During the 2014 Maidan Revolution, Ukrainians braving both cold weather and government violence demonstrated that their nation was embracing a new national consciousness, defined by European values and a dedication to equality before the law. Threatened by Ukraine's rejection of Russia's sphere of influence, the Kremlin reacted by annexing Crimea and establishing separatist pseudo-states in the easternmost regions of Ukraine. In addition to defending its territory, Ukraine is struggling to fight corruption and build a society that lives up to the liberal-democratic values of the Maidan.

An in-depth understanding of Ukraine's politics, economics, and society must continue to inform American policy toward Ukraine. This report offers both an analysis of current policy as well as concrete recommendations for furthering U.S. national interests in Ukraine.
U.S. Policy on Ukraine

Challenges and Opportunities

A Comprehensive Survey for Policymakers

Produced on behalf of RazomThink, an initiative of Razom.

Razom (“Together” in Ukrainian) is a 501(c)3 non-profit organization supporting the people of Ukraine in their pursuit of a democratic society with dignity, justice, and human and civil rights for all.
Ukraine has a vibrant tradition of multilingualism, especially between Ukrainian and Russian. In the interest of consistency with the transliteration systems used by the State Department and the United Nations, we will be transcribing the Ukrainian language variants of the names of locations and individuals using the BGN/PCGN Ukrainian romanization system.

An interactive online version of this report is available at www.razomforukraine.org/policyreport

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First Edition
During the 2014 Maidan Revolution, Ukrainians braving both the cold weather and government violence demonstrated that their nation was embracing a new national consciousness, defined by European values and a dedication to equality before the law. Threatened by Ukraine’s rejection of Russia’s sphere of influence, the Kremlin reacted by illegally annexing Crimea and establishing separatist pseudo-states in the easternmost regions of Ukraine. In addition to defending its territory, Ukraine is struggling to fight corruption and build a society that can live up to the liberal-democratic values of the Maidan.

The fate of Ukraine is critical to the future of Europe and the United States. Ukraine lies at the boundary of the rules-based international order and the post-WWII security structure. As such, maintaining the region’s economic and political stability is a U.S. national interest. An in-depth understanding of Ukraine’s politics, economics, and society must continue to inform American policy. This report offers both an analysis of the impediments to Ukraine’s stability and the humanitarian crisis ensuing from the Donbas War, as well as concrete recommendations for maximizing policy effectiveness. The analysis offered here is the product of many lively debates among the production team, the authors, editors, and numerous external advisers. We welcome the continuation of these discussions.

As a graduate student studying international affairs, I am honored to have had the opportunity to lead the production of this report. Although our opinions are by no means unanimous, this report is the product of the collective effort of dozens of people. I must first thank Anastasiia Rybytska for her overseeing of this project and Oleksandr Bezobchuk for his expert layout and design. I’m very grateful to the authors who contributed sections to this report: Olena Bilan, Dawn Calabia, Natalia Hryvnyak, Volodymyr Kashporov, Oleksandra Matviychuk, Zoe Ripecky, Khristyna Rybachok, Ilona Sologoub, Mychailo Wynnyckyj, and Oleksandr Zholud. For comments and advice, thank you to Nataliya Bugayova, Orest Deychakiwsky, Hon. John Herbst, Serhii Plokhii, and Hon. Temuri Yakobashvili. A very big thank you to Dora Chomiak for her meticulous editing of the whole document. I’m also very grateful to the editing team, Sasha Belenkaya, Taisia Bullard, William Buschur, Daniel Fowler, Julian Hayda, Cynthia Rennolds, and Michael Stecyk. For discussions that helped shape the ideas in this report, thank you to Mariana Budjeryn, Alexandra Chalupa, Joshua Cohen, Andrij Dobriansky, Luke Mackle, Natalia Shyrba, Mariya Soroka, and Olya Yarychkivska. Thanks to our team member Eugene Bondarenko for help with translations. Most importantly, I’d like to thank the team that produced this report. I’m grateful for the opportunity to have worked with such clever and kind people as George Barros, Bogdan Belei, Eugene Bondarenko, Michael Fedynsky, Roxolana Kozyckij, and Zoe Ripecky.

Mykola Murskyj
Cambridge, Mass.
The overthrow of President Yanukovych in early 2014 gave Ukraine a real opportunity to launch necessary political and economic reforms. Threatened by the possibility that Ukraine's pivot to Europe might serve as an example for the Russian people, Moscow sought to maintain Ukraine within its sphere of influence by illegally annexing Crimea and funneling arms and equipment to pro-Russian separatists in the Donbas region of Eastern Ukraine. The future success of Ukraine as a functional and democratic state is important not only for Kyiv, but can serve as a beacon of hope for the entire post-Soviet space.

The Maidan represented Ukraine’s rejection not only of Russia’s sphere of influence but also of corruption within its own government. Working together with its Western partners, Ukraine seeks to fulfill the population’s desire for democratic institutions while simultaneously defending against a Russian-led insurgency. One of the most important consequences of the Maidan was the rapid development of an immense and vibrant civil society that subsequently played the leading role in drafting reforms and pushing for their implementation. Government infighting and corruption make this task all the more difficult, and the slow pace of change frustrates both Ukraine’s public and the country’s Western partners. Moreover, three years’ worth of structural and back-end reforms — despite their scope and importance — have been largely invisible to Ukraine’s residents, who are impatient to see judicial, education, and healthcare reform, as well as the rebuilding of infrastructure.
Today, Ukraine fights an undeclared war against two small pseudo-states called the Luhansk and Donetsk People's Republics (LDNR). Kremlin “curators” direct the politics and the military operations of the breakaway republics, in addition to distributing minimal social payments and financially supporting the leadership. Framed by the Minsk agreements, the negotiations to end the war are deadlocked over whether political concessions from Kyiv or security-related concessions from the Kremlin and the LDNR — a durable ceasefire — should come first.

The United States plays an important role in keeping Ukraine economically and politically stable. Together with the European Union, the U.S. has imposed individual and sectoral sanctions on Russia both for the annexation of Crimea and for its role in the war in Ukraine's easternmost regions. The U.S. government has provided over $1.3 billion in aid to help speed up reforms, stabilize the economy, and reinforce civil society and public institutions. The U.S. has also sent advisers and technical assistance to Ukraine, and provided a total of $600 million in security assistance. Aside from direct aid, the U.S. has provided Ukraine with three separate loan guarantees of $1 billion each. The Ukraine Freedom Support Act of 2014 authorizes increases in military and economic assistance for Ukraine. The 2015 and 2016 National Defense Authorization Acts expand U.S. security assistance to Ukraine. The STAND for Ukraine Act, which passed only the House of Representatives in September 2016, would reinforce U.S. sanctions and formalize non-recognition of the annexation of Crimea. Many congressional and administration officials have called for the U.S. to provide defensive lethal weapons to Ukraine, though the U.S. has not taken this step.

Any U.S. policy on Ukraine must be underpinned by the following principles:

1. **Recognition that Eastern Europe's security and stability are U.S. strategic interests;**

2. **Dedication to upholding Ukraine's sovereignty, territorial integrity, and right to self-determination;**

3. **Increasing Ukraine's capacity to face its own domestic challenges.**

These principles are the basic building blocks of U.S. Ukraine policy and form the basis of this report.
A. GEOPOLITICS

The United States has a fundamental interest in Ukraine's future and needs to play a larger role in the relevant international negotiations. As a signatory to the Budapest Memorandum\(^1\) giving Ukraine certain security assurances, the U.S. should be proactive in setting strategic goals regarding Ukraine rather than reacting to Russia's actions. It is important to understand that the Kremlin's reckless behavior toward the U.S. and its allies is calculated to make Russia appear as if it is not a declining power, but a strategic adversary. Russia's primary interest in destabilizing Ukraine is not to counteract decades of Western-bloc expansion, but to prevent Ukraine from becoming a successful democracy that might serve as an example for others in the post-Soviet space, especially for Russia itself.

The Kremlin uses a Huntingtonian civilizational narrative to justify intervention to halt the development of democracy in East Slavic countries (its perceived sphere of influence), thus creating a self-fulfilling prophecy of the incompatibility of democracy with East Slavic culture. Ukraine, the story goes, inherently belongs within Russia's sphere of influence, its integration with Europe is a threat to Russia's interests, and the military conflict in the east is a manifestation of Ukraine's internal ethnic divisions. This framing denies Ukrainians the right to national self-determination and grossly exaggerates the tensions between different groups of Ukraine's multiethnic society. Supporting Ukraine's transition is the best way to counteract this narrative. Therefore, Ukraine and its partners must focus on building a successful and prosperous Ukraine on the territory it currently controls.

For the U.S., this means maintaining a robust sanctions stance and keeping the stakes and costs high for potential Russian escalation, while simultaneously helping Ukraine grow its economy and reform its political system.

Finally, it is important to understand that from the perspective of the Ukrainians who joined the Russian-led separatists, the war was induced by economic difficulties; the Donbas War is not an identity-based conflict. An analysis published in the *Journal of Comparative Economics* demonstrates that neither support for separatism nor the incidence of separatist violence falls along ethnic or linguistic lines; rather, separatism is better predicted by economic vulnerability. This suggests, in turn, that any resolution to the crisis will need to include significant socioeconomic components, and not just political concessions from Kyiv.

\(^1\) When the Soviet Union dissolved in 1991, Ukraine inherited the world’s third-largest nuclear arsenal. In 1994, Ukraine, Russia, the United States, and the United Kingdom signed the Budapest Memorandum, giving Ukraine security assurances in exchange for the latter transferring its nuclear weapons to Russia. The Memorandum’s signatories agree to a number of points, one of which is to refrain from using force, including economic coercion, against Ukraine.
Recommendations

1. **To break the deadlock in the Donbas War's peace process, the U.S. should push for progress to be made in parallel in the security, political, and humanitarian directions.** The U.S. should become more deeply engaged in the entire peace process and emphasize that a sustainable ceasefire must be a prerequisite to any other steps in the security, political, and humanitarian directions.

2. **The U.S. must continue to demand Russia's full compliance with Minsk II, and should prioritize Russia's compliance with the security points of the agreement as a condition of sanctions relief.** The U.S. should also encourage Ukraine to specify that amnesty for separatists, granted in September 2014, does not apply to international or war crimes. The Minsk II agreement includes mechanisms that the government of Ukraine can use to strengthen the sovereignty and territorial integrity of the country. While Ukraine has fulfilled nearly half its Minsk II obligations, additional progress increases the likelihood the EU will remain united behind the current sanctions regime.

3. **The U.S. should increase non-lethal military aid to Ukraine; the U.S. should consider providing defensive lethal weapons as the situation on the ground develops.** Note that while it is unclear whether it is in the interests of either Ukraine or the United States for the latter to actually provide lethal defensive weapons to Ukraine, it is in both parties' interest that the Kremlin continue to believe there is a real chance the U.S. would do so.

4. **The U.S. should continue supporting Ukraine-based broadcasting in Ukrainian, Russian, and Crimean Tatar languages, as well as other forms of engagement with populations vulnerable to Russia's propaganda.** The U.S. must continue to combat Russian propaganda.
B. INSTITUTIONS AND INFRASTRUCTURE

Civil society groups play a disproportionately important role in the reforms process, drafting the relevant bills or Cabinet orders, pushing for their passage, and leading their implementation. It is important that American and international experts offer their help in drafting reforms in all sectors, noting that cooperation is particularly important for civil society groups working on energy sector reform.

Ukraine must continue the prosecution of current officials for corruption. This effort should be based on continuing the judicial reform process, reforming the law enforcement system by limiting the powers of the Prosecutor General, creating efficient and effective anti-corruption bodies and anti-corruption courts, and managing the system of income/wealth e-declarations. Ukraine can increase the accountability of current officials by strengthening the involvement of businesses in the anti-corruption effort (e.g., by adopting legislation punishing “supply-side” corruption), strengthening the involvement of citizens in anti-corruption efforts, and adopting laws on whistleblower protection.

Recommendations

1. The United States should encourage the Ukrainian government to focus on top-priority reforms and avoid political infighting. These key reforms include liberalization and deregulation of the economy, anti-corruption legislation, tax and fiscal reform, as well as electoral and civil service reform. The U.S. should promote the creation of public forums for wider discussion of draft laws on constitutional amendments and reforms.

2. The U.S. should help Ukraine develop new formats of cooperation with civil society that give those organizations a seat at the reforms table rather than a purely consultative role.

3. The U.S. should take a strong stance on civil liberties within Ukraine, standing up for vulnerable groups like Ukraine’s 1.8 million internally displaced persons (IDPs) and independent journalists under government pressure. The U.S. should encourage the President and the Prime Minister to efficiently implement promised de-oligarchization policies.
4. As public frustration with austerity and the slow pace of reforms increases, the U.S. should increase the visibility of American assistance. In order for Ukrainians to continue to support Ukraine’s pro-Western choice, they must feel that it has had a positive impact on their lives. The public is impatient to see infrastructure rebuilt and the education and healthcare sectors reformed. Structural and top-level reforms, though important, can be largely hidden from an impatient public.

C. HUMAN RIGHTS AND SOCIETY

Strict conditionality of financial aid remains an effective tool to influence Ukraine’s political elites. The IMF’s support package for Ukraine is an example of the effective use of conditionality, although the tight fiscal policies may actually be exacerbating rather than ameliorating the recession in Ukraine. The conditionality of aid should be re-focused on strengthening and legitimizing state institutions rather than dismantling state control; for example, Ukraine’s economy can recover quicker if property rights are secured and the judiciary is cleaned up.

Donbas War-related sanctions and the sanctions tied to the annexation of Crimea represent one of the strongest sources of leverage for the West. The U.S. must continue to condemn Russian occupation and annexation of part of Ukraine’s territory. Talk of possibly recognizing Crimea’s annexation or of unilaterally lifting sanctions erodes the U.S. bargaining position. Diplomatic, legal, and economic means must be used to press the Russian Federation to protect members of civil society from persecution in Crimea, and from violence in the Russian-controlled Donetsk and Luhansk People’s Republics.

Recommendations

1. The U.S. should continue to highlight the severity of the Donbas War, especially the fates of the 1.8 million people displaced from their homes and the 10,000 killed. The U.S. should continue to highlight the plight of the Crimean Tatars, Crimea’s indigenous Sunni Muslim population, as well as Crimea’s pro-Ukrainian activists, who have been the target of systematic repression by the Russian de facto authorities.
2. The U.S. should provide seed funding to encourage Ukraine to develop and implement a coordinated plan to promote and bring about the successful reintegration of displaced persons and the return of their full political and economic rights. This process includes encouraging donors to invest in housing, infrastructure repair, and job training in secure parts of Ukraine to create jobs and housing opportunities for displaced families.

3. The U.S. should provide financial aid and expertise to help Ukrainian and international organizations more effectively investigate human rights violations committed against the millions of people who live on Russian-occupied territory. The U.S. should urge the de facto authorities in Crimea and the Donbas to comply with international human rights laws and standards.

4. The U.S. should help Ukraine in its efforts to provide Russian-language radio and TV broadcasting to Crimea and the Donbas. For example, the U.S. could help build transmission towers so that 3G cell phone coverage can be provided to the occupied territories. The U.S. should encourage Kyiv to increase engagement with the south-east of Ukraine with a public awareness campaign focusing on building local self-government and minority rights.

5. In every conversation with senior Ukrainian officials, the U.S. should highlight humanitarian concerns, support for international humanitarian law, and the need to bring an end to Ukraine’s commercial food and medical blockade of occupied territories. The U.S. should insist that Ukraine’s military and intelligence agencies respect fundamental liberties, including the right to be free from torture.

6. The U.S. should encourage the government of Ukraine to separate all pension payments from IDP benefits, and to establish clear rules and procedures with a reasonable deadline for the completion of residence re-verifications.
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Ukraine and the Maidan

Overview

Three months of large-scale popular protests, often referred to as the Maidan or the Revolution of Dignity, ousted Ukraine’s President Viktor Yanukovych in early 2014. The demonstrations began after the President, in an unexpected policy reversal, refused to sign an Association Agreement with the European Union in November 2013. On November 30, special police units used force against protesting students, triggering a nationwide movement. By the end of February, more than one hundred protesters had been killed. Yanukovych and his government fled Ukraine on February 22, 2014 and were replaced by a pro-Maidan government.

The revolution\(^1\) also prompted counter-protests. As the new pro-Western government worked to stabilize the country economically and politically, Russian-backed protesters and political operatives attempted to take over government buildings in Ukraine’s south and east, aiming to create a new state called “Novorossiya” or “New Russia” comprising nearly half of Ukraine’s territory. The plan lacked active support from these regions’ residents, and armed rebellion succeeded only in the high-unemployment easternmost districts of the Donetsk and Luhansk oblasts (provinces) along the Russian border.\(^2\) The Russian Federation, however, did successfully stage a military operation to occupy and annex Crimea, where the de facto authorities continue to violate the human rights of dissidents and the peninsula’s indigenous population, the Crimean Tatars.

Two important consequences of the Maidan were the rapid development of an immense and vibrant civil society and the accession of a pro-Western government in Kyiv with the election of President Petro Poroshenko and Prime Minister Arseniy Yatsenyuk. Prime Minister Volodymyr Groysman, an ally of President Poroshenko, replaced Yatsenyuk in April 2016. Since then, Kyiv has passed important legislation to liberalize and deregulate the economy, update the energy sector, and restructure the judiciary system. That said, three years’ worth of structural and back-end reforms — despite their scope and importance — have been largely invisible to Ukraine’s residents, who are impatient to see judicial, education, and healthcare reform, as well as the rebuilding of infrastructure. Civil society organizations play the leading role in drafting reforms and pushing for their implementation. Government infighting and corruption make this task all the more difficult, to the frustration of Ukraine’s public and the country’s Western partners.

Historical Context

Ukraine’s statehood can be traced back to the medieval empire Kyivan Rus, a key player in Europe and Eurasia from the 9th to 11th centuries.\(^3\) After Rus fell to the Mongols in the thirteenth century, its lands were divided between the Polish-Lithuanian Commonwealth, the Crimean Tatar Khanate, the Austrian empire, and others. An independent Cossack state developed in the 16th century and was gradually annexed by the

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1 The word ‘Maidan,’ Ukrainian for ‘square,’ refers both to the main square in Kyiv where protests took place, as well as to the revolution itself. The terms ‘Euromaidan’ and ‘Revolution of Dignity’ are also used.
2 The territories of the Donetsk and Luhansk oblasts form a geographical entity called the Donbas.
Russian Empire over the period 1654-1709. By the late 1800s, the Russian Empire had come to control most of Ukraine’s current territory, with a small portion in the west — today’s Lviv, Ivano-Frankivsk, and Volyn regions — becoming part of Austria-Hungary. Ukraine declared independence during World War I, and enjoyed a few years of sovereignty before being conquered by the Red Army. In 1932–1933, the Soviet authorities orchestrated an artificial famine in Ukraine, known as the Holodomor, which killed millions of people and left a traumatic mark on the Ukrainian national memory. After World War II, the Ukrainian Soviet Socialist Republic assumed the physical shape it has today after incorporating both the regions previously held by Poland and, in 1954, the Crimean Peninsula, which had been part of the Russian SFSR.

Ukraine handed over its nuclear weapons to Russia after the United Kingdom, the United States, Ukraine, and Russia signed the Budapest Memorandum, giving Ukraine limited security assurances.

With the collapse of the Soviet Union in 1991, Ukraine became an independent state, inheriting a crashing economy and the third-largest nuclear arsenal in the world. It handed over its nuclear weapons to Russia after the United Kingdom, the United States, Ukraine, and Russia signed the Budapest Memorandum, giving Ukraine limited security assurances.

Today, Ukraine is the second-largest country in Europe after Russia, and has a population of around 42 million. Its human development index is high, even though the 2016 estimates of per capita GDP (PPP) were just over $7,000. The majority of Ukraine’s population are ethnic Ukrainians (77%). Minorities include ethnic Russians (17%), Belarusians (0.6%), Crimean Tatars (0.5%), and others. In 1991, the Crimean peninsula became the Autonomous Republic of Crimea, with some powers devolved to its Parliament and executive authorities.

In Ukraine, the question of language is often unrelated to ethnicity or national self-identification: 97% of Ukraine’s residents speak either Ukrainian or Russian, with the vast majority speaking both. Only in certain parts of the easternmost and westernmost regions do some not understand Ukrainian or Russian, respectively. These demographics are important because of the false perception that identity politics somehow explains the current situation in Ukraine. Russian continues to be the primary language of Ukraine’s businesses, society, social media, web pages, and more. Only a small minority of Russian speakers (both ethnic Russians and ethnic Ukrainians) support a military alliance with Russia.

Since independence, Ukraine’s economy has been dominated by a small group of oligarchs and their business “clans.” Many of these made their fortunes taking advantage of the lawlessness of the post-Soviet transition period. For example, the Dnipropetrovsk clan would buy natural gas at state-subsidized prices and sell it at market price. Former President Viktor Yanukovych was a prominent member of the Donetskl clan. While a small handful of oligarchs dominated the 1990s and early 2000s, their individual influence has been diminishing.

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4 See, for example, Robert Conquest, Harvest of Sorrow: Soviet Collectivization and the Terror-Famine (Oxford University Press, 1987). The Holodomor is recognized as a genocide by 25 countries, including the United States.
5 The text of the Budapest Memorandum, which was signed in 1994 by Boris Yeltsin, Bill Clinton, John Major, and Leonid Kuchma, can be found here: https://www.msz.gov.pl/en/p/wiedenobwe_at_s_en/news/memorandum_on_security_assurances_in_connection_with_ukraine_s_accession_to_the_treaty_on_the_npt?printMode=true
6 “Population (by estimate) as of 1 April, 2016,” State Statistics Service of Ukraine.
8 “Report for Selected Countries and Subjects,” World Economic Outlook Database, April 2016 (International Monetary Fund. April 2016).
9 “Ukraine,” CIA World Factbook.
10 See, for example, the results of Ukraine’s state census in 2001.
11 Data from the Razumkov Polling Centre, 2015. For more, see www.razumkov.org.ua.
12 Margarita Balmaceda, Politics of Energy Dependency: Ukraine, Belarus, and Lithuania between Domestic Oligarchs and Russian Pressure (University of Toronto Press, 2014).
13 The Dnipropetrovsk Clan included former PM Pavlo Lazarenko and the now feuding Yulia Tymoshenko and Ihor Kolomoyskyi.
as the oligarchic class grows in number: instead of Kyiv’s politics being dominated by the five richest people in Ukraine, it is dominated by the richest thousand.

After more than a decade of peaceful transitions between governments and presidential administrations, Ukrainians in 2004 took to the streets of Kyiv to protest the falsified election of Viktor Yanukovych to the presidency. The Orange Revolution led to a rerun election, won by pro-Western candidate Viktor Yushchenko. After years of stilled progress, however, Yushchenko’s popularity fell dramatically. In the meantime, Yanukovych, with the help of American political consultants, rebranded himself as a common-sense and stabilizing choice for Ukraine.14

Yanukovych went on to win the 2010 presidential election, enjoying significant support in the Eastern and Southern regions of Ukraine. His presidential administration and the governments formed during his presidency were described by many observers as being noteworthy for their ineffectiveness and high levels of corruption.15 Although Yanukovych did not support closer ties with NATO, he announced he was planning to sign a Deep and Comprehensive Free Trade Agreement (DCFTA) with the European Union in November 2013. Observers note that many Ukrainians tolerated the Yanukovych regime because they were holding out for the possibility of a closer relationship with the EU, which they believed would signal greater stability and economic development.16

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Maidan Revolution

While Yanukovych was attending a joint summit in Vilnius, Lithuania, it became clear that he had suddenly changed policy and would not sign any documents bringing Ukraine closer to the EU. This triggered anger and frustration among many Ukrainians, who were tolerating his administration in the hopes that he would seek closer ties with the West. Mustafa Nayyem, an Afghan-born opposition journalist, asked on Facebook if anyone would be interested in meeting on the Maidan Nezalezhnosti (Independence Square) at midnight. This post – written in Russian – captured the developing social media storm and triggered the Maidan protests. From November 21 to 30, university students and civil society activists met daily on the Maidan to demonstrate their support for closer ties with the European Union. These protests, attended by up to tens of thousands of people, were mainly pro-EU and largely non-partisan, without the flags or other symbols of Ukraine’s political parties.

Many Ukrainians tolerated the Yanukovych regime because they were holding out for the possibility of a closer relationship with the EU.

While Yanukovych’s about-face was the initial trigger for the Maidan protests, the demonstrations switched from being pro-EU to being anti-Yanukovych on the morning of November 30. Student demonstrations were slated to end the previous evening, with many deciding to spend the night on the Maidan with new friends before dispersing. However, early on the morning of November 30, special police forces surrounded the area where the students were sleeping and beat them, injuring dozens. At the time, it was unprecedented for the Ukrainian government to order the beating of students, and this triggered massive action among Kyiv residents — around half a million came to the Maidan to protest the police violence.

From this point forward, two things were clear: first, the demonstrations were now aimed at forcing Yanukovych’s resignation; second, no longer could the administration dismiss the protesters as “radicals” who came to Kyiv from Western Ukraine. The Maidan had turned into a national movement against Yanukovych’s corrupt Party of Regions and its oppressive government.

Over the next two months, the protests became more organized: professors volunteered their time to teach at the “free university” on the Maidan, multiple large-scale kitchens were set up, and war veterans (from the War in Iraq and the Soviet war in Afghanistan) joined volunteers to form a Maidan Self-Defense Force. The Self-Defense Force was responsible for keeping order within the Maidan and protecting activists from police forces. Many Western diplomats visited the protests, including the then-U.S. Ambassador to Ukraine Geoffrey Pyatt. Western governments condemned the violence used against peaceful protesters.

