuss the investigation.<sup>35</sup>
- On September 29, 2007, a group of men attacked a rabbi and two yeshiva students in Cherkasy. Rabbi Yosef Rafaelov came with the students from Israel to join the local community in celebrating the Sukkot holiday. On Saturday evening, they were attacked near the synagogue by a group of men who beat them and kicked them repeatedly.<sup>36</sup>
- On September 28, 2007, the Chief Rabbi of Sevastopol, Rabbi Binyamin Wolf, was on his way to Friday prayers when he was surrounded by four thugs who taunted him with antisemitic slurs and broke his nose. Shortly thereafter, police detained two suspects.<sup>37</sup>
- On September 27, 2007, four youths attacked Mendel Lichshtein, an Israeli citizen, near a synagogue in Zhytomyr. Lichshtein fought off the youths before they were able to harm him. A few months earlier, in July, Rabbi Shlomo Vilgen was accosted by a mob of around 20 people shouting antisemitic slogans near the synagogue.<sup>38</sup>
- Also in Zhytomyr, on August 6, 2007, two young skinheads attacked Nochum Tamarin, director of the local branch of the Federation of Jewish Communities, and his wife Brocha. The youths hit their victims several times in the face, and right before fleeing punched Brocha Tamarin one last time as she lay on the ground.<sup>39</sup>

In August, one of Ukraine's chief rabbis, Rabbi Ariel Chaikin, issued an open letter to Ukrainian officials decrying the fact that Jews “feel that they are in danger” in Zhytomyr. “They are constantly threatened, they are insulted on the street, and people throw things at them,” wrote Chaikin.<sup>40</sup> He further charged that “officials in Zhytomyr either don't have the desire to or are incapable of preserving security and interethnic and interreligious peace in the city.” The rabbi said the police who now patrol the area near the synagogue “are unable to seriously resist antisemitic gangs” and that the state security agency refuses to investigate the incidents or the antisemitic and xenophobic gangs in Zhytomyr.<sup>41</sup>

- On July 21, 2007, in Odessa, a group of youths seriously injured a citizen of Kuwait. The attackers, who numbered about ten, had shaven heads, according to a witness. They broke bottles on the victim's head. The Kuwaiti was hospitalized.<sup>42</sup>
- On July 4, 2007, Yevgeni Tretyakov was assaulted in his native village of Ostrozhan, Cherkasy Oblast. The victim has been previously harassed because of his sexual orientation. However, this was the first instance of a violent attack on Tretyakov.<sup>43</sup>

## II. Attacks on Places of Worship and Cemeteries

Acts of vandalism and property damage continue to occur with alarming frequency, according to NGO monitors. The majority of such incidents have been directed against Jewish cemeteries and places of worship. However, attacks against the minority community of Tatar Muslims have also occurred, particularly in the Crimea. Many acts of vandalism are committed at night, as most cemeteries are not guarded and poorly lit. Disturbingly, many attacks on places of worship and cemeteries are reportedly carried out by minors. Perpetrators in most cases of vandalism go unpunished. Some incidents from 2007 and the first half of 2008 include:

