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# FINAL REPORT



## GAP ANALYSIS OF UKRAINIAN YOUTH LEGISLATION IN RELATION TO RECOMMENDATIONS OF THE EU-UKRAINE ASSOCIATION AGREEMENT AND OTHER RELEVANT EU POLICIES

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# GLOSSARY

ECHR	European Convention of Human Rights and Fundamental Freedoms
EU	European Union
HIV/AIDS	Human immunodeficiency virus infection and acquired immune deficiency syndrome
LGBTI	Lesbian, gay, bisexual, transgender and intersex
ICTs	Information and communication technologies
STIs/STDs	Sexually transmitted infections/sexually transmitted diseases
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNICEF	United Nations Children’s Fund

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# 1. INTRODUCTION

This report presents the results of an assessment of youth policy and legislation in Ukraine. The purpose of the assessment is to support the Ministry of Youth and Sports of Ukraine and other involved national and local institutions and organisations in applying innovative youth development approaches and integrating them in new policies, strategies and services related to youth development by:

- a) Conducting a youth legislation and policy gap analysis in Ukraine, including identifying the “gaps” in existing national youth legislation and policy; and
- b) From the findings of the gap-analysis, providing recommendations in accordance with the EU-Ukraine Association Agreement for strengthening legislation and policy relating to youth in Ukraine.

According to the EU-Ukraine Association Agreement, the Parties agree to closely cooperate in the field of youth policy and non-formal education of young people.<sup>1</sup> This includes:

- (a) Facilitating the integration of young people into society at large by encouraging their **active citizenship** and spirit of initiative;
- (b) Helping young people **acquire knowledge, skills and competencies outside the educational systems**, including through **volunteering**, and recognising the value of such experiences;
- (c) Enhancing cooperation with third countries;
- (d) Promoting cooperation between youth organisations in Ukraine and in the EU and its Member States; and
- (e) Promoting **healthy lifestyles**, with a particular focus on youth.

Youth policy and legislation is a wide and encompassing field; however, as set out in the terms of reference (annex A), the focus of the capacity-gap analysis will be on the following four interrelated areas (as highlighted in bold above):

- Promoting healthy lifestyles and sport;
- (Active)<sup>2</sup> citizenship;
- Non-formal education; and
- Volunteering

The analysis also considers cross-cutting issues in youth policy, as set out in EU and international standards. These cross-cutting issues include:

- Addressing social exclusion;
- Non-discrimination;
- Impact of conflict/post conflict context on youth and youth policy

It should be noted that the analysis was of youth policy and law and not on the extent or nature of its implementation.

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<sup>1</sup> EU-Ukraine Association Agreement, Article 434.

<sup>2</sup> Active' is added to the area of citizenship to include it as a broader category encompassing political and social participation and engagement of young people, rather than citizenship in the 'narrow' sense.

## 2. METHODOLOGY

A full methodology is attached at Annex B. However, it is useful to set out some points about the design of the study and how key terms are defined and understood for the analysis, below.

### 2.1. DESIGN AND APPROACH

The analysis measures national laws, including, in particular, the Law on Support for Social Formation and Development of Youth, Law on Physical Education and Sports against international and EU standards. Relevant international standards were reviewed in order to draw out the key components of states' obligations as regards the development of policies, strategies and services relating to youth development. A similar review was conducted of the regional (EU) standards. An assessment of recognised best practices was also carried out to inform the recommendations and best practices. First, information was gathered on key issues facing youth in Ukraine, in order to assess the responsiveness of youth legislation and policy to unique issues facing young people in Ukraine. Second, a set of indicators / key questions were developed based on international and EU standards, which provided the framework for the analysis of the national Laws and policies. Indicators were heavily informed by the EU reporting framework on the Youth Strategy, as set out in the EU World Youth Report 2012. Third, relevant national laws (including Acts and Decrees) and policy documents were selected.

Table 1 provides a summary of international and regional standards and Ukraine laws and policy documents that were used in the analysis.

**Table 1: Key standards used to inform the analysis:  
international, EU and Ukrainian**

	INTERNATIONAL	EU	UKRAINIAN
HEALTHY LIFESTYLE AND SPORT	<p>Right to enjoyment of highest attainable level of health (Article 12 ICESCR; Articles 4, 6 and 24 UNCRC)</p> <p>Right to protection from use of drugs (article 33, UNCRC)</p> <p>UNCRC, General Comment No. 4 on adolescent health and development (CRC/GC/4/2003)</p>	<p>EU Youth Policy (field of action 4 – health and sport)</p> <p>EU Council Resolution on Health and Wellbeing</p> <p>EU Resolution on Mental Health</p> <p>EU Physical Activity Guidelines</p>	<p>Law of Fundamental Healthcare Principles of Ukraine, 1993</p> <p>Law on Social Work with Families, Children and Youth, 2001</p> <p>Law on Physical Culture and Sports, 1994</p> <p>Law on AIDS Prevention and Social Security of the Population of Ukraine, 2009 (as amended)</p> <p>Family Code of Ukraine</p>

	INTERNATIONAL	EU	UKRAINIAN
ACTIVE CITIZENSHIP	<p>Right to be heard (UNCRC Article 12)</p> <p>Lisbon Declaration (participation of youth in development of policy and programmes)</p> <p>United Nations Framework Approach for the International Year of Youth: Dialogue and Mutual Understanding</p> <p>GA 68/130. Policies and programmes involving youth (youth participation)</p>	<p>EU Youth Policy (field of action 5 – participation)</p> <p>Communication addressing the concerns of young people in Europe: Implementing the European Youth Pact and promoting active citizenship, 2005</p> <p>Communication on Promoting young people's full participation in education, employment and society, 2007</p> <p>Revised European Charter on the Participation of Young People in Local and Regional Life, 2008</p> <p>Recommendation (98) 8 on children's participation in family and social life</p> <p>Recommendation (97) 3 on Youth participation and the future of civil society</p>	<p>Law on Youth and Children's Organisations 1999</p>
NON FORMAL EDUCATION		<p>Council Recommendation on the validation of non-formal and informal learning (2012/C 398/01)</p> <p>Recommendation on the promotion and recognition of non-formal education/ learning of young people (2003)</p>	<p>Law on Education, 1991 (as amended, 2015)</p>
VOLUNTEERING		<p>European Youth Forum, <i>Volunteering Charter: European Charter on the rights and responsibilities of volunteers</i> (2012)</p>	<p>Law on Volunteering, (as amended) 2015</p>

	INTERNATIONAL	EU	UKRAINIAN
GENERAL	<b><u>TREATIES</u></b>		
	KUN Convention on the Rights of the Child (1989) (UNCRC)	European Convention on Human Rights (1950)	Law on State Programme “National Action Plan to Implement the UN Convention on the Rights of the Child until 2016, 2009”
	International Covenant on Civil and Political Rights (1966)	Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007)	Law on Protection of Childhood, 2001
	International Covenant on Economic, Social and Cultural Rights (1966)	The Bologna Declaration of 19 June 1999, Joint declaration of the European Ministers of Education	Law on Fostering Youth Socialisation and Development in Ukraine, 1993 (as amended)
	UN Convention on the Elimination of all Forms of Discrimination Against Women (1979)	European Union Youth Strategy, 2010 – 2018	Decree of the President of Ukraine No. 532/2013 on the Strategy for the State Youth Policy Development for the Period up to 2020, 2013 (“Ukraine Youth Strategy”)
	Convention on the Rights of Persons with Disabilities (2007)	European Commission White Paper: A New Impetus for European Youth, 2001	
	UN Declaration on Violence Against Women (1993)		
	<b><u>OTHER INSTRUMENTS</u></b>		
	Lisbon Declaration on Youth Policies and Programmes, adopted at the World Conference of Ministers Responsible for Youth (1998)		Concept for State Programme ‘Youth of Ukraine’ for 2016 – 2020 (“Concept for 2016 – 2020”)
	UN Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples (1965)		Law on Non-Discrimination

## 2.2. DATA COLLECTION

Information was collected initially through desk-based research, and set out in a separate report, which presented the results of an initial analysis and also highlighted gaps in information, along with key questions for further review. In January 2015, the Consultant carried out a series of key informant (semi-structured) interviews to gather further information on policy development processes, domestic laws and regulations and how they apply and what impact they have in practice, along with perceived gaps in law and policy. Interviews were carried out with relevant government Ministries and Agencies, along with civil society organisations run by young people or who work with youth and UN organisations with relevant mandates. Table two sets out the interviews that the Consultant carried out in Kyiv January 2015.

**Table 2: Key informant interviews**

GOVERNMENT	<ul style="list-style-type: none"> <li>• Deputy Director, Department of Youth, Ministry of Youth and Sports</li> <li>• Representative of Department of Out-of-School Education and Children's Rights and Deputy Chief, Department of Content of Education (Primary and Secondary), Ministry of Education and Sciences</li> <li>• Specialist, Department of Prevention of Dangerous Diseases, Ministry of Social Policy</li> <li>• Deputy Head of Social Service Provision, State Employment Centre</li> <li>• Director, State Institute of Youth and Family Policy</li> <li>• Director, Sport for All organisation</li> <li>• Deputy Physician-in-Chief, Institute of Paediatrics, Obstetrics and Gynaecology of Medical Sciences of Ukraine</li> </ul>
CIVIL SOCIETY	<ul style="list-style-type: none"> <li>• Representative, European Youth Parliament</li> <li>• National Organisation of Scouts</li> <li>• Youth Policy Expert</li> <li>• Youth Specialist, Network for People Living with HIV in Eastern Europe</li> </ul>
UNITED NATIONS	<ul style="list-style-type: none"> <li>• Consultant on HIV/AIDS Legislation and Policy, UNDP</li> <li>• Youth and Adolescent Development Specialist, UNICEF</li> <li>• Programme Officer, UNFPA</li> <li>• Regional Advisor, UNODC</li> </ul>

Information was provided to each interviewee about the nature and purpose of the project and the ethical guidelines leading the qualitative data collection process. All interviewees signed consent forms prior to the interview.

In addition, many interviewees took part in a validation workshop in Kiev in January 2015. At this workshop, the consultant presented preliminary findings from the assessment and received feedback from participants.

In light of new legal developments from March 2015 (in particular in the areas of non-formal education and volunteering), the consultant incorporated changes into a revised and updated analysis, which was completed in June 2015.



## 2.3. LIMITATIONS

The Consultant relied on translated laws and policy documents, some of which were not “official” versions. This may have resulted in different and perhaps inaccurate interpretations of provisions. However, the interpretations of several key provisions were checked during the in-country interviews with stakeholders, thus minimising the likelihood of incorrect interpretations of law and policy documents.

One of the planned in-country interviews (with the Ministry of Health) was unable to be carried out. This may have resulted in gaps in information; however, the Consultant was able to interview a representative from a key Government body working in the field of health (Institute of Pediatrics, Obstetrics and Gynecology of Medical Sciences of Ukraine), and this elucidated useful data, minimising the impact of being unable to carry out an interview with a representative from the Ministry of Health. Also, each Ministry was asked to secure an appropriate representative for the interviews, and was supplied with information as to the purpose and content of the interviews. However, in some cases, the representative selected was unable to provide information in key areas.

## 2.4. DEFINITION OF KEY TERMS

It is important to define key terms used in the analysis to ensure they are understood and used in a consistent manner.

For the purposes of this analysis, **“youth”** is defined as “persons between the ages of 15 to 24, in accordance with the official United Nations definition.”<sup>3</sup> This also accords with dominant understandings of youth as being a period of transition from the dependence of childhood to adulthood’s independence. Youth can be understood as a fluid category, rather than a fixed age-group; however, age is the easiest way to define this group in a consistent manner across countries, particularly in relation to education and employment. Therefore “youth” is often indicated as a person between the age where he/she may leave compulsory education, and the age at which he/she finds his/her first employment. According to UNESCO, *“This latter age limit has been increasing, as higher levels of unemployment and the cost of setting up an independent household puts many young people into a prolonged period of dependency.”*<sup>4</sup>

It is noted that the definition of youth in key policy and legal instruments in Ukraine significantly differs from this definition, and is generally considered to include young people aged 14 – 35 years;<sup>5</sup> a very broad age range that appears to be open to significant debate within Ukraine,<sup>6</sup> as explored below. Therefore, in accordance with the approach of UNDP, “youth” is defined somewhat flexibly for this analysis, while at the same time noting that the focus is *primarily* on young people aged 15 – 24 years.<sup>7</sup>

There is no universally accepted definition of **“active citizenship”**; however, it is generally accepted that it refers to the involvement of individuals in public life and affairs at all levels. According to the Open Society Foundation, *“active citizenship means people getting involved in their local communities and democracy at all levels, from towns to cities to nationwide activity.”*<sup>8</sup> To be “active citizens”, young people need to develop the skills, knowledge and understanding to be able to engage in decisions about their communities and be involved in democratic processes.

**“Non-formal education”** does not include all kinds of learning that happens outside formal systems (e.g. schools). The EU-adopted definition of “non-formal education” is *“learning that is not provided by an education or training institution and typically does not lead to certification. It is, however, structured (in terms of learning objectives, learning time or learning support.)”*<sup>9</sup> The European Youth Forum provides a more detailed definition: *“non-formal education corresponds to a collection of teaching tools and learning schemes that are seen as creative and innovative alternatives to traditional and classical teaching systems. Via personal interaction and flexibility in problem solving, people can discuss matters of relevance to their lives as citizens in society and integrate their knowledge.”*<sup>10</sup> According to the Youth Forum, different non-formal education can be delivered by a variety of persons; however, it is commonly provided by NGOs involved in youth and community work. It is purposive, voluntary and planned (but may be unstructured).

The assessment adopts the broad definition of “health” set out by the World Health Organisation. According to this definition, health is *“a state of complete physical, mental and social*

<sup>3</sup> Secretary-General’s Report to the General Assembly, A/36/215, 1981, as affirmed by Secretary-General’s Report to the General Assembly, A/40/256, 1985. For further information regarding the definition of youth, please also see UN Department of Economic and Social Affairs webpage, “Definition of Youth”: <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>.

<sup>4</sup> UNESCO, What do we mean by ‘youth’? (<http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>).

<sup>5</sup> Law on Fostering Youth Socialisation and Development in Ukraine, 1993, article 1.

<sup>6</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 26 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>7</sup> UNDP, Youth Strategy 2014 – 2017, p. 9: ‘In terms of programming, UNDP proposes to focus principally on young women and men ages 15 – 24, but also to extend that youth group to include young men and women ranging from ages 25 – 30 (and even beyond through 35), based on contextual realities and regional and national youth policy directives.’

<sup>8</sup> Open Society Foundation, ‘Active citizenship’ (<http://www.opensocietyfoundations.org/voices/active-citizenship-can-change-your-country-better>).

<sup>9</sup> The EC (2001) Communication on Lifelong Learning: formal, non-formal and informal learning (Cedefop, 2001).

<sup>10</sup> Council of Europe, Committee on Cultural and Education, YouthPass, Non-formal education report, Doc. 8595, 15 December 1999.

*well-being and not merely the absence of disease or infirmity.*<sup>11</sup> “Lifestyle” is defined as it is generally understood: “the way in which someone lives”.<sup>12</sup> A **“healthy lifestyle”** is therefore the steps, actions and strategies that persons put in place to achieve optimum health (an optimum state of complete physical, mental and social wellbeing). The approach used by WHO is based on the ecological model, which recognises that various influences and underlying determinants can impact on healthy behaviours. The ecology model of public health, originally developed by Bronfenbrenner (1977), describes the interrelatedness of different spheres of social life and the interactions between individuals and their environments.<sup>13</sup> The implications of adopting an ecology model interpretation of health and “healthy lifestyles” for this analysis is that a broad range of factors and interventions will be considered relevant to issues of youth and health, including social and environmental factors and how they impact on young people. In short, it requires a holistic and comprehensive approach to analysis and policy development.

The analysis adopts the EU definition of **“volunteer”** contained in the Volunteering Charter: *“A volunteer is a person who carries out activities benefitting society, by free will. These activities are undertaken for a non-profit cause, benefitting the personal development of the volunteer, who commits their time and energy for the general good without financial reward.”*<sup>14</sup>

**Social exclusion** is defined broadly for the purposes of this analysis, to include not just the traditional dimensions of poverty, but also the multi-dimensional aspects of material and non-material deprivation. The analysis adopts the definition of social exclusion used by UNDP, which includes *“the social, political, and economic deprivation suffered by marginalised individuals. This deprivation can be read in terms of an imposed inability to enjoy fundamental human rights, such as the right to education, the right to work and to a fair remuneration, the right to health and wellbeing, and the right to vote and to stand for elections.”*

UNDP recognises that, globally, some groups of young people are particularly vulnerable and require specific attention. These groups could include: *“young men and women from indigenous, ethnic and minority groups, migrants, refugees and Internally Displaced Persons (IDP), Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI), young people living with HIV, young people with disabilities or living in conditions of poverty and/or conflict, young sex workers and drug users, those facing religious discrimination, those suffering from domestic and sexual violence, widowed young women, as well as young women entering into forced marriages or victims of human trafficking into slavery or the sex industry.”*<sup>15</sup>

**Discrimination** is understood as it is in international human rights law to include *“any distinction, exclusion, restriction or preference which is based on a number of identified grounds and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights or freedoms.”*<sup>16</sup>

**Stigmatisation** is related to discrimination and used in this analysis in the context of HIV/AIDS and LGBTI (young) persons. UNAIDS defines HIV-related stigma and discrimination as *“a process of devaluation of people either living or associated with HIV and AIDS... Discrimination follows stigma and is the unfair and unjust treatment of an individual based on his or her real or perceived HIV status.”*<sup>17</sup>

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<sup>11</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

<sup>12</sup> See Oxford English Dictionary Online.

<sup>13</sup> World Health Organization, World report on violence and health, 2002.

<sup>14</sup> European Union, European Youth Forum, Volunteering Charter: European Charter on the rights and responsibilities of volunteers, 2012.

<sup>15</sup> UNDP, Youth Strategy 2014 – 2017, p. 11.

<sup>16</sup> Human Rights Committee, General Comment No. 8: Non-discrimination, 1989.

<sup>17</sup> UNAIDS, Reducing HIV stigma and discrimination: A critical part of national AIDS programmes, 2007, p. 9 ([www.unaids.org/sites/default/files/en/media/unaids/contentassets/dataimport/pub/report/2008/jc1521\\_stigmatisation\\_en.pdf](http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/dataimport/pub/report/2008/jc1521_stigmatisation_en.pdf)).

# 3. YOUTH AND YOUTH POLICY IN UKRAINE: BACKGROUND AND CONTEXT

Ukraine has experienced many political and economic changes since gaining independence in 1992, following the collapse of the Union of Soviet Socialist Republics. During the Soviet era, Ukraine had a large agricultural output compared to the rest of the USSR; however after 1991, this output fell considerably. Furthermore, Ukraine was highly dependent on Russia as a major oil importing country. Ukraine's reliance on Russia to import oil and gas had a significant impact on the politics of the country, particularly in regard to Ukraine's relationship with Europe and the moves towards reforms in various sectors in order to align more with European preferences and policies. President Yanukovich and his government lost power in April 2014 which increased the instability in the national economy as previously, Russia had been providing much financial assistance and reduced oil and gas prices. International organisations have also worked to improve the economy more recently; the International Monetary Fund has been part of an assistance package of \$14-18bil.<sup>18</sup>

The economic instability has been heightened by fighting in the east of the country, which began in April 2014 when pro-Russian activists seized control of government buildings in towns and cities in the Donetsk and Luhansk regions. The ensuing conflict has resulted in the deaths of 5,358 people, and another 12,235 have been wounded since mid-April last year.<sup>19</sup> Around 1 million persons have been displaced by the conflict; almost half of these are internally displaced persons.<sup>20</sup> According to the UN High Commissioner for Human Rights, "any further escalation will prove catastrophic for the 5.2 million people living in the midst of conflict in eastern Ukraine."<sup>21</sup> However, there are public declarations of representatives of armed groups rejecting the ceasefire that is in place and vowing to accelerate the offensive.<sup>22</sup>

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<sup>18</sup> CIA, World Fact Book (<https://www.cia.gov/library/publications/the-world-factbook/geos/up.html>).

<sup>19</sup> United Nations in Ukraine, Dangerous escalation in conflict proving catastrophic for civilians, 3 February 2015 (<http://www.un.kiev.ua/en/information-centre/news/1948>).

<sup>20</sup> UNICEF Ukraine, Conflict in Ukraine leaves almost 150 schools closed, 19 December 2014 ([http://www.unicef.org/ukraine/media\\_27126.html](http://www.unicef.org/ukraine/media_27126.html)).

<sup>21</sup> United Nations in Ukraine, Dangerous escalation in conflict proving catastrophic for civilians, 3 February 2015 (<http://www.un.kiev.ua/en/information-centre/news/1948>).

<sup>22</sup> United Nations in Ukraine, Dangerous escalation in conflict proving catastrophic for civilians, 3 February 2015 (<http://www.un.kiev.ua/en/information-centre/news/1948>).

## 3.1. YOUTH IN UKRAINE

Young people (aged 15-24) currently make up around 11% of Ukraine's population.<sup>23</sup> However, Ukraine considers those between 14 and 35 to be "youth", and around 32% of the population of Ukraine fall within this age bracket.<sup>24</sup> Given the decreasing birth rates and aging population, the demographic makeup of the country is predicted to change during the next few decades.<sup>25</sup> The population of the country has been, and will continue, to shrink due to three factors – fewer births, a high incidence of mortality among working male adults (due to health reasons) and also due to migration for economic reasons.<sup>26</sup> Regional disparities are also significant, and those living in more rural locations have reduced access to services.<sup>27</sup> Around 20% of the population are not ethnically Ukrainian – the largest minority in the country are Russians who make up 17.4% of the total population.<sup>28</sup> Around half of the population identifies as Orthodox (although there are several branches contained within this grouping).<sup>29</sup>

The GDP per capita in Ukraine is \$7420.7<sup>30</sup> and it is classed as a lower middle-income country by the World Bank.<sup>31</sup> Life expectancy at birth averages around 71 years, although there is some disparity between men and women. Both primary school enrolment for children and literacy rates for 18-24 year olds are between 99-100%.<sup>32</sup> In 2009, around one million people in Ukraine were unemployed, and young people made up 54% of this figure. Consequently, unemployment of young people (aged 14-25) is relatively high at 18%.<sup>33</sup> Youth unemployment has also been highlighted as an issue in the Concluding Observations of the Covenant on Economic, Social and Cultural Rights.<sup>34</sup>

A Youth Development Index developed by the Commonwealth measuring youth development in five key areas (education, health and well-being, employment, political participation and civic participation) ranked Ukraine as a medium level country for youth development with a score of 0.73 out of a possible 1.<sup>35</sup> In a breakdown of this result, Ukraine scored highly on education (0.93) and employment (0.79), average on health and wellbeing (0.675) and poorly on civic and political participation (0.28 and 0.16 respectively).

A report by Council of Europe on Ukraine Youth Policy in 2013 found that the main concerns held by young people fall primarily into three categories – healthy lifestyles, employment and patriotic education.<sup>36</sup>

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<sup>23</sup> CIA, The World Factbook (<https://www.cia.gov/library/publications/the-world-factbook/geos/up.html>).

<sup>24</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 7 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>25</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.20-21 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>26</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.22 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>27</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.22 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>28</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.22 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>29</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.23 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>30</sup> Bertelsmann Stiftung's Transformation Index, BTI, Ukraine Country Report, p. 2 ([http://www.bti-project.de/uploads/tx\\_itao\\_download/BTI\\_2014\\_Ukraine.pdf](http://www.bti-project.de/uploads/tx_itao_download/BTI_2014_Ukraine.pdf)).

<sup>31</sup> World Bank, Ukraine (<http://data.worldbank.org/country/ukraine>).

<sup>32</sup> UNICEF Ukraine, Country Statistics ([http://www.unicef.org/infobycountry/ukraine\\_statistics.html](http://www.unicef.org/infobycountry/ukraine_statistics.html)).

<sup>33</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team (2013), p.92 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ukraine, 2014, para. 12.

<sup>35</sup> The Commonwealth, Youth Development Index, 2013, p. 9 ([http://www.youthdevelopmentindex.org/cms/cms-youth/\\_images/197918019952385f3219c75.pdf](http://www.youthdevelopmentindex.org/cms/cms-youth/_images/197918019952385f3219c75.pdf)).

<sup>36</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p.8 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

The conflict in the Donetsk and Luhansk regions has had a huge impact on Ukraine's children and young people. UNICEF reports that, of the one million persons who have been displaced by the conflict, around one third of these are children. The conflict has also left some 150 schools closed, disrupting the education of around 50,000 children.<sup>37</sup>

A common issue raised by interviewees is the impact of the conflict on youth policy development. Currently, there is a Government moratorium on spending, with budgets being re-directed into defence. This has had an impact on the implementation of laws, including those relating to youth, and (youth) service delivery.

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<sup>37</sup> ЮНІСЕФ Україна, Через конфлікт в Україні майже 150 шкіл залишаться зачиненими, 19 грудня 2014 р. ([www.unicef.org/ukraine/media\\_27126.html](http://www.unicef.org/ukraine/media_27126.html)).