The euphoria of the Maidan spread to other regions across Ukraine. The largest protests outside Kyiv occurred in Lviv, Ternopil, Rivne (predominantly Ukrainian-speaking); Kharkiv, Odesa, Poltava (predominantly Russian-speaking); and Simferopol, the largest city in Crimea. Smaller anti-Yanukovych protests took place in nearly every city in Ukraine, including Donetsk, Luhansk, and other places now occupied by Russian-led separatist forces. The Maidan received considerable support from Ukrainian diaspora, who encouraged global media and government agents to acknowledge the protests.

In the meantime, Yanukovych was hemorrhaging supporters. The head of his presidential administration (similar to a chief of staff) Serhiy Lyovochkin resigned, accelerating the flow of defections from the Party of Regions to the pro-Western opposition parties. In regions of Western Ukraine, police forces under the Interior Ministry began disobeying orders.

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On January 16, 2014, Parliament passed and Yanukovych signed a set of what were called “dictatorial laws,” intended to force the Maidan to an end. Newly criminalized activities included driving in groups of more than five cars and wearing helmets in public. These laws only exacerbated anti-government sentiment (pensioners in Ukraine responded by coming onto the streets in droves wearing pasta strainers on their heads), and by the end of January, Yanukovych had lost control of key government buildings in Western Ukraine to the protesters.

As the size of the protests and the severity of violence grew, Western diplomats increased pressure on Ukrainian political leaders to strike a deal. On February 20, the interior minister announced that the police were authorized to use live ammunition against the protesters. Between February 18–22, over 200 protesters were “disappeared” or killed, and thousands more were injured. By the night of February 20, a large group of MPs — those controlled by formerly pro-Yanukovych oligarchs Rinat Akhmetov and Dmitry Firtash — defected to the opposition, allowing Parliament to finally pass a resolution calling for government forces to stand down.

The Maidan turned into a national movement against Yanukovych’s corrupt Party of Regions and its oppressive government.

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22 See, for example, the CSIS Ukraine Crisis timeline at ukraine.csis.org.
23 Aslund, Ukraine.
On February 21, 2014, after receiving a phone call from Russian President Vladimir Putin, Yanukovych agreed to sign an EU-mediated agreement with three opposition leaders, Arseniy Yatsenyuk, Vitali Klitschko, and Oleh Tyahnybok, stipulating that he would stay in power until new presidential elections in December. When the opposition leaders announced this deal to the demonstrators during a memorial service for the recent casualties, the Maidan responded with derision. One leader of the Maidan Self-Defense Forces took the microphone and unexpectedly announced an ultimatum: Yanukovych must be gone by 10:00 A.M. the next morning.

After the Maidan

President Yanukovych left Kyiv by helicopter in the early hours of February 22, and most government ministers were nowhere to be found. Parliament quickly adopted a resolution declaring Yanukovych unable to execute the duties of the office of President. By the end of the week, an interim government had been assembled and started the task of stabilizing the country politically and economically. Arseniy Yatsenyuk, the leader of the Fatherland Party, became Prime Minister, and some key ministerial positions were given to Western-educated technocrats. Parliament declared Oleksandr Turchynov, a prominent member of the opposition, its Speaker, whose constitutional duty is to also hold the office of the President when that office is vacant. New presidential elections were scheduled for May 25. Parliament also voted to order the immediate release of Yulia Tymoshenko from prison, where she was serving a politically motivated seven-year term.

The success of the Maidan Revolution led to a period of unbridled optimism about the future of Ukraine. Mourning for the fallen protesters was combined with the hope that the new government would be fully transparent, efficient in responding to their needs, and finally turn Ukraine into what they called “a normal country.” Expectations were very high.

Over the past two years, the Ukrainian government was able to implement some very important reforms. For example, Ukraine restructured the energy sector, increasing household gas prices to market prices while providing huge subsidies for the indigent. Ukraine’s state gas company, Naftogaz, was actually a net positive contributor to the state budget in 2016 after years of being a financial sinkhole. Ukraine also shut down a large number of banks, which were non-viable or zombie banks. Ukraine’s Central Bank has gone through an important internal transformation that has received praise from IMF officials. Important steps were taken to address Ukraine’s rampant corruption, including the establishment of a National Anti-Corruption Bureau. State tenders are now run through an electronic procurement system called Prozorro, which is projected to save billions in the state budget.

However, the effectiveness of these measures remains questionable since corruption has not decreased sufficiently. 39% of Ukrainians believe that corruption within state bodies is a greater threat to Ukraine’s stability than the military conflict in Donbas, even though only 10% of Ukraine’s residents have actually paid a bribe in the last six months. In order to fight corruption, Ukraine must reform its tax administration, reform the agricultural sector, enhance the protection of property rights, and accelerate the pace of privatization of state assets.

Between February 18–22, over 200 protesters were “disappeared” or killed, and thousands more were injured.

24 Petro Poroshenko played a small role in the Maidan and was not a key player at this point.

25 Today, the population’s frustration with the pace of reforms is due partly to their extremely high expectations post-Maidan, as well as the government’s inability to sustain a satisfactory pace of reforms.

26 “2.5 Years of Reforms: All Victories and Failures of Ukraine,” VoxUkraine, 14 November 2016.

assets. In order for Ukraine’s residents to continue supporting the pro-Western government, they need to see concrete progress in reforms of the healthcare sector and the education system, in addition to the rebuilding of infrastructure.28

Kremlin Reacts

Occupation of Crimea

On February 23, the day after Yanukovych fled Kyiv, both pro-Maidan and pro-Russian demonstrations were held throughout Crimea.29 That day, President Putin held an all-night meeting with the heads of Russia’s security services, as he recalls in the documentary Homeward Bound, and told them at the meeting’s close that they “must start working on returning Crimea to Russia.”30 Four days later, armed men without insignia took control of government buildings in Crimea, including the autonomous republic’s Parliament.31 Members of the Crimean Parliament immediately chose a new pro-Russian government and declared independence from Ukraine. The de facto authorities then held a referendum on whether Crimea should join the Russian Federation, although the actual alternative provided by the ballot was not the status quo, but significant autonomy within Ukraine as provided by the 1992 constitutional compromise.32 During the referendum, paramilitary units patrolled the streets and pro-Russian armed brigades “guarded” polling stations. Many commentators concluded that voters felt coerced, and the internation-

31 In April 2014, President Putin admitted that these “little green men” were in fact Russian soldiers or operators. See, for example, “Putin admits Russian forces were deployed to Crimea,” Reuters, 17 April 2014.
al community has decried the referendum as having been held at gunpoint.\textsuperscript{33} Despite not offering voters a status-quo option, the referendum — held March 16, 2014 — passed with 96.77\% of the vote, with 83.1\% of voters participating.\textsuperscript{34} By March 21, the Russian Federal Assembly had ratified the treaty bringing Crimea into the Russian Federation, despite the Council of Europe’s Venice Commission concluding the entire operation was not in compliance with international law. Acting on threats received from senior Russian officials, Ukraine’s acting president Oleksandr Turchynov ordered Ukrainian troops to evacuate Crimea on March 24.\textsuperscript{35}

Although both Ukraine and Russia claim sovereignty over Crimea, the peninsula has been occupied and de facto administered by the Russian Federation since March 2014. This represents a number of concrete challenges for the international community. First, it is a violation of the Helsinki Final Act of the Conference on Security and Cooperation in Europe, whose signatories pledged to respect each other’s sovereignty and territorial integrity and to refrain from threats of force against one another.\textsuperscript{36}

Second, the human rights situation in Crimea is continually excoriated in the United Nations and elsewhere.\textsuperscript{37} Crimea’s residents have had to endure well-documented systematic violations of their civil, political, social, economic, and cultural rights. One group that has been targeted is the indigenous Sunni Muslim population, the Crimean Tatars, who comprised 12\% of the peninsula’s population in 2013. After the 1944 forced deportation of the entire Crimean Tatar population under Josef Stalin, the group became staunchly anti-Kremlin and only returned to their homeland when the Ukrainian government invited them to do so shortly after Ukraine regained independence in 1991. The Russian authorities have restricted the Crimean Tatars right to assemble on their holidays. Moreover, in 2016, the Mejlis, a centuries-old Crimean Tatar self-governing assembly, was banned as an “extremist organization.”\textsuperscript{38} A Council of Europe report said that the banning of the Mejlis heralds “a new level of repression targeting this time the Crimean Tatar community as a whole.”\textsuperscript{39} Crimean Tatar leaders, such as the former Soviet dissident Mustafa Dzhemilev, have been banned from returning to Crimea. At least twenty Ukrainian and Crimean Tatar opposition journalists and activists have been “disappeared.”\textsuperscript{40} The Russian authorities have also shut down the only Crimean-Tatar-language television channel ATR.\textsuperscript{41} Reviving a tactic used in Soviet times, the de-facto authorities have forcibly confined Ilmi Umerov, the former deputy chair of the Mejlis, to Psychiatric Hospital No. 1 in Simferopol.\textsuperscript{42}

In March 2014, the United Nations adopted a resolution reaffirming Ukraine’s sovereignty and territorial integrity and declaring the results of the supposed ref-

\begin{itemize}
\item [33] Roland Oliphant, “Crimeans vote peacefully in referendum, but have little choice,” The Telegraph, 16 March 2014. Note that Oliphant was reporting from Simferopol, Crimea.
\item [34] David Herszenhorn, “Crimea Votes to Secede From Ukraine as Russian Troops Keep Watch,” The New York Times, 16 March 2014.
\item [35] More than a year after the annexation of Crimea, Turchynov said that he had received phone calls from the speaker of the Russian Federation Council Sergiy Naryshkin, in which the latter allegedly said Russia would bomb key government buildings in Kyiv if Ukraine resisted Russia’s actions in Crimea. To see the video of Turchynov’s talk show appearance in which he first describes these alleged threats, visit https://www.youtube.com/watch?v=DeOQk2bEwA.
\item [36] ‘Conference on Security and Cooperation in Europe: Final Act,” (1975), accessible at osce.org/helsinki-final-act. In particular, see sections I–VIII.
\item [37] For more information on the annexation of Crimea and ongoing human rights violations, please see the report by Razom and the Volya Institute, Human Rights on Occupied Territory: Case of Crimea (New York, 2015). A PDF of the report is available here: volyainsstitute.org/wp-content/uploads/2015/12/Zvit_Crimea_print.pdf.
\item [38] Eleanor Knott, “What the Banning of Crimean Tatars’ Mejlis Means,” Atlantic Council, New Atlanticist, 2 May 2016.
\item [40] Ibid.
\item [41] Knott, “Mejlis.”
\end{itemize}
erendum invalid. In December 2016, the General ad-
opted a resolution recognizing Russia as an “occupying
power,” condemning the occupation and the human
rights abuses the de-facto authorities commit against
Crimea’s residents.

A Council of Europe report said that the banning of the
Mejlis heralds “a new level of repression targeting this time
the Crimean Tatar community as a whole.”

Donbas War and Russian Incursions

In Ukraine’s southern and eastern regions, protests
against the Maidan government intensified after
the annexation of Crimea, growing into a full-
fledged war by April 2014. For a few months, Rus-
sian authorities and separatist groups hoped that
they might establish a breakaway state called “No-
vorossiya,” or “New Russia,” comprising just under
half of Ukraine’s territory. But because this move-
ment lacked support from the local population, it
failed everywhere but in the regions where unem-
ployment had recently spiked, specifically in the
eastern halves of two provinces, the Donetsk and
Luhansk oblasts (provinces). Russian-backed armed
groups took over certain state functions, such as
collecting trash and administering schools. It is
difficult to say what fraction of the separatist mi-
litias is comprised of Russian citizens and soldiers.
International organizations estimate that one-fifth
of those fighting in separatist militias are Russians
and the rest are local Ukrainians, although defect-
ing separatists have told interviewers that 80% of
their ranks were Russians.

Today, Ukraine continues to fight a simmering war
against the Luhansk and Donetsk People’s Republics,
which now control only 7% of Ukraine’s territory. With-
out Russian political, military, and financial support,
experts estimate that the organizations would fall within
weeks. After nearly three years of conflict in Eastern
Ukraine, more than 10,000 people have died and nearly
21,000 have been injured, and this only reflects available
data on the Ukrainian side. The civilian population re-
main in the Donetsk and Luhansk oblasts has been left
amidst a humanitarian and human rights crisis.

Political Instability
and Reform

Amidst an escalating war, Ukraine held presidential
elections on May 25, 2014, with Petro Poroshenko eas-
ily defeating Yulia Tymoshenko and other contenders.
Poroshenko, who had previously served as Foreign
Minister and later as Minister of Trade and Economic
Development, is a prominent Ukrainian oligarch who
made his fortune as a confectioner, shipbuilder, and
media owner. He played a limited role in the Maidan
and campaigned on a platform of political reforms and
anti-corruption measures.

Yatsenyuk became interim Prime Minister shortly after
the Maidan ended in February 2014, and he was chosen
to lead the government once again in December 2014
after new Parliamentary elections were held. Although
he came to power at the head of a reformist coalition

43 “Resolution adopted by the General Assembly on 27 March 2014,” Resolution
44 United Nations General Assembly, “Situation of human rights in the
Autonomous Republic of Crimea and the city of Sevastopol (Ukraine),” 31
October 2016, documents-dds-ny.un.org/doc/UNDOC/GEN/N16/352/55/
45 Artur Gasparyan, “I Was a Separatist Fighter in Ukraine,” RFE/RL, 13 July
2014.
46 Known collectively as LDNR (the Russian initialism for Luhansk and
Donetsk People’s Republics). The territory these occupy is sometimes
referred to as the Donbas, although technically the Donbas refers to the full
territory of the Donetsk and Luhansk oblasts (provinces), and not just the
halves occupied by the LDNR.
47 Carlotta Gall, “Ukraine Town Bears Scars of Russian Offensive That Turned
Tide in Conflict,” The New York Times, 9 September 2014. See also Crisis
Group, “Separatists,” and ibid.
after the Maidan Revolution, his approval rating sank into the single-digits soon afterward. Yatsenyuk’s cabinet included a number of Western reformers, notably Natalie Jaresko (U.S.-born Minister of Finance) and Aivaras Abromavicius (Lithuanian-born Minister of Economic Development and Trade). The Cabinet was rated by VoxUkraine’s Index for Monitoring Reforms as the greatest contributor to the reform process, although these reforms tended to be structural and therefore largely invisible to the public.

Ukrainian politics is notoriously murky, with political parties and politicians shifting allegiances and titles quickly. Although President Poroshenko, Prime Minister Yatsenyuk, and the Cabinet that was composed mostly of reform-minded ministers were together able to prevent Ukraine’s state and economy from collapsing in 2014, Ukraine’s people and Western partners grew increasingly frustrated with Kyiv’s “reluctance to crack down on high-level corruption” and dismantle private interests’ hold over the Ukrainian state.48

Case Study of Ukrainian Politics: 2016 Political Crisis

Ukrainian politics is notoriously murky, with political parties and politicians shifting allegiances and titles quickly. The 2016 political crisis provides an illustrative case study.

By February 2016, many Ukrainians lost confidence in the ability of President Poroshenko and Prime Minister Yatsenyuk to break the stranglehold of oligarchs on Ukraine’s political and economic life.49 The crisis began on February 3 when Aivaras Abromavicius, Minister for Economic Development and Trade, announced his intent to resign. Abromavicius, a native of Lithuania, was brought into the second Yatsenyuk government along with a number of Westerners to help reform Ukraine’s inefficient and corrupt economy. Abromavicius cited constant pressure from vested interests to block his Ministry’s reform efforts. In particular, he stated that Poroshenko’s friend and business partner Ihor Kononenko consistently interfered with his work.

While President Poroshenko repeated appeals for Western support in Ukraine at the 2016 Davos World Economic Forum and the Munich Security Conference, several key Western figures — among them U.S. Secretary of State John Kerry — expressed frustration with the glacial pace of Ukraine’s economic and political reforms. The International Monetary Fund also delayed further financing until the political situation was stabilized.50 As if to pacify Western critics, President Poroshenko announced the resignation of Victor Shokin on February 16. Shokin was the deeply controversial Prosecutor General of Ukraine, who allegedly refused to prosecute corruption cases and thus contributed to the government’s poor reputation.51 President Poroshenko also asked for the resignation of the Yatsenyuk government.

That same day, Parliament took up the President’s call for the government’s resignation. A purely symbolic vote to declare the Yatsenyuk government’s record “unsatisfactory” passed easily, with 120 MPs from Poroshenko’s bloc contributing to the 226 votes needed to pass. No members of Yatsenyuk’s party — The People’s Front — were present. Just before the binding no-confidence vote was called fifteen minutes later, members of the Opposition Bloc (a successor to the Party of Regions considered to be allied with oligarch Rinat Akhmetov) and the Renaissance Party (reportedly associated with exiled oligarch Ihor Kolomoyskyi)52 walked out of Par-

51 “Ukraine general prosecutor has resigned: Ukrainska Pravda newspaper,” Reuters, 16 February 2016.
52 Ihor Kolomoyskyi, who now lives in Geneva, was appointed by Poroshenko to be the governor of the Dnipropetrovsk oblast in the summer of 2014. His rule was highly controversial, generating many allegations of extrajudicial killings and corrupt business dealings. Kolomoyskyi was fired by Poroshenko in 2016.
In an unusual twist, 30 members of the President’s party — allegedly those with close economic ties to him — left the hall as well.\(^5\) \(^4\) These absences ensured that the no-confidence vote would not pass — in fact, it failed by 32 votes.\(^5\) It is unclear why the President was unable or unwilling to deliver his own party’s votes after pushing for the government’s resignation. Theories abound, alleging that this was a genuine miscalculation on the part of the President, or an internal rebellion within his party, or a scheme for the President to get credit for pushing reform while safeguarding the interests of his fellow oligarchs.\(^5\) In the eyes of many Ukrainian people, Yatsenyuk’s credibility was shattered because while the pro-reform MPs voted for his ouster, the actions of oligarch-backed MPs ensured that he stayed in power. The oligarchs stood to benefit from stalling reform, since effective reforms would threaten their political influence and economic interests.

Soon after this crisis, Yuliya Tymoshenko’s Fatherland Party and the Andriy Sadovy’s Self-Reliance Party quit the governing coalition, leaving it without a parliamentary majority. This forced Parliament to attempt to form a new coalition government. There were some concerns that if a new coalition could not be formed, the President would have been forced to call early parliamentary elections. These would have significantly destabilized Ukrainian politics, risked any chance of Minsk II implementation, and empowered populists like Tymoshenko’s Fatherland Party and Oleh Lyashko’s Radical Party.

On April 14, 2016, a new coalition government was formed under Volodymyr Groysman, formerly the speaker of Parliament and a close ally of President Poroshenko. Observers shared two primary concerns: first, the parliamentary coalition comprised individual MPs and not political parties, which is unconstitutional; second, the proximity of Groysman to the President greatly increased the influence and purview of the latter. This all occurred against a background of serious skepticism about President Poroshenko’s willingness or ability to push difficult reforms. That said, the appointment of Groysman meant that President Poroshenko was now fully answerable for the slow pace of reform. Because the Maidan coalition fell apart, in order to pass key legislation, the Poroshenko-Groysman team now needs to rely on the members of the political parties reconstructed from the disbanded Party of Regions.

### Moving Forward

Some observers argue that the pace of reforms has accelerated slightly under the Groysman government and that the economy has begun to grow at a faster pace,\(^5\) while others question whether Groysman’s appointment simply means a consolidation of power for Poroshenko.\(^5\) Another close ally of President Poroshenko, Yuriy Lutsenko, was appointed Prosecutor General, even though he lacked a legal education and background. Important foreign and domestic policy issues are addressed in informal meetings of the “Strategic Group of Seven,” consisting of President Poroshenko, his Chief of Staff Boris Lozkin, Prime Minister Groysman, Speaker of

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\(^5\) Mustafa Nayyem facebook post, 16 February 2016, facebook.com/Mustafanayyem/posts/10206049534263456.


\(^5\) Leshchenko, "House of Cards."
Ukraine's vibrant civil society is behind the introduction, codification, and implementation of nearly all of the reforms passed since the Maidan.

Ukraine’s vibrant civil society is behind the introduction, codification, and implementation of nearly all of the reforms passed since the Maidan. Non-governmental organizations and members of the “volunteer” movement engage with the government through civic councils, direct advocacy, and expert consultations. The civil society groups that have the largest effect on policymaking are the Reanimation Package of Reforms (RPR), Nova Krayina, and VoxUkraine. In many ways, RPR is the central hub of many other civil society organizations and the most influential channel for the implementation of reforms. The organization Dixi Group played a key role in the adoption of energy reforms like the Gas Market Law, which brought Ukraine into compliance with the EU Third Energy Package.

Many Ukrainians remain optimistic that their country may one day overcome both its Soviet past and pervasive oligarchic influence, believing that the best way forward is reintegration with Europe. Support for Europe in Ukraine — 67% want Ukraine to join the EU — stands in sharp contrast with Western Europe’s burgeoning euroscepticism. Moreover, Ukrainian society’s steady, slow push toward liberal-democratic norms rings dissonant with the growth of reactionary parties in Austria, Switzerland, the UK, France, the Netherlands, and elsewhere. Only 6 members of Ukraine’s 424-seat Parliament are from far-right parties, while in Switzerland, the far-right populist Swiss People’s Party won 29.4% of the votes in the 2015 elections. In Austria, the far-right Freedom Party made an incredibly strong showing in the 2016 elections, and Marine Le Pen may very well win the French presidential election in 2017. In addition, the Chief Rabbi of Ukraine Yaakov Dov Bleich argues that Ukraine has not had increasingly frequent anti-Semitic attacks, as Western European countries have experienced in recent years.

KEY TAKEAWAYS

1. Ukraine has a 1000-year tradition of nation building, historically derailed by both external aggressors and a domestic inability to engage in sustainable statecraft. Many Ukrainians saw the Maidan as a bright and hopeful moment in Ukrainian history. There has been some significant progress on reforms in Ukraine, although not nearly enough has been implemented, and the opposition of oligarchs and other vested interests is growing.
2. **Claims that the Maidan was a product of radical nationalism are false.** While Ukrainian ultranationalists and the far-right did have a limited presence in the Maidan, the entire movement was centered on liberal ideas of individual rights, government accountability, and political pluralism. After the Maidan, far-right parties lost 30 of their 37 seats in Ukraine’s 450-member Parliament.\(^{67}\)

3. **Ukraine must continue the prosecution of current officials for corruption and a lack of professional integrity.** This process should include continuing and implementing judicial reforms; limiting the powers of Prosecutor’s Office; creating properly functional anti-corruption bodies, including specialized anti-corruption courts. Ukraine’s government should expand the scope of anti-corruption efforts to include businesses (for example by adopting legislation punishing the “supply side” of corruption), in addition to strengthening the involvement of citizens in anti-corruption efforts and adopting a whistleblower protection law.

4. **Civil society groups play a disproportionately important role in the reforms process,** drafting the relevant bills or Cabinet orders, pushing for their passage, and leading their implementation. It is important that American and international experts offer their help in drafting reforms in all sectors. Cooperation is particularly important for civil society groups focused on the energy sector. In this sector, the U.S. should focus support and engagement on groups that understand Ukraine’s energy environment and provide concrete solutions with goals of making the energy sector more transparent, efficient, and competitive.

5. The Kremlin uses a Huntingtonian civilizational narrative to justify intervention to halt the development of democracy in East Slavic countries (its perceived sphere of influence), thus creating a self-fulfilling prophecy of the incompatibility of democracy with East Slavic culture. Ukraine, the story goes, inherently belongs within Russia’s sphere of influence, its integration with Europe is a threat to Russia’s interests, and the military conflict in the east is a manifestation of Ukraine’s internal ethnic divisions. This framing denies Ukrainians the right to national self-determination and grossly exaggerates the tensions between different groups of Ukraine’s multiethnic society. Supporting Ukraine’s transition is the best way to counteract this narrative. Therefore, **Ukraine and its partners must focus on building a successful and prosperous Ukraine on the territory it currently controls.** For the U.S., this means maintaining a robust sanctions stance and keeping the stakes and costs high for potential Russian escalation, while simultaneously helping Ukraine grow its economy and reform its political system.

**RECOMMENDATIONS**

1. **The United States should encourage the Ukrainian government to focus on top-priority reforms and avoid political infighting.** These key reforms include liberalization and deregulation of the economy, anti-corruption legislation, tax and fiscal reform, as well as electoral and civil service reform. The U.S. should promote the creation of public forums for wider discussion of draft laws on constitutional amendments and reforms.

2. **The U.S should continue to highlight the plight of the Crimean Tatars,** the annexed peninsula’s indigenous Sunni Muslim population, who have been the target of systematic repression by the Russian de facto authorities. **Engage Turkey,** and especially the sizeable Crimean Tatar diaspora in Turkey, as a natural partner and stakeholder.

3. **The U.S. should codify its non-recognition of Russia’s annexation of Crimea.**

4. **The U.S. should increase the financial aid it offers Ukraine for rebuilding infrastructure and supporting social services on the condition that Ukraine makes concrete steps on reforms.**

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\(^{67}\) Anecdotally, it is worth recalling that the first protester killed was a Russian-speaking Armenian studying in Kyiv, and that the initial protests were triggered by a Russian-language call-to-action posted on Facebook by a Muslim Afghan-born Ukrainian journalist.
and anti-corruption measures. Encourage the President and the Prime Minister to efficiently implement promised de-oligarchization policies.