- On June 27, 2008, two youths broke into an Orthodox cathedral in the Chernihiv Oblast. The vandals assaulted several monks, shouting “you have nothing to do around here! Leave immediately!” The attackers also tore down several icons.<sup>44</sup>
- In April 2008, the UNHCR and the Crimean Tatar Mejlis expressed particular concern about acts of vandalism (which resulted in 290 destroyed graves in Nizhnegorsk and Chistenkoe) and the xenophobic inscriptions on objects in the outskirts of the city of Simferopol. No offenders had been identified by police as of August 2008.<sup>45</sup>
- On April 16, 2008, vandals burned the protective shed above the tomb of an important Jewish spiritual leader Rabbi Aaron of Zhytomyr. The memorial was covered with neo-Nazi graffiti and writing. This was the second act of vandalism at this important memorial in the prior six months.<sup>46</sup>
- On March 4, 2008, a Jewish cemetery was vandalized in Berdychiv, Zhytomyr Oblast. The perpetrators painted swastikas and neo-Nazi symbols on the walls of a historic mausoleum and attempted to break into the tomb of Rabbi Levi Yitzchak, a prominent eighteenth century Jewish leader. Two weeks later the police arrested three minors and a 21-year-old man in connection to the incident. The local rabbi stated that law enforcers asked him to declare that this act of vandalism was not ideologically based.<sup>47</sup>
- On February 9, 2008, a dozen hooligans desecrated an entire Muslim cemetery in Nizhnegorskiy, a small city of ten thousand people in the Autonomous Republic of Crimea. The vandals killed a guard dog, partially destroyed the cemetery’s fence, and toppled over or smashed each of more than two hundred gravestones. Two suspects were detained in March; they turned out to be members of a Cossack security battalion Sobol, well-known for its xenophobic ideology and frequent attacks on Crimean Tatars.<sup>48</sup> However, it appears that the identity of all perpetrators was known to the police as early as the morning following this act of vandalism. Law enforcement officials in the Crimea initially refused to acknowledge Sobol’s involvement in the incident, but Interior Minister Yuriy Lutsenko confirmed the fact that the detained suspects were members of Sobol, also calling the Nizhnegorskiy incident “one of the biggest and unparalleled acts of vandalism in Ukraine.”<sup>49</sup>
- In October 2007, a Jewish school in Kyiv was torched in an apparent antisemitic attack. No one was hurt in the attack, as the school was closed for vacation. According to the school’s rabbi, Moti Levenhartz, a week earlier, a rock was thrown through a school window with a threatening antisemitic note.<sup>50</sup>

- On May 23, 2007, 19 gravestones in a Jewish cemetery were vandalized in Chernihiv.<sup>51</sup> Police brought state and local units into the search for perpetrators, resulting in the arrest of a fourteen-year-old youth.<sup>52</sup>
- On May 3, 2007, vandals splashed black paint on a synagogue in Dnipropetrovsk. The same day, an unidentified individual set fire to an exhibit organized by the Jewish Agency for Israel in Kharkiv.<sup>53</sup>
- On May 2, 2007, a Holocaust memorial was vandalized in Khmelnytskyi. Many graves and other portions of the monument were desecrated. The monument was erected after World War II, on the site of a Nazi massacre of eight thousand Jews.<sup>54</sup>
- On April 30, 2007, vandals destroyed more than 400 tombstones at the Old Crimea cemetery in Mariupol; police arrested the offenders, and the trial was pending at the end of the year.
- On April 20, 2007, three youths vandalized homes being constructed by Crimean Tatars in Simferopol. The vandals damaged eight homes before they were chased off.<sup>55</sup>
- On April 12, 2007, about 70 tombstones of Holocaust victims were destroyed in the historic cemetery of Chernivtsi. Local businesses are helping pay for repairs.<sup>56</sup>
- In April, vandals daubed a swastika on the Armenian Apostolic church in Kiev, and the next day damaged the church's bell tower where construction work had just been completed.<sup>57</sup>
- On March 20, 2007, vandals damaged a Holocaust memorial inside a Jewish cemetery and painted swastikas in Kalush. They stole a marble tomb covering and damaged the fence that was built around the site of a mass execution of Jews during World War II.<sup>58</sup>
- On March 6, 2007, two Holocaust memorials were desecrated in the city of Oleksandriia. One monument was covered in black paint; and vandals also signed the name of a nationalist organization, the Ukrainian Insurgent Army.<sup>59</sup>
- On February 20, 2007, a monument to Holocaust victims and 240 Jewish graves were defaced with swastikas in the Black Sea port of Odessa. The monument was a site where thousands of Jews died during the Holocaust between 1941 and 1944. Police started an investigation and detained two teenagers that confessed to committing the crime. They admitted to being intoxicated, but claimed no antisemitic motivation. The teens stood trial on the charges of hooliganism.<sup>60</sup>