## 3.2. OVERVIEW OF YOUTH POLICY IN UKRAINE

At the global level, key youth policy standards are contained in the 1998 Lisbon Declaration on Youth Policies and Programmes, agreed at the World Conference of Ministers Responsible for Youth. The Conference articulated the need for governments to develop *“national youth policies and operational programmes, at appropriate levels, to implement the World Programme of Action for Youth to the Year 2000 and Beyond, taking into account the national priorities, realities and limitations arising from different socio-economic and cultural development contexts.”* Ministers signed up to a range of commitments, including the need to match a policy with implementation processes and resources, mainstream youth issues beyond a singular policy document, consider the needs and priorities of young people themselves, develop measurable goals and indicators for accountability, and collect data and commit to make research findings public.

The key instrument at the EU level relating to youth policy is the EU Youth Strategy, 2010 – 2018. The Strategy calls for *“[g]reater collaboration between youth policies and other policy areas such as education, employment, inclusion and health”* and a *“joined-up”* policy making by *“feeding in”* the other processes of policy coordination with its specific expertise and by providing young people with an opportunity to have a say and make their voices heard.”

The objectives of the EU Youth Strategy are to:

- (i) create more and equal opportunities for all young people in education and in the labour market; and
- (ii) promote the active citizenship, social inclusion and solidarity of all young people.

The EU Youth Strategy advocates a cross-cutting approach branching out into eight different policy areas (“fields of action”): Education and Training; Employment and Entrepreneurship; Social Inclusion; Health and Well-being; Participation; Culture and Creativity; Volunteering; and Youth and the World.

The government in Ukraine has taken a range of legislative and policy initiatives regarding youth. The Law Fostering the Socialisation and Development of Youth 1993 is a key instrument. It outlines the parameters for the implementation of youth policy and includes key organisational, socio-economic, legal and political principles for the socialisation of young citizens of Ukraine. The 2013 youth policy strategy, adopted by decree of the Ukrainian President, states that its main purpose is to put in place an enabling environment for the “intellectual, moral and physical” development of youth, for ensuring its participation in the development and implementation of youth policy from national through local levels, and to increase the labour market competitiveness of Ukrainian young people. The priorities of the strategy are: affordable education, healthy lifestyles, employment, housing, participation and access to European programmes. It is based on three core principles: prioritisation of youth problems and initiatives; involving youth NGOs in the process of decision-making; and transparency and openness.

The tasks set out in the strategy are:

- The consolidation of efforts directed at creation of favourable conditions for intellectual, moral and physical development of youth and realisation of their educational and creative potential;
- Ensuring participation of young people in the process of formation and realisation of state youth policy;
- Increasing the effectiveness of the state youth policy realisation at the national, regional and local levels; and
- Increasing the competitiveness of young people in the labour market.

The strategy covers the period from 2013 to 2020. Recently, a “concept paper” of a National Programme Concerning Youth was developed for 2016 – 2020. The Concept Paper has been developed by a Working Group involving key Government Ministries, youth and other civil society organisations and United Nations organisations. The Concept Paper sets out a number of activities under six strategic priority areas, including: (1) citizenship and patriotism; (2) healthy and safe lifestyle; (3) development of non-formal education; (4) youth employment; (5) youth housing; and (6) partnership support of young people on temporary occupied territories and young internally displaced persons. The strategic priorities sit within an overall programme goal: *“to create favourable conditions for development and self-fulfillment of young Ukrainians, educated as patriots and citizens.”* According to the Concept Paper, the Youth Policy Programme is *“based on the framework of common European principles – opened, evidence-based concepts, equal opportunities, programme feasibility, cross-sectoral and accountable approach and direct involvement of young people in its implementation.”*



### 3.3. INSTITUTIONAL FRAMEWORK FOR YOUTH POLICY DEVELOPMENT AND IMPLEMENTATION

Responsibility for youth policy rests with the **Ministry of Youth and Sports**, which is currently leading the development of the 2016 – 2020 Concept Paper. According to Decree 390 of the President of Ukraine of 2013 its youth specific tasks include the development of measures to promote healthy lifestyles, youth employment, conditions for the intellectual and creative self-development of youth, social development of children and youth, humanistic values and patriotism among young people. Further, it is responsible for state support to youth and children's associations, and for promoting volunteering.

Youth issues are multi-sectoral and cut across many different areas of governance. Government Ministries and bodies working in non-youth specific sectors also have a significant role in youth law and policy. The Ministry of Education and Science is responsible for all levels of formal education (pre-school, primary school, secondary school and tertiary education) and vocational and out-of-school education. The **Ministry of Education and Science** is also responsible for teacher training. The **Ministry of Health** is divided into four State Services, along with a Central Body. The State Services include: Epidemiological Service; Medications; Control of Drugs; and HIV/AIDS and Other Socially Dangerous Illnesses. The Ministry of Health manages Youth Friendly Clinics, which were developed in collaboration with UNICEF. The **Ministry of Social Policy** is responsible for the provision of social services to "particularly vulnerable groups" of persons. Particularly vulnerable groups are defined by Regulation of the Cabinet of Minister 896 of 2013 as: families (persons) with difficult life conditions include the families (persons) who are not able to overcome or minimise independently these difficult conditions: cruel treatment towards the children in the family, absence of permanent job of the working-age members of the family (person); homelessness; enduring the punishment restraining liberty of one of the family members (person); violence in the family, long-term disease; disability; congenital physical and mental abnormalities; low income, unemployment of a family member (person) leading to improper maintenance of the child and his/her care; lifestyle, which results in the inability of one of the family members (person) partially or completely to take care of their own personal lives and to participate in public life; evasion of the parent's duty to bring up the children; the removal of the child from his/her parents' custody without deprivation of parental rights; natural disaster; discrimination against individuals and / or groups. **Sports for All** is a State organisation that sits under the Ministry of Youth and Sport, which was established by the President of Ukraine in 2003. Its focus is on the promotion of healthy lifestyles in the general population, with a particular focus on sport and physical activity.

The **State Institute of Youth and Family Policy** is also a key institution. It sits under the Ministry of Youth and Sport and its mandate is to carry out research on youth and family issues for use by Government in policy making.

A potentially very welcome development is that a **Deputy Minister for European Integration** was recently established. Each Ministry also has a Deputy Director for European Integration. This is relevant if youth policy reform issues are conceived as one part of the European integration process.

It should be noted that regional authorities are very important actors in the implementation of youth policy. However, as this analysis focuses on national level youth policy and law, regional policy and its implementation are not included in this report.

Ukraine has a national youth association: The **Ukrainian Youth Forum**, which was established in 1995, is a member of the European Youth Forum.<sup>38</sup> According to the 2013 Council of Europe Review of youth policy, the Ukrainian Youth Forum included 16 all-Ukraine children's

<sup>38</sup> Ukrainian Youth Forum (<https://www.facebook.com/UkrainianYouthForum>).

and youth organisations and is active in healthy lifestyles, technology, innovation, business development, ecology and democratic development of the state. Also, a **European Youth Parliament** was established in Ukraine in 2000, and registered with the Government of Ukraine in 2002. The European Youth Parliament conducts national and regional conferences, training sessions and workshops on youth issues, and selects delegations to represent Ukraine at the European Youth Parliament international and regional sessions.<sup>39</sup>

Several **United Nations** organisations are quite heavily involved in youth policy, including, notably UNDP, UNFPA, UNICEF (which focuses on particular at risk groups) and UNODC (which works particularly on drug policy and HIV prevention). A UN Working Group on Youth, which is headed by the UNFPA Country Representative, was recently established. The purpose of the working group is to ensure cohesion in the approach of the UN to youth issues and avoid duplication in priority areas and programmes. There are plans to integrate a Youth Advisory Panel into this Working Group in 2015, which will involve around 5 – 7 young people.<sup>40</sup>

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<sup>39</sup> European Youth Parliament – Ukraine (<http://www.eyp-ua.org/en/about-us>).

<sup>40</sup> Interview with Programme Officer, UNFPA.

# 4. GAP ANALYSIS: FINDINGS ON OVERARCHING ISSUES

## 4.1. THE DEFINITION OF “YOUTH”

As noted above, there are inconsistencies between the Ukraine definition of youth (14 – 35 years) and the United Nations definition, which defines youth as persons aged 15 – 24 years.<sup>41</sup> The Ukraine definition is also inconsistent with EU definitions: the EU Youth Strategy 2009, for instance, defines “youth” as persons aged between 13 and 30 years.

Almost all interviewees felt that the Ukrainian definition of youth was too broad and that this had negative implications for the targeting of resources, setting of priorities and effectiveness of programmes and other initiatives. The following quotes are an illustration of perspectives from interviewees in relation to the 15 – 35 year age band:

- *“It should be lowered to 30 years. If you compare an 18 year old with a 35 year old, it is a completely different life stage. The ideas for responding to the youngest compared to the oldest in the age band is so different.”<sup>42</sup>*
- *“It is not possible to say that people aged 35 are young. Normally, people start working in their early 20s. 14 years later, are they still young? No. You can’t consider 35 to be “youth.” They should lower the age range to, say, 28 years.”<sup>43</sup>*
- *“14 and 35 year olds have different needs. “Youth” should be defined as 15 – 24 year olds.”<sup>44</sup>*
- *“It’s important to reduce the age of “youth” to 14 – 30 years...if the age band is reduced, we can concentrate efforts on the youth that need the most help.”<sup>45</sup>*

One interviewee stated that the definition of “youth” should be sector-or programme-dependent. For instance, defining youth up to 35 years is suitable in the context of housing, as young people at that age may not have secured affordable housing, but may be unsuitable for other initiatives or priority areas (e.g. health).<sup>46</sup>

The wide definition of youth in Ukraine is inconsistent with international and EU standards and has led to inconsistent and non-“joined up” approaches to youth programming, a lack of cohesion in youth policy development and has likely resulted in inefficient targeting of resources. There does not appear to be strong resistance to changing the Government-wide definition of “youth” by lowering the upper age limit; however, it is worth noting that the approach in the Concept for 2016 – 2020 is to keep the definition of “youth” as those aged 14 – 35 years, despite criticism of this approach.

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<sup>41</sup> Secretary-General’s Report to the General Assembly, A/36/215, 1981, as affirmed by Secretary-General’s Report to the General Assembly, A/40/256, 1985. For further information regarding the definition of youth, please also see UN Department of Economic and Social Affairs webpage, “Definition of Youth” (<http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>).

<sup>42</sup> Interview with Representative, European Youth Forum.

<sup>43</sup> Interview with Representative, National Organisation of Scouts Ukraine.

<sup>44</sup> Interview with Youth Specialist, Network for People Living with HIV.

<sup>45</sup> Interview with Director, State Institute of Youth and Family Policy.

<sup>46</sup> Interview with Director of ‘Sports for All’.

## 4.2. YOUTH POLICY DEVELOPMENT PROCESSES

As noted above, the Lisbon Declaration on Youth requires Governments to mainstream youth issues beyond a singular policy document, and the EU Youth Strategy requires Governments to commit to collaboration between youth policies and other policy areas (education, employment, health and so on). The assessment found a number of gaps in policy processes in Ukraine against these standards and commitments.

### **Lack of consideration of joined-up vision for youth and Government coordination**

Nationally, only one department is directly involved in youth policy: the Department on Youth, which falls under the Ministry of Youth and Sports.<sup>47</sup> Linking youth policy heavily to a single department means that the youth agenda risks becoming part of a bigger policy agenda, rather than being mainstreamed across all relevant government policy areas. According to the UNFPA interviewee, the Ministry of Youth and Sports is too heavily focused on sport, and youth issues tend to get lost in its efforts to promote sports. There appears to be a lack of specific youth focus in other Government Ministries, and lack of conscious thought as to how their Ministerial mandates and activities link up to national youth policy priority areas and activities. This runs contrary to international and EU commitments relating to youth policy.

Also, Ministries do not appear to work in any sustained, coordinated way to ensure that youth issues are mainstreamed across Government. This point was raised by some interviewees, who expressed concern about the lack of multi-sector work on youth issues:

- *“Horizontal coordination between Ministries is very weak. One of the challenges is that there is no effective system of inter-Ministerial collaboration”<sup>48</sup>*
- *“During the last 25 years, there has been no integral, effective mechanism for youth policy [development]. The problem is that there is no effective mechanism of cooperation with Ministries and with other organisations. There is a vacuum.”<sup>49</sup>*

According to the Ministry of Youth and Sports, Ministries are involved in youth policy as their mandate relates to specific pieces of legislation; however, there are no regular inter-Ministerial meetings on youth and youth policy, leading to a lack of cohesion and strategic vision of youth policy. According to one interviewee, the problem appears to be that other Ministries view youth issues as falling exclusively within the mandate of the Ministry of Youth and Sports, and that other Ministries are not very engaged in youth policy development.<sup>50</sup> This makes it likely that particular issues and the needs of target groups may fall through the cracks and that resources are not effectively targeted, as there is no whole-Government strategic vision that all responsible Ministries are working towards.

### **Lack of participation of young people in youth policy development<sup>51</sup>**

One significant gap identified is the lack of explicit recognition in the Ukraine Youth Strategy of the participation of young people in the setting of priorities and defining activities. The

<sup>47</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 38. ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>48</sup> Interview with UNDP Programme Officer.

<sup>49</sup> Interview with Director of State Institute of Youth and Family Policy.

<sup>50</sup> Interview with UNDP Programme Officer.

<sup>51</sup> This issue is covered more comprehensively below (active citizenship).

only reference to youth participation in the development of the Strategy is that 'The Strategy is being realised with active participation of the youth NGOs.' In fact, the strategy does not contain any information on how the specific priorities and activities were selected (e.g. the evidence base, who fed into the process and so on), perhaps resulting in poor targeting of key issues and resources. It is therefore lacking transparency, and formal avenues for youth participation in policy development about key matters concerning them. Linking the development of youth policy with research institutes and young people's organisations is key to ensuring that youth policy is effective, relevant and properly targeted.

It is noted, however, that the Concept for 2016 – 2020 provides avenues for the participation of young people in the development of youth policy. It explicitly recognizes that the development of youth policy should be guided by the *"direct involvement of young people in its implementation."*

### **Lack of evaluation and monitoring framework**

Another gap identified is the lack of monitoring and evaluation framework attached to the country's key youth policy instrument. While data is collected and studied by the State Institute of Youth and Family Policy on macro-level indicators of youth wellbeing (employment; education enrolment; economic status etc.), there is no set of detailed indicators that link to the Government's Youth strategy and therefore, no way to meaningfully evaluate and monitor its progress and impact. Monitoring the impact of the government's youth-focused initiatives is essential to ensuring that policies and programmes are working to achieve the government's key strategic objectives. Also, Ukraine appears to lack independent research centres on youth and youth policy. The State Institute of Youth and Family Policy is able to set its own research priorities; however, these must be approved by the Ministry of Youth and Sports. Lack of independent research on youth could result in issues that are not perceived to be a priority or "friendly" to Government being left off the agenda.

Encouragingly, according to the Concept for 2016 – 2020, the Youth Programme will be evaluated according to a three-tier system, involving overarching indicators (UNESCO's Youth Development Index); process indicators; and impact indicators. However, there is no reference made in the Concept Note to specific indicators that will be used to measure process and impact. Also, there is currently no plan setting out how data will be collected, collated, analysed and reported and by which responsible body. Effective monitoring and evaluation of the Concept for 2016 – 2020, and of youth policy initiatives in general will require effective, cooperative working between Ministries and other key stakeholders. It was reported that the Ministry of Youth and Sport lacks capacity to collect and analyse data against the EU youth indicators.<sup>52</sup>

It should also be noted that the National Action Plan to Implement the UN Convention on the Rights of the Child until 2016, which sets out a comprehensive framework for the promotion and protection of children's rights in Ukraine, places an obligation on State Executive Authorities and local governments to monitor and assess the implementation of the Plan.<sup>53</sup> The Plan also includes an obligation to publish the results of the assessment, which is important. However, this monitoring and assessment framework applies only to children (who are defined as those under the age of 18 years). This framework is therefore not sufficient to cover youth, which, as noted above, is defined internationally as those aged 15 – 24 years and in Ukraine, as those aged 14 – 35 years.

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<sup>52</sup> Interview with UNDP Programme Officer.

<sup>53</sup> National Action Plan to Implement the UN Convention on the Rights of the Child until 2016, 2009, Section IV.

## 4.3. GAPS IN CROSS-CUTTING ISSUES: SOCIAL EXCLUSION AND DISCRIMINATION

According to international and EU standards, the Government of Ukraine is under an obligation to prohibit discrimination against all persons, including young people. Article 2 of the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and UN Convention Rights of the Child all place an obligation on States to respect and ensure that all individuals can enjoy the rights contained in each Convention without any distinction on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 14 of the ECHR also contains a prohibition on discrimination, and Protocol 12 extends this not only to the rights in the Convention, but also to rights accorded to persons in national laws. International and European standards in the area of non-discrimination are also elaborated in the general comments of the UN treaty monitoring bodies and various EU directives.

### **Lack of consideration of particularly vulnerable and excluded groups in national policy documents**

Unfortunately, the current Ukraine Youth Strategy does not include any reference to the vulnerability of particular groups of young people to discrimination and it does not include non-discrimination as an aim of the Strategy, and does not refer to the need to address discrimination in any of its key priority areas or activities (with the exception of youth employment). This is also the position in the Concept for 2016 – 2020. Both policy documents also fail to include, as a key priority area, the promotion of tolerance and respect for and among groups of young people that are discriminated against. Also, the way that the results of the current strategy are framed does not allow for the Strategy to be measured in terms of its ability to address discrimination and reach excluded groups of young people (for instance, by measuring impact on particular groups of young people who are marginalised or who face exclusion). According to the Ministry of Youth and Sport, it does not allocate any specific funding to work with particularly vulnerable or excluded groups. The UN Treaty Monitoring Bodies, in their periodic reviews of Ukraine, have consistently expressed concerns around the discrimination, hate speech and acts of violence faced by groups of persons; in particular, Roma, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and persons from particular religious minorities (Jehovah's Witnesses and Crimean Tartars).<sup>54</sup> Failure of the Youth Strategy to address these issues is a significant gap.

- *“Vulnerable groups of youth are missing in key national policy documents. They appear in particular sections [of the Youth Strategy] – employment, education – but it lacks focus on vulnerable groups generally. As for the New Plan [for 2016 – 2020], the focus on empowerment of socially and economically vulnerable young people is missing.”<sup>55</sup>*

Encouragingly, while the current Youth Strategy fails to focus on the vulnerabilities of young people affected by the conflict, the Concept for 2016 – 2020 contains, as a strategic priority area, “partnership support of young people in temporary occupied territories and young internally displaced persons.” This area includes actions aimed at the psychological rehabilitation of children and youth; public sensitization to counter harmful regional stereotypes; and the

<sup>54</sup> Human Rights Committee, Concluding Observations: Ukraine, 2012, paras 10 – 12; UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, paras. 27, 87 – 90; UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ukraine, 2014, paras. 7 – 10.

<sup>55</sup> Interview with Youth and Adolescent Development Specialist, UNICEF.

provision of social assistance to internally displaced young people (in the areas of education, employment, social and political life and leisure). This is a welcome development: in addition to the issues faced by internally displaced young people, the conflict has had and is continuing to have a significant impact on young people in the affected regions, who are reportedly experiencing aggression, stress, depression and other mental health problems.<sup>56</sup>

Relatedly, the Youth Strategy also does not appear to target socially excluded groups of young people. Although the document lists “implementation of activities directed at promoting youth employment, particularly among socially vulnerable groups”, under key objectives relating to youth employment, it does not mainstream the targeting of socially vulnerable groups across the entire youth policy goals. Nor does it explicitly aim at addressing social exclusion among within its other priority areas. In fact, there is no evidence in the Strategy that particular groups of youth who are socially excluded were explicitly incorporated into its development. Similarly, the Concept for 2016 – 2020 does not include any reference to socially marginalized groups of young people, and does not include addressing social marginalization as a separate strategic priority area, nor as a priority or action within any of its six strategic priorities. According to UNDP Ukraine, acute social exclusion is experienced by 37.7 per cent of Ukrainian households, so it inevitably affects large numbers of young people. Critical exclusion is experienced by 16.8 per cent of households; the risk of critical exclusion is very high for families with children, where there is at least one unemployed person in the household, and is more pervasive in rural areas.<sup>57</sup> The lack of consideration and targeting of socially excluded groups of young people is therefore a significant gap in youth policy.

### **Gaps in anti-discrimination legal framework**

Ukraine does have a legal framework that addresses discrimination. Article 1(2) of the Anti-Discrimination law contains an open-ended (non-exhaustive) list of prohibited grounds of discrimination. This includes prohibitions on discrimination on the basis of: race; colour; political, religious and other beliefs; sex; age; disability; ethnic or social origin; family and property status; place of residence; and language. Likewise, the Law on Protection of Childhood provides that all children shall enjoy their rights irrespective of race; colour; gender; language; religion, political or other beliefs; national, ethnic and social origin; material position; health status; and place of birth; or any other status. In addition, under the National Action Plan on the CRC, children with disabilities and refugee and stateless children enjoy special protections and support as key vulnerable groups of children (though this Plan does not apply to youth aged over 18 years).

While these lists are non-exhaustive, the law omits certain particular grounds of discrimination that are recognised in international and European law. These grounds include pregnancy and maternity, which are explicitly recognised under the Convention on the Elimination of All Forms of Discrimination Against Women and the EU Gender Equality (Goods and Services) Directive<sup>58</sup> and the Gender Equality (Employment) Directive.<sup>59</sup> The Anti-Discrimination Law also does not include “health status” as a protected characteristic (though this is explicitly included in the Law on the Protection of Childhood). Although social protections are accorded to pregnant women and mothers under other laws in Ukraine, it is best practice to explicitly recognise these statuses as protected grounds in national anti-discrimination law. This would provide uniform, holistic protections to (young) women in all areas covered by Ukraine’s anti-discrimina-

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<sup>56</sup> Interview with Youth and Adolescent Development Specialist, UNICEF.

<sup>57</sup> UNDP, About Ukraine (<http://www.ua.undp.org/content/ukraine/en/home/countryinfo/>).

<sup>58</sup> Convention on the Elimination of All Forms of Discrimination Against Women and the EU Gender Equality (Goods and Services) Directive, Article 4(1)(a).

<sup>59</sup> Convention on the Elimination of All Forms of Discrimination Against Women and the EU Gender Equality (Employment) Directive, Article 2(2)(c).

tion law. It is also important that health status is included as a protected characteristic in the Anti-Discrimination Law: discrimination on the ground of health status can have significant implications on the rights of young people who have health conditions that may be stigmatised, for instance, HIV/AIDS.

Other significant grounds missing from Ukraine's Anti-Discrimination Law include discrimination on the basis of sexuality / sexual orientation and gender identity, which are recognised as grounds for discrimination in international<sup>60</sup> and European<sup>61</sup> human rights law. This is a considerable gap in both the law and youth strategy in Ukraine. It is well documented that LGBTI (young) persons in Ukraine face discrimination in education, healthcare, employment and social security, and are also subjected to hate crime and violence on the basis of their sexual orientation and gender identity.<sup>62</sup> Discrimination and victimisation on the basis of sexuality and gender identity is a rights violation in itself and can also result in the inability for young people to enjoy other rights (such as the right to access health care and the right to education or employment). In addition, attitudes that cause and perpetuate discrimination create stigma, which contributes to the high rate of HIV infection in Ukraine. For instance, it may cause LGBTI young people to face exclusion from sexual and reproductive health services through fear of being judged negatively by service providers, and may therefore lack the information and skills necessary to help them make healthy and informed decisions, placing them at risk of HIV infection and other STIs.

It is also worth noting that article 161 of the Criminal Code does not include gender identity or sexual orientation as grounds for a hate crime, which also represents a gap. It means that the State may not be able to prosecute acts of hate against young people who experience hate attacks on the ground of their sexuality or gender identity (except where these amount to other crimes, e.g. assault). It also suggests that acts of hate are "acceptable" where they occur on the ground of sexuality and gender identity, but not on other grounds.

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<sup>60</sup> The Human Rights Committee has stated that the prohibition on discrimination in Article 26 of the International Covenant on Civil and Political Rights includes discrimination based on sexual orientation: *Young v Australia* (Communication No. 941/2000), U.N. Doc. CCPR/C/78/D/941/2000 (2003); Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), U.N. Doc. E/C.12/GC/20, 2009, Para 32.

<sup>61</sup> See, for example, *Salgueiro da Silva Mouta v Portugal* (Application No. 33290/96), 21 December 1999; *Smith and Grady v the United Kingdom* (Application Nos. 33985/96 and 33986/96), 27 September 1999; *Karner v Austria* (Application No. 40016/98), 24 July 2003; *Bączkowski and Others v Poland* (Application No. 1543/06), 3 May 2007; and *E.B. v France* (Application No. 43546/02), 22 January 2008 (sexual orientation); *Christine Goodwin v the United Kingdom* (Application No. 28957/95), 11 July 2002 and *P. v S. and Cornwall County Council*, Case C-13/94, [1996] (gender identity / gender re-assignment); and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>62</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ukraine, 2014, para. 10.