5. The U.S. should help Ukraine develop new formats of cooperation with NGOs that help give civil society a seat at the reforms table, as opposed to a purely consultative role. Policies which direct aid to only a narrow circle of civic organizations with a certain existing level of financial management should be changed in order to expand aid to more organizations.

6. The U.S. should take a strong stance on civil liberties within Ukraine, standing up for vulnerable groups like Ukraine’s 1.8 million internally displaced persons (IDPs) and independent journalists under government pressure.

The views above are those of the majority of the production team.

FURTHER READING


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Donbas War and Ukraine’s Security

Origins of the Donbas War

Shortly after the 2014 Maidan Revolution, armed protesters — described by Yale professor Marci Shore as a “motley crew of territorial patriots, fascists, anti-fascists, local hoodlums, Russian volunteer soldiers, mercenaries, revolutionaries, Kremlin special forces, gangsters, and warlords” — began seizing government buildings in eastern and southern Ukraine. By April, violent demonstrations had evolved into a full-fledged war, with top posts in separatist militias and political circles eventually going to Russian operatives. With explicit support and leadership from the Kremlin, many of the separatist groups joined together and attempted to form “Novorossiya” — a pseudo-state aspiring to expand across nearly half of Ukraine’s territory. However, Russia overestimated the degree of support this project would have from the local population, and was forced to nix the Novorossiya plan by January 2015.

Due primarily to significantly higher unemployment rates in the eastern halves of the Donetsk and Luhansk oblasts (provinces), separatist forces were successful in holding on to that 7% of Ukraine’s territory. The armed groups in those areas styled themselves “Luhansk People’s Republic” and “Donetsk People’s Republic” (known by their Russian initialisms LNR and DNR, collectively LDNR). They began fulfilling some of the responsibilities of states, such as waste management and the payment of pensions. Despite being the political, military, and financial lifeline of the LDNR, Russia has not formally recognized them as republics independent from Ukraine.

Without Russian political, military, and financial support, the LDNR would quickly fall to infighting and a lack of resources.

Without Russian political, military, and financial support, experts estimate that the LDNR would quickly fall to infighting and a lack of resources. Russian military units have played important roles in key battles of the Donbas war, notably at the battles of Ilovaisk (August–September 2014) and Debaltseve (February 2015). It is unclear what fraction of the LDNR militias is composed of Russian citizens and soldiers. International

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10 “Мы все знали, на что идем и что может быть,” Новая газета (Novayagazeta.ru), 10 December 2016.
organizations estimate that one-fifth of those fighting in separatist militias are Russians and the rest are local Ukrainians, although defecting separatists have told interviewers that 80% of their ranks were Russians.\textsuperscript{11} \textsuperscript{12}

The war of the combined Russian-separatist forces against Ukraine has taken the lives of just under 10,000 people, a conservative figure.\textsuperscript{13} Among those killed are 2,500–4,000 civilians and 500–1000 Russian soldiers.\textsuperscript{14} There are 3.1 million in the region who need humanitarian assistance, in addition to 1.8 million internally displaced persons (IDPs) and 1.12 million internationally displaced persons.\textsuperscript{15} The United States has responded to this humanitarian crisis with funding and resources, including allocating $28 million in humanitarian aid in fiscal year 2016.\textsuperscript{16}

**What is Driving the Separatism?**

Some view Russia’s aggressive foreign policy as a victory for President Putin.\textsuperscript{17} In fact, it seems that Russia’s policy of hybrid warfare and support for separatism in Eastern Ukraine was not as successful as the Kremlin had hoped. For the past year, the borders of separatist-controlled territory in Eastern Ukraine have remained more or less static. Roughly speaking, only half of the Donetsk and Luhansk oblasts remain outside Kyiv’s control. If the conflict had been a result of deep ethnic tension between Ukrainians and Russians in the Donbas region, according to the Kremlin’s narrative, why did rebellion remain contained to only 7% of Ukraine’s territory?

A statistical analysis published in the *Journal of Comparative Economics* sets out to explain the scope of rebellion in Eastern Ukraine using original data on violence and economic activity in the Donbas region.\textsuperscript{18} The paper investigates local variation in rebellion and aims to answer the following question: why might two relatively similar municipalities in the same region experience different levels of separatist activity? Why do some towns remain under government control while others slip away? Why might residents of one municipality be more receptive to foreign fighters? Zhukov evaluates two explanations: “identity-based” and “economic.”

The identity-based explanation holds that ethnicity and language indicate how likely an area is to experience separatist activity. In the context of Eastern Ukraine, this hypothesis means that rebellion is expected in cities and towns where there is a high concentration of ethnic Russians or Russian-speaking Ukrainians. The economic explanation, on the other hand, asserts that areas most vulnerable to negative economic shocks from austerity measures, trade openness with the EU, and trade barriers with Russia are more likely to experience rebellion and violence.

The paper’s conclusion supported the economic explanation; that is, pre-war employment was the strongest predictor for separatist activity, and not association with Russian language or ethnicity. For many workers in Ukraine’s industrial Donbas region, the Association Agreement with the European Union posed a serious threat to job security.\textsuperscript{19} Towns which expected negative shocks in their

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\textsuperscript{12} Igor Sutyagin, “Russian Forces in Ukraine,” Royal United Services Institute, March 2015.


\textsuperscript{14} Anna Nemtsova, “How Russia Hides Its Dead Soldiers Killed in Ukraine,” The Daily Beast, 19 August 2015.

\textsuperscript{15} USAID Fact Sheet #6, FY 2016: Ukraine – Complex Emergency. 20 May 2016.

\textsuperscript{16} USAID’s Office of U.S. Foreign Disaster Assistance (USAID/OFDA), USAID’s Office of Food for Peace (USAID/FFP), U.S. Department of State’s Bureau of Population, Refugees, and Migration (State/PRM).


\textsuperscript{18} Zhukov, ibid.; Yuri Zhukov, “The Economics of Rebellion in Eastern Ukraine.” VoxUkraine, 20 November 2015.

Those who supported or actively engaged in rebellion were more influenced by economic considerations and not, as the Kremlin’s narrative says, by ethnically or linguistically motivated grievances.

Thus, the story of superficial ethnic conflict does not hold. Despite the seemingly endless supply of heavy machinery, military leadership, and logistical support, Russia’s proxy warfare failed to establish a Novorossiya because it could not “win hearts and minds” and mobilize the local population. Without actual grievances to tip the scale of cost-benefit analysis towards rebellion, most locals preferred the status quo — Kyiv’s government — to war and destruction. The only quantitative analysis of the emergence of the DNR and LNR demonstrates that those who supported or actively engaged in rebellion were more influenced by economic considerations and not, as the Kremlin’s narrative says, by ethnically or linguistically motivated grievances.

Progress Toward Peace?

Major negotiations in the context of the Donbas War are usually held in the “Normandy Format,” which brings together France, Germany, Russia, and Ukraine. To Ukraine’s frustration, the United States does not play a major role in these negotiations, deferring largely to the leadership of Germany, which held the OSCE Chairmanship in 2016. Germany was therefore also a key player in the “Trilateral Contact Group,” a negotiating platform that comprises the OSCE, Ukraine, and Russia.

The ceasefire ostensibly agreed to in the Minsk I Agreement, signed in September 2014, had completely fallen through by February 2015. The Minsk II Agreement,
### Minsk II Implementation Chart

*Current as of November 2016.*

<table>
<thead>
<tr>
<th>Article</th>
<th>Ukraine Progress</th>
<th>Separatists / Russia Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Immediate ceasefire</td>
<td>Multiple ceasefire agreements have failed, with the majority of violations caused by joint Russian-separatist forces.</td>
<td></td>
</tr>
<tr>
<td>2. Pullout of heavy weapons</td>
<td>Somewhat respected</td>
<td>Somewhat respected</td>
</tr>
<tr>
<td>3. OSCE Monitoring</td>
<td>Largely respected</td>
<td>Largely not respected</td>
</tr>
<tr>
<td>4a. Begin election dialogue</td>
<td>Insists on security first</td>
<td>Attempted to initiate</td>
</tr>
<tr>
<td>4b. Geographic identification</td>
<td>Completed.</td>
<td>(Does not apply)</td>
</tr>
<tr>
<td>5. Pardon, amnesty</td>
<td>Unclear. Law 1680-VII grants amnesty but only if free elections take place.</td>
<td>(Does not apply)</td>
</tr>
<tr>
<td>6. All-for-all prisoner exchange</td>
<td>Initiated.</td>
<td>Not completed, demand amnesty guarantee first.</td>
</tr>
<tr>
<td>7. Humanitarian relief</td>
<td>Largely completed. Respect for humanitarian organizations.</td>
<td>Unclear</td>
</tr>
<tr>
<td>8. Economic Aid</td>
<td>Largely Completed.</td>
<td>(Does not apply)</td>
</tr>
<tr>
<td>9. Russia must restore border to Ukraine after Ukraine completes Article 11</td>
<td>(Does not apply)</td>
<td>Not done; contingent on &quot;full political regularization,&quot; i.e., &quot;special status&quot;</td>
</tr>
<tr>
<td>10. Pullout of “foreign armed formations,” disarming of illegal armed groups.</td>
<td>Completed, illegal armed groups have been disbanded or absorbed into Ukraine's military.</td>
<td>Not completed.</td>
</tr>
<tr>
<td>11a. Constitutional Reform implementing national decentralization</td>
<td>Not completed, although significant moves have been made to decentralize the budget process.</td>
<td>(Does not apply)</td>
</tr>
<tr>
<td>11b. Permanent legislation recognizing “Special Status” of occupied territory</td>
<td>256-VII and 1680-VI satisfy details of Art. 11 without granting &quot;special status&quot; per se. These go into effect only after elections are held.</td>
<td>(Does not apply)</td>
</tr>
<tr>
<td>13. Intensify work of trilateral contact group</td>
<td>Mostly respected</td>
<td>Mostly respected.</td>
</tr>
</tbody>
</table>
reached by the Normandy Format heads of state and signed by the Trilateral Contact Group, has been the primary framework within which the Donbas peacebuilding process is discussed. “Minsk II” is actually the shorthand name for a document signed in Minsk, Belarus, on 12 February 2015, called the “Package of Measures for the Implementation of the Minsk Protocol,” which refers in turn to the ceasefire agreement signed in September 2014 by Russia, Ukraine, and representatives of the OSCE.

Most of the points of the Minsk II Agreement are commonsense provisions related to an immediate ceasefire, which apply both to Ukraine and to the Russian-backed separatist forces. These provisions have been implemented to varying degrees by both sides.

Point 1 of Minsk II requires that an “immediate and full” ceasefire begin February 15, 2015. Signed documents notwithstanding, the war continued in full force until September 2015, when a side agreement was negotiated within the Trilateral Contact Group.

It is in the interest of both sides to appear to be implementing the ceasefire provisions. While Ukraine does not have military plans to retake the territory of the Donetsk and Luhansk People’s Republics (DNR and LNR), official Russian so-called “curators” of the occupied territories are struggling to both maintain enthusiasm for the movement while at the same time strategically holding back over-eager militia members desperate to fight Ukraine.25 According to the International Crisis Group, Russian military officers, depending on the strategy chosen, sometimes mete out severe punishments for those separatist militia members who break the ceasefire.26 Likewise, Ukraine has imposed a 45-minute waiting period before soldiers are permitted to return fire, during which they are required to inform both the OSCE and military headquarters, according at least to sources within Ukraine’s Parliament.

Ceasefire violations have been steadily increasing since January 2016. June 2016 saw 69 civilian casualties, double the number from the previous month, and the largest number since the post-Minsk peak of the war in August 2015.27 Over the winter 2015–2016, nearly all of the of the very few civilian casualties were caused by unexploded ordnance, such as landmines. However, the UN has reported that as a consequence of the dramatic increase in violence, more than half of the summer’s civilian casualties were directly the result of “mortar fire, cannons, howitzers, and tanks.”

The withdrawal of heavy weapons, required by Point 2 of Minsk II, has been somewhat completed by both sides, although what were occasional violations are becoming more regular. The OSCE report from 12 March 2016, for example, states that the monitoring mission observed a T-64 tank near government-controlled Berezove, and 82mm mortars, which were camouflaged with tree branches, near DNR-Russian controlled Oleksandrivka.28 They also saw a 152mm self-propelled howitzer near separatist-held Ternove, within the heavy-weapon “withdrawal zone.” In general, however, both sides have largely withdrawn their heavy weapons to official OSCE-designated holding sites, which the Special Monitoring Mission (SMM) regularly inspects.29

25 The social media pages of those involved in the conflict continue to report increasing numbers of desertions from combined Russian-separatist forces and local militias. Many of the volunteers who have come from Russia are disappointed with the degree of inactivity.
28 “Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs,” 5 February 2016. The reports of the OSCE SMM in Ukraine are found at www.osce.org/ukraine-smm.
29 See, for example, Daniel B. Baer, “Response to the OSCE Chief Monitor and the OSCE Special Rep in Ukraine — Statement to the Permanent Council,” 28 April 2016.
Political Requirements of Minsk II

While both sides want to appear compliant with the cease-fire and heavy weapons provisions, this is not the case with the political provisions. Ukraine and the Russian-led separatists do not agree on the points regarding the political status of the separatist-held regions, blanket amnesty for the separatists, local elections on occupied territory, and the restoration of Ukraine’s control over its border with Russia.

Regarding amnesty, Point 5 of Minsk II requires Ukraine to enact “a law that forbids persecution and punishment of persons in relation to the events” that took place in the separatist-held regions. This is highly controversial in Ukraine; nonetheless, Parliament passed and President Poroshenko subsequently signed Law 1680-VII right after the first Minsk agreement was signed, granting amnesty so broadly that it more than satisfies Point 5 of Minsk II. Article 3 of that law says that anyone who “participated in the events” in the LDNR will not only be free from criminal investigation, but will enjoy the state’s guarantee that no government institutions or their representatives can discriminate against them based on their participation in the war. After Minsk II was concluded, President Poroshenko signed Ukraine passed Law 256-VIII, which says that 1680-VII goes into effect only after OSCE-certified free and fair elections are held in separatist territory. Note that making amnesty conditional on fair elections does not technically violate any provisions of either Minsk agreement. The Russian-separatist representatives at the Trilateral Contact Group have made it clear that they will not return hostages until they are guaranteed amnesty, not finding the amnesty terms of 1680-VII and 256-VIII sufficient. Note that it is important for Ukraine to not amnesty those guilty of international or war crimes. The most effective way to try these crimes would be through an international tribunal rather than Ukrainian courts.

Three of the remaining political points generate the bulk of the controversy surrounding the Minsk II agreement. Point 9 says that control of the border between Russia and Ukraine should be restored to Ukrainian control if Ukraine successfully implements Point 11. Point 11 requires Ukraine to (1) enact constitutional amendments permanently decentralizing power and (2) to pass laws permanently granting special status to the territory under occupation, which would entail local self-government, the right to form “people’s militias,” and more. The specifications for “special status” are included in the text of Minsk II. And then there’s Point 10, which mandates the “pullout of all foreign armed formations” and the “disarmament of all illegal groups.”

Public opinion in Ukraine makes it impossible to discuss a special status for the breakaway territories until free and fair local elections are held there, and the OSCE will not certify that elections were “free and fair” unless illegal armed groups and foreign armies withdraw. However, Minsk II says that border control does not need to be restored to Ukraine until after it decentralizes, while also requiring that local elections be held in accordance with Ukrainian law.

These interpretations are the source of the deadlock. Passing a law governing possible future elections that prop

Minsk II requires that any Donbas elections be held “in accordance with Ukrainian law.”

up what Kyiv calls “terrorist regimes” would be difficult for Ukraine’s elite to sell to the people, regardless of any merits this plan might have. The general fear on Ukraine’s side is that if Kyiv approves of the elections in separatist-held territory, the elections would grant the separatist leaders — who would likely win any election held at their guns’ points — some degree of legitimacy. Public opposition to granting even the slightest concessions to the separatists, much less elections that could possibly lead to “special status,” is driven by populists like Oleh Lyashko and his Radical Party, as well as Yulia Tymoshenko and her Fatherland Party, both of whom stand to gain many seats in Parliament if snap elections were held today.

The issue is further complicated by the fact that Minsk II requires that elections be held “in accordance
with Ukrainian law.” Ukrainian election rules are well-established, the consensus is that the language in Minsk II means that the elections should be held in accordance with Ukraine's law 256-VIII, which requires (among many other things) that there be no restrictions on who is allowed to run for office, that pro-Ukrainian parties be admitted to the election, and that the 1.5 million internally displaced persons be allowed to vote. Naturally, the LDNR oppose this, since the enfranchisement of internally displaced persons will significantly hurt them in the polls. In reality, it is likely that both Ukraine and the Russian-backed separatists will need to compromise regarding elections.

National Decentralization

The second main reason why Minsk II is seen as controversial is that it requires Ukraine to enact constitutional amendments that devolve some powers to local and regional governments. Like many post-Soviet countries, Ukraine kept in place the highly centralized Soviet system of government and never adopted any meaningful degree of local self-rule. The Ukrainian people and elites have both historically recognized the need to decentralize, but since the Donbas War began, “decentralization” is mistakenly seen as a codeword for granting special status to the breakaway regions. To be sure, the two are distinct, and Minsk II makes that clear: permanent legislation on special status is actually the second requirement of Point 11, the first being nation-wide decentralization via constitutional amendments.

The decentralization amendments proposed by President Poroshenko in July 2015 are highly controversial both inside and outside Ukraine. The bill passed its first reading in August 2015 with 265 votes but lacks the 300 to pass the second reading and proceed to enactment as a constitutional amendment. Popular opposition to decentralization is so great that during the first reading of the proposed constitutional amendments, massive protests erupted outside Parliament, and exploding grenades thrown by far-right radicals killed a few Ukrainian soldiers.

The proposed amendments divide local self-government into three levels, “community” (hromada), “district” (raion), and “province” (oblast). The community level would regulate schools, utilities, and public safety, while the district level would be charged with running specialized schools, hospitals, and the like. The provincial government would be in charge of infrastructure, specialized hospitals, and the protection of natural resources. This commonsense division of responsibilities is sorely needed in Ukraine.

Nonetheless, it is unlikely that 300 members of parliament would vote for the bill in its present form. Apart from the unpopularity of the idea, broad loopholes in the draft amendments allow for abuse of power by the President through “prefects” he or she appoints to “oversee” the work of the community, district, and regional councils. The President would have the power to unilaterally suspend the authority of the elected local bodies and appoint his or her own officials to take over. In the current version of the bill, this power is not limited — that is, nothing in the text of the bill requires the President to first get approval from Parliament or from the Cabinet of Ministers, and nothing in the text allows for Parliament or the Cabinet of Ministers to limit the President’s suspension powers in any way. In fact, the only influence the Cabinet or Parliament might have over the “prefects” would be through impeaching the

Fiscal decentralization has allowed local authorities to retain some tax revenue and have more control over regional and municipal budgeting.
President. In addition, the right to local self-government that the proposed amendments purport to grant is not given any protection in courts: the bill gives local authorities no legal remedy, should the President choose to suspend them. Some commentators argue that President Poroshenko’s proposed decentralization amendments would prevent local communities from being less dependent on Kyiv. The fact that “prefects” are appointed by the President, with no accountability to Parliament or the Cabinet of Ministers, casts doubt on whether the amendments are meant to decentralize power at all.

That said, Ukraine has been able to take some important steps toward de facto decentralization. Fiscal decentralization has allowed local authorities to retain some tax revenue and have more control over regional and municipal budgeting. Local authorities have also been given greater power over infrastructure, leading to 2.5-fold increase in the amount of roads that were paved. To a certain degree, the national government has given local governments more control over healthcare and education, leading to greater budget efficiency and more direct accountability.

Moving Forward

Perhaps the only middle ground that’s consistent with both Minsk II and the political realities in Ukraine is the following: Elections could be held in separatist territory without Ukraine’s control of the border but in such a way that Ukraine is satisfied that the elections were free and fair, ideally through the certification of an OSCE monitoring mission and in the absence of illegal and foreign armed groups. Ukraine might then enact constitutional amendments decentralizing power and, if it is still necessary, pass laws granting the Donbas permanent special status, in order for Ukraine to be given full control of the border with Russia.

This plan would be very unpopular in Ukraine, in Russia, and in the occupied territories. If forced on Ukraine prematurely, it might lead to the downfall of Ukraine’s government or to snap parliamentary elections that would put populists in charge of the country.

For these reasons, the international community should push for the separation of the political process from the security process. Indeed, the intertwining of the two processes is the source of the deadlock: Ukraine will not hold elections and make political concessions until they control the territory, and Russia and the LDNR will not hand over the border until they have “special status” and hold elections.

The strategy used by Georgia in 2008–20010 is illustrative of how separating the political and security processes might look. The political status of the occupied territory should be relegated to negotiations among Normandy Format foreign ministries, while other ministries negotiate a sustainable ceasefire and work to alleviate the humanitarian crisis.

RECOMMENDATIONS

1. The U.S. should continue to highlight the severity of the Donbas War, especially the fact that the Donbas War has displaced 1.8 million people from their homes and killed at least 10,000. Continue to highlight the plight of the Crimean Tatars, Crimea’s indigenous Sunni Muslim population, who have been the target of systematic repression by the Russian de facto authorities.

2. To break the deadlock in the Donbas War’s peace process, the U.S. should push for progress to be made in parallel on the security, political, and humanitarian directions. Ukraine insists that Russia and the separatists must adhere to a sustained ceasefire before Kyiv makes any political concessions, such as amnesty for separatists and special local elections. Russian President Vladimir Putin, on the other hand, said that without political concessions from Ukraine, there cannot and will not be peace. The U.S. should therefore push for these processes to be parallel and not sequential. The U.S. should become more

37 Ibid.
38 Recall that Point 9 of Minsk II is contingent on the fulfillment of Point 11.
deeply engaged in the entire peace process while also emphasizing that any progress on security, politics, or humanitarian concerns is only possible after a sustainable ceasefire.

3. The U.S. must continue to demand Russia’s full compliance with Minsk II, and should prioritize Russia’s compliance with the security points of the agreement as a condition of sanctions relief. The U.S. should also encourage Ukraine to specify that amnesty for separatists, agreed upon in September 2014, does not apply to international or war crimes. The Minsk 2 agreement includes mechanisms that the government of Ukraine can use to strengthen the sovereignty and territorial integrity of the country. While Ukraine has fulfilled nearly half its Minsk II obligations, additional progress increases the likelihood the EU will remain united behind the current sanctions regime. The U.S. should help Ukraine understand that abandoning the Minsk process would likely alienate key Western allies. Ukraine should take the initiative by implementing such points as national decentralization and passing a law that would govern possible future local elections in liberated territories.

4. The U.S. should increase levels of non-lethal military aid to Ukraine; defensive lethal weapons should be provided to Ukraine only if Russia escalates the conflict. Note that while it is unclear whether it is in the interests of either Ukraine or the United States for the latter to actually provide lethal defensive weapons to Ukraine, it is in both parties’ interest that Russia continues to believe there is a real chance the U.S. would do so.

5. The U.S. should provide financial aid and expertise to help Ukrainian and international organizations more effectively investigate human rights violations in the occupied territories. Urge the de facto authorities in Crimea and Donbas to comply with international human rights laws and standards.

6. Understand that from the point of view of the Ukrainians who joined the Russian-led separatists, the war was induced by economic difficulties — it is not an identity-based conflict. Data demonstrate that the conflict does not fall along ethnic or linguistic lines; rather, economic vulnerability is a better predictor of incidents and intensity of violence. This suggests, in turn, that any resolution to the crisis will need to include significant socioeconomic components and not just political concessions.

7. The U.S. should help Ukraine provide radio and TV broadcasting to Crimea and the Donbas.

8. The U.S. should provide seed funding to encourage Ukraine to develop and implement a coordinated plan to promote and bring about the successful reintegration of displaced persons and the return of their full political and economic rights. Part of this is encouraging donors to invest in housing, infrastructure repair and job training in secure parts of Ukraine to create jobs and housing opportunities for displaced families.

The views above are those of the majority of the production team.

FURTHER READING


Provisional record of the 7683rd United Nations Security Council Meeting, on the implementation of the Minsk Agreements and overall security situation in eastern Ukraine, 28 April 2016.
Until the 2014 Maidan Revolution, the security and stability of Ukraine was an important but not vital American interest. President Obama and others believed that although there were some American interests in Ukraine, for Russia Ukraine was a “core” interest; making it “vulnerable to military domination by Russia no matter what we do.”1 And President-Elect Donald Trump’s views appear to reflect a much deeper acquiescence to Russian interests in Ukraine.

However, the U.S. national interest evolves as the global security situation evolves. Maintaining America’s power position in the world is a vital interest, and Russia’s incursions into its neighbors’ territory erode that power position. This is the third time that Russia has forcibly changed the border of an independent state since 1991.² Values and principles aside, caving to Russian pressure and forcing Ukraine to accept “limited sovereignty” demonstrates that the U.S. yields to pressure and blackmail.³

The Role of the United States

The United States has played an increasingly important role in Ukraine since the revolution. Senior Obama administration officials visited Ukraine regularly, including Vice President Biden. The United States was key in developing Ukraine’s IMF program, and direct financial assistance from Washington has accelerated certain important reforms in Ukraine.

