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# Corruption, Impunity, and Current Reforms in Ukraine

## Assessment Report

### Introduction

At the time of this report, Ukraine had emerged as the most serious international problem in Europe since the political conflicts and wars associated with the break-up of Yugoslavia. A mass uprising centered on Maidan Square in Kyiv forced President Viktor Yanukovich, a corrupt and authoritarian leader, out of office. Russian President Vladimir Putin reacted strongly to the removal of Yanukovich, who had been amenable to Russian interests and susceptible to Russian pressures. Putin ordered the Russian annexation of Crimea and hinted at the occupation and possible annexation of additional Ukrainian territory, while applying economic pressure on Ukraine concerning exports to Russia and payments for oil.

The United States and the European Union rallied to give Ukraine strong diplomatic and substantial economic support. However, both western and Ukrainian leaders have publicly stated that the success of Ukraine as a viable state requires basic political and economic reforms. Such reforms are now the top priority of the current Maidan-inspired government in Kyiv.

This report is based largely on 22 extended interviews conducted between April 27 and May 3, 2014, with leading representatives of government, civil society and international organizations in Kyiv,<sup>1</sup> to assess the role that impunity played in producing the current situation and the plans and first steps taken to combat it, as observed and evaluated by local participants and analysts and by international observers. It reflects the constraints of conducting a one-week mission in the capital of a large and varied country, where political views and interests are sharply divided. Furthermore, interviews took place during a time of transition, when the country was under siege. Nevertheless, listening to people involved on the ground is a useful first step in understanding the rapidly developing situation in Ukraine and thinking about how the international community can best assist its democratic reforms.

There is no doubt that the Maidan uprising's successful removal of Yanukovich from power is only the beginning, not the end, of efforts to create a new, reformed Ukraine. There is

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<sup>1</sup> An interview list is included at the end of the report.

also no doubt that numerous officials are accustomed to and profit from the old corrupt and autocratic ways of doing things.<sup>2</sup> Nevertheless, the new government made it clear that its first priority is to establish the rule of law.<sup>3</sup>

## Background

Independent Ukraine's first 22 years have been marked by twists and turns: economic decline and an upswing aborted by the world financial crisis, Machiavellian political maneuvers, authoritarian rule and popular uprisings, and now foreign invasion. The parliamentary system has changed from single-seat constituencies to mixed proportional representational/single-seat constituencies to a full proportional representation system.

Leonid Kravchuk, head of the Ukrainian Communist Party in the Soviet Union's last two years, was elected the first president of independent Ukraine (1991–1994). Adherence to a quasi-Soviet economic model, hyperinflation, and a 50 percent drop in GDP<sup>4</sup> led to Kravchuk's defeat in the next presidential election by former Prime Minister Leonid Kuchma (1994–2004), who served two terms in office. Kuchma initiated a privatization of heavy industry that was marked by charges of corruption and the rise of regional oligarchs. The extent of the corruption can be inferred from the fact that former Prime Minister Pavlo Lazarenko (1996–1997), was convicted and sentenced to prison in the United States in 2006 for money laundering and extortion. The United Nations estimates that Lazarenko embezzled approximately \$200 million from the government of Ukraine while serving as prime minister.<sup>5</sup>

Starting with the appointment of Viktor Yushchenko, head of the National Bank, as a reformist prime minister (1999–2001), Ukraine experienced steady economic growth until the 2008 world financial crisis.<sup>6</sup> Nevertheless, widespread corruption and charges that Kuchma had ordered the killing of the journalist Georgiy Gongadze cast a dark shadow over the end of his administration.

The 2004 presidential election was a contest between Donetsk Governor Viktor Yanukovich and Viktor Yushchenko, who had formed the "Our Ukraine" party as a coalition of opposition forces. An attempt by Yanukovich to steal the election led to a massive campaign of protests and civil disobedience known as the Orange Revolution. The Ukrainian Supreme Court declared the second round of the election fraudulent, a revote was ordered, and Yushchenko was elected Ukraine's third president (2005–2010).

The hopes raised during the Orange Revolution for a political and economic revival were dashed by squabbling between Yushchenko and his first prime minister, the energetic and ambitious businesswoman and politician Yulia Tymoshenko. Yushchenko dismissed her from her post and engaged in a series of tactical parliamentary alliances that culminated in a temporary coalition with Yanukovich's Party of Regions, making him prime minister. At the end of 2007, Tymoshenko again became prime minister. However, political in-fighting between her and Yushchenko degenerated into public animosity. This made it difficult to give a united,

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2 The following information about the cleansing of the judicial system is taken from Maria Popova, "Ukraine's Legal Problems: Why Ukraine's Plans to Purge the Judiciary Will Backfire," *Foreign Affairs*, April 15, 2014, [www.foreignaffairs.com/articles/141187/ maria-popova/ukraines-legal-problems](http://www.foreignaffairs.com/articles/141187/ maria-popova/ukraines-legal-problems)

3 On February 24, within hours of Yanukovich's ouster, the parliament began a process of lustration, the purge of officials who perpetrated crimes and abuses of power.

4 Andrew Wilson, "Ukraine: Political and Economic Lessons from Democratic Transitions," Council on Foreign Relations, June 18, 2013, <http://www.cfr.org/democratization/ukraine/p30818>. See also [http://kushnirs.org/macroeconomics/gdp/gdp\\_ukraine.html](http://kushnirs.org/macroeconomics/gdp/gdp_ukraine.html)

5 [http://en.wikipedia.org/wiki/Pavlo\\_Lazarenko#Prime\\_minister](http://en.wikipedia.org/wiki/Pavlo_Lazarenko#Prime_minister)

6 "Economic Development of the Ukraine: Introduction," Business Reference Services, Library of Congress, [www.loc.gov/rr/business/ukraine/introduction.html](http://www.loc.gov/rr/business/ukraine/introduction.html)

coherent response when the global financial crisis hit.<sup>7</sup> The worldwide decline in demand for steel caused the price of one of the country's main exports to collapse. The value of the Ukrainian currency fell sharply, and investors pulled out. Anger, fear and frustration spread among the Ukrainian public.

Disillusion with the outcome of the Orange Revolution and new economic hardships created a favorable environment for the return of Yanukovich, who won the presidency in February 2010 in what international observers evaluated as a free and fair election.<sup>8</sup> In March, Tymoshenko was ousted as prime minister by a parliamentary vote. In May 2011, she was arrested on charges of abuse of office, ostensibly for having signed a gas import contract with Russia with overly high prices. By October she was found guilty and sentenced to seven years' imprisonment.

As a candidate, Yanukovich had run as a democratic reformer, a professional who could unite the country. However, once in office, Yanukovich showed his disregard for legal rules and procedures from the beginning. Notably, he ignored the law when creating his majority in parliament.<sup>9</sup> Nevertheless, Yanukovich maintained and even strengthened his hold on political power. The 2012 parliamentary elections were conducted under a new electoral law that created a mixed voting system, with blocs of parties not permitted. Yanukovich's Party of Regions won 42 percent of the vote. The OSCE/ODIHR Election Observation Mission characterized the elections as having serious defects, such as abuse of governmental administrative resources, hidden financing, lack of balanced media coverage, and tabulation of votes lacking transparency.<sup>10</sup>

Once in office, Yanukovich and his officials fostered an environment permeated by cronyism and corruption and lacking rule of law. According to interviewees, the 2013 budget of the Ministry of Internal Affairs was higher than that of the army. It included lots of weapons for the Ministry's internal troops, including 80 new sniper guns for its special unit. The army or police special units had none. It appears that Yanukovich was building up the MIA forces as his own praetorian guard. He also started to take over businesses belonging not only to ordinary people or political foes, but to his own supporters, like Petro Poroshenko.

