



Ukraine: Four Pathways to Sustainable Ethno-Cultural Governance

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Reform is a word that is used frequently with respect to the democratic transformation of Ukraine following the change of regime after the manifestations and demonstrations in the Maidan square around the change of the year 2013/14. Unfortunately, very few analysts consider ethno-cultural governance and national minority protection important aspects of the reform efforts. Establishing permanent and functioning inter-ethnic structures receives little attention, except in the small circle of human rights defenders. Although a breakout of inter-ethnic tensions is on everybody's mind, establishing lasting legal and political institutions for stable and peaceful inter-ethnic relations remains absent from most of the international debate on the future of Ukraine. Indeed, it has been argued that reforms with high relevance for the country's future, such as territorial and administrative reforms have been largely 'ethnically neutral.' This Issue Brief discusses four pathways towards sustainable ethno-cultural governance and stable inter-ethnic relations in Ukraine and proposes institutionalized and open dialogue as well as awareness campaigns as a cross-cutting tool to avert tension.

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I. INTRODUCTION

Ukraine is a multicultural society with a tradition of inter-ethnic tolerance and respect for ethno-cultural and religious groups.¹ The geographical location of Ukraine is specific in many respects. It lies on the bounds of Europe and Asia, being a crossroad of Western and Eastern Europe, and borders with seven neighbouring countries. All these factors have defined Ukraine's rather mixed national composition and the need to accommodate a wide range of cultural, linguistic and religious diversity. Ukraine is home to around 130 ethnic groups, including a number of national and religious groups.² It is thus not only a

multicultural but also a multilingual society where Ukrainian is the official language and Russian is the major second language of inter-ethnic communication among most groups.³ Research from 2015, not including conflict zones and Crimea, shows that a majority considered Ukrainian their native language (60%), followed by Russian (15%), while 22% used both languages equally, and 2% speak another native language.⁴

Ethno-cultural groups live intermingled; there are no historical regions inhabited traditionally by one ethnic or national group, and with the exception of a small number of municipalities where there is an ethnic majority, the ethnic composition of most

districts is mixed. This is the legacy of Ukraine's century old history of being ruled by foreign powers and migration across its territory. Mitigating inter-cultural circumstances through ethno-cultural governance has been on the agenda of Ukrainian governments for centuries.

In spite of the conflict in Eastern Ukraine and the illegal annexation of Crimea, the Ukrainian government has continued to enhance national minority protection and support national minority promotion. Over the years, democratization of the Ukrainian society involved developing norms and standards for the protection of national and ethnic as well as religious minorities. Co-operation with international organizations has helped further the development and implementation of minority rights instruments and ethno-cultural governance policies. With regard to the rights of national minorities, Ukraine has signed and ratified the most important international instruments promoted by the Council of Europe.⁵ Due to Ukraine's standing as original member of the United Nations, it has also been early to sign and ratify UN treaties relevant for national minority protection.⁶ In efforts to comply with these, the government has striven to enhance its administrative capacities and to empower independent human rights and anti-discrimination bodies further.

The Parliamentary Commissioner for Human Rights (an ombudsperson institution) is active at implementing the Law on the Principles of Preventing and Combatting Discrimination, adopted in 2012 and amended in 2015. Unfortunately, the Law does not include a reference to national origin and descent as protected grounds against discrimination. The Commissioner has subsequently adopted a Strategy of Actions on Preventing and Combating Discrimination for 2014-2017, which includes among others foci on discrimination against Roma, hate speech and ethnic profiling issues as well as the protection of persons belonging to national minorities. Although the number of petitions on ethnic discrimination to the Commissioner is down, the number of cases initiated by the Commissioner is rising.⁷ This should be seen in relation to the rather diminished role of the judiciary in addressing cases of discrimination, and the fact that judges have been slow to shift

the burden of proof to defendants.

The Parliamentary Commissioner was also instrumental in promoting the National Human Rights Strategy and Action Plan drafted by the Ministry of Justice and adopted by the Ukrainian parliament (Verkhovna Rada) in 2015. The Strategy includes a short chapter on national minorities and indigenous peoples, which is unfortunately not very action-oriented and lacks comprehensive objectives.⁸ Moreover, the Commissioner's opinions are not legally binding, which means that justice can only be sought through the judiciary. It is expected that this deficit will be addressed in legislation seeking to harmonize Ukrainian law with European Union (EU) standards on non-discrimination, including on discrimination by association, victimization and multiple discrimination.⁹ Notwithstanding this, challenges remain, and national minority protection and promotion have yet to be seen as a vital component in achieving social unity and eliminating inter-group tensions.

II. REFORMS AND CHALLENGES

According to the World Bank, Ukraine faces a number of general challenges in public administration reform. This may also influence on how the country weathers its approach to ethno-cultural governance. First, a systematic implementation of an integrated justice reform is needed, where credible results will depend on how Ukraine's authorities address a number of key challenges in the justice system. Unfortunately, the World Bank does not see ethno-cultural governance as one of the key challenges.

