

# UKRAINE 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Ukraine is a republic with a presidential-parliamentary system of government. The constitution provides for a directly elected president, a unicameral parliament (Verkhovna Rada), and a prime minister appointed by the president and confirmed by parliament. The October 28 parliamentary elections constituted a step backward from democratic progress made during other recent national elections. Security forces generally reported to civilian authorities.

The most serious human rights problem during the year remained the politically motivated imprisonment of former prime minister Yulia Tymoshenko and former interior minister Yuriy Lutsenko. A second major problem was the failure of the October 28 parliamentary elections to meet international standards of fairness and transparency. The third major human rights problem was increased government interference with and pressure on media outlets, including government tolerance of increased levels of violence toward journalists.

Other human rights problems were abuse of persons in custody, including beating and alleged torture of detainees and prisoners; harsh and unhealthy conditions in prisons and detention facilities; an inefficient and corrupt judicial system; arbitrary and lengthy pretrial detention; inadequate provisions for asylum seekers; pervasive corruption in all branches of government; government pressure on nongovernment organizations (NGOs); societal violence against women and abuse of children; societal discrimination against, and harassment of, religious and ethnic minorities; trafficking in persons; a rise in discrimination and violence against lesbian, gay, bisexual, and transgendered (LGBT) persons; and discrimination toward persons with HIV/AIDS that endangered their prospects for treatment.

The government generally did not prosecute security officials who committed abuses, especially against prisoners and members of minority groups. Prosecutions for corruption, which were frequent, were often criticized as selective and politically motivated. Impunity was a problem throughout the government.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were no reports that the government or its agents committed any politically motivated killings.

There were reports of deaths attributed to illegal actions or negligence by authorities. On June 14, 28-year-old Roman Valetov died in a pretrial detention center in Donetsk. According to his family, his body showed signs of severe beating, including the loss of several front teeth and bruises across his body. Prison authorities reported that the bruises resulted from epileptic convulsions and that Valetov died from acute heart disease. Valetov's family contended that he had not previously suffered from epilepsy or heart disease. Officials, however, accepted the assessment of prison authorities that the cause of death was heart disease. Authorities did not conduct a further investigation.

On January 5, the Desnyanskyi District Court found former police officer Serhiy Prykhodko guilty in the 2010 custody death of Ihor Indylo. Prykhodko received a five-year suspended sentence for exceeding authority and using violence. Indylo's family appealed the verdict. In May the appeals court overruled the court ruling and remanded the case to prosecutors for additional investigation. The case continued at year's end.

The closed trial of Oleksiy Pukach continued during the year. Pukach, a former senior official of the Ministry of Internal Affairs, was charged with the 2000 killing of investigative journalist Heorhiy Gongadze. On December 27, the prosecution announced that it was seeking a life sentence in prison for Pukach. According to authorities, Pukach confessed to strangling and beheading Gongadze, and reportedly implicated former president Leonid Kuchma and other government officials in the murder plot. In March 2011 the Prosecutor General charged Kuchma with abuse of office in connection with the killing. However, in December 2011 a Kyiv district court dismissed the charges, citing a ruling by the Constitutional Court that evidence against Kuchma was improperly obtained.

## **b. Disappearance**

On October 19, Leonid Razvozhayev, a Russian activist, was abducted while registering to apply for asylum at a partner office of the UN High Commissioner for Refugees (UNHCR) in Kyiv. During a break in his registration interview, he stepped outside where masked men reportedly kidnapped him. Razvozhayev claimed he was subsequently tortured and transported to Moscow. On October 21, he appeared in a Moscow court, which ordered his detention. The UNHCR expressed concern over Razvozhayev's disappearance and stated it was awaiting

the results of an official investigation. Amnesty International also expressed grave concern over the incident, saying the “abduction... may have constituted a violation of the country’s obligations under international human rights law.” Ukrainian authorities initially stated there were no grounds for an investigation. However, on December 22, Kyiv police confirmed that they planned to investigate the alleged abduction. Razvozhayev remained in detention in Russia at year’s end.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices; however, there were reports that police continued to abuse and torture persons in custody.

The Ukrainian Helsinki Human Rights Union, a coalition of human rights organizations, reported it received 178 complaints of alleged torture and abuse during the year in comparison with 240 complaints in 2011. In a May 15 judgment involving Ukraine, the European Court of Human Rights (ECHR) stated that “ill treatment in police custody reflected a recurring problem” in the country and urged authorities to “put in place specific reforms in its legal system to ensure that the practice ... was eradicated.”

On April 24, the attorney for jailed former prime minister Tymoshenko alleged that prison guards assaulted her while moving her from prison to a hospital for a medical examination. On April 25, the then human rights ombudsman, Nina Karpachova, visited Tymoshenko and photographed bruises on her arms and stomach; the photographs were made public. An official forensic examination confirmed bruises on Tymoshenko’s body, but officials reported they could not determine their origin. On May 4, Prosecutor General Victor Pshonka said the forensic investigation did not corroborate Tymoshenko’s charge of an assault and that there were insufficient grounds to open a criminal case.

The media reported instances of police abuse. For example, Inter TV and other media reported that on June 17 police officers in the eastern city of Donetsk stopped Mykhailo Byelikov for drinking in public. The officers reportedly took Byelikov to a district police station where they beat and raped him with a baton. They also allegedly tried to extort 1,500 hryvnia (\$190) from him. Because of his injuries, Byelikov underwent several colon reconstruction surgeries. An investigation initiated on June 22 led to the arrest and indictment of three officers

for abuse of authority with grave consequences. Their trial continued at year's end.

A new Criminal Procedure Code (CPC), which took effect November 19, rendered confessions and statements by defendants inadmissible. However, as of the end of the year police continued to rely on confessions to solve cases and mistreated detainees to obtain confessions.

According to a report published on November 14 by the Council of Europe's Committee for the Prevention of Torture (CPT), "the phenomenon of police ill-treatment remains widespread and...persons run a significant risk of being subjected to ill-treatment when they do not rapidly confess to the criminal offence(s) of which they are suspected." The report was based on visits by CPT officials to police detention facilities in the Kyiv and Kharkiv regions during November and December 2011.

Detainees often did not have access to defense lawyers and doctors. Police continued to be underfunded and undertrained; the system to investigate allegations of abuse by officials was ineffective.

The Ministry of Internal Affairs reported that 15 police officers were convicted of torture and inhuman treatment during the first 10 months of the year. Eight cases remained under investigation at year's end.

Physical hazing and violence continued to be a problem in the armed forces. During the first six months of the year, the State Judicial Administration stated 61 guilty verdicts were issued that involved hazing. In 2011 the Prosecutor General's Office reported that 239 servicemen were convicted of hazing, and 132 hazing-related criminal cases were forwarded to the courts.

### **Prison and Detention Center Conditions**

Prison and detention center conditions remained poor, did not meet international standards, and at times posed a serious threat to health of prisoners. Overcrowding, abuse, poor sanitation, and the lack of adequate light, food, and medical care were persistent problems. The government permitted monitoring visits by independent human rights observers.

Physical Conditions: According to the State Penitentiary Service (SPS), as of the first of July, 152,076 persons were held in SPS facilities; of these, 33,167 were in

pretrial detention. Approximately 9,315 were women, and 1,342 were juveniles. Authorities held men, women, and juveniles in separate facilities, although there were reports that in some pretrial detention facilities juveniles were confined with adults. During the first nine months of the year, 789 individuals died in custody including 52 suicides and three homicides. Most prisoners had some access to potable water.

According to the Ministry of Internal Affairs, approximately 123,000 persons were held in police-controlled temporary holding facilities during the first nine months of the year. The ministry confirmed 16 deaths in these facilities, 14 by suicide and two from illness.

Conditions in police temporary holding facilities and SPS pretrial detention facilities were harsher than in low- and medium-security prisons. The former were often overcrowded and lacked adequate sanitation and medical facilities.

Overcrowding in prisons and pretrial detention centers continued to be a problem. In its report, the CPT described conditions in one 28-bed cell at a Kharkiv pretrial detention facility that held at least 44 inmates forced to take turns sleeping. The report also highlighted concerns of severe mistreatment of detainees and inadequate access to medical care.

Administration: Authorities kept records of prisoners in detention, but occasionally records were incomplete, and authorities did not apply access rules uniformly. Human rights groups reported instances in which authorities confiscated prisoners' passports but failed to return them when the prisoners were released. Authorities made no major effort during the year to improve record keeping. Alternative sentencing, such as fines or community service, was available for some nonviolent offenders. The SPS does not employ an ombudsman for prisoners, but the Office of the Parliamentary Commissioner on Human Rights responded to complaints made by prisoners and conducted prison monitoring.

Officials generally allowed prisoners to receive visitors and observe religious services, although those in disciplinary cells could not receive visitors. However, prisoner rights groups noted that some families had to pay bribes to obtain permission for prison visits to which the law entitles them. Authorities allowed visitors to former prime minister Tymoshenko and former interior minister Lutsenko, although an arbitrary enforcement of regulations appeared at times to be designed to obstruct their ability to meet with visitors. For example, on October 30, the SPS approved and then denied Tymoshenko a visit by Walburga Habsburg

Douglas, the vice president of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE), citing Tymoshenko's health as grounds for the denial.

Prisoners and detainees could file complaints with the ombudsman about conditions in custody, but human rights organizations noted that prison officials continued to censor or discourage complaints and penalized and abused inmates who filed complaints. Rights groups reported that legal norms do not ensure confidentiality of complaints, and authorities took no steps to improve the situation.

Monitoring: The government generally permitted independent monitoring of prisons and detention centers by international and local human rights groups.

In its November 14 report, the CPT expressed concern over treatment of persons in police medical facilities. The delegation was particularly concerned about the practice of handcuffing patients to their beds, the violation of doctor-patient confidentiality, and multiple allegations of abuse of detainees. In some cases the CPT described allegations of mistreatment "of such a severity that it could be considered to amount to torture." This included "electric shocks, pistol-whips, burns by cigarette lighters, and asphyxiation by placing a gas mask or plastic bag over a detained person's head."

The CPT delegation also noted with particular concern the "considerable delays" in providing specialized medical examination and treatment to Lutsenko and Tymoshenko, stressing that authorities were responsible for providing adequate health care to all prisoners.

In April investigative journalist Kosyantyn Usov released a documentary that included footage taken by detainees with smuggled mobile phone cameras of the Lukyanivskiy pretrial detention center. The video showed harsh conditions, including overcrowding; lack of access to clean water, natural light, and fresh air; and poor medical care. It also showed detention center staff taking bribes in exchange for passing mobile phones and other packages to detainees.