Public resentment grew, and finally exploded in reaction to Yanukovich's rejection on November 21, 2013, of a negotiated agreement for association with the European Union. In rejecting association with the EU, Yanukovich had chosen closer economic relations with Russia, eventually to culminate in a Moscow-dominated Eurasian Union. In return, Putin had offered \$15 billion in loans and sharply reduced gas prices, with no mandatory reforms attached. It is significant that the agreement would have required wide-ranging reforms, including a serious struggle against corruption in Ukraine. The regime's inability to suppress prolonged public protests and takeovers of government buildings and the killing of 103 Maidan demonstrators by government security forces in Kyiv led to its overthrow. On February 22, 2014, the Rada (Ukrainian Parliament) voted to remove President Yanukovich from power and set elections

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7 "The global economic crisis sent Ukraine's economy into a tailspin. In 2009, the country's GDP fell by about 15 percent, exports by 25 percent, and imports by just under 40 percent. The consumer price index rose by more than 12 percent." Alexander J. Motyl, "Ukrainian Blues: Yanukovich's Rise, Democracy's Fall," *Foreign Affairs*, July/August 2010, [www.foreignaffairs.com/articles/66447/alexander-j-motyl/ukrainian-blues](http://www.foreignaffairs.com/articles/66447/alexander-j-motyl/ukrainian-blues)

8 Organization for Security and Co-operation in Europe, "Ukraine, Presidential Election, 17 January and 7 February 2010: Final Report," 28 April 2010, [www.osce.org/odihr/elections/ukraine/67844](http://www.osce.org/odihr/elections/ukraine/67844).

9 Unable to form a majority coalition of parties to establish his government, his Party of Regions changed the parliamentary rules to permit support by 16 individual parliamentarians who crossed party lines to join his coalition. This was something that the Constitutional Court had explicitly outlawed in 2008, although it now refused to challenge Yanukovich. For this reason, some Ukrainians considered him no longer a valid president, a usurper holding office through unconstitutional action. Dmytro Potekhin, "Eastern Gangstership" *The Ukrainian Week*, January 28, 2014, <http://ukrainianweek.com/Columns/50/100226>

10 Organization for Security and Co-operation in Europe, "Ukraine, Parliamentary Elections, 28 October 2012: Final Report," 3 January 2013, [www.osce.org/odihr/98578](http://www.osce.org/odihr/98578)

for May 25. It then elected Oleksander Turchynov as interim president and Arseniy Yatsenyuk as interim prime minister. Yulia Tymoshenko was released from jail and soon became one of the two leading candidates for president.

Yanukovych's downfall angered Putin, and the Russian response was swift. On February 27-28, unidentified pro-Russian gunmen seized key buildings in Simferopol, Crimea's capital. On March 6, Crimea's parliament voted to join Russia. After a referendum without public debate was held on March 16, with 97 percent voter approval, Putin signed a bill on March 18 absorbing Crimea into the Russian Federation.

Continuing attacks and counter-attacks between pro-Russian and what at times seemed incompetent and feckless Ukrainian forces produced casualties and deaths. Reports by the UN Human Rights Monitoring Mission in Ukraine documented abduction, torture, and murder, violence against participants in peaceful rallies, intimidation and blocking of pro-Ukraine media, harassment, and even attacks on presidential candidates. The majority of human rights violations were reportedly committed by separatists.<sup>11</sup> Nevertheless, the US and the EU emphasized the paramount importance of conducting presidential elections on May 25, in order to establish the legitimacy of the government in Kyiv.

Perhaps in reaction to western threats to impose sanctions against entire sectors of the Russian economy if Russia annexed additional Ukrainian territory or tried to derail the vote, Moscow and its surrogates criticized and harassed, but did not prevent, the elections from taking place, except in the self-proclaimed republics of Donetsk and Luhansk. They may also have been reassured by the pragmatic reputation of the leading candidate, Petro Poroshenko, a billionaire who had served under Yanukovych as minister of economic development and trade. However, it should be noted that he also served under Yushchenko as minister of foreign affairs and as head of the Council of the National Bank under both men. Poroshenko also supported the Maidan uprising both financially and with his physical presence.<sup>12</sup> Ukrainians apparently appreciated both his professionalism and his idealism and elected him the fifth president of independent Ukraine.

On June 28 Poroshenko made a definitive move towards Europe, signing a long-delayed trade agreement that is seen as a first step toward EU membership. But recent events have been discouraging. The underlying problems of corruption and cronyism that fueled the Maidan protests continue to plague the country.

### Regional Divide

While the population of Ukraine is almost 80 percent ethnic Ukrainian, the experiences and socioeconomic development of Ukrainians in the eastern and western parts of the country have been substantially different for a good part of their history. This has created attitudes and linguistic habits so divergent that observers often comment that Ukrainians seem to be two nations contained in one state.

The ethnic nationalism of western Ukrainians encompasses a desire to preserve and, where possible, expand the use of the Ukrainian language, which was officially recognized as the sole official state language of Ukraine. This has raised concerns among Russians and Russian-speaking Ukrainians, at times fanned into exaggerated fears that they would be forced to stop speaking Russian and use only Ukrainian.<sup>13</sup> However, the Russian-speaking regions have not

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11 [www.un.org/apps/news/story.asp?NewsID=47809#.U30muOIOXMw](http://www.un.org/apps/news/story.asp?NewsID=47809#.U30muOIOXMw)

12 "Frontrunner in Ukraine Election May be Shifting Putin's Stance," New York Times, May 19, 2014, [www.nytimes.com/2014/05/19/world/europe/frontrunner-in-ukraine-election-may-be-shifting-putins-stance.html?hpw&rref=world](http://www.nytimes.com/2014/05/19/world/europe/frontrunner-in-ukraine-election-may-be-shifting-putins-stance.html?hpw&rref=world)

13 Statistics on Russian language use in the east should not be taken as a proxy for political attitudes any more than English

been put under strong pressure to switch to Ukrainian, perhaps in part because presidents Kuchma and Yanukovich and the dominant Party of Regions had their political base of support in the east. Furthermore, in December 2012, the Party of Regions managed to enact a law allowing local and regional governments to give official status to Russian and other languages used by at least 10 percent of their residents. Although the law reaffirmed Ukrainian as the official state language, it in turn raised fears and objections among western Ukrainians that official use of Ukrainian would be demoted and threatened.

Moreover, the memories and evaluations of World War II and the post-war period are a politically live topic in Ukraine today and differ strongly in western and eastern Ukraine. For many western Ukrainians, the Ukrainian Insurgent Army (UPA) are seen as national heroes, while many eastern Ukrainians agree with decades of Soviet and later Russian propaganda that they were simply Nazi collaborators and fascists. The Russian propaganda machine and eastern Ukraine separatists make use of these historical sensitivities, labeling the Maidan protestors and the new government in Kyiv as “fascists” and even “Nazi collaborators.”