Secondly, improving public sector performance requires professional, motivated and well-managed personnel; public administration in Ukraine suffers from low effectiveness, an ingrained culture of corruption and lack of a service culture, all of which translates to only 8% of the population expressing trust in the government according to the 2015 Gallup poll.¹⁰ This low percentage reflects the distrust not only among the general population but also among national minority groups. A challenge linked directly to this is the lack of transparency in policy and administrative decision-making. Again, unbeknown to the World Bank, representatives

of national minorities have repeatedly highlighted this aspect.

Finally, connecting public administration reform should be linked to civil society movements because they support transparency. Moreover, forums for dialogue over reforms are immature, and platforms for co-ordination with government are far from effective (e.g. the civic councils). This speaks directly to the concerns that national minorities have lodged regarding territorial and administrative reforms.

During the past three years, a number of policy areas that impact directly or indirectly on the protection of national minorities has been undergoing reform. Most importantly, there has been, and are, ongoing efforts to review and reform human rights legislation and policy programming that has direct impact on national minority protection. These efforts are progressing but at a slow pace.

In addition to the improvements implemented in the area of anti-discrimination, national minority representatives have recently asked the Verkhovna Rada to address the need for updated and efficient legislation, including elaboration of a comprehensive strategy for ethno-cultural relations. This is no easy task given that the legislative acts that involve provisions relative to national minority protection are numerous and disparately scattered across the spectrum of the legal system. Directly relevant instruments range from national minority and IDP acts to criminal codes on hate speech and hate crime; they also involve legislation on education, elections and party representation as well as legislation on local self-government. Legislation for language policy, indigenous peoples and Crimean Tatars has also been proposed.

In these reforms, the views of national minorities and ethno-cultural groups have not always been taken into consideration; information exchange and open dialogue about issues has often been missing. Overlooking national minority protection obligations in the planning of certain reforms has resulted in a rise in dissatisfaction with the government's handling of these reforms among some national minorities. A trend of ethno-cultural tension, especially at the regional and local levels, has been seen as a result of this. The next few years are, therefore, pivotal to how

the Ukrainian government will avoid inter-ethnic tension while organizing the country's democratization through sector reforms.

III. PATHWAYS AND PRIORITIES FOR SUSTAINABLE ETHNO-CULTURAL GOVERNANCE

The challenges described above point toward a set of pathways built on four key priorities for achieving sustainable ethno-cultural governance: (1) safeguarding national minority rights and protection through a thorough review and consolidation of relevant legislative instruments, (2) securing equitable national minority representation in territorial and administrative management, (3) building institutions and enhancing the capacities for good ethno-cultural governance at all levels of government, while (4) enhancing ethno-cultural dialogue as a cross-cutting issue that supports all priorities. Measures taken so far have been important in improving national minority protection; however, advancing reforms in the four areas of priority will be critical to developing a comprehensive and sustainable model of ethno-cultural governance for Ukraine.

Pathway 1: Safeguarding national minority rights through legislative review

The 1996 Ukrainian Constitution recognizes equality rights and certain rights for specific national minorities in Ukraine. Article 21 provisions equality for all people in their dignity and rights as well as the inalienability and inviolability of human rights and freedoms. With Article 24, it presupposes equal fundamental rights and freedoms as well as equality of citizens before the law irrespective of their "race, colour of skin, political, religious and other affiliations, gender, ethnic and social origin, wealth, place of residence, linguistic and other characteristics." Moreover, with Article 10, it provisions the free development, use and protection of the Russian language and other minority languages of Ukraine, while Article 53 provisions that citizens belonging to

national minorities shall be guaranteed, in accordance with law, the right to education in their native language, or to study their native language at the state and communal educational establishments or through cultural institutions.

With the 2015 National Human Rights Strategy, the government has furthermore undertaken to review relevant primary legislation pertaining to national minorities, such as the 1992 Law on National Minorities. This Law prohibits any restriction of the rights and freedoms of citizens on ethnic grounds, but is basically an anti-discrimination instrument. Thus, the Law is considered vastly out-dated, vague and badly focused and in urgent need of updating. A draft on amending the Law on National Minorities was submitted to the Verkhovna Rada for consideration in November 2014. Although parliamentary hearings on the role, importance and impact of civil society on the development of an ethnic national policy took place in November 2015, there has not been noticeable progress in this regard. Apparently, there has been no consultations with representatives of national minorities on the draft legislation.

As a result of this inertia in the legislative process, the protection against hostile acts against vulnerable national minorities and ethno-cultural groups, such as religious minorities and Roma communities, is effectively relegated to the field of criminal law. Article 161 of the Criminal Code of Ukraine addresses the violation of equality of citizens based on their race, ethnicity, or attitude towards religion. It presupposes liability for intentional actions aimed at inciting national, racial or religious feud and hatred on grounds of race, colour of skin, political, religious or other beliefs, gender and ethnic and social origin, personal wealth, place of residence, language or other characteristics. Motives of racial, ethnic, or religious hatred and discord are moreover viewed as aggravating circumstances pursuant to Article 3 of the Criminal Code. Unfortunately, very few acts of violence are reported and even fewer reach the courts. There is a realization in the government that this situation is not sustainable, and efforts are made to upgrade and improve Article 161.