Improvements: In July, in response to Usov's documentary, the acting head Lukyanivskiy, Pavlo Holubovskiy, told the media that overcrowding in his facility was brought under control. He stated the facility had a capacity of 3,200 detainees, and over three months court appeals and work with the prosecutor's office reduced

the number of persons held there from 3,400 to 3,000. Inmates, however, disputed Holubovskyi's assessment and claimed overcrowding continued.

On November 4, changes to the law that regulates the parliamentary human rights ombudsman expanded the office's authority through a new National Preventive Mechanism (NPM) to curb torture and mistreatment in prisons. The ombudsman established a department to implement the NPM and conducted 136 monitoring visits to pretrial detention centers, prisons, and facilities for children, the elderly and persons with disabilities. The ombudsman's office reported that several of the facilities made some improvements in response to its recommendations.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention; however, in practice serious problems remained.

#### **Role of the Police and Security Apparatus**

The Ministry of Internal Affairs is responsible for maintaining internal security and order; it reports directly to the president and oversees the police and other law enforcement personnel. The Security Service of Ukraine (SBU) is responsible for all state security, nonmilitary intelligence, and counterintelligence. It too reports directly to the president. The State Tax Administration, which exercises law enforcement powers through the tax police, is accountable to both the president and the cabinet.

The law provides for civilian control of the law enforcement agencies. It authorizes members of parliament to conduct investigations and public hearings into law enforcement problems. Parliament and its committees meet regularly with senior officials from law enforcement agencies and occasionally hold hearings on high-profile problems. Parliament's human rights ombudsman is also authorized to initiate investigations into the relevant activities of security forces. There were reports that the Ministry of Internal Affairs and SBU at times acted with impunity and appeared to act to further the political interests of the presidential administration.

Law enforcement forces were generally effective, but significant cases of abuse and impunity were reported. The Prosecutor General's Office investigated security force abuses, but human rights groups raised concerns that not all cases were properly investigated and some instances of abuse were not prosecuted. The

government provided training to law enforcement on how to curb abuses, and NGOs also provided human rights trainings for law enforcement. However, human rights groups noted that authorities did not undertake any major reform of security forces, and training did not result in substantive changes. Security forces generally prevented and responded to societal violence. However, NGOs stated they sometimes used excessive force to disperse protests, and in other cases they failed to protect peaceful demonstrators from harassment or violence from opposing protesters.

According to the Prosecutor General's Office, 100 criminal investigations into alleged torture or degrading treatment by police were opened during the first nine months of the year. In the same period, the prosecutor sent 36 cases of alleged mistreatment involving 75 law enforcement officers to the courts.

According to the Ministry of Internal Affairs, during the first nine months of the year authorities opened criminal cases for other types of crimes against 395 police officers. The majority of cases were in connection with abuse of office or power.

### **Arrest Procedures and Treatment While in Detention**

By law authorities may detain a suspect for three days without a warrant, after which time a warrant must be obtained from a judge. According to the new CPC, detainees must be brought before a judge within 72 hours, and pretrial detention should not exceed six months for minor crimes and 12 months for serious crimes. Under the law citizens have the right to contest an arrest in court or by appeal to a prosecutor; detainees must be promptly informed of their rights; and authorities must immediately notify family members of an arrest. However, police often did not follow these procedures.

Under the law the government must provide attorneys for indigent defendants. However, compliance was uneven because of a shortage of defense attorneys or because attorneys, citing low government remuneration, refused to take on indigent clients. On October 11, the Ministry of Justice opened the first free secondary legal assistance center to implement a 2011 law on free legal aid. During the first six months of the year, according to the national report for the country's UN Universal Periodic Review, 953 lawyers were qualified to provide free legal aid. By year's end free legal assistance centers were established to open in each of the oblasts and in the cities of Kyiv and Sevastopol in January 2013.



The law provides for bail, but it was rarely granted. Many defendants could not pay the required bail amounts. Courts sometimes imposed travel restrictions as an alternative to pretrial confinement. However, during most of the year, courts generally opted to place individuals in pretrial detention. Under the new CPC, prosecutors may no longer impose restraint measures without a court order following an adversarial hearing. Prosecutors must prove that the measure of restraint they are seeking is the minimum to ensure that suspects will appear at future hearings and will not interfere with criminal proceedings.

Arbitrary Arrest: Authorities reportedly continued to make arbitrary arrests, in part to extract evidence that could be used against detainees. There were reports of unsanctioned arrests, and police at times failed to keep records or register detained suspects. Additionally, courts often extended detention to allow police more time to obtain confessions.

On August 29, a court rejected former prime minister Tymoshenko's appeal and upheld her October 2011 conviction and seven-year prison sentence conviction for abuse of office and exceeding authority. She was arrested and detained in August 2011 during her trial for allegedly refusing to cooperate with investigators and disrupting court proceedings. According to most local and international legal analysts, Tymoshenko's arrest and detention were unjustified and disproportionate to the charges.

Pretrial Detention: Lengthy pretrial detention remained a serious problem. In a submission during the year to the UN Universal Periodic Review, the NGO Donetsk Memorial reported that pretrial detentions sometimes lasted up to seven years. For example, on November 26, Dmytro Donskoy was released after six years in a pretrial detention center after courts could not make a final determination of his guilt.

In a separate report on prison conditions published in April, Donetsk Memorial cited the "unjustifiably high" use of pretrial detention and widespread corruption among prison staff. The report concluded that no substantial progress toward observing the rights of prisoners had been made during 2010 and the first half of 2011.

Former acting defense minister Valeriy Ivashchenko was detained in 2010 on charges of exceeding authority and abuse of office. He remained in custody for more than two years until his conviction and sentencing on April 12 to five years in jail, which was reduced by an appeals court to probation. Ivashchenko was

released and appealed his original conviction. The prosecutor general appealed the reduced sentence, and the case continued at the end of the year.

Former interior minister Lutsenko was detained in 2010 on charges of embezzlement and abuse of office. He remained in pretrial detention throughout his trial until his sentencing on February 27 to four years in prison.

#### **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary; however, in practice the judiciary was subject to political pressure, corruption, inefficiency and lacked public confidence. In certain cases the outcome of trials appeared predetermined.

According to most local and international legal experts, a number of individuals were victims of politically motivated prosecutions after being denied the right to a fair public trial. They included former prime minister Tymoshenko, former interior minister Lutsenko, former acting defense minister Ivashchenko, and former head of customs Anatoliy Makarenko.

During the year Deputy Prosecutor General Renat Kuzmin repeatedly stated that the government had reliable information proving Tymoshenko's involvement in the 1996 killing of parliament member Yevhen Shcherban. The Danish Helsinki Commission for Human Rights noted that such statements violated the right to the presumption of innocence under the country's constitution and cast doubt on the right to a fair trial.

Both Tymoshenko and Lutsenko complained their right to a fair trial was further violated because they could not meet with their attorneys in private. For example, Tymoshenko was subjected to video surveillance by three cameras in her prison hospital room. Lutsenko stated he could only communicate with visitors by telephone through a security glass and alleged that authorities monitored the telephones.

Judges continued to complain about deterioration in the separation of powers between the executive and judicial branches of government. Some judges said they were under pressure from high-ranking politicians seeking resolution of select cases and were at times told how to decide cases regardless of the merits. Lengthy court proceedings, particularly in administrative courts, inadequate court funding, a shortage of qualified legal assistance for defendants, and the inability of courts to enforce rulings also impeded the right to a fair trial.

The State Judicial Administration funded and staffed all courts, except for the Supreme Court. The justice and education ministries were responsible for training judges.

### **Trial Procedures**

The new CPC, which took effect November 19, introduced a wider range of restraint measures to reduce use of pretrial detention, new procedures to reduce incentives for authorities to coerce confessions, streamlined investigations and trial procedures, and more procedural rights for the defense. At the same time, observers contended that further legal reforms were needed to limit the power of the Prosecutor General's Office and to establish an impartial and independent criminal justice system in line with the country's international commitments.

There is no comprehensive jury system. Most cases are decided by a single judge, although trials on charges carrying a maximum sentence of life imprisonment are heard by two judges and three public assessors who have some legal training.

The constitution and laws include provisions for a fair trial. Under the new CPC and other laws, citizens are presumed innocent and have the right to be informed promptly and in detail of charges against them (with free interpretation as necessary). They also have the right to be tried publicly without undue delay, to communicate privately with an attorney of choice (or one provided at public expense), to have adequate time and facilities to prepare a defense, to have access to government-held evidence, to confront witnesses against them, and to present witnesses and evidence. They also have the right not to be compelled to testify or confess guilt, and the right to appeal. The new CPC expanded these rights.

Lengthy pretrial detention periods and a very high conviction rate undermined the presumption of innocence. Although the law required trials to be public, courtroom space was often limited, and media were at times prohibited from observing court proceedings. Trials, which by law had to start no later than three weeks after criminal charges were filed, seldom met this requirement, and months frequently passed before a defendant was tried; complicated cases usually took much longer to go to trial. Human rights groups reported that officials occasionally monitored meetings between attorneys and their clients.

Both the old and the new CPCs provide for an appeals process, including for the prosecution. According to the old CPC, appeals courts could dismiss convictions

or order new trials if certain documents signed by the defendant were missing from the case file. Officials sometimes verbally and physically abused defendants to force them to sign copies of missing documents to avoid dismissal of the conviction or a new trial. Under the new CPC, however, such documents are no longer admissible as evidence and cannot be grounds to dismiss a case.

During the trials of Tymoshenko and Lutsenko their rights as defendants to confront witnesses, present their own witnesses and evidence, and have access to government-held evidence were violated.

On July 5, parliament adopted legislation on the bar and lawyer's activities, which together with the new CPC and the law on free legal assistance, intended to increase the independence of lawyers, create a single registry for lawyers, and broaden professional rights and guarantees for those practicing law.

On September 18, parliament adopted amendments to the law on the Prosecutor General's Office ostensibly to limit the office's powers that go beyond criminal prosecutions. Human rights experts and the international community expressed disappointment in the limited scope of the amendments. They urged more reform of the prosecutor's office to increase professionalism, improve observance of ethical standards, and limit the authority of prosecutors to exercise powers outside of the criminal process, including so-called prosecutorial inspections.

### **Political Prisoners and Detainees**

Authorities selectively detained and prosecuted members of the political opposition and continued to imprison opposition politicians.