Ideological differences between eastern and western Ukraine are accentuated by differences in their underlying economic structures. Eastern Ukraine is dominated by mining, steel and other heavy industry. According to those interviewed for this report, this creates a company-town environment, with large oligarch-owned corporations exercising paternalistic sway over the population. Western Ukraine has a stronger local civic and entrepreneurial tradition. Visitors from bordering states (Belarus, Poland, Slovakia, Hungary, Romania) come to purchase products such as food or gasoline that are cheaper in Ukraine than in their own countries.

The eastern industrial enterprises have strong trade links with Russia, while the western economy is more oriented towards central Europe. Economic interests reinforce cultural-psychological predispositions. As one interviewee pointed out, western Ukrainians seeking jobs abroad tend to emigrate to West Europe, while eastern Ukrainians go to Russia.

It is widely believed that corruption is more widespread in eastern Ukraine, facilitated by post-Soviet attitudes prevalent in the population, while western Ukrainians pride themselves on holding “European” values. However, differences in levels of corruption may also be a function of the much larger amounts of industrial enterprise money at play in the east.

The cultural, economic and ideological divides have been reflected in a political divide. Ukrainian nationalist and reformist parties have greater support in the west, while the Party of Regions and Communist Party strongholds are in the east. During the 2004 and 2010 presidential elections, western Ukraine tended to support Yushchenko and Tymoshenko, while eastern and southern Ukraine voted for Yanukovich. In general, it has been said that western Ukraine valued national independence for its own sake, as an ideal worth sacrificing for, while eastern Ukraine supported it in 1991 only in the hope that it would bring prosperity. When this failed to happen, it became disillusioned and even hostile to the government in Kyiv.

However, the Russian annexation of Crimea and threats to partition the rest of Ukraine may have had the effect of narrowing the gap between the stereotypical nationalist west and Russified east; and Putin may have engaged in a kind of inadvertent nation-building, arousing in many eastern Ukrainians new feelings of loyalty to the country. Before the annexation, a

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language use would have been a good indicator in Ireland of support for British rule in 1910. As one of our informants said, he speaks Russian better than Ukrainian, but he would not want to be deprived of the Ukrainian language.

reputable public opinion survey showed that 67-83 percent of Russian-speaking Ukrainians in various eastern regions were against annexation by Russia (even in Crimea, the outlier region, 59 percent of respondents were against annexation). A poll taken after the Crimean annexation showed that only 18 percent of the population (24 percent of Russian-speakers) in eastern Ukraine favored allowing regions to secede. Significantly, unification with Russia was supported primarily by older respondents.<sup>14</sup>

The confrontation with Russia seems to have energized efforts to come to a mutual understanding between the major Ukrainian regions. Both civil society and the government in Kyiv have been reaching out to eastern Ukraine, sending representatives to their counterparts in the area to negotiate and cooperate. Moreover, the Party of the Regions, the most influential and representative political party in eastern Ukraine, publicly supports a united Ukraine. Second, some oligarchs have cast their lot with Kyiv.<sup>15</sup>

After a series of meetings between central government officials and representatives of eastern Ukraine, the Ukrainian parliament adopted on May 20 a “memorandum on mutual understanding and peace” that calls for decentralization of government and guarantees the status of the Russian language. Both are major demands of the eastern Ukrainians. While all parties and political leaders now agree on the need for some decentralization, it may be harder to agree on the specifics of what kind of decentralization and how extensive it should be. There is a danger that a radical federalization would in effect become partition by another name.

### Corruption and Impunity

Corruption was a widespread feature of the Soviet system, permeating the habits and psychology of ordinary citizens. It is, therefore, not surprising that it continues to afflict post-Soviet societies. Corruption accelerated during the Kuchma years, especially in relation to the privatization of major state-owned enterprises, and was accompanied by attempts to suppress media, which were exposing the scandals. Yushchenko made strong statements against corruption after taking office,<sup>16</sup> and interviewees say that initially it had some effect in decreasing corruption. Still, the political balance between the contending forces of the president, successive prime ministers, and the Party of Regions prevented any one group from achieving impunity. This is the landscape that the post-Maidan reformers now face.

The overall pattern is of general corruption: citizens expect to pay bribes in their daily lives in order to obtain ordinary government services, and business and politics influence each other decisively in illegitimate ways. In each institution corrupt power is concentrated at the top, involving more and more people as one descends down the hierarchy. At the top of the pyramid before the protests, uniting and profiting from the entire system, were President Yanukovich

14 Alexander J. Motyl, “Is Losing Crimea a Loss?”, *Foreign Affairs*, March 10, 2014, [www.foreignaffairs.com/articles/141020/alexander-j-motyl/is-losing-crimea-a-loss](http://www.foreignaffairs.com/articles/141020/alexander-j-motyl/is-losing-crimea-a-loss). David Francis, “Why Putin’s Adventure in Ukraine is Doomed,” *The Fiscal Times*, April 15, 2014, <http://finance.yahoo.com/news/why-putin-adventure-ukraine-doomed-183800324.html>. “Despite Concerns about Governance, Ukrainians Want to Remain One Country,” Pew Research Global Attitudes Project, May 8, 2014, [www.pewglobal.org/2014/05/08/despite-concerns-about-governance-ukrainians-want-to-remain-one-country](http://www.pewglobal.org/2014/05/08/despite-concerns-about-governance-ukrainians-want-to-remain-one-country)

15 Gennady Kernes, successful businessman and mayor of Kharkiv, came out in favor of the Kyiv government shortly before his assassination. Serhij Taruta, founder of the Industrial Union of Donbas, is the current governor of Donetsk region. Boris “Benja” Kolomoiski is mayor of Dnepropetrovsk. Rinat Akhmetov, thought to be the richest man in Ukraine, went further, mobilizing the mining and steel workers in his factories to take the city of Mariupol back from the separatists. He has exhorted his followers to do the same in the rest of Donetsk region.

16 “Bureaucracy and corruption are today hiding behind democratic slogans in Ukraine. The Ukrainian nation is wise and it will understand. Because a small handful of people, who have been plundering the country for 20 years is only a handful, from which the whole society, the whole state and our image in the world have been suffering. The interest of the Ukrainian nation is that the practice was put an end to... The country has to change. We need to reverse our approaches 180 degrees, and we will do it. The Ukrainian nation stimulates us to.” Yanukovich speech in Warsaw, February 4, 2011, in “Yanukovich: ‘Some misinform international community about Ukraine’,” *Kyiv Post*, February 7, 2011, [www.kyivpost.com/content/politics/yanukovich-some-misinform-international-community--96507.html](http://www.kyivpost.com/content/politics/yanukovich-some-misinform-international-community--96507.html)

and his cronies. The president's son Oleksandr Yanukovich, trained as a dentist, during his father's few years in office became the richest man in Ukraine. His success was due in good part to illegitimate privatization of state enterprises, through seizure of small businesses under fabricated justification with the help of corrupt officials and rigged public procurements. By the beginning of 2014, his companies were winning half of all government tenders.