With regard to internally displaced persons (IDPs), due to the conflicts in the eastern

regions and the illegal annexation of Crimea, the Verkhovna Rada has adopted the Law on Ensuring the Rights and Freedoms of internally displaced persons in October 2014, with amendments in 2015 to bring it closer to international standards. However, experts have argued that further amendments are needed to bring the Law into line with international standards, as well as further harmonization and development of additional regulations and instructions to bring existing practice in line with the amendments. Moreover, experience from other countries has shown that while adoption of IDP-specific legislation may be appropriate in a number of contexts, it will still be essential to review the general legislative framework, not specific to IDPs, and assess the extent to which the specific needs of IDPs are addressed and whether it enables them to enjoy their rights in full equality.¹¹ There is, therefore, widespread recognition, including by the government, of the need to further enhance the normative framework to better protect the rights of IDPs, especially their political rights, and address the specific concerns they experience.

Specifically, with regard to the Crimean Tatars, the Verkhovna Rada adopted the Law on Restitution of the Rights of People Deported on National Grounds in April 2014. The Law aims to provide state guarantees to the IDPs as to their settlement within those administrative units where they or their close relatives resided as of the time of the deportation, and it established an office of the Commissioner of the President of Ukraine for the Affairs of Crimean Tatars. Unfortunately, there has been delay in implementing the Law and in funding the special Commissioner's office.

Closely connected to the issue of protecting the Crimean Tatars is the question of indigenous peoples. Ukraine drafted a law on the status of indigenous peoples in 2003, but it was not adopted. According to the European Commission for Democracy through Law (Venice Commission), the law was not adequately reflecting international standards for indigenous peoples at the time as it did not provide for land rights and the right to manage natural resources.¹² In April 2017, a new draft was introduced in the Verkhovna Rada; it has, however, not been adopted.

In 2004, the Ukrainian government drafted

a law on languages in Ukraine with a view to ensure the rights stipulated in the Constitution. The Law, which was supposed to replace the 1989 law on the languages in the Ukrainian SSR was never adopted. Instead, another text was developed into the Law on the Principles of the State Language policy, which aimed at giving Russian and minority languages, the status of a regional language, approving its use in courts, schools and other government institutions in areas of Ukraine, where the percentage of representatives of national minorities exceeds 10% of the total population of a defined administrative district. The Law is still in effect, even though the Verkhovna Rada adopted a repeal law immediately after the deposing of President Yanukovich. The interim acting President Turchynov, did not sign the repeal law, however. The Law is currently under review by the Ukrainian Constitutional Court. Notwithstanding this, minority languages have been recognized as regional languages in a number of regions or by city councils.¹³

The current President, Petro Poroshenko promised a revision of the legislation, and a draft Law on State Language was introduced in Verkhovna Rada in January 2017. If this draft Law is adopted in its current form, it would establish a National Commission on State Language Standards with investigative and sanctioning powers and introduce criminal liability for public disrespect of the Ukrainian language. This does not abode well for members of national minorities in Ukraine.

The lack of clarity in the linguistic rights of national minorities has furthermore been worsened with the very recent adoption of a new Law on Education in September 2017. According to the new Law all secondary education must be conducted in Ukrainian, and national minority languages must be studied only as additional languages rather than native languages. Previously, students in Ukraine were able to study all eleven years in the language of their native tongue, meaning that all lessons were conducted in the minority language, and the state Ukrainian language was used in studying separate subjects, such as Ukrainian language, literature and history.¹⁴ The new Law has incurred quite some criticism from kin-states and international organizations, such as the Council of Europe and the OSCE High Commissioner on

National Minorities.¹⁵ It is now under review by the Council of Europe's Venice Commission.

In the sphere of political and social rights, national minorities have previously enjoyed special protection rights in the Law on Election of People's Deputies adopted in November 2011. It specifically protects the right of national minorities living compactly in administrative-territorial units to constitute one electoral district. This has been eliminated in a new Law on Local Elections adopted in July 2015, which prohibits privileges based on race, colour of skin, political, religious and other beliefs, ethnic and social origin, wealth, place of residence, language and other characteristics. A new Law on Public Service from 2015 follows the same principle, but requires public servants to have a command of regional or minority languages where necessary.

Also in 2015, the 1984 Labour Code was amended with an expansion of the non-discrimination provision to include among others, race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, health, disability, suspected presence or presence of HIV/AIDS, family and material status, family responsibilities, location, and membership in trade union or other association of citizens. Unfortunately, national origin or belonging to a national minority were not included.

Finally, Ukraine has undergone massive reforms of territorial and administrative management since 2014. This process has been rather 'ethnically neutral' resulting in impacting both directly and indirectly on the lives of national minorities.¹⁶ It thus leaves questions as to how national minorities and their issues will be represented. This is discussed separately below.