## RECOMMENDATIONS ON YOUTH POLICY DEVELOPMENT PROCESSES AND CROSS-CUTTING ISSUES

**Definition of youth:** It is recommended, to ensure consistency with international and EU standards, that the definition of “youth” in Ukrainian legislation and policy is changed. It should ideally be changed to the definition used by the UN (15 – 24 years). However, it may be more feasible, in the current climate, to change it to 14 – 28 years (the definition contained in an earlier version of the 2016 – 2020 Youth Concept).

**Improving cross-Ministerial coordination on youth issues:** It is recommended that an Inter-Ministerial Working Group on youth be established, led by the Department of Youth within Ministry of Youth and Sport. The mandate of the Working Group could meet regularly to discuss the development, implementation and monitoring the progress and impact of youth policy. This Working Group could include the Deputy Minister for European Integration from each relevant Ministry (each that have within their mandate issues that fall within the areas identified in the Concept for 2016 – 2020). This would not only ensure improved coordination, but may also help to ensure that youth issues are prioritised (as European Integration appears to be a priority goal for the Government). The Working Group process could include a mechanism for young people to participate in youth policy agenda-setting and development. UNDP could assist in the development and steering of the Working Group and its mandate and operation could be set out in a Government Decree.

**Mainstreaming youth issues across relevant Ministries:** Consideration could be given to establishing a process for “youth impact assessments”. A youth impact assessment could be modeled on child impact assessment frameworks and would require relevant Government Ministries to analyse and report on the impact that each new piece of legislation would have on youth (or key youth priority issues) before the legislation is adopted. Consideration could then be given to how to minimise any negative impacts on youth and how to utilise legal developments so that they positively contribute to addressing youth issues. The assessment could be carried out by relevant Government Ministries or outsourced to a quality research centre or institution.

**Ensuring youth participation in policy development:** A mechanism for the continual, regular involvement of young people in Government policy should be established and set out in law. This mechanism could form part of the Inter-Ministerial Working Group recommended above. It should include allocated places for young people who are from marginalised or excluded groups.

**Improving monitoring and evaluation of the progress and impact of youth policy:** It is recommended that a procedural framework be developed for monitoring the progress and impact of youth policy. This could be based on the EU Youth Indicators. A manual should be developed, based on these indicators, setting out: specific indicators to be used; data required against each indicator; Ministry responsible for collecting and reporting the data; timelines for data collection and reporting; how data is communicated to a central body (the Inter-Ministerial Youth Working Group, recommended above); public reporting of data / monitoring findings. It should also identify whether and if so, how, capacity building is needed in data collection in each relevant Ministry.

**Particularly vulnerable and excluded groups of youth:** The Youth Concept Programme for 2016 – 2020 should be amended to include content on the specific groups of youth that are considered to be particularly vulnerable or excluded, issues affecting these groups of youth, and activities aimed at addressing these issues. It is also recommended that the needs of particularly vulnerable or excluded groups of youth be included in the mandate of the Inter-Ministerial Working Group (recommended above).

**Improving anti-discrimination law:** The Anti-Discrimination Law should be amended to explicitly include sexuality / sexual orientation; gender identity; health status; and pregnancy and maternity as protected characteristics. Article 161 of the Criminal Code should be amended to include gender identity and sexuality / sexual orientation as grounds for a hate crime.

**Positive promotion of equality:** Consideration should be given to the development of a Public Sector Equality Duty, which could be achieved through amendments to the Anti-Discrimination Law, or through a separate Law or Decree. A Public Sector Equality Duty would place an obligation on all public bodies (Ministries, Departments, Government Bodies, Government service delivery organisations etc.) to actively promote equality in relation to all protected characteristics contained in Anti-Discrimination Law. This could be modeled on the UK Public Sector Equality Duty, which is recognised as good practice, and was included in anti-discrimination legislation in the UK in 2011. The Duty covers the nine protected characteristics in UK discrimination legislation: age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It places an obligation on all Government bodies to: remove or minimise disadvantages suffered by people due to their protected characteristics; take steps to meet the needs of people with protected characteristics; and encourage people from protected groups to participate in public life or other activities where their participation is disproportionately low. The Duty requires Government bodies to set out and ensure how the duty will be met.

# 5. GAP ANALYSIS BY KEY AREA: THE FINDINGS

## 5.1. PROMOTING HEALTHY LIFESTYLES AND SPORT

Ukraine has poor health indicators compared to European averages, with the lowest life expectancy at birth than the European average: 65 years for men and 76 for women (the European average is 79).<sup>63</sup> The adult mortality rate is almost twice as high as the European average (213 to 132), and the maternal mortality rate also exceeds the European average (32 to 20).<sup>64</sup> One of the most significant health issues documented in Ukraine is the accelerating rates of HIV infection, which are the highest recorded in Europe: UNICEF has estimated that 238,000 people ages 15 – 29 are living with HIV/AIDS, and just under 1% of those over 18 years of age have HIV, which is higher than the percentage of adults living with HIV/AIDS (0.62 per cent).<sup>65</sup> The rate of infection for HIV has increased by 20% in the last five years.<sup>66</sup> UNICEF statistics show that only 32.3% of males and 38.9% of females have comprehensive knowledge of HIV.

Youth is also associated with risky health behaviours: use of alcohol, drugs, cigarettes and unsafe sex.<sup>67</sup> Injecting drug use has been found to be partially driving the spread of HIV, though it is now also spreading among the younger population through unprotected sex and through mother to child transmission. In relation to sexual and reproductive health, young people aged 18-35 have been found to have the highest concentration of abortions per 1000 people compared with other age brackets, and there are also other issues such as sexually transmitted diseases and a lack of education and care in response to these.<sup>68</sup>

UNDP has also reported that some 30,000 new cases of tuberculosis are recorded annually.

UNFPA have documented that mental and psychological stress impact negatively on young people, resulting in part from difficulties in finding work, and a general lack of security resulting in poor health outcomes.<sup>69</sup> Those directly affected by the conflict in the East have reportedly experienced stress, depression and other mental health problems, as noted above.

Lack of physical activity has also been found to have a negative impact on the health outcomes of young people in Ukraine: a survey entitled “Youth in Ukraine: Lifestyles and Values” conducted by UNFPA found that a third of respondents had not taken part in any physical exercise in the past week.<sup>70</sup>

According to the Programme for Economic Reforms, unequal access to high quality health-care, along with other services, is a key problem, particularly in rural areas, and for persons who are poor and socially vulnerable.<sup>71</sup>

<sup>63</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 65. ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>64</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 65. ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>65</sup> UNICEF Ukraine, Statistics ([http://www.unicef.org/infobycountry/ukraine\\_statistics.html](http://www.unicef.org/infobycountry/ukraine_statistics.html)).

<sup>66</sup> V. Oshovskyy, The actual questions of HIV/AIDS prevention in vulnerable groups. Ukrainian Family Planning Association experience (<http://www.unesco.org/education/uie/pdf/Oshovskyy.pdf>).

<sup>67</sup> Council of Europe, Youth policy in Ukraine: Conclusions of the Council of Europe international review team, 2013, p. 69. ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>68</sup> UNFPA, Youth and Youth Policy in Ukraine, 2010, p. 87.

<sup>69</sup> UNFPA, Youth and Youth Policy in Ukraine, 2010.

<sup>70</sup> UNFPA, Youth and Youth Policy in Ukraine, 2010, p. 109.

<sup>71</sup> Government of Ukraine - United Nations Partnership Framework 2012 – 2016.

## 5.1.1. INTERNATIONAL AND EUROPEAN STANDARDS

### INTERNATIONAL STANDARDS

The right to “*the highest attainable standard of physical and mental health*” is recognised in several UN Treaties, including the International Covenant on Economic and Social Rights (ICESCR)<sup>72</sup> and the UN Convention on the Rights of the Child (UNCRC).<sup>73</sup> Other international conventions also recognise the right to health for specific groups, including:

- The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv)
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b)
- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c); and
- The 2006 Convention on the Rights of Persons with Disabilities: art. 25.

International law defines health comprehensively in accordance with the definition by WHO set out above. Notably, the definition includes elements of both physical and mental health. This right imposes an obligation on the State of Ukraine, as parties to both Conventions, to take range of measures to ensure that all individuals achieve their highest attainable standard of health. Article 12 of ICESCR provides that States must ensure:

- Provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- The improvement of all aspects of environmental and industrial hygiene;
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The UNCRC, which applies to youth up to the age of 18 years, places additional obligations on State Parties. Article 24 provides that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services,” and that they should take appropriate measures:

- To diminish infant and child mortality;
- To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- To ensure appropriate pre-natal and post-natal health care for mothers;
- To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

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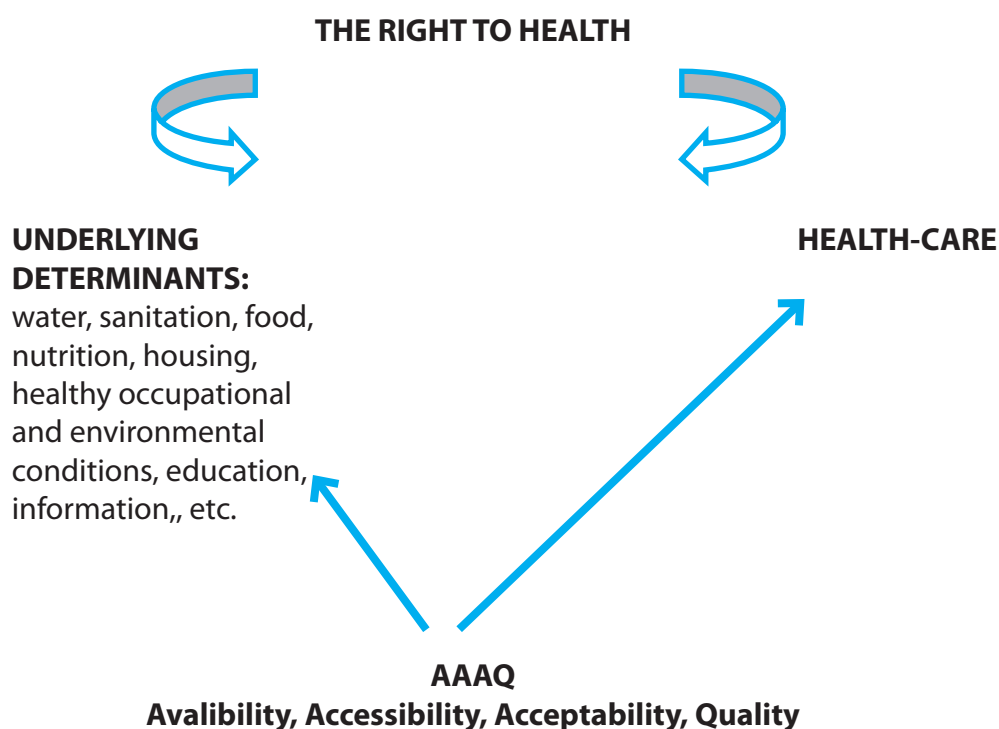
<sup>72</sup> International Covenant on Economic and Social Rights, Article 12.

<sup>73</sup> UN Convention on the Rights of the Child, Article 24.

- To develop preventive health care, guidance for parents and family planning education and services.

It should also be emphasised that all human rights are interrelated, and that other rights are closely related to the fulfilment of the rights to health, including for instance, the right to housing, the right to nutritious food, the right to education, and so on. For children, the four fundamental principles of the UNCRC are inextricably linked to the fulfilment of the right to health, and these include: the right to non-discrimination (article 2); the best interests of the child principle (article 3), the right to participation (article 12), and the right to the highest standard of life, survival and development (article 27). Considering health as a right that is connected to the fulfilment of other rights is strongly linked to the social-ecology model of health, which views underlying social and economic determinants as fundamentally important to the right to health, as explained in Scheme 1, below.

**Scheme 1: The Right to Health<sup>74</sup>**



(General Comment No. 14 of the Committee on Economic, Social and Cultural Rights)

<sup>74</sup> WHO, 2013 (<http://www.who.int/mediacentre/factsheets/fs323/en/>).

Both the UN Committee on Economic, Social and Cultural Rights<sup>75</sup> and the UN Committee on the Rights of the Child<sup>76</sup> have published instructive general comments relating to the right to health, which elaborate the normative content of the right and how it relates to other human rights. According to both General Comments, the right to health contains four core obligations:

**Availability:** A sufficient quantity of functioning public health and health care facilities, goods and services, as well as programmes.

**Accessibility:** Health facilities, goods and services accessible to everyone, including that they are available to all in a non-discriminatory manner; they are physical accessible; they are economically accessible (i.e. affordable); and that information is accessible.

**Acceptability:** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate as well as sensitive to gender and life-cycle requirements.

**Quality:** Health facilities, goods and services must be scientifically and medically appropriate and of good quality.

The General Comments reiterate that the right to health extends not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

The Committee on the Rights of the Child's General Comment No. 4 on adolescent health and development stipulates that the health and development of adolescents is strongly linked to their environment – family, peers, schools and services, as well as the wider environment of religious leaders, media, national and local policies and legislation.<sup>77</sup> It calls on States to take measures to ensure that parents / guardians are provided with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including the provision of material assistance and support with regard to nutrition, clothing and housing; providing adequate information and parental support to address risky behaviours of adolescents (e.g. risky sexual behaviour and other risky lifestyle behaviours); support to adolescent parents; and ensure well-functioning child protection interventions in cases of abuse or neglect.<sup>78</sup>

It is worth noting that the UN System Wide Action Plan on Youth Report 2014<sup>79</sup> recommends that States ensure that young people are able to make autonomous health-related decisions, and sets the following strategic objectives:

- Develop gender-sensitive laws and policies that fulfill the rights of all young people to autonomous decision making in matters of health, with special attention on sexual and reproductive health;
- Enforce gender-sensitive laws and multi-sectoral public policies to protect all young people from risk factors for negative health outcomes;
- Ensure all young people have opportunities to engage as advocates in their own right to health;
- Provision of age and sex specific information relating to health; and
- Improve the capacity of the health sector to respond to the unique needs of young people.

<sup>75</sup> UN Committee on Social, Economic and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, 2000, E/C.12/2000/4.

<sup>76</sup> UN Committee on the Rights of the Child, General Comment No. 15: The Right to the Highest Attainable Standard of Health, 2013, CRC/C/GC/15 and General Comment No. 4: Adolescent Health and Development, 2003, CRC/GC/2003/4.

<sup>77</sup> The Committee on the Rights of the Child's General Comment No. 4 on adolescent health and development, para. 14.

<sup>78</sup> The Committee on the Rights of the Child's General Comment No. 4 on adolescent health and development, para. 16.

<sup>79</sup> UN System Wide Action Plan on Youth Report 2014, p. 31.

In addition, the Government of Ukraine-United Nations Partnership Framework 2012 – 2016 has a strong focus on health: outcome one is “improved access to and utilization of quality health, education and social services” and outcome three is that “more people adopt healthy and safe patterns of behaviour.”

## **EU STANDARDS**

The EU Social Charter includes the right to health, which obliges State parties:

- to remove as far as possible the causes of ill-health;
- to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; and
- to prevent as far as possible epidemic, endemic and other diseases.

Therefore, the EU also takes an approach to health that requires States parties to address not only the promotion of health and the prevention of disease, but also to address the underlying causes (determinants) of ill-health and unhealthy behaviours.

The EU Council Resolution on Health and Wellbeing of Young People (2008) sets out that States agree that knowledge of the state of health, the health needs and expectations of young people and experiences and lessons learned should be assessed and contribute to the development of youth policy so that strategies are properly tailored to the specific needs of youth, and to address the unique needs of differences among young people (age, sex, place of residence, socio-economic factors); that a comprehensive, cross-sectoral approach should be adopted to address the health and well-being of young people; that it should focus on the promotion of physical activity and a well-balanced diet; and that special attention should be paid to young people’s mental health (particularly through schools and youth work), and the prevention of suicide and other harms.

The EU Resolution also calls on Member States to promote the “youth” dimension in health-related activities; involve young people in the development of health policy; promote leisure, cultural and physical activities of all young people; promote young people’s health and well-being in media programmes; and support the training of youth workers and NGOs in the area of health and wellbeing.

The EU Youth Policy defines “health and sport” as one of its key objectives<sup>80</sup> and provides that healthy living, physical education and sport should be promoted for young people. The policy states that special attention should be paid to the issues of obesity, injury, addictions and substance abuse, and maintaining mental and sexual health. It sets out the following actions for Member States:

- Implement the Council Resolution on Health and Well-being of Young People and encourage youth fitness and sport by applying the EU Physical Activity Guidelines;
- Promote training opportunities on health for youth workers and youth leaders;
- Encourage cooperation between health and youth policy makers, and youth involvement in health policy;
- Mobilise all stakeholders at local level to detect and help young people at risk;
- Develop tailor-made information on health for young people, particularly those at risk of social exclusion, and mobilise youth information networks; and
- Encourage peer-to-peer health education at school and in youth organizations.

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<sup>80</sup> The EU Youth Policy, Field of Action 4.

### 5.1.2. UKRAINE LAW AND POLICY: GAPS

The promotion of health in Ukrainian policy is framed as the promotion of “healthy lifestyles”. In Ukraine’s Youth Policy, one of the key objectives is defined as “formation of a healthy lifestyle”, to be achieved through: “motivation to live a healthy lifestyle; development of physical culture and sport; organising all-Ukrainian, cross-regional and regional sport competitions and tournaments; and implementation of programmes directed at engaging young people in physical culture and sport activities.”<sup>81</sup> This is also the approach adopted in the Concept for 2016 – 2020, in which one of the key priority areas is defined as: ‘health and safe lifestyle’, which includes state and public awareness activities aimed at the promotion of a healthy and safe lifestyle among youth. This approach was adopted, reportedly, due to the insufficiency of health systems to deal with the health problems of the country: “the current health system is unable to provide people’s needs to accessible, high quality and effective medical care.”<sup>82</sup> The Ministry of Health currently promotes healthy lifestyles through its “constitution of a healthy person” paradigm. This defines and promotes a healthy lifestyle as one in which persons: do exercise and sport; give up alcohol and tobacco; eat healthily; choose active leisure; have healthy sleep; observe the rules of hygiene; are educated to fight risks of HIV/AIDS, tuberculosis and sexually transmitted diseases; do not use drugs; appreciate family and friends; and have success and harmony. While this approach focuses on the core requirements of health, it does little to link these to the enjoyment of the highest attainable standard of health, as broadly conceived. It is also very focused on the individual, and does not recognise the underlying structural determinants of health, such as (lack of) resources; inequality; access to services and so on. In short, as pointed out in the most recent youth policy review of Ukraine, it frames health in a narrow way, and “suggests that the way we (choose to) live our lives is the only factor determining health conditions.”<sup>83</sup> The WHO highlights a broad range of elements that contribute to health and that should be addressed in ensuring an effective health policy and legal framework. These include healthy lifestyles, but also: access to quality medical services; identification of risk patients; enforcing existing laws; and improving quality of life.<sup>84</sup>

While the youth strategy does indeed include other factors that are key determinants of health, such as adequate housing and education, these are not linked to health and healthy lifestyles, which frames the health issue as not being holistic. The Concept for 2016 – 2020 likewise does not frame health in a holistic way. It focuses heavily on concepts of ‘sound mind in sound body’ (enhancing health through physical education and sport, healthy and safe lifestyles, and building employment centres and sporting and youth facilities); and ‘living in harmony with oneself and the world’ (improving mental health through building family relationships, promoting sexual and reproductive health and promoting ‘safety knowledge’ among youth). It excludes actions that focus on structural impediments to health and healthy lifestyles.

It is on this basis that the following analysis of gaps is framed. The analysis is structured around key components of the international and EU standards relating to youth, health and sport.

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<sup>81</sup> The *Strategy for the state youth policy development for the period up to 2020*, Article 3(2).

<sup>82</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 66 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>83</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 67 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>84</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 68 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).



## Legal right to health

In Ukraine, the right to health is set out in the Constitution, though it is narrowly defined as the right to protect one's health and life and the life and health of others, rather than being framed as a right to the highest attainable standard of physical and mental health.<sup>85</sup>

The Law on Health of Ukraine, 1993 (as amended) provides all citizens with a right to health care, rather than a right to health. Youth also have a specific right to healthcare (and engagement in physical activity and sports), rather than a right to health. This is set out in the Law on Fostering Youth Socialisation and Development in Ukraine, 1993.<sup>86</sup> Similarly, the principal law containing children's rights, the Law on the Protection of Childhood, 2001, includes a right to "health care", rather than a more comprehensive right to the highest attainable standard of mental and physical health. This appears to be a narrow formation of the right to health, and does not include the right to the highest attainable standard of physical and mental health. However, significantly, the definition of "health" contained in the Law on Health is very broad and comprehensive and in line with international definitions. Article 3 defines "health" as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." The components of the right to healthcare are explicitly set out in a comprehensive list to include:

- Living standards (food, clothing, housing, medical care and social services and protection, necessary to support human health);
- Environment safe for life and health;
- Sanitary and epidemiological welfare of the territory and settlement where he or she lives;
- Safe and health working environment, education, welfare and recreation;
- Qualified medical assistance, including free choice of treating physician, selection of treatment methods according to his/her recommendations and health care institution;
- Accurate and timely information on the status of his/her health and public health, including existing and potential risk factors and their degree; and
- Participation in discussing draft laws and introduction of proposals as regards shaping state policy in the field of health care.

The right to health, as defined in the Law on Health, is comprehensive and complies with international standards. However, it is unclear whether this definition applies to the right of youth to healthcare contained in the Law on Fostering Youth Socialisation and Development. This Law is explicitly designed to address the unique health needs of young people, and is the most useful instrument to this end. Lack of a comprehensive definition of health that accords with international standards is therefore a gap in this law.

### **Mainstreaming of youth in health policy and delivery**

As set out above, according to both international and EU standards, States should ensure that the dimension of "youth" is included in the development of all health-related policies and initiatives. There does not appear to be any formal avenues for the Ministry of Youth and Sport to coordinate with and influence broader health policies of Ukraine. Youth policy, broadly framed, is a cross cutting and multi-sector issue. The containment of youth policy exclusively within one Ministry / Department means that youth is not mainstreamed across government

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<sup>85</sup> The Constitution of Ukraine, Article 27.

<sup>86</sup> Law on Fostering Youth Socialisation and Development in Ukraine, 1993, Article 12.

departments and ministries that develop policy relating to health. This represents a significant gap in targeting interventions and programming at the unique needs of youth. It can result in health initiatives that are not targeted to youth. For instance, several interviewees reported that they did not feel that health campaign messaging was directed at and did not appeal to youth: *“The health messaging from Government: nothing is specifically youth-focused. There is a campaign on alcohol abuse, but it just says “don’t drink” and doesn’t appeal to youth.”*<sup>87</sup> However, it was noted that HIV/AIDS messaging tended to have a youth focus.

### **Targeting health-related initiatives to the needs of youth and the needs of vulnerable youth**

It is essential that health policies targeting youth are developed from an evidence base which provides information on the unique needs of youth. The lack of monitoring and evaluation on key areas of youth policy, including health, means that there is a lack of available evidence on which to base policy formation to ensure that it is effective and targeted at the actual needs of youth. There is also no provision in the youth policy documents that were analysed for this report for links to be made between research institutions and policy makers, which can be understood as a gap in ensuring that youth policy is developed from a robust evidence base.

In order to ensure that youth policy is effectively targeted, it is also necessary to ensure that young people are able to participate in its development. Persons in general have the right to participate in the formation of health policy, as set out in article 6 of the Law on Health in Ukraine; however, no formal channels have been identified to operationalise this general provision. Also, while young people enjoy partial participation rights through formal avenues, as set out in the section on active citizenship, neither the youth policy nor youth-related laws in Ukraine provide any formal avenues for youth to be involved explicitly in the formation of (youth) health policy. As noted above, according to international and EU standards and best practice, it is essential that youth are involved in decision-making about policies concerning them. Failing to provide specific channels for this participation in the development of health policy represents a significant gap between international / EU standards and Ukrainian national policies and laws.

The need to properly and effectively target health policy and interventions also extends to understanding and addressing the needs of particularly vulnerable groups of youth. The Government should ensure that health programmes and services are available to all on a non-discriminatory basis and that groups of particularly vulnerable young people are targeted with effective policies, programmes and interventions. As set out above, both the Youth Policy and the Concept for 2016 – 2020 do not make any provision for targeting particularly vulnerable groups of young people, and this includes in the area of health and healthy lifestyles. The National Action Plan on the CRC (which applies to youth aged to 18 years) states that the Government commits to targeting several vulnerable groups, including orphan children and children deprived of parental care and children from low income and single parent families. This is laudable; however, it is very narrowly drafted and excludes targeting of the considerable number of vulnerable groups of young people in the Ukraine context. In the Ukraine context, as indicated above, these particularly vulnerable groups can include: youth from ethnic minorities, girls/women, youth living in rural locations, and, particularly in relation to risk behaviours and sexual health: sex workers, street-based youth, men who have sex with men and intravenous drug users.<sup>88</sup> Also, the National Action Plan on the CRC does not apply to young people over the age of 18 years.