Although one can find corruption in the most Spartan regimes and the most law-abiding democracies, it was the presence of impunity that made corruption so all pervasive in the Yanukovich years. In each of the sectors we examined, the perpetrators were not afraid of being caught and punished, so long as they did not act against political instructions from the regime. One interviewee learned that 400 cases of corruption are now being investigated in Kharkiv—the perpetrators had become arrogant and began to steal openly. Other examples of arrogance were the attempted takeovers of foreign investments operating in Ukraine, such as the Norwegian Telenor telecommunications corporation's investment in a Ukrainian phone company and the attempted seizure of the British-owned Globus shopping mall in the center of Kyiv. Although both high-profile cases ended with the foreign investors able to preserve their stakes in the companies through the use of strategic public relations and diplomatic pressure, such incidents harmed efforts to attract and maintain foreign investment in Ukraine.<sup>17</sup>

Many sources cited several state institutions as plagued by corruption, including the police, judiciary, tax offices, schools, the ministry of Health, and the railroad. Wherever there was an opportunity for bribery, rigged bidding and kickbacks in public procurement, someone took advantage of them.<sup>18</sup>

### Police

Those interviewed mentioned that public opinion polls showed that a substantial percentage of the public do not trust the police.<sup>19</sup> People complain that when they try to report a crime to the police, they are often advised not to file a formal complaint. A popular negative stereotype is that the police believe that their function is not to fight crime but to solicit bribes, sometimes by threatening businessmen for real or imaginary transgressions. Even if some lower-rank police officers or investigators are honest, their supervisors tell them, "You investigate, but I will decide what to do with the results." The police accept bribes from businessmen to overlook violations or for other favors. Even more troubling, some police accept bribes and have stable working relationships not only with rich or politically influential people but also with organized crime. According to some interview sources, the entire police hierarchy is implicated in the corruption process: the local police give a percentage of their bribe earnings to their station chief, who shares a percentage of his take with the regional commander, who in turn provides an appropriate cut to his superiors at the center.<sup>20</sup>

An interviewee stated that the police themselves were not only mistrusted as corrupt, they were actually feared more than any other government institution as an actual threat, perceived as engaging in acts of extortion, torture, and even rape, without having to answer for such criminal acts.

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17 [www.reuters.com/article/2011/01/17/telenor-alfa-idUSLDE7oGoW62o11o117](http://www.reuters.com/article/2011/01/17/telenor-alfa-idUSLDE7oGoW62o11o117)  
[www.kyivpost.com/content/ukraine/kyiv-prosecutors-open-criminal-case-re-attempt-to-illegally-seize-globus-shopping-mall-329811.html](http://www.kyivpost.com/content/ukraine/kyiv-prosecutors-open-criminal-case-re-attempt-to-illegally-seize-globus-shopping-mall-329811.html)

18 Interview with ICTJ.

19 "Ukrainians avoid police, but trust officers more than courts or president", Kyiv Post, April 12, 2013, [www.kyivpost.com/content/ukraine/ukrainians-avoid-police-but-trust-officers-more-than-courts-or-president-323182.html](http://www.kyivpost.com/content/ukraine/ukrainians-avoid-police-but-trust-officers-more-than-courts-or-president-323182.html). Adrian Beck, "Reflections on Policing in Post-Soviet Ukraine: A Case Study of Continuity," *The Journal of Power Institutions in Post-Soviet Societies*, Issue 2, 2005, <http://pipss.revues.org/294>. Adrian Beck and Yulia Chistyakova, "Crime and Policing in Ukraine: The Kharkiv Crime Survey 2000," Scarman Centre, University of Leicester, UK, March 2001, [www2.le.ac.uk/departments/criminology/people/bna/CrimeandPolicinginUkrainetheKharkivCrimesurvey2000.pdf](http://www2.le.ac.uk/departments/criminology/people/bna/CrimeandPolicinginUkrainetheKharkivCrimesurvey2000.pdf). See generally Razumkov Centre Poll showing over 83% believe law enforcement agencies are completely corrupt or highly corrupt, [www.uceps.org/eng/poll.php?poll\\_id=903](http://www.uceps.org/eng/poll.php?poll_id=903)

20 Interview with ICTJ.

There has been speculation about the ideological leanings of the police, with intimations that many of them harbor nostalgia for the comfortable, almost-lazy life of the police in Soviet days, enforcing a strict order with few legal restraints. However, one source had an additional theory about the poor performance of the police and security forces during the crisis, likening them to a man with weak muscles.<sup>21</sup> Exaggerating only slightly, one could say that their everyday function was to collect bribes, not to keep law and order. When suddenly confronted with the need to enforce order, they displayed professional incompetence. Considering the performance of the elite security units during the Maidan confrontation, they committed one mistake after another. They wasted and repeatedly ran out of ammunition, set up roadblocks on tactically useless streets, and deployed their men for prolonged periods in an arrangement designed for only short periods of time.

### Prosecutors

Prosecutors are an integral link between the police and the courts, determining which cases are pursued and which are not. This crucial power has been used against important, well-connected people. For example, in 2005 Ukraine's Prosecutor General instigated criminal proceedings against Kuchma and former members of his administration in connection with the murder of the journalist Gongadze. Subsequently, it was reported that Kuchma had been unofficially granted immunity in return for his departure from office. However, in the light of new evidence, in 2011 the investigation was reopened and Kuchma was again charged with the murder. A district court ordered prosecutors to drop the charges against Kuchma later that year on the grounds of insufficient evidence. This was a rare case where the prosecution lost in court; the Prosecutor General boasted in a private conversation that in 99 percent of cases his office pursued, the defendant was found guilty. The lopsided conviction rate may raise some doubts as to the fairness of proceedings, but one source said that in general prosecutors maintained a professional ethic until the later years of the Yanukovich regime. At that point many of them became immersed in the surrounding corruption, for example by accepting payments to shut down business rivals on trumped-up charges, which has been happening even in small towns. Some of them also served Yanukovich faithfully when he made his last desperate efforts to subdue the Maidan uprising.<sup>22</sup>

### Courts

Those interviewed stated that the courts have been corrupt at every level of the Ukrainian judicial system: the Supreme Council of Judges, Supreme Court, Supreme Commercial Court, and regional and local courts. While the almost 100 percent conviction rate of the criminal courts raises suspicions, the commercial courts are considered especially corrupt, because, by their very nature, they deal with money matters. Yanukovich and his associates muscled in on any business that promised financial rewards, forcing partnerships or heavily discounted sales of companies, or simply confiscating them. The courts were the instruments used to take businesses away from owners and investors.

Everyone knew what gifts to bring or rates to pay in order to get favorable treatment, depending on the kind of case and the level of the court. It could range from cognac, meat, or eggs to \$1 million for a single ruling. Although, as with the police, such windfalls had to be shared with superiors, at times including President Yanukovich, enough remained so that some judges enjoyed a lifestyle far beyond their official salaries, with luxurious homes, vacations, cars—their children driving Maserati sports cars. Even criminal court judges found it easy to supplement their income. One interviewee complained that judges were not recruited primarily from the ranks of practicing lawyers, who are exposed to the realities of life and the

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<sup>21</sup> Interview with ICTJ.