On January 31, Arsen Avakov, the former governor of Kharkiv oblast and head of the local opposition party, was charged with abuse of office in connection with a land sale in 2009. Human rights groups claimed the charges were a politically motivated attempt to prevent Avakov, a popular politician, from running in the October parliamentary elections. A local court issued an arrest warrant, but Avakov had earlier left the country. On March 27, Italian authorities detained Avakov on an extradition request but later released him. Avakov returned to the country in December after the October parliamentary elections. As an elected member of parliament with the opposition Batkivschyna party, he has immunity from prosecution.

In 2010 former prime minister Tymoshenko, former minister of internal affairs Lutsenko, and six other senior members of Tymoshenko's government were charged with abuse of power and misuse of state funds, charges that were widely regarded as politically motivated. Domestic and international observers also raised concerns about the charges, noting that while the government had a right to investigate corruption, prosecution should not be selective or politically motivated (see section 4).

Tymoshenko remained in prison at year's end following her conviction in October 2011 on charges of abuse of power and misuse of state funds. Her complaint to the ECHR about her detention and trial remained under the court's review.

Tymoshenko was sentenced to seven years in prison and ordered to pay the government approximately 1.5 billion hryvnia (\$190 million) for losses allegedly caused by a 2009 natural gas agreement she signed with Russia. Many domestic and foreign observers, governments, and NGOs considered the government's prosecution of Tymoshenko to be politically motivated.

On August 27, Lutsenko was found guilty a second time and sentenced to two years in prison for renewing authorization of surveillance on an individual. Earlier in the year, on February 17, he was sentenced to four years for illegally promoting his driver and illegally authorizing funding for the celebration of Police Day in 2009.

On July 3, the ECHR ruled that authorities had violated article 5 of the European Convention on Human Rights by arbitrarily arresting and detaining Lutsenko. In addition, the court ruled that authorities also violated article 18 of the convention by wrongfully prolonging Lutsenko's detention past his arraignment. The court ordered the government to pay a fine of 15,000 euros (\$19,800) in compensation and declined to hear the government's appeal of the ruling. At year's end the government had not complied with the ECHR decisions on Lutsenko.

### **Civil Judicial Procedures and Remedies**

The constitution and laws provide for the right to seek redress for any decisions, actions, or omissions of national and local government officials that violate citizens' human rights. However, an inefficient and corrupt judicial system limited the right of redress. Individuals may also file a collective legal challenge to legislation that they believe may violate basic rights and freedoms. Individuals may appeal to the human rights ombudsman at any time and to the ECHR after exhausting domestic remedies.

## **Regional Human Rights Court Decisions**

Individuals may apply to the ECHR to redress alleged violations of human rights by the state as provided under the European Convention on Human Rights. During the first nine months of the year, the ECHR handed down 61 judgments against the country. Most involved violations of the right to a fair trial, unduly long proceedings, violation of the right to liberty and security, and inhumane or degrading treatment. At the end of November, 10,500 cases against Ukraine were pending at the ECHR. In 2011 the ECHR issued 105 decisions against the country.

Independent observers noted that while the government paid damages to those who won ECHR cases involving financial matters, it failed to institute reforms to address the root causes of many of the cases brought before the court.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions; however, in practice authorities generally did not respect these prohibitions.

In its July report, *Sounding the Alarm Round 2*, Freedom House reported that security officers were approaching civil society organizations before the October 28 parliamentary elections to hold “preventative conversations.” Activists believed the discussions were meant to discourage them from their work.

On August 17, opposition politician Oleksandr Turchynov alleged that law enforcement officials monitored and tracked opposition activists without legal permission. On August 20, Serhiy Vlasenko, a lawyer for former prime minister Tymoshenko, alleged that authorities had him under surveillance, tapped his telephones, and watched his e-mail account.

On December 6, a new law came into force that requires citizens to provide biometric and personal information to be included in government-issued identity documents such as passports, drivers’ licenses, and other documents. Human rights groups criticized the law for violating the right to privacy by sharing a large amount of sensitive personal information across many government agencies without adequate safeguards to protect the integrity of the data.

By law the SBU may not conduct surveillance or searches without a court-issued warrant. Authorities may initiate an emergency search without prior court

approval but then must submit an application for court approval immediately after the investigation begins. The Office of the Prosecutor General has the constitutional responsibility to ensure that all law enforcement agencies observe the law. Citizens have the legal right to examine any dossier concerning them in the possession of the SBU and the legal right to recover losses resulting from an investigation. However, authorities generally did not respect these rights because implementing legislation was not enacted, and many citizens were not aware of their rights or that authorities had violated their privacy.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution and laws provide for freedom of speech and press. However, the government did not respect these rights in practice.

Journalists and media owners at times succumbed to government pressure and intimidation by practicing self-censorship, and authorities reportedly attempted to direct media content. There were also reports of intimidation and violence against journalists by national and local officials, and unknown perpetrators. In the months before the October 28 parliamentary elections, government pressure on independent media outlets increased, including criminal investigations, prosecutions, raids by tax inspectors, and implied threats to deny broadcasting licenses. However, in an attempt to bring greater objectivity to news coverage of the elections, several major private television channels entered into an agreement with a leading NGO, the International Renaissance Foundation, to establish a monitoring committee of television news.

Freedom of Speech: Individuals could criticize the government publicly and privately. There were reports during the year of selective administrative actions against civic protests, in one case resulting in the death of an activist who reportedly died from a heart attack as police destroyed a tent camp of antigovernment protesters. Other groups reported psychological pressure and intimidation by the government, such as the SBU approaching civil society organizations to discuss their future plans.

Freedom of Press: Independent media were active and expressed a variety of views. However, both independent and state-owned media demonstrated a tendency toward self-censorship on stories that criticized the government. This

situation improved in October after several leading television channels made a public commitment to more balanced reporting before the parliamentary elections.

International watchdog groups continued to express concern during the year about media freedom in the country. For example, in April, Reporters Without Borders released a report about press freedom, warning of violence and impunity that encouraged a culture of censorship and pressure. It also noted a surge in harassment and intimidation of journalists in the period preceding the October parliamentary elections.

In July Freedom House's report noted that developments in the country's media environment "reinforce concerns that space for freedom of the press is shrinking and that the independence of many media outlets is compromised." The report found worsening trends in government corruption involving granting of digital broadcasting licenses, increased business and political influence on media, media monopolization, use of administrative resources to hinder the operations of independent media, and an increase in "sponsored" political reporting.

In November the International Press Institute added the country to its "Europe Watch List" because of diminished media freedom. The institute concluded that conditions for the media had deteriorated following President Viktor Yanukovich's election in 2010, citing economic pressure on the media, repression of independent media outlets, and impunity for violence against journalists.

The National Council for Radio and Television Broadcasting used the distribution of new digital television broadcast rights to pressure or punish certain television stations for political purposes. For example, by November more than 75 percent of national and regional licenses for digital broadcasting had been granted, with licenses issued only to stations that were government-owned, pro-government, or owned by supporters of the party in power, Party of the Regions (POR).

Violence and Harassment: According to the Institute of Mass Information (IMI), a local media watchdog agency, 82 assaults, attacks, and cases of intimidation against journalists were recorded during the year. In addition five journalists were either arrested or detained. In total IMI recorded 352 violations of journalists' rights during the year, a figure 3.5 times greater than all violations in 2011 and the highest since IMI started collecting data in 2002.

On August 1, unknown assailants beat Vladimir Goncharenko, an environmentalist and editor of the newspaper *EKO Bezpeka*. The assault occurred four days after



his press conference on his investigation of illegal dumping of toxic and radioactive scrap metals in the city of Kryviy Rih. He died two days later from his injuries. Local authorities denied the illegal dumping and opened a criminal investigation into the beating death, saying it was likely due to a personal dispute. In October the Dnipropetrovsk office of the Ministry of Internal Affairs released facial composites of two suspects. There were no arrests, and the investigation continued at year's end.

On September 26, Dmytro Volkov, a broadcast journalist investigating illegal land transfers in Vyshgorod for TV channel 1+1, was attacked and badly beaten. The unknown perpetrators warned Volkov not to pursue the investigation. The minister of the interior stated that he would personally supervise the investigation. On October 9, two weeks after police began an investigation into the attack, TV 1+1 announced a one-million-hryvnia reward (\$120,000) for information leading to the capture of the perpetrators. The investigation continued at year's end.

On October 15, Konstantin Kovalenko, a journalist for the online news site *GolosUA*, reported that he was tortured by simulated drowning and threatened with death to prevent him from publishing a story about his investigation into vote buying.

Censorship or Content Restrictions: On July 12, tax inspectors raided the office of the independent television channel TVi for alleged tax violations and opened a criminal case against TVi Director-General Mykola Knyazhytskyy. After domestic and international protest, President Yanukovich promised to look into the case and protect freedom of press. Nonetheless, TVi disappeared from the network listings of cable operator Triolan in 11 large cities. Other cable providers, particularly in the east, also dropped TVi's broadcast or moved it to less popular and more expensive cable offerings. Smaller regional companies took similar actions between July and September. Cable providers stated commercial considerations drove these decisions. However, independent journalists alleged that the National Council for Radio and Television Broadcasting coerced the cable companies to remove or relocate TVi.

Several instances of government pressure on media outlets to alter the content of their products were reported in advance of the October 28 parliamentary elections. In Odessa the independent television channel Novaya Odessa was allegedly pressured to run political coverage and political advertisements on behalf of the ruling POR or have its license revoked.

In September authorities pulled the major weekly news magazine *Ukrainsky Tyzhden* (Ukrainian Week) from newsstands at the government-run Kyiv Boryspil airport. Authorities notified the magazine that the decision was based on its articles critical of President Yanukovich's administration and its reporting on alleged threats to media freedom.

On October 25, six editors of the privately-held UNIAN news and information agency claimed that management instituted a ban on negative coverage of President Yanukovich and had increased coverage of the Communist Party head Petro Symonenko, regarded as a political ally of the ruling POR. The editors also said they were instructed to remove stories about members of parliament and journalists' protests.

Opposition parties claimed that state television gave preferential access to POR candidates and restricted access for members of the opposition, although some opposition figures noted coverage became more balanced just before the October parliamentary elections. There were also reports throughout the country of paid political advertisements or government-sponsored news stories presented as objective news reports.

Libel Laws: Libel is considered a civil offense, and the law limits the amount of damages that may be claimed in libel lawsuits. The press can publish critical materials and opinions without penalty, and public officials enjoy fewer legal protections from criticism than other citizens.

However, local media observers expressed concern over high monetary damages that at times were demanded and awarded for alleged libel. Government entities and public figures in particular continued to use the threat of civil suits based on alleged damage to a "person's honor and integrity" to influence or intimidate the press and investigative journalists.