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<sup>87</sup> Interview with European Youth Parliament Representative.

<sup>88</sup> UNICEF, Country Information: Ukraine and see also Busza, Balakireva, Teltschik, Bondar, Sereda, Meynell and Sakovych, ‘Street-based adolescents at high risk HIV in Ukraine’ in *Epidemiol Community Health*, 2010.

Particular groups of young people may have specific health needs (e.g. those with disabilities), or may need to access particular information and services to make healthy, informed decisions (e.g. youth sex workers, LGBTI youth and intravenous drug users). Also, particular groups of young people may face discrimination and exclusion from health services (e.g. Roma young people, LGBTI youth). It is a significant gap in youth policy that the needs of particular marginalised or vulnerable groups of young people are not identified or provided for.

### **Ensuring access to quality health, including sexual health, information and education**

According to international and EU standards, States should ensure children and youth receive age-appropriate, quality and comprehensive health education, and this should include education on sex and relationships. The UN Committee on the Rights of the Child provides in its General Comment No. 1 that States must ensure that “no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include...(inter alia) to develop a healthy lifestyle and good social relationships”, and that healthy behaviour should be promoted in schools.<sup>89</sup> The Committee also stated, in its general comment on adolescent health, that “adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practice healthy behaviours. This should include information on the use and abuse of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.”<sup>90</sup> According to the Committee on the Rights of the Child, States must also ensure that young people have skills to put the information into practice, including on how to prepare adequate nutritional food, effective hygiene habits, and skills for dealing with social situations (interpersonal communication, decision-making, and coping with stress and conflict).<sup>91</sup>

States should ensure that access to quality education, information and skills training is made available not only in formal educational institutions (schools), but also that it is available through non-formal educational avenues, for instance through youth groups, and though the use of ICTs and peer-to-peer education.

There are specific international and EU standards and guidance on sex and relationships education, which is particularly important in the context of youth and young people’s development. According to the UN System Wide Action Plan on Youth Report, “efforts to enhance youth education have to take into consideration the need for comprehensive sexuality education that emphasises a holistic approach to human development and sexuality.” UNESCO has published international guidance on sexuality education that sets out evidence supporting sex and relationships education and detailing what should be included in the curriculum for children and young people aged 5 to 18 years.<sup>92</sup> The Guidance recommends that States ensure that school curriculum equips children and young people with effective knowledge and skills relating to HIV, contraception, human sexuality and relationships. The WHO has also produced European guidance on sexuality education, which sets out the rationale for sexuality education and guidance on how to effectively deliver it.<sup>93</sup> According to existing research, the core characteristics of effective sex and relationships education are:

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<sup>89</sup> UN Committee on the Rights of the Child, General Comment No. 1: The Aims of Education, para. 9.

<sup>90</sup> CRC/C/GC/15 and General Comment No. 4: Adolescent Health and Development, 2003, CRC/GC/2003/4.

<sup>91</sup> CRC/C/GC/15 and General Comment No. 4: Adolescent Health and Development, 2003, CRC/GC/2003/4.

<sup>92</sup> UNESCO, International Technical Guidance on Sexuality Education, 2009 (<http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>).

<sup>93</sup> WHO Regional Office for Europe and BzGA, Standards for Sexuality Education in Europe, 2010 (<http://www.bzga-whocc.de/?uid=20c71afcb419f260c6afd10b684768f5&id=home>).

- It should be received by all children and young people, regardless of gender, sexual orientation, disability, ethnicity, culture, age, race, religion or belief;
- It should be delivered by trained educators, which are willing and competent teachers;
- SRE should be delivered in an age-appropriate manner: it should start before a young person first has sex and it should respond to the needs of young people as they mature. Ideally, it should start in primary school, covering topics such as personal safety and friendships;
- It should be based on medically and factually correct information;
- It should promote core values, such as mutual respect, loving and happy relationships, health, safety and equality (particularly in relation to sexual orientation and gender identity);
- It is most effective when it develops the skills of children and young people as well as knowledge, and this is best achieved through interactive and participatory learning; and
- It works best when schools work together to support parents in informing their children.<sup>94</sup>

There are considerable gaps in Ukrainian youth law and policy relating to the provision of education and information on health generally, and sexual health in particular. The Youth Policy is silent on the need to improve knowledge and skills of young people in relation to sexual health and adopting healthy lifestyles. It is also silent on the need to ensure quality education, information and skills development in sexual health and the need to promote access to sexual health services. The Concept Note for 2016 – 2020 includes, within the priority area of ‘healthy and safe lifestyle,’ to ensure the reproductive health of young people. However, it does not set out what this includes and does not focus on access to information and education on SRH.

There are also significant gaps in law in the field of formal health education. “Basics of health education” is included as a mandatory subject in secondary school. While it was generally recognised that the content of health education was quite comprehensive, the sex and relationships element is not addressed adequately.

It was felt by some interviewees that the absence of formal sex education left young people vulnerable to disease and to making risky, unformed decisions: *“Every young person is considered an at risk group [for HIV infection], as there is no good sex education in schools.”*<sup>95</sup>

Навіть більше: заняття з питань охорони здоров’я нині проводять вчителі біології. Moreover, health education is currently provided by biology teachers. While some biology teachers have been trained as part of donor-sponsored (normally) HIV/AIDS programmes to deliver sex and relationships education, it appears that teachers are not taught on how to deliver this subject as part of their in-service training, meaning that many teachers remain untrained in this area. This appears to have resulted in biology teachers who are reluctant, due to conservative attitudes to sexuality in Ukraine, or simply unsure how to deliver SRE:

- *“Ukraine doesn’t really have sex education. Even in biology [where it is being taught in a limited way], the teacher will just say “read this chapter of the text book at home”, then they don’t talk about it again...In Soviet times, no one talked about sex. Ukraine society is not ready to talk about it yet. Parents aren’t ready to talk about it, even with their children.”*<sup>96</sup>
- *“Non-specialised teachers provide sex education. Some teachers are shy, and don’t cover the topics properly.”*
- *“Teachers cannot deliver it [sex and relationships education] properly. Usually they just omit sex education from health education.”*<sup>97</sup>

<sup>94</sup> See National Children’s Bureau, Sex Education Forum, *Does sex and relationships education work?* 2010.

<sup>95</sup> Interview with Youth Specialist, Network for People Living with HIV.

<sup>96</sup> Interview with, European Youth Parliament Representative.

<sup>97</sup> Interview with Deputy-in-Chief of the Institute of Paediatrics, Obstetrics and Gynaecology of Medical Sciences of Ukraine.

Where sex and relationships education is provided for in law, it is not explicitly set out in legislation and it appears to focus exclusively and narrowly on HIV prevention and drug addiction: key objectives for combatting HIV/AIDS set out in the National Action Plan on the CRC are (inter alia) to: “ensure informing 100 per cent of senior school age children how to protect themselves from HIV/AIDS infection”; raising public awareness of HIV/AIDS; and carrying out an information campaign aimed at “shaping public opinion as regards the effects of drug addiction and unacceptability of any form of drug trafficking.” The Law on AIDS Prevention and Social Security of the Population also provides for a state guarantee of “inclusion of issues related to HIV prevention, healthy and moral lifestyle, spiritual values, responsible sexual behaviour, traditional family values, treatment, care and support to persons living with HIV and their families, as well as the unacceptability of discrimination against such people and the need to promote tolerance toward these people” in secondary, vocational and higher educational institutions. This is important, but limited: it ties the prevention of HIV to lifestyle issues, rather than to structural factors that may increase the likelihood of risky behaviours, such as lack of access to contraception and stigma relating to high risk groups that may place restrictions on their ability to access services (for instance for young sex workers, young LGBTI persons or intravenous drug users). It also does not apply to primary schools – as noted above, sex and relationships education is most effective when delivered in a age-appropriate and accessible way to children and young people before they first have sex (ideally starting in primary school). Linking HIV-related education to “traditional family values” and “moral lifestyle” may also place a restriction on teachers providing education on family structures and relationships that may be socially perceived as “immoral” or “non-traditional”, including same-sex relationships.

Moreover, while HIV prevention and drug addiction are without doubt extremely important issues, sex and relationships education and access to information about sex, relationships and health is far wider than this, and should include the whole range of (sexual) health and relationships issues, as identified above. Also, vulnerability to HIV infection is linked to other health issues and vulnerabilities, for instance, access to contraceptives, information on sexuality and gender identity, information and skills on relationships and consent and so on.

Also, there is a fragmentation in the activities of donors on sex education programmes. It was reported that there are currently 14 different extra-curricular courses on safe behaviour / sex education. However, not all teachers delivering this are trained in each module. Teachers tend to choose the course they have been trained on, even where this is not the most effective / appropriate course.<sup>98</sup> Also, as the development of these modules has been funded by HIV/AIDS programming funds, they may not be sufficiently comprehensive, and may not cover all aspects of sex and relationships education.

There are also significant gaps in law and policy relating to informal education and awareness-raising of health and sexuality issues. The Law on Health provides that “The State shall enhance a healthy lifestyle of the population by way of disseminating scientific knowledge on health care issues, organising medical, environmental and physical education; carrying out measures aimed at enhancing hygienic culture of the population...”<sup>99</sup> This provision is quite broad and vague and does not oblige the Government to target youth and youth health matters in its awareness-raising campaigns.

The Law on Protection of Childhood also places an obligation on the Government to provide information to the public: “the state shall use all measures relating to: provision of all population groups, including parents and children, with information on healthcare and healthy diet of children, benefits of breastfeeding, hygiene, sanitary conditions and prevention of accidents; promoting awareness-building, services in the field of family planning and reproductive health.” Again, this provision is quite broad but is a little more elaborated and specific in which issues it

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<sup>98</sup> Interview with UNFPA Programme Officer.

<sup>99</sup> The Law on Health, Article 32.

targets. However, it misses several key health issues, such as mental health awareness, physical activity and drug and alcohol awareness, for example.

In practice, it appears that the Ministry of Youth and Sport links its role in promoting healthy lifestyles very much to sport: *“Our area of involvement in promoting healthy lifestyles is encouraging young people to get involved in physical education and sport.”*<sup>100</sup> While the Ministry of Health has some responsibility to promote healthy lifestyles, it is unclear how much of its activities are targeted at “youth”. Lack of regular inter-Ministerial coordination on youth issues has resulted in the lack of a joined up approach to promoting health and healthy lifestyles among youth, and a lack of prioritisation of “youth” in health promotion initiatives.

In terms of non-formal education, the Ukraine Youth Strategy does not encourage health education within youth organisations / centres, nor does it promote the use of information and communication technologies, including in particular mobile phone and online technologies to reach young people. It also does not promote the use of peer-to-peer youth health education, as required by international and European standards. It has long been recognised that young people frequently use new technologies to access key information, and failure to explicitly promote the use of ICTs to promote health education and awareness is a key gap.

### **Access to youth-friendly health care**

According to international and EU standards, all youth must have free access to health care, and health services should be child and youth-friendly. The core elements of youth-friendly services are:<sup>101</sup>

- Young people should have a right to access medical services independently (i.e. an independent ability to consent without parental permission or permission of another person);
- The right to access medical services should be a right to do so confidentially, and the privacy of young people should be respected; and
- Staff should be properly trained and skilled in working with youth and in health issues affecting young people.

According to Ukraine law, every citizen has the right to healthcare, including a comprehensive range of services: emergency, primary medical assistance, secondary (specialised) and tertiary (highly specialised) medical assistance and palliative care.<sup>102</sup> The Health Law also provides explicitly for the right to healthcare for children and adolescents. Article 60 provides: *“Medical assistance shall be provided to children by health care institutions and treating physicians who conduct economic activity in medical practice as individual entrepreneurs. The state provides children with vacation packages to health centers on a free-of-charge basis.”*<sup>103</sup>

The right to access healthcare is also provided specifically for youth in the Law on Fostering Youth Socialisation and Development, which states: *“Healthcare authorities ensure development of a network of healthcare institutions specialised in the area of substance abuse which provide young people with required free aid, develop and implement gate-keeping programmes and actions targeted at prevention of socially dangerous diseases among young people as well as promotion and strengthening of healthy lifestyles.”*<sup>104</sup> In addition, the Law on Pro-

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<sup>100</sup> Interview with Deputy Director of the Department of Youth, Ministry of Youth and Sports.

<sup>101</sup> See, for example, UN Committee on the Rights of the Child, General Comment No.4 on adolescent health and development, para. 33: ‘With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment.’

<sup>102</sup> Law on Health, Article 8.

<sup>103</sup> Law on Health, Article 60.

<sup>104</sup> Law on Fostering Youth Socialisation and Development, Article 12.

tection of Childhood provides children (those up to 18 years) with a guarantee of access to free healthcare: “The state shall guarantee a child’s right to health care, free qualified medical care in state and municipal healthcare facilities, promote creating a safe environment for life and healthy development of a child, balanced diet, shaping healthy lifestyle habits,” which explicitly includes: “stipulating for provisions of necessary medical care to all children.”<sup>105</sup> The Law on Protection of Childhood also provides a guarantee of antenatal and post-natal care, in accordance with international and EU standards: “provision of mothers with appropriate healthcare services within the pre-natal and post-natal period.”<sup>106</sup>

The law provides all young people (those above 14 years) with the right to consent to medical care independently, in accordance with international and EU standards. Article 38 of the Health Law provides: “every patient, reaching fourteen years of age and referring for receiving medical assistance, shall have the right to free choice of treating physician, if the latter may offer his/her services, and choosing of treatment methods according to his/her recommendations.” Article 43 of the Health Law requires that informed consent be obtained for all medical interventions – those aged over 14 years are deemed legally able to consent. However, according to several interviewees, there is some inconsistency in the law, leading to a lack of clarity about when young people aged 14 – 18 years can in fact independently consent to medical treatment, and to what types of interventions. According to the Family Code, parents have responsibility for the health and wellbeing of their children up to the age of 18 years. This appears to have been interpreted to mean that young people may access testing and initial consultation, but for any diagnostic work or treatment, they must have the consent (and thus inform) their parents or legal guardian. This is contradictory to international and EU standards which, as noted above, require States to ensure that young people can independently and confidentially access the full range of health and sexual health services. The apparent lack of clarity in the law can have a negative impact on young people, who may be “put off” accessing needed treatment as they fear informing their parents and getting their consent. Also, for risk adverse doctors, a lack of clarity in the law may mean that they will be more likely to involve a parent. This was highlighted by several interviewees. One of which stated that: *“14 – 18 year olds can consent to testing, but cannot consent to diagnosis and treatment. It is possible that they come to the clinics anonymously, get a consultation, but if they need treatment they must come with their parents. Some young people just disappear as they don’t want to involve their parents.”*<sup>107</sup>

The Law on Health also provides for the right to confidentiality in accessing health services for all youth who are able to consent to treatment independently, in accordance with international and EU standards. Article 39 provides persons with the “right to confidentiality of information on the state of his/her health, the fact of seeking medical help, diagnosis, as well as data, obtained during his/her medical examination.” Article 40 provides for doctor-patient confidentiality. As noted above, confidentiality and respect for privacy is essential to ensuring that youth are able to access healthcare.

Youth-friendly clinics were developed in Ukraine in 2002 - 2004, with the support of WHO and UNICEF, based on principles of: “voluntarism, benevolence, accessibility, confidentiality, anonymity and non-judgemental attitude to the visitor.”<sup>108</sup> The role, mandate, composition and guidelines for operation of the Youth-Friendly Clinics are set out in Ministerial Decree No. 383 of 2009. The clinics provide a comprehensive range of services, including promotion of health lifestyles; counselling on reproductive, sexual, physical and mental health; safe sexual behaviour skills training; preventing teen pregnancy; providing psychological help in a crisis; prevention of other negative phenomena; and training of professionals and volunteers. The clinic’s staff

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<sup>105</sup> Law on Protection of Childhood Article 6.

<sup>106</sup> Law on Protection of Childhood Article 6.

<sup>107</sup> Interview with Deputy-in-Chief of the Institute of Paediatrics, Obstetrics and Gynaecology of Medical Sciences of Ukraine.

<sup>108</sup> Ministerial Decree No. 383 of 2009, Article 1.

are trained in working with young people. The clinics cater to young people between the ages of 14 – 24 years, and provide a comprehensive range of services, including social work and psychological services, as well as medical services. The clinics also collect and centrally report and collate statistics on young people attending the clinics, and reportedly use this data in developing the clinics and ensuring that they are responsive to the needs of young people, and also report this data to the Ministry of Health.<sup>109</sup> The clinics operate and are based on criteria that accords with international and EU standards, and offer a commendable range of services aimed at maintaining health (not just the treatment of disease). As at January 2014, there were 147 youth friendly clinics in 27 communities across the country.<sup>110</sup>

Some concerns were expressed during the interviews about the lack of a youth friendly approach in mainstream health facilities. The Youth-Friendly Clinics cannot provide all types of treatment. Particularly for more specialist treatments, it may be necessary for a young person to visit mainstream health services, which, it was reported, are under no obligation to implement youth-friendly principles, and in practice, may not adequately be able to identify and respond to the unique needs of youth. For example, young people attend HIV/AIDS clinics when they have tested positive to HIV. They do not receive adequate support and follow-up, which can have an extremely negative impact, particularly where they are young and do not have a responsible parent caring for them. This problem is illustrated in the following quote: *“Adolescents who have HIV need to take medicine [anti-retroviral treatment] every day, at the same time. They may be afraid to talk to their parents or doctor about it. They may not take the drugs regularly, and will need to talk to someone they trust who can help them do their treatment properly. But doctors in Ukraine see health as “physical health” only, and not counselling etc...there was a 14 year old girl who died because she didn’t take her anti-retrovirals;”*<sup>111</sup>

Ukraine’s Youth Strategy does not appear to prioritise the training of professionals who provide medical care to young people. This is a gap, as it limits the “youth friendliness” of service providers. Also, there is no mention in the Strategy and laws of the need for medical services to cater for particularly vulnerable groups of young people, or those with more acute or specific health needs (e.g. sex workers, LGBTI young people, young drug users). Particularly in the absence of laws explicitly prohibiting discrimination on the ground of sexual orientation or gender identity, it is a gap that the youth policy and laws do not appear to prioritise ensuring that medical services are youth friendly and accessible to particularly vulnerable groups of young people.

There also appear to be no youth-specific indicators used in inspections and monitoring and accreditation of mainstream health services. Therefore, there is no accountability for health services who do not offer a youth friendly service.

## **Harmful substances**

As noted above, tobacco, alcohol and other drug use and abuse by young people is a significant health issue in Ukraine. International and EU standards require States to address the harmful impact of drug and alcohol use and abuse by young people. Article 33 of the UNCRC is a key provision, and provides that: “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.” The Committee on the Rights of the Child, in its general comment on adolescent health and development, expressed concern “about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles” and urged States to “regulate or prohibit

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<sup>109</sup> Interview with Deputy-in-Chief of the Institute of Paediatrics, Obstetrics and Gynaecology of Medical Sciences of Ukraine.

<sup>110</sup> Interview with Deputy-in-Chief of the Institute of Paediatrics, Obstetrics and Gynaecology of Medical Sciences of Ukraine.

<sup>111</sup> Interview with Youth Specialist, Network for People Living with HIV.



information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.”

Ukraine has a fairly comprehensive legal framework that aims at the prevention and treatment of drug and alcohol use and abuse by young people. In particular, the Law on Measures to Prevent and Reduce the Consumption of Tobacco Products and their Harmful Influence on the Population’s Health contains provisions that specifically apply to children and youth and aims to implement a range of measures “to protect the population’s health from the harmful consequences to human health due to smoking of tobacco products and other ways of consumption, as well as the harmful influence of tobacco smoke.”<sup>112</sup> It places restrictions on smoking in public places; and on the advertising and sale of tobacco products to children (those aged under 18 years); and places requirements for the import and sale of tobacco products, including that they must carry health-warning labels.<sup>113</sup> The Law also requires the Government to raise awareness and promote the harmfulness of tobacco products.<sup>114</sup>

The Law in Ukraine also regulates the consumption, advertising and sale of alcohol, particularly in relation to persons under 18 years of age, which is the minimum legal drinking age.<sup>115</sup> While the Law is fairly comprehensive in this area, it is noted that some gaps remain, which are significant particularly in light of the increasing use of drugs and alcohol by young people in Ukraine and the health consequences of this. For instance, as noted by the UN Committee on the Rights of the Child, the ineffectiveness and weak enforcement of laws prohibiting the sale of alcohol and tobacco to children is a challenge.<sup>116</sup>

The Law on Social Work with Families, Children and Youth provides for “medical and social rehabilitation of children who suffer from alcohol and drug abuse but due to health conditions may not be referred to schools of social rehabilitation or vocational schools of social rehabilitation.”<sup>117</sup> The Law on AIDS Prevention and Social Security of the Population provides for the prevention of HIV among injecting drug users through rehabilitation and harm reduction programmes, including medication-assisted therapy for drug users and proper conditions for the exchange and disposal of needles and syringes.<sup>118</sup>

However, it was reported by the interviewee from UNODC that young people under the age of 18 years are not accepted into opiate substitution (drug treatment) programmes. This is pursuant to a Decree of the Ministry of Health. This is against international and EU standards which stipulate that young people should be able to independently access a range of medical interventions and services. According to the same interviewee, health decrees in this area are complicated and contradictory, which makes it very difficult for practitioners to determine what the law is and what procedure they should follow. This, in turn, means that practitioners are unsure about what steps they should take to protect young people’s rights in this area. In its most recent periodic review of Ukraine, the UN Committee on the Rights of the Child noted the lack of specialised youth friendly services aimed at treatment and rehabilitation for children who used intravenous drugs and the attitudes that impede access to existing services.

The punitive approach that the Government appears to take to young drug users may be harming young people and their access to services. Very heavy penalties apply to persons who are found to be in possession of even very small amounts of illicit substances,<sup>119</sup> and the Government appears to prioritise imprisonment over providing access to treatment for young people: it

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<sup>112</sup> Law on Measures to Prevent and Reduce the Consumption of Tobacco Products and their Harmful Influence on the Population’s Health, Article 5.

<sup>113</sup> Law on Measures to Prevent and Reduce the Consumption of Tobacco Products and their Harmful Influence on the Population’s Health, Article 13.

<sup>114</sup> Law on Measures to Prevent and Reduce the Consumption of Tobacco Products and their Harmful Influence on the Population’s Health, Article 14.

<sup>115</sup> Ukraine: Alcohol consumption: levels and patterns ([http://www.who.int/substance\\_abuse/publications/global\\_alcohol\\_report/profiles/ukr.pdf](http://www.who.int/substance_abuse/publications/global_alcohol_report/profiles/ukr.pdf)).

<sup>116</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine (2011) para 60.

<sup>117</sup> The Law on Social Work with Families, Children and Youth, Article 10.

<sup>118</sup> The Law on Social Work with Families, Children and Youth, Article 4.

<sup>119</sup> The European Monitoring Centre for Drugs and Drug Addiction reports that: ‘In 2010 regulations aimed at strengthening control over drug trafficking were adopted. The Order of the Ministry of Health of Ukraine on 29 July 2010 No 634 amended the table, defining new legal thresholds for small, large and especially large amounts of drugs that would result in criminal responsibility...the probability of punishment for acetylated opium increased 20 times, while for poppy straw it increased five times’ (<http://www.emcdda.europa.eu/publications/country-overviews/ua>).

was reported by a specialist in this area that around 70% of persons current in prison in Ukraine are on drug possession charges.<sup>120</sup> According to the European Monitoring Centre for Drugs and Drug Addiction, “excessive criminalisation of small amounts of opioid drugs jeopardises the performance of harm reduction programmes, including the needle exchange programme, and can lead to a surge in morbidity from HIV because of an inability to use these services.”<sup>121</sup> The UN Committee on the Rights of the Child has also expressed concern about the impact of Ukraine’s heavy criminal penalties for drug possession in its recent periodic reporting, stating that it perhaps creates a barrier to their access to health services.<sup>122</sup> Indeed, the climate of fear created through a heavily punitive approach may drive drug use and abuse underground, and discourage youth from accessing services, including clean needles, education and information and treatment and rehabilitation. This is exacerbated by the reported data sharing practices, in which health professionals at times shared information with police, perhaps deterring young people further from accessing health services.<sup>123</sup>

### **Addressing risky sexual behaviours, HIV/AIDS and STDs**

As set out above, Ukraine has the highest rate of HIV infection in Europe and rates of infection are relatively high among youth. Risky health behaviours, such as unsafe sex and intravenous drug use are key factors that are fuelling the spread of HIV among young people, and it is important that any youth policy and law addresses these issues.