<sup>22</sup> Interview with ICTJ.



practice of law, but were often former policemen or law clerks, who in their work observed and were educated in the ways of corruption.

### Tax Administration

Corporate taxes are very high in Ukraine (“Higher than in Belgium,” according to one source<sup>23</sup>), and the rules are extremely complex and sometimes require consultation with authorities. This creates a double incentive for corruption.<sup>24</sup> Many tax administrators actively seek bribes to supplement their income. In the past, there were plenty of opportunities for personal interaction—people had to stand in line for 2–3 hours at the tax office to pay their taxes, and if an administrator found a defect in the tax form, they had to leave to correct the mistake and return to stand in line again. However, Ukraine started to computerize tax payments about three years ago, and this has drastically decreased the opportunities for corruption, because electronic filing leaves a trail for inspectors. It is also harder to solicit a bribe without a personal meeting or at least a phone conversation. After the Maidan uprising, the exchange rate changed against the Ukrainian currency and made some previously profitable operations unprofitable. However, to stop paying monthly taxes in advance requires personal communication with a tax inspector.<sup>25</sup> The new complications of soliciting bribes may be one reason that the demanded cost of bribes is reported to have risen threefold in recent years. At any rate, some tax administrators continue to have bank accounts abroad for their supplementary “income.”

In Donetsk and Kharkiv in eastern Ukraine the tax authorities favored persons, like regime-friendly oligarchs, who usually paid less in taxes than they should have, some even managed to show a loss and obtain credits and subsidies. At the same time, under the Yanukovich regime politically motivated orders were sometimes given to tax certain enterprises heavily.

### Elections

The OSCE and other international observers have found that some national electoral campaigns, such as the 2012 parliamentary elections, did not meet international norms of free and fair elections. In particular, the state broadcast media tended to cover the activities of the president and his political party and allies more often and more favorably than those of the opposition. In addition, political deals and outright bribery have been used to affect the coverage of nominally independent media. Intimidating and bribing federal and local election officers to permit election fraud (double voting and stuffing ballot boxes) were only the last step in an already unbalanced process.

### Penitentiaries and Closed Institutions

Jails in Ukraine are overcrowded, violent, and humiliating environments. It is common for prison personnel to demand money from inmates, threatening beatings if they are unwilling or unable to comply. Similar implicit or explicit demands for money in exchange for normal treatment are rife in other closed institutions, such as orphanages or mental asylums.

### Education

Bribery was widespread in the education system, especially in higher education—in order to enter the university of one’s choice, to get higher grades, to pass exams, to get one’s master’s

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23 Interview with ICTJ.

24 An informal categorization of companies used in everyday conversation divides them into white, grey, and black. White companies keep only one set of accounting books; their official books are also their real books. Grey companies keep two sets of accounting books, one for the tax authorities and one for the actual management of the company. For example, it might pay its staff the official minimum salary, which is taxed, and the rest in cash, which is not. Black companies operate totally unofficially and pay no taxes. Most, but not all, international companies operating in Ukraine are white. Our main informant on this topic did not know of any Ukrainian companies that were white.

25 Companies sometimes send junior staff on errands to the tax administration, and some tax administrators have countered by insisting that they will only talk with the Chief Accountant or Chief Executive Officer.

or doctoral dissertation approved. Administrative decisions could be taken against students who ran afoul of the authorities. If a university professor was caught obviously plagiarizing a book that he was writing there were no consequences. According to sources, only the National University of Kyiv – Mohyla Academy and the Ukrainian Catholic University in Lviv have a reputation for not being corrupt.<sup>26</sup>

### The Maidan Uprising

Some sources believed that Yanukovych's decision to reject the EU association agreement was itself partly a manifestation of his arrogant belief in his own impunity. For two years, the government had assured the public that it was working on an agreement with the EU and would sign it. Then, on November 21, a week before the Vilnius conference, it announced that it would refuse to sign the agreement. But beyond that, and much more importantly, was a growing feeling among many in the population that this could be their last chance to have a decent, normal life in Ukraine. Maidan quickly turned into not just a demonstration for association with the EU, but a protest against the system. People were angry and frustrated not only because there was widespread corruption, but because there was a total absence of justice. Judges not only took bribes, but also obeyed direct orders from the president or other political leaders on the disposition of cases. In other words, in its essence Maidan became a protest against impunity.

A major part of the Maidan supporters were businesspeople who had seen that they could not expect fair and equitable treatment in the courts, in customs, or from the tax authorities. Their backing helped sustain the protests. The Maidan protestors were also partially self-supporting, engaging in fund-raising and receiving help and support from civil society.

When government security forces attacked and beat nonviolent student demonstrators on November 30 and were not punished, it demonstrated the regime's blatant assumption of impunity. As the Maidan movement switched the focus of its demands to government accountability, it gained energy and even broader support. Finally, the regime resorted to brutal violence against protestors and journalists, heavy beatings and even the use of snipers. Such total lawlessness, rather than restoring order, made the situation spin out of control, and Parliament removed Yanukovych from power.<sup>27</sup>

The joy surrounding Yanukovych's removal from office is tempered by wariness, even cynicism on the part of some opposition activists and members of the public. The years of corruption without accountability, hypocrisy, and the disappointments of the Orange Revolution have made many people distrust populist politicians, including those associated with the Maidan movement. Observers point out that present parliament members are the same ones who passed a number of anti-democratic laws in January that had intensified the clashes with the Maidan demonstrators.<sup>28</sup>

The distrust of the new government that they put into power explains the reluctance of activists to vacate their Maidan encampment in the center of Kyiv. It is a form of constant political pressure to keep the government honest. One interviewee believed that the Ukrainian government should never have consented to the Geneva agreement to vacate all public buildings and spaces in eastern and western Ukraine for this reason.

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<sup>26</sup> Interview with ICTJ.

<sup>27</sup> Contemporary reports by local observers on various aspects of Euromaidan were published by Open Dialog Foundation, <http://en.odfoundation.eu/>

<sup>28</sup> David M. Herszenhorn, "Election of President Seen as a Beginning to Repairing Ukraine," New York Times, May 24, 2014, [www.nytimes.com/2014/05/25/world/europe/activists-say-election-of-a-president-is-just-a-start-in-repairing-ukraine.html?hpw&rref=world](http://www.nytimes.com/2014/05/25/world/europe/activists-say-election-of-a-president-is-just-a-start-in-repairing-ukraine.html?hpw&rref=world)

When asked to evaluate the ministers of the new government, our sources assessed almost all of them positively, although a couple expressed doubts about the Minister of Internal Affairs. There were misgivings whether the ministers would be able to impose their will on the entrenched bureaucracy. For example, the ministers of health and agriculture are isolated in their ministries, surrounded by people who have profited greatly from the old ways of doing things. The Minister of Justice, Pavlo Petrenko, wanted to rectify an injustice against a lawyer who was being kept under arrest to pressure him on his client-attorney privilege, a totally illegal act, but was opposed by the Prosecutor General and the judge in the case, against whom Petrenko had filed complaints before joining the government, when the judge had imposed penalties on Maidan activists.<sup>29</sup>

Complaints have also been raised about incidents involving members of parliament, which raises concerns about how sincerely some of them embrace the rule of law. For example, members are required to resign their seat when they assume certain extra-parliamentary posts, but a couple have refused to do so, and our source is taking the case to court.<sup>30</sup> Even more daunting is the task of infusing governmental structures outside of Kyiv with a reformist spirit. So far, no changes have been felt in the police or the other regional and local institutions.