Going forward, a consolidated, comprehensive approach to national minority protection and promotion is needed in order to secure good ethno-cultural governance. A mainstreaming of national minority protection provisions should be undertaken as part of a legislative review. Preferably all relevant primary law instruments should be mainstreamed with provisions on national minority protection in non-discrimination clauses. These various provisions enshrined in

primary law should eventually be collected in one piece of legislation, such as a revised version of the Law on National Minorities, that comprises all substantive national minority rights and freedoms as well as guidelines for the right to free self-identification of national minorities and equality for all national minorities in Ukraine. This will create clarity and prevent confusion.

The focus should be on mainstreaming of ethno-cultural awareness and sensitivity across all pieces of primary and secondary law acts tangential to national minority existence in Ukraine, including all socio-economic sectors, education, territorial governance, cross-border co-operation as well as linguistic rights in public service provision and media. This process should be transparent and supported by an open consultation exercise inviting all relevant stakeholders to engage in a peaceful exchange of views; it should also involve awareness raising campaigns among the general public and ensure open access to information.

Pathway 2: Securing equitable representation in territorial governance

The post-2014 overhaul of territorial governance that involves both redistricting and administrative reforms as per a strategy for Reform of Local Self-Government and a proposal for a draft law amending the Constitution. According to the draft Law on Amending the Constitution as to Decentralization of Power, introduced in the Verkhovna Rada on 1 July 2015,¹⁷ Article 132 on administrative and territorial structures of Ukraine stipulates that these should be based on the principles of unity and integrity of the territory of the State, decentralization of power, ubiquity and ability of local self-government, sustainable development of administrative and territorial units while taking into consideration their historical, economic, ecological, geographic, and demographic characteristics as well as *ethnic and cultural traditions*.¹⁸ In addition, Article 44 of the 1997 Law on Self-Government provisions local authorities to implement target programmes in areas where national minorities live compactly.

A major aim of the Reform strategy is the

creation of self-sufficient and effective self-government structures. For this purpose, essential powers have been transferred from the centre to the periphery. New territorial units have been formed and local self-governing authorities have been delegated additional powers and responsibilities.¹⁹ Elections have been held, and local economies are beginning to develop in positive directions.

The Reform has delegated numerous tasks to local authorities that have relevance for national minority protection, such as maintenance of educational and cultural institutions as well as disbursement of funding and resources. In addition, other areas of development impact indirectly on national minority protection, including infrastructure development, social and public services provision as well as cross-border co-operation in some cases.²⁰

The Ukrainian government has identified the need for improving capacities of local administrations, and the provision of methodological support will ensure relevant structures and procedures, skillful and knowledgeable human resources as well as mechanisms for co-ordination and co-operation not only with the central authorities but also with civil society.

However, the Reform process has been conspicuously ‘ethnically neutral’ in spite of the fact that the 2015 Law on Amending the Constitution provisions taking into consideration ethnic and cultural traditions, and the Law on Elections of People’s Deputies provisions protection for national minorities living compactly and adjacently in electoral districts and. As it turns out, this provision is not followed consistently by the Central Election Commission, when establishing electoral districts.²¹ Moreover, in districts where national minorities are not present in adequate numbers, there are no provisions for participatory rights, and especially the smaller national minorities have found it difficult to get represented under the current regulations for standing for elections. This does not seem to face a better future under the current Reform since the *hromadas* (new local amalgamated communities proposed by the legislation) inhabited by substantial numbers of persons belonging to national minorities, and which currently are self-governing, may find themselves merged with the surrounding

villages inhabited by persons belonging to the majority or another national minority.

Such a development could mean that the thresholds for access to certain minority rights provided for in Ukrainian law are difficult or impossible to meet and could furthermore lead to a weakening of the possibilities for persons belonging to national minorities to influence local affairs. National minorities are particularly concerned that the ongoing process of amalgamation of local *hromadas* can affect the existence and functioning of national minorities' cultural associations and libraries at the local level. They also fear loss of influence in municipal councils, in particular in those *hromadas* where the proportion of persons belonging to national minorities will diminish, as well as the consequent ability to influence the way local budgets are spent.

At present, consultative and advisory councils concerning ethno-cultural issues working under the auspices of provincial authorities exist in less than half of Ukrainian oblasts.²² Moreover, according to most experts and members of the advisory structures, the consultative councils merely perform symbolic functions, convene infrequently and even rarely, while making no significant decisions. As a rule, they are summoned on the initiative of state administrations in order to evidence in their records that activities take place.

At the local level, national minorities are allowed to initiate consideration of any issue under a local self-government's responsibility according to Article 9 of the 1997 Law on Local Self-Government. Thus, a local initiative submitted for consideration to a council must be considered at an open meeting with participation of the group that initiated it. This is a very precarious situation for members of the national minorities, and it remains an open question as to whether local self-governments will consider national minorities a priority given the many new tasks they are faced with due to other demands they face to develop and modernize local communities.

At the executive level, the 1997 Law on Local Self-Government provides for implementing joint projects, securing joint financing of institutions and organizations owned by municipalities and for the delegation to municipal authorities of certain tasks that make it possible for different communities to

form educational institutions in the languages of national minorities. It also provides for establishing joint cultural institutions and activities.²³ It is not clear how the pending legislation will address this.