International and European standards provide guidance on responding to HIV/AIDS and other STIs. According to these Guidelines, it is necessary for States not only to ensure that young people have access to medical care, services and information, but also to initiate prevention measures, and to create a framework in which at risk groups of young people are not stigmatised. The reason for this is that members of at risk groups (including, for instance, men who have sex with men, sex workers and intravenous drug users) are already stigmatised and are more likely to face discrimination than other persons with HIV/AIDS. According to UNAIDS: “Members of these groups often avoid or delay seeking needed services for fear of being “found out”, humiliated, and/or treated differently by health workers and, in some instances, prosecuted and imprisoned.”<sup>124</sup>

According to the UN Committee on the Rights of the Child, “States should ensure that appropriate goods, services and information for the prevention and treatment of STDs, including HIV/AIDS, are available and accessible. To this end, States parties are urged (a) to develop effective prevention programmes, including measures aimed at changing cultural views about adolescents’ need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality; (b) to adopt legislation to combat practices that either increase adolescents’ risk of infection or contribute to the marginalization of adolescents who are already infected with STDs, including HIV; and (c) to take measures to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms, and care.”<sup>125</sup> According to the International Guidelines on HIV/AIDS and Human Rights developed by UNAIDS and the UN High Commissioner on Human Rights, States should establish an effective framework for response to HIV/AIDS which integrates HIV responses across all of government in a coordinated, participatory and transparent way.

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<sup>120</sup> Interview with UNODC Regional Advisor.

<sup>121</sup> Country overview: Ukraine (<http://www.emcdda.europa.eu/publications/country-overviews/ua>).

<sup>122</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, para 60.

<sup>123</sup> Interview with UNODC Regional Advisor.

<sup>124</sup> UNAIDS, *Reducing HIV stigma and discrimination: A critical part of AIDS programmes*, 2007, p. 10 ([http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/dataimport/pub/report/2008/jc1521\\_stigmatisation\\_en.pdf](http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/dataimport/pub/report/2008/jc1521_stigmatisation_en.pdf)).

<sup>125</sup> UN Committee on the Rights of the Child, General comment No. 4: Adolescent health and development, 2003, CRC/GC/2003/4, para 30.

The Youth Strategy does not explicitly address HIV/AIDS and STDs, nor does the Concept for 2016 – 2020; though it could be argued that this issue is partially subsumed within the “healthy lifestyle” key area in both of these documents. However, as noted above, the promotion of a healthy lifestyle is a limited way to address health issues among young people. It focuses on the individual rather than also addressing structural factors that create risk of HIV infection and STIs (for instance, stigma associated with particularly vulnerable groups, such as LGBTI young people and sex workers). Also, HIV/AIDS responses do not appear to be mainstreamed throughout government, as required by international standards. Addressing HIV/AIDS and STIs is a complex and multi-faceted issue and requires the involvement of a diverse range of government sectors – health, education, media, child protection and family, local government, social services and so on. Failure to mainstream youth HIV/AIDS response throughout government is a significant gap.

The Ukraine Law on AIDS Prevention and Social Security of Population sets out a framework for the prevention, treatment, care, support and legal and social protections of persons living with HIV. The Law provides that an individual has a right to HIV testing, and pre and post-testing counselling.<sup>126</sup> The Law makes specific provision for persons aged over 14 years, and provides that all individuals aged over 14 years will be deemed to have the capacity to consent to testing provided informed consent is obtained. This is good practice: requiring parental consent or the consent of another adult can deter young people from seeking testing and support,<sup>127</sup> and providing young people with an independent right to confidential testing is essential to ensuring that there are no barriers to them accessing such a service. However, as noted above, a lack of clarity in the law has meant that medical service providers may seek parental consent for a young person aged 14 – 18 years before delivering HIV/AIDS diagnostics and treatment.

The Law also provides that results must be confidential (except where, following counselling, the behaviour of the person living with HIV is placing others at risk),<sup>128</sup> and that registration and monitoring of HIV-positive persons must be done confidentially in line with data protection laws.<sup>129</sup> This is important in ensuring that there are no legal barriers to young people accessing services confidentially. It also provides for post-test counselling,<sup>130</sup> which is good practice. However, one gap in the youth strategy in terms of access to medical care is that it does not include measures to make sexual health services, such as information and contraceptives, freely available to young people in an accessible way (for example, through schools or youth centres). Young people may be “put off” accessing sexual health advice and contraceptives through doctor’s surgeries, particularly where the doctors are known to their family, so it is important to ensure their availability through youth-friendly services.<sup>131</sup> Also, young people must pay for medicines and contraceptives, and may be unable to do so.<sup>132</sup>

The Law on AIDS Prevention and Social Security of Population aims at preventing HIV/AIDS through the delivery of information and education on HIV. As noted above, the Law makes limited provision for issues related to HIV prevention to be included in secondary, vocational and tertiary educational provision. It also requires the Government “to prioritise awareness-raising for the general public promoting a healthy and moral lifestyle, spiritual values and responsible sexual behaviour in order to prevent HIV”.<sup>133</sup> Again, tying HIV prevention to the promotion of a “moral lifestyle” risks excluding or even stigmatising groups of young persons who are not so-

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<sup>126</sup> The Law on AIDS Prevention and Social Security of Population, Article 6.

<sup>127</sup> Coram Children’s Legal Centre and IPPF, Qualitative research on legal barriers to young people’s access to sexual and reproductive health services: Inception report, 2014 ([http://www.childrenslegalcentre.com/index.php?page=international\\_research\\_projects](http://www.childrenslegalcentre.com/index.php?page=international_research_projects)).

<sup>128</sup> The Law on AIDS Prevention and Social Security of Population, Article 7(1); article 11.

<sup>129</sup> The Law on AIDS Prevention and Social Security of Population, Article 9(1) and (2).

<sup>130</sup> The Law on AIDS Prevention and Social Security of Population. Article 7(2).

<sup>131</sup> Coram Children’s Legal Centre and IPPF, Qualitative research on legal barriers to young people’s access to sexual and reproductive health services: Inception report, 2014 ([http://www.childrenslegalcentre.com/index.php?page=international\\_research\\_projects](http://www.childrenslegalcentre.com/index.php?page=international_research_projects)).

<sup>132</sup> Interview with UNICEF Youth and Adolescent Development Specialist.

<sup>133</sup> The Law on AIDS Prevention and Social Security of Population, Article 4.

cially considered to be living a “moral lifestyle”, such as LGBTI young persons and sex workers, and is therefore problematic.

Law in Ukraine makes provision for addressing stigma and discrimination against persons with HIV, and persons belonging to particular vulnerable groups. The Law on AIDS Prevention and Social Security of Population places an obligation on the Government to develop “a consistent policy focused on the development of a tolerant attitude toward populations at high risk of HIV infection.”<sup>134</sup>

The Law addresses two issues relating to discrimination and stigmatisation. It prohibits discrimination on the basis of HIV status, and also on the basis of membership or perceived membership to an “at risk group”,<sup>135</sup> “ which is defined as “persons who are at higher risk of HIV infection, due to their behaviour or behaviour of their social environment.”<sup>136</sup> This is quite a vague provision, undermining its protective impact. The Law does not explicitly prohibit discrimination on the basis of sexuality or gender identity, for instance. However, discrimination is defined quite comprehensively as “action or inaction which directly or indirectly establishes limitations, deprives of relevant benefits or humiliates human dignity of any individual on the ground of one of multiple indicators, related to actual or suspected presence of HIV with an individual, or gives grounds to affiliate an individual to a population at high risk of HIV.”<sup>137</sup>

The Law also sets out the rights to which persons living with HIV are entitled, including rights to treatment and medical care; information and confidentiality; access to psychological, social and legal services (confidentially); access to medical records and information.<sup>138</sup> It affirms that persons living with HIV are accorded with all human rights contained in the Constitution and other Laws of Ukraine.<sup>139</sup>

## Mental health

According to the UN Committee on the Rights of the Child, in its general comment on adolescent health and development, “mental disorders and psychosocial illness are relatively common among adolescents. In many countries symptoms such as depression, eating disorders and self destructive behaviours, sometimes leading to self-inflicted injuries and suicide, are increasing.”<sup>140</sup> The Committee elaborated in its general comment on the Convention rights in relation to mental health of adolescents:

- Children and young people are entitled to the right to adequate treatment and rehabilitation with mental health problems;
- Governments should raise awareness of the early signs and symptoms of mental health issues;
- Governments should ensure that young people are protected from undue pressure that can contribute to mental health problems; and
- Governments must combat discrimination surrounding mental health issues.<sup>141</sup>

The EU Resolution on Mental Health sets out requirements of Member States in the promotion of mental health of persons, regardless of age. The Resolution takes a comprehensive view of mental health and the importance of creating environments and addressing underlying

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<sup>134</sup> The Law on AIDS Prevention and Social Security of Population, Article 4.

<sup>135</sup> The Law on AIDS Prevention and Social Security of Population, Article 14(3).

<sup>136</sup> The Law on AIDS Prevention and Social Security of Population, Article 2.

<sup>137</sup> The Law on AIDS Prevention and Social Security of Population, Article 14(3).

<sup>138</sup> The Law on AIDS Prevention and Social Security of Population, Article 13.

<sup>139</sup> The Law on AIDS Prevention and Social Security of Population, Article 15.

<sup>140</sup> UN Committee on the Rights of the Child, General comment No. 4: Adolescent health and development, 2003, CRC/GC/2003/4, para. 20.

<sup>141</sup> UN Committee on the Rights of the Child, General comment No. 4: Adolescent health and development, 2003, CRC/GC/2003/4, para. 29.

factors that contribute to poor mental health. It contains a minimal number of provisions relating to children and young people. The Resolution calls on Member States to support school staff to develop a healthy environment<sup>142</sup> and organise support programmes for parents, particularly for disadvantaged families, and to promote allocation for posts of school counsellors in each secondary school to assist young people and provide for their social-emotional needs.<sup>143</sup> It also “stresses the need for specialist mental health services for children and adolescents” and “the need for the early detection and treatment of mental health problems in vulnerable groups, with particular reference to minors.”<sup>144</sup> It also proposes that mental health be incorporated into the programmes of study of all healthcare professionals and continuing professional development training.<sup>145</sup>

Contrary to international and EU standards, there is no comprehensive policy for preventing and responding to mental health problems of youth in Ukraine, nor is mental health included as an explicit area of action in the Youth Strategy, which is a significant gap particularly in light of the relatively high reported suicide rate of young people in Ukraine.<sup>146</sup> However, it should be noted that the Concept for 2016 – 2020 includes: “*facilitating the strengthening of young people’s mental health’ is an objective within the priority area of ‘healthy and safe lifestyles’.*”

There is a Law on Mental Health Services, which sets out how mental health services should be delivered, and the human rights entitlements of persons using these services. However, this Law does not include consideration of youth specifically. The Ukrainian Government has adopted a Ministry of Health Order (No. 176) aimed at improving psychiatric aid (2009 – 2010),<sup>147</sup> which contained the identification of child psychiatry as one of its priorities. Also, it is worth noting that the right to health care in Ukraine, as noted above, includes the right to the highest attainable standard of physical and mental health. However, the policy and legal rights are limited, according to the UN Committee on the Rights of the Child, and certainly do not amount to a comprehensive policy to address mental health issues for youth.<sup>148</sup>

There are some legal provisions that address (youth) mental health, mainly aimed at supporting young people in times of crisis, and preventing mental illness. For instance, the law provides for psychological support for children in schools, as the Law on Education provides that “The State psychological service shall be in place in the system of education. Psychological provision of the educational upbringing process in educational institutions shall be performed by practicing psychologists.”<sup>149</sup> The Law on Social Work with Families, Children and Youth provides a framework for the delivery of social services for families, children and youth, which is defined under the Law as: “a system of social measures aimed at promotion, support and provision of services to families, children and youth in order to overcome or mitigate the rough and tumble of life, support of social status and full life.”<sup>150</sup> The Law provides that social services shall be accessible and must provide a complex of social services to families, children and youth, including: provision of psychological services on holding psycho diagnosis, psychological treatment, psychological rehabilitation, granting methodological advice.<sup>151</sup>

There is also a limited provision in this Law for “social, medical and psychological rehabilitation within the relevant healthcare institutions for children and youth who have experienced violence and abuse, as well as were affected by the Chernobyl incident.”<sup>152</sup> There is also a specif-

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<sup>142</sup> The EU Resolution on Mental Health, Article 25.

<sup>143</sup> The EU Resolution on Mental Health, Article 26.

<sup>144</sup> The EU Resolution on Mental Health, Article 27.

<sup>145</sup> The EU Resolution on Mental Health, Article 28.

<sup>146</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, para. 58.

<sup>147</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, para. 58. The consultant has not been able to read a copy of this policy.

<sup>148</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, para. 58.

<sup>149</sup> The Law on Education, Article 21.

<sup>150</sup> The Law on Social Work with Families, Children and Youth, Article 1.

<sup>151</sup> The Law on Social Work with Families, Children and Youth, Article 8.

<sup>152</sup> The Law on Social Work with Families, Children and Youth, Article 10.

ic Law on the Chernobyl Consequences and Law on Protection of Violence. However, clearly this is limited to children who are affected by particular acts and events, and does not apply more generally to children affected by issues that impact on their mental health.

The Law on Social Work with Families, Children and Youth also states that the Government should stipulate: “awareness-raising, communications work in families, among children and youth according to their place of residence, study or employment, aimed at shaping individuals’ standards of positive behaviour and healthy lifestyle.”<sup>153</sup> Also, the Law on Anti-Discrimination, as noted above, does not prohibit discrimination on the ground of health status, which is a gap in the legal protections afforded to youth with mental health problems.

However, these legal provisions amount to quite a piecemeal approach to the cross-cutting issue of youth mental health. The lack of a comprehensive policy on mental health and lack of explicit recognition of youth in the law on mental health has meant that gaps remain in the policy and legislative framework in this area, notably: a lack of youth-friendly mental health facilities and rehabilitative services; provisions to ensure that young people are, where possible, treated in the community and not subjected to unnecessary detention / institutionalisation; promotion of early detection of mental health issues; and incorporation of programmes of study on youth and mental health for relevant professionals.

### **Sport and physical culture**

The EU Physical Activity Guidelines apply to persons of all ages; however, certain provisions apply to young persons. Part 3.3 relates to physical activity in education (in schools, as well as in local communities). The Guidelines recognise that “schools and sport clubs are important places to enhance health-related physical activities of children and young people. Sedentary children and young people show signs of metabolic problems such as clustering of cardiovascular risk factors.” The Guidelines mandate that one hour a day of physical activity should be promoted in schools, as play or as physical education. Schools should also be encouraged to promote interest in life-time physical activities of pupils. States should ensure that the key criteria for effective physical education in schools are met, including: reasonable class sizes; adequate facilities and equipment; a well-planned curriculum; appropriate assessment procedures; qualified teachers; and positive administrative support for networks linking stakeholders in areas of physical activity and health care in the local community (for instance, through sports clubs). It also requires that school playgrounds and physical education lessons be adapted to all pupils, paying particular attention to the need to engage girls.

The law and policy framework in Ukraine has focused considerably on the promotion of sport and physical activity of youth. Under the key priority area of “formation of a healthy lifestyle”, the Youth Strategy explicitly mentions “development of physical culture and sport”; “organising all-Ukrainian, cross-regional and regional sport competitions and tournaments”; and “implementation of programs directed at engaging young people in physical culture and sport activities.” In the Concept Note for 2016 – 2020, sport is heavily focused on within the key priority area of ‘healthy and safe lifestyles’. According to the Concept Note, key objectives include: “enhancing physical, mental and social health of young people through wide implementation of a system of physical education and sport”; and building sport facilities and recreation centres.

Ukraine also provides young people with the right to engagement in physical activity and sport. Article 12 of the Law on Fostering Youth Socialisation and Development provides that: “The state ensures that young citizens have the right to healthcare, engagement in physical activity and sport equal to the right of other citizens.” This law and the comprehensive Law on Physical Culture and Sports 1994, provides a framework for operationalising the Government’s commitment to encourage youth sport and physical activity both within and outside educa-

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<sup>153</sup> The Law on Social Work with Families, Children and Youth, Article 9.

tional institutions. The Law on Physical Culture and Sports provides that all citizens have “the right to be engaged in physical culture and sport.” This includes a wide range of sport and activities that are set out in the law, ensuring that persons may freely choose from a wide range of sports and activities that are accessible and safe, and provides for the founding of institutions of citizens into civil society organisations of sports and physical training.<sup>154</sup>

This Law also provides that this right is available to all equally, without discrimination on the basis of race; skin colour; political, religious and other beliefs and views; gender; ethnic and social origin; material position; living community; language or other criteria.<sup>155</sup> As noted in relation to other laws, the law does not explicitly include gender identity, sexuality, health status or disability as protected grounds, leaving a gap in the law. Article 4 provides a list of principles of state policy in this area, notably that promotion and development of sport and physical activity should be based on universal human values, fairness, mutual respect and gender equality and equal opportunity, and that activities should be available for all age groups. It also provides that access for persons with disabilities should be a key principle on which policy in this area should be based. This is encouraging as sport and physical culture policy should be based on fairness, improving respect among persons and accessibility for all, according to international and EU standards. The Act also provides a list of indicators for the collection of data, which is disaggregated by age, and in particular, “the attraction of children and youth, including those with disabilities, to youth sports schools.”<sup>156</sup>

It also provides for the establishment of sports clubs (institutions of physical culture and sports), and youth sports schools, which are “out of school sports educational institutions of physical culture and sport, which provide for development of skills of trainees within the chosen sport”, which “provide the necessary conditions for harmonious education, physical development, adequate health improvement, meaningful recreation and leisure of children and youth, realising personal potential, acquisition of healthy lifestyle habits, and preparation of athletes for reserve sport.”<sup>157</sup> The Act also provides for a framework of funding for youth sport schools.<sup>158</sup> Special provisions apply to children and youth who are identified as “gifted”.<sup>159</sup> A wide range of other non-youth specific sports institutions and bodies are also established under the Act.

Sports for All is the State organisation responsible for establishing and running the sports centres, and it also organises and holds a number of sporting events throughout the country, some of which are targeted at youth. To date, it has established 289 sports centres, though only 26 of these (9%) are in villages, which is problematic considering the lack of opportunities, facilities and services for youth that have been documented in rural areas. Sports for All carries out outreach work into schools and universities and also in places in which vulnerable and excluded youth can be accessed (orphanages, care homes for people with disabilities). It also carries out public awareness raising about healthy lifestyles (for instance, the “Red Card” campaign, which targets at risk groups of persons and those engaging in risky behaviours).

The Act also promotes physical culture within schools. Article 26 provides for the development of “physical culture in the field of education...aimed at fostering development of physical health of pupils and students, integrated approach to forming mental and physical skills of a person, improvement of physical and psychological preparation for active life, professional occupation based on principles of individual approach, priority of health-improving measures, extensive use of various means and forms of physical education and mass sport, continuity of the process through life.” This provision is significant as it links sports to health and healthy living, and aims to promote physical activity as a key component of good health throughout a

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<sup>154</sup> The Law on Physical Culture and Sports, Article 3.

<sup>155</sup> The Law on Physical Culture and Sports, Article 3.

<sup>156</sup> The Law on Physical Culture and Sports, Article 7.

<sup>157</sup> The Law on Physical Culture and Sports, Article 10.

<sup>158</sup> The Law on Physical Culture and Sports, Article 10.

<sup>159</sup> The Law on Physical Culture and Sports, Article 11.

pupil's life. This provision also establishes "experts in physical education" within all schools. It makes physical education classes obligatory and provides that they must be timetabled at least three times a week. It also makes sport and exercise rehabilitation of pupils with disabilities obligatory in educational institutions. The Act also makes provision for physical activities to be developed in places of employment<sup>160</sup> and in rural areas.<sup>161</sup>

The legal and policy framework in the area of sport and physical culture is comprehensive and largely compliant with international and EU standards. However, a previous analysis of youth policy in Ukraine noted the need to focus more on encouraging young people who are not already actively engaged in sport and physical activity.<sup>162</sup>

### **Addressing underlying determinants of ill-health**

As noted above, according to international and EU standards, Governments must not only ensure access to quality healthcare for the population, it must also ensure that the underlying determinants of health are available and met. These determinants, which are also rights in international and EU law, include: quality housing, nutritious food, clean and safe water, social security, environmental protection, protective employment conditions, and good occupational health and safety and so on.

Neither the Ukraine Youth Policy nor the Concept Note for 2016 – 2020 make explicit reference to the need to ensure that these underlying determinants are available in order to ensure that young people achieve their highest standard of mental and physical health, as required in international and EU law. Nonetheless, a comprehensive range of laws in Ukraine provide a framework for these determinants / rights. The Constitution of Ukraine accords a comprehensive range of rights to all citizens, including key economic and social rights: the right to social security;<sup>163</sup> housing;<sup>164</sup> standard of living, including nutrition, housing and clothing;<sup>165</sup> a safe environment;<sup>166</sup> education;<sup>167</sup> and protections from violence.<sup>168</sup> The law on Protection of Childhood contains key rights for children, including the right to an adequate standard of living;<sup>169</sup> housing;<sup>170</sup> protection from the worst forms of child labour;<sup>171</sup> protection of children who are without family care;<sup>172</sup> and protection and support for children with disabilities.<sup>173</sup>

The Law on Health also places an obligation on the Government to "ensure living standards of the population, including food, housing, medical care, social services and protection, necessary to support its health."<sup>174</sup> This includes the obligation to set minimum wages, pensions, scholarships, social assistance, provision of vulnerable groups with food, clothing, medicine and other essentials, and carrying out special measures to meet the needs of refugee, homeless or other individual who have no fixed abode.<sup>175</sup> It also provides that the State ensure "environmental protection as an important precondition of life and human health."<sup>176</sup>

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<sup>160</sup> The Law on Physical Culture and Sports, Article 28.

<sup>161</sup> The Law on Physical Culture and Sports, Article 29.

<sup>162</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 85 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>163</sup> The Constitution of Ukraine, Article 46.

<sup>164</sup> The Constitution of Ukraine, Article 47.

<sup>165</sup> The Constitution of Ukraine, Article 48.

<sup>166</sup> The Constitution of Ukraine, Article 50.

<sup>167</sup> The Constitution of Ukraine, Article 53.

<sup>168</sup> The Constitution of Ukraine, Article 54.

<sup>169</sup> The law on Protection of Childhood, Article 8.

<sup>170</sup> The law on Protection of Childhood, Article 18.

<sup>171</sup> The law on Protection of Childhood, Article 21.

<sup>172</sup> The law on Protection of Childhood, Articles 24 and 25.

<sup>173</sup> The law on Protection of Childhood, Articles 26 and 27.

<sup>174</sup> The Law on Health, Article 25.

<sup>175</sup> The Law on Health, Article 25.

<sup>176</sup> The Law on Health, Article 26.



The law also provides for the delivery of social services for those who are in need. The Law on Fostering youth Socialisation and Development in Ukraine provides that “Social services centres for families, children and youth and their specialised units shall be created for the purpose of supporting youth socialisation and development”.<sup>177</sup> Social services centres are defined as: “special institutions providing social services to families, children and youth who find themselves in challenging life situations or in need of external support.”<sup>178</sup> This Law also provides for assistance to raise the standard of living of young people, through a system of benefits and priority housing allocation.<sup>179</sup>

The Law on Protection of Childhood also sets out a system of child protection for children who are without family care, and the Law on Social Work with Families, Children and Youth provides for “comprehensive measures, aimed at preventing family troubles, social orphanhood, domestic violence and child abuse, human trafficking, the worst forms of child labour...”<sup>180</sup> thereby providing for prevention of family breakdown and violence and abuse against children.

Therefore, while the Youth Strategy makes no explicit mention of the need to address underlying determinants that negatively affect the health of youth, the law is very comprehensive in this regard and largely complies with international and EU standards.

While the law on social services is quite comprehensive and protective, it should be noted that there exist “a critical lack of social workers” on the ground and lack of resources to ensure that these laws are implemented effectively.<sup>181</sup>



## RECOMMENDATIONS ON HEALTHY LIFESTYLES AND SPORT

**Mainstreaming youth issues in health policy:** Ensure that the Ministry of Health is represented on the Inter-Ministerial Working Group on Youth (recommended above). In the meantime, improve links between the Ministry of Health and Ministry of Youth and Sport through the establishment of regular meetings with key focal points in each Ministry to discuss youth health policy development.

**Targeting policy to the needs of youth and the most vulnerable:** Improve linkages between the Ministry of Health and Ministry of Youth and Sport to key research institutions. This could be achieved through inviting researchers to Inter-Ministerial meetings and Working Groups (see above).

**Improving sex and relationships education in schools:** UNDP could develop a Sex and Relationships Working Group, involving representatives from all relevant NGOs and UN organisations. The purpose of the Working Group would be to avoid duplication and ensure cohesion among donors and programmers in this area and to advocate for the adoption of sex and relationships education into the compulsory curriculum. In order to avoid resistance, the Working Group could advocate for sex and relationships education to be delivered under the umbrella subject of “relationships education” (perhaps as an additional stream within health education), which should include knowledge and skills on healthy relationships, including on sexual health. It should be inclusive of diverse sexual orientations and gender identities.

<sup>177</sup> The Law on Fostering youth Socialisation and Development in Ukraine, Article 6.

<sup>178</sup> The Law on Fostering youth Socialisation and Development in Ukraine, Article 2.

<sup>179</sup> The Law on Fostering youth Socialisation and Development in Ukraine, Articles 9 and 10.

<sup>180</sup> The Law on Social Work with Families, Children and Youth, Article 9.

<sup>181</sup> Interview with Specialist from Dangerous Diseases Department of Ministry of Social Policy.