### The Separatist Challenge

If impunity and disregard for rule of law ultimately caused the downfall of the Yanukovich regime, it had a much more negative effect on eastern Ukraine. One could argue that it made the minority support for secession much stronger than it would otherwise have been and also lowered the capacity of Ukraine's military and security forces to deal with it.

The Maidan uprising had found some support in eastern Ukraine, both in terms of demonstrations in that area and of significant numbers of people going to join the protests in Kyiv. However, it is also true that large numbers of people, even those who support a united Ukraine, were influenced by the constant barrage of Russian propaganda attacking the "fascist coup." (As noted previously, eastern attitudes towards independent Ukraine had generally been less unconditional and idealistic than in the west.) For this reason, the decades-long misgovernment of Ukraine, the corruption, and failure to institute rule of law had missed an opportunity to solidify support for the institutions and symbols of the country among parts of the eastern Ukrainian population. It would have been much harder for the separatists to gain a political foothold in a population less dismayed and cynical about the Ukrainian government at all levels.

One could also speculate that widespread disregard for the rule of law breeds a certain expectation of impunity, decreasing the psychological barrier to breaking the law. The separatists occupying government buildings, firing on Ukrainian government forces, and abducting and killing officials and political opponents show no signs that they expect to suffer legal consequences for their actions, even if the eastern regions remain a part of Ukraine.

The unprofessionalism and corruption of the local police, and its long-standing relationship with organized crime, became serious weaknesses in Ukraine's struggle to avoid partition. Some criminal elements who have joined the separatist forces or act as their hired enforcers have had friendly relations for years with the local police, who are accustomed to taking bribes to ignore illegal activity. One source witnessed a peaceful demonstration in Donetsk on April 30, 2014, by about 1,000 supporters of a united Ukraine. They were confronted by about 200 thugs, who attacked and chased those who tried to flee, severely beating any whom they caught. The police did not

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<sup>29</sup> Interview with ICTJ.

<sup>30</sup> Interview with ICTJ.

interfere, except to stop a few beatings where the victim seemed close to the point of death. Police passivity began to be discussed as a public scandal, and eight attackers were arrested the next day.<sup>31</sup>

Such incidents help to explain why separatist activities in eastern cities are more visible than those of the majority supporting a united Ukraine. It is widely believed that the separatist movement and police bribes are financed by secret funds, but there is a difference of opinion concerning the source of the funding, whether it is Moscow or ex-President Yanukovych's son Oleksandr, whose base is in Donetsk.

One surprising exception to the widespread incompetence is the Security Service of Ukraine (SBU), the former Soviet secret police. Although suspected by many of retaining a secret allegiance to Moscow, one source who had been briefed by local officials was told that it has been the most effective institution in stopping separatists in cities like Kharkiv.<sup>32</sup>

Several interviewees warned that prosecution of crimes committed by Ukrainian security forces under the Yanukovych regime was not advisable at a time when the state badly needed them to fight separatism in eastern Ukraine. When asked about past crimes and the possibility of members of the security forces going to jail, most sources supported an amnesty, with the exception of particularly heinous violations like murder.<sup>33</sup> One silver lining is that the present struggle will help to reveal which personnel are loyal to an independent, united Ukraine and which ones are not. After the crisis is over, much can be forgiven to those who supported Ukraine in its hour of danger; they may even be seen as heroes, while failure to remain loyal can be considered an aggravating factor when prosecuting other crimes.

In general, an effective reform would offer eastern elites the prospect of living in a reasonably normal society, where their wealth would assure due influence but not be threatened by sudden confiscation through fabricated legal means. It could be a powerful motivation to accept and even support reforms, especially when considering what sort of a country they want their children to live in.

### Current Reform Initiatives

In its efforts to radically reform the Ukrainian state, the government inaugurated a mass purge of the judicial establishment. It adopted a resolution to fire five Constitutional Court justices who were considered to have been particularly compliant to Yanukovych's wishes, and to call on the president and the Congress of Judges to remove seven more, for a total of 12 out of 18 Supreme Court justices. A new law "On Restoring Trust in the Judicial System of Ukraine" went into force on April 11. The law suspended the mandates of a wide range of personnel, including all chairs and deputy chairs; secretaries in the high specialized and appellate courts; all members of bodies responsible for recruitment, promotion, and internal discipline (the High Qualification Commission of Judges and the Supreme Council of Justice); and all delegates to the Congress of Judges. The law excluded most of these persons from ever being eligible for reappointment and forbade the recruitment of parliamentarians, cabinet members, or persons charged with corruption or convicted of any crime. A review process was also instituted to identify judges who violate judicial ethics or who had made politically motivated rulings facilitating electoral fraud or persecution of the opposition.

The review of past behavior will be conducted by a new Special Temporary Commission, composed of: five members appointed by parliament, five by the Supreme Court, and five by

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<sup>31</sup> Interview with ICTJ.

<sup>32</sup> Interview with ICTJ.

<sup>33</sup> Interview with ICTJ.

the newly created government Public Defender of Anti-Corruption Policy. Limitations are put on who can be appointed; for example, no one who served in law enforcement in the past ten years is eligible.

This is as thorough a cleansing of the judicial system as one could hope for. Because the majority of those dismissed served during the Yanukovich years, opponents of reform may try to criticize this as a simple political maneuver to replace judges who served the old regime with new ones who serve the new regime. Whether such charges are true will depend on the success of efforts to create a reformed, truly honest, and politically independent judicial system.

Lustration is not a simple process, and on April 1 a conference was held in Kyiv by the Open Dialog Foundation with participants from other post-Communist states to discuss the different kinds of lustration in their countries, sharing lessons learned.<sup>34</sup> One informant warned that western Ukrainians do not fully understand the situation in eastern Ukraine, the situations are different in different regions and may require somewhat different approaches to lustration.

An interviewee said that the judicial purge taking place could be called a “little lustration.” A law is being drafted that would be a broader lustration, covering other parts of the government. Meanwhile, a special parliamentary commission has been formed to investigate crimes against the Maidan protestors by the police, especially the special police units called Berkut.

The Ministry of Internal Affairs is working to introduce a new concept of policing, focusing on service as its function and emphasizing citizen rights. The source admitted that the reform was just beginning and added that the ministry was seeking ways to learn from other countries and previous examples, mentioning the UK in this regard.<sup>35</sup> The ministry has created a Human Rights Advisory Council to further the protection of human rights and assist in the reform of the ministry. Evhen Zakharov, a member of the Kharkiv group for human rights, was appointed Head of Council. The body is composed of human rights activists, opinion makers, and representatives of the ministry, including the Deputy Minister. The council meets monthly.