### **Internet Freedom**

There were no government restrictions on access to the Internet. Recent surveys showed that more than 50 percent of adults were regular Internet users.

Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. However, law enforcement bodies monitored the Internet, at times without appropriate legal authority. While online media

remained free of direct state control, there were at least two cases of interference by law enforcement agencies with prominent bloggers and online publications.

On June 25, parliament member Volodymyr Landyk filed a complaint with the Prosecutor General's Office against Ksenya Vasilenko, the editor of the independent Internet news site LB.ua, for allegedly violating a law barring publication of "secret communications of government officials." The news site had published a story that included text messages from Landyk to a public relations firm. Vasilenko claimed the threat of a criminal investigation was an example of government pressure on independent media. The case was dropped after domestic protest and international pressure.

On August 7, the Internet company Hosting Ukraine notified the Web site *You Have the Right to Know* that its contract would be terminated for violating rules against posting information regarding political parties and movements. The Web site operators countered that it was properly registered with the Ministry of Justice as a media resource and that its contract did not prohibit politically oriented information. The operators contended the government had pressured the hosting company to shut them down, although they continued to operate online.

### **Academic Freedom and Cultural Events**

There were no reports of government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

#### **Freedom of Assembly**

The constitution generally provides for freedom of assembly; however, according to local NGOs, the government frequently infringed on this right by influencing courts to side with local and national governments to ban protests and demonstrations.

According to the constitution, organizers must inform authorities in advance of a planned demonstration or protest, and local authorities have the option to challenge the legality of the planned event. The courts have wide discretion either to allow or refuse permission on grounds of protecting the public from a possible disturbance or crime.

According to the Center for Political and Legal Reforms, courts sided with local authorities in 88 percent of cases to deny permission for demonstrations, compared with 89 percent in 2011. Courts reported that authorities challenged 355 decisions during the year, compared with 227 in 2011. The denial rate in Kyiv was 86 percent, while in Kharkiv the court sided with authorities in 100 percent of reported cases.

In cases where protests were not challenged, or when protests were conducted in violation of a court order, the government often deployed large numbers of police, sometimes greater in number than protesters. Police generally allowed pro-government protests to proceed undisturbed.

Authorities often banned protests and demonstrations on dubious grounds. For example, in August a court in Kharkiv upheld a government request to ban a peaceful protest on the grounds that the protest would threaten the lives of citizens not taking part in the event, it might obstruct traffic, and the planned location was being prepared for a honey festival and flower exhibition. The court also noted the harmful effects of the sun's rays and danger of heat exhaustion.

On October 27, a Kyiv court banned a planned protest in the city center against the parliamentary election, but the court decision banned all mass gatherings in central Kyiv for two weeks, except for government-sponsored events. The court reportedly cited the potential danger of conflicts between organizations with opposing views. Opposition protesters defied the ban and held their rally in front of the Central Election Commission.

In September a group of civil society organizations published a joint letter objecting to the increasing tendency of courts to ban peaceful protests, the growing use of administrative measures, such as fines and arrests for violations of freedom of assembly rules, and arbitrary interpretation of constitutional provisions.

### **Freedom of Association**

The constitution and law provide for freedom of association. While the government generally respected this right, some restrictions remained. Extensive registration requirements for organizations remained in effect, but there were no reports that the government used them to disband existing organizations or to prevent new ones from being formed.

On March 22, parliament adopted a new law on NGOs to simplify registration requirements and remove restrictions on their activities, scheduled to take effect in January 2013 (see section 5).

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt/](http://www.state.gov/j/drl/irf/rpt/).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide citizens with freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. International and domestic organizations reported that the system to protect asylum seekers, stateless persons, and other persons of concerns did not operate effectively.

The UNHCR described the asylum system as “dysfunctional” and continued to advise other countries not to return third-country asylum seekers to Ukraine. According to the UNHCR, returned refugees could not be assured of access to a fair and efficient procedure to determine refugee status according to international refugee standards, or to effective protection against refoulement. The government also at times denied the UNHCR access to persons of concern.

Access to Asylum: The country's laws provide for granting of asylum or refugee status, and the government has established a legal system to protect refugees. However, international protection for asylum seekers was insufficient due to both legislative gaps and the system of implementation. Authorities failed to provide effective protection for refugees and asylum seekers.

According to observers, recent legal reforms and judicial actions brought some advances in access to asylum. However, legal obstacles for asylum seekers remained. For example, human rights groups noted that the refugee law falls short of international standards due to its restrictive definition of who is a refugee. The law also narrowly defines who is eligible for complementary protection and excludes persons in need of international protection. The law permits authorities to reject many asylum applications without a thorough case assessment, depriving asylum seekers of the opportunity to present their complete asylum application and forcing them to seek protection elsewhere. In other cases government officials

declined to accept initial asylum applications without legal basis, leaving asylum seekers without documentation and vulnerable to frequent police stops, fines, detention, and exploitation. A five-day appeal period prevented asylum seekers in practice from appealing rulings on their detention or deportation.

The UNHCR noted that the Refugee Department of the State Migration Service (SMS) lacked sufficient autonomy to make impartial determinations about refugee status. The absence of such autonomy opened decision making on refugee status and protection to influence by other factors, such as concerns about irregular migration.

In more than 50 cases during the year, the government refused refugee status to individuals that other governments subsequently found to have legitimate claims under the UNCHR resettlement program. They were subsequently accepted as refugees after Ukrainian authorities did not provide asylum protection.

The government discriminated against asylum applications from individuals from Russia, Belarus, or countries in Central Asia. According to government figures, as of September only one application from those countries was approved.

During the year the number of asylum applications increased because the SMS did not function properly during part of 2011 by failing to accept applications for international protection. The large number of applicants and limited administrative resources caused delays for many applicants and left them without documentation and vulnerable to exploitation.

Authorities detained some asylum seekers for extended periods. In some cases individuals were detained for up to one year. Some individuals, when released, were given three days to leave the country. Most individuals could not meet the departure deadline. As a result, some were rearrested and detained again for up to one year.

Refoulement: The government did not assure protection against the expulsion or return of refugees to a country where there was reason to believe their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The UNHCR reported that asylum seekers at borders were not guaranteed access to the country's territory. During the year the UNHCR recorded at least two incidents involving the expulsion of two individual asylum seekers or refugees.

For example, the UNHCR reported that on August 15 authorities violated the principle of nonrefoulement and national and international law by extraditing a Russian citizen to a country where he had a well-founded fear of repression. The UNHCR had recognized the Russian citizen as a refugee and concluded that forcibly returning him to his home country exposed him to unacceptable risks of serious human rights violations and constituted refoulement. Another country party to the UN Convention on Refugees had also recognized the Russian citizen as a refugee before his extradition.

Refugee Abuse: Authorities frequently detained asylum seekers without court order for extended periods. Asylum seekers also were detained repeatedly for purposes of deportation.

In a letter dated January 31 to the interior minister, Human Rights Watch expressed concern about the “arbitrary detention of some or all of a group of 125 Somali nationals” at the Zhuravychi Migrant Accommodation Centre. Some of the detainees were registered with the UNHCR or with the country’s authorities as asylum seekers. Others reportedly told the UNHCR they were prevented from applying for asylum in the country.

On August 3, refugee Umar Abuev was severely beaten while in custody in a Kyiv pretrial detention center. Abuev had been classified as an asylum seeker, and the UNHCR recognized him as a refugee under its mandate. Detention officials reportedly moved Abuev to the visiting area of the detention center, where an unidentified outsider beat him. He suffered a number of injuries and lapsed into a coma. The human rights ombudsman monitored the case, but prison authorities did not investigate the attack. Abuev was released from the detention facility after authorities recognized him as a refugee and declined to extradite him.

Human rights groups noted that the law on refugees does not expressly provide protection for war refugees, victims of indiscriminate violence, or unsuccessful asylum seekers who could face the threat of torture or loss of life or freedom if deported. Other laws provide some protection against forcible return for asylum seekers.

Additionally, refugees and asylum seekers, mainly from Africa and Asia, were at times victims of violent, racially motivated attacks. Asylum seekers in detention centers were sometimes unable to apply for refugee status within the prescribed time limits and had limited access to legal and other assistance.

Lack of access to qualified interpreters hampered the full range of asylum procedures. International observers noted that the government did not provide resources for translators, which created opportunities for corruption and undermined the fairness of asylum application procedures.

According to the Danish Refugee Council (DRC), the country's estimated 200 unaccompanied minor asylum seekers faced additional risks. Ukraine lacked an effective mechanism in both law and practice to determine the age of asylum seekers. Authorities often incorrectly identified minors as adults through ad hoc assessments, in part because the law allows adults to be detained and processed more easily than minors. The DRC reported that at least 25 unaccompanied minor asylum seekers were detained and held in violation of the law during the year. Unaccompanied minors may not legally apply for asylum on their own behalf, and authorities sometimes failed to appoint a responsible adult to act on the child's behalf, leaving the child in limbo. Because such minors lacked status as asylum seekers, they could not access official support and often were forced to rely on informal networks for food, shelter, and other needs. As a result, they remained vulnerable to abuse, trafficking and other forms of exploitation.

Access to Basic Services: Human rights groups reported that asylum seekers lacked social and economic rights and assistance. For example, authorities did not provide language courses, social assistance, or employment assistance, and most asylum seekers were unable to obtain a work permit as required by law. In an effort to survive, some attempted to work illegally, increasing their risk of protection problems and exploitation.

The country remained an origin, destination, and transit country for migrants. Authorities previously increased the number of temporary accommodation centers to house refugees, but the number of available spaces remained inadequate to meet requirements.

### **Stateless Persons**

According to the law, citizenship is derived by birth, territorial origin, naturalization, restored citizenship, and adoption.

According to UNHCR estimates, there were 39,817 stateless persons in the country. Stateless persons also included an unknown number of persons who either lived in the country for decades but failed to clarify their citizenship status after the collapse of the Soviet Union in 1991 or arrived in the country as students



or visitors both before and after 1991. Many did not obtain residency documents or take other steps to register as foreign residents according to the regulations of their country of origin. Formerly deported persons (mainly Crimean Tatars) also continued to return to the country and were sometimes at risk of statelessness due to legal and bureaucratic barriers.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the right to change their government peacefully. The law also provides citizens the right to vote in periodic, free, and fair elections based on universal suffrage. However, recent elections did not meet international standards of transparency and fairness.

#### **Elections and Political Participation**

Recent Elections: The October 28 parliamentary elections did not meet international standards for fairness or transparency. Domestic and international observers characterized them as a step backward compared with other recent national elections in the country. In a statement released by the OSCE's Office for Democratic Institutions and Human Rights, the elections were characterized by "the lack of a level playing field."