**Ensuring access to contraceptives:** The Ministry of Health / Ministry for Education should be encouraged to allocate funding towards the provision of free contraceptives (condoms) to young people. These could be delivered through schools (through school health services or counsellors), health services, youth services / organisations and sports for all centres, and young people should be able to access contraceptives independently and confidentially. These could be delivered through a scheme similar to the “C-Card Scheme” which is a successful public health initiative in the UK. It allows young people (aged 13 – 24 years) to register at specific venues and receive an allocation of condoms free every month by presenting an identification card at particular places (e.g. youth centres). Condoms are received confidentially.

**Ensuring youth independent access to full range of health care:** The Law on Health and Law on HIV/AIDS should be amended to allow all young people aged 14 years and over to consent to receiving all types of medical services (unless they are demonstrated not to have the capacity to consent). The types of services to which they can consent independently (i.e. without a parent or legal guardian) should be explicitly set out to include: testing, diagnosis, all forms of treatment, counselling, other forms of care. The ban on persons below the age of 18 years on accessing opiate substitution therapy should be removed and the law should provide for all young (above the age of 14 years) to access all drug treatment therapies independently.

**Mainstreaming youth friendly principles throughout medical services:** The Minister for Health should be encouraged to adopt a Decree extending youth friendly principles (that guide youth-friendly clinics) to all health service providers, and health professionals should receive training on implementing youth friendly principles.

**Ensure accreditation / monitoring system includes key indicators on youth friendliness of health services (and on access by particularly vulnerable groups):** The legislative framework setting out the criteria for accreditation, inspections and monitoring of health services and facilities should be reviewed. Indicators relating to youth should be added to these frameworks (e.g. can youth independently consent to all forms of treatment? Are services provided confidentially and without notification of parents? How many staff members have been trained in youth friendly health service provision? Are treatments available free of charge? And so on).

**Decriminalisation of drug possession:** Law enforcement authorities should be encouraged to apply a health, rather than punitive approach to drug use and abuse by young people. Ideally, criminal law should be amended to decriminalise possession of illicit substances (particularly of very small amounts). Alternatively, the Prosecutor’s guidelines should be amended to state that, where a young person is arrested for drug possession, criminalisation should be avoided. Where at all possible, young people should be diverted out of the criminal justice system and into drug treatment services.

**Legislate to ensure youth can access drug treatment and that youth friendly principles apply in drug treatment programmes:** The Minister for Health should be encouraged to adopt a Decree setting out youth friendly principles that should apply to all drug treatment providers, and health professionals should receive training on implementing youth friendly principles.

**Define “at risk groups” in the HIV/AIDS Law:** Particular at risk groups against whom discrimination is prohibited should be set on in the Law on HIV/AIDS. These should include (in a non-exhaustive list): intravenous drug users, sex workers and men who have sex with men.

**Develop policy priorities and activities to address youth mental health issues:** The Ministry of Health, along with the Ministry of Youth and Sports, Ministry of Education and Ministry of Social Policy should develop a comprehensive mental health policy to address the mental health needs of youth. This should be guided by EU standards.

## 5.2. NON-FORMAL EDUCATION

Non-formal education is a learner-centred and practice-based learning process which emphasises intrinsic motivation, social context of learning, and the usefulness of knowledge, and aims at identity growth, social change and integration into society. Learning is voluntary, involves conscious, educational aims and may be credited.<sup>182</sup> However non formal education in Ukraine faces several challenges.

### 5.2.1. EU STANDARDS ON NON-FORMAL EDUCATION

The Council Recommendation on the validation of non-formal and informal learning (2012/C 398/01) recognises that the “knowledge, skills and competences acquired through non-formal and informal learning can play an important role in enhancing employability and mobility, as well as increasing motivation for lifelong learning, particularly in the case of the socio-economically disadvantaged or the low-qualified.”<sup>183</sup> This is particularly relevant in the context of the economic crisis, which has increased the levels of youth unemployment. The recommendation ascribes responsibility for facilitating opportunities for formal and non-formal education to a wide variety of stakeholders, including employers, trade unions, employment services, youth organisations and civil society organisations in general.

It further sets out the need to:

- By 2018, have in place arrangements for the validation of non-formal and informal learning, enabling individuals to:
  - “(a) have knowledge, skills and competences which have been acquired through non-formal and informal learning validated, including, where applicable, through open educational resources;
  - (b) obtain a full qualification, or, where applicable, part qualification, on the basis of validated non-formal and informal learning experiences, without prejudice to other applicable Union law, in particular Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ( 2 ).”
- Include within the arrangements for validation of an individual’s non-formal and/or informal learning: the identification of learning outcomes, documentation of learning outcomes, assessment of learning outcomes and certification of results.
- Apply principles to the arrangement for validation, including (but not limited to):
  - o The need to link validation to national qualifications frameworks and keep it in line with the European Qualifications Network;
  - o Ensure availability of information on opportunities and benefits of informal and non-formal activities;
  - o Disadvantaged and/or unemployed groups are particularly likely to benefit from opportunities;
  - o The use of Union transparency tools, such as the Europass framework and Youthpass, is promoted in order to facilitate the documentation of learning outcomes.

The Recommendation on the promotion and recognition of non-formal education/learning of young people (2003) emphasises the crucial role that lifelong learning can play in reducing social inequality and exclusion, and the role non-formal education plays in “securing the

<sup>182</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 130 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>183</sup> Council of Europe, Recommendations on the validation of non-formal and informal learning (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:398:0001:0005:EN:PDF>).

knowledge and capacities which young people need to succeed in contemporary societies.”<sup>184</sup> It recommends that states:

- Reaffirm that non-formal education constitutes “a fundamental dimension of the life-long learning process”<sup>185</sup> and work towards: increasing the qualification of professionals in charge of non-formal education opportunities and activities; improving the quality of non-formal education itself; and improving the monitoring of progress of those within non-formal education programmes.”
- Promote equal opportunities for all young people (particularly the socially-disadvantaged groups) to access non-formal opportunities.
- Promote innovation and research within the development of non-formal education.
- Use non-formal education as a method of integrating young people into society.
- Make non-formal education a particular focus of national youth policies.

In the UNDP Youth Strategy 2014 – 2017, non-formal education sits within the strategy outcome of increased economic empowerment of youth: “Non-formal education will build skills for employability, internships and apprenticeships, and better access to job market data centres. Another important area will be fostering a policy environment conducive to job creating for young people.”<sup>186</sup>

Non formal education should “seek to support the training of low skilled and disadvantaged youth in an effort to upgrade their skills so that they might be better able to find work in more productive sectors.”<sup>187</sup>

Non formal learning opportunities should be created with a mind to addressing early school leaving. National legislation and policies should also reflect the need to raise public awareness of the value of non-formal learning.

## 5.2.2. NON-FORMAL EDUCATION IN UKRAINE NATIONAL POLICY AND LEGISLATION

### Legislative framework and definition of non-formal education

There have been recent developments in Ukraine to include non-formal education as a priority in youth policy, and to provide a legislative basis for the provision and recognition of non-formal education. The Ukraine Youth Policy prioritises the “*formation of an integrated system of informal education for young people in the cooperation of national and international associations, state and local authorities in order to promote social dialogue and the creation of additional conditions for the development and fulfillment of the personality.*”<sup>188</sup> The Concept for 2016 – 2020 includes “*development of non-formal education*” as one of its six priority areas for youth policy. It aims to encourage young people’s civic activism and support their “*acquisition of knowledge, skills and competencies beyond the system of education, including through participation in voluntary activities, and recognition of such experience as valuable.*” While there is no comprehensive legislative framework for non-formal education in Ukraine, amendments to the Education Law, which were passed in 2015, incorporated several key provisions on non-formal education into Ukrainian law. The amendments add a definition of non-formal education into the Education

<sup>184</sup> Council of Europe, Recommendations on the promotion and recognition of non-formal education/learning of young people(<https://wcd.coe.int/ViewDoc.jsp?id=21131&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>).

<sup>185</sup> Council of Europe, Recommendations on the promotion and recognition of non-formal education/learning of young people(<https://wcd.coe.int/ViewDoc.jsp?id=21131&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>).

<sup>186</sup> UNDP Youth Strategy 2014 – 2017, p. 2.

<sup>187</sup> UNDP Youth Strategy 2014 – 2017, p. 27.

<sup>188</sup> *State Target Social Programme “Youth of Ukraine” for 2009-2015*, priority 3.

Law. This is significant, as it was previously noted that lack of a legal definition of non-formal education had caused significant problems for the implementation and creation of non-formal education systems.<sup>189</sup> According to the amended Education Law, the definition of the 'education system' is extended to include non-formal systems: *"civil society institutions, in particular, organizations and institutions that involve volunteers in their activities."*<sup>190</sup> The amended law also includes non-formal education as a component of the structure of the education system, and defines non-formal education comprehensively as:

- *"An institutionalized and structured model of education organized by means of educational institutions without the provision of educational programmes and qualifications, recognized by national education authorities, or without qualifications at all. It is supplementary, alternative and / or complementary to formal education in the process of lifelong learning; it contributes to the rights of persons at any age to access education, but does not provide for mandatory continuing structured cycle to get education; it can be short-term, of different intensity levels, particularly in the form of short courses, seminars and workshops."*<sup>191</sup>

This definition is comprehensive and largely complies with EU standards – it provides that non-formal education can include a range of initiatives that are linked to life-long learning, and it legally embeds the idea that non-formal education is a core component of the education system in Ukraine. It is also explicitly rights based, as it provides that non-formal education should contribute to the rights of all persons (from any age).

It is hoped that the inclusion, in law, of non-formal education as a key component of the education system will encourage the Government to prioritise the development and recognition of non-formal education programmes, and will help key stakeholders develop a coherent understanding what it is and what its purpose is. It was noted by some interviewees that the Ministry of Education have a limited understanding of non-formal education: *"The Ministry [of education] doesn't really understand what non-formal education is. They think it is just after-school activities."*<sup>192</sup> A single legislative definition will ideally foster a cohesive approach to non-formal education across Government.

### **No law or policy on engaging vulnerable or excluded youth in non-formal education**

There is no mention in youth policy documents, or in the amended Education Act, of the need to promote equal opportunities for all young people to access non-formal education opportunities, with particular attention to socially disadvantaged, unemployed and excluded youth. This is inconsistent with EU standards, which, as set out above require that non-formal education initiatives target socially vulnerable groups.

### **Lack of legal provision for recognition / accreditation of non-formal education**

Lack of recognition of non-formal education programmes was highlighted as a challenge by several interviewees, along with the lack of a registration system for non-formal education providers. The Education Law (as amended) contains a general provision which recognizes that

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<sup>189</sup> European Integration School for civil society leaders of Ukraine ([www.ipo.org.ua/upload/documents/education.doc](http://www.ipo.org.ua/upload/documents/education.doc)).

<sup>190</sup> Article 28, Education Law (as amended)

<sup>191</sup> Article 29, Education Law (as amended)

<sup>192</sup> Interview UNDP Consultant.

*“formal qualifications can be obtained through the learning of a range of individual non-formal education programmes”* and provides generally for *“appropriate recognition of the authorized bodies of acquired knowledge, skills and other competencies.”*<sup>193</sup> However, there are no detailed provisions (for example, in legislative guidance) setting out processes for recognition and registration of non-formal education programmes. Though, it is hoped that this will follow on from the passing of the non-education amendments to the Education Law.

It is likely that the lack of detailed systems of registration and accreditation leads not only to an inconsistent approach to non-formal education, but it undermines its perceived importance and credibility. This is inconsistent with EU standards, which place strong emphasis on the need to (by 2018) have in place arrangements for validation which go beyond the attestation system described in the Ukraine Youth Policy and Concept for 2016 – 2020. The EU standards outline the importance of ensuring non-formal education is recognised, that qualifications are obtainable, that it can provide a clear route into formal (secondary) education, and that arrangements for validation include the identification, documentation and assessment of learning outcomes, as well as provide for the certification of results. These details are missing from Ukrainian legislation.

The Ukrainian legislation also omits mention of the need to use Union transparency tools, such as the Europass framework and Youthpass, though the Concept for 2016 – 2020 does contain, as an objective, the creation of *“a European instrument for presentation of young people’s knowledge, experience and qualification in order to raise their social mobility.”*

### **Lack of linkage to other youth policy priorities**

Perhaps as a result of a gap in national law or policy on non-formal education that was only recently addressed, non-formal education initiatives do not appear to link heavily to other youth policy initiatives and priorities. Initiatives on non-formal education do not identify the improvement of non-formal education opportunities as a means to address early school leaving, and do not describe the need to promote innovation and research within the sector, as well as the need to improve focus on non-formal education within other pieces of national legislation.

Also, it has been reported that non-formal education tends to be left to NGOs and as such is not sufficiently addressed in national strategies on the subject, so there is not enough of a *“cross-sector approach.”*<sup>194</sup> Moreover, long term learning in Ukraine is often provided through vocational education by educational institutions, as are extracurricular activities - to the detriment of the possibilities of non-formal education.<sup>195</sup> A further disconnect appears to be between the aims of conventional educational institutions and the skills needed to improve the employability of youth, so the current skills education system doesn’t fit with the needs of the economy.<sup>196</sup> Addressing these skills gaps can be achieved more fully through non-formal learning which tends to be more short term and designed to address a specific skill.<sup>197</sup> Also, as put by one interviewee: *“non-formal education is important as it is closer to real life. It minimises the gap between formal education and real life.”*<sup>198</sup>

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<sup>193</sup> Article 29, Education Law (as amended)

<sup>194</sup> Council of Europe, Learning mobility and non-formal learning in European contexts. Policies, approaches and examples p. 104 ([http://pjp-eu.coe.int/documents/1017981/1667851/YKB17\\_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf](http://pjp-eu.coe.int/documents/1017981/1667851/YKB17_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf)).

<sup>195</sup> Council of Europe, Learning mobility and non-formal learning in European contexts. Policies, approaches and examples ([http://pjp-eu.coe.int/documents/1017981/1667851/YKB17\\_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf](http://pjp-eu.coe.int/documents/1017981/1667851/YKB17_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf)).

<sup>196</sup> Council of Europe, Learning mobility and non-formal learning in European contexts. Policies, approaches and examples, p. 105 ([http://pjp-eu.coe.int/documents/1017981/1667851/YKB17\\_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf](http://pjp-eu.coe.int/documents/1017981/1667851/YKB17_Text.pdf/84ae531b-fbc8-440e-95bf-082d585420bf)).

<sup>197</sup> What is non-formal education? (<http://infed.org/mobi/what-is-non-formal-education/>).

<sup>198</sup> Interview with the Representative of National Organisation of Scout in Ukraine.

## RECOMMENDATIONS ON NON FORMAL EDUCATION

**Development of legislation or guidance on non-formal education:** A separate Act or Guidance / Decree should be adopted on non-formal education. This should include a statement of its purpose; target groups; and set out a framework for an accreditation and registration system. However, it should be ensured that any legal developments do not create an overly rigid or bureaucratic system for the delivery of non-formal education.

**Targeting of vulnerable and excluded groups:** policy and legislative developments on non-formal education should prioritise how non-formal education can respond to the needs of socially vulnerable and excluded groups of young people.



## 5.3. VOLUNTEERING

Volunteering is one way the Government plans to improve the inclusion of youth in society.<sup>199</sup> Yet one report suggests that the percentage of those who are involved in youth organisations is between 2-4%, which is a very low figure. The same report, when looking at the reasons behind this low figure, found that many young people were either unaware or not satisfied with the opportunities available in regard to volunteering.<sup>200</sup> Analysis on the World Values Survey also found that the rates of participation of volunteers in Ukraine were quite low.<sup>201</sup>

Another report highlighted the need to provide development assistance to volunteering to develop opportunities for young people, as assistance is currently limited by a lack of resources.<sup>202</sup> This report also elaborates on how historical factors may influence the rate of volunteering: “[In Soviet times] volunteering was not a choice. If everyone had to do it, then there was no value in it. That was the negative side. A positive side, arguably, was being a Pioneer and being expected to do positive things for society. Since we no longer have Pioneers, only the negative legacy is left.”<sup>203</sup>

### 5.3.1. INTERNATIONAL AND EU STANDARDS ON VOLUNTEERING

#### INTERNATIONAL STANDARDS

The UNDP Policy relating to volunteering provides that States should: “Promote internship, apprenticeship and volunteering schemes in support of young persons’ transition from school to work or their reintegration into the labour market after long-term unemployment spells as a means of acquisition of skills.”<sup>204</sup>

#### EU STANDARDS

In 2012, the European Youth Forum developed the *Volunteering Charter: European Charter on the rights and responsibilities of volunteers*<sup>205</sup>, a document that enshrines the right to volunteering, as well as provisions relating to the practice of volunteering and the organisation or provision of volunteering. The 45 Articles include rights relating to core human rights (Article 2), the right to be informed of duties (Article 5), the right to support and to personal development. Volunteers are responsible for commitment to their volunteering opportunity, and, for example, for maintaining confidentiality (Article 21) and working towards the benefit of the organisation for which they are volunteering (Article 22). The rights and responsibilities of service providers correspond to those of the volunteers. In sum, this Charter focuses on the mutual benefit that volunteering provides to volunteers and their organisations, as well as the importance of support, development and guidance in order to maximise the potential benefits of such volunteering.

### 5.3.2. VOLUNTEERING IN UKRAINE NATIONAL LEGISLATION AND POLICY

Provisions relating to volunteering exist with Ukrainian national legislation in a number of articles in a variety of laws. Most prominently, the Law of Ukraine on Volunteering Activities (2011, last amended 2015) establishes a range of provisions relating to the rights and responsibilities of volunteers and those receiving voluntary services.

<sup>199</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 127 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>200</sup> UNICEF, *Youth Policy Review*, 2010, p. 15 ([http://www.youthpolicy.org/national/Ukraine\\_2010\\_Youth\\_Policy\\_Review.pdf](http://www.youthpolicy.org/national/Ukraine_2010_Youth_Policy_Review.pdf)).

<sup>201</sup> *Volunteers: A Social Profile*. Marc A. Musick, John Wilson, Indiana University Press, 2008, p. 343.

<sup>202</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 128 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>203</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 128 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>204</sup> UNDP Youth Strategy 2014 – 2017, p. 28.

<sup>205</sup> *Volunteering Charter* ([http://ec.europa.eu/citizenship/pdf/volunteering\\_charter\\_en.pdf](http://ec.europa.eu/citizenship/pdf/volunteering_charter_en.pdf)).

Other Laws also touch upon volunteering, including, Article 47 of the Law on Education:

- *“Postgraduate education shall include: internship - acquisition by an individual of an experience in fulfilling tasks and responsibilities within the scope of professional occupation or area of expertise. Internship shall be arranged at universities, academies, institutes and constitute a mandatory form of primary specialisation of individuals obtaining scientific and educational, creative and performing arts professions.”*<sup>206</sup>

Further, Article 49 of the Law of Ukraine on Physical Culture and Sports (1994) States that “The state shall promote development of volunteers” movement in the field of physical culture and sport, which on a voluntary basis provides help in organising fitness, health and sports activities, promotion of healthy lifestyle, provision of consulting assistance.<sup>207</sup>

Notably, this latter provision does not relate specifically to youth, although the general context of the legislation allows for application to youth.

The Concept for 2016 – 2020 contains an objective relating to volunteering within strategic priority area 4 (on youth employment): *“to create a National Volunteer Service as a vehicle to engage youth in activity which is meaningful and significant for the society, deliver non-formal education and support secondary employment.”*

### **Definition of volunteering**

The Law on Volunteering (as amended) defines volunteering in Article 1:

- *“volunteering activities” shall mean voluntary, unselfish, socially oriented, non-profit activities, carried out by volunteers and voluntary service organisations by means of providing volunteer assistance.*
- *“volunteer assistance” shall mean works and services, carried out for free and provided by volunteers and voluntary service organisations.*

The definition of volunteering activities may be at odds with Article 3 of the Volunteering Charter, which requires that “activity is undertaken for a non-profit cause and does not replace paid staff”, with the implication that volunteering work should not act as a stand-in for work that should be remunerated.

Before the amendments in 2015, the Law on Volunteering provided that volunteers must be over the age of 18. However, following the recent amendments, persons over the age of 14 years are permitted to volunteer, though only with the consent of their parents.<sup>208</sup> This is a welcome development, as it opens up volunteering opportunities to all youth. However, it is not compatible with the Volunteering Charter, which does not set a minimum age for volunteering. The age limit for volunteering should be consistent with the laws on child employment, and the requirement to get parental consent for any young person aged 14 – 18 years before they are permitted to volunteer should be reconsidered. This requirement will potentially exclude some young people from engaging in volunteering activities that do not meet their personal goals and ambitions. Young people from the age of 14 years are legally able to consent independently in other contexts (e.g. medical treatment), and it would be preferable for the law to recognize their capacity to consent to volunteering independently from the age of 14 years.

The Law prescribes specific activities as “volunteering activities”, which include, for example, *“assistance to support low-income, unemployed, multi-child, homeless and uncared-for individ-*

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<sup>206</sup> Law of Ukraine on Education, 1991, Article 47.

<sup>207</sup> Law of Ukraine on Physical Culture and Sports, 1994, Article 49.

<sup>208</sup> Article 7, Law on Volunteering (as amended)

uals in need of social rehabilitation” or “provision of assistance to persons who due to physical or other peculiarities are limited in possibility to implement their rights and legitimate interests.” The Law also allows, finally, for “any volunteer assistance in other areas, not prohibited by the law.”

### **Formalised framework for volunteering**

Volunteering opportunities appear to be fairly formalized and there is quite a rigid legal framework applying to volunteering within Ukraine. However, recent amendments have loosened the legal requirements considerably. For example, the Law formerly required that the Cabinet of Ministers accredit organisations as “voluntary service organisations” and record and publicise information on voluntary service organisations, their location, postal address, ID codes of communication facilities, and, if available, address of official website in Internet and e-mail. Following the 2015 amendments to the Law, there is no longer a requirement for organisations to register – any non-profit organisation is now permitted to engage volunteers. Volunteering agreements – formerly mandatory – are now optional under the amended Law, with a few exceptions. Also, several new provisions appear to provide incentives for volunteers – for instance, income tax and social funds contributions are no longer to be charged from volunteer expenses. It is hoped that the legislative changes will allow and encourage more organizations to offer voluntary positions, and will also encourage more young people to volunteer.

### **Conditions and quality of volunteering**

The Law on Volunteering accords volunteers with a range of rights and entitlements. Article 5 of the Law provides that organizations offering voluntary work must provide volunteers with safe and appropriate for life and health conditions of providing volunteer assistance, and must:

- carry out training of volunteers (when necessary);
- reimburse direct damages, inflicted by a voluntary service organization in the case of unilateral termination of the agreement on provision of volunteer assistance, except as otherwise stipulated by the agreement;
- compensate moral and property damage, inflicted as a result of carrying out volunteering activities, according to the law;
- reimburse to volunteers their expenses, associated with their provision of volunteer assistance, stipulated by Article 11 of this Law;
- insure volunteers according to the law of Ukraine “On Insurance” (though, following the amendments to the Law introduced in 2015, volunteer insurance is no longer mandatory, but now optional and based on an agreement between the volunteer and the organisation);
- comply with the legal regime of classified information;
- ensure free access to information, associated with its carrying out of volunteering activities.”

Under the Law, volunteers have the following rights:<sup>209</sup>

- appropriate conditions of carrying out volunteering activities;
- obtaining complete and accurate information about procedure and conditions of carrying out volunteering activities;
- provision with special protective means, equipment and facilities;

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<sup>209</sup> Article 7, Law on Volunteering, as amended

- vaccination, medical examination and other treatment and preventive measures, directly related to provision of volunteer assistance;
- enrolment of time spent while carrying out volunteering activities to curricular practical training in case its nature coincides with volunteer's major;
- reimbursement of expenses, related to provision of volunteer assistance; and
- other rights, stipulated by the agreement on carrying out volunteering activities and by the law.

Many of these provisions are in line with the Volunteer Charter, which requires, for example, that volunteers are provided with social insurance (Article 6), with information about their work (Article 5), and with reimbursement (Article 9). However, additional (and missing) rights include the right to development support (Article 12) and the right to participate in decision making processes (Article 13).

According to the national law, volunteers' "obligations" include performing voluntary work in line with the agreement entered into between the volunteer and voluntary organization, as well as responsibilities that include avoiding actions and deeds that could harm the voluntary organization. This last provision includes the requirement that a volunteer *"compensate moral and property damage, inflicted as a result of carrying out volunteering activities, according to the law."*

The amended (2015) Law on Volunteering also contains provisions on the recognition of volunteering (e.g. recognition of volunteering experiences in public service and local government employment processes), which is a welcome development, as it allows young people to use volunteering experiences to improve their prospects in the job market, and thereby will likely encourage young people to volunteer.

The Law on Volunteering does not appear to focus on the quality of opportunities afforded to youth. This is inconsistent with EU Standards, which provide that volunteering should not take the place of work that a person could be paid for. It appears that the volunteering laws in place at present refer to adults, rather than to all youth and that they refer to the regulation of the relationship between entities and individuals more than they do to the expectations of the content of a volunteer opportunity, or, for example, what a volunteer should receive in order to enjoy the full benefit of volunteering as an opportunity to *develop*. Several interviewees expressed concern that the Government and other stakeholders perceive volunteering simply as "working for free" and do not situate it in the context of skills development and increasing the "employability" of young people.