In a rare prosecution of such cases, in August 2007, the Malinovsky District Court of Odessa sentenced three local residents to prison for the mass vandalism of a Jewish cemetery. Each of the defendants, a 20-year-old college student inspired by neo-Nazi literature, and two of his friends, was sentenced to two years in prison after being found guilty of painting swastikas and antisemitic slogans on 302 gravestones and a Holocaust memorial. Members of the local Jewish community protested the light sentences.<sup>61</sup>

## III. The Government Response

The government's response to the recent surge in hate crimes has been insufficient and inconsistent. President Yushchenko and some other senior government officials have spoken out against racist and xenophobic violence. However, these statements have been undermined by other declarations by some key law enforcement officials whose remarks suggested a denial of the problem. The government does not currently collect statistics or publicly report on violent hate crimes.

The authorities did take some important steps in 2007, including the creation of specialized units in key government agencies. Also, in early 2008, there were several guilty verdicts handed down in cases of violence in which incitement to hatred based on nationality, race, or religion were among the charges. However, these verdicts were exceptions to a pattern in which violent crimes with an apparent bias motivation are more often treated as hooliganism. Law enforcement officials lack training and experience in recognizing and recording the bias motivations behind attacks, limiting the ability of prosecutors to pursue hate crime cases in court. An inadequate legal framework also hinders the ability of criminal justice officials to prosecute hate crimes as such.

### A. Political Will

President Yushchenko has addressed the issues of racist and xenophobic violence on several occasions, calling for more action from law enforcement agencies. In a meeting with leaders from the Jewish community on October 22, 2007, Yushchenko criticized law-enforcement agencies for their lackluster response to the recent xenophobic and antisemitic attacks in Ukraine.<sup>62</sup> On April 14, 2008, President Yushchenko wrote to Prosecutor General Oleksander Medvedko and

Interior Minister Yuriy Lutsenko to draw their attention to the increasing number of cases of xenophobia, racial and national intolerance reported by the national media.

Other senior government officials have spoken out against racist and xenophobic violence. On March 30, 2007, the Interior Minister Vasyl Tsushko condemned acts of xenophobia and racism at a meeting of representatives of embassies and international organizations. Tsushko denied any massive instances of xenophobic incidents in Ukraine, but recognized that single incidents could lead to an overall negative tendency. The Minister assured his interlocutors that each incident would be thoroughly investigated by the police.<sup>63</sup> On April 27, 2007, the Education and Science Minister Stanislav Nykolaenko made an official statement condemning xenophobia and racial violence against foreign students. Nykolaenko spoke out against nationalist youth groups that were inciting racial hatred and provoking racial tension among students.<sup>64</sup>

Similarly, on February 1, 2008, Ihor Sharov, the Chair of the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations, made a statement on the increase in crimes against foreigners. He called on law enforcement agencies to hold impartial investigations and bring responsible persons to justice in these cases. He highlighted that "it is necessary to determine whether or not murders were racially motivated."<sup>65</sup>

Significantly, on July 25, 2008, Interior Minister Yuriy Lutsenko urged the government to create a comprehensive government program to minimize xenophobia and racial intolerance. He also called on all hate crime victims to report incidents to the police.<sup>66</sup>

These statements have marked a step forward. However, as discussed below, the message of the president and other senior officials has not been translated into consistent action. Generally positive statements by some politicians have also been undermined by other statements by key law enforcement officials whose remarks have been racist in nature, or have suggested a denial of the problem, both in characterization of the problem and in description of individual cases. Such statements from leading criminal justice officials run contrary to an increasing body of evidence that indicates that hate crimes have become a serious problem in Ukraine.