While not without controversy, the Obama administration’s Ukraine policy was instrumental for Ukraine’s development after the Maidan. The highest profile debate regarding U.S. policy towards Ukraine has been whether to provide the country with lethal (but defensive) weapons. In December 2014, Congress passed the Ukraine Freedom Support Act, which gave the U.S. government the authority to spend $350 million on defensive weapons for Ukraine.⁴ Many Obama administration officials — among them Secretary of State John Kerry, Secretary of Defense Ash Carter, Supreme Allied Commander in Europe Philip Breedlove, and Assis-

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2 The other two being Georgia (2008) and Moldova (1992).
Overview of U.S. Policy on Ukraine

Tentative Secretary of State for European and Eurasian Affairs Victoria Nuland — had advocated for President Obama to send Ukraine the authorized weapons. They argued that increasing Ukraine’s military capabilities would both send a strong signal and raise costs for possible Russian escalation. Numerous members of Congress from both parties have also pushed the administration to arm Ukraine. Those few who do not want to arm Ukraine claim that Russia could easily increase its support to the separatists, thus negating the effect of any aid the U.S. sends, while making the war longer and bloodier. They are also wary of the possibility of entering into what they view as a U.S.-Russia proxy war, noting that Ukraine has the capability to produce its own weapons. Due to these conflicting views and concerns, the $350 million for lethal aid remains unspent.

The Obama administration provided economic and technical support for many facets of Ukraine’s reform process.

Aside from the debate over lethal aid, the U.S. has provided $1.3 billion for security, reform, and technical assistance since the beginning of the Revolution. Security support makes up $600 million of this aid, providing body armor, vehicles, night and thermal vision devices, medical equipment, heavy engineering equipment, radios, patrol boats, rations, tents, and counter-mortar radars. U.S. forces take part in Operation Fearless Guardian, a training mission for the Ukrainian military million to train the country’s National Guard. The U.S. also continues to participate in Operation Rapid Trident, a long-standing annual training exercise that includes soldiers from 18 nations — Ukraine, the U.S., as well as NATO member and Partner-ship for Peace countries — that seeks to increase interoperability across the participants’ militarys.

The Obama administration also provided economic and technical support for many facets of Ukraine’s reform process. One of the most visible and popular reforms has been the creation of a new police force to take over some of the responsibilities of Ukraine’s notoriously corrupt “militsia.” The police reform initiative was made possible by a $15 million dollar grant from the U.S. Department of Justice to fund a training program for 100 Ukrainian police instructors, who then went on to train new police forces throughout Ukraine. Initial reports show that this program has been one of the most successful U.S.-backed reform projects, since eliminating citizens’ day-to-day experiences of corruption helps change attitudes about society as a whole.

The U.S. has been at the forefront of delivering humanitarian aid to Ukraine. Since 2014, USAID and the State Department has provided $135 million in humanitarian aid, including food, medical supplies, shelter, and logistics assistance. The U.S. was by far the largest donor, surpassing the second largest — the European Commission — which provided $43.7 million. To help Ukraine rebuild its struggling economy, the U.S. has provided $3 billion in loan guarantees as part of an international $40 billion loan package of support for Ukraine’s economy.

In the 2015 Defense Appropriations Bill, Congress appropriated an additional $300 million to the U.S. Department of Defense to provide aid to Ukraine for 2016. The Consolidated Appropriations Act of 2016 (signed in December 2015) provided $658 million to the State Department for bilateral economic assistance, international security assistance,

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5 Josh Rogin, “Kerry Tells Lawmakers He’s for Arming Ukraine,” Bloomberg View, 9 February 2015.
7 “Ukraine Gets $266 mn from U.S. over Two Years —Pyatt,” UNIAN, 26 January 2016.
14 “The U.S. promised another $1 billion to Ukraine,” Agence France-Presse, 19 May 2015.
16 “U.S. to back $2 billion in loan guarantees for Ukraine,” Reuters, 13 January 2015.
The United States played a leading role in forging an international coalition to sanction Russia for its actions in Ukraine.

multilateral assistance, and export and investment assistance to Ukraine.\(^\text{18}\) In response to Russian aggression, the Obama administration had also requested $3.4 billion for military spending in Europe next year, more than quadrupling the current funding of $789 million.\(^\text{19}\)

The United States played a leading role in forging an international coalition to sanction Russia for its actions in Ukraine. In March 2014, President Obama issued an executive order putting in place travel bans and asset freezes on individuals connected to Russia’s annexation of Crimea,\(^\text{20}\) and he partnered with other world leaders to suspend Russia’s membership in the G8.\(^\text{21}\) As Russia began fomenting conflict in the Donetsk and Luhansk oblasts (provinces), the U.S. ramped up its sanctions to include Russian energy, financial, and defense firms.\(^\text{22}\) The administration urged the EU to join in on broader sanctions,\(^\text{23}\) and has since been instrumental in helping the bloc overcome its internal divisions to maintain a unified front on Russian sanctions.\(^\text{24}\)

In addition to direct material and financial aid, American officials were crucial in supporting Ukraine on the international stage. Former U.S. Ambassador to Ukraine Geoffrey Pyatt, current U.S. Ambassador to Ukraine Marie Yovanovitch, former U.S. Permanent Representative to the United Nations Samantha Power, as well as current U.S. Permanent Representative to the United Nations Nikki Haley have been outspoken in condemning Russian aggression against Ukraine. They held Russia accountable for its misinformation campaign, at the same time insisting that the U.S. support Ukraine’s sovereignty while helping in its reform process. Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland has been a leading figure of support for Ukraine within the administration both during and after the Maidan, helping to secure much of the aid mentioned above.\(^\text{25}\) Former Vice President Joe Biden visited Ukraine four times since the Russian invasion of Crimea. During his trip in December 2015, Biden announced an additional $190 million in U.S. support to help Ukraine implement its programs for reform and fighting corruption.\(^\text{26}\)

Responses to Donbas War

One of the most contentious, if over-emphasized, questions in U.S. policy toward Ukraine is whether or not the United States should proactively supply lethal weapons, even if defensive, to Ukraine.

Those who support arming Ukraine include Ash Carter,\(^\text{27}\) John Kerry,\(^\text{28}\) Chuck Hagel, Michèle Flournoy, Ivo Daalder, and many others.\(^\text{29}\) Former National Security Adviser Susan Rice had resisted calls for giving Ukraine lethal weapons, despite signalling in February 2015 that her views might change. Around the same time, President Obama told a press conference that “it is true that if in fact diplomacy fails, what I’ve asked my team to do is look at all options … The possibility of lethal weapons is one of those options that is being examined.”\(^\text{30}\)

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\(^{25}\) Victoria Nuland, “Testimony on Ukraine,” Senate Foreign Relations Committee, 8 October 2015.


\(^{30}\) Michael Kofman, “How to Start a Proxy War with Russia.” *The National}\n
The strongest argument for providing Ukraine with lethal defensive weapons is that increasing the cost of escalation for Russia makes escalation less likely: since one of Russia’s goals is to credibly threaten to destabilize Ukraine in order to exert influence over its policy choices, if the cost of this destabilization becomes prohibitively high, the Kremlin’s influence over Ukraine can be diminished. However, this assumes that the weapons provided by the United States would increase the cost of Russian escalation past some critical point, which is far from clear. *Specifically because that critical point is unknown*, arming Ukraine risks provoking Russian-separatist forces, rather than deterring them.

A second argument used by proponents of providing Ukraine lethal defensive weapons is based on the Budapest Memorandum on Security Assurances of 1994, a political agreement between the U.S., U.K., Russia, and Ukraine. When Ukraine became an independent state in 1991, it inherited the world’s third largest nuclear arsenal from existing Soviet military assets and installations on Ukrainian territory. Through the Budapest Memorandum, Ukraine agreed to transfer its nuclear arsenal to Russia, conditional on the other parties agreeing to respect Ukraine’s independence, sovereignty, and existing borders, in addition to promising not to use economic or other leverage to influence Ukraine’s politics.31 In response to Russia’s annexation of Crimea and ongoing war in Ukraine’s easternmost regions, the United States declared that Russia violated its commitments in the Memorandum.32 Some argue, therefore, that failing to provide lethal defensive aid to Ukraine damages American credibility. However, while this may be a moral case for providing Ukraine lethal defensive aid, the Budapest Memorandum is not a legally binding document and does not oblige the United States to intervene to help Ukraine. Moreover, one could argue that the extensive non-lethal U.S. military aid has satisfied its commitment.

In the end, the arguments against arming Ukraine are stronger, from the point of view of both Ukraine and the United States. First, providing lethal weapons runs the risk of inflaming a simmering conflict and igniting a proxy war between the United States and Russia, in a region to which both Donald Trump and Vladimir Putin have signaled it is the latter who has the stronger commitment.

Second, the current level of strategic depth is preserved if the United States focuses on financial, political, and technical aid, keeping the option of arming Ukraine open, and hinting that the option becomes more likely if Russia escalates the conflict. Third, lethal defensive weapons are not the only way to increase the costs of a Russian military escalation. Other options include helping the Ukrainian armed forces prepare fortifications and erect anti-tank barriers. Finally, note that from the point of view of the Ukrainian electorate, it is important that their elected officials continue asking for lethal aid from the United States. Thus it is difficult to tell whether Ukrainian elites truly believe lethal aid will help.

For these reasons, it may indeed be better for the U.S. to maintain its policy of not sending lethal weapons to Ukraine, although the option should certainly be kept open. Keeping the option on the table acts as a restraint against further Russian aggression, since Russia fears that if it were to escalate the fighting, the United States could respond by sending arms to Ukraine. Providing lethal aid to Ukraine should be strongly considered in the event of a Russian escalation in Ukraine.

**Key Takeaways**

1. **The United States has a fundamental interest in Ukraine’s future and should play a larger role in the relevant international negotiations.** This is particularly important since no signatories of the Budapest Memorandum — who pledged to respect Ukraine’s sovereignty and consult with each other if Ukraine’s territorial integrity were violated — are present in the Minsk process, other than Russia. The U.S. should be proactive in setting strategic goals regarding Ukraine, rather than reacting to Russian actions. One way to do this would be to engage more deeply with Germany in the negotiations instead of ceding responsibility completely.

2. **It is key to understand that the Kremlin’s**
reckless behavior toward the U.S. and its allies is calculated to make Russia appear as if it is not a declining power, but a strategic adversary. Russia’s primary interest in destabilizing Ukraine is not to counteract decades of Western-bloc expansion, but to prevent Ukraine from becoming a successful democracy that might serve as an example for the Russian people. Russia uses a Huntingtonian civilizational narrative to justify intervention to halt the development of democracy in East Slavic countries (Russia’s perceived sphere of influence), thus creating a self-fulfilling prophecy of the incompatibility of democracy with East Slavic culture. Supporting Ukraine’s transition to democracy is the best way to undermine this narrative.

3. Strict conditionality of financial aid remains an effective tool to influence Ukraine’s political elites. The IMF’s support package for Ukraine is an example of effective conditionality, although the required tight fiscal policies may actually be contributing to the recession in Ukraine. The conditionality of aid should be re-focused on strengthening and legitimizing state institutions rather than dismantling them; for example, Ukraine’s economy can recover more quickly if property rights are secured and the judiciary is cleaned up.

4. Skepticism about arming Ukraine should not be interpreted as a shibboleth distinguishing those caving to Russian aggression. There are effective ways to help Ukraine defend itself that do not involve risking an escalation of the conflict.

**RECOMMENDATIONS**

1. Ukraine and its partners must focus on building a successful and prosperous Ukraine on the territory it currently controls. This means maintaining a robust sanctions stance and keeping the stakes high for potential Russian escalation, while at the same helping Ukraine build its economy.

2. As public frustration with austerity and the slow pace of reforms increases, the U.S. should increase the visibility of the impact of American assistance. In order for the people to continue to support Ukraine’s pro-Western choice, they must feel that that choice has had a positive impact on their lives. The public is waiting to see infrastructure rebuilt and the education and healthcare sectors reformed. Structural and top-level reforms, though important, can be largely invisible to an impatient public.

3. The U.S. should help Ukraine in its efforts to provide Russian-language radio and TV broadcasting to Crimea and the Donbas. The U.S. should help build transmission towers so that 3G cell phone coverage can be provided to the occupied territories. The U.S. should encourage Kyiv to increase engagement with the south-east of Ukraine with a public awareness campaign focusing on bolstering local self-government bodies and minority rights.

4. In every conversation with senior Ukrainian officials, the U.S. should highlight humanitarian concerns and the need to bring an end to Ukraine’s commercial food and medical blockade of occupied territories. The U.S. should insist that all sides, including Ukraine’s military and intelligence agencies, respect fundamental liberties, including the right to be free from torture.

The views above are those of the majority of the production team.

**FURTHER READING**


Civil Society in Ukraine

Oleksandra Matviychuk is a Ukrainian civil society leader and a recipient of the OSCE’s Democracy Defender Award.

Since the 2014 Maidan Revolution, Ukraine has worked to expand its democratic institutions while striving to meet European governance standards. To a large extent, this is due to the work of an active civil society. When Ukraine meets new challenges, it is civil society which quickly reorganizes in order to meet those challenges. This is attributed to a phenomenon referred to as “Maidan Energy” — representing the collective effort of hundreds of thousands of people, working to solve societal problems and emphasizing individual responsibility for the continued democratic development of the country.

The Maidan acted as a sort of catalyst for the development of civil society and the creation of a powerful volunteer movement. Ukraine must take full advantage of the new possibilities brought about by the Revolution of Dignity. Ideally, successful democratization would be good not only for Ukraine, but for other states in the region, some of whom have recently rolled back fundamental freedoms and civil liberties.

This section discusses civil society in Ukraine before the Maidan, after the Revolution, and gives recommendations for U.S. engagement with Ukrainian civil society in the future.


Political Persecution of Civil Society

Before the Maidan

Following the election of Viktor Yanukovych as a President of Ukraine in February 2010, the Party of Regions undertook the creation of a vertical, centralized power structure. In October 2010 the Constitutional Court of Ukraine decided to restore the Constitution of 1996, adding a whole range of new presidential powers. It became increasingly clear that the authorities considered key rights and freedoms (e.g., freedom of expression, freedom of peaceful assembly and association, right to a fair trial, right to personal privacy) to be a threat to the expansion of their authoritarian rule. A worsening economy and increasing poverty accompanied the strengthening of the authoritarian regime. Combined with the unprecedented scale of corruption, these developments led to the loss of credibility of key state institutions, public discontent, and protests.

Within a year of Yanukovych’s election and the expansion of presidential powers, human rights organizations like Freedom House and Amnesty International reported the beginning of a systematic attack on personal rights and fundamental freedoms by the government.³ Opposition politicians, journalists, human rights defenders, and public activists became victims of repression. Importantly, both judicial means — unlawful arrests, fabricated administrative, and criminal cases — and extrajudicial means — threats, destruction of property, assault, and even murder — were employed by Ukraine’s authorities.⁴

By the beginning of 2013, the independence of the courts and the principle of adversarial proceedings in cases against state institutions had effectively been abolished. Judicial independence was further eroded by laws giving prosecutors the right to influence judges through the High Council of Justice whenever the judge disagreed with their position. Law enforcement was systematically employed to persecute civil society and suppress freedoms of speech and assembly.⁵ A vivid example is the unlawful dispersal of the marches that took place across Ukraine in June 2013, when protesters demanded the prosecution of a law enforcement official who had raped and attempted to kill a woman in Vradyivka.⁶

It is important to emphasize the growing influence of Russia in Ukraine’s internal processes of adopting of crucial state decisions. For several months before Maidan, the Russian Federation used various methods to hinder European integration, including so-called trade wars, during which Russia placed arbitrary bans on Ukrainian-manufactured goods at key junctions in political negotiations.⁷ Parliament members from the ruling Party of Regions submitted bills analogous to those in Russia aimed at limiting fundamental rights and freedoms, often under the guise of combating extremism. For these reasons, the unexpected decision by the government on November 21, 2013 to postpone the process of signing the Association Agreement between Ukraine and the European Union at the upcoming EU summit in Vilnius was perceived as a rejection of EU integration and a pivot toward the Eurasian Customs Union.

Civil Society on the Maidan

The unprovoked assault on peaceful protesters on the night of November 30, 2013, served as a catalyst of the protest movement. The protests swelled over the coming weeks, eventually reaching more than half a million participants.⁸ According to opinion polls, the main motive for individuals subsequently joining the Maidan was the assault on protesters on November 30 (69.6%), followed by the refusal of Yanukovych to sign the Association Agreement with the European Union (53.5%), as well as aspirations to change life and government in Ukraine (49.9%).⁹

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³ The Kharkiv Human Rights Protection Group, ibid.
⁷ “Указ Президента РФ от 6 августа 2014 г. No. 560 О применении отдельных специальных экономических мер в целях обеспечения безопасности Российской Федерации” [Presidential Decree of August 6, 2014 N 560 “On the application of certain special economic measures to
The activists who took part in the Maidan came from diverse social and economic strata. According to Anton Oleynik, Associate Professor of Sociology at Memorial University of Newfoundland, Canada, “These people contributed to their common goals financially, materially (e.g., bringing food, clothing, fuel, and other supplies), and through volunteer work.... The current massive civic action movement was born during the Maidan protests of 2013-14 and became even more robust and active after the start of hostilities between Russia and Ukraine in February of 2014.”10

The Maidan Revolution led to the fall of the authoritarian regime and opened the possibility of building a democratic state upon values held in common with other European countries. However, Russia’s actions in Crimea and the Donbas have led to a mass exodus from these regions due to the threat to people’s lives and freedoms — this section focuses primarily on the development of civil society in the areas currently under Ukrainian control.

Challenges for Civil Society Growth

Both during and after Maidan, Ukraine’s blossoming civil society (referred to as “the volunteer movement”) was made up of people from different strata of society. Currently, the civic activists referred to as “volunteers” are people of different ages, professions, faiths, political ideologies, social origins, ethnicities, financial situations, etc. They have created various horizontally structured organizations that have been functioning effectively for over two years. After the Maidan, the volunteer movement focused initially on assisting Ukraine’s armed forces and the volunteer battalions, as well as helping accommodate the influx of internally displaced persons (IDPs) from Crimea and Donbas.

Additionally, these civic organizations began facilitating social reforms in various areas including public oversight of the government, documentation of the violations of human rights, and reporting crimes in the areas of armed conflict. In essence, civil society is acting as a parallel state, working in tandem with government institutions. It is no accident that according to sociological studies, the volunteer movement has become one of the most influential institutions in modern Ukraine.11 Volunteers are now one of the three most trusted groups in the country, alongside the church and the military.12

Today, the recently reborn civil society faces a number of key challenges that will influence how Ukraine moves forward. The first challenge facing civil society is to force the government to undertake democratic reforms and not become a continuation of the old system. Second, Ukraine must resist Russian aggression while striving not to become an authoritarian state itself. Finally, the third challenge is to continue rapid development and not lose touch with society at large.

Challenge #1

There was no meaningful “reset” of the political system or a change in the composition of political elites after the Maidan Revolution. This helps explain the current focus on reevaluating the functions of existing institutions and establishing a new hierarchy of institutions and individuals, instead of creating new independent institutions. Political parties have attempted to improve their reputations by recruiting former civil society activists into their ranks. Government institutions have invited activists to be part of different reform councils and to some extent has been forced to take public opinion into consideration when making decisions.

Challenge #2

In response to the Russian invasion and separatist

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10 Anton Oliynyk, Войни добра на всіх фронтах. Як волонтери стали соціальними інноваторами, Ukrainska Pravda, 13 July 2016.


movement, the government has felt it necessary to take often disproportionate steps to restrict personal liberty. In other words, the goals of the government’s measures are understandable, but the measures themselves are quite controversial in their implementation. Because these measures are taken in order to “combat Russian aggression,” they enjoy the support of Ukrainian society despite being overly restrictive. This creates the impression that Ukrainians are willing to voluntarily surrender the gains that they made during Maidan such as increases in their freedoms of speech, assembly, and protection against discrimination. Winning the Donbas War at the expense of becoming an authoritarian state like Russia would do little to build Ukraine into a democratic society with rule of law. This is why the protection of democratic values must remain one of the main goals of civil society.

**Challenge #3**

Sociological studies demonstrate an interesting tendency: while half of Ukrainians believe that society’s readiness to fight for its rights has increased, only a little over 30% say that they are personally more willing to stand up against the violation of their rights. Similar responses were received when people were asked whether Ukrainians are more willing to join civic organizations. Approximately 50% of respondents indicated that Ukrainians were more willing to do so, yet only 18% expressed willingness to personally join a civic organization. According to Iryna Bekeshkina, the head of the Ilko Kucheriv Democratic Initiatives Foundation,

We see a rise in civic activity. This is a fact. However, why is this happening? Because those who were active before have become even more active now. This is a problem because people can only maintain this level of motivation for so long. This is why civil society now faces the task of bringing more people into the fold.

**Recommendations**

1. **The U.S. should develop new formats of working with Ukraine that give civil society a seat at the table, not just a consultative role.** After all, civil society has been an actor equal to — or even greater than — state institutions when it comes to the democratization of Ukrainian society.

2. **Policies which direct aid to only a narrow circle of civic organizations with a certain level of financial management must be expanded in order to include more recipients.** It is important to support new grassroots initiatives, including those in the newly liberated regions in the east of the country, which are not technically listed as civic organizations.

3. **All diplomatic, legal, and economic means must be used to pressure the Russian Federation to protect members of civil society from persecution in the occupied territories.**

**Further Reading**


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Ukraine suffers from systemic corruption and can be characterized as a captured state. Although corruption does exist in the private sector, public sector corruption draws the most attention and requires state action.¹ This paper uses the World Bank’s narrow definition of corruption — “the abuse of public office for private gain.”²

In a captured state, the majority of government employees use their positions to serve their private interests rather than the interests of the state or its citizens. Of course, there are no corruption-free states. But in countries with only episodic corruption, the majority of public servants act honestly, often because the expected punishment for rent-seeking activities exceeds their benefits.

A modern state performs several important functions, including providing public goods, correcting market failures, protecting competition, partially redistributing income and setting up a social safety net. In captured states, these functions are performed badly — public goods are scarce and low-quality, regulations are used for the enrichment of officials and their “friends,” markets are monopolized (often with the help of admin-

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The belief that bribery is integral to the Ukrainian mentality stems from (1) an excessive and complicated system of regulations and (2) a large, poorly paid, and inefficient bureaucracy that uses its monopolistic position for rent-seeking.

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or private lessons). Another example of inequality is how difficult it is for “outsiders” to enter government service, let alone take on key positions. In Ukraine, this situation has only partially changed after the Revolution of Dignity, due to the overwhelming inertia within the system.

A thriving shadow economy is both a consequence and a source of corruption. First, regulations are difficult to comply with due to their contradictory nature or vagueness, and thus officials can decide what constitutes compliance and collect bribes from businesses willing to escape prosecution for non-compliance. Therefore, firms are pushed into the shadows in order to (1) circumvent some regulations and (2) get some unregistered cash for bribes. Second, corruption at the highest levels of government serves as an excuse for corruption at all levels. A government clerk may think, “Why can I not accept this small gift if the president has built a palace for himself?”

Under systemic corruption, honest actors are a minority since honest behavior is punished by the system: government officials get low salaries; moreover, they are often required to regularly pass cash to higher-level officials, which makes taking bribes a necessity.

Citizens of systemically corrupt countries generally have low trust in state institutions. Figure 1 illustrates this for Ukraine. This lack of trust slows down even genuine attempts at reforms.

Figure 1. Level of trust to different institutions. Data source: Institute of Sociology “Social Monitoring Survey”

Figure 1 shows the index of trust measured from –1.0 to 1.0, which is constructed in the following way: the share of people who do not trust or mostly do not trust a certain entity is subtracted from the share of people who trust or mostly trust this entity, and the result is normalized by the share of people who provided an answer other than “hard to say.” A negative index means that more people do not trust an institution than trust it. This figure shows that Ukrainians trust each other but do not trust political institutions (indices of trust in the President, Parliament and government are negative), but the lowest trust is to the “militsia” (police) and judicial system.

3 See, for example, the electronic library of the National Institute for Sociology, accessible at i-soc.com.ua/institute/el_library.php.
The Ukrainian system of corruption has its roots in the pervasive regulation of the Soviet period, during which two “systems” operated in parallel: official state structures and deals made on a person-to-person level. Indeed, relying on informal arrangements was the only way for citizens to survive. This informal system continued to develop during the years of independence, and now it is so well established that many see corruption as an inherent feature, or “mentality,” of Ukrainians. In a recent survey by the Kyiv International Institute of Sociology (hereafter referred to as KIIS), 66% of respondents agree that “Bribery is an integral part of the Ukrainian mentality.”

We believe that this “mentality” stems from two factors: (1) excessive and complicated regulations and (2) a large, poorly paid, and inefficient bureaucracy that uses its monopolistic position for rent-seeking. By the end of 2013, every government agency was a rent-seeking machine delivering payments from the bottom up, with each level taking a share. There is evidence that people paid to get even a low-salary job at the government or a state-financed institution to become a part of this machine.

Therefore, it is not surprising that not only “oligarchs” but also mid-level bureaucrats strongly resist reform attempts. Ukraine has close to 300,000 civil servants and nearly 3 million public employees. On the other hand, millions of citizens engage in the supply side of corruption, paying bribes and using personal connections to

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5 The report “Corruption in Ukraine” was prepared by Kyiv International Institute of Sociology and financed by UNITER project of the United States Agency for International Development. It can be accessed at kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20ENG.pdf

6 This infographics texty.org.ua/action/file/download/file_guid=37483? shows cases of bribes which had been proven in the courts. For example, a nurse at a district hospital paid $1000 to get her job which pays less than $100 a month. The highest proven bribe ($200k) was paid for the position of a head of regional ecology inspection. There is also anecdotal evidence that highest level positions are sold for millions of dollars.