## RECOMMENDATIONS ON VOLUNTEERING

**Amend definition of volunteering:** The definition of volunteering should be amended so that young people under 14 years do not require parental permission to volunteer.

**Provide for minimum quality standards on volunteering:** The Ministry of Education / Ministry for Youth and Sport should draft a set of quality indicators for volunteering organisations and volunteers, to ensure that volunteering opportunities are meaningful and allow youth to develop essential skills and knowledge.

## 5.4. ACTIVE CITIZENSHIP

Active citizenship can be defined as *“having the right, the means, the space and the opportunity and where necessary the support to participate in and influence decisions and engage in actions and activities so as to contribute to building a better society”*.<sup>210</sup> Academic research on the subject of active citizenship in Ukraine has highlighted the fact that there are often barriers to formal and conventional participation. Diuk found that although young people were active participants in large scale protest movements in both 1990 and 2004, they were unable to institutionalise their participation in the political process.<sup>211</sup> Tereshchenko also found that youth participation in civic engagement was often informal and through “unconventional” acts. Drawing from this, she argues that *“locality and schools may provide youth with an important space for civic engagement and for exercising democratic citizenship.”*<sup>212</sup>

### 5.4.1. INTERNATIONAL AND EU STANDARDS

International and EU standards provide for the right for children and young people to participate in political and social life and provide some guidance on the content of this right.

#### INTERNATIONAL STANDARDS

Article 12 of the UN Convention on the Rights of the Child is a key provision (though of course, it applies only to youth aged up to 18 years). It states that Governments “shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” According to the UN Committee on the Rights of the Child, this includes structures for participation and representation at all government levels, and that children “should be supported and encouraged to form their own child-led organisations and initiatives, which will create space for meaningful participation and representation.”<sup>213</sup> The Committee also provides key principles on which child participation should be based.<sup>214</sup> These include that participation must be:

- **Transparent:** children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight;
- **Voluntary:** children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;
- **Respectful:** children’s views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities;
- **Relevant:** the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;
- **Child-friendly:** environments and working methods should be adapted to children’s capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views.

<sup>210</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 122 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>211</sup> N. Diuk, *Youth as an Agent for Change: The Next Generation in Ukraine* (<http://www.ned.org/docs/179-196-Diuk.pdf>).

<sup>212</sup> A. Tereshchenko, *Ukrainian youth and civic engagement: unconventional participation in local spaces* (<http://www.tandfonline.com/doi/abs/10.1080/13676261.2010.487518#vjbtdvzfc0e>).

<sup>213</sup> UN Committee on the Rights of the Child, *General Comment No. 12 on the right to be heard* (2009), para. 133.

<sup>214</sup> UN Committee on the Rights of the Child, *General Comment No. 12 on the right to be heard* (2009), para. 134.

- Inclusive: participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved;
- Supported by training: adults need preparation, skills and support to facilitate children's participation effectively;
- Safe and sensitive to risk: in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation.
- Accountable: Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities.

Key international guidelines on youth are also instructive. The United Nations Framework Approach for the International Year of Youth: Dialogue and Mutual Understanding provides that States should mobilise and engage youth by institutionalising mechanisms for youth participation in decision-making processes; support youth-led organisations and initiatives to enhance their contribution to society; and strengthen networks and partnerships among Government, youth-led organisations, the private sector, the media and the UN. According to General Assembly Resolution on Policies and Programmes Involving Youth (68/130), Governments should encourage the participation of youth "in actions and decisions and in strengthening efforts to implement the World Programme of Action, bearing in mind that girls, boys, young women and young men have the same rights, but different needs and strengths, and that they are active agents in decision-making processes and for positive change and development in society."<sup>215</sup>

## EU STANDARDS

The EU Youth Policy prioritises youth participation as a field of action<sup>216</sup> and encourages States to achieve this through:

- Developing mechanisms for engaging in dialogue with young people and facilitating their participation in the shaping of national policies;
- Supporting youth organisations, including local and national youth councils;
- Promoting participation by under-represented groups of young people in politics, youth organisations and other civil society organisations; and
- Supporting ways of "learning to participate" from an early age.

The Treaty of Lisbon, which came into force in 2009 encourages youth participation in the democratic life of Europe and expressly recognises the role of civil society organisations and representative associations in its article 165: "Union action shall be aimed at:... encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe." Following on from article 165, the EU Council of Youth Ministers adopted a New Framework for EU Cooperation in the Youth Field (2010-2018): "The structured dialogue with young people and youth organisations serves as a forum for continuous joint reflection on the priorities, implementation and follow-up of European cooperation in the youth field."

The Revised European Charter on the Participation of Young People in Local and Regional Life, 2008 provides comprehensive guidance on the key elements of youth participation. It sets out the following components for effective youth participation:

<sup>215</sup> General Assembly Resolution on Policies and Programmes Involving Youth (68/130), para. 65.

<sup>216</sup> The EU Youth Strategy, Field of action 5: participation.

- An education and training policy promoting youth participation in schools;
- Training of youth in participation;
- Informing young people of the right to access information and their rights to participation;
- Promoting youth participation through information and communication technologies;
- Promoting young people's participation in the media;
- Promoting young people's organisations and participation in NGOs and political parties; and
- Institutional participation by young people in local and regional affairs (e.g. through youth councils, youth parliaments and youth forums).

## UNDP YOUTH POLICY

One of the key strategic outcomes in UNDP's Youth Policy is *"enhanced youth civic engagement and participation in decision-making and political processes and institutions."* As set out in this Policy, active citizenship requires:

1. That youth know about their rights and the channels through which they might exercise their civil and political rights; and
2. They must be able to contribute to decision making processes that impact their lives.

Channels should be available and accessible (and know) at all levels: from local or institutional level right up to international level. ICT services and other media are encouraged as a way to support and facilitate active citizenship and participation as follows.

### 5.4.2. ACTIVE CITIZENSHIP AND YOUTH PARTICIPATION IN UKRAINIAN NATIONAL LEGISLATION

One of the key areas of the Ukraine Youth Strategy is the *"mainstreaming of participation of young people in social and political life"*, to be achieved through: involvement of young people in youth policy formation and realisation; involvement of young people in the activity of public authorities and local government; and ensuring youth participation in a civil society development.<sup>217</sup> The Concept for 2016 – 2020 includes 'citizenship and patriotism' as a key priority area, which involves *"carrying out state and public activities aimed at strengthening patriotism, civic consciousness and active civic positions of young people."* There is also a legal framework relating to youth participation and child participation. However, some gaps remain in the extent to which Ukraine accords with international and EU standards in this area.

#### **Right to information, education and skills development for participation**

As provided for in the Revised European Charter on the Participation of Young People in Local and Regional Life, 2008, information is key to participation: *"in order to participate in activities and in the life of their community, or to benefit from services and opportunities aimed at them, young people need to know about them"* and local and regional authorities should *"support and improve existing information"* through youth centres, schools, libraries and so on.<sup>218</sup> Information should be available that is accessible to young people, and young people should be encouraged to develop skills for civic engagement and participation and of existing channels that can be used for such participation.

<sup>217</sup> The EU Youth Strategy, Key area 5.

<sup>218</sup> Revised European Charter on the Participation of Young People in Local and Regional Life, 2008, para. 44 – 46.

The Law on Protection of Childhood is relevant in this regard, providing, as it does, for the child's rights to Freedom of Expression and Obtaining Information, which is essential to the enjoyment of active citizenship. Article 9 provides that *"every child shall have the right to freedom of expression, shaping of own views, development of own social activity, obtaining of information, corresponding to the child's age. This right shall include the freedom to seek, receive, use, disseminate and store information in oral, written or in any other form, using art, literature, media, mass communications, means of communication (computer, telephone network, etc.) or other means at the child's own discretion."*<sup>219</sup> It also accords children with the right to *"access to information and materials from various national and international sources, especially those contributing to healthy physical and mental development, social, spiritual and moral well-being."*<sup>219</sup> In exercising these rights, the Law provides that the State should encourage: spreading by mass media of materials useful for development of a child; publishing and distributing children's literature and textbooks by creating favorable conditions for their publication; international cooperation in the area of exchange and dissemination of information and materials, available from various national and international sources; and activities of mass media, aimed at meeting the language needs of children, including those, belonging to national minorities.

The Law of Ukraine on the National Action Plan to Implement the UN Convention on the Rights of the Child until 2016 includes, in section 6, details relating to "Participation of Children in Life of Society."<sup>220</sup> This section of the Plan obliges the Government to implement the rights of children to express their opinions and develop skills to make "socially motivated decisions", through promoting TV and radio programmes for children (including for those with hearing and sight impairments), and to create advisory agencies of youth and child civil society organisations within each regional and municipal council.

One gap in the law and policy relating to the right to information, however, is the lack of consideration of and engagement with ICTs. ICTs, in particular mobile phone and online technologies, provide excellent opportunities for engaging youth in political and social life and ensuring that information is accessible to them.

Another key criterion for ensuring active citizenship of youth is that they must be given the knowledge and skills to actively engage in political and social life. Ideally, this training should commence at a young age, and in school, for instance, through civic education and the development of democratic student associations. Not only is this important in allowing children to develop the skills and knowledge for participating in political and social life, it is also important and a requirement in international and EU law that children are able to participate in decisions affecting their education. There are modules on civic education in secondary school. However, this appears to focus on the law, and not on how Government functions and how young people can get involved in political and social life. Also, there does not appear to be any mandatory subject in Primary School that focuses on civic education or citizenship. In order to encourage youth to be interested and engaged in political life, it is important to start from a young age, and ensure that content and teaching is participatory and age-appropriate.

School Councils have been established in Ukraine, and appear to operate in most schools. Also, University Student Councils are established, and according to a new Law on Higher Education, University administrations are required to allocate 1% of their total funds to Student Councils. This is good practice. However, concerns were expressed by some interviewees that student participation in schools governance was not taken seriously, and that students' views and opinions tended to be sidelined in schools. One interviewee reported that some universities do not encourage young people to be politically engaged.<sup>221</sup> She also reported, as did other interviewees, that excluded groups of young people, such as those who are economically mar-

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<sup>219</sup> The Law on Protection of Childhood, Article 9.

<sup>220</sup> Law of Ukraine on State Program "national Action Plan to Implement the UN Convention on the Rights of the Child" until 2016.

<sup>221</sup> Interview with Representative of European Youth Parliament in Ukraine.



ginalized and/or living in a rural locality, lack opportunities and encouragement to be engaged in political processes.

### **Establishment and development of youth organisations**

Youth organisations are extremely important to active citizenship: they focus on reflecting the views and serving the needs of youth, and also *“provide space where young people can learn and experience the opportunities and challenges of participating in decisions and actions with other young people.”*<sup>222</sup> Young people should have the right to form and join youth organisations and the Government should support these organisations.

Youth organisations are established and governed by a legal framework in Ukraine. The Law on Fostering the Socialisation and Development of Youth provides that *“the state ensures the right of young people to establish youth civil society organisations”,* and that *“youth civil society organisations have the right to present to state executive authorities and local self-governments proposals on issues of youth socialization and development.”*<sup>223</sup>

Article 15 of this Law provides State executives with a right, though not an obligation, to provide funding to programmes and projects of youth civil society organisations aimed at enhancing youth socialization and development, along with *“foundation buildings, facilities, land plots and other property necessary for carrying out their statutory activity.”*

Article 23 of the Law on Health provides a right for children and youth to establish and join youth organisations: *“Children shall have the right to get united in independent children and youth civil society organisations provided that their activities do not contradict the Constitution of Ukraine and the laws of Ukraine, do not infringe public order and threaten state security, rights and freedoms of other individuals, do not harm the morals and health of children and other citizens.”*

The Law on Youth and Children’s Public Organisations provides a detailed legal framework for the establishment and regulation of youth organisations, which it defines as *“organisations of citizens in the age of 14 to 35 years aimed at exercising activities focused on satisfaction and protection of their legitimate social, economic, creative, spiritual and other interests.”*<sup>224</sup> It provides the principles on which youth organisations must be based, which include: voluntariness, equal membership, self-government, legality, and openness.<sup>225</sup>

The Law accords young people with the right to establish<sup>226</sup> and join<sup>227</sup> youth organisations.

However, a key gap in this legal framework is the prohibition on children from founding political or religious organisations.<sup>228</sup> The UN Committee on the Rights of the Child expressed concern over this provision in its Concluding Observation for Ukraine in 2011 noted its concern over the prohibition on *“children’s participation in political rallies and demonstrations as well as the establishment of children’s associations along political and religious lines.”*<sup>229</sup> It should be noted that, according to one interviewee involved in a youth organisation, the prohibition on youth forming political organisations meant that these organisations were somewhat immune from having their mandates *“captured”* by excessive influence of Ukraine’s main political parties. However, legislating a complete ban on the formation of political parties is a disproportionate and unduly restrictive way to address this. It is important, in ensuring that Ukraine law is consis-

<sup>222</sup> The Revised European Charter on the Participation of Young People in Local and Regional Life, 2008, Para. 53.

<sup>223</sup> The Law on Fostering the Socialisation and Development of Youth, Article 14.

<sup>224</sup> The Law on Youth and Children’s Public Organisations, Article 2.

<sup>225</sup> The Law on Youth and Children’s Public Organisations, Article 3.

<sup>226</sup> The Law on Youth and Children’s Public Organisations, Article 4.

<sup>227</sup> The Law on Youth and Children’s Public Organisations, Article 5.

<sup>228</sup> The Law on Youth and Children’s Public Organisations, Article 23.

<sup>229</sup> UN Committee on the Rights of the Child, Concluding Observations: Ukraine, 2011, para 62.

tent with international and EU standards, that the prohibition on youth political organisations is removed.

### **Participation of young people in Government processes**

The Law On Fostering Youth Socialization and Development in Ukraine provides for *“Direct participation of youth in building and implementation of policies and programmes which concern society in general and young people”*; and the Law on Youth and Children’s Public Organisations contains a provision requiring these organisations to be invited by executive authorities and bodies of local self-government to work out and discuss drafts of decisions in the sphere of national policy, with regard to children and youth.

There are several formal structures for youth to engage in political processes in Ukraine, but these have limitations. Public Councils are groups of members of the public organized into thematic advisory boards. In Ukraine, there is one Public Council on Youth. According to the Ministry of Youth and Sports, 97% of the Public Council are representatives of youth organizations. However, according to other interviewees, Public Councils tend to be composed of older people and there are no Government initiatives to promote youth involvement on Public Councils. The National Youth Council is reportedly not engaged in Government decision-making in any sustainable way, and there is no provision for their meaningful, sustainable participation in law. Ministerial Public Committees are a forum for public engagement through public hearings in Parliament relating to issues within the brief of each Ministry. However, these reportedly tend to focus on highlighting the Ministry’s achievements: *“It is more like a PR thing, and not really a discussion.”*<sup>230</sup> Also, there appears to be a lack of youth issues present in the public hearings, even within the Youth and Sport Public Committee: *“the Parliamentary Committee on Youth and Sport is 99% about sport and only 1% about youth.”*<sup>231</sup>

The involvement of young people tends to be on an ad hoc basis, in relation to a specific law or issue. The Ministry of Youth and Sport reportedly involves young people in working groups that are set up to debate specific draft laws, which is commendable. This is normally done through publishing the draft law on the Ministry’s website and inviting organizations and also sending invitations to specific organisations. However, the involvement of these young people appears to be limited to commenting on a law or amendment or policy document after it has already been produced, limiting their opportunity to set the agenda and define Government priorities. This led some interviewees to report that youth participation in this way was not meaningful and their impact was severely limited: *“Sometimes, for example, the Deputy Minister [of Youth and Sport] will consult with young people, but this is just a PR opportunity...we need a sustainable way for youth to talk to Parliament.”*<sup>232</sup>

According to some interviewees, young people’s involvement does not often result in policy or legal changes that accord with their intentions or interests. For example, reportedly, the new Law on Volunteering was agreed by a working group involving youth volunteers. It was presented to Government, and was subsequently altered so much that it is now *“a completely different document and against their interests.”*<sup>233</sup>

While ad hoc instances of participation are noted, there does not appear to be a routine, sustained mechanism for young people to be involved in political decision-making, and in the development of youth law and policy. The lack of a legal framework providing guaranteed routes and mechanisms for youth participation is a significant limitation. This issue was raised

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<sup>230</sup> Interview with the Representative of National Organisation of Scouts of Ukraine.

<sup>231</sup> Interview with the Representative of National Organisation of Scouts of Ukraine.

<sup>232</sup> Interview with the Representative of National Organisation of Scouts of Ukraine.

<sup>233</sup> Interview with Youth Policy Expert.

by many of the interviewees: “there is no permanent, sustainable mechanism to direct youth organisation’s involvement in law and policy making, and no multi-agency mechanism for discussing youth issues and making youth law and policy.”<sup>234</sup>

Also, there does not appear to be any commitment in policy or legal provisions to ensuring that marginalised and excluded groups of young people are able to participate in the development of youth policy, which is a significant gap. When initiatives are in place for involving young people in the development of specific draft laws, as set out above, there do not appear to be any attempts to ensure that marginalised or excluded groups of young people participate.

- “At first glance, it appears that young people have active citizenship: there is the Youth Parliament, Student Councils, School self-governance, youth NGOs and advisory boards under the Ministry, but the young people sitting in these groups are aligned with political parties. They are the elite: well qualified, they speak English, they know what they want. There is no one living with HIV, no poor youth, no disabled youth...”<sup>235</sup>

Not providing for groups of marginalised and vulnerable groups of young people to participate in policy development will only serve to further marginalise and exclude their interests.

## RECOMMENDATIONS ON ACTIVE CITIZENSHIP

**Revise civic education component of compulsory school curriculum:** The civil education subject should be reviewed and revised to ensure that it includes knowledge and skills development on political processes and avenues for youth to engage in Government policy.

**Provisions on School Councils should include allocations for vulnerable and socially excluded groups of youth:** The criteria for the composition of Student Councils in all levels of education should be amended to provide for allocated places for particularly vulnerable or excluded groups of young people. It should also include measures for ensuring that vulnerable and excluded groups are encouraged to participate and that their needs are met to ensure for meaningful participation (e.g. they may have additional needs for accessing buildings and meeting materials etc.).

**The prohibition on youth forming political organisations should be removed:** The Law on Youth Organisations should be amended to remove the ban on youth forming organisations of a political character.

**Mechanism for sustained, meaningful participation of young people in Government policy processes should be developed:** A mechanism for the continual, regular involvement of young people in Government policy should be established and set out in law. This mechanism could form part of the Inter-Ministerial Working Group recommended above. It should include allocated places for young people who are from marginalised or excluded groups.

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<sup>234</sup> Interview with Youth Policy Expert.

<sup>235</sup> Interview with UNICEF Youth and Adolescent Development Specialist.

## 6. CONCLUSIONS

There appears to be a strengthening Government commitment to addressing issues faced by youth, particularly as this relates to the EU-Ukraine Association Agreement. This provides a solid foundation for considering and pushing forward reforms aimed at ensuring that the youth law and policy in Ukraine is consistent with EU and international standards.

While the legal and policy framework relating to youth in Ukraine is quite comprehensive in some areas, in others, there are gaps between the domestic law and policy and the standards set out in EU and international law. These gaps may, in part, be symptomatic of a lack of joined-up, whole-of-Government approach to youth law and policy at the national level. A core finding was that there is a lack of joint working on youth issues across different Government Departments leading to a lack of strategic vision and inefficient use of resources. Another core finding was the lack of engagement of youth in the development of youth policy, and in policy generally. One priority recommendation suggested in the report is the establishment of an Inter-Ministerial Working Group on Youth, led by the Department of Youth within the Ministry of Youth and Sport, to ensure improved coordination and prioritisation of youth issues across Government. The Working Group could include a mechanism to ensure that young people are involved in agenda setting in the youth law and policy arena. This could be set out in law.

Another cross-cutting key gap in youth law and policy is the lack of focus on and provision for addressing the needs of particularly vulnerable groups. It should be ensured that any reform efforts integrate the needs of vulnerable groups of young people, and that Ukraine's Anti-Discrimination Law be amended to explicitly include statuses not currently protected in law: sexual orientation, gender identity, pregnancy and maternity and health status. The development of a Public Sector Equality Duty would also be a welcome development, to ensure that equality is actively pursued in carrying out all Government / public activities.

In the area of healthy lifestyles and sport, it appears that some very good progress has been made in the past decade, particularly in terms the establishment of youth-friendly clinics throughout the country. However, efforts should be taken to ensure that youth friendly principles are reflected in law and policy and that they apply to mainstream providers, as well as youth friendly clinics. In particular, the law should be clarified to ensure that young people over the age of 14 years can independently and confidentially access the whole range of health, including sexual health, services. The law should also be amended to provide for compulsory, comprehensive sexual health and relationships education, starting from an early age in schools. This would help to ensure that youth are able to make healthy, informed decisions. The Government's punitive approach to (youth) drug use should also be addressed, to ensure that young people have access to youth-friendly treatment services and are not criminalised for very minor offences.

In terms of non-formal education, efforts should aim at the development of legislation or guidance, setting out a framework for an accreditation and registration system. However, it should be ensured that any further legal developments do not create an overly rigid or bureaucratic system for the delivery of non-formal education. Also, it is recommended that efforts are made to target particularly vulnerable groups and ensure that they can benefit from non-formal education opportunities.

In the area of volunteering, it was noted that the existing legislative framework is unnecessarily restrictive, and that it shut young people out from carrying out many forms of bene-

ficial volunteering. Recent amendments to the Law, introduced in 2015 have loosened many requirements, and are to be welcomed, and should increase incentives for young people to volunteer and for organizations to engage (young) volunteers. However, it is recommended that standards are put in place to ensure that volunteering opportunities are meaningful and of high quality, rather than simply a way of facilitating “free work” for organisations.

Active citizenship is an area that requires some reform in order to ensure that young people are able to engage in political and social life, including a revision of the civic education component of the compulsory school curriculum; provisions and measures to encourage school councils to allocate positions for particularly vulnerable and excluded groups of youth; and a mechanism should be developed to ensure that young people are able to participate in Government policy and law making in a sustained and effective way.

# ANNEX A:

## TERMS OF REFERENCE

### TOR for INDIVIDUAL CONSULTANT

**Project name:** Strengthening National Capacity for Effective Youth Development and HIV/AIDS Response in Ukraine

**Post title:** Legal expert to undertake gap analysis of Ukrainian youth legislation in relation to recommendations of the EU-Ukraine Association Agreement and other relevant EU policies.

**Country / Duty Station:** home-based

**Expected places of travel (if applicable):** Ukraine, Kyiv up to 4 days.

**Starting date of assignment:** 20 November 2014.

**Duration of assignment / or end date (if applicable):** 20 December 2014 (up to 16 working days).

**Supervisor's name and functional post:** Project Manager.

**Payment arrangements:** Lump-sum. All mission related travel and accommodation expenses outside of expert's home base will be borne by UNDP.

**Administrative arrangements:** Contractor will use project's office space during his/her visit to Ukraine. UNDP will provide some essentially required consumables (e.g. stationeries) based on the needs assessment and other needed support.

**Selection method:** Desk review.

### 1. BACKGROUND

UNDP is the UN's global development network advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP views youth as a positive force for transformative social change and aims to help enhance youth political participation, adhering to the principle that youth political participation needs to be meaningful and effective. While supporting adequate policies and programming with regards to the specific needs of young people, UNDP places a strong emphasis on cross-sectoral approaches and cross-cutting issues including youth information and access to technology and social media, and capacity and leadership development.

Following the request of the Ministry of Youth and Sport of Ukraine UNDP has initiated three-year project "Strengthening National Capacity for Effective Youth Development and HIV/AIDS Response in Ukraine" in 2014. The overall objective of the Project is to support the Ministry of Youth and Sports of Ukraine and other involved national and local institutions and organizations in applying innovative youth development approaches and integrating them in new policies, strategies and services related to youth development.

The Ukraine-European Union Association Agreement is a treaty between the European Union (EU) and Ukraine that establishes a political and economic association between the two parties. The Association was ratified on September 2014 by Parliament of Ukraine (Verhovna Rada) and the Action Plan of its implementation was adopted by the government of Ukraine at the same time. The Association's Title V Chapter 23 "Education, training and youth" defines common education and youth-related policies development that follow multi-sectoral approach.

The Ministry of Youth and Sport of Ukraine is in charge of youth policy development and coordination, as well as promoting healthy life style and sports. The Ministry is thus responsible for approximation of youth and sport legislation to the EU standards. According to the EU-Ukraine Association Implementation Action Plan the youth-related legislation and policies are to be revised and amended in 2015. The respective legislation gap analysis will be the first step in the process of legislation and policy approximation as stipulated by the EU-Ukraine Association Agreement and in line with the common EU policies.