For example, just two weeks prior to his call for a comprehensive government program to combat xenophobia and racial intolerance, Lutsenko made admittedly racist comments in a discussion about Vietnamese and Chinese laborers in Ukraine, questioning the registration of non-CIS foreigners.<sup>67</sup> A week later, Lutsenko reiterated a similar view, stating: “you can call me a racist but I will not allow Kyiv to become another Kharkiv or Odessa,” implying that foreigners are the source of crime.<sup>68</sup> The media quickly picked up the story and wrote disapprovingly about the statements, although the Interior Ministry never issued an official apology.

In another incident, following the aforementioned February 21, 2008 attack on Chinese and Iranian students, Kyiv Police Chief Volodymyr Polishchuk appeared dumbfounded as to why local media was treating the incident as a racist attack. Rather, he claimed that the attacks were “just hooligan excesses.” Similarly, in response to the January 21, 2008, murder of a student from Congo and a subsequent call for action from UN officials, Mykola Onischuk, the Justice Minister, characterized this and other recent hate crimes simply as “isolated incidents.”<sup>69</sup>

## **B. The Absence of Data and the Problem of Underreporting**

The government’s response to—and even recognition of—hate crime is seriously limited by the absence of any systematic data collection by law enforcement bodies, an essential component in any effective strategy to combat bias-motivated violence. The Ukrainian authorities are not currently engaged in any official data collection or public reporting on the incidence of violent hate crimes. Without this, it is difficult for the authorities to assess the extent of the violence, as well as the extent to which law enforcement officials are responding.

In addition, underreporting of incidents by victims to the police is likely one of the greatest factors contributing to a distorted official picture. The fact that victims frequently choose not to report hate crimes can be explained by a number of factors: victims may not believe that pressing charges will bring any concrete results; hate crime victims may fear further abuse at the hands of the police; and/or they may be fearful of further violence at the hands of the perpetrator if they should report their attack to the police.

In a July 2008 report on racial discrimination in Ukraine, Amnesty International documented cases in which police have ignored reports of attacks, have been slow to respond to threats of hate violence, and have made victims and friends of victims feel as though they themselves were under suspicion.<sup>70</sup>

## **C. Government Initiatives to Combat Hate Crimes**

Despite the overall failure to collect data on hate crimes and report on responses to incidents, the government has taken some steps toward combating bias-motivated offenses, in particular by creating specialized units to

address racism and xenophobia within certain ministries.

- In May 2007, the Interior Ministry developed an action plan for addressing xenophobia for the period through 2009.<sup>71</sup> The plan contains a number of useful strategies for combating hate crimes, such as training law enforcement officers and reaching out to NGOs working on these issues. The plan also calls for the creation of a special unit to investigate and prevent crimes against foreigners; a unit on ethnic crime was subsequently established. However, the unit was created to combat both crime committed against foreigners as well as crimes committed by foreigners, with an initial focus on the latter. The unit subsequently shifted its attention to crimes committed against foreigners and was able to produce statistics on such crimes; however, the data was not disaggregated to show bias-motivated offenses.<sup>72</sup>
- On October 24, 2007, in accordance with a presidential decree, the Security Service of Ukraine (SBU) established a special unit on combating xenophobia and intolerance. The unit is largely responsible for monitoring the activities of known neo-Nazi groups and for investigating and preventing crimes committed by such groups.<sup>73</sup>
- On November 13, 2007, the Foreign Ministry created the office of Special Ambassador on Racism, Xenophobia and Discrimination. Oleksandr Gorin was appointed to the new post with a mission “to combat antisemitism, prevent instigation of interethnic and interreligious conflicts, and coordinate activities with other ministries and departments in this context.”<sup>74</sup> Gorin was subsequently appointed Deputy Foreign Minister in 2008, although he retained the special ambassadorship.
- The State Committee for Nationalities and Religion (SCNR) is another body involved in combating

racism and racial discrimination. The Committee informed ECRI that it has started monitoring the media and conducting an awareness-raising campaign to involve civil society in creating a climate against intolerance and discrimination. The SCNR is also reportedly establishing an advisory council for combating xenophobia, racism and intolerance, which will include lawyers and representatives of international organisations and government agencies. The council will study the Committee’s proposals to the government and advise courts and law enforcement officials on addressing racially motivated crimes.<sup>75</sup> As of the end of August 2008, however, the council had yet to be created.