Although the central government holds the ultimate responsibility for implementing international standards adopted by Ukraine, there are no guidelines and instructions from central level that impose the implementation of minority protection on the local self-governments. National minorities at the local level are not satisfied with the situation, and the authorities are not sensitized to the fact that local tension must be addressed immediately to secure the unity of the entire state.

Going forward, it is vital that local administrations become sensitized about ethno-cultural issues and national minority protection, including Ukraine's obligations under international human rights law. Local self-governments and local administrations should be made aware about their role as key implementers of national legislation and policies in the field of national minority protection and promotion, including the right to trans-frontier co-operation with kin-states. While the redistricting of new territorial units has been successful in many cases, some national minorities have not been satisfied with the results, nor the processes.

Effective and clear guidelines for the relations between the central and the local administrations with regard to ethno-cultural issues are furthermore an important requirement. They should be transparent and openly accessible; this will ease any tension that might arise from stakeholders who feel excluded from the processes. An essential part is, therefore, to ensure national minority representation and participation at all stages of planning and decision-making through permanent and effective consultative and advisory institutions or direct participation.

Pathway 3: Building institutions for comprehensive governance

Over the years, the Ukrainian government has established various institutional frameworks for addressing ethno-cultural governance, and the Verkhovna Rada occasionally holds hearings on ethno-cultural relations. Since

2014, the Parliamentary Committee on Human Rights has addressed ethno-cultural governance issues through sub-committees on ethnopolitics, on citizenship and on gender equality and non-discrimination. A few national minority representatives have become members of the Verkhovna Rada through mainstream party platforms although several national minority parties do exist.²⁴

Members of national minorities are represented directly in a few local governments through the electoral system, while at the regional level, less than half of the oblasts maintain councils that include national minority representatives.²⁵ At the local level, access to authorities and the decision-making processes is often best achieved through informal and direct communication with public officials.

At the central executive level, issues of concern to national minority protection and promotion are addressed through the Ministry of Culture, which has been the responsible authority for ethno-cultural governance since 2010/11, including the co-ordination between the central government authorities through an inter-departmental working group established in 2015. This working group addresses Roma issues and includes Roma representatives.²⁶ Other relevant ministries, such as the Ministry of Education, have small units dealing with ethno-cultural governance issues, and a new Ministry on Temporarily Occupied Territories and IDPs was established in 2016.

After 1991, a number of different setups with responsibility for ethno-cultural governance have come and gone, including a committee directly under the Cabinet, a full ministry and a department within the Ministry of Justice. A special Plenipotentiary for ethnonational policy was appointed in 2014 and dismissed in 2015. Thus, there is currently no mediator who can provide direct access for national minorities to the central authorities.

A Plenipotentiary on the Crimean Tatar People was also appointed in 2014 and is still in office. Through a parliamentary resolution, Ukraine has recognized the assembly (*kurultay*) of the Crimean Tatars and their representative office (the *Mejlis*) as legitimate political institutions in the territory of Ukraine.

At the regional executive level, fifteen of 25 oblasts have special divisions responsible for ethno-cultural governance, not including

occupied Crimea.²⁷ In other oblasts, these functions were transferred to other structures, in most cases, as an additional load to major responsibilities of a department or a unit without due attention to the protection of national minorities and without regarding them as a priority.²⁸ In these divisions, only one specialist is usually directly responsible for ethno-cultural issues. Overall 44 specialists are engaged in ethno-cultural governance in the oblasts of Ukraine, most without having received special training or possessing experience. This is a disturbingly small number compared to the number of national minorities resident in these regions.

Advisory and consultative bodies have also come and gone. A resolution of the Cabinet of Ministers on the Provision of Participation of the Public in the Development and Implementation of State Policy adopted in November 2010 provides for the creation of public advisory councils under ministries, oblast and district state administrations. The same decision regulates the procedure of formation and functioning of these structures, and a Cabinet decision from April 2015 restricts the number of members to 35, thus rendering it difficult for some representatives of national minorities to get appointed.

The only consultative bodies currently addressing ethno-cultural issues and governance at the central level are the Committee on Minority Affairs and Cultural Diversity and the Council of Ethnic and National Communities attached to the Ministry of Culture as well as a council under the Ministry of Education. In addition, the Ministry of Culture organizes a scientific committee, the Expert Council on Ethnic Affairs, which supports the Ministry with academic knowledge.

At the regional and local levels, advisory bodies involving national minority representatives exist in less than half of Ukrainian oblasts. In twelve oblasts, councils of national minority representatives are functioning and in three oblasts, there are also sectoral units within public councils established. At these levels, much of the work to get access to decision-makers is done by local non-governmental organizations (NGOs) supported by international donors.

Going forward, a comprehensive model for institutionalization of ethno-cultural relations

at both the central, regional and local levels is the pathway to good ethno-cultural governance with peaceful and stable inter-group relations. Announcing a goal-oriented strategy will immediately send signals to all stakeholders and set out an action plan for achieving the goals. Such strategy requires immediate action as well as longer term overarching objectives.