## 2. MAIN OBJECTIVES OF THE ASSIGNMENT

The main objective of the assignment is to conduct youth legislation and policy gap analysis in Ukraine. The Expert has to identify the “gaps” in national youth policies and provide recommendations in accordance with the EU-Ukraine Association Agreement. In addition to the recommendations specified by the EU-Ukraine Association Agreement the consultant should perform the respective analysis of common EU youth-related policies and recommendations.

### DESCRIPTION OF RESPONSIBILITIES / SCOPE OF WORK

**1. Analysis of the existing youth legislation and policy in Ukraine (with a special focus on the following youth domains: promoting healthy life style and sport, citizenship, non-formal education, volunteering). All the related laws will be provided by UNDP in English.**

1.1. Develop detailed research methodology;

1.2. Conduct desk review of existing youth legislation and policies in Ukraine (relevant laws, national programs, strategies and procedures etc). The focus will be made on two main Laws: Law on Support for Social Formation and Development of Youth, Law on Physical Education and Sports (the legislation acts will be provided by the project in English if necessary).

1.3. Review the ratified EU-Ukraine Association Agreement and conducts the gap analysis of the main youth-related recommendations with the national youth policy and standards, compare existing national youth legislation with EU youth policies.

**2. Provide the recommendations to amend the national legislation in relations with the EU youth related policies.**

- Undertake the country visit to hold interviews with the main national stakeholders on youth policy development and implementation.
- The initial research will be conducted via desk study home-based. The field research shall validate the preliminary research and fill in the remaining data gaps.
- The Expert is expected to develop a tool kit for data collection (list of documents for revision, list of stakeholders, questions for the in-depth interviews, etc.). A tool kit should be submitted to and approved by the UNDP Project team prior to the visit.
- The UNDP will facilitate the meetings with the representatives from the government of Ukraine (Ministry of Youth and Sport, Ministry of Social Policy, Ministry of Education and Science, Ministry of Health Protection of Ukraine) and civil society (youth NGOs, academia, UN agencies, youth workers, etc).

**3. Provide recommendations with regards to the main challenges and areas for improvement of youth-related legal, policy, and institutional cooperation in Ukraine**

The Expert should develop the structure of the comprehensive report with the table of recommendations following the respective gaps. The report is to be completed in English highlighting the findings of the desk review and site visit. The final report will be published on the UNDP website and submitted for the national stakeholders for further processing.

# ANNEX B:

## FULL METHODOLOGY

### 1. PURPOSE OF THE ANALYSIS

The purpose of the analysis is to support the Ministry of Youth and Sports of Ukraine and other involved national and local institutions and organizations in applying innovative youth development approaches and integrating them in new policies, strategies and services related to youth development by:

- a) Conducting a youth legislation and policy gap analysis in Ukraine, including identifying the “gaps” in existing national youth legislation and policy; and
- b) From the findings of the gap-analysis, providing recommendations in accordance with the EU-Ukraine Association Agreement for strengthening legislation and policy relating to youth in Ukraine.

According to the EU-Ukraine Association Agreement, the Parties agree to closely cooperate in the field of youth policy and non-formal education of young people.<sup>236</sup> This includes:

- a) Facilitating the integration of young people into society at large by encouraging their **active citizenship** and spirit of initiative;
- b) Helping young people **acquire knowledge, skills and competencies outside the educational systems**, including through **volunteering**, and recognising the value of such experiences;
- c) Enhancing cooperation with third countries;
- d) Promoting cooperation between youth organisations in Ukraine and in the EU and its Member States; and
- e) Promoting **healthy lifestyles**, with a particular focus on youth.

Youth policy and legislation is a wide and encompassing field; however, as set out in the TOR, the focus of the capacity-gap analysis will be on the following four interrelated areas (as highlighted in bold above):

- Promoting healthy lifestyles and sport;
- (Active)<sup>237</sup> citizenship;
- Non-formal education; and;
- Volunteering.

The analysis will also consider cross-cutting issues in youth policy, as set out in EU and international standards. These cross-cutting issues include:

- Addressing social exclusion;
- Non-discrimination.

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<sup>236</sup> EU-Ukraine Association Agreement, Article 434.

<sup>237</sup> 'Active' is added to the area of citizenship to include it as a broader category encompassing political and social participation and engagement of young people, rather than citizenship in the 'narrow' sense.



## 1.1. DEFINITION OF KEY TERMS

It is important to define key terms used in the analysis to ensure they are understood and used in a consistent manner.

For the purposes of this analysis, **“youth”** will be defined as “persons between the ages of 15 to 24, in accordance with the official United Nations definition.”<sup>238</sup> This also accords with dominant understandings of youth as being a period of transition from the dependence of childhood to adulthood’s independence. Youth can be understood as a fluid category, rather than a fixed age-group; however, age is the easiest way to define this group in a consistent manner across countries, particularly in relation to education and employment. Therefore “youth” is often indicated as a person between the age where he/she may leave compulsory education, and the age at which he/she finds his/her first employment. According to UNESCO, *“This latter age limit has been increasing, as higher levels of unemployment and the cost of setting up an independent household puts many young people into a prolonged period of dependency.”*<sup>239</sup>

It is noted that the definition of youth in key policy and legal instruments in Ukraine significantly differs from this definition, and is generally considered to include young people aged 14 – 35 years; a very broad age range that appears to be open to significant debate within Ukraine.<sup>240</sup>

There is no universally accepted definition of **“active citizenship”**; however, it is generally accepted that it refers to the involvement of individuals in public life and affairs at all levels. According to the Open Society Foundation, *“active citizenship means people getting involved in their local communities and democracy at all levels, from towns to cities to nationwide activity.”*<sup>241</sup> To be “active citizens”, young people need to develop the skills, knowledge and understanding to be able to engage in decisions about their communities and be involved in democratic processes.

**“Non-formal education”** does not include *all* kinds of learning that happens outside formal systems (e.g. schools). The EU-adopted definition of non-formal education is *“learning that is not provided by an education or training institution and typically does not lead to certification. It is, however, structured (in terms of learning objectives, learning time or learning support.)”*<sup>242</sup> The European Youth Forum provides a more detailed definition: *“non-formal education corresponds to a collection of teaching tools and learning schemes that are seen as creative and innovative alternatives to traditional and classical teaching systems. Via personal interaction and flexibility in problem solving, people can discuss matters of relevance to their lives as citizens in society and integrate their knowledge.”*<sup>243</sup> According to the Youth Forum, different non-formal education can be delivered by a variety of persons; however, it is commonly provided by NGOs involved in youth and community work. It is purposive, voluntary and planned (but may be unstructured).

The report adopts the broad definition of “health” set out by the World Health Organisation. According to this definition, health is *“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”*<sup>244</sup> “Lifestyle” is defined as it is generally understood: *“the way in which someone lives.”*<sup>245</sup> A **“healthy lifestyle”** is therefore the steps, actions and strategies that persons put in place to achieve optimum health (an optimum state of complete physical, mental and social wellbeing).

The analysis adopts the EU definition of **“volunteer”** contained in the Volunteering Char-

<sup>238</sup> Secretary-General’s Report to the General Assembly, A/36/215, 1981, as affirmed by Secretary-General’s Report to the General Assembly, A/40/256, 1985. For further information regarding the definition of youth, please also see UN Department of Economic and Social Affairs webpage, “Definition of Youth”

<sup>239</sup> UNESCO, *What do we mean by ‘youth?’* (<http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>).

<sup>240</sup> Council of Europe, *Youth policy in Ukraine: Conclusions of the Council of Europe international review team*, 2013, p. 26 ([http://www.coe.int/t/dg4/youth/Source/IG\\_Coop/YP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/IG_Coop/YP_Ukraine_en.pdf)).

<sup>241</sup> Open Society Foundation, ‘Active citizenship’ (<http://www.opensocietyfoundations.org/voices/active-citizenship-can-change-your-country-better>).

<sup>242</sup> *The EC (2001) Communication on Lifelong Learning: formal, non-formal and informal learning* (Cedefop, 2001).

<sup>243</sup> Council of Europe, Committee on Cultural and Education, YouthPass, *Non-formal education report*, Doc. 8595, 15 December 1999.

<sup>244</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

<sup>245</sup> See Oxford English Dictionary Online.

ter: *“A volunteer is a person who carries out activities benefitting society, by free will. These activities are undertaken for a non-profit cause, benefitting the personal development of the volunteer, who commits their time and energy for the general good without financial reward.”*<sup>246</sup>

**Social exclusion** is defined broadly for the purposes of this analysis, to include not just the traditional dimensions of poverty, but also the multi-dimensional aspects of material and non-material deprivation. The analysis adopts the definition of social exclusion used by UNDP, which includes *“the aspects of social exclusion describe the social, political, and economic deprivation suffered by marginalised individuals. This deprivation can be read in terms of an imposed inability to enjoy fundamental human rights, such as the right to education, the right to work and to a fair remuneration, the right to health and wellbeing, and the right to vote and to stand for elections.”*

**Discrimination** is understood as it is in international human rights law to include *“any distinction, exclusion, restriction or preference which is based on a number of identified grounds and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights or freedoms.”*<sup>247</sup>

## 2. PLAN FOR ANALYSIS

The capacity-gap analysis will be carried out in two stages. Firstly, a desk review of relevant youth legislation and policy in Ukraine will be carried out. The results of this will be set out in a draft report detailing preliminary findings. Secondly, data collection will be carried out through a series of key informant interviews with the main national stakeholders on youth policy development and implementation.

### 2.1. DESK REVIEW

The desk review will examine EU and international standards, policies and strategies relating to youth and youth development. From this analysis, a set of key indicators will be devised that will be used as measurements against which Ukrainian legislation and policy relating to youth will be analysed. The analysis will identify areas in which the national youth laws and policies are strong, and in line with international and regional standards and best practices, and those in which there are gaps, challenges or other issues of concern, which will lead directly to the development of recommendations for review and, potentially, amendment or reform.

### 2.2. IN-COUNTRY VISIT (KEY INFORMANT INTERVIEW)

A series of individual key informant interviews will be carried out with stakeholders during a four-day in-country research visit by the consultant. The purpose of the key informant interviews will be to:

- Fill gaps in data (particularly in relation to policy documents and laws not already secured by the consultant);
- Allow for the collection of contextual information on the issues and commonly understood challenges of young people in Ukraine, in order to improve the consultant’s ability to assess the responsiveness of policies and laws to the unique situation of youth in Ukraine;

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<sup>246</sup> European Union, European Youth Forum, *Volunteering Charter: European Charter on the rights and responsibilities of volunteers*, 2012.

<sup>247</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, 1989.

- Collect data on the gaps in youth law and policy according to the perceptions of key stakeholders to supplement and clarify the preliminary findings from the desk review and develop findings in the final report; and
- Gain a better understanding of policy-making processes and procedures in relation to youth in Ukraine, in order to assist in the development of recommendations.

As the analysis involves national-level policies and laws, interviews will be carried out with key government and non-government representatives working at the national level. Prior to the interviews being carried out, the consultant will develop a list of stakeholders to be interviewed (based on the desk review and consultations with UNDP) and question schedules to guide these interviews. The interviews will be semi-structured to ensure that they are flexible and responsive to the issues raised by each participant.

### **3. METHODOLOGICAL PROCESS FOR GAP ANALYSIS**

National laws, including, specifically, the Law on Support for Social Formation and Development of Youth, Law on Physical Education and Sports and will be measured against international and EU standards and best practices relating to youth development. Relevant international standards will be reviewed in order to draw out the key components of states' obligations as regards the development of policies, strategies and services relating to youth development. A similar review will be conducted of the regional (EU) standards and best practices. This review will result in the development and delineation of indicators / key questions which will provide the framework for the analysis of the national Laws and policies. In addition, information will be gathered on key issues facing youth in Ukraine, in order to assess the responsiveness of youth legislation and policy to unique issues facing young people in Ukraine. This information will be collected through desk-based research and key informant interviews in Ukraine. Indicators will be heavily informed by the EU reporting framework on the Youth Strategy, as set out in the *EU World Youth Report 2012*.

#### **3.1. STANDARDS FOR MEASUREMENT**

The key instrument that will provide the framework for analysis is the EU Youth Strategy, 2010 – 2018, as this is the most targeted and relevant document and is directly linked to the EU-Ukraine Association Agreement. The objectives of the Youth Strategy are to:

- (I) create more and equal opportunities for all young people in education and in the labour market; and
- (II) promote the active citizenship, social inclusion and solidarity of all young people.

The EU Youth Strategy advocates a cross-cutting approach branching out into eight different policy areas ("fields of action"): Education and Training, Employment and Entrepreneurship, Social Inclusion, Health and Well-being, Participation, Culture and Creativity, Volunteering, and Youth and the World.

However, the analysis will also be informed by relevant standards contained in international and European instruments.

#### **INTERNATIONAL STANDARDS**

There is, admittedly, a limited international framework relating specifically to youth,

though the following international standards and guidance may be drawn upon to inform the analytical framework:

- Lisbon Declaration on Youth Policies and Programmes, adopted at the World Conference of Ministers Responsible for Youth (1998)
- UN Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples (1965)
- General Assembly Resolution on Policies and Programmes involving Youth, A/RES/68/130

There is, however, a more extensive and well-articulated international policy framework surrounding youth and youth development, as follows:

- World Programme of Action for Youth to the Year 2000
- ECOSOC Resolution 2007/27: Supplement to the World Programme of Action for Youth to the Year 2000 and Beyond
- United Nations Framework Approach for the International Year of Youth: Dialogue and Mutual Understanding (12 August 2010 – 11 August 2011)<sup>248</sup>

The classification of “youth” falls within two broad categories of rights: 1) those that apply to children (youth aged up to 18 years) and are contained within the Convention on the Rights of the Child and its Two Optional Protocols (Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict)<sup>249</sup>; and 2) those that apply more generally to all individuals.

The following is a list of international instruments that will contain provisions that are relevant to this analysis:

#### **CHILD SPECIFIC (RELEVANT TO YOUTH AGED UP TO 18 YEARS)<sup>250</sup>**

- The Convention on the Rights of the Child (1989) (UNCRC)
- UN Guidelines for the Alternative Care of Children (2009)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000)
- ILO Minimum Age Convention 1973 (No. 138)
- ILO Worst Forms of Child Labour Convention 1999 (No. 182)

#### **GENERAL HUMAN RIGHTS (RELEVANT TO ALL AGES – INCLUDING BEYOND 18 YEARS)**

- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The Convention on the Elimination of all Forms of Discrimination Against Women (1979)
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Convention on the Rights of Persons with Disabilities (2007)
- UN Declaration on Violence Against Women (1993)

“Soft law” will be used to draw out the normative content and context of rights and best practices relating to policies, strategies and services relating to youth development. These include: General Comments, General Discussion Days and Concluding Observations of relevant

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<sup>248</sup> United Nations framework approach (<http://social.un.org/youthyear/unapproach.html>).

<sup>249</sup> Please note that at the time of writing Ukraine had not signed or ratified the Third Optional Protocol on a Communications Procedure.

<sup>250</sup> This list includes only the instruments most closely relevant to this analysis and is not exhaustive.

UN Committees. In particular, the General Comment No. 4 of the UN Committee on the Rights of the Child on adolescent health and development will be used to provide a set of standards and measures for the analysis.

## **EUROPEAN INSTRUMENTS**

There is an extensive framework of European legislation and guidance surrounding youth development. The primary instrument, the European Convention on Human Rights and Fundamental Freedoms (Council of Europe) is relevant to this analytical framework, while the foundational treaties also touch upon youth development in parts. The EU approach to youth policies, services and strategies is perhaps captured best within policy documents and statements. This analytical framework therefore focuses on the policy documents.

In addition to the EU Youth Strategy mentioned above, the following documents provide guidance from the European Union relating to youth policy:

- European Convention on Human Rights (1950)
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007)
- The Bologna Declaration of 19 June 1999, Joint declaration of the European Ministers of Education
- European Commission White Paper: A New Impetus for European Youth, 2001

The following additional EU instruments relate to the specific areas in this analysis.

## **PROMOTING HEALTHY LIFESTYLES AND SPORT**

- European Council Resolution on the health and well-being of young people, 2008/C 319/01
- European Union Physical Activity Guidelines: Recommended policy actions in support of health-enhancing physical activity, 10 October 2008
- European Parliament Resolution on Mental Health, 19 February 2009, 2008/2209

## **ACTIVE CITIZENSHIP**

- Communication addressing the concerns of young people in Europe: Implementing the European Youth Pact and promoting active citizenship, 2005
- Communication on Promoting young people's full participation in education, employment and society, 2007
- Revised European Charter on the Participation of Young People in Local and Regional Life, 2008
- Recommendation (98) 8 on children's participation in family and social life
- Recommendation (97) 3 on Youth participation and the future of civil society

## **NON-FORMAL LEARNING**

- Council Recommendation on the validation of non-formal and informal learning (2012/C 398/01)
- Recommendation on the promotion and recognition of non-formal education/learning of young people (2003)

## **VOLUNTEERING**

- European Youth Forum, Volunteering Charter: European Charter on the rights and responsibilities of volunteers (2012)

## **POLICY DOCUMENTS AND RESEARCH**

- European Union Youth Report 2012

- Developing the creative and innovative potential of young people through non-formal learning in ways that are relevant to employability, 2014
- Youth Social Exclusion and Lessons from Youth Work: Evidence from literature and surveys, Report produced by the Education, Audiovisual and Culture Executive Agency (EACEA)

### 3.2. DEFINING INDICATORS FOR THE ANALYSIS

Analytical, thematic categories and indicators will be developed based on these standards and best practices. These themes will be derived primarily from the two main policy documents, including, globally, the World Programme of Action for Youth to the Year 2000 and Beyond, and, regionally, the European Youth Strategy. The analytical process takes the unusual step of focusing on the policy documents, rather than the rights framework, because, in this instance, the policy framework is clearer, and more directly persuasive (near binding) upon the Government of Ukraine as regards youth policy, strategy and services development. Youth rights will be integrated into these themes, with a separate thematic area of “rights” generally included in order to ensure that rights are promoted and protected.

These key priorities and fields of action have been integrated into the following table, which acts as the framework for this analysis.

Key area defined in EU-Ukraine Association Agreement (and TOR)	Relevant key strategic area in EU Strategy for Youth	Key EU and international standards	Indicators used to measure national policy and legislation
1. Promoting healthy lifestyles and sport	Health and wellbeing	<p><u>INTERNATIONAL STANDARDS</u></p> <p>Right to enjoyment of highest attainable level of health (Article 12 ICESCR; Articles 4, 6 and 24 UNCRC)</p> <p>Right to protection from use of drugs (article 33, UNCRC)</p> <p>UNCRC, General Comment No. 4 on adolescent health and development (CRC/GC/4/2003)</p> <p><u>EU STANDARDS</u></p> <p>EU Youth Policy (field of action 4 – health and sport)</p> <p>EU Council Resolution on Health and Wellbeing</p> <p>EU Resolution on Mental Health</p> <p>EU Physical Activity Guidelines</p>	<p><i>A. MAINSTREAMING AND TARGETING YOUTH IN HEALTH POLICY AND DELIVERY</i></p> <p>A.1 Promotion of «youth» dimension in health-related policies and initiatives</p> <p>A.2 Implementation of health measures of young people that are responsive, appropriate, cross-sectoral, effectively coordinated and systematically evaluated</p> <p>A.3 Young people are meaningfully involved in development of health policy and delivery</p> <p>A.4 Health policy targets vulnerable, at risk and socially excluded groups of young people</p> <p><i>B. EDUCATION AND ACCESS TO INFORMATION</i></p> <p>B.1 Development of tailor made information on health for young people, including sexual and reproductive health information</p> <p>B.2 Ensuring access to quality health, including sexual health, information and education</p> <p>B.3 Ensure youth develop necessary skills to lead a healthy lifestyle, through formal and informal education</p> <p>B.4 Develop training of youth workers and NGOs on healthy lifestyles</p> <p>B.5 Develop peer-to-peer health education</p> <p><i>C. HEALTH FACILITIES</i></p> <p>C.1 Ensure youth have access to quality health facilities that are youth friendly and accessible, and respects confidentiality and privacy</p> <p><i>D. HARMFUL SUBSTANCES AND SPECIFIC HEALTH RISKS</i></p> <p>D.1 Regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets young people</p> <p>D.2 Ensure prevention and treatment of obesity, injury, addictions and substance abuse, and maintaining mental and sexual health</p> <p>D.3 Ensure that the specific needs of young people are met in the response to HIV and AIDS</p> <p>D.4 Ensure youth are protected from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards</p> <p><i>E. MENTAL HEALTH</i></p> <p>E.1 Ensure health systems meet the mental needs of youth, and that they are supported in the community (not institutionalised)</p> <p>E.2 Promotion of early detection and treatment focused on youth</p> <p>E.3 Incorporate mental health into the programmes of study of all health care professionals</p> <p>E.4 Ensure healthy school environments that support young people, particularly those marginalised or at risk of mental health problems</p> <p>E.5 Support programmes for parents, and support posts for counsellors in secondary schools</p> <p><i>F. ACCESS TO LEISURE-TIME AND PHYSICAL ACTIVITIES</i></p> <p>F.1 Promote physical activity to encourage fitness and healthy lifestyles</p> <p>F.2 Encourage healthy living for young people and physical education, sporting activity and collaboration between youth workers, health professionals and sporting organisations</p> <p>F.3 Raising awareness of how sport can promote teamwork, intercultural learning, and responsibility</p>

Key area defined in EU-Ukraine Association Agreement (and TOR)	Relevant key strategic area in EU Strategy for Youth	Key EU and international standards	Indicators used to measure national policy and legislation
2. (Active) citizenship	Participation Social inclusion	<p><u>INTERNATIONAL STANDARDS</u></p> <p>Right to be heard (UNCRC Article 12)</p> <p>Lisbon Declaration (participation of youth in development of policy and programmes)</p> <p>United Nations Framework Approach for the International Year of Youth: Dialogue and Mutual Understanding</p> <p>GA 68/130. Policies and programmes involving youth (youth participation)</p> <p><u>EU STANDARDS</u></p> <p>EU Youth Policy (field of action 5 – participation)</p> <p>Communication addressing the concerns of young people in Europe: Implementing the European Youth Pact and promoting active citizenship, 2005</p> <p>Communication on Promoting young people's full participation in education, employment and society, 2007</p> <p>Revised European Charter on the Participation of Young People in Local and Regional Life, 2008</p> <p>Recommendation (98) 8 on children's participation in family and social life</p> <p>Recommendation (97) 3 on Youth participation and the future of civil society</p>	<p><i>A. YOUTH PARTICIPATION</i></p> <p>A.1 Promote and develop mechanisms for youth to participate in international and EU dialogues on youth policy and monitoring</p> <p>A.2 Promote and develop mechanisms for dialogue with youth on national (youth) policies</p> <p>A.3 Develop and promote concrete guidelines on youth participation and consultation</p> <p>A.4 Promote use of ICTs in development of strategies for increasing participation of young people in decision-making at all levels</p> <p>A.5 Develop opportunities for debate between public institutions and young people</p> <p><i>B. YOUTH ORGANISATIONS</i></p> <p>B.1 Ensure support to youth organisations and local and national youth clubs and youth councils, and promote participation of young people in these organisations, including socially excluded young people</p>



Key area defined in EU-Ukraine Association Agreement (and TOR)	Relevant key strategic area in EU Strategy for Youth	Key EU and international standards	Indicators used to measure national policy and legislation
3. Non-formal education	Education and training  Employment and entrepreneurship	Council Recommendation on the validation of non-formal and informal learning (2012/C 398/01)  Recommendation on the promotion and recognition of non-formal education/learning of young people (2003)	A. <i>NON-FORMAL LEARNING OPPORTUNITIES</i> A.1 Develop non-formal learning opportunities to address early school leaving A.2 Raise public awareness of the value of non-formal learning
4. Volunteering	Voluntary activities	European Youth Forum, Volunteering Charter: European Charter on the rights and responsibilities of volunteers (2012)	A. <i>VOLUNTARY OPPORTUNITIES</i> A.1 Develop and encourage voluntary opportunities and voluntary service of young people, paying particular attention to young people with fewer opportunities A.2 Promote cross-border mobility of youth workers and young volunteers  B. <i>CONDITIONS AND ACCREDITATION</i> B.1 Ensure decent working conditions for young volunteers Take concrete measures to assure quality of volunteering B.2 Promote the recognition and accreditation of skills acquired through voluntary activities

This table will be used to conduct an in-depth analysis of the laws and policies relating to youth development in Ukraine. It should be noted that there is some overlap between categories. It may become apparent while conducting the gap analysis that it will be necessary to amend this analytical framework, or to “reorder” it, in order to strengthen the analysis.

#### 4. CHALLENGES

It may be difficult to identify and retrieve laws and policies in some of the categories. The reason for this is that these provisions may be contained in regulations or guidelines, rather than in primary legislation. Subordinate legislation or guidelines are less likely than primary legislation to be available publicly or available in the English language. This will be circumvented through supplementing the desk-based review with key informant interviews.

## 5. WORKPLAN

Activity	Week 1	Week 2	Week 3	Week 4	Winter Break	Week 5	Week 6	Week 7
Methodology development								
Desk review								
UNDP comments on methodology and desk review and revision								
Development of tools for in-country visit								
In-country visit								
Draft report submitted and reviewed								
Final report completed								