

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
AL UKR 3/2018

11 July 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on minority issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 34/9, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a series of violent and apparent hate attacks and crimes, between April and June 2018, targeting Roma in different parts of Ukraine, in particular Kyiv, Kharkiv, Ternopil and Lviv, and which have been allegedly perpetrated by members of extreme right-wing groups.**

According to the information received:

On 18 April, members of the "Sich-C14", an extreme right-wing group, illegally confined around 300 Roma, mainly young women with children, at the main train station in Kyiv. The members of "Sich-C14" verbally intimidated them and prevented them from leaving the train station premises unless they showed identification documents. No complaint was filed about this incident as the Roma were afraid of retaliation.

On 21 April, approximately 15 members of "Sich-C14" violently attacked an informal Roma settlement in Holosiivskyi district of Kyiv and burned it down. Reportedly the police, who arrived at the scene after the events, failed to intervene and protect the Roma families residing in the settlement (approximately 300 Roma, including 100 children) and instead allegedly advised them to leave Kyiv. On 24 April, the Office of the Ukrainian Parliament Commissioner for Human Rights stated that there were clear signs of discrimination and incitement to hatred against the Roma minority, and requested the National Police to take appropriate preventive and remedial action in this regard. Criminal cases have been initiated by the National Police (No. 12018100010004064) under art. 161 (2) of the Criminal Code and No. 12018100010004065 under art. 296 (2) of the Criminal Code) and the investigation is on-going. However, the case was initiated only 5 days after the posting through social media of a video footage showing masked attackers throwing rocks and spraying gas at terrified Roma people. To date, there

has been no identification of perpetrators and therefore no arrest has taken place yet.

On 9 May at approximately 9pm, another attack against a Roma informal settlement took place in the village of Rudne, in Lviv region. Reportedly, about 15 individuals in masks attacked and burned down the Roma settlement, which resulted in the complete destruction of Roma property and in the Roma residents fleeing the settlement. On 10 May, the Ukrainian Ombudsperson, Lyudmyla Denisova, publicly reacted with regard to this incident and urged the local police to effectively respond to the attack and launch a thorough investigation. On the same day, the Lviv regional police department announced the launch of criminal proceedings under the Criminal Code provisions on hooliganism (Chapter XII, Article 296). The Roma victims filed a complaint with the police and have legal representation. No alleged perpetrator has been identified and prosecuted to date.

On 22 May, at approximately 10pm, around 15 individuals attacked a Roma settlement located in Velyka Berezovytsia village in Ternopil region. At that time, there were 7 adults and 30 children present in the settlement. The perpetrators allegedly beat the Roma residents, shot firearms and burned down the settlement, causing the Roma residents to flee. According to accounts of the Roma residents, one child went missing after the attack and was found only one day later. After the events, the police arrived at the place of the attack and arrested 12 alleged perpetrators and launched a criminal case under the Criminal Code provisions on hooliganism. All the arrested alleged perpetrators were shortly afterwards released. However, the alleged organizer of the attack received a notice of suspicion and was officially charged. He is allegedly a member of a local unit of “Right Sector”, an extreme right-wing group, which is also a political party and reportedly a volunteer battalion active fighting alongside Ukrainian Armed Forces in the armed conflict in the east of Ukraine. On 23 May, the Ombudsperson, Lyudmyla Denisova, opened proceedings on this new attack.

On 24 May, Mr. Sergiy Mukha, who is a lawyer working on a case related to an attack in Vilshany village, where one Roma was killed and others were injured, was attacked and threatened, in the city of Derhachi, Kharkiv region. The group attacking Mr. Mukha consisted of three unknown persons wearing military camouflage and a prosecutor from the Derhachi Local Prosecutor’s Office, who verbally intimidated the lawyer. The aggressors entered Mr. Mukha’s office, beat him, threatened his life if he did not stop his work on the Roma case, searched the office and took USD 2,000. After the attack and harassment, Mr. Mukha’s case was referred to the Kharkiv Regional Prosecutor’s Office, but the investigation has not been completed, and the aggressors have not been prosecuted. The prosecutor still holds his position in the Derhachi Local Prosecutor’s Office.

On 7 June, the extreme right-wing group “National Brigades” announced a 24-hour ultimatum for Roma residents to leave the settlement in Holosiivskyi park in Kyiv. The language used in this ultimatum was particularly threatening and

stigmatizing against Roma. It expressly indicated that in case the Roma people did not leave the area within the given ultimatum, the “National Brigade” would intervene to “do some work and cleaning”. According to information, a total of 60 Roma, including 10 children, were living in the settlement. Reportedly, members of the “National Brigades” had in the past warned and intimidated the Roma of this settlement in person, when they went to Holosivskyi park, following an invitation by a TV crew filming a story about robbery and attacks allegedly committed by Roma people.

Finally, on 23 June, just before midnight, masked members of an extreme right-wing group attacked a Roma settlement in Lviv, killing by stabbing one person and wounding four others, including a 10-year old boy. At the time of the attack, a total of 14 persons were present in the settlement. Police has launched criminal proceedings and arrested 7 alleged perpetrators and 1 organizer of the attack, who claim to be members of a newly-established extreme right-wing group called “Sober and angry youth”, which is reportedly connected to the so-called “Misanthropic Division”, the latter with ties to the “Azov Battalion”.