As a first priority, performing the legislative review and getting the legal framework for ethno-cultural governance in place will ensure the sustainability of a comprehensive model. Secondly, and paralleled, performing a comprehensive review of the need for institutions and functions at all levels will provide a grand overview of needs for future action. This process should be transparent and supported by an open consultation exercise inviting all relevant stakeholders to engage in a peaceful exchange of views. In the meantime, strengthening and supporting existing institutions and functions by making them permanent will furthermore contribute to immediate improvement of the situation by creating trust.

Establishing permanent institutions and functions in areas where such do not exist must also receive immediate attention following the outcome of a comprehensive review. Most importantly, it is necessary that the comprehensive review is undertaken in direct dialogue and full collaboration with national minority representatives.

With specific regard to decentralization, the strategy must furthermore include devising a set of guidelines for the delegation of national responsibilities from the central government to regional and local authorities, including guidelines for cross-border co-operation; it will help avoiding apathy and inaction, as it will raise trust and confidence among all stakeholders and set higher standards for dialogue, interaction and transparency.

To make ethno-cultural governance sustainable, it is furthermore necessary to provide capacity building and training to all public servants and service providers dealing directly with national minorities; this will improve relations and provide the foundation for good implementation of the comprehensive model of ethno-cultural governance. Finally, awareness raising among all stakeholders and the general public about Ukraine's

responsibilities and willingness to enhance its approach to national minority protection and ethno-cultural governance is also required; such campaigns should be implemented at all levels of society and always involve representatives of national minorities in order to avoid misinformation.

Pathway 4 (cross-cutting): Stable inter-ethnic relations through dialogue

One aspect that promotes peace and security, tolerance and respect as well as renders society more dynamic and rich is good inter-group communication. Ukraine has a tradition of being a tolerant nation with respect for all ethno-cultural and religious groups. Yet, many representatives of national minorities call for better inter-ethnic relations through improved dialogue.

Although the Ministry of Education has taken initiatives to educate young persons on multicultural coexistence, in the framework of the Programme "Main Objectives in Awareness Raising among Pupils of Grades 1-11 of General Educational Establishments of Ukraine," it is counter-acted by the current political context in which the space for expressing diversity publicly has diminished.

The situation is worsened by the recent legislative acts in the area of media, such as restrictions on the use of national minority languages in public media and closing of foreign language outlets. Moreover, the use of incendiary language by politicians due to emotions running high on the conflict in eastern Ukraine has a detrimental effect on inter-ethnic relations and on the integration of Ukrainian society.

As a result, society in Ukraine is becoming increasingly polarized and national minority issues are often seen through a prism of security concerns, causing political pressures in the Verkhovna Rada to take regressive steps in the field of national minority rights. National minorities increasingly feel that their representatives are not heard on issues important for society on the whole and for minorities in particular; they are not taken into consideration in the course of public debates and in the making of important decisions. This is partly a result of general moral atmosphere

contributing to the marginalization of certain groups.

To a certain extent, the reason is to be found in the unwillingness and inability of state structures to pay attention to the special needs and problems of national minorities. Public organizations often confine their activity to cultural, folklore and educational spheres. This does not promote political participation and may result in national minorities becoming unable to formulate more complicated and challenging issues and to lobby their demands before authorities.

At the same time, organizational problems of communication exist. National minorities have been expressing concerns regarding the non-existence of a specialized ministry on ethno-cultural governance. The reason for this concern (not shared by the government) is the fact that a ministry, unlike a state service or agency, according to the law cannot only implement but also formulate policy in the respective area. Besides, people think that a unit or a department within a ministry does not have a sufficient administrative 'weight' for the consideration and resolving of systemic problems. In addition, the limited functionality of most advisory councils and the restriction in their numbers prevent access for some.

Going forward, the establishment and maintenance of good inter-ethnic communication between the government, its authorities and the people speaking on behalf of national minorities must be a cross-cutting priority. Good communication can avert tensions and conflicts; aspects of societal disintegration that Ukraine does not need at this time. This will to a large extent depend on goodwill of the government and its understanding of how important the attention to the opinions and needs of national minorities is.

Keeping an open ethno-cultural dialogue about the issues of national minorities' concern will require establishing mechanisms for structured dialogue with efficient channels of communication leading to co-operation that enables national minorities to become active partners not only in the process of decentralization but also in the future policy planning and implementation of programmes, including cross-border co-operation programmes.

In the current situation, the factors that

would stimulate the government and its authorities to behave in such a way are rather weak. It should be of highest priority to establish open, permanent and transparent channels between the beneficiaries, stakeholders and the authorities at all levels of government. Another priority should be to make the agenda for inter-ethnic communication inclusive in terms of allowing all aspects of national minority protection to be discussed and addressed. Avoiding sensitive issues will create tension and open up for subversive movements.

IV. CONCLUSIONS

Securing sustainable ethno-cultural governance and stable inter-ethnic relations in Ukraine would need a two-pronged strategy to address the inter-ethnic challenges. The first prong of the strategy involves advancing reforms across the three pathways of a thorough review of legislation, securing representation in territorial governance and building comprehensive governance. Reforms in these areas can help clarify the legal situation through mainstreaming minority protection in all relevant legislation that must support the substantive minority rights spelled out in a revised Law on National Minorities.

