Ukraine

Consolidated Joint Submission to the UN Universal Periodic Review
28th Session of the UPR Working Group

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Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC
and
Center for Civil Liberties
and
DeJuRe Foundation

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1. **(A) Introduction**

1.1. CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.

1.2. The Center for Civil Liberties (CCL) was founded in Kyiv in 2007 to promote and implement the values of human rights in Ukraine and on the territories of the newly independent states. CCL focuses on encouraging realization of the reforms concerning human rights, establishing public control over the actions of law enforcement organs, judges, and local self-government bodies; documenting cases of political persecution in the Crimea and international crimes in the Donbas; educational activities for promoting the values of human rights; and participating in different programs of international solidarity.

1.3. The DeJuRe Foundation (DeJuRe) developed out of a long-term cooperation of experts of the judicial reform group of the Reanimation Package of Reforms. As its main task, the organisation focuses on the development of and support for the implementation of laws appropriate for safeguarding the rule of law and democracy in Ukraine. The expert staff of DeJuRe Foundation includes both Ukrainian and foreign lawyers.

1.4. In this document, CIVICUS, CCL and DeJuRe examine the Government of Ukraine’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Ukraine’s fulfilment of the rights to freedom of association, peaceful assembly, and expression since its previous UPR examination in December 2012. To this end, we assess Ukraine’s implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations. Ukraine is listed in the ‘obstructed’ category on the CIVICUS Monitor which rates protection of the freedoms of expression, association and peaceful assembly.

1.5. During the 2nd UPR cycle, the Government of Ukraine received 11 recommendations relating to the above-mentioned rights. Of these recommendations, 7 were accepted and 4 were noted. An evaluation of a range of legal sources and human rights

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1 The full version of this submission can be found [here](https://monitor.civicus.org/country/ukraine/).

2 See: [https://monitor.civicus.org/country/ukraine/](https://monitor.civicus.org/country/ukraine/)
documentation addressed in subsequent sections of this submission demonstrate that the Government of Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented two of them. Positively, laws restricting freedom of expression based on sexual orientation have not been brought forward and progress has been made on preventing discrimination against workers based on sexual orientation and gender identity. New protest laws have also been drafted and, although certain concerns remain about their scope, the government of Ukraine has sought international advice as to their coherence with international standards on the freedom of peaceful assembly. New laws on combatting problems of concentration of media ownership and protection of journalists have also been introduced since Ukraine’s last review, although, in practice, both of these issues remain serious concerns for freedom of expression in the country.

1.6. CIVICUS, CCL and DeJuRe are particularly concerned by the impact on journalists, civil society organisations and human rights defenders of the armed conflict between Ukraine and Russian-backed de facto authorities in self-proclaimed autonomous areas of the country in Donbas and Crimea. The conflict is having a seriously detrimental impact on the quality of civic space in conflict zones and areas under occupation by Russia and pro-Russian illegal armed formations. The conflict also has wider implications, particularly for freedom of expression, across the whole of Ukraine.

1.7. CIVICUS, CCL and DeJuRe are further alarmed by the continued failure to ensure justice for the victims of the killings during the EuroMaidan protests of 2013 and 2014. While we commend the Government of Ukraine’s positive moves to introduce new peaceful assembly legislation, ensuring that the perpetrators of mass killings during earlier protests are held accountable is equally important to ensuring that Ukrainian citizens have confidence in the state’s ability to protect their basic right to protest peacefully.

1.8. Finally, CIVICUS, CCL and DeJuRe highlight concerns about the recent introduction of new laws which require staff of NGOs to submit asset declarations. These new rules could be abused for political purposes and specifically to silence anti-corruption advocacy by Ukrainian civil society.

2. (B) Freedom of association

2.1. Under the 2nd UPR cycle, the government received two recommendations related to the right to freedom of association of LGBTI people. Through these, Ukraine was urged to respect its ‘international commitments on fundamental rights related to non-
discrimination\(^3\) and to adopt laws and other measures to ‘correct and prevent discrimination based on sexual orientation’.\(^4\) The Government of Ukraine has partially implemented both of these recommendations, taking an important step in this regard in November 2015 when, following public protests and a series of recommendations from the European Commission\(^5\), it amended the Labour Code to prohibit discrimination on a range of grounds including sexual orientation, gender identity, race, colour, political, religious and other beliefs, membership in a trade union or other association.\(^6\)

**2.2.** Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Ukraine is a state party, guarantees the freedom of association. The constitution of Ukraine, in article 26, recognises the right of citizens to associate in order to advance “political, economic, social, cultural and other interests”.\(^7\) In Ukraine, the process to register and form an organisation is straightforward, and the legal framework for civil society is mostly open and supportive.\(^8\) While, in practice, some infringements of the right to freedom of association continue to be committed through the uneven enforcement of legislation, in general, a favourable environment for the creation and activities of associations prevails. The government does not have wide scope to deregister an organisation and there are no documented cases of illegal or arbitrary dissolutions of organisations.\(^9\)

**3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists**

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3 Recommendation from France, A/HRC/22/7

4 Recommendation from Uruguay, A/HRC/22/7


3.1. Under Ukraine’s previous UPR examination, the government received no recommendations specifically related to the protection of human rights defenders, journalists and civil society representatives. Despite an absence of recommendations related to human rights defenders during Ukraine’s last UPR examination, in the intervening period human rights defenders and civil society activists were subject to a range of unwarranted restrictions on their activities including arbitrary arrest, abduction and enforced disappearances.