According to domestic and international observers, this was primarily due to widespread abuse of government resources to favor progovernment candidates, misuse of state law enforcement authorities to harass and intimidate opposition candidates, government interference with media, violence toward journalists, manipulation of election commissions, fraud and falsification in the vote-counting process, and selective prosecution of political opponents, which prevented them from participating in the elections. Results in five single-member districts remained in dispute at year's end and were proposed for a revote in 2013.

Local elections in October 2010 also did not meet the standards for openness and fairness. According to domestic and international observers, there were numerous procedural and organizational irregularities and incidents where authorities pressured monitors and candidates. Other problems were attributed to a new local election law adopted two months prior to the vote, which blocked participation of new parties, allowed for improper use of administrative resources, and created complicated registration and voting procedures. The president's POR won clear majorities in most regions and major cities throughout the country.

By contrast, the 2010 presidential election was assessed as having met most international standards for a free and fair election, according to domestic and international election monitors. Yanukovich and Tymoshenko competed in a runoff vote; Yanukovich won by a narrow margin with 48.9 percent of the vote.

On November 27, the president signed a law to introduce national referendum voting. The country's constitutional scholars claimed the bill, which authorizes constitutional amendments via referendum, was itself unconstitutional. Opposition leaders expressed concerns the referendum law could be used to give parliament the power to directly elect the president. International experts noted substantive and procedural flaws, which raised serious questions about the fairness and transparency of any referendum conducted under the law.

Participation of Women and Minorities: There were 43 women in the 450-seat parliament, an increase of seven from the previous parliament. Women held three posts in the Cabinet of Ministers, and the 18-member Constitutional Court included two female justices.

The number of minorities in parliament and the cabinet was not available due to privacy laws.

The law does not allow regional political parties; Crimean Tatars had to join national political parties or blocs. Only one Crimean Tatar was a member of the national parliament.

Mustafa Dzhemilev, the leader of the Crimean Tatar Mejlis (a nongovernmental body) continued to voice concerns about the decreasing presence of Crimean Tatars in local government. According to Djemilev, authorities continued to replace Crimean Tatar officials with individuals of other nationalities. As a result, while Crimean Tatars constituted 14 percent of the population in Crimea, they held only approximately 3 percent of senior positions in local government. Crimean Tatars occupied seven seats in the 100-member Crimean parliament. National authorities did not recognize the Mejlis.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for official corruption; however, the government ineffectively prosecuted corruption and rarely imposed penalties.

Corruption remained pervasive at all levels in the executive, legislative, and judicial branches of government and in society.

According to a nationwide 2011 survey by the Kyiv International Institute of Sociology, 60 percent of respondents acknowledged that they had been involved in corrupt transactions with government officials in the previous 12 months.

Under the law penalties for corruption can be assessed against public officials, civil servants, and persons who provide public services, such as notaries and aides to members of parliament. Public officials must declare their income and expenses and are restricted from receiving gifts more than a certain value, employing close relatives, or using information obtained in the course of their work for personal gain. During the year the Ministry of Justice created a legally required database of persons guilty of corruption and reported that by year's end the database contained 5,700 cases of corruption. However, by law the public cannot access the data.

In its July report Freedom House stated that the government's anticorruption campaign "lacks credibility" and had "been used to justify prosecution of political opponents of the current government." Experts also noted the "astonishing pace" at which officials in power, their relatives, and friends were accumulating wealth and influence -- a process Freedom House described as the "familyization" of corruption.

Former prime minister Tymoshenko and former interior minister Lutsenko continued to serve sentences for abuse of office and authority. Other former government officials accused of corruption and related charges either received suspended sentences or were released on probation. Domestic and international human rights groups contended the convictions were selective and politically motivated (see section 1.d.).

On March 20, Anatoliy Hrytsenko, a POR member and former speaker of the Crimean parliament, received a two-year suspended prison sentence for approving fraudulent privatization of state-owned lands between 2001 and 2005. He was released on probation after spending more than one year in pretrial detention.

By contrast, alleged misdeeds by senior government officials were not investigated. Latvian authorities, for instance, could not secure the government's cooperation for a probe into an alleged corrupt purchase of two oil rigs by a Ukrainian state company through the Latvian banking system.

Low-level corruption remained a problem. According to the latest available information, in 2011 the Prosecutor General's Office reported that prosecutors initiated and forwarded to courts criminal corruption cases against 385 police officers, 120 tax officials, 86 penitentiary service officers, 36 customs officers, 18 prosecutors, six Security Service officers, and five border guards.

Members of parliament are immune from prosecution. Judges are immune from arrest and detention prior to a court conviction, unless parliament rescinds their immunity. Only the Prosecutor General's Office can investigate judges, and a judge's property may not be searched without prior court approval. In 2011 the Prosecutor General's Office confirmed that it had initiated 33 corruption cases against judges and forwarded 35 corruption cases against judges to court. During the year 16 judges were found guilty of wrongdoing: 12 were convicted of bribery, one of knowingly issuing an unjust decision, and three of abuse of power or office.

Numerous allegations of political corruption and vote buying were reported during the parliamentary election campaign. Candidates reportedly offered money, goods, and services to secure voter support. For example, domestic observers in the city of Bila Tserkva witnessed campaign workers for a single-mandate district candidate distribute 100 hryvnia (\$12.44) to voters in exchange for copies of their passports. In the Ternopil region, observers noted that a candidate's charity organization reportedly gave teachers cash awards of 200 hryvnia (\$25) to celebrate Teacher's Day.

The constitution and law require authorities to provide government information upon request, unless it pertains to national security. Officials are required to respond to requests within 10 days and to provide information within 30 days. Denials can be appealed to a higher level at the agency concerned and then to a court.

However, local media and NGOs reported that the government's implementation of the public information law was uneven, and there were reports that officials refused to provide requested information. Government officials often did not understand the law. For example, the Center for Public Studies and Analysis sent information requests to more than 200 local and national government offices. Less than 30 percent of local authorities provided complete answers, and less than 20 percent of central government offices did.

On July 4, parliament passed amendments to the law on state procurement that allowed state-owned companies to conduct closed, noncompetitive tenders for

contracts, and freed them from requirements to publish details about those contracts. Experts criticized the amendments for rendering a significant part of the government procurement process nontransparent, reducing public oversight of government spending, and introducing opportunities for large-scale corruption.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases and openly criticizing the government's human rights performance. However, government officials were not uniformly cooperative or responsive to their views, and in some instances authorities pressured or intimidated civic groups. For example, the SBU contacted civil society organizations following their participation in a controversial public gathering early in the year. The activists reported the contact left them feeling threatened and pressured to curtail subsequent lawful gatherings and related activities.

On March 22, parliament adopted a new law on NGOs to replace Soviet-era regulations on public associations, scheduled to take effect in January 2013. Civil society groups and public experts played a major role in its development and passage. Known as the Law on Public Associations, it complies with European standards and provides for simplified registration procedures. It also allows NGOs to pursue any lawful interests beyond the interests of its members, conduct activities throughout the country, and engage in entrepreneurial activities to support not-for-profit activities.

Government Human Rights Bodies: The constitution provides for a human rights ombudsman, officially designated as the Parliamentary Commissioner on Human Rights. On February 7, then ombudsman Nina Karpachova reported to parliament on the human rights situation in the country in 2011. Human rights groups criticized the report as inadequate and the ombudsman for poor cooperation with human rights organizations and for failing to open regional offices. While the ombudsman's office was active, many observers said its efforts were not leading to systemic changes.

On April 24, parliament approved the government's nomination of Valeria Lutkovska as the new ombudsman. Human rights groups generally welcomed the change and commended the extensive structural reforms and projects Lutkovska implemented, such as creating a citizen advisory council that included civil society

representatives, and launching the National Preventive Mechanism to stop mistreatment of detainees in government holding facilities. Some NGO leaders, however, objected to Lutkovska's assertion that the political motivation behind the prosecution of opposition leaders was not part of her duties.

According to the ombudsman's office, 14,704 persons filed complaints with the ombudsman during the first 11 months of the year. Of that number, approximately 54.5 percent related to civil rights, in particular the right to a fair trial, abuse by law enforcement personnel, and timely implementation of court rulings. The remaining complaints involved violations of economic rights (14.8 percent); social rights (12.9 percent); individual rights (12.1 percent), including right to life, respect for personal integrity, and prohibition of torture in detention; and political rights (5.5 percent).

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law and constitution prohibit discrimination based on race, gender, disability, language, social status, and ethnic and social origin. However, both governmental and societal discrimination persisted, and the government did not effectively enforce the prohibitions.

On June 8, President Yanukovich signed a resolution of the National Security and Defense Council implementing additional measures to suppress terrorism in the country by banning distribution of materials that incite ethnic, racial or religious hatred, intolerance, and discrimination. According to the resolution, the main causes of terrorism are radicalism, extremism, attempts to politicize interethnic and interreligious relations, and the negative influence of religious extremist groups.

On September 6, parliament adopted a new law to prevent and counteract discrimination. It covers discrimination based on race; political, religious, or other beliefs; sex; age; disability; ethnic or social origin; family and property status; place of residence; language; and other characteristics. Experts generally described the law as well intentioned but noted that the definition of discrimination was too narrow because it omitted explicit reference to sexual orientation and gender identity. In addition experts expressed concern that the law lacked meaningful enforcement mechanisms. In response, the ombudsman's office began to work with human rights groups and other government agencies to prepare amendments to introduce more effective discrimination protection mechanisms.

## **Women**

Rape and Domestic Violence: The law prohibits rape but does not explicitly address spousal rape. A law against “forced sex with a materially dependent person” may be used as grounds to prosecute spousal rape. Under the law a person can be detained for up to five days for offenses related to domestic violence and spousal abuse.

Sexual assault and rape continued to be a significant problem. According to the Ministry of Internal Affairs, during the first 10 months of the year police recorded 451 incidents of rape or attempted rape.

On March 8, three men in the southern city of Mykolaiv raped, strangled, and set fire to 18-year old Oksana Makar before leaving her for dead in a ditch. Makar was hospitalized and lived for two weeks. Her attackers were initially released, prompting spontaneous demonstrations. They were eventually arrested, tried, and convicted; one was sentenced to life in prison, and the others received sentences of 14 and 15 years. Their appeals were pending at year’s end.

Domestic violence against women remained a serious problem. Spousal abuse was common. Advocacy groups asserted that the percentage of women subjected to physical violence or psychological abuse at home remained high. Human rights groups noted low capacity to detect and refer cases of domestic violence and reported that preventive services remained underfunded and underdeveloped.