7 State Statistical Service, 2015, ibid.
“get things done” (bypass the law) or to accelerate bureaucratic procedures.

Legislation in Ukraine is often complicated and contradictory, sometimes deliberately designed to create opportunities for rent-seeking, either by providing discretion to officials, by imposing very high compliance costs on businesses, or both.

The KIIS report shows that 70.7% of Ukrainians had some experience with corruption in 2015, compared to 72.4% in 2011. This small but statistically significant reduction is due to a decrease in the incidence of voluntary bribes from 40.5% in 2011 to 35.6% in 2015.

At the same time, the level of extortion (i.e., involuntary bribes, payments demanded by officials) is much higher than the incidence of voluntary bribes. Extortion has remained relatively stable with 56.8% of the population experiencing extortion in 2015, compared to 57.1% in 2011.

What Can Be Done?

Anti-corruption reforms require not only political will but a strong legal foundation. This is especially true in Ukraine, where strict compliance with legislation is often used as a form of sabotage. Therefore, “cleaning” the legislation from vague or contradictory norms would greatly reduce the opportunities for corruption.

Among the post-Soviet countries, the only success story in meaningfully reducing corruption is Georgia. Several veterans of Georgian transformation, including its former president, Mikheil Saakashvili, had taken high-level positions in Ukraine after the Maidan. However, by December 2016 all of them resigned. Faced with a strong resistance from the mid-level bureaucracy and a lack of political support from top-level officials, these reformers have shown only moderate progress.

By looking more closely at the Georgian example, we can identify a few key ingredients to the success of its reforms, nearly all of which are missing in Ukraine.

1. Outsiders. In Georgia, reforms were implemented by political “outsiders” (i.e. those outside the political system), whereas the current Ukrainian political elite has been entrenched for decades. While many figures from the private sector or other countries entered the previous government led by Arseniy Yatsenyuk, they lacked strong political support and were not able to overcome the resistance of the system. To a certain extent, the much needed high-level political support for reforms was provided by the IMF, EU and international organizations, who played the role of an “outside enforcer of reforms.”

2. Concentration of power and a mandate for reform. In Georgia, there was one decision-making center, the government under President Saakashvili. In Ukraine there are effectively two heads of the executive power — the President and the Prime Minister.

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8 Ibid.
9 Although this factor is rarely mentioned, Ukrainian labor legislation, which is overly protective of employees, is slowing down reforms considerably. For example, there were multiple instances when corrupt state-owned enterprise heads could not be fired because they were on extended sick leave or vacation. When replaced by new people, who selected through open competition, the corrupt officials were reinstated by courts on technicalities. There are also many instances when police officers did not pass the integrity check and were subsequently fired, only to be reinstated through court decisions because of a loophole in the law on the police reform. For an interesting comparison to the relationship between reform and labor legislation in Botswana, see Joseph Patrick Ganahl, Corruption, Good Governance, and the African State. A Critical Analysis of the Political-Economic Foundations of Corruption in Sub-Saharan Africa. Potsdam University Press, 2013. https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/index/index/docId/6664/. Eastern European countries are a good example of tackling corruption but they had a large stimulus in the form of EU admission, and some of them considerably reduced AC effort afterwards - see Mungiu-Pippidi, Alina (2010). The Experience of Civil Society as an Anticorruption Actor in East Central Europe. Romanian Academic Society and Hertie School of Governance, 2010.

10 Dismantling systemic corruption is rarely a success and requires strong political will from top officials and/or some external incentive. For example, Ganahl (2013) shows that in Sub-Saharan Africa only Botswana has been a success. Ganahl, Joseph Patrick (2013). Corruption, Good Governance, and the African State. A Critical Analysis of the Political-Economic Foundations of Corruption in Sub-Saharan Africa. Potsdam University Press, 2013. https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/index/index/docId/6664/. Eastern European countries are a good example of tackling corruption but they had a large stimulus in the form of EU admission, and some of them considerably reduced AC effort afterwards - see Mungiu-Pippidi, Alina (2010). The Experience of Civil Society as an Anticorruption Actor in East Central Europe. Romanian Academic Society and Hertie School of Governance, 2010.

Minister — who are often involved in infighting. In the current political cycle, this led to a sharp drop in their popular support and replacement of the Prime Minister in April 2016. An alternative to this infighting is power concentration, but this too carries concrete risks.

3. Small country and a small state. Another obvious difference between Ukraine and Georgia is the size of the country and the size of the state. In Georgia at the start of reforms in 2003, total government expenditure was 16.5% of GDP. It peaked at 36% in 2009. In Ukraine, which has ten times the population of Georgia, the government redistributed 37% of GDP in 2003, and 45% in 2014. Naturally, the larger the “pie” that officials get to distribute, the higher is the potential for corruption, especially given the high level of discretion that Ukrainian legislation provides.

4. External conditions. The global economic and security situation during the time of intense reforms in Georgia (2004-2007) was more favorable than today, so the results of reforms were quickly visible in the form of economic growth and foreign direct investment (FDI) inflow. Today, Ukraine cannot expect similar economic growth even if it instituted similarly radical reforms. On the other hand, the economic crisis may provide additional incentives for structural changes.

5. The war. Russian aggression in Ukraine started before the reform process, when the state was practically dysfunctional. While the war mobilizes both civil society and the government, it detracts resources from productive activities — in 2016, Ukraine’s defense expenses were 2.7% of GDP compared to 1% of GDP in 2013. Sometimes the war is used as an excuse for the sluggishness of reform efforts while creating additional opportunities for corruption, such as non-transparent procurement of military supplies.

What Has Changed?

People’s attitudes in Ukraine toward corruption have shifted. While we cannot directly compare the data from the 2011 and 2015 surveys by the Ukraine National Initiatives to Enhance Reforms (UNITER, see Table 1), we note a two-fold decrease in the share of people who think that corruption for personal benefit is always justified.

Figure 3. Do you believe that giving bribes, unofficial services or gratuities can be justified if it is necessary for resolving a problem that is important for you? (% of respondents), Source: UNITER surveys

<table>
<thead>
<tr>
<th>Year</th>
<th>Always Justified</th>
<th>Sometimes Justified</th>
<th>Never Justified</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>8.1</td>
<td>43.1</td>
<td>43.8</td>
</tr>
<tr>
<td>2009</td>
<td>7.6</td>
<td>43.5</td>
<td>45.9</td>
</tr>
<tr>
<td>2011</td>
<td>6.1</td>
<td>41.9</td>
<td>41.2</td>
</tr>
<tr>
<td>2015</td>
<td>3.2</td>
<td>19.1</td>
<td>37.4</td>
</tr>
</tbody>
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Another survey provides more evidence of decreased tolerance to, as well as incidence of, corruption (Figure 4). At the beginning of 2016, three times fewer people thought that corruption could be justified, and the share of people who offered some benefit to an official decreased by a

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13 For the last few years Georgia has been keeping government expenditures below constitutionally prescribed 30% of GDP level.
14 Data from the IMF World Economic Outlook Database, April 2016.
15 Data from the Ukrainian treasury.
Anticorruption Reforms

third compared to 2013.

What Has Been Done?

Reduction of corruption rests on two pillars - prevention and punishment. In our view, prevention is more important since in the absence of opportunity, a corruption act will not occur. However, with a focus on punishment, the probability of corruption is nonzero, depending instead on the scale of the corruption benefit and the expected punishment. Therefore, reforms which reduce the possible scope of corruption are more efficient than measures aimed at punishing corrupt officials.

Figure 5 shows that many reforms adopted in 2015-2016 contained anti-corruption components, although very few of them were purely anti-corruption measures.

Below we provide an overview of the main developments that reduce the opportunities for corruption in Ukraine.

State procurement reform is one of the most important reforms Ukraine has passed. Since August 1, 2016, the Prozorro electronic public procurement system has been mandatory for use by all state agencies and budget-financed institutions. Developed by a group of civil activists who now work for the Ministry of Economic Development and Trade, this system has recently won the Procurement Leader Award. To date, the use of the system saved about UAH 7 billion ($280 million). Prior to its introduction, only firms with personal relationships to government officials could expect to win tenders (and naturally, their price was not the lowest one), so "outsiders" did not even submit their bids.

An important part of the procurement reform was the outsourcing of state procurement of medical drugs to international organizations. The law implementing this reform was adopted in March 2015 and enacted in late 2015, but it has already brought in savings of about $34 million.20

Unification of gas prices (elimination of cross-subsidization of households at the expense of industry) and de-monopolization of the natural gas market have wiped out a wide range of opportunities for corruption.

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19 See the Ministry of Economic Development FB page: facebook.com/mineconomdev/posts/1160370977353882.

20 See the report and infographics here: patients.org.ua/2016/07/07/mizhnarodni-organizatsiyi-zakuplyat-na-zekonomleni-200-mln-gryn-dodatkovi-liki/
tion. For example, gas distribution companies were able to buy subsidized natural gas intended “for the population” and sell it to industry with more than a 100% markup.

As a result, the deficit of the state-owned energy monopoly Naftogaz dropped from above 7% of GDP in 2014 to about 2% of GDP in 2015, and it is expected to be zero at the end of 2016. Bringing prices for households to import parity level was a necessary precondition for natural gas market reform. The next step was the adoption of the law “On natural gas market” that introduced some elements of the EU Energy III package. Starting in April 2017, Ukraine’s gas market is expected to function in accordance with EU norms. Equally important has been the replacement by the EU of Russia as Ukraine’s main gas supplier. In addition, Ukraine launched a large-scale energy efficiency program supported by the World Bank.

**About 100 deregulation initiatives** have been adopted during 2015-2016, although the majority of them were incremental (Figure 6). The most important ones are the laws on deregulation, canceling of a number of licenses and certificates or simplifying procedures for obtaining them. Deregulation results in large savings for business. For example, the former Minister of Agrarian Policy said in an interview that simplification of obtaining quarantine certificates alone saved the industry about UAH 12 billion ($0.5 billion) per year.

The recent simplification of registration procedures

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21 For detailed information about the methodology behind calculating the index, see imorevox.in.ua/?page_id=30
23 The replacement of Russia as Ukraine’s primary gas supplier is important because gas supplies were used by Russia as a weapon, and for quite a long time for the extraction of rents by the Russian and Ukrainian governments.
Anticorruption Reforms

for drugs certified in the EU, U.S., Canada, and Japan should make informal payments to accelerate the registration unnecessary and thus reduce the prices of these drugs. Regulatory cost analysis is now being introduced into the state agencies since March 2016 (before that officials who drafted regulations rarely considered the fact that regulation bears some cost both for business and the state).

At the beginning of 2015, the Ukrainian government launched a Business Ombudsman office" financed by the OECD. For just over a year, the office considered over a thousand complaints from businesses about government agencies and issued seven systemic reports addressing specific regulatory problems and providing policy advice for the government.

Recently, 360 government decrees containing outdated regulatory norms were cancelled. That said, deregulation is not proceeding as fast as expected, and action plans are often behind the schedule.27

**Banking sector reform** has been aimed at improving the overall health of the banking system by strengthening macroprudential regulation, reducing related lending, and increasing the responsibility of banks’ owners. These reforms led to the large-scale elimination of “zombie banks” and money-laundering institutions, making it harder to hide and legalize dubious funds. This reform is one of the most successful.

**Transparency and elements of e-government.** The Ministry of Justice introduced an online service in early 2015 and opened about 300 data registries, among them real estate and car registries. Additionally, online portals with budget data and transactions28 of budget-financed institutions as well as with data collected from government agencies29 were created. Currently they are operating in testing mode.

Anti-corruption civil society organizations and activists indicate that the use of “open data” has greatly simplified their watchdog activities.30 More registries are available online.

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26 Business Ombudsman Council, https://boi.org.ua
27 According to the reports of the State Regulatory Service: www.dkrp.gov.ua/info/5273
28 See www.e-data.gov.ua.
29 See www.data.gov.ua.
30 Surveyed by VoxUkraine within the study "Incentives and constraints for
expected to open, and they will be integrated with the Prozorro e-procurement system.

**State service reform** is currently being implemented through the new law “On Civil Service,” enacted in May 2016. The law introduces more transparency into recruitment and functioning of government agencies and allows for increases in the salaries of officials. Low salaries of government employees are partly responsible for corruption because they reduce the “foregone salary” portion of expected punishment. Proper selection and proper remuneration of state officials should increase their quality and integrity.

**Judicial reform** — on which the implementation and enforcement of many other kinds of reforms depend — has just started. The amendments to the Constitution and two laws reforming the judicial system adopted in August 2016 are aimed at enhancing the independence of the judiciary and increasing its quality.31 During the first half of 2016, the High Qualification Commission — an independent body evaluating the integrity of judges — evaluated over 300 judges (about 4% of the total number). Progress is slow but steady. Here, there is a tradeoff between the speed of reform and independence of the judicial system.

State-owned enterprise reform and privatization have faced high resistance at all levels of the government. The most notorious law enforcement body is the Prosecution Office (PO), which is constitutionally under the influence of the President and thus can be used to press his or her opponents. Presidents Poroshenko’s unwillingness to have an independent prosecutor general has harmed his international image.33 The National Anti-Corruption Bureau (NABU) recently began investigating some prosecutors.34 The prosecution office retaliated by searching NABU premises and detaining some of its staff, harming its own credibility and that of its recently appointed new head.

State-owned enterprise reform and privatization have faced high resistance at all levels of the government. There have been some positive achievements, such as the regular publication of balance sheet data of the 100 largest SOEs, adoption of the law that prescribes creation of supervisory boards at SOEs and the replacement of the management of the largest enterprises (such as the state gas extraction company UkrGazVydobuvannia, state railway company UkrZaliznytsia, and others).35 However, competitive selection processes for CEO positions at state enterprises are often sabotaged, and frequently the “old” heads are renewed in their positions by courts.

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32 See the National Reform Council report for the first half of 2016, available at reforms.in.ua/sites/default/files/upload/reform-report-1h-2016.pdf

33 For example, in September 2015 the U.S. Ambassador to Ukraine Geoffrey Pyatt made a number of strong statements about Viktor Shokin, the prosecutor general at that time. Geoffrey R. Pyatt, “Corrupt prosecutors under Shokin ‘are making things worse by openly and aggressively undermining reform,’” Kyiv Post, 26 September 2015.


35 According to the former Minister of Economic development, SOE losses in 2014 amounted to over UAH 80 billion (5.7% of GDP) while in 2015 they fell to UAH 16 billion (0.8% of GDP). Certainly, not all of these losses can be attributed to corruption but based on the anecdotal evidence, a large part of them can. See, for example, http://ukranews.com/ua/news/406693-zbytky-derzhkompaniy-u-2015-stanovyly-16-mlrd-gryven.
Although privatization was unblocked in March 2016, it so far has been a failure.\textsuperscript{36} For example, the Ukrainian government botched the sale of the Odesa Petrochemical Plant, large seen as a key privatization litmus test.\textsuperscript{37}

From the discussion above, it is clear that changes that have the most adverse impact on corruption are related to corruption only indirectly. However, a number of specific anti-corruption initiatives have been introduced as well.

Most notably, a number of specialized anti-corruption bodies have been created.

The National Anti-Corruption Bureau (NABU) became fully operational in early 2016, and as of September 2016 it had opened 245 investigation cases. Only 34 of them have been processed through the courts.\textsuperscript{38} The NABU has hired 506 of the planned 700 employees.\textsuperscript{39} However, NABU cannot work at full capacity since Parliament is reluctant to adopt the law that would allow NABU to have independent surveillance service.\textsuperscript{40} A Specialized Anti-Corruption Prosecutor Office (SAP) supports the NABU activities, and now employs about half of the planned 45 people.

The creation of the National Agency for Corruption Prevention (NACP) to collect, process, and publish electronic declarations of officials and political parties has not gone smoothly.\textsuperscript{41} In April 2016, after almost a year of delay, the NACP was finally launched, and the electronic declarations system was launched on September 1, 2016 despite multiple attempts to disrupt it. Both Ukrainian public\textsuperscript{42} and international partners\textsuperscript{43} came out to defend the system. At the end of October 2016, about 120,000 officials submitted very detailed declarations of their incomes, assets, and property, as well as those of their families. The public was outraged by millions of dollars in cash declared by some. The NABU announced having opened investigations in a few of the cases.

Adopting an e-declarations system was a requirement for getting a visa-free travel regime with the EU, as was the establishment of the National Agency for Recovery and Management of Illegally Received Assets, which is now recruiting staff.

The National Anti-Corruption Bureau (NABU) became fully operational in early 2016, and as of September 2016 it had opened 245 investigation cases. Only 34 of them have been processed through the courts.

The law “On the State Investigation Bureau” was passed at the end of 2015, and the Bureau is currently recruiting. These specialized bodies are a necessary part of anti-corruption reform. The only missing element is a specialized anti-corruption court.\textsuperscript{44}

A law addressing political corruption was adopted in fall 2015. On July 1, 2016, political parties published their declarations, which are mostly empty because the

\textsuperscript{36} According to Treasury reports, for the first 9 months of 2016, UAH 77 million of the planned 17.1 billion were obtained from privatization (which is not, however, very different from the previous few years). 80% of the planned privatization revenues had to arrive from the sale of the Odesa petrochemical plant. In 2015, actual privatization revenues were less than 1% of the plan.


\textsuperscript{39} NABU official report: ukurier.gov.ua/media/documents/2016/08/09/10_p11-13.pdf

\textsuperscript{40} Currently, NABU can wiretap someone’s phone, for example, only via the Ukrainian Security Service, which increases the risk of leakage of information on its investigations.

\textsuperscript{41} Details on the process and challenges of e-declaration system creation here: antac.org.ua/en/publications/e-declarations-of-public-officials-final-countdown-or-new-battles-ahead/

\textsuperscript{42} An influential media - European Pravda - editorial calling to delay visa-free regime and IMF tranche for Ukraine until proper e-declaration system is in place. See "Reforms Imitators. Why the West Should Deny Poroshenko Financial Aid and Visa Free Travel," European Pravda, 15 August 2016.


\textsuperscript{44} Bohdan Vitvitsky, “Needed to Enforce Anti-Corruption Laws in Ukraine: Special Detectives, Special Prosecutors and Special Judges,” VoxUkraine, 9 October 2015.
NACP cannot yet effectively enforce the law.\textsuperscript{45} Another important draft law on whistleblower protection\textsuperscript{46} has been introduced in Parliament.\textsuperscript{47}

Reforms such as e-procurement, unification of gas prices, deregulation, and the creation of new anti-corruption bodies would not have been possible without international support. Specifically, all of these were included in the conditions of the IMF program, in order to overcome resistance by influential businessmen (oligarchs) and politicians.

The technical and financial assistance of international governments and NGOs cannot be underestimated. Under the IMF program, Ukraine received three tranches, but the third one has been delayed for more than a year, waiting until Ukraine fulfills the program conditions.

CONCLUSIONS AND RECOMMENDATIONS

The two entities with the highest interest in the success of Ukrainian reforms are civil society organizations (CSOs) and international donors. Their cooperation should continue. In particular, the Ukraine Freedom Support Act of 2014\textsuperscript{48} authorises $20 million of assistance to civil society in Ukraine in 2016 (section 7, subsection d). The Act states that

\textit{“Not later than 60 days after the date of the enactment of this Act, the President shall submit a strategy to carry out the activities described in paragraph (1) to (A) the Committee on Foreign Relations and the Committee on Appropriations of the Senate; and (B) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.”}

The deadline expired a long time ago but the President has not submitted the strategy. Congress should continue to encourage the President to send the House Foreign Affairs Committee and Senate Foreign Relations Committee the required strategy, and to ensure that this section of the Ukraine Freedom Support Act receives the authorized funding through the appropriations process. Specific guidelines for effective support of anti-corruption CSOs are provided in the study \textit{Incentives and constraints for Civil Society Organizations (CSOs) to effectively engage in anti-corruption reforms at national and regional levels}, performed by Pact and VoxUkraine and supported by USAID.\textsuperscript{49}

Civil society has two main instruments to influence anti-corruption efforts: media activity and street action. In addition, civil society organizations often draft laws themselves, which are then passed with the help of the civil activists elected to Parliament in 2014. The arsenal of the international community includes “carrots,” i.e., financial and technical assistance, which should be strictly conditioned on the implementation of liberal reforms and anti-corruption measures. The international toolkit also contains “sticks” — such as personally sanctioning corrupt officials or tracing illegally obtained overseas assets of Ukrainian origin.

To increase the efficiency of the joint effort of Ukrainian civil society organizations and the international community, the U.S. should focus on encouraging Ukraine to pursue three key priorities aimed at dismantling the system of corruption:

\textbf{1. Narrowing the ground for corruption by}

\textsuperscript{45} Andriy Kulykov, Natalia Sokolenko, Vita Dumanska, “In their Accounting Reports, Many Parties Wrote Zeroes - Dumanska,” Hromadske Radio, 8 August 2016.

\textsuperscript{46} The full text of the law can be found at w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59836

\textsuperscript{47} The full text of the law can be found at w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59836

\textsuperscript{48} H.R. 5859, 113th Cong., 3 January 2014.

continuing deregulation, SOE reform, and privatization;\textsuperscript{50}

2. **Prosecuting current officials for their lack of integrity.** This effort should be based on continuing the judicial reform process, reforming the law enforcement system by limiting the powers of the Prosecution office, creating efficient and effective anti-corruption bodies and anti-corruption courts, and managing the system of income/wealth declarations.

3. **Increase accountability of current officials by strengthening the involvement of businesses in the anti-corruption effort** (e.g., by adopting legislation punishing “supply-side” corruption),\textsuperscript{51} strengthening the involvement of citizens in anti-corruption efforts,\textsuperscript{52} and adopting laws on whistleblower protection.

The U.S. Congress and international organizations such as IMF or the World Bank should provide strong political support and, where appropriate, technical assistance to help with the implementation of the above priorities.

Keeping in mind that prevention is more important than punishment, it would be good to construct a bargain in which the adoption of reforms and dismantling of rent-seeking schemes is exchanged for the personal safety of corrupt officials, perhaps through a dual-track approach\textsuperscript{53} or the adoption of some form of asset amnesty.

\textsuperscript{50} One possible idea can be outsourcing privatization to an international fund. See, for example, Luc Vancraen, “Outsourcing Privatization In Ukraine To Attract Capital And Raise Efficiency,” VoxUkraine, 23 January 2015.

\textsuperscript{51} See, for example, Anton Marchuk, “Stick and Carrot: How to Interest Business in Fighting Corruption,” VoxUkraine, 20 July 2016.

\textsuperscript{52} See, for example, Keith Darden, “How to fight corruption: Time for qui tam laws?” VoxUkraine, 26 September 2014.

\textsuperscript{53} See, for example, Gerard Roland, Yurii Gorodnichenko, “Dual-Track for Ukraine: How to Fight Corruption,” VoxUkraine, 10 March 2015.
Economic Situation and Reform

Introduction

Ukraine is the second largest country in Europe by area after Russia, and sixth largest by population, making it one of the biggest consumer markets in the region.\(^1\) A favorable geographic position establishes the country as a natural transportation link between Europe, Russia, and Central Asia. Ukraine is rich in natural resources, such as iron ore and coal, and is richly endowed with chernozem, one of the most fertile types of soils in the world.\(^2\)

These advantages, however, have not translated to financial well-being for Ukraine’s people. Structurally, Ukraine is a relatively small, open, and commodity-based economy. In 2015, it ranked 64th globally by nominal GDP ($91 billion) and was 49th by GDP at purchasing power parity (PPP). Ukraine’s per capita GDP stood at $2,125 ($7,971 at PPP) last year, ranking it 135th worldwide (118th based on PPP). Ukraine’s external trade turnover is equivalent to 107% of GDP.\(^3\)

Heavy industry is a key sector of Ukraine’s economy due to the country’s ample natural resources and the forced industrialization of the Soviet era. Industry accounted for 26% of gross value added in 2015 and has an even larger impact on GDP due to its interdependence with other economic sectors, particularly rail transportation. Agriculture has grown significantly in recent years, nearly doubling its share in gross value added from 7.5% in 2007 to 14% in 2015, one of the highest ratios in the region.

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\(^1\) Data excludes Crimea, occupied by Russia since March 2014. Its area takes up 27,000 square kilometers, population stood at 2.4m people in 2013 (5.2% of total) and GDP accounted for 3.8% of Ukraine’s total in 2013.


\(^3\) See, for example, “Ukraine Exports” on Trading Economics at http://www.tradingeconomics.com/ukraine/exports.
Figure 1. GDP Per Capita: Ukraine vs. Regional Peers (2015)
Source: IMF, Dragon Capital

Figure 2. External Trade Turnover: Ukraine vs. Regional Peers (% of GDP; 2015/latest available data)
Source: World Bank, Dragon Capital

Figure 3. Share of Industry in Gross Value Added: Ukraine vs. Regional Peers (%; 2015/latest available data)

Figure 4. Share of Agriculture in Gross Value Added: Ukraine vs. Regional Peers (%; 2015/latest available data)

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4 Including construction.
5 Gross value added equals to GDP minus net taxes on products.
International Trade

Commodities account for two-thirds of the country’s merchandise exports, one of the highest proportions in the region, trailing only Russia and Kazakhstan. In contrast to its oil and gas-rich neighbors, Ukraine is dependent on metallurgy, mining, and soft commodities exports. The share of metals in total exports has been shrinking, from 42% in 2007 to 25% in 2015, while the share of soft commodities (grain, oilseeds, and vegetable oils) has been trending higher since 2010, from 8% in 2005 to 29% in 2015 (the figure stands at 38% if other processed foods are added). This percentage remains the highest in the region, reflecting Ukraine’s status as one of the world’s largest producers and exporters of agricultural commodities. Machinery and manufactured consumer goods make up the bulk of non-commodity exports.