We express our serious concern over the reported rising frequency of violent attacks against the Roma minority in Ukraine, in particular during the recent period from April to June 2018. The hate-motivated attacks are particularly violent and involve physical aggression, destruction of property and harassment and intimidation against Roma people, including against women and children.

We note with deep concern that such violent attacks are allegedly and mainly orchestrated and perpetrated by extreme right-wing groups in Ukraine with clearly expressed intentions to target Roma communities on the basis of their ethnicity, to raise stigmatizing and discriminatory discourse against them in the country and to organize violent actions against its community members, putting their life at risk.

We deplore the absence of effective measures of protection of the members of the Roma minority against such actions by the Ukrainian authorities, and in particular by the regional and local police, and we are concerned over the alleged prevailing climate of impunity and lack of accountability as a result of absence of prompt, thorough and impartial investigation of such heinous criminal acts. Similarly we express our concern about the reported burning down of several homes in the informal settlement in Holosiivskyi district of Kyiv and the total destruction informal settlement in the village of Rudne which rendered several Roma families homeless violating the right to adequate housing.

Finally, we are concerned that such heinous acts against Roma in Ukraine are often qualified by the competent authorities as “hooliganism” and not as crimes committed based on “racial, national or religious enmity or hostility”. Therefore, they are not sanctioned in line with the relevant provisions of the Ukrainian Criminal Code, which include also bias as an aggravating factor of such offences (Articles 67 (3), 115 (14), 121 (2), 122 (2), 127 (2), 129 (2) and 161 of the Ukrainian Criminal Code).

We commend the official position adopted by the Office of Ukrainian Parliament Commissioner for Human Rights and the Ombudsperson herself and by the Minister of Interior with regard to a number of these violent attacks. Nevertheless, we firmly believe that public statements and expressions should be followed by coordinated and sustained actions with the view to effectively eliminating any acts of discrimination, violence and exclusion of all vulnerable populations in Ukraine, and in particular of minorities, as well as to provide with effective remedy to victims and strengthen accountability through effective investigation and prosecution.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations. The full texts of the human rights instruments and standards recalled in the annex are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on any investigation and legal proceedings that have been launched with regard to all the cases mentioned in this letter, as well as their outcomes. Please further provide information on any prosecutions which may have taken place in connection with above-mentioned allegations. If no investigation and/or prosecution has taken place, please explain the reasons why.
3. Please indicate the sanctions imposed on perpetrators of hate-motivated acts against persons belonging to national or ethnic, religious and linguistic minorities, similar to the ones mentioned above.
4. Please explain why some of these hate-motivated offences are treated under the "hooliganism" provisions of the Ukrainian Criminal Code, instead of the specific provisions on criminal offences (such as murder, bodily injury, battery and torture) with the aggravated factor of "racial, national or religious enmity or hostility", instead of being treated under Article 161 on "willful actions inciting national, racial or religious enmity and hatred".

5. Please indicate specific remedial actions that have been undertaken following the human rights violations against members of the Roma minority, including with regard to their access to adequate housing as a result of the complete destruction of Roma property and houses during the attacks mentioned above. Has adequate compensation and alternative short and long term housing been provided by the Government in accordance with international human rights standards to the individuals who have lost their homes and property?
6. Please provide information on the measures undertaken to effectively curb hate-speech and incitement to hatred and violence against vulnerable segments of the Ukrainian society and in particular against persons belonging to racial, national, ethnic, religious and linguistic minorities.
7. Please indicate any measure undertaken to ensure that the human rights of persons belonging to the Roma minority in Ukraine are protected and promoted.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations. Please accept, Excellency, the assurances of our highest consideration.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 2, 6, 9, 12, 14, 17 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which Ukraine ratified on 12 November 1973, which establish the principle of non-discrimination on any grounds, the right to life and security of the person, freedom of movement and of residence, equality before the law, and protection against interference with one's privacy, family and home.

With regards to security of person, we recall that, as established by the Human Rights Committee, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, "the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury". Furthermore, we would like to recall that "States have a duty to prevent and redress unjustifiable use of force in law enforcement" (CCPR/C/GC/35, para. 9).

We would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Ukraine on 7 March 1969. Article 1 (1) 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".

We would like to recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In addition and in light of the alleged implication of hate groups in the abovementioned facts reported to our attention, we would like to recall that States Members must condemn all organizations which are based on ideas or theories of superiority of one race or group of one color or ethnic group, according to Article 4 of ICERD. States are also required to declare an offence punishable by law all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin (Article 4 (a)).

In addition, Article 5 (b) of ICERD guarantees the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. Furthermore, article 5 (e) (iii) prohibits racial discrimination with regard to the right to housing. In

accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

The right to adequate housing is protected in article 25 of UDHR, and article 11.1 of International Covenant on Economic, Social and Cultural Rights (ICESCR). With respect to specific standards to guarantee the right to housing the Committee on Economic, Social and Cultural Rights (CESCR) also established that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. Furthermore article 17 of the ICCPR establishes that no one "shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence".

Article 11.1 of the ICESCR on adequate housing as a component of the right to an adequate standard of living is to be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

States have furthermore the obligation to protect all individuals from forced evictions irrespectively whether they are committed by State or non-State Actors, such as extreme right wing groups. According to General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, victims of forced evictions are furthermore entitled to receive adequate compensation for their loss of property and States have the obligation to provide adequate alternative short and long terms housing to persons that have been evicted.

Finally, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which, in its Article 1, refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".