Similarly, mainstreaming national minority representation and participation in territorial governance as well as allowing for ethno-cultural issues to be addressed across the spectrum of regional and local public management would not only enrich Ukraine's approach to regional development but also secure equal treatment and equitable access. Furthermore, institutionalizing equitable representation, participation and access by building permanent consultative and advisory structures both at the political and executive levels and with clear guidelines for decentralized administrations would not only create a functioning approach to ethno-cultural governance but also secure the peace and stability of the regions.

The second prong of the strategy involves promoting stable inter-ethnic relations through open, respectful and institutionalized dialogue. Dialogue is a cross-cutting instrument that can support the aim of implementing the three pathways and priorities for sustainable ethno-



cultural governance; formal and structured dialogue will help stakeholders, beneficiaries and the government achieve better governance together.

Open and respectful dialogue is also the tool to bring on board the sceptics, the majorities. Awareness campaigns are essential to inform the general public about Ukraine's international obligations and wish for enjoying respect on the account of protecting humanand

minority rights. Lack of knowledge-exchange between groups and individuals is often a major deterrent to fostering understanding; sectarianism emerges from lack of open dialogue. Better inter-ethnic communication is needed to avert tensions and conflicts. This is perhaps the most important of the two prongs that must underpin Ukraine's strategy for reforms in the area of ethno-cultural governance.

Notes

¹ This Brief is based on findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme, “National Minorities and Ethno-Political Issues: Belarus, Moldova, Ukraine” – 2014-2017 supported by the Ministry of Foreign Affairs of Denmark.

² Armenian (0.2%), Belarusian (0.6%), Bulgarian (0.4%), Crimean Tatar (0.5%), Hungarian (0.3%), Moldovan (0.5%), Polish (0.3%), Romanian (0.8%), Russian (17.3%), Ukrainian (77.8%) as well as 1.8% other smaller national or ethno-cultural groups like Roma, Ruthenians/Rusyns and diaspora groups from Germany and Italy. There are also Jewish and Muslim minorities in Ukraine. Figures are from 2001 according to The World Factbook, at <<https://www.cia.gov/library/publications/the-world-factbook/geos/up.html>>

³ While there is no official recognition of ethno-cultural groups in Ukraine, the government has stipulated that Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, ‘Moldavian’ (Moldovan), German, Polish, Russian, Romanian, Slovak and Hungarian are recognized languages in Ukraine. Declaration upon signature to the European Charter on Regional or Minority Languages.

⁴ Razumkov Centre, “Which language is native for you?”, at <http://old.razumkov.org.ua/eng/poll.php?poll_id=1134>

⁵ The European Convention on Human Rights (ECHR) in force since 1995, the Framework Convention for the Protection of National Minorities (FCNM) in force since 1998, the European Charter of Local Self-Government in force since 1998 and the European Charter for Regional or Minority Languages (ECRML) in force since 2006.

⁶ The International Convention on the Elimination of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and the Convention of the Rights of the Child (CRC)

⁷ Between 2013 and 2016, the numbers of petitions related to minority rights received by the Commissioner has decreased from 2051 to 303; however, cases initiated by the Commissioner independently has risen from 22 in 2014 to 69 in 2016.

⁸ To the credit of the Ministry of Culture, there has been a number of activities initiated as a result of the Strategy, such as establishment of consultative bodies and addressing Roma integration.

⁹ Law 3501 on Introducing Changes to Certain Legislative Acts of Ukraine

¹⁰ The World Bank, “Ukraine: Systematic Country Diagnostic toward Sustainable Recovery and Shared Prosperity”, report (April 28, 2017).

¹¹ Council of Europe, “Enhancing the National Legal Framework in Ukraine for Protecting the Human Rights of Internally Displaced Persons” (June 2016).

¹² European Commission for Democracy Through Law (Venice Commission), Opinion no. 303 / 2004 CDL-AD(2004)036 on the Draft Law on the Status of Indigenous Peoples of Ukraine, at <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)036-e)>

¹³ For example, the Russian language has been recognized as a regional language in nine regions of Ukraine, and the Bulgarian language has been recognized by the Znamianka City Council and one village council in the raion of Vilshanka (region of Kirovohrad), while the Crimean Tatar language has been recognized in the rural settlement of Novooleksiiivka in the region of Kherson. Polish is recognized by one village council of the rayon of Storozhynets in the region of Chernivtsi, Romanian by ten village councils in the raion of Hertsa, one village council in the raion of Hlyboka, two village councils in the raion of Novoselytsia, four village councils in the raion of Storozhynets in the region of Chernivtsi, and by one rural settlement and three village councils in the raion of Tiachiv and by two village councils in the raion of Rakhiv in the Transcarpathian region. Finally, the Hungarian language has been recognized in the towns of Chop and Berehove, as well as in the raions of Uzhhorod, Vynohradiv (decisions of nine village councils and one rural settlement council) and Berehove (decisions of 27 village councils) in the Transcarpathian region. Some raion or village councils have recognized more than one minority language. The Bolhrad Raion Council in the Odesa region recognized Bulgarian and Gagauz, whereas the village council of Nyzhni Petrivtsi in the raion of Storozhynets in the region of Chernivtsi has recognized Romanian and Polish. Council of Europe, “Fourth Report Submitted by Ukraine on Implementation of the Framework Convention for the Protection of National Minorities”, ACFC/SR/IV (30 May 2016)003.