The share of energy commodities in total merchandise imports shrunk to 20% in 2015 after peaking at 35% in 2011, and consists of natural gas and oil products. Despite a significant decline in energy imports, the Ukrainian economy remains quite energy inefficient, as the country inherited extremely energy-intensive industrial and utilities sectors from the Soviet Union. Since then, Ukraine has made limited progress to reform energy efficiency.

Ukraine’s exports are highly dependent on global commodity cycles and the state of the world economy. Ukraine’s real GDP grew at 7.5% per year on average from 2000-2007, supported by favorable global growth, skyrocketing global commodity prices, and loose domestic policies. During the global economic crisis in 2008-2009, Ukraine’s economy shrank 15.1% per year, but recovered to the same level of moderate growth witnessed between 2010-2013 at an average of 2.5% GDP growth. Ukraine’s real GDP declined by 6.6% in 2014 and by 9.9% in 2015, as the economy suffered due to Ukraine’s military conflict with Russian-backed separatists.6

Both exports and imports of goods shrank significantly in 2014-2015, by 41% and 52.3% respectively, due to low prices for Ukrainian exports and an extremely sharp reduction of trade with Russia, which accounted for a quarter of total exports before the conflict. Ukraine’s current account improved because imports fell more significantly than exports, from a deficit of 8.7% of GDP in 2013 to 0.2% in 2015, which decreased demand for hard currency to finance the gap. It seems likely that the balance will remain close to zero in the next few years.

6 See data on Ukraine’s GDP at tradingeconomics.com/ukraine/gdp.
Ukrainian exports are still largely dependent on commodities — chiefly steel, wheat, corn, sunflower seeds and oil. Prices for these commodities have fluctuated greatly, sometimes doubling or halving in a year, which has affected export revenues and therefore the exchange rate. The Free Trade Agreement (FTA) with the EU could ameliorate this problem, but even after the agreement was signed, there were no significant structural changes in exports to the EU. The devaluation that occurred over 2014-2016 should boost exports, but new production also requires an inflow of investment which depends on structural reforms such as strengthening protection of property rights and the rule of law.

**Ukraine’s Unsustainably Large Public Sector**

Many economists argue that one of the major impediments to Ukraine’s economic development is excessive redistribution through the public sector.\(^7\) The Ukrainian government’s ratio of public spending to GDP increased significantly since the early 2000s, from 35.5% of GDP in 2000 to 48% in 2013.\(^8\) This increase had to be supported by both a higher tax burden and a higher budget deficit. In other former Soviet countries, one can observe similar trends towards a larger public sector, but to a smaller extent than in Ukraine.

In the past, public spending has been primarily directed to current consumption through social transfers, while public investment has usually been small. In 2013, household incomes consisted almost equally of wages (42%) and social transfers (38%), particularly pensions.\(^9\)

The Ukrainian pension system is in dire need of reform. The state pension fund (SPFU) has run a significant deficit financed by the state budget since 2004, when pensions were increased in order to bolster popular support ahead of presidential elections. No

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\(^7\) “What is the optimum level of public spending in Ukraine?” Center for Economic Strategy, 2 November 2015.


government since then has been able to substantially decrease the deficit. The primary source of SPFU revenues has been a social fee based on paychecks. Before 2015, it was proportionally one of the largest taxes in Europe (about 46%), therefore it was not possible to balance the SPFU finances by further increasing the size of the social fee. In 2016, Ukraine decided to cut the social fee by more than half, down to 22%, hoping to create incentives for employers to pay wages legally. So far, these hopes have not been realized. Currently, the largest single item in budget spending for 2016 is a transfer to the SPFU in order to finance its deficit of 144 billion Ukrainian hryvnia (UAH), which is close to 10% of Ukraine's GDP and one third of all budget expenditures.

While taxes were reduced in 2014-2015, Ukraine's tax administration remains a serious issue that demands further attention. For example, for the last 20 years, Ukraine has struggled with with value-added tax refund arrears. Each time there have been shortages in actual budget revenues compared to projections, this issue has been reignited.

One of the most important reforms in public finance since the Maidan is the new public procurement system Prozorro. Since August 1, 2016, all public procurement of goods and services above a value of UAH 200 thousand and for projects costing more than UAH 1.5 million must be made using a system of public, electronic procurement. In the interest of increasing competition and foreign investment, foreign companies are also able to participate in these tenders. Prior to the introduction of the system, corruption was rampant in public procurement, which limited participation and showed bias in excluding some participants. The amount of 'corrupt rent' (i.e., the share of payment that was used as a bribe) differed from tender to tender, but the average estimate had been about a third of the procurement's value.

The Ukrainian budget has been in deficit since 2000. The deficit was financed roughly equally by domestic and external borrowing. Because of the de facto pegged exchange rate and large nominal GDP growth, gross public debt looked quite small and manageable despite the fact that interest rates were notably higher than in the developed countries (5-10% per year, in USD). In 2007, the debt-to-GDP ratio was just 11.8%. During the global financial crisis, the Ukrainian government borrowed heavily, which boosted the ratio to 40.6% by 2010. By the Maastricht criterion of 60%, Ukraine's public debt was still considered safe.

In 2014-2015, due to the sharp depreciation of the hryvnia and the decline in real output, the debt-to-GDP ratio increased to 80.2% and will remain above the 60% mark until at least 2021, according to IMF forecasts. In 2015, in order to reduce the public debt burden, Ukraine managed to strike a deal with its eurobond holders, excluding Russia, in order to receive a debt “haircut” (a write-off of part of the debt) and extend principal repayment dates. Even despite these positive steps, debt servicing is the second largest item in budget expenditure: in 2015, debt servicing cost UAH 86.8 billion, comprising 15% of state budget expenditures.

Due to costly social commitments, its large defense outlays, and its debt burden, Ukraine's best hope for sustainably improving public revenues is economic expansion. To achieve this goal, the most pressing issues to be resolved are property rights protection and deregulation.
Overview of U.S. Policy on Ukraine

Fixed Exchange Rates
a Disaster

Until 2014, the primary goal of Ukrainian monetary policy appeared to be fixing the UAH/USD exchange rate, although it was never explicitly defined that way by the central bank. Adverse external shocks led to periods of sharp depreciation of the hryvnia with a corresponding spike of inflation. During positive conditions in external markets, the fixed exchange rate led to growing foreign reserves and non-sterilised interventions on the foreign exchange market, leading to loose monetary policy and high inflation rates.

During the commodity boom in 2003-2008, there was a great influx of foreign currency, augmented after 2005 with excessive optimism from investors, particularly regarding the banking sector. Several large European financial groups entered the market, and large banks actively tapped foreign capital markets. The inflow of foreign currency and real appreciation of the hryvnia led to massive current account deficits and external debt growth (see Figure 12). A notable share of banking system liabilities was in foreign currency, while hard currency loans were liberally given to many borrowers without hard currency incomes.

In 2012-2013, the Ukrainian government maintained the exchange rate peg despite the onset of a recession. This led to a fall in foreign exchange reserves from USD 38 billion in August 2011 to USD 20.4 billion in December 2013. The war in Donbas, the occupation of Crimea, and the severe deterioration of external trade led to further decreases in reserves to just USD 5.6 billion in February 2015, by which time the central bank had no other option than to float the hryvnia. In order not to repeat its previous errors, the central bank started to shift toward inflation targeting as an explicit policy. Nevertheless, there are many restrictions on free capital flow, and currency market regulations are still in place.

The Ukrainian banking system is plagued by insider lending and low-quality collateral. The war, the sharp depreciation of the hryvnia, and the economic recession led to rapid growth in non-performing banks, many of which had problems since the 2008-2009 crisis but were kept afloat artificially. The central bank decided to clean the system, and in 2014-2016 roughly a third of banks were declared bankrupt, including several of the largest ones. This led to a massive outflow of deposits and a system-wide run on banks.

Currently, one of the main problems is restoring trust in the banking system. A healthy banking sector and the re-launch of banking lending are two of the most important steps in restoring economic growth.

Figure 11. External debt of Ukraine, as of January 1
Source: National Bank of Ukraine
Conclusion

According to the IMF, the Ukrainian economy has started to recover. In 2016, annual GDP growth will turn positive for the first time in three years, showing 1.5% growth. In the years 2017–2021, economic expansion should accelerate but cumulative growth for the period will be just enough to make up for the previous contraction. These figures are not very promising: per capita GDP will remain below 2013 levels in dollar terms until the year 2021. Reaching the level of even the poorest EU members will take decades.

Inflation is projected to slow from 43.3% in 2015 and 12% in 2016 to single digits, with a long term annual inflation of 5%. Low and stable inflation should increase the predictability of investments and increase trust in the banking system.

The current account balance will run a small deficit (2.0–2.5% of GDP) that should be covered by an increased inflow of investments from abroad. It is paramount to create possibilities for such investments by improving the regulatory climate and strengthening the rule of law. Otherwise, the deficit will further weaken hryvnia, which in turn risks undoing the success of the current inflation policy.

Ukraine faces many risks that make any medium-term forecasts quite tentative. Ukraine must create conditions for high, sustainable growth if it hopes to catch up the EU. Therefore, it is essential to improve the economic climate through the rule of law and making the country an attractive place for foreign investors.

RECOMMENDATIONS

1. Continue to support reform efforts through advising, consulting, providing technical assistance, etc, especially in areas critical for improving business environment: judicial system, prosecutor office, tax authorities, deregulation.
2. Whenever possible give priority to creation of new institutions and staff them with new people rather than reforming existing organizations, which are often entrenched in corruption
3. Continue to provide financial assistance to Ukrainian authorities strictly conditional on reforms
4. Strengthen support of local civil society, providing it with financial and technical assistance, especially to regional organizations

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Energy Policy and Reform

Introduction

Ukraine’s energy sector is simultaneously a cause for distress and hope. It represents both the country’s corrupt and vulnerable past, as well as its optimistic and proactive future. Reforms are underway to make Ukraine’s energy sector more competitive, efficient, and transparent, but well-meaning legislation is often slowed by low political will and entrenched business interests.

Over the past few decades, the Ukrainian energy sector has been defined by heavy political influence, corruption, non-market based pricing, cross subsidization, and high operational losses. Ukraine is one of the least energy-efficient countries in the world, and its energy intensity is nearly ten times higher than the OECD average. This gross inefficiency has had a severe economic and environmental impact, with significant political implications. In 2012, Ukraine imported over 60% of its energy from Russia. Russia, and specifically its state-owned gas company Gazprom, used Ukraine’s dependence as a political weapon and threatened Ukraine with gas cutoffs and price increases. In 2006, 2008, and 2009, Russia shut off gas to Ukraine following westward political shifts by Kyiv. Ukraine’s vulnerability was only reinforced by domestic corruption and the capture of state-run energy companies by oligarchs. In Ukraine, a small number of well-connected individuals profited from this chaos and used price differences and subsidies to collect huge rents, robbing the state budget and contributing to a cycle of destruction.

On the other hand, in this time of change and pro-European orientation in Ukraine, the energy sector is a top reform priority and provides great hope for the future, despite historically gross mismanagement. Unleashing potential while simultaneously ensuring more efficient practices could transform not only Ukraine’s energy sector, but also its economy as a whole. Ukraine

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1 The ratio of Total Primary Energy Supply to GDP that is commonly used to measure energy efficiency
3 [Ibid.]
has a significant amount of oil and gas reserves, both conventional and unconventional, estimated at 9 billion tons of oil equivalent. Ukraine is ranked sixth in the world for hard coal reserves, though most of this is currently compromised in areas of the ongoing Donbas war. According to the International Renewable Energy Agency (IRENA) and Ukraine’s State Agency on Energy Efficiency and Energy Saving (SAEE), in 2015, the annual technically achievable energy potential of renewable energy sources was 68.6 million tons of oil equivalent per year, or enough to replace around half of Ukraine’s total annual energy consumption today. Regulatory problems, over-subsidization, and corruption have hindered the realization of this potential, but with successful reforms and a focus on efficiency, Ukraine could become largely energy independent. Regulatory problems, over-subsidization, and corruption have hindered the realization of Ukraine’s energy potential, but with successful reforms and a focus on efficiency, Ukraine could become largely energy independent.

Energy reform is necessary for European integration and for meeting Ukraine’s commitments under the Energy Community treaty, signed by EU member states and several neighbor states in Southern and Eastern Europe. For Ukraine, meeting its treaty commitments will ensure more secure supplies and open up new investment opportunities. For Europe, integrating Ukraine into its internal market is a priority of its Energy Union strategy, in addition to being integral to its own energy security.

If Ukraine is able to successfully topple the energy sector’s cycle of corruption and dysfunction, broader reforms to Ukraine’s governance system and business climate will become all the more realistic.

Under the Energy Community treaty, Ukraine must pass new laws that are aligned with EU-wide energy norms and legislation, notably the Third Energy Package. This legislative package, signed into EU law in 2009, liberalizes the EU’s internal gas and electricity markets through ownership unbundling and the establishment of an independent regulatory authority for each member state. Meeting these standards is key to Ukraine’s Energy Community commitments, as well as to its EU Association Agreement.

7 According to a statement from UkrTransGaz.
8 Ownership unbundling refers to the separation of production from supply operations. This is meant to prevent network operators from favoring their own energy production and supply companies.
Energy Package requirements must be in force before Ukraine can receive the full amount of the most recent EU macro financial assistance package (1.8 billion euros).

Ukraine’s interests and the interests of its partners depend directly on the success of energy reforms. If Ukraine is able to successfully topple the energy sector’s destructive cycle of corruption and dysfunction, broader reforms to Ukraine’s governance system and business climate will become all the more realistic.

Opportunities and Threats

Gas and Electricity Markets

In April 2015, Ukraine’s parliament adopted a new law on restructuring the gas market in line with EU standards.\(^{10}\) However, incomplete secondary legislation has slowed this law’s implementation. Further, Ukraine’s state energy company, Naftogaz, and the Ministry of Energy have both created their own plans for the Naftogaz unbundling; conflicts between the two have delayed the process.\(^{11}\)

In a positive development, energy prices for households increased to nearly market prices over the past two years, almost entirely eliminating inefficiencies caused by the cross-subsidization of high industry prices with low household prices. Gas consumption has decreased heavily over the past five years, both as a result of increased prices and the ongoing war’s effect on industry (see Figure 2).\(^{12,13}\)

The electricity sector also has seen significant progress on reforms. In June 2016, the Ukrainian government submitted a Third-Energy-Package–compliant Electricity Market draft law to Parliament, which was adopted on its first reading in September 2016.\(^{14}\) Some have expressed hope that gas sector reform will set a precedent for the electricity market, but both processes have been moving at too slow a pace.

An Independent Regulator

A draft law establishing an independent energy regulatory committee (NEURC), necessary for EU integration and the next IMF macro financial tranche, has been drafted with the participation of a multitude of actors.\(^{15}\) The goal of a reformed NEURC is to provide accountability and predictability to attract private investment and to ensure efficient, competitive, and secure energy supplies. A strategic group comprising Ukrainian experts, members of parliament, and international consultants produced a draft in line with European standards. In September 2016, this bill was adopted by Parliament and passed into law. Legally, this new regulatory committee is independent from political and market forces. The committee receives its funding from fees paid by energy market participants, and members are paid salaries that are average for the industry (unlike other public servants who are paid much less, incentivizing corruption). Two members of the committee are nominated by the president, two by Parliament, and one by the Ministry of Energy. As of its last announcement in November 2016, the European Secretariat is in the process of assessing whether the law complies with the Third Energy Package.\(^{16}\)

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\(^{11}\) “Naftogaz Reorganization to Be Finished by April 2017,” Interfax, 26 November 2016.


\(^{13}\) BP overview, ibid.

\(^{14}\) “Government Approves a Bill to Demonopolize Electricity Market,” Information and Communication Department of the Secretariat of the Cabinet of Ministers of Ukraine, 3 February 2016.

\(^{15}\) This body is analogous to the Federal Energy Regulatory Committee in the U.S.

Domestic Production and Energy Efficiency

Despite sizable domestic energy potential, Ukraine is primarily considered a transit country, and reforms are meant to secure this role. However, as mentioned above, Ukraine has sizable untapped energy resources. Unfortunately, investment in Ukraine’s upstream sector is still considered risky by external investors and even internal companies. Oleg Prokhorenko, CEO of Ukraine’s largest gas producing company, UkrGasVydobuvannya, wrote an op-ed in the Kyiv Post detailing corruption schemes as major obstacles to reform in this area.\(^\text{17}\)

Efforts for greater energy efficiency, often considered the “cheapest” energy source, are also less than satisfactory. Last year, the government issued “warm loans” to homeowners looking to weatherize their homes. The program was extremely popular, and demand for loans exceeded funds available. However, as of today, the government budget does not detail funds for continuing the program.\(^\text{18}\) Aside from this program and adoption of the “National Energy Efficiency Action Plan until 2020,” and other non-binding actions, little concrete movement has been made in this area. The EU, World Bank, and other institutions have focused on energy efficiency in some of their efforts in Ukraine, but more can be done in this instrumental area.

Alternative Energy

Ukraine has large potential alternative energy production. According to the International Renewable Energy Association, Ukraine has enough renewable energy potential (solar, hydro, wind, biomass, and geothermal) to fulfill half of its energy needs today. In 2013, the Cabinet of Ministers adopted a document called “The Energy Strategy of Ukraine Through 2030,” prioritizing renewable energy because of its contribution to energy security and lack of environmental consequences. This policy sets ambitious goals for renewable energy, including a doubling of the share of renewable energy in the power sector from 6.9% in 2010 to 11.4% in 2030.

In a symbolically significant announcement, Ukraine’s Ministry of the Environment recently unveiled plans to transform Chernobyl, the radioactive site of the 1986 nuclear disaster, into a large site for solar energy. The 1000-square-mile exclusion zone is uninhabitable, which makes sunlight “one of the only things that can be harvested.”\(^\text{19}\) In November 2016, two Chinese solar firms unveiled plans to take on this project.\(^\text{20}\)

Although the potential is large and the stated goals are ambitious, powerful forces behind traditional fuels have hampered political will for strong enforceable renewable energy policies. Ukraine also requires outside investment and guidance in this area, which has not yet been present.

Transparency and Efforts of Civil Society

Ukraine is a candidate country of the Extractive Industry Transparency Initiative (EITI), a global standard used to promote transparency in resource extraction around the world.\(^\text{21}\) In late 2015, Ukraine published its first EITI report on its oil and gas sectors.\(^\text{22}\) The purpose of the report is to disclose information about how much companies pay the government for the extraction of resources, and how much the government

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\(^\text{19}\) Anna Hirtenstein, “Chernobyl’s Atomic Wasteland May Be Reborn with Solar Energy,” Bloomberg, 26 July 2016.


\(^\text{21}\) “UAEITI,” EITI Ukraine, https://eiti.org/implementing_country/26

\(^\text{22}\) “Ukraine disclosed data on payments in oil and gas production for the first time,” Extractive Industries Transparency Initiative, 12 October 2015.
receives from them. Since resources are a public good, this strategy ensures that extractive industry taxes and royalties are fairly and transparently paid and accounted for in the government budget. In Ukraine, many hope EITI will serve as a foundation for continued reforms to establish transparency and open competition, and set a standard by which all actors in the sector play.

The Ukrainian Government also passed a new law, “On Strengthening the Transparency of Extractive Industries in Ukraine,” that imposed new standards for transparency in the Energy Sector in line with EITI requirements. The Energy Reforms Coalition, a coalition of energy sector-minded civil society groups, are lobbying for reforms, monitoring progress, and ensuring open information in the process. Both of these developments were huge victories for Ukrainian civil society, which worked closely with government and business to complete the report and strongly lobbied to pass the law.

**RECOMMENDATIONS**

1. **The U.S. Congress should appropriate the funds designated for support of Ukraine’s energy sector.** In 2014 Congress passed the Ukraine Freedom Support Act which authorized the appropriation of $50,000,000 in support of projects that increase Ukraine’s energy production and efficiency (Section 7, Subsection C). These funds could play a key role in Ukraine’s economic development and Europe’s energy security.

2. **The U.S. should increase cooperation with civil society groups that specifically focus on the energy sector.** As in all sectors in Ukraine, civil society has completed the brunt of the work of monitoring and enforcing reforms as well as cooperating with international entities related to the energy sector. The U.S. should focus support on groups that understand the situation and provide concrete solutions with goals of making the energy sector more transparent, efficient, and competitive.

3. **The U.S. should condition aid on concrete progress.** Support from the U.S. is integral to reforms in the energy sector, so in many ways the U.S. is in a position to expect results. Support and aid should be tied to concrete reforms that are in line with European standards and contribute to the goal of creating a more competitive, transparent, and efficient energy sector. This includes fully implementing a new independent regulator, as well as new laws reforming the gas and electricity markets.

4. **The U.S. should prioritize support for Domestic Production, Alternative Energy and Energy Efficiency.** The U.S. should offer assistance and strategic funding to make Ukraine more energy efficient and less reliant on imports. Focus on efficiency and domestic production could significantly decrease Ukraine’s demand as well as the political vulnerabilities that come along with it. Plans to assist with alternative energy development and production should also be mobilized, as part of a U.S. interest in a secure, economically viable, and sustainable Ukraine.

5. **The U.S. government should take a harder stance against Gazprom.** Russia has used Gazprom as a tool for political manipulation and threats, and the U.S. should impose more stringent sanctions targeting Gazprom. The company’s actions have negatively affected Ukraine for decades, and are a direct threat to European stability. Gazprom has been continuously tied to corruption, political influence, and violation of EU competition laws.

**FURTHER READING**


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Background

Russia’s annexation of Crimea in March 2014 was followed a month later by an outbreak of fighting in eastern Ukraine’s Donbas region between armed separatists backed by Russia and Ukrainian armed forces. Fierce fighting there triggered Europe’s largest internal migration crisis since World War II. Today, more than 1.8 million Ukrainians have registered with their government as internally displaced persons (IDPs).

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Another 1.4 million Ukrainians have fled abroad using various legal avenues to get residency, mostly to Russia (1.1 million), while others sought refugee status in neighboring countries or Europe. The top receiving countries for Ukrainian asylum seekers in Europe were Germany, Italy, Poland, France, and Sweden.¹ The Donbas area they fled was producing 15% of the country’s exports. Now parts of Luhansk and Donetsk are controlled by separatists supported by Russian aid, weaponry, advisors, and “volunteer” fighters. The separatists control over 2.5 million Ukrainians, living under conditions of lawlessness, human rights abuse, limited markets, poor economic conditions, and faltering public institutions.²

Ukraine was militarily and domestically ill-prepared to deal with the security and humanitarian challenges that Crimea’s annexation and the armed insurrection of the Russian-backed separatist unleashed. As hundreds of thousands fled the fighting in Eastern Ukraine, the government relied on volunteers both to aid its defense and to cope with emergency humanitarian needs and evacuation of civilians, “internal refugees” from the conflict. Citizens who flee violence but remain within...
in their country of residence or nationality are called internally displaced persons (IDPs) and remain the responsibility of their government. As the numbers of displaced populations skyrocketed, the Government of Ukraine (GOU) requested humanitarian assistance from the United Nations. The UN Office for the Coordination of Humanitarian Aid (OCHA) deployed staff and, working with the GOU and the UN country team, issued an emergency appeal in August for $33.3 million to improve protection and assistance for those most at risk among the 5 million affected by the conflict. OCHA and UN humanitarian agencies and their implementing nongovernmental partners continue working with the government, local communities to improve the protection of the rights of displaced and war-affected people and enhance their ability to meet their basic needs.

Today’s Humanitarian Challenges in Ukraine

“We feel abandoned, forgotten by all,” said a group of IDPs living in the 15 kilometer buffer zone along the line separating Ukrainian and separatist forces.³ Life is grim on both sides of the line, with access and travel in these communities limited, due to insecurity, checkpoints, road closures and the presence of landmines and other unexploded remnants of war. Public transport in even the Ukrainian controlled zone is practically nonexistent, as are ambulances, fire services, police, or the rule of law. One hundred and twenty health facilities have been damaged or destroyed, only a few have been repaired. Yet many have no choice but to remain in these war affected areas. The UN requested $298 million for 2016 to provide for protection and basic needs of the 3.1 million still in need of humanitarian aid. The appeal for Ukraine is a small part of the $21 billion the UN must raise to respond to the need of the world’s 65 million conflict victims, refugees, and displaced persons as well as 26 million others at risk due to famine and natural disasters.⁴

Health and Nutrition

In Ukraine 2.3 million citizens need international support to remain healthy, to access medicine and adequate nutrition. Ukrainian clinics and hospitals need international aid to fight infectious disease, like polio (now contained), TB, and HIV or to treat chronic conditions like kidney disease, hypertension, and mental and physical disabilities. Residents of separatist areas too often lack access to affordable medicines, treatments, and nutritious food. This year, the UN requested $33.3 million for health and nutrition, but only $3.3 million has been donated. The World Health Organization (WHO) is working to increase the country’s low vaccination coverage and preventive health service, but poor funding may cause the cancellation of its 30 mobile health units, which serve 12,000 people a month.⁵ Schools and kindergartens have been damaged. Teachers, parents and students need psycho-social support; many teachers and experienced civil servants have fled the conflict areas.