3.2. Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, international law and national legislation are being applied in the territory of the occupied Crimea and parts of Donbas not controlled by the Ukrainian government. On 21 May 2015, the Ukrainian parliament approved a derogation from Ukraine’s obligations under the ICCPR and the Convention for the Protection of Human Rights and Fundamental Freedoms. The derogation, which was subsequently communicated to the Council of Europe and the UN Secretary-General, states that Ukraine is not responsible for upholding all of the rights enshrined in those international agreements in all of its territory, based on the fact that Russia is in de facto control of parts of Donbas and the Crimea peninsula. It also states that a derogation applies to the full application of certain rights in territory under its control until such time as full sovereignty is returned to all of its territory.

4. (D) Freedom of expression, independence of the media and access to information

4.1. Under the 2nd UPR cycle, the government received ten recommendations relating to freedom of expression. By accepting eight of these recommendations, the government pledged to undertake a number of reforms including “prevent the adoption of a law prohibiting freedom of expression with regards to homosexuality” and “further promote freedom and pluralism of the media as key elements for enabling the exercise of freedom of expression.” In the intervening period, Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented one.


13 Please refer to Annex I to this submission for more detail on this.
4.2. Article 19 of the ICCPR, to which Ukraine has been a State Party since 1973, guarantees the right to freedom of expression and opinion. Article 34 of the Constitution of Ukraine 1996 (as amended in 2014) states that everyone is guaranteed the ‘right to freedom of thought and speech, and to the free expression of his or her views and beliefs’ and the ‘right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.’ The same article provides for lawful restrictions on these rights, which allows measures to be taken in the interests of national security, territorial indivisibility or public order.

5. (E) Freedom of peaceful assembly

5.1. During Ukraine’s examination under the 2nd UPR cycle, the government received one recommendation on the right to freedom of assembly. Ukraine accepted this recommendation and committed to ‘implement a law on freedom of assembly that complies with applicable standards under article 21 of the ICCPR.’ This recommendation has not been implemented.

5.2. Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 39 of Ukraine’s constitution states that citizens have the ‘right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations’, as long as they notify the authorities in advance. The constitution states that all restrictions must be provided for in law and necessary in ‘the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons.’

6. (F) Recommendations to the Government of Ukraine

CIVICUS, CCL and DeJuRe call on the Government of Ukraine to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights

14 Information from UN OHCHR Website on status of ratifications of ICCPR: Ukraine signed the ICCPR in 1968 and ratified it in 1973. It also accepted ICCPR individual communications procedure in 1991: http://indicators.ohchr.org/

15 Full English text of Ukraine’s constitution from The Constitute Project, here: https://www.constituteproject.org/constitutions/Ukraine_2014?lang=en


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enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6 on Protecting Human Rights Defenders, 27/5 on the Safety of Journalists and 27/31 on Civil Society Space.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

6.1. Regarding freedom of association

- Abolish Law No. 6172 requiring staff of non-governmental organisations to submit asset declarations to the authorities.
- Repeal article 186-5 of the Code of Ukraine on Administrative Offences establishing liability for the leadership or participation in unregistered associations of citizens;
- Amend the Law of Ukraine “On public associations”, by including, under article 21 of this law, the right of associations to represent and protect the rights of their members and other persons, upon their request to initiate actions on issues of public interest;
- Amend part 2 of article 50 of the Code of Administrative Procedure of Ukraine, by including in the list of plaintiffs in the administrative case, public associations without the status of legal entity;
- Adopt changes to the Law of Ukraine "On political parties" to bring it into line with international standards;
- Simplify rules for the creation of trade unions and their associations in accordance with the requirements of the Convention on Freedom of Association and Protection of the Right to Organize (C87), in particular, to allow the possibility of their creation without registration.

6.2. Regarding freedom of expression, independence of the media and access to information

- Ensure the effective investigation of all cases of obstruction of journalistic activities and violence against and death of journalists;
- Cancel the procedure of permitting registration of the print media, which is not consistent with the requirements of article 10 of the European Convention for the Protection of Human Rights;
• Eliminate technical obstacles for the creation of a public broadcaster, its adequate funding and to ensure a rapid process of reorganization of the regional companies and their adherence to the National Television Company of Ukraine;

• Refrain from imposing disproportionate restrictions on freedom of speech, using rhetoric against Russian armed aggression.

6.3 Regarding freedom of assembly

• Urgently complete the investigation of widespread violations of freedom of assembly during the events on Maidan in 2013 and 2014, the events of May 2014 in Odesa, attacks on the Equality March in Kyiv in 2015, and all other cases involving the use of violence or excessive force during peaceful protests;

• Adopt a special law envisaging the guarantee of freedom of peaceful assembly, for the implementation of the decision of the European Court of Human Rights in the case "Verentsov against Ukraine";

• Cancel local government provisions, which impose rules on peaceful assembly which run contrary to article 39 of the Constitution of Ukraine;

• Ensure effective investigation and prosecution of perpetrators of unlawful obstructions of freedom of assembly;

• Increase police capacities to protect participants of peaceful assemblies in strict compliance with the principle of non-discrimination. To achieve this, align departmental normative documents and update the system of training of the National Police.

6.4 Regarding access to UN Special Procedures mandate holders

• Given the challenges described in this submission, the government should engage with the UN Special Rapporteur on the independence of judges and lawyers to analyze the situation in the occupied Crimea, where the prosecution of lawyers defending political prisoners is a serious problem. Additionally, the Government should extend an open invitation to all UN special procedures to visit the country and report on the human rights situation.

6.5 Regarding State engagement with civil society
• Implement transparent and inclusive mechanisms of public consultations with a wide range of civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.

• Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.

• Incorporate the results of this UPR into its action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a mid-term evaluation report to the Human Rights Council on the implementation of the recommendations of this session.