Most recently, in April 2008, an Interministerial Commission on Combating Racism, Xenophobia, and Discrimination was established by the Cabinet of Ministers of Ukraine. The Commission is chaired by the SCNR and includes representatives of the Interior Ministry, the SBU, and Foreign Ministry. The SCNR organized three meetings, drafted and submitted an action plan on counteraction of xenophobia for 2008-2009, which was approved on August 6 by the Cabinet of Ministers. In addition to the above-mentioned ministries, the action plan involves the justice, education, youth, and culture ministries. Among other activities, the plan sets out:

- to initiate parliamentary hearings on combating xenophobia, racial, and ethnic discrimination;
- to improve related legislation;
- to develop bilateral partnerships with intergovernmental organizations and other governments to gain experience in practices aimed at combating xenophobia and discrimination;
- to strengthen the response to acts of bias-motivated acts of vandalism;

- to train law enforcement and criminal justice officers—including through the OSCE/ODIHR’s hate crime training program.

If fully implemented, these activities would strengthen considerably the government’s response to violent hate crime.

The Human Rights Ombudsman, Nina Karpachova, has also played a role in addressing violent hate crime. On December 10, 2007, in the course of signing a Memorandum of Understanding between U.N. agencies operating in Ukraine and the Ukrainian Ombudsman for Human Rights, Karpachova declared that preventing racism and xenophobia would be among the priority areas. In March 2008, the Ombudsman issued a public statement raising concerns regarding an anti-immigrant march in Kyiv to the SBU security services, Kyiv city officials, and the Administration of the Kyiv Polytechnic University, where the march took place. Karpachova used that occasion to note her concern over the rise of xenophobic incidents in Ukraine, particularly the “cruel murders” of African nationals.<sup>76</sup> In another incident, the Ombudsman drew public attention to the attack on five Chinese nationals, who were brutally assaulted and stabbed by a group of unknown assailants.<sup>77</sup>

While the creation of an interministerial commission and specialized units in relevant government bodies constitutes positive steps forward, there has been no regular reporting to the public on the concrete activities of these bodies. Also, consultations between these bodies and civil society groups have been irregular. The work of these official bodies will be advanced by making their activities and achievements transparent and actively involving civil society in their efforts.

## **D. Hate Crime Prosecutions**

In those cases where hate crimes have been reported and suspects are apprehended, police often charge them with hooliganism or another related offense that fails to recognize the bias motive. This is apparent from

the lack of acknowledgement of bias motivations in sentencing by Ukrainian courts.

As mentioned above, there is no official data available to determine the extent to which suspects were apprehended in potential hate crime cases or with what criminal offenses such suspects are charged. Moreover, civil society groups have been unable to systematically gather this information.

The Ukrainian criminal code contains general provisions that permit a racist or other bias motive of the offender to be taken into account by the courts as an aggravating circumstance during sentencing. Article 67 of the criminal code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including “a motive of racial, national, or religious hatred” in the commission of crimes. A judge is not obliged, however, to consider these motivations in the sentencing, and there are no reported cases in which a judge has applied the aggravating circumstances in the final verdicts.

Article 161 criminalizes incitement to hatred, insults or discrimination based on nationality, race, or religion. The law provides for punishment of a fine, correctional labor for up to two years, or imprisonment for up to five years, depending on the seriousness of the crime, whether it was accompanied by violence, and whether it was committed by a group or by a public official. Although this provision is more applicable to cases of hate speech and discrimination, it has also been applied in cases of violent hate crimes, and has served in those cases as a means for the state to recognize the bias motivations inherent in the crimes.

Unfortunately, investigators generally lack an explicit instruction and adequate training to fully investigate possible racial or other bias motivations behind violent attacks. Furthermore, in most cases of suspected hate crimes, hate crime monitors report that prosecutors have been reluctant to bring charges under article 161

or request more serious penalties under the provisions in article 67.