800,000 residents remain in buffer zone communities, despite insecurity and absent services and amenities.

800,000 residents remain in buffer zone communities, despite insecurity and absent services and amenities. Some residents are still employed, but struggle to survive, while others must rely on friends or charity; many are elderly or disabled, often lacking the resources, energy, or possibilities to relocate.

Humanitarian conditions in the separatist-controlled areas of Luhansk and Donetsk are worse. Separatist authorities continue to restrict UN and NGO human-

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³ Author interviews with IDPs and war-affected villagers, Ukraine gray zone, July 2015.
⁴ OCHA 2016 Appeal, reliefweb.int/report/world/un-and-partners-launch-
itarian access and program operations. In the summer of 2015, the separatist authorities in Luhanski and Donetsk requested information about operations and registration from all humanitarian organizations to determine who might continue operations. They then rejected most applicants. Only a few NGOs and international organizations are permitted to operate monitoring or humanitarian aid programs for those most in need. In a surprising breakthrough, three UN humanitarian convoys of medicine and shelter materials were able to reach separatist occupied Luhanski in August.6

Hunger

The World Food Program (WFP) this year found that 500,000 IDPs and war-affected Ukrainians were facing malnutrition. More than half of those requiring food aid live in government-controlled regions including Donetsk, Dnipropetrovsk, Kharkiv, and Zaporizhzya. The UN reported that the increase this year is due to higher prices, reduced incomes, the inability of many farmers, businesses, and families to access credit, and the depletion of family and local charitable resources after two years of war.7 Only $20 million of the $75 million needed for food security has been donated. WFP has issued an urgent appeal for more funding to provide food baskets, or where access to markets is feasible, vouchers or cash assistance to the malnourished until next January.

Land Mines

The UN is concerned that buffer zone residents and travelers will ignore or overlook warning signs marking the increasing number of landmines and unexploded ordnance near checkpoints, on roads, or at crossing points used each day by over 27,000 travelers.8 Increased fighting and new daytime shelling attacks produced the highest casualties this July (73 wounded and 8 deaths).9 bringing casualties since the start of the conflict to over 31,000 persons and deaths to 9,400.10 Increasing attacks since May 2016 have stopped residents near the conflict from tilling their fields, tending vegetable gardens, or gathering wood for cooking and heating.

The government of Ukraine still lacks the modern machinery, vehicles, personal protective equipment, and sufficient tools to clear landmines and unexploded ordnance.

The OSCE’s Special Monitoring Mission in Ukraine (SMM) reports that hundreds of incidents of rockets, artillery and other heavy weapons are being fired each week from weapons that the latest ceasefire agreements required to be withdrawn from the front lines.11 Some experts estimate that each year of war will require 10 years of clean up — large areas of eastern Ukraine now are contaminated with mines and unexploded remnants of war. Regrettably, according to observers, the government of Ukraine still lacks the modern machinery, vehicles, personal protective equipment, and sufficient tools to clear landmines and unexploded ordnance which have injured numerous civilians and pose a special risk to children.12

Employment

IDPs want to work to support their families but must contend with a depressed economy, inflation, high unemployment, reduced factory production and layoffs, as well as lack of contacts and knowledge of their

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6 WHO, ibid.
7 “Ukraine” country brief, reliefweb.int/report/ukraine/wfp-ukraine-country-brief-july-2016
9 OCHA op cit, page 1.
11 OSCE Special Monitoring Mission (SMM) to Ukraine, report from 7 August 2016, www.osce.org/ukraine-smm/258221OSCE.
12 OSCE Provides humanitarian demining equipment, osce.org/ukraine/133266.
host communities and sometimes outright discrimination. A study by the International Organization for Migration (IOM) found employers thought IDPs only wanted temporary work or feared “they cannot offer adequate wages to entice and retain IDPs, who are often stretched financially and need significant funds to cover accommodation costs, including furnishing and equipping their new homes. Displaced women . . . have to look after their children, only part-time jobs or self-employment are generally feasible.” This same study found many IDPs well qualified: “More than half of the IDPs we surveyed have higher or incomplete higher education, so their labor and intellectual potential could significantly contribute to the country’s economic recovery.” Early recovery and livelihood activities planned by the UN have attracted less than $2 million of the $33 million requested. The GOU should encourage donors to support expanded retraining and small business development to enable more displaced families to become self-supporting.

IDP Benefits

With no jobs, most IDPs depend on benefit payments. Elderly IDPs receive both pensions and IDP benefits. The GOU created modest IDP benefits in 2015 for those living in government controlled areas. In February 2016 the GOU without notice cut off pension and IDP payments to over 500,000 IDPs, who it claims committed fraud by returning to live in separatist areas. Many IDPs and the organizations assisting them protested. Ukraine set up a re-verification exercise for IDP addresses that lacks sufficient staff to complete the process in 2016. The suspensions have overwhelmed local government offices and forced many IDPs, particularly the elderly, into extremely difficult situations, unable to pay rent, buy food or medicine, and dependent on charity. Under Ukrainian law, pensions can be paid anywhere. The GOU should disconnect pension payments from IDP benefits and permit its citizens to receive their earned pensions wherever they live.

14 Ibid.

The UN has urged that shelling of residential areas should cease to prevent more damaged homes, more civilian casualties and more displacement.

15 UNHCR Steps Up Shelter Program, reliefweb.int/report/ukraine/unhcr-steps-shelter-programme-eastern-ukraine.

Shelter

In the summer, some IDPs return to homes near the front lines, hoping to farm or cultivate gardens to improve their diets and their income. Others return to repair homes or apartments hoping security might improve and international shelter aid would permit them to complete repairs and permit them to live rent free in their own communities. To date, the GOU has failed to implement a legal basis and procedure to compensate or provide restitution to owners whose homes, property, or businesses were damaged, destroyed, or confiscated in the conflict. This is a matter of great concern to the displaced who want recognition of their losses and some support to rebuild their lives. The UN has received only 20% of the $56 million needed for shelter repairs and furnishings. Three hundred thousand families now are living in housing in need of repairs to make them habitable (windows, doors, roofs) and have water and heat. Ukraine supported the UN’s policy to avoid establishing large IDP camps, and instead encouraged people to find shelter and support with families and friends across the country. The UN has urged that shelling of residential areas should cease to prevent more damaged homes, more civilian casualties and more displacement. The UN found that 10,000 houses in Luhansk’s non-government controlled area (NGCA) are in urgent need of repair. Unexpectedly, in July the Luhansk separatists finally permitted the UN to deliver two convoys of shelter repair materials so repairs may begin before winter.
Education

There are 580,00 children affected by the conflict in Ukraine. The UN Children’s Fund (UNICEF) requested $8.6 million and received $2 million from donors. The Government of Ukraine permits displaced children and youth to enroll in Ukrainian government schools wherever they are living. Today, 220,000 children in the conflict area attend war-damaged schools. Many need tutoring to make up for lost schooling, and psychosocial support for themselves, as well as their parents and teachers. Some children were not enrolled in school because their parents expected to return home quickly, other children feared rejection or ridicule by teachers or host community students. Some families cannot pay school fees or give children pocket money. UNICEF has helped with school supplies, books, and Mine Risk Education. Dozens of children have been killed by mines and explosive remnants of war.16 The OSCE’s chief monitor recently raised concerns that “the contamination of populated areas with explosive remnants of war, including across the contact line, in addition to restrictions of the freedom of movement at the checkpoints, directly affects children’s access to education, health, recreation and social protection. Children in situations of internal displacement require special attention.”17 The needs of war-affected children and the need to expand kindergarten spaces so IDP mothers can seek work has put additional pressure on local educators and their budgets. UNICEF supports teacher training, Mine Risk Education, and awareness and support for child protection services. Its ability to work in the separatist areas has been limited. Ukrainian curriculum has been replaced under the separatists with Russian curriculum, which will complicate these children’s access to Ukrainian education institutions.18

Water and Sanitation

UNICEF has received 11% of its requested budget of $39 million to ensure water for 1.2 million Ukrainians and sanitary supplies to 300,000. To aid travellers, it now provides water and sanitary supplies for each side at border crossing points. By June, 1.4 million people had received drinking water, including 2,766 people in Donetsk, either through supplies of bottled water, water trucked to distribution points, or by repairing and rehabilitating war-damaged or aging water supply equipment and networks. The organization advocates for both sides to end attacks on water and electricity networks and systems which are essential for health. It has provided equipment and water purification chemicals to ensure safe drinking water for Luhansk NGCA residents and 20,000 hygiene kits for those unable to afford the cost of needed soap and cleaning supplies.19

Protection

The UN Refugee Agency (UNHCR), UNICEF, and the UN Family Planning Association (UNFPA) work to improve legal and community protection for displaced and war-affected families, as well as vulnerable groups like children, the disabled, single heads of households, or minorities. The UN works with the GOU to educate about and encourage the adoption and implementation of international standards for dealing with the rights and needs of IDPs, asylum seekers, and refugees living in Ukraine. Respect for the international humanitarian principles of impartiality and non-discrimination and the protection of human life underpin the work of all genuine humanitarian efforts, despite the unpopularity of aiding those living under undemocratic and repressive systems, as occurring in the separatist areas. UNHCR advocates for restoration of freedom of movement and for improved humanitarian access to the most needy in both government and NGCA.

18 UNICEF June 16, ibid.
19 Ibid.
UN protection programs educate and advocate with local authorities and communities on the rights of IDPs and the need for efforts to prevent and respond to gender based violence and sexual exploitation and abuse. Because of Ukraine’s historic problems with human trafficking and response to trafficking victims, these agencies and their local implementing partners must educate war-affected families and local authorities about the need to prevent trafficking. The UN liaises with local government, supports NGO hot lines, outreach, information campaigns, counselling, and referrals, as well as legal aid services to the displaced. They partner with civil society groups to develop and update relevant information, such as this year’s Free Legal Aid Guide or bulletins on how to obtain re-verification of residence to reinstate IDP benefits. Through education campaigns, awareness-raising, and social activities they help IDPs, host communities and local authorities better understand displacement, the legal rights and responsibilities of IDPs, and to foster greater acceptance and tolerance of differences, to promote reconciliation between different communities. Donors have provided $15 million of the $52 million the UN requested.

Freedom of Movement

Since late 2014, the GOU has required electronic passes for anyone seeking to enter or leave the separatist areas. It bans all commercial shipments, including food and medicine, into the NGCA. Despite restrictions limiting crossing points, permitting only private cars or taxis, and limiting travelers to 25 kg of cargo, over 800,000 Ukrainians crossed last year. They endure 10-12 hour queues at limited or often closed crossing points, extremes of hot and cold weather, shelling, requests for bribes, poor sanitation, little shelter, and at times no facilities. Ukrainians keep crossing because they want to visit and care for family and friends, to work, to access bank accounts, to shop for less expensive food and medicine, to inspect property, conduct business, or access once neighboring institutions like hospitals, churches, or cemeteries. Ukraine’s constitution provides for freedom of movement, a right restricted since 2015, and these restrictions are heavily disliked by citizens. Humanitarian agencies and the UN are also subject to restrictions on movements and cargo, and are permitted to use only specially designated convoy crossing points, which are often closed.

Pensioners living in separatist areas must cross into GOU-controlled areas to access their pensions.

Creating Humane and Durable Solutions for the Displaced

While the search for a ceasefire and peace is a complex geopolitical problem, Ukraine’s current displacement situation is fixable with a serious international and local effort. It needs to be accomplished before dissatisfaction and competition for scarce resources create major tensions or unrest. A report of the UN protection cluster in Ukraine found that “promotion of peaceful conflict resolution mechanisms, provision of basic services, and development of equal employment opportunities are all peacebuilding activities that can begin even as the conflict continues.”

In 2015, the World Bank, the EU, and the UN Development Program produced a reconstruction plan that outlined how $1.5 billion budget could expand social programs and carefully target projects with local government and businesses that would kickstart and

20 UNHCR Ukraine Operational Updates, unhcr.org.ua/en.
22 “UN Peacebuilding: an Orientation,” ibid. (6). reliefweb.int/sites/reliefweb.int/files/resources/peacebuilding_reconciliation_guidance_note_0.pdf
revive local economies, producing more tax revenues. The plan sought to promote the positive benefits of providing durable positive solutions for those displaced who are unable or unwilling to return to the East or to Crimea, due to the significant destruction and human rights abuses that have occurred. The plan will require national and local governments to work with international donors, financial institutions, private business, and industry to rebuild community cohesion and trust. The plan also calls for improved IDP and host community access to reliable public services, particularly social services (like health, welfare, education, kindergartens, employment services, etc.) and an increase in the stock of safe affordable housing to alleviate the pressing needs for shelter for the displaced. Meeting such needs would help to create jobs for IDPs and host community residents as they restore damaged infrastructure in secure areas and renovate or construct safe new housing. This should be possible because IDPs want to work and, according to a recent poll, they still are viewed favorably by their fellow countrymen and women.24

The recent report UN Peacebuilding: An Orientation found that a best practice for dealing successfully with those displaced is that “consistent and equitable provision of government services is a key component for promoting sustainable peace and social cohesion.”25

Some regional and local officials are supportive, since employing IDPs and host community residents would promote economic and social integration and lessen competition and economic tensions. The new government ministry responsible for the occupied territories and IDPs, if adequately staffed, should plan coordinated efforts to end displacement and promote voluntary integration or reintegration of the displaced.

Historically, most displacement lasts 17 years, a period that disrupts the social and economic fabric of a nation, isolates, disenfranchises, and wastes the potential contributions of the displaced, while often breeding disaffection and mistrust and hampering a country’s economic and social development. Ukraine, with its educated population, healthy business sectors and a vibrant civil society and a renewed commitment to reduce corruption and economic and judicial reform should be able to plan and implement opportunities for its displaced citizens to return to more normal lives. Ukraine’s government and citizenry should encourage and welcome the displaced, who voted with their feet to remain Ukrainians. Ukraine’s political, business, religious, and civic leaders should press for policies and programs to solve internal displacement and to provide a legal basis for the restitution of property destroyed, damaged or confiscated during the war. Ukraine’s leaders should also make it possible for the war-displaced to integrate into communities they choose, where they will be welcomed, respected, and able to find jobs and housing to permit them to rebuild their lives and ensure a brighter future for themselves and for Ukraine.

**RECOMMENDATIONS**

With 3.1 million conflict-affected people still in need and limited humanitarian funding, the U.S. should heed the UN Humanitarian Coordinator’s plea for more support, since “people in need as well as volunteers are traumatized, broke, and stretched to their limits.”26

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24 UNHCR and Kyiv Institute of Sociology, “After two years of displacement, hosting communities in Ukraine remain supportive towards IDPs - UNHCR study,” 9 June 2016.


1. The U.S. should highlight, in all conversations with senior Ukrainian officials, humanitarian concerns, including support for international humanitarian law and an end to Ukraine’s commercial food and medical blockade of occupied territory.

2. The U.S. should provide increased funding for shelter and early recovery programs in Ukraine and encourage other donors to do so.

3. The U.S. should provide seed funding to encourage Ukraine to develop and implement a coordinated plan to promote and bring about the successful reintegration of the displaced and the return of their full political and economic rights.

4. The U.S. should provide development funds and encourage other donors to invest in housing, infrastructure repair, and job training in secure parts of Ukraine, in order to create jobs and housing opportunities for displaced families.

5. The U.S. should encourage the government of Ukraine to separate all pension payments from IDP benefits, and to establish clear rules and procedures with a reasonable deadline for the completion of residence re-verifications, given the extreme poverty faced by most IDPs.

FURTHER READING

Record of the 7576th Meeting of the United Nations Security Council, on the situation in Ukraine, including briefings by Deputy Secretary-General Jan Eliasson; Assistant Secretary-General for Human Rights Ivan Simonovic; Director of OCHA John Ging; and Ambassador Ertuğrul Apakan, Chief Monitor of the Special Monitoring Mission to Ukraine of the OSCE. 11 December 2015.


Introduction

The judicial system in Ukraine is inefficient, opaque, and suffers from extremely low public confidence. In 2013, 16 percent of the population reported that they trusted the courts. By late 2014, that trust was down to 10 percent. Those who fully trusted the court system were a mere one percent. Currently, despite all the other developments in Ukraine, the strength and independence of the judicial system remains under threat. This risk is linked to the rigidly corrupt oligarchic system that has prevailed since Ukraine gained its independence in 1991. Each new government in Ukraine subjugated the judicial system, which then worked in the interest of those governing and ignored the needs of society.

After the 2013-2014 Revolution of Dignity, one of society’s most pressing demands was immediate judicial reform, which began only in October 2014. The government was able to enact some positive changes but these have not been sufficient to increase public confidence or accelerate reforms in other sectors.

Existing judicial reforms were initiated, developed, and implemented by a top-down command structure stemming from President Poroshenko. This approach provided little opportunity for any public input or for

In order for judicial reforms to be sustainable and accepted by the people of Ukraine and its civil society, the reforms process must be supported by the international community.

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any influence from civil society. Thus, the risk that the changes are only superficial is high, leaving the judicial system dependent on and heavily influenced by other branches of government in Ukraine. In order for judicial reforms to be sustainable and accepted by the people of Ukraine and its civil society, the reforms process must be supported by the international community.

Ukraine's Justice System

The judicial system of Ukraine consists of general jurisdiction courts and the Constitutional Court of Ukraine. The courts of general jurisdiction form a single system, which consists of both general and specialized courts. The Supreme Court of Ukraine is the highest judicial body of general jurisdiction in Ukraine, ensuring the consistency of jurisprudence, although the Supreme Court may review the decisions of the high specialized courts only in circumstances specified by law.

Today, the justice system does not perform its responsibilities properly. The primary reasons behind this include a low level of “legal culture” and legal consciousness in the society, the prevalence of corruption in the field of justice, as well as the continuing dependence of judges on Ukraine's executive and legislative branches.

In addition, imperfect procedural tools, including an undeveloped system of alternative methods to dispute resolutions like mediation, are an impediment to protecting people's rights and interests and the efficient functioning of the justice system. The system also suffers from imperfect methods of determining the workload of judges, leading to a disproportionate and highly variable caseload among judges. There is also insufficient use of modern information systems (e.g., e-justice). All of this leads to low public visibility of the justice system and low public confidence in the effectiveness and impartiality of judges.

Second, the current system of legal counsel is also dysfunctional. The professional rights and guarantees of the bar enshrined in law are not provided with adequate mechanisms for their implementation. As a result, lawyers are ignored, there is disrespect to the profession, and the role of lawyers in society is diminished. The system of professional self-regulation of lawyers by means of associations or other professional organizations is flawed, and lawyers receive insufficient professional training. The legal counsel system also lacks a balanced and comprehensive approach to the distribution of power and responsibility regarding pro bono work.

Third, there are significant problems in the execution of court rulings. Very few judgments are actually executed (according to the Ministry of Justice, only 20% of judgments are actually carried out). There is no effective incentive structure for bailiffs, and the interaction of bailiffs with other government and non-government agencies is highly inefficient. Parties that win lawsuits sometimes often wait years for the judgments to be executed. Ironically, in order to get state-guaranteed execution of judgments, people resort to bribing government contractors.

Ukraine’s criminal justice system is plagued with structural flaws. The impunity of prosecutors, for example, is not in keeping with European norms, and internal tools to fight corruption remain underdeveloped. There are significant structural obstacles to the autonomy of criminal investigators. The entire system suffers from inadequate IT infrastructure, preventing efficient electronic administration. On a practical level, there is a lack of respect for the adversarial principle in criminal proceedings. There is also no individualized, evidence-based approach to crime prevention, rehabilitation, or resocialization, with limited use of non-incarceratory punishment. There are also differences between the procedural responsibilities and actual

According to the Ministry of Justice, only 20% of judgments are actually carried out.

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28 See, for example, “Ministry of Justice: Only 20% of Adjudications Are Executed in Ukraine,” International Center of Reforms, icrua.org, 2015.
institutional functions of criminal justice bodies. For example, between 2012-2014 Ukraine conducted substantial reform in the criminal justice process, and the powers granted by the reforms far exceeded the institutional functions specified in Ukraine’s Constitution and other laws. As a result, there were significant issues in the implementation of the provisions of the new Code of Criminal Procedure.

Many of these systemic problems stem from poor strategic planning in the legislative process. Policymakers focus on short-term solutions, leading to the lack of a systemic vision for democratizing the justice sector. There is insufficient coordination and consultation among the political parties, groups responsible for executing the reforms, and civil society.

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Progress on Judicial Reforms

The goal of judicial reform in Ukraine is to reinforce the rule of law through the right to fair hearings by independent and impartial tribunals, the effective implementation and enforcement of court rulings, and the introduction of a higher level of “legal culture” into society. Judicial reforms should also meet the standards and adopt the best practices of the Court of Justice of the European Union (CJEU). Respect and adherence to the rule of law should flow from the highest tiers of government down to the provincial, district, and municipal levels.

The first step toward comprehensive judicial reform was Presidential Decree No. 826, which created “The Council on Judicial Reform” (hereafter – the Council). The Council is an advisory body to the President of Ukraine. The Council consists of 32 experts, including representatives of the Council of Europe, the OSCE, and the EU project “Support for Justice Reforms in Ukraine.” The Coordinator of the Council is Alexey Filatov, the Deputy Head of the Presidential Administration.

The Council developed a “Strategy for Reforming the Justice System, 2015–2020,” approved in May 2015. The Strategy provides for reform in two stages: first, immediate updating of relevant legislation to restore confidence in the judiciary in Ukraine; and second, systemic changes, such as adopting constitutional amendments concerning the judicial system, judiciary, and other related legal institutions.

The Strategy’s goals, plans, expected results, and success metrics for implementing these reforms are outlined in the “Action Plan” for the implementation of the Strategy. According to the Action Plan, new legislation should be adopted in the following areas:

1. The right to a fair trial (already adopted February 12, 2015)
2. Amendments to the Constitution of Ukraine regarding justice and related legal institutions, as well as actual implementation of provisions laid out in legislation (already adopted June 2, 2016)
3. Enforcement of court decisions (adopted June 2, 2016)
4. Procedural law
5. The bar
6. Pro bono legal counsel

As required in the Strategy of Judicial Reform, Ukraine’s Parliament adopted the Law “On Ensuring the Right to a Fair Trial” (Law No. 192-VIII) on February 12, 2015. This law provides mechanisms for updating the judiciary itself, including the evaluation of all judges’ qualifications to verify their competence, integrity, and professional ethics. The law introduces a new method of keeping track of a judge’s professional history and provides for new rules for the structure of the High Council of Justice (HCJ) and the High Judicial Council.

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29 Presidential Decree No. 826, 27 October 2014.
31 To read the full text of this law, see zakon.rada.gov.ua/go/192-19.
Qualification Commission of Ukraine (HJQC). In addition, the law establishes mechanisms of disciplinary proceedings against a judge and provides for extremely competitive procedures for the appointment and transfer of judges. Finally, it returns the Supreme Court of Ukraine to its role as the highest judicial body in the government system of Ukraine.

On June 2, 2016, Parliament adopted amendments to the Constitution in an attempt to depoliticize the judiciary and to ensure its independence. The amendments include legislation on the formation and liquidation of courts and the elimination of opportunities to politically influence judges. To do this, the amendments establish a new High Council of Justice, (hereinafter — GRP, to distinguish it from the current HCJ, which it will replace before April 2019). The GRP will submit nominations for judgeships to the President, since judges can only be appointed by the President. The GRP will have the sole authority to suspend, relieve, or transfer judges. In addition, the five-year probationary period for a judicial appointment will be eliminated — appointments will take effect immediately.

The amendments solidify the mechanisms for updating the judiciary (assessment and evaluation of judges, the basis for their authority and their dismissal) and significantly reduce the dependence of the Constitutional Court on political bodies. The amendments deny Parliament, the President, and the Congress of Judges the right to dismiss a judge of the Constitutional Court. This may only be done by two-thirds of the Court itself.

In addition, the June 2 amendments provide for the possibility of creating a three-tiered judicial system in the future and establish anti-corruption protections (including the competitive selection of judges, the regulation of sources of income, and the introduction of some degree of public control). The amendments grant everyone the right to file suit in the Constitutional Court in the case of a discrepancy of a law with the Ukrainian Constitution, after the exhaustion of other remedies. Prosecutors no longer have oversight over law enforcement. In a controversial move, the amendments also grant the right to to defend clients (or oneself) in court exclusively to attorneys.

These amendments took effect on September 30, 2016, while provisions for the recognition of the International Criminal Court jurisdiction in Ukraine come into force in three years. Under the transitional provisions, until the end of 2017 the President has the authority to establish, reorganize, and liquidate courts. In addition, until September 30, 2018, the President may transfer judges to another court upon the submission of the GRP.

### Implementing Legislation

Along with the changes to the Constitution, Parliament adopted the Law “On the Judicial System and the Status of Judges” (No. 1402-VIII), which aimed to implement the provisions of the June 2 constitutional amendments. According to the law, the current four-tiered justice system is replaced with a three-tiered system, comprising local courts, courts of appeal, and the new Supreme Court. The high specialized courts (Supreme Administrative, Economic and Civil, and Criminal Courts) are eliminated, and instead cassation divisions will be created within the structure of the Supreme Court.

In addition, two new courts are created, the Supreme Anti-Corruption Court and the High Court of Intellectual Property, which will have original jurisdiction over the corresponding categories of cases. The High Court of Intellectual Property is to be created by September 30, 2017, and the Supreme Anti-Corruption Court will be operational a year after the relevant legislation is adopted.