The Public Defender of Anti-Corruption Policy,<sup>36</sup> Tetyana Chornovol, was a well-known activist and journalist who had been followed and severely beaten in December 2013, after publishing an article on the personal wealth of the Minister of Internal Affairs and investigating the assets of several other political figures. Her background gave her unquestioned credibility in her new official position. A group of volunteers has created the Anti-Corruption Bureau (ACB) to support her in her investigations. The ACB has a core staff of ten full-time volunteers who lead a number of working groups composed of industry professionals to conduct in-depth investigations of corruption cases. The ACB does not have an official legal status, but has drafted a law to create the National Anti-Corruption Service (NACS), to fight high-level government corruption. The draft law has the support of Prime Minister Yatsenyuk, the EU, the World Bank, and others. The ACB is conceived as a prototype of the future NACS, which should begin operating in July 2014. Meanwhile, in addition to shepherding the draft law through the legislative process, the ACB is working to identify key corruption schemes, create an independent database of corruption cases and complaints brought to the Public Defender's Office, and prepare the concept of Electronic Government (e-Government), which is an

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34 Andriy Valchyshyn, “Open Dialog Foundation held a conference on Lustration in Ukraine” Open Dialog Foundation, April 4, 2014, <http://en.odfoundation.eu/a/3290,open-dialog-foundation-held-a-conference-on-lustration-in-ukraine>

35 Interview with ICTJ.

36 The title has also been translated as “Government’s Representative on Anti-Corruption Issues” and as “Government Agent for Anti-Corruption Policy.”

extremely effective tool against corruption.

There is an effort underway to preserve the testimonies of victims of political repression. On March 25, 2014, the government appointed Volodymyr Viatrovych as director of the National Memory Institute of Ukraine. From 2008–2010, as director of the Security Service of Ukraine Archives, he had opened the KGB archives to the public. He has now set the goal of creating an Archive of National Memory.<sup>37</sup> Some NGOs are also said to be collecting the testimony of victims.

Another initiative needs to be mentioned, the effort to recover assets valued in the billions of dollars stolen and hidden abroad by Yanukovich and his aides. A team of international lawyers has prepared materials on this topic and shared them with the prime minister and the minister of justice. The Ukraine Forum on Asset Recovery was jointly organized by the US and the UK in London on April 29–30, 2014. It was attended by senior government officials, judicial experts, prosecutors, financial intelligence analysts, and regulators. The meeting planned practical steps for Ukraine and worked on international cooperation in the tracing of assets. The meeting was part of the Stolen Asset Recovery Initiative (StAR), organized by the World Bank and the United Nations Office on Drugs and Crime (UNODC).<sup>38</sup>

The election of Petro Poroshenko as president by a wide margin reinforces the hopes for reform. At the end of the campaign, before casting his ballot, he said “We will do the absolutely unique transformation of the country... zero tolerance to corruption, with a very good investment climate, with an independent court system, with all the necessary things to attract business.”<sup>39</sup> He was stating what the country wants and what it needs.

## Civil Society

The creative, lively, active, and diverse civil society in Ukraine is one of the stronger arguments for optimism about the country’s future. It can be credited with important, even historical achievements. Twice, in the Orange Revolution and in Maidan, civil society formed alliances that overturned what seemed to be an inevitable outcome imposed by autocratic rule. From its ranks come many of the politicians and officials who, it is hoped, will finally be able to reform the political system.

In the broader sense, the term civil society includes community organizations, churches, clubs and independent media; in the narrower sense, it applies to nongovernmental organizations (NGOs). The most attractive characteristic of NGOs is that they do not simply critique, but pursue solutions to societal problems.

Ukraine has a favorable legal environment for NGOs. A new law regulating civil society came into effect in 2013:<sup>40</sup> anyone has the right to come together and form an NGO, and it is legally difficult to force one to close. There are also no limitations on unregistered initiatives, so long as they are in line with international standards (for example, not racist). A Foreign Agent Law that could have threatened some NGOs that were considered hostile to the government was repealed on January 28 in an effort to appease the Maidan protestors.<sup>41</sup>

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37 [www.cdvr.org.ua/content/new-director-ukrainian-national-memory-institute-historical-memory-policy-safeguard-against-repeating-crimes-past](http://www.cdvr.org.ua/content/new-director-ukrainian-national-memory-institute-historical-memory-policy-safeguard-against-repeating-crimes-past)

38 [www.reuters.com/article/2014/04/27/us-ukraine-crisis-assets-idUSBREA3QoSD20140427](http://www.reuters.com/article/2014/04/27/us-ukraine-crisis-assets-idUSBREA3QoSD20140427), <http://star.worldbank.org/star/UFAR/ukraine-forum-asset-recovery-ufar>

39 David M. Herszenhorn, “Pro-European Billionaire Claims Victory in Ukraine Presidential Vote,” *New York Times*, May 25, 2014, [www.nytimes.com/2014/05/26/world/europe/ukraine-elections.html?hp&\\_r=0](http://www.nytimes.com/2014/05/26/world/europe/ukraine-elections.html?hp&_r=0)

40 “The Law of Ukraine ‘On Public Associations,’” Expert Advisory Center “Legal Analytics”, April 22, 2012, <http://legalanalytics.com.ua/en/zakonodavstvoo/novynyzakonodavstvao/110-publicassociations.html>. “Law of Ukraine ‘On Public Associations.’” UCIPR, March 22, 2012, [www.ucipr.org.ua/publications/law-of-ukraine-on-public-associations/lang/en](http://www.ucipr.org.ua/publications/law-of-ukraine-on-public-associations/lang/en)

41 “Ukraine: Repeal Repressive New Legislation,” Human Rights Watch, January 18, 2014, [www.hrw.org/news/2014/01/18/](http://www.hrw.org/news/2014/01/18/)

The NGO community is diverse and includes thousands of registered NGOs, only a fraction of which are actually active. It is strongest in Kyiv, less so in the regions and weakest in the localities.<sup>42</sup> NGOs in eastern Ukraine have been focused on noncontroversial topics like animal welfare, but during the current political crisis links have been created between Kyiv and eastern Ukrainian NGOs, and it is expected that eastern NGOs will become involved in more political issues in the near future.

Interviewees stated that among the NGOs there are a small number of “favorites” of grant-givers, who get funding and know how to write reports and grant applications for future funding. An NGO that receives a grant for a project involving a government institution needs to find a partner in the institution to get results, in order for the grant to be renewed. NGOs have been known to give a percentage of the foreign grant to their government partner to maintain the cooperative relationship. Some informants asserted that these “favorite” NGOs tend to stick to hot topics, such as human rights, HIV/AIDs, and women’s issues, and are sometimes reluctant to think and operate “outside the box.” For example, several informants stated that in 2004 the established civil society players were not ready to initiate the process that led to the end of the Kuchma regime and the success of the Orange Revolution. The Maidan activists employed a successful new model, based on self-organization and flexible alliances, mobilizing resources and fundraising among the broader population.<sup>43</sup>

There have been attempts to increase civil society monitoring and input into government policy and operations, with mixed results. In 2011, the Law on Public Councils established monitoring of every executive body of government, at every level.<sup>44</sup> Up to 400 NGOs participate in Public Councils, an unwieldy number. They organized into working groups, but the real work is done by those tasked by the government.