However, there is evidence that police are beginning to investigate bias motivations more actively, especially in the most serious crimes, and prosecute them in a way that reflects those bias motivations. In early 2008, there were three guilty verdicts handed down in violent hate crime cases in which violations under article 161 were among the charges. These are the first such recorded cases since 1992.

- On May 6, 2008, four youths were convicted of premeditated murder of a 31-year-old Korean citizen Kang Jong Von, which occurred on April 23, 2007. The murder was described in the police report as exceptionally cruel, as the attackers beat the victim while screaming racial slurs and profanities at him. Each defendant was sentenced to thirteen years of imprisonment, and the four of them together were ordered to pay one million hryvnias (\$220,000) to Von's family in compensation for moral damage.<sup>78</sup> The trial was marred by the perpetrators' unapologetic behavior in court, which included laughing at a witness from the Korean Embassy.<sup>79</sup>
- On April 17, 2008, the Darnitsky District Court of Kyiv convicted four suspects of murdering Kunon Mievi Godi in October 2006. The 44-year-old Nigerian citizen, who spent many years in Ukraine, was killed on the evening of October 25, 2006, near a metro station. Eyewitnesses reported that the attackers shouted racist slogans. Mievi Godi, who is survived by a Ukrainian wife and a son, died of knife wounds before police arrived.<sup>80</sup> Oleksandr Shepitko was found guilty of first degree murder and incitement of ethnic hatred (article 115, part 2, and article 161) and was sentenced to eleven years in prison, while Yana Komlyuk was convicted solely of incitement of ethnic hatred, receiving a four and a half year sentence. The other two de-

fendants avoided prosecution: one of them was a minor, and the other testified as a witness.<sup>81</sup>

- On April 17, 2008, the Podolsky District Court of Kyiv sentenced 18-year-old skinhead Vyacheslav Dmitruk to three years in prison for attacking a Japanese tourist on October 27, 2007. Dmitruk was found guilty of incitement of ethnic hatred (article 161, part 2). However, the other perpetrators were never charged or investigated by the police.

These cases stand out as precedents for future investigations and prosecutions.

In what is a worrying development, in several cases, victims of hate crimes who have reportedly sought to defend themselves in the course of being attacked, have themselves been detained or faced charges of assault.

- On February 19, 2008, in Kyiv, in a supermarket near the Shuliavska metro station, three young men confronted a group Africans. One of the attackers hit and verbally insulted Daniel Osaemor, a Nigerian market trader. Upon exiting the supermarket, Osaemor was attacked again, by the original assailant and several others. He fought back, even as he was stabbed, using a metal pipe to strike one of the attackers. Both the victim and one of the assailants required hospitalization, while the other attackers fled.<sup>82</sup>

According to the Kharkiv Human Rights Protection Group, Ukraine's leading human rights organization, the investigator in charge of the case objected to the victim characterizing his actions as defense against a racist attack, arguing that there are no grounds to state that the assault was motivated by racism. Police reportedly allowed the man accused of wielding the knife, a Russian citizen, to leave the country for medical treatment, yet charged Osaemor with assault.<sup>83</sup> Although the charges against him were later dropped, this case is an

example of a predisposition in some cases of the police against victims of hate crimes. While high ranking Ukrainian law enforcers are publicly engaged in blame shifting and criminalizing foreigners, low ranking officers apply this rhetoric in practice, which can lead to mistreatment of hate crime victims.