At year’s end, according to the Ministry of Internal Affairs, 117,400 persons were under police supervision for domestic violence, compared with 109,468 in 2011.

Police issued 78,600 warnings and 3,800 protective orders related to domestic violence in the first nine months of the year. During the same period, authorities brought administrative charges against 90,600 individuals for domestic violence and disobeying protective orders. Punishments included fines and community service.

La Strada-Ukraine, an NGO that focuses on gender problems, operated a national hotline for victims of violence and sexual harassment. During the year more than 1,400 individuals called the hotline for assistance related to domestic or sexual violence. La Strada reported that increased public awareness campaigns increased the number of requests for assistance each year over the last five years.

The law requires the government to operate a shelter in every major city, but in practice it did not, in part due to the lack of municipal funding.

According to the Ministry of Social Policy, during the first 10 months of the year government centers for social-psychological assistance provided domestic violence-related services to 9,593 individuals and referred 109 families for assistance. NGOs operated additional centers for victims of domestic violence in several regions, but women's rights groups noted that many nongovernment shelters closed due to lack of funding. There were no shelters for adult victims of domestic violence in Kharkiv, Vynnytsia, and Cherkasy regions.

According to women's advocacy groups, municipally and privately funded shelters were not always accessible. Shelters were frequently full, and resources were limited. Some shelters did not function throughout the year, and administrative restrictions prevented women and families from accessing services. For example, some places would only shelter children of certain ages, while others did not admit women who were not registered as local residents. Government centers offered only limited legal, psychological, and economic assistance to victims of domestic violence.

Sexual Harassment: The law puts sexual harassment in the same category as discrimination; however, women's rights groups asserted that there was no effective mechanism to protect against sexual harassment. They reported continuing, widespread sexual harassment and even coerced sex in the workplace. However, women rarely sought legal recourse, because courts declined to hear their cases and rarely convicted perpetrators. Women's groups also cited a persistent culture of sexism and harassment and highlighted protests over sexist comments by senior government officials.

While the law prohibits coercing a "materially dependent person" to have sexual intercourse, legal experts said safeguards for workers and employees against harassment were inadequate.

Reproductive Rights: The government recognized the basic right of couples and individuals to decide freely the number, spacing, and timing of their children. Health clinics and local health NGOs were permitted to operate freely in disseminating information on family planning under the guidance of the Ministry of Health. There are no restrictions on the right to access contraceptives.



Quality prenatal and postnatal care remained inaccessible to many women because state-funded clinics were underfunded and lacked quality equipment, and services in private clinics were expensive.

The rates of sexually transmitted infections, including for HIV/AIDS, continued to rise rapidly. During the year the International HIV/AIDS Alliance of Ukraine reported that Ukrainians with HIV were more likely to die from AIDS than Africans with HIV in countries with the highest HIV burden. The quality of sexual and reproductive health services was poor in state-funded hospitals, and high prices in private medical clinics made them unaffordable for many persons.

Men and women enjoyed equal access to diagnosis and treatment for sexually transmitted infections. Local health NGOs and clinics reported that women were more likely than men to seek treatment and refer their partners. Romani rights groups reported that Romani women experienced racial discrimination in standards of medical care and lacked access to information on health matters.

Discrimination: Under the law women enjoy the same rights as men, including equal pay for equal work. However, industries dominated by female workers had the lowest relative wages. Women received lower salaries due to limited opportunities for advancement and the types of industries in which women were employed. Government statistics indicated that men earned on average 25 percent more than women. Domestic and international observers noted that women held few elected or appointed offices at the national and regional levels. The human rights ombudsman created a permanent representative specifically to address gender equality as well as children's rights and nondiscrimination.

Senior government officials exacerbated discrimination against women by continuing to make disparaging and demeaning remarks about women in public. In May Education Minister Dmytro Tabachnyk stated publicly that the best female graduate and postgraduate students "are girls who have a less bright, less attractive, and less model-like appearance." Tabachnyk repeatedly refused to apologize for his remarks.

## **Children**

Two government offices protect children rights. In May the parliamentary commissioner for human rights appointed a representative for children's rights, nondiscrimination, and gender equality. The commissioner's office received 739 complaints regarding children's rights and made 26 visits to children's facilities

and institutions. In August 2011 the president appointed an ombudsman for children under the presidential administration. During the first eight months of the year, the president's children's ombudsman received 3,000 complaints and made 53 visits to institutions for children.

Birth Registration: Citizenship is determined by birthplace or parentage. A child born on the territory of the country in a family of stateless persons residing permanently in the country is a citizen. The law requires that parents register a child within a month of its birth.

Education: Education was free and compulsory, but not universal. According to government figures, as of 2011 nearly 4.3 million students were studying in 19,800 schools; more than 41,000 children between the ages of six and 18 did not receive a full secondary education.

NGOs reported that a lack of schooling remained a significant problem among the rural population and within the Romani community (see section 6, National/Racial/Ethnic Minorities).

Child Abuse: Children continued to be victims of violence and abuse. According to the Ministry of Internal Affairs, in the first nine months of the year, 8,360 minors were victims of crime; of that number, 2,544 crimes were serious or very serious, such as assault, robbery, and murder. The ministry also recorded 155 cases of sexual crimes against children and 226 cases of corruption of minors. Human rights groups noted low capacity to detect and refer cases of violence against children and reported that preventive services remained underfunded and underdeveloped. There were also instances of forced labor involving children.

Child Marriage: On April 4, the president signed a law to raise the minimum age for marriage from 17 to 18 for women. The minimum age for men remained 18. Under the law a court may grant a child as young as 16 permission to marry if it is in the child's interest. According to the latest available UNICEF statistics, 10 percent of women reported being married or in a union before they were 18. Romani rights groups reported that early marriages involving girls under 18 were common within the Romani community.

Sexual Exploitation of Children: The minimum prison sentence for child rape is 10 years. Molesting children under 16 is punishable by imprisonment for up to five years. The same offense committed against a child under 14 is punishable by imprisonment for a term of five to eight years.

Commercial sexual exploitation of children remained a serious problem. Domestic and foreign law enforcement officials reported that a significant amount of the child pornography on the Internet continued to originate in the country. The International Organization for Migration (IOM) reported that children from socially disadvantaged families and those in state custody continued to be at high risk of being trafficked and exploited inside the country for commercial sex and the production of pornography.

Courts have the authority to limit access to Web sites that disseminate child pornography and to impose financial penalties and prison sentences on those operating the Web sites.

In an October report the international NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (EPCAT) noted that the country lacked a comprehensive approach to preventing commercial sexual exploitation and sexual abuse of children. In addition, no policies combat the increasing problem of child sex tourism, and no government programs assisted child victims of sexual exploitation.

Displaced Children: According to the Ministry of Education, Science, Youth, and Sports, as of November there were 56 shelters and 60 assistance centers for children across the country in all oblasts and the cities of Kyiv and Sevastopol. During the first six months of the year, 7,691 children came to these shelters.

Institutionalized Children: The child care system continued to rely on long-term residential care for children at social risk or deprived of parental care. The system did not adequately address the prevention of abandonment or the reintegration of children with their biological families. In 2010, according to UNICEF, more than 96,000 children lived in institutions, and more than 62,000 lived in institutions for children with disabilities. Human rights groups and media reported that lack of resources and government inaction created unsafe, inhumane, and sometimes life-threatening conditions in some institutions.

In addition observers noted that the judicial system lacked expertise to work with minors, and the legal process for juveniles emphasized punishment over rehabilitation. Supportive social services were often lacking, and children in conflict with the law faced bureaucratic and social barriers to reintegration.

International Child Abductions: The country is party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's country-specific information at [www.travel.state.gov/abduction/country/country\\_3781.html](http://www.travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

According to census data and international Jewish groups, an estimated 103,600 Jews lived in the country, constituting approximately 0.2 percent of the population. Local Jewish leaders estimated the number of persons with an ethnic Jewish heritage to be as high as 370,000.

On November 5, the Association of Jewish Organizations and Communities of Ukraine (VAAD) expressed concern that throughout the campaign for the October 28 parliamentary elections, pro-government and opposition candidates "tried to use elements of anti-Semitism both in their public rhetoric to mobilize supporters and also as part of propaganda aimed at discrediting their political opponents." VAAD also expressed particular concern over anti-Semitic and extremist remarks by members of the Svoboda party.

At the same time, VAAD cited long-term data showing "a trend of improvement" in the level of anti-Semitism, stating that "over the last four to five years, there has been a continuous decline in the number of anti-Semitic publications in the press; in the number of acts of vandalism of cemeteries, memorials, and synagogues; and the number of assaults on the street of Jewish people," as well as declining negative attitudes toward Jewish persons in public opinion polls.

There were a number of acts of anti-Semitism during the year, some involving physical attacks and vandalism of Jewish property, and members of various political parties and organizations continued to make occasional extremist, intolerant, and anti-Semitic statements. According to VAAD, there were nine incidents of vandalism during the year, compared with nine incidents in 2011 and 16 incidents in 2010. Graffiti swastikas continued to be seen in Kyiv and other cities.

According to the Mykolaiv Jewish community, a local Holocaust monument was vandalized on the eve of the Jewish New Year in mid-September.

On September 21, five unidentified men in Rivne assaulted and verbally abused Gennadiy Frayerman, chairman of the local Chesed charity and one of the leaders

of the local Jewish community. The attackers approached Frayerman outside the Chesed office saying that they were looking for a Jew. After Frayerman said he was Jewish, the attackers beat and kicked him. He sustained minor injuries. The attackers fled.

On December 18, the Rivne city court gave a 3.5-year suspended sentence to each of three men who on June 6 vandalized and defaced with swastikas a Holocaust memorial near Rivne. Local Jewish leaders had called on authorities to prosecute the case as an anti-Semitic offense. However, the court instead convicted the men of hooliganism and grave desecration.

In November the three-year trial of Serhiy Kyrychenko, charged with incitement of ethnic hatred after making frequent anti-Semitic remarks during media appearances in Kherson, ended due to the expiration of the statute of limitations. His numerous appeals and motions delayed the case. The prosecution noted that, while Kyrychenko was neither acquitted nor convicted, the court did not challenge the validity of the charges against him.

Senior government officials and politicians from various political parties continued efforts to combat anti-Semitism by speaking out against extremism and social intolerance and criticizing anti-Semitic acts.