As some civil society veterans became ministers in the new government and established an informal alliance to promote a package of reforms, some of our sources jokingly asked, “If all the activists are in power, who will be civil society? We need people who are ready to go to the street.”<sup>45</sup> Fortunately, civil society in Ukraine shows no sign of fading, and veteran activists are constantly reinforced by a new wave of energetic and capable recruits.

## Conclusions

A strong desire to eliminate corruption and impunity, and live in an environment ordered by the rule of law, is shared by ordinary people in both eastern and western Ukraine. To the extent that the government in Kyiv can make a convincing case through words and actions that it will be the agent of such change, it will help the struggle to maintain a united Ukraine.<sup>46</sup> It will also have a strong argument to avoid a radical federalization of the state, since such political fragmentation would not only strengthen Moscow’s ability to manipulate Ukrainian internal affairs,

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ukraine-repeal-repressive-new-legislation; “Backslidings in legislation on NGOs in Ukraine,” UCIPR, January 24, 2014, [www.ucipr.kiev.ua/publications/backslidings-in-legislation-on-ngos-in-ukraine/lang/en](http://www.ucipr.kiev.ua/publications/backslidings-in-legislation-on-ngos-in-ukraine/lang/en); “Ukrainian parliament repeals anti-protest law; prime minister resigns,” UPI, January 28, 2014, [www.upi.com/blog/2014/01/28/Ukrainian-parliament-repeals-anti-protest-law-prime-minister-resigns/7721390913604/](http://www.upi.com/blog/2014/01/28/Ukrainian-parliament-repeals-anti-protest-law-prime-minister-resigns/7721390913604/)  
42 Susan Stewart, “NGO Development in Ukraine since the Orange Revolution” in *Ukraine on its way to Europe*. 177–194 (Juliane Besters-Dilger ed., 2009).

43 Nadia Diuk, “Euromaidan: Ukraine’s Self-Organizing Revolution,” *World Affairs*, April–May, 2014, <http://worldaffairsjournal.org/article/euromaidan-ukraine%E2%80%99s-self-organizing-revolution>. Igor Savchenko, “Report on Euromaidan,” Open Dialog Foundation, January 15, 2014, <http://en.odfoundation.eu/a/1356,report-on-euromaidan>

44 The law was supported by the Ukrainian Center for Independent Political Research, a think tank whose interests include civil society development, [www.eldis.org/go/home&id=4408&type=Organisation#.U4KbxOIOXMw](http://www.eldis.org/go/home&id=4408&type=Organisation#.U4KbxOIOXMw), [www.ucipr.kiev.ua/lang/en](http://www.ucipr.kiev.ua/lang/en)  
45 Interview with ICTJ.

46 This includes businesses that relied primarily on the Russian market and will need to change their thinking and improve their capacities.

but would also create a series of potential strongholds for corrupt regional warlords and their henchmen.

The widespread, long-standing corruption and impunity in Ukraine raises a serious issue concerning eastern Ukraine: is there a tension between the need to fundamentally reform the Ukrainian system and the attempt to maintain a united state? If serious efforts are made to stem corruption and impunity, will this convince some eastern elites that their interests are threatened to the point that they would be better served by joining Russia?

Ukraine may be able to adapt lessons learned in other post-Communist states in the region, particularly in terms of capacity building.



## Recommendations

### 1. To the Government of Ukraine

- a. **Strengthen anticorruption training, investigation, and prosecution for police, judges, and government officials.** Almost every person interviewed emphasized the need for training programs. A primarily punitive approach to reform may be ineffective, because people try to avoid getting caught rather than focus on the advantages of changing their behavior. One important and effective form of training would be to import international judges and police to serve for two years alongside their Ukrainian colleagues.
- b. **Carry out the vetting of state institutions in sensitive manner.** Firing all corrupt judges and police would be a drastic and satisfying solution, however a more practical approach may be to investigate and determine degrees of guilt and offer rehabilitation to lesser offenders, including professional and ethical training. One pessimistic source proposed forming parallel systems, putting the former miscreants in less-sensitive posts and focusing the training on the next generation.<sup>47</sup> Another variant would be to establish model units, which could then serve as examples to spread best practices throughout the institution.
- c. **Review state salary levels to ensure that state agents are not corrupted by attempts to compensate for low wages.** One of the most important reasons for corruption among lower level police and other officials is salaries so low that bribery is almost a necessity to support their families. Ways must be found to raise salaries, as difficult as it may be. Recovered state assets, supplemented with significant donations from oligarchs who would not want a serious investigation into how they acquired their wealth, could help to create an endowment fund to help pay for part of an increase in salaries. Another possibility could be fewer police and better social benefits and pensions.
- d. **Recover stolen assets.** Finding and recovering assets stolen by high-ranking individuals in the former regime is a question of justice, but there is also a need for the financial resources in a time of scarcity.
- e. **Increase monitoring of institutions for corruption and potential for bribery.** Greater monitoring should be introduced in institutions where there is currently little or no oversight, such as courts, prisons, orphanages, and mental asylums. As the reform of the tax administration has shown, the use of computers in citizen interaction with the government, and the spread of e-Democracy, is an effective weapon against corruption.
- f. **Decentralization is needed because the country is large and contains different environments.** Instead of an extensive federalization that could destroy the unity of the country and create havens for antireform political warlords to flourish, decentralization should happen at the local, municipal and district level.
- g. **Strengthen legal education to help reinforce rule of law.** The quality of education in law schools has decreased significantly. The teaching of simple technical competence needs to be improved, and it must be supplemented with a rigorous course in ethics.

### 2. To Civil Society

- a. **Document serious human rights abuses and collect testimonies of victims.** Civil Society groups in Ukraine, aided by the international community, can begin to pre-

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<sup>47</sup> Interview with ICTJ.

serve victims' testimonies as a standalone initiative or in anticipation of a more official truth-telling process.

- b. **Engage young radicals still occupying the Maidan encampment in Kyiv and in other regions.** Unlike the majority of Maidan protestors, the youth have not returned to their "normal" lives but have totally immersed themselves in political activism. Eventually, they could become a source of instability.

### 3. To the International Community

- a. **Train civil society on various official and nonofficial measures to support democratic change, including truth seeking, prosecutions, reparations, and institutional reform.** Few of the interviewees were familiar with the concept of transitional justice; however, all had heard of the South African Truth and Reconciliation Commission and thought it was an interesting and positive idea. The Ministry of Internal Affairs has expressed an interest in learning more about the concept of transitional justice and ICTJ activities through its Human Rights Advisory Council. The Anti-Corruption Bureau (ACB) has expressed a similar interest.
- b. **Assist and train civil society on collecting testimonies and documenting past serious human rights violations under successive autocratic regimes.** The preservation of victim testimonies is already taking place, and expertise is needed on different kinds of testimony for different purposes. Collecting testimonies from all sides, including from victims in eastern Ukraine, is a nonpartisan approach to truth seeking and increasing mutual understanding. Given how widespread official crimes and violations were in Ukraine, preserving victim testimonies would be a first step toward securing justice for past crimes.
- c. **Monitor and, when needed, apply pressure to ensure that the Ukrainian government maintains its commitment to the reform process.** Several sources recalled that significant international financial aid had been given to the Yanukovich regime to finance anticorruption programs.<sup>8</sup> Foreign aid money should be used primarily for training and capacity building of government officials and civil society.