- On April 5, 2007, Emmanuel Emanche and Jacob Ezeofor, two first-year students from Nigeria, were attacked on their way back from a nightclub in Lviv. The victims were able to defend themselves, but one of the attackers, a Ukrainian teenager, was wounded in the incident. The police arrested the original victims, Emanche and Ezeofor, although no charges were filed. One year later, the pair was still imprisoned in Lviv, and both were expelled by their universities.<sup>84</sup>

## E. Legislative Developments

As of August 2008, there were several proposed packages of amendments to the criminal legislation dealing with incitement and violent hate crimes, although none of them fully overcome the current weaknesses in the legal framework addressed above. Some of them seek to amend legislation that deals specifically with cases of violence:

- On January 11, 2008, Gennadiy Moskal, the people's deputy from the Our Ukraine—People's Self-Defense Party, introduced a bill *On amending certain legislative acts in Ukraine*, which would provide concrete definitions and increase the punishment for displays of extremism, xenophobia, antisemitism, racial and religious intolerance.<sup>85</sup> Moskal's bill also proposed amendments to article 161, including provisions that criminalize violence against national minorities and foreigners.
- On March 27, 2008, Anna German of the Party of Regions introduced a bill aimed to increase the punishment for incitement of political, ideological,

racial, national, and religious intolerance. The draft legislation also included provisions that would allow for penalties to be enhanced in cases of assault, murder and other violent offenses in which the perpetrator was motivated by racial or national hatred.<sup>86</sup>

- On March 28, 2008, Taras Chornovil, also of the Party of Regions, introduced a similar bill, aiming to amend the criminal code provisions concerning responsibility for crimes motivated by racial, national, and religious hatred. Chornovil's bill proposed amending eight different articles of the Criminal Code.<sup>87</sup>

Other bills relate more specifically to the incitement to hatred provisions in article 161 or seek to create new provisions that criminalize hate speech:

- On January 21, 2008, President Yushchenko proposed draft law no. 1395, introducing amendments to article 161 of the Criminal Code. The bill would create stiffer punishments for crimes stipulated in the article without seeking to amend the language of the article.<sup>88</sup> The president's bill was rejected in committee in April 2008.
- On April 17, 2008, Oleksandr Feldman of the Yuliya Tymoshenko Bloc registered the bill *On liability for publicly praising and propagandizing Nazism and discriminatory ideology*. The draft law proposed to define what is meant by Nazism and discriminatory ideology and to outline punishments for the propaganda of both.<sup>89</sup>

## IV. Recommendations

In order to address the problem of racist violence and other forms of intolerance, Human Rights First urges the respective Ukrainian authorities to implement the following recommendations:

- 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.
- The Interior Minister should ensure that the ministry's special unit responsible for combating ethnic crimes has clear guidelines to address crimes—including those committed against foreigners—that are motivated by racism and xenophobia. If the ministry deems necessary to specifically monitor crimes committed by foreigners (as this unit also does), this should be undertaken by a separate unit
- The Interior Ministry should develop an internal protocol mandating police officers and investigators to record bias motives in the commission of a crime. The Interior Ministry should commit to making data on the incidence of violent hate crimes public—an important step toward improved public policy on combating hate crime.
- The Ukrainian 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, e.g., the OSCE's Law Enforcement Officer Program on Combating Hate Crimes, and on a bilateral basis, e.g. through the United States Department of Justice 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 of any reports of police harassment of hate crime victims and ensure the prosecution of offenders.

As a follow-up to steps already taken by the government, we further recommend the following:

- The Ukrainian authorities should reach an agreement with the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), identifying specific areas in which ODIHR would provide technical support and assistance to combat violent hate crimes, including through expanded law enforcement training.
- The Ukrainian authorities should ensure regular public reporting of the concrete actions, achievements, and shortcomings of the special units on combating racism and xenophobia created in the Interior Ministry and the State Security Service, State Committee for Nationalities and Religion, the Foreign Ministry's special envoy and the recently created Interministerial Commission on combating racism, xenophobia, and discrimination. The Commission should be entrusted with adequate authority and sufficient resources to address the problem.

- These bodies should formalize outreach to civil society, including by meeting on a regular basis with nongovernmental organizations in the framework of the Diversity Initiative, a coordination group of organizations based in Ukraine and dealing with the problem of hate crimes.
- The Ukrainian 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. The systematic use of such penalty enhancement provisions in appropriate cases will send a strong message of condemnation of hate crimes.

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