Prosecutors will no longer have oversight over law enforcement.
The implementing legislation creates the Supreme Court de novo. The Supreme Court should be established by March 30, 2017. Its bench will comprise not only experienced judges, but lawyers and legal academics who have at least ten years of experience. The High Judicial Qualification Commission (HJQC) will select Supreme Court judges. To ensure the Supreme Court is not politicized, it can only be reorganized or liquidated by law and not by Cabinet, Presidential, or judicial decree.

The implementing legislation introduces new principles for the composition of the bench. Ukrainians who were educated or worked abroad will have access to the competitive selection process for judgeships.

The Supreme Court will comprise not only experienced judges, but also lawyers and legal academics who have at least ten years of experience.

The law also creates a Public Council of Integrity, which will assist the HJQC in establishing criteria for evaluating the ethics and values of judges. Provisions for monitoring the lifestyle of judges are introduced. Judges are required to declare the income of their families in addition to their own. At the same time, the remuneration of judges is significantly but gradually increased.

In addition, on June 2, 2016, Parliament passed laws relating to the enforcement of judgements, including the law “On Organizations and Persons Engaged in the Enforcement of Judgments and Other Decisions of Other Bodies” (No. 1403-VIII) and the law “On Enforcement Proceedings” (No. 1404-VIII). The laws introduce a hybrid system of judgment enforcement by allowing for the existence of private judgment-enforcement bodies. Following the example of a number of European countries, private and public judgment-enforcement bodies will have similar rights and tools at their disposal so that citizens will have the choice to apply to either the state or private enforcement agency.

There are also bills pertaining to the justice system that are still at various stages of the legislative process, including draft amendments to the Civil Procedure Code, the new version of the Commercial Procedure Code, draft amendments to the law “On Legal Counsel,” “On the High Council of Justice” — these are already developed and are currently in a process of public and expert discussion. Parliament is also considering bills on electronic writ proceedings and computer-aided seizure of funds in civil and commercial proceedings.

As part of the Strategy, updates were made to the authorities responsible for judges’ professional careers. After a competitive selection process, new members were appointed to the High Council of Justice and HJQC, using the newly-enacted procedures. The HJQC and the Council of Judges of Ukraine approved new provisions regarding new procedures for evaluating judges’ qualifications, and this qualification assessment process has begun. The proposed plan for optimizing infrastructure for the judiciary was approved. In particular, the plan provides for the creation of a unified information and communication systems, as well as the introduction of electronic instruments for procedural justice.

The poor assessment of the judicial reforms by the expert community is largely due to the absence of any serious debate or discussion of the draft laws, either on the public or expert level.

The level of public approval of the reform, according to research firm TNS, is 17% (one of the lowest percentages, compared to the other reforms carried out). Only 25% of the members of the National Reform Council saw the reform positively, which is very low when compared to other reforms. The National Reform Council had placed reforming the justice system
as one of its four high-priority projects for 2016.

The general public’s poor approval of the judicial reforms might be explained by the fact that the changes have not yet reached their main goal — guaranteeing the right to a fair trial heard by an independent, professional, and impartial court.

The poor assessment of the judicial reforms by the expert community is largely due to the absence of any serious debate or discussion of the draft laws, either on the public or expert level. The reforms are also perceived as including imperfect and slow mechanisms for updating the judiciary, as well as loopholes that could be abused by the political authorities.

**Challenges in Implementing Reforms**

There were very few discussions and debates on the draft laws, both on public and expert levels. All legislative initiatives are legally in the hands of the President — the bill is drafted by a Council chaired by the deputy head of the Presidential Administration, and the law is adopted by the pro-presidential majority in Parliament. This, therefore, can form the basis for the abuse of power and requires a very broad discussion and monitoring of proposed projects.

There is no plan to structurally improve the judiciary, nor any mechanisms or draft laws that would consolidate the system to three tiers. Thus, the transition from the current four tiers to three tiers looks more like a superficial transformation that will have no substantive effect.

The law on the judicial system does not regulate the procedure for the establishment of the High Anti-Corruption Court, and hence its creation requires the development and adoption of a special law. This, in turn, allows compromised judges and chief judges to keep their posts. The High Anti-Corruption Court needs to be established within one year after the adoption of the relevant legislation.

The paucity of mechanisms to ensure the independence of judges allows for the possible abuse of power by the political authorities. Judges are still appointed and sworn in by the President of Ukraine. This may contribute to the fact that the heads of key courts are invited for an “audience” with the Presidential Administration but are actually there to establish informal contacts with the President’s “curators” of the judicial system.

There are also no effective mechanisms for the public to exert any influence on the selection and evaluation of judges. Thus, the findings of the Public Council for Integrity will be simply information for the HJQC, which they are free to ignore. There is no obligation on the part of the HJQC to accept the Council’s recommendations since it makes decisions unilaterally. In addition, the Public Council will have no impact on the competitive process for filling vacant positions on local courts.

There are no representatives of the public on the HJQC, members of which are mostly judges. Instead, the composition of the HJQC is extended by two members — the Chairman of the State Judicial Administration and the Parliamentary Commissioner for Human Rights (previously, HJQC members were appointed by judges only). Therefore, the threat of the preservation of collective responsibility in the judiciary remains.

Until 2019, the powers of the High Council of Justice (GRP) will be performed by the current HCJ, which over the past year has not proven to be much of an agent for reforms.

There are no provisions for effective mechanisms to update the composition of the benches of the first and second appellate courts. The new laws contain no provisions preventing a court’s chief judge from being re-elected, and some have been elected to this position four or even five times — despite there currently being a ban to hold the chief judgeship twice in a row.

In addition, restricting the right to litigate cases to lawyers is an excessive restriction on access to the justice system, and it is particularly unnecessary at this stage of the reform process. Moving forward, Ukraine needs to develop an environment that enables people better access to qualified lawyers and legal assistance for pro se litigators.
Ukraine must also ensure the rapid formation of a “dossier” of judges by consolidating information collected by the National Anti-Corruption Bureau of Ukraine, the Ministry of Internal Affairs, the General Prosecutor of Ukraine, the State Security Service of Ukraine, the Ministry of Justice of Ukraine, the State Fiscal Service, the State Service for Financial Monitoring, and the National Agency for the Prevention of Corruption.

RECOMMENDATIONS

1. The U.S. should encourage Ukraine to create public forums and establish a public comment period for draft laws on judicial reform. The public should be notified in advance and by various means (online, by mail, etc.) of the date, times, and place of these forums. Several forums should be held in each major city in order to ensure participation. Ukraine should conduct an education campaign to make the public well-informed ahead of any discussion forums. The U.S. should ensure the participation of foreign experts in public debate and monitoring, as well as public coverage of these discussions. The public should be able to submit written commentary on the reforms by various means, including electronically. After the comment period closes, a summary of the submitted comments should be published for public viewing.

2. The U.S. should assist in the systemic monitoring of judicial reforms that is done by several non-governmental organizations — in particular, the coalition of NGOs called Reanimation Package of Reforms,34 the European Business Association,35 and American Chamber of Commerce in Ukraine.

3. The U.S. should help strengthen the Council for Judicial Reform by providing specialized experts and grant support. This should be done in coordination with the work of the relevant parliamentary committees and members of Parliament, since the process of reforms is currently carried out exclusively by the Poroshenko Administration. The participation of MPs will allow society to come to a consensus on reforms faster.

4. The U.S. should help Ukraine develop alternative dispute resolution tools, in order to reduce the burden on the judicial system and increase public confidence in the justice system.

Special thank you to Eugene Bondarenko for assistance in translation.

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34 "Judicial Reform: Expectations and Possible Scenarios,” Reanimation Package of Reforms, 15 August 2016. For more, please visit rpr.org.ua.
35 "EBA Considers Mechanisms to Ensure Independence of the Judiciary in the Judicial Reform Voted by Rada as Insufficient,” Interfax-Ukraine, 3 June 2016.
Appendix 1
Inclusion of LGBTI People in Ukraine: From Protests to Policy Change

Appendix 2
Timeline
Appendix 1
Inclusion of LGBTI People in Ukraine: From Protests to Policy Change

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Introduction

In Ukraine, historically negative attitudes towards lesbian, gay, bisexual, transgender, and intersex (LGBTI) people are grounded in both traditional clericalism and a lingering Soviet mentality. Homosexuality was condemned during Soviet times and prohibited by the Criminal Code of the USSR. Although Ukraine was the first country of the former Soviet Union to decriminalize homosexuality in 1991, the stigma surrounding LGBTI people is largely due to the lack of human rights awareness and education. In fact, homosexuals are one of the most stigmatized groups in Ukraine. According to research by the Ukraine National Initiatives to Enhance Reforms (UNITER) project, 45% of the population would not like to have homosexuals as their neighbors (this category is considered the least tolerable after drug addicts and heavy drinkers). According to a February 2016 poll conducted by the Kyiv International Institute of Sociology and commissioned by Nash Svit Center, no more than 4.3% of Ukrainians feel positive or rather positive towards the LGBTI community (see the chart below).

Societal bias against LGBTI people and a weak antidiscrimination legal framework increase the likelihood of hate crimes. For example, in only two criminal proceedings on homophobia-motivated crimes in 2014 — the murder of an LGBTI person in Kharkiv and the arson of the Zhovten Cinema for showing a film on LGBTI-related issues — hate motives were considered by the court as mitigating instead of aggravating circumstances.


Appendix 1: Inclusion of LGBTI People in Ukraine.

First Steps in Developing LGBTI Antidiscrimination Legislation

Ukraine has made some modest progress establishing an appropriate antidiscrimination legal framework. These steps are largely related to the country’s obligations to the European Union the harmonization of Ukrainian laws with EU norms. In particular, the EU-Ukraine Association Agreement and Visa Liberalization Action Plan required the adoption of legislation combating discrimination of vulnerable groups, which Parliament did pass in 2015. This provides a window of opportunity to bring LGBTI-related issues into the spotlight in Ukraine. Moreover, Ukraine’s ability or inability to provide equality on the grounds of sexual orientation and gender identity could be considered by its Western partners as a “litmus test” of Ukraine’s adherence to European values and human rights.

In 2015, Ukraine had two major successes in guaranteeing the rights of LGBTI people. After a few voting attempts, the Verkhovna Rada adopted amendments to the Labor Code on November 12 that prohibit discrimination based on sexual orientation. These amendments are particularly important because a majority of LGBTI organizations report that employment is the sphere in which LGBT people most frequently face discrimination. Despite the fact that these changes were adopted in a rush ahead of an EU assessment, the amendments are considered the biggest success in LGBTI rights since homosexuality was decriminalized in 1991.

The second success was President Poroshenko’s August 2015 announcement of the National Human Rights

Although Ukraine was the first country of the former Soviet Union to decriminalize homosexuality in 1991, the stigma surrounding LGBTI people is largely due to the lack of human rights awareness and education.

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The National Human Rights Action Plan includes language envisaging the adoption of legislation that would combat discrimination on the grounds of sexual orientation and gender identity.

Lessons From Kyiv Pride 2016

Since 2012, the Kyiv Pride March — commonly referred to as the March for Equality — has been one of Ukraine’s primary LGBTI-related events and a symbol of the solidarity with the LGBTI community. On June 12, 2016, a record 1500–2000 participants marched in the city center in Kyiv’s first-ever peaceful Pride March.8

Several factors made the 2016 Kyiv Pride successful. First, a set of key stakeholders supported having a successful and peaceful march, including international community, Ukrainian politicians and public figures, law enforcement bodies, the media, and mainstream human rights NGOs. Organized according to the theme of security as a human right, Kyiv Pride urged the police to demonstrate their defence of the people’s right to peaceful assembly. On the eve of the march, the Head of National Police Khatia Dekanoidze assured the public of the police’s commitment to defend the security to the protestors.9 The scale of the security measures was unprecedented, as 6000 policemen protected 1500-2000 protesters, encircling the marching column and carefully controlling entry to the march.

In addition, an important factor in the march’s success was the role of international diplomats and organizations working in Ukraine. In the public statement released on the International Day Against Homophobia and Transphobia, the ambassadors of thirteen countries appealed to the police and Kyiv authorities to protect the right for peaceful assembly of LGBTI people and their allies.10 Members of the European Parliament, namely Rebecca Harms, Ana Homes, and Sophie Welt, visited Kyiv to attend the demonstration. Ambassadors of EU countries in Ukraine also joined the demonstration. The United Kingdom’s new Ambassador to Ukraine Judith Gough, an openly gay diplomat, is a strong supporter the Ukrainian LGBTI community and speaks often at LGBTI events.11 Finally, the support of Ukrainian politicians was more audible than in

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Appendix 1: Inclusion of LGBTI People in Ukraine.

previous years. A number of young members of Parliament attended Kyiv Pride, including representatives of Euro-optimists caucus Serhii Leshchenko, Svitlana Zalishchuk, and Mustafa Nayyem. These MPs were key backers of the adoption of antidiscrimination amendments to the Labor Code in November 2015.

Forty human rights organizations issued a joint statement supporting Kyiv Pride, which shifted the perception that the march was solely connected to LGBTI issues but rather connected to overarching ideas of human rights, equality, and non-discrimination. Importantly, the church condemned threats of violence from right-radical movements, calling instead for peace and tolerance.

The Time for LGBTI Inclusion

Both the successful adoption of LGBTI non-discrimination legislation and the success of the Kyiv and Odesa Pride marches created broader visibility of the LGBTI community and the difficulties its members face. Research repeatedly shows that the level of acceptance of LGBTI people, as well as the acceptance of other minorities, is positively correlated with the level of awareness of and personal contact with that minority. It is key for Ukraine to further develop a non-discrimination legal framework, as well as monitoring the implementation of legislation already adopted, like the amendments to Labor Code and the National Human Rights Action Plan. However, the next challenge for Ukraine’s LGBTI community will be to turn the success of the Kyiv Pride march and a mobilized support network into viable policy change, a problem shared by much of Ukraine’s post-Maidan civil society.

Chapter 105 of National Human Rights Action Plan, called “Establishing an Effective Framework for Preventing and Combating Discrimination,” contains a set of legislative initiatives concerning LGBTI people. One initiative is a bill on the registration of civil partnerships for hetero- and same-sex couples that should be developed by the Cabinet of Ministers of Ukraine by the second quarter of 2017. The Action Plan prescribes that draft law should consider proprietary and non-proprietary rights of civil partners, including ownership and inheritance rights, alimony rights, and the right not to be called as a witness against one’s partner.

Same-sex couples who find themselves internally displaced persons (IDPs) have no right to common shelter, no right to state support if a partner dies in the Donbas War, no inheritance rights, etc., since their union is not recognized by the state.

Discussing the legalization of same-sex unions is likely premature until widespread homophobia and transphobia are overcome, according to LGBTI activist Hanna Dovgopol. That said, the difficulties faced by non-recognized same-sex partners have been exacerbated recently due to annexation of Crimea and the militarization of the country, according to analysis by Nash Mir. Same-sex couples who find themselves internally displaced persons (IDPs) have no right to common shelter, no right to state support if a partner dies in the Donbas War, no inheritance rights, etc., since their union is not recognized by the state.

12 “Ukrainian Church Urges Against Fighting at the ‘Equality March’ in Kyiv,” 5.ua, 10 June 2016.
15 Anna Dovgopol, personal interview with the activist, 13 October 2016.
Conclusion and Recommendations

For years, LGBTI people have been among the most stigmatized parts of society. Unwillingness to recognize the rights of LGBTI people is largely connected with not knowing who they are and the absence of personal connections with them. As in many countries around the world, there is much work to be done to make society more inclusive LGBTI people, not least because the way they are treated often serves as a “canary in the coal mine,” warning of possible discrimination against other groups in society.

Together with the adoption of the Labor Code amendments and the National Human Rights Strategy, the large-scale peaceful Kyiv and Odesa Pride marches provide some hope that the non-acceptance of LGBTI people might give way to greater inclusion. However, Ukrainian legislation remains far behind the progressive Western antidiscrimination laws, and the words “same-sex partnership” are fully absent from Ukrainian legislation. For these reasons, U.S. policy toward Ukraine regarding LGBTI issues should focus on the following:

1. The U.S. should provide support to public outreach programs that expand societal dialogue on LGBTI issues. American donors like USAID should continue funding communication activities targeted at those people who have progressive pro-European views but who do not necessarily know of or support the LGBTI rights movement. This focus will help persuade the doubting majority.

2. The U.S. should continue to apply the best U.S. public diplomacy tools to provide support to the LGBT community in Ukraine. The U.S. should use creative and non-confrontational means to counter anti-LGBT messaging. Artistic events — such as the concert of the gay men’s chorus Potomac Fever on the stage of Lviv Philharmonic — have the capability to produce tremendous shifts in public opinion.

3. The U.S. should support programs focusing on advocacy for non-discrimination legislation on the grounds of sexual orientation and gender identity. U.S. government grant programs should support the adoption of antidiscrimination legislation envisioned by the National Human Rights Action Plan17 (Chapter 105, point 6) concerning, among other things, legislation recognizing same-sex partnerships, improving regulations concerning transgender people, and amending the Criminal Code to treat sexual orientation or gender identity hatred motives as aggravating, not mitigating, circumstances in criminal proceedings.

4. The U.S. should encourage Ukraine to adopt even a minimal same-sex partnership law. Legal recognition of same-sex unions would secure the rights of same-sex couples in the face of military hostilities in Ukraine and annexation of Crimea.

Appendix 2
Timeline

**November 21, 2013:** In a sudden policy reversal, President Yanukovych announces he will not pursue an Association Agreement with the EU, succumbing to pressure from the Kremlin.

**November 30, 2013:** The opportunity to sign an EU association agreement passes. The Ukrainian government orders dispersal of protesters on Independence Square in Kyiv. Special police use force, resulting in dozens of wounded and hundreds of arrests. As a reaction to police violence, the protest demographics shift from being mostly student-based to being composed of the general population.

**December 1, 2013:** Hundreds of thousands of locals take to the streets to protest police violence against students. Protests become anti-government rather than simply pro-EU.

**December 10th:** Special police forces make their first attempt to storm the Maidan after most protesters leave for the night. Protesters return to the Maidan in the middle of the night and successfully prevent special police forces from taking the encampment.

**January 16-20, 2014:** Government passes draconian anti-protest laws, violent clashes between special police forces and protesters ensue.

**January 21, 2014:** First protesters killed by special police forces, dying of gunshot wounds. Bodies of protesters begin to be discovered in suburban forests.

**January 23, 2014:** Protesters in cities throughout Ukraine begin occupying regional administration buildings, eventually taking 10 of 25 regional centers.

**February 19-20, 2014:** Over 100 protesters are killed by government snipers, the most violent event in Ukraine since WW II.

**February 21, 2014:** Ukraine’s government reaches an EU-brokered deal with the opposition, scheduling presidential elections for December and promising a return to the 2004 constitution, taking away certain presidential powers.

**February 22, 2014:** President Yanukovych flees Kyiv and dozens of his party’s members defect to the opposition. Parliament passes a resolution declaring Yanukovych no longer able to discharge the office of President. Protesters resolve to continue barricading and guarding Maidan at least until the presidential elections in order to put pressure on the interim government.

**February 27, 2014:** Russian special forces appear in Crimea without insignia and organize “self-defense militias” to take over government buildings and military installations. A new government begins to form in Kyiv.

**March 16, 2014:** Citing the presence of a large Russophone population, Russia instigates a referendum in Crimea to join the Russian Federation. Referendum passes with a supposed 95.5% majority, amidst widespread international condemnation, allegations of voter fraud, and a
boycott by the Tatar and Ukrainian populations of Crimea. Ukraine’s Acting President Oleksandr Turchynov declares a so-called “anti-terrorist operation” (ATO) in the Donbas, ordering volunteer battalions from the Maidan and the Ukrainian military to fight separatists in the region.

May 11, 2014: Militants in the Donbas hold a similar referendum to the one in Crimea, declaring the Donetsk and Luhansk provinces of Ukraine independent. The United States and Germany quickly condemn the referendum, calling it illegitimate. The Ukrainian ATO continues, and is popularly referred to as the Ukrainian-Russian war due to the evidence of direct Russian involvement.

May 25, 2014: Ukraine holds OSCE-monitored elections, choosing billionaire chocolate magnate Petro Poroshenko to be president.

June 8, 2014: A NATO investigation finds evidence of more than 9,000 enlisted Russian soldiers fighting against Ukrainian forces in the Donbas.

July 17, 2014: A surface-to-air missile hits a civilian airliner, Malaysia Airlines flight 17, killing nearly 300 passengers over occupied Donbas. Likely thinking they struck a military plane, separatist militants quickly claimed credit for the attack on social media.

September 5, 2014: Thousands having been killed in the Donbas, representatives of Ukraine, Russia, and the OSCE meet in Minsk, Belarus to agree to a ceasefire. Ukraine agrees to recognize local autonomy, though not independence, of the Donbas, and to eventually hold OSCE-monitored elections in the region. All parties sign the Minsk-1 Agreement, but fighting in the Donbas continues.

February 11, 2015: Casualties rise to over 5,400, after skirmishes over key transportation hubs like the Donetsk city airport and the railroad junction at Debaltseve. The presidents of Ukraine, Russia, France, the chancellor of Germany, and leaders of the LDNR meet in Minsk for a second round of ceasefire agreements. All parties sign the Minsk II Agreement, but joint Russian-separatist forces continue to attempt to take Debaltseve from the Ukrainian military.

February 18, 2015: Ukrainian forces withdraw from occupied cities, though fighting still continues with separatist advances westward.

Mid May, 2015: Construction of the Kerch Strait Bridge to connect Russia with Crimea commences.

May 28, 2015: The Atlantic Council releases a report says the number of on-duty Russian soldiers in the Donbas is greater than 10,000.

June 2015: Casualties rise to 6,000. Separatist leaders claim to be arranging local elections, but no commitments are announced.

June 21, 2015: Lithuanian Defense Minister Marius Yanukonis announces that Lithuania is ready to provide lethal aid to Ukraine as “an example to other NATO member states.”

June 28, 2015: Dutch investigators end MH17 investigation due to Russian and separatist obstruction.

July 25, 2015: The U.S. State Department announces that the Pentagon will begin providing training to regular Ukrainian troops by the end of 2015.
Appendix 2: Timeline

Early September, 2015: Ukraine and joint Russian-separatist forces agree to a ceasefire in the negotiations of the Trilateral Contact Group. The casualty rate begins to steadily decrease.

October 13, 2015: The Dutch Safety Board releases MH17 report which finds that a Russian-made Buk missile likely downed MH17.

November 5, 2015: OSCE observes noticeable increases in ceasefire violations around the Donetsk airport.

November 9, 2015: Ukraine sees first direct engagement with separatist forces in months as separatist forces in the Donetsk region attempt to overtake a military base in the town of Mayorsk.

December 30, 2015: In the face of increased conflict, Minsk II implementation extended into 2016.

February 4, 2016: Western reformers begin to leave the Ukrainian government, citing corruption. Lithuanian-born Minister of Trade and Economic Development Aivaras Abromavicius resigns due to interference in his work by Ihor Kononenko, a close ally and business partner of President Poroshenko. Others follow.

February 13, 2016: The OSCE reports at the Munich Security Conference that fighting has intensified in eastern Ukraine, with separatists moving heavy weaponry back to the front line.

February 19, 2016: UNICEF reports that 580,000 children have been “deeply affected” by the conflict in eastern Ukraine.

April 1, 2016: The White House announces $335 million in additional security assistance aid for Ukraine.

April 14, 2016: Volodymyr Grosman approved as new Prime Minister, replacing Arseniy Yatsenyuk.

April 28, 2016: UN Assistant Secretary General for Political Affairs raises casualty estimate to 9,333.

June 2, 2016: Ukrainian Parliament passes controversial judicial reforms in the form of constitutional amendments, which were meant to bring the Ukrainian judicial system on a path towards greater transparency and fairness.

June 3, 2016: Ukraine and the U.S. sign third $1 billion loan guarantee agreement.

July 18, 2016: Trump campaign softens GOP platform language on Ukraine at the Republican National Convention in Cleveland by amending the nature of U.S. aid to Ukraine from “lethal defense weapons” to “appropriate assistance.”

July 27, 2016: Belarusian journalist Pavel Sheremet, who was sharply critical of the Putin administration, is killed by a car bomb in the center of Kyiv.

September 1, 2016: Separatists agree to a ceasefire in Ukraine for the start of the school year. Ceasefire breaks down within weeks.

September 28, 2016: A Dutch investigation concludes that Malaysian Airline flight 17 was shot down by a Russian-made Buk missile launched from within separatist-controlled territory in eastern Ukraine.

October 17, 2016: Russian-born separatist commander Arsen Pavlov, better known as “Motorola,” is killed by an IED in Donetsk. He was infamous for the execution of Ukrainian POWs.
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During the 2014 Maidan Revolution, Ukrainians braving both cold weather and government violence demonstrated that their nation was embracing a new national consciousness, defined by European values and a dedication to equality before the law. Threatened by Ukraine’s rejection of Russia’s sphere of influence, the Kremlin reacted by annexing Crimea and establishing separatist pseudo-states in the easternmost regions of Ukraine. In addition to defending its territory, Ukraine is struggling to fight corruption and build a society that lives up to the liberal-democratic values of the Maidan.

An in-depth understanding of Ukraine’s politics, economics, and society must continue to inform American policy toward Ukraine. This report offers both an analysis of current policy as well as concrete recommendations for furthering U.S. national interests in Ukraine.