Unlike in previous years, the Jewish pilgrimages to the Uman burial site of Rabbi Nakhman, founder of the Bratslav Hasidic movement, took place without significant incidents. Approximately 26,000 pilgrims traveled to Uman in September. Increased numbers of Jewish pilgrims also visited other burial sites of prominent spiritual leaders in Medzhybizh, Berdychiv, and Hadyach without significant incidents.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

On January 13, the president signed into effect amendments to several laws on the rights of persons with physical, sensory, intellectual, or mental disabilities in employment, education, access to essential services, and such activities as employment, education, health care, and air and other forms of transportation.

The changes expressly forbid discrimination on the basis of disability and require that the government ensure access to public venues for persons with disabilities and support their involvement in public, educational, cultural, or sporting activities. The new measures also require employers to ensure safe workspaces that account for individual needs of employees with disabilities. In addition, disabled-rights NGOs would also participate in municipal planning processes to ensure government facilities meet legal requirements for accessibility. Heretofore, the government generally did not enforce these laws.

Advocacy groups maintained that despite the legal requirements, most public buildings remained inaccessible to persons with disabilities. Access to essential services and activities such as employment, education, health care, transportation, and financial services remained difficult. The law provided for assistance for homebound voters and voters with disabilities. Limited access to public buildings restricted the ability of persons with disabilities to participate in public affairs.

NGOs complained that the government did not allocate adequate resources to help those with disabilities.

According to Semen Gluzman of the Ukrainian Psychiatric Association (UPA), patients in mental health facilities remained at risk of abuse, and many psychiatric hospitals continued to use outdated methods and medicines. According to UPA, insufficient funding, patients' lack of access to legal counsel, and poor enforcement of legal protections deprived patients with disabilities of their right to adequate medical care. On November 26, the human rights ombudsman published a report on monitoring visits to 11 psychiatric facilities, in which representatives found insufficient funding for patients' food and medicine, patients confined for extended periods when they were not acutely ill, understaffing, overcrowding, poor ventilation, unsanitary bathrooms, and other harsh conditions.

By law employers must allocate 4 percent of employment opportunities to persons with disabilities. NGOs noted that many of those employed to fill these positions received a nominal salary to meet the requirement but did not actually work at their companies. During the first nine months of the year, 8,760 persons with disabilities received jobs through government employment-placement services, according to the Ministry of Social Policy.

NGOs expressed concern over the lack of programs to promote the integration of students with disabilities into the general student population and noted that the lack

of needs-assessment programs by state-funded employment centers led to the placement of graduates with disabilities in inappropriate jobs.

### **National/Racial/Ethnic Minorities**

Mistreatment of minority groups and harassment of foreigners of non-Slavic appearance remained problems. Some observers suggested overall xenophobic incidents declined slightly, while NGOs dedicated to combating racism and hate crimes noted an increase in hate-based incidents and attacks.

The law criminalizes deliberate actions to incite hatred or discrimination based on nationality, race, or religion, including insulting the national honor or dignity of citizens in connection with their religious and political beliefs, race, or skin color.

However, human rights organizations stated the requirement to prove actual intent, including proof of premeditation and intent to incite hatred, made its application difficult. Police and prosecutors generally prosecuted racially motivated crimes under laws against hooliganism or related offenses.

The government acknowledged that racism and ethnically motivated attacks were problems. However, some officials continued to minimize their seriousness, maintaining that xenophobia was not a problem and violent attacks were isolated incidents.

No official statistics were available on the number of racially motivated attacks. However, the Diversity Initiative monitoring group, a coalition of international and local NGOs headed by the IOM mission in Kyiv, reported at least 20 attacks involving 24 victims during the year. During 2011, 23 attacks were reported.

According to the Diversity Initiative, police initiated at least five criminal cases in the attacks they documented during the year. Victims reported instances in which police did not investigate after receiving complaints, and some victims declined to report incidents to authorities after police declined to investigate previous attacks. One victim was charged after reportedly responding to a racially motivated attack in self-defense.

According to the latest available statistics from the Prosecutor General's Office, in 2011 three cases involving criminal intent to incite hatred were tried, and investigations into three other cases were begun. The courts found five persons guilty of inciting hatred, compared with three in 2010 and four in 2009. Four of

the five persons convicted in 2011 received amnesty; the fifth was freed because of “active repentance.”

The law increases penalties for hate crimes. Under the law premeditated killing on grounds of racial, ethnic, or religious hatred carries a 10-to 15-year prison sentence. Other hate crimes can be punished by a fine from 3,400 to 8,500 hryvnia (\$420 to \$1,100) or up to five years in prison.

Advocacy groups asserted that police occasionally detained dark-skinned persons and subjected them to far more frequent and arbitrary document checks. At times victims of xenophobic attacks were prosecuted for acting in self-defense. For example, a Nigerian student, Olaolu Femi, remained in prison at year’s end on charges of attempted murder following a November 2011 incident in which Femi says he defended himself and a friend against five attackers who knocked them to the ground, shouted racist epithets, and beat them. Human rights groups alleged that Femi was attacked due to his race and that local authorities committed procedural and substantive violations of his rights when they charged him with attempted murder.

In May many observers raised concerns over the risk of racist and xenophobic attacks in connection with the European Football Championship (EURO 2012). NGO groups noted that authorities took measures to prevent such attacks during the soccer championship, and no incidents were reported in the country during the games.

Roma continued to face governmental and societal discrimination. Romani rights groups estimated the country’s Romani population to be between 200,000 and 400,000. Official census data placed the number at 47,600. The discrepancy was due in part to a lack of legal documentation among the Roma. According to experts, there were more than 100 Romani NGOs, but most lacked capacity to advocate effectively for the Romani community or provide services.

Representatives of Roma and other minority groups claimed that police routinely ignored and sometimes abetted violence against Roma and referred pejoratively to Romani ethnicity in crime reports. On May 31, unidentified perpetrators burned down a Romani settlement of approximately 70 persons in Kyiv. Residents reported that during the attack their assailants ordered them to “disappear from Kyiv,” and the perpetrators also threatened to shoot the residents. Residents alleged they were being pushed out of Kyiv in advance of the European Football Championship (EURO 2012). Romani rights groups reported that police declined



to investigate the attack since no criminal complaint was filed, and authorities took no further action to investigate the attack.

Romani rights NGOs also reported repeated police harassment, denial of access to education and health services, routine xenophobic and racist encounters, and barriers to obtaining basic identity documents.

The constitution provides for the free development, use, and protection of Russian and other minority languages. On August 8, a new law came into force that expanded the use of Russian and the languages of other national minorities in regions where they are spoken by at least 10 percent of the population. At least 15 local and regional governments introduced the use of Russian as an official regional language. Hungarian, Moldovan, and Romanian were also introduced as regional languages in at least one region each.

Ukrainian and Crimean Tatar minorities in Crimea continued to complain of discrimination on the peninsula and in Sevastopol. They urged that the Ukrainian and Crimean Tatar languages be given a status equal to Russian.

Crimean Tatars also asserted that discrimination by local officials deprived them of equal opportunities for employment in local administrations. According to the Permanent Commission of the Crimean Parliament for Interethnic Relations and Issues of Deported Persons, approximately 310,000 registered Crimean Tatars lived in the country, including in Crimea and in Kherson Oblast.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

There was a marked increase in discrimination, social stigma, and violence against LGBT individuals who experienced discrimination in education, the workplace, and access to medical treatment and to information on the prevention of HIV/AIDS. The government took no significant action to combat discrimination based on sexual orientation or gender identity.

During the year parliament approved on the first reading legislation that would restrict the rights of all Ukrainians to advocate for the human rights of LGBT individuals by making it a criminal offense to publish, broadcast, or otherwise distribute so-called “homosexual propaganda.” The bill did not become law. LGBT rights groups expressed concern that lawmakers continued their efforts to pass the bill.

The LGBT rights group Our World (*Nash Svit*) monitored rights violations against LGBT individuals in selected regions of the country and documented 86 cases of human rights violations, discrimination, and hate-based actions during the year. Violations included physical violence, abuse, threats, property damage, theft, extortion, bullying, workplace discrimination, discrimination in educational settings, and divulging of personal information.

On May 17, approximately 20 men who said they belonged to the Svoboda political party prevented a screening of the LGBT-focused film “*Milk*” at Kyiv-Mohyla Academy. They demanded to see the license that authorized the screening. The screening was legally licensed, but organizers could not immediately produce the document. Fearing for their safety, the organizers acceded to the men’s demand not to show the film. Later, the Svoboda Web site reported that its activists “did not permit the showing” of the film.

On May 20, organizers of a gay pride march were forced to cancel the event after extremist groups engaged in coordinated efforts to stop the march through intimidation and violence, and police stated they would not protect participants if the march went forward. Five masked persons assaulted two event organizers after a press conference announcing the event’s cancellation. A third organizer was attacked and beaten a month later.

In September Our World released a report that analyzed the government’s failure to implement the Council of Europe’s (COE’s) 2010 recommendations for combating LGBT discrimination. According to the report, the authorities took no actions to implement any of the recommendations, collected no information about discrimination based on sexual orientation, and took no steps to combat homophobia and transphobia. The government failed to translate the COE’s recommendations into the national language or disseminate them. The researchers noted that homophobic rhetoric among local authorities and members of the national parliament continued to increase.

On December 8, extremists harassed, attacked, and used tear gas and violence to disperse a peaceful demonstration by LGBT activists and allies in Kyiv. At least two activists were beaten after the demonstration. Several extremists identified themselves as members of the Svoboda political party, which took credit on its Web site for breaking up the demonstration. Six demonstrators and two Svoboda members were detained and fined. A court later fined the protest organizer, Olena

Shevchenko, 850 hryvnia (\$106) for allegedly failing to notify authorities of the demonstration correctly in spite of the notification she had filed.

### **Other Societal Violence or Discrimination**

Persons with HIV/AIDS faced discrimination and at times lacked access to treatment. The International HIV/AIDS Alliance in Ukraine reported that persons with HIV/AIDS continued to face harassment by law enforcement officials and prosecutors, discrimination in the workplace, job loss without legal recourse, social isolation, and stigmatization. The organization stated that lack of state funding, inadequate access to HIV testing, limited antiretroviral treatment, and counterproductive government policies all exacerbated the spread of HIV/AIDS and its mortality.

HIV service providers reported that police checks of substitution therapy clinics continued throughout the year. For example, on February 8 in the city of Vinnytsya police reportedly detained, photographed, and identified patients at a substitution therapy clinic. On December 6, police allegedly detained, photographed, and fingerprinted 10 patients at a clinic in the city of Ternopil. Service providers noted that such checks interfere directly with the provision of health-care services and create an atmosphere of distrust that hinders access to care and treatment.