¹⁴ It is estimated that 10% of students, or around 400,000 children, study in such schools. Most of them are Russian language schools but there are also five Polish schools, 176 Hungarian schools, under 200 Romanian schools, a few Moldovan schools, one Slovak school, while school for Crimean Tatar children is planned. Euromaidan Press, “Ukraine’s new education law unleashes international storm over minority language status”, at <<http://euromaidanpress.com/2017/09/19/ukraines-new-education-law-causes-international-storm-over-minority-language-status/#arvldata>>

¹⁵ See analysis from Gwendolyn Sasse, “Ukraine’s Poorly Timed Education Law”, at <http://carnegieeurope.eu/strategiceurope/?fa=73272&utm_source=rssemail&utm_medium=email&mkt_tok=ey>

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¹⁶ David J. Smith and Mariana Semenyshyn, “Territorial-Administrative Decentralization and Ethno-Cultural Diversity in Ukraine: Addressing Hungarian Autonomy Claims in Zakarpattia”, 95 *ECMI Working Paper* (2016).

¹⁷ See analysis by Balazs Jarabik and Yulia Yesmukhanova, “Ukraine’s Slow Struggle for Decentralization”, at <<http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219>>

¹⁸ European Commission For Democracy Through Law (Venice Commission), Draft Law on Amending the Constitution of Ukraine as to Decentralization of Power, introduced by the President of Ukraine to the Verkhovna Rada on 1 July 2015, Opinion No. 803/2015 CDL-REF(2015)022.

¹⁹ The Reform strategy provisions that 1500-2000 territorial communities will be created instead of more than 11,000 local councils.

²⁰ Protection of national minority rights is addressed in inter-State agreements between Ukraine and the following States: Germany, Hungary, Romania, the Russian Federation and the Slovak Republic. In a number of cities across Ukraine, consulates of neighbouring countries play an active role in supporting projects of national minority organisations and facilitate cross-border contacts. Intergovernmental bilateral commissions have been established on the basis of bilateral agreements with Germany, Hungary, Romania and the Slovak Republic to act as fora for discussing issues affecting national minorities. See Council of Europe, “Fourth Report Submitted by Ukraine on Implementation of the Framework Convention for the Protection of National Minorities”, ACFC/SR/IV (30 May 2016)003.

²¹ In 2012, the Hungarian minority, which has previously enjoyed the protection of electoral districts, was split between the districts of Uzhhorod, Mukachevo, Khust and Vynohradiv.

²² In twelve oblasts, councils of national minority representatives are functioning under the heads of oblast administrations. In three oblasts, there are also sectoral units within public councils set up according to the decisions of the heads of oblast administrations. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.

²³ Twelve programmes directly related to ethno-cultural issues are effective in Vinnytsia, Volhyn, Zaporizhzhia, Kropyvnytskyi, Mykolaiv, Odesa, Kherson and Chernivtsi. In addition, the city of Kyiv and Zakarpattia (Transcarpatian) oblast have two programmes each. A paradigm of such programmes, is the Regional Programme for the Support to National Cultural Societies and Ukrainian Diaspora for 2016-2018 in Chernivtsi oblast. Its primary goal is to maintain the identity of national minorities, provide financial support to ethno-cultural communities for the restoration and preservation of their cultures and traditions. The programme is financed through the regional budget. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.

²⁴ There are some examples of formation of political parties by national minorities. These are the Party of Hungarians of Ukraine, KMKS; Democratic Party of Hungarians of Ukraine; Party of the Russian Block; Party of Poles - Solidarity. The latter one, created in 2014, positioned itself as party of all ethnic minorities of Ukraine, but it did not and does not play any noticeable role in political life. In 2016, there were formed also the Roma Party of Ukraine and the Georgian Party of Ukraine. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.

²⁵ For example, in the local elections of 2015, Hungarian parties won a wide representation in local councils of Zakarpattia oblast with the Party of Hungarians of Ukraine (KMKS) winning eight seats out of 64 in the Zakarpattia Oblast Council. Hungarian parties are also represented in district councils. As a whole, in Zakarpattia oblast the number of deputies elected to local governments from KMKS reached 63 persons; from the Democratic party of Hungarians of Ukraine, the number was 26. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.

²⁶ Specifically, the working group is tasked with ensuring proper implementation of the government’s Strategy on the Protection and Integration of the Roma minority.

²⁷ Vinnitsa and Zakarpattia (Transcarpathian) oblasts have independent structural divisions vested with respective functions; Zakarpattia has specifically established structures for the protection of Roma communities. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.

²⁸ Ethno-cultural governance is assigned to the departments of culture in fifteen oblasts, and in seven oblasts to the units responsible for information and public relations. Findings collected by the European Centre for Minority Issues through its Eastern Partnership Programme.



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