Domestic and international organizations highlighted continued legal and administrative barriers for injection drug users (IDU) to access key treatment options, such as drug replacement therapy and needle exchange programs. For example, human rights groups reported that Ministerial Order No. 200 of July 2 introduced new barriers for IDUs to access substitution therapy and significantly reduced the effectiveness of harm-reduction programs during the second half of the year.

UNICEF reported that children with HIV or a disability are at high risk of abandonment, social stigma, and discrimination. Many HIV-infected children were prevented from attending kindergartens or schools, treated negligently, and kept isolated from other children. The most at risk adolescents faced higher risks of contracting HIV/AIDS, as well as additional barriers to accessing information and services for prevention and treatment.

### **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides workers with the right to form and join independent unions without previous authorization and to bargain collectively. By law all trade unions have equal status, and the establishment of a trade union does not require government permission.

Human rights groups described the law on trade union registration as excessively complex and bureaucratic and stated it introduced obstacles to registration in practice. Workers have the right to strike on condition that a strike does not jeopardize national security, public health, or the rights and liberties of others. The right was generally respected in practice. The right to strike does not apply to personnel of the Prosecutor General's Office, the judiciary, armed forces, security services, law enforcement agencies, the transportation sector, or public servants. Personnel from these entities may seek redress through the judicial system.

National federations and confederations of unions continued to be denied the right to strike. A strike may be organized only if two-thirds of the workers of an enterprise vote for it, which trade unions considered to be an unfairly high threshold. It calls for joint worker-management commissions to resolve differences over wages, working conditions, and the rights and duties of management at the enterprise level. The National Mediation and Reconciliation Service mediates labor disputes. There are no legal mechanisms to prevent antiunion discrimination. The law requires justification of layoffs and firings, and union activity is not a legitimate, legal cause for firing. Legal recourse is available for reinstatement, back wages, and punitive damages, although court enforcement of this law has been described as arbitrary and unpredictable.

The right to form unions was generally recognized. To function, however, a union must be registered by the government. Unions reported significant bureaucratic hurdles in the registration process, entailing payments of multiple fees and visits to as many as 10 different offices. The International Trade Union Confederation (ITUC) characterized the registration requirement as "a restriction unacceptable by international labor standards." In addition unions reported multiple incidents of harassment by local law enforcement while navigating the registration process.

The 2011 Social Dialogue Law has also increased the burden on smaller and independent unions to meet representation criteria to take part in tripartite negotiations, participate in social insurance programs, and represent labor at a national and international level. The law entrenched the status of the Federation

of Trade Unions (FPU), hindering the ability of smaller independent unions to effectively represent their members' interests by limiting which unions meet representation criteria. In an opinion published in December 2011, the ITUC expressed its doubt as to the true independence and objectivity of the agency that determines which unions meet the law's representation criteria, a problem that remained unresolved during the year.

The Confederation of Free Trade Unions of Ukraine (CFTU) initially faced difficulties in meeting representation criteria to participate in tripartite negotiations. However, on September 4, CFTU chairman Mykhailo Volynets signed an agreement (with four other chairmen of national trade unions, including the FPU), to establish a "Joint Representation Body of All-Ukrainian Trade Unions on the National Level." The agreement aimed to ensure participation of independent trade unions in developing a general agreement and monitoring its implementation.

Unions not affiliated with the FPU continued to be denied a share of disputed trade union property inherited by the FPU from the Soviet era. The retention of this property by the FPU, including social insurance benefit funds, real estate, trade union halls and offices, and other financial holdings, gave the FPU a benefit that independent unions could not offer. Leaders of non-FPU trade unions and some government officials continued to claim that the FPU improperly sold some Soviet-era assets to thwart their future distribution. A 2007 parliamentary moratorium on the FPU's sale of property remained in place during the year. However, the current government subsequently dissolved a commission formed during the previous administration to inventory union assets.

Statutory joint worker-management commissions were not always effective, and enforcement was arbitrary and uneven. These commissions were at times dominated by management or union representatives co-opted by management. Renouncing membership in an FPU-affiliated union and joining a new union was bureaucratically onerous and typically discouraged by management; some individuals reported threats of dismissal and other retaliatory discrimination.

Discrimination against independent trade unions took place frequently, including numerous alleged cases of illegal dismissal of trade union activists, leaders, and other workers for their protected collective activity. For example, a mining enterprise fired a union chairman in Dnepropetrovsk because of his union activities. Trade unions also reported frequent dismissals based either on trade union activity or membership in a specific independent or alternative trade union.

There were several reports that employers pressured union members to leave a CFTU-affiliated union. For instance, the members of a union at one mine in the Donetsk region were instructed upon threat of dismissal to quit their independent trade unions. In another case management cordoned off the office of a coal miners' union in Luhansk oblast and prevented the union's chairman from representing workers' interests. In one case an employee was reportedly beaten and hospitalized after refusing to leave the union. The employee appealed to local law enforcement, but the case was delayed and finally dropped.

According to the Free Trade Union of Entrepreneurs of Ukraine (FTUEU), its leader Valentyna Korobka was hospitalized with a concussion and other injuries after police assaulted her at a protest on July 4 in Kyiv. The FTUEU is an active democratic union, focused on street vendors, the self-employed, and informal workers. It is affiliated with the Confederation of Free Trade Unions of Ukraine and the StreetNet International alliance of street vendors.

Another employer, a beverage company, reportedly prevented local employees from establishing an independent trade union called "Protection of Justice." Workers organized anyway, but the employer retaliated by transferring union members to a shortened work schedule. Management implemented the change without the workers' consent or approval from the elected committee of the primary trade union. Later in the year the company fired these trade union members.

In highly publicized actions from January to March, small ad hoc groups of retired Chernobyl cleanup workers that were not associated with any traditional unions petitioned and camped outside several local government buildings in Luhansk, Donetsk, and Kharkiv to protest a constitutional court ruling reducing their retirement and social benefits. Several thousand protesters gathered in April to demand a meeting with national government or parliamentary representatives to present their demands, but the protest was unsuccessful.

Members of CFTU-affiliated unions continued to claim that management sometimes forced them into additional or undesirable work and threatened them with dismissal if they refused to leave their unions. There were also continuing complaints that FPU-affiliated unions deducted dues from the salaries of workers who had joined a different union.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. Forced labor is not believed to be a widespread problem. However, as in all labor matters, enforcement continued to be a serious challenge and deficiency for the government, in part due to a lack of resources, and there were reports that women, men, and children were trafficked for labor.

During the first half of the year, the IOM assisted 424 adult victims (men and women) of labor exploitation.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law protects children from exploitation in the workplace, but the government did not always effectively enforce the law.

The law sets 16 as the minimum age for most employment. Children 15 years of age may perform "light work" with a parent's consent, but the law does not clearly define the term. Children can legally do some forms of work beginning at age 14 as part of an apprenticeship in the context of vocational educational training.

The Child Labor Division of the State Labor Inspectorate under the Ministry of Social Policy is responsible for enforcing child labor laws. The Department on Adoption and Children's Rights Protection in the Ministry of Social Policy and the Criminal Police for Children's Affairs in the Ministry of Internal Affairs are responsible for identifying children in the informal sector involved in the worst forms of child labor. The Internal Affairs Ministry's Department on Cybercrimes and Trafficking is responsible for the enforcement of laws against child trafficking.

The worst forms of child labor were found primarily in the informal sectors, including on family farms and in open-air markets.

The criminal code criminalizes exploiting children for labor. The penalty for forcing children into begging is up to three years in jail. According to the Ministry of Health, there were very few recent or official statistics about exploitation of child labor. The most recent research on the problem of child labor was more than a decade old. According to a 1999 study conducted by the State Statistics Committee and the International Labor Organization, 350,000 children were

employed--46 percent in agriculture, 26 percent in commerce, and 19 percent in the service industry. The average age at which children began employment was 12. The IOM reported that children from socially disadvantaged families and those in state custody continued to be at high risk of being trafficked and exploited inside the country for begging.

Enforcement remained inadequate to deter violations. The State Labor Inspectorate inspected 314 enterprises in March. It identified 589 working minors, three of whom were 14-15 years of age. Another 135 minors were 15-16 years old, and the remaining 451 were 16-18. Unlike in previous years, the inspectors did not find cases of working minors under the age of 14, perhaps because of the small number of inspections. The most frequent violations of labor law for minors related to their work in hazardous conditions, length of the workday, failure to maintain work records, and delayed salary payments.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The national monthly minimum wage for all sectors, as specified in the state budget, is 1,147 hryvnia (\$143), or approximately 6.90 hryvnia (\$0.86) per hour, as of January 1, 2013, based on the monthly subsistence income set by the government. Workers in the informal sector might have received wages below this established minimum.

The State Labor Inspectorate employed 706 labor inspectors nationwide (while its staffing schedule contained 840 labor inspector positions) and was responsible for enforcing the minimum wage. The organization was unable to monitor all employers because its staff during the year was inadequate to conduct sufficient inspections.

Wage arrears decreased 8.2 percent during the year. According to the State Statistics Committee, arrears stood at 950.5 million hryvnia (\$118.2 million) as of December 1. Most arrears accumulated in industry but also significantly impacted construction, transport, communications, real estate, and agricultural enterprises.

The law provides for a maximum 40-hour workweek, a 24-hour period of rest per week, and at least 24 days of paid vacation per year. It provides for double pay for overtime work and regulates the number of overtime hours allowed. The law



requires that all overtime be agreed upon with the respective local trade union organization and sets limits on the number of allowable overtime hours. However, regulations covering rest periods, maximum hours, and overtime were not always effectively enforced.

Although the law contains occupational safety and health standards, the standards were frequently ignored in practice. Lax safety standards and aging equipment caused many injuries on the job. The mining sector proved particularly problematic, with a number of wage, overtime, and operational safety and health complaints. In particular, complaints for wage arrears were filed for mines in Luhansk, Lviv, and Dnepropetrovsk oblasts, while safety and health complaints were registered at a mine in Luhansk, among others. Mineworkers, particularly in the illegal mining sector, faced very serious exploitative and safety and health problems.

During the year there were 121 mining fatalities, 25 percent fewer than in 2011. During this period 3,650 coal miners were reported injured, 14 percent fewer than in 2011. The fatality rate was 1.4 deaths per million tons of coal mined. The total number injured at work during the year was 9,816 (down 8 percent from 2011), while work fatalities during the year decreased to 623, a 9 percent decline from 2011.

The law provides workers the right to remove themselves from dangerous work without jeopardizing their continued employment; however, the NGO Solidarity Center stated that employers in the metal and mining industries often violated the rule and retaliated against workers by pressuring them to quit.