

# **THE INTERNAL ENEMY**

## **A Helsinki Commission Staff Report on Corruption in Ukraine**



**October 2017**

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*This report was drafted by Helsinki Commission staff.  
Paul Massaro, Policy Advisor, served as lead author.*

## I. EXECUTIVE SUMMARY

Ukraine's struggle with corruption has prevented it from becoming a full, prosperous democracy and hinders its ability to respond effectively to Russian violations of its sovereignty. This Helsinki Commission staff report examines why corruption has been so persistent in Ukraine. It provides a historical analysis of corruption in Ukraine from its break with the Soviet system to today, reviewing the current state of reforms and providing recommendations in context.

The resilience and influence of Ukraine's oligarchs are at the heart of the country's persistent corruption. Oligarchs have captured the Ukrainian state, crowding out non-corrupt political parties and competing with one another to steal Ukraine's wealth. They are not so much businesspeople as courtiers, who transform political and personal connections into monopolies supported by the state.

Two phenomena in particular have given rise to this system of oligarchic competition: (1) the lack of reforms in the early years of independent Ukraine, which resulted in incomplete economic liberalization, and (2) gas arbitrage, which has been uniquely devastating to reform attempts due to building so many oligarchic fortunes and providing a backdoor for Russia to influence Ukrainian politics for decades.

Today's Ukraine has implemented many important reforms that have helped to counter corruption, specifically in energy, finance, and economics. However, judicial reforms continue to lag behind. Commentators have observed that progress has slowed and frustration among civil society and the international community has increased.

This report recommends that Ukraine move forward with remaining reforms, supported by both civil society and the international community. Most important is that Ukraine not allow backsliding to occur. Ultimately, the oligarchs must be transformed from courtiers into entrepreneurs and businesspeople so as to finally end the pervasive institutionalized corruption. An empowered Ukrainian civil society—including independent media—will be paramount to such reforms, and has proven time and again that it is world class in its engagement. Key here is to condemn any attempt to hinder or harm civil society.

The report makes numerous recommendations by sector, with an emphasis on the importance of reforming the judiciary. In particular, Ukraine should establish an anticorruption court as soon as possible, so as to provide the final necessary piece of Ukraine's anticorruption architecture.

Additional reform areas discussed include the safeguarding and further empowering of the anticorruption architecture; implementing privatization and additional regulatory and corporate governance reform as the next step for energy sector reform; pursuing consolidation and transparency as ideas for banking sector reform; and limiting parliamentary immunity.

This report also discusses greater e-government and press freedom as mechanisms to empower Ukrainian civil society, including independent media, to monitor the reform process and prevent backsliding. Finally, it encourages the international community to continue its support for Ukraine and dig in for the long haul.

## II. INTRODUCTION

### *2.1. The Importance of Ukraine for U.S. Foreign Policy*

The issue of corruption in Ukraine is a part of a larger U.S. foreign policy effort to counter the threat that corruption presents to U.S. interests around the globe. As Chairman Wicker and fourteen other Senators wrote earlier this year:

A world that is a more democratic, respects human rights, and abides by the rule of law strengthens the security, stability, and prosperity of America. History has demonstrated time and time again that free societies are more likely to be at peace with one another. Constitutional democracies are also less likely to fail and become breeding grounds for instability and migration. Democratic nations that respect good governance and the rights of their citizens are also more likely to be economically successful, and to be stable and reliable trade partners for the United States.<sup>1</sup>

In Ukraine, pervasive corruption has been both a cause and a symptom of political weaknesses since the country gained its independence in 1991. It has also rendered Ukraine vulnerable to malign Russian influence and eventually outright invasion.

Russia, in fact, has weaponized corruption, both to exploit and undermine the rule of law in countries where Moscow seeks exercise influence or control and as a means of protecting and laundering the ill-gotten gains of Russia's power elite. As Brian Whitmore explained at a 2017 Helsinki Commission briefing, "The Kremlin's black cash is the new red menace, and it has to be looked at that way. Corruption as a tool of statecraft is something that is spreading from Moscow and is spreading as a tool of influence."<sup>2</sup> Monies stolen by the Russian government have ended up hidden in real estate in London, Miami, or New York, or funneled through anonymous companies to offshore accounts. These corrupt monies have a debilitating effect in their country of destination, influencing politics and generating resentment.<sup>3</sup>

The corrosive effects of corruption in Ukraine understandably fueled widespread frustration and anger that, in 2013—ironically, a year when Ukraine held the Chairmanship of the OSCE—spilled out in the streets. On its face, the Maidan protests were a reaction to the government's rejection of an association agreement with the European Union.

In reality, the European Union had become a stand-in symbol for the rule of law and good governance and the protests were a demand for those basic elements of democracy. Perhaps nothing illustrates Moscow's hand in Ukraine's corruption as concisely as the image of ousted Ukrainian President Yanukovich fleeing Kyiv by helicopter, after the deaths of 100 protesters, in a nighttime flight to Moscow where he continues to enjoy

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<sup>1</sup> Letter to President Donald J. Trump, May 3, 2017, [https://www.rubio.senate.gov/public/\\_cache/files/07d6ba61-7421-4316-9f3f-d4485e7529bf/ABA64081874BD3513AB936690A9E8F3A.5-3-17-letter-to-potus-re-human-rights-and-democracy.pdf](https://www.rubio.senate.gov/public/_cache/files/07d6ba61-7421-4316-9f3f-d4485e7529bf/ABA64081874BD3513AB936690A9E8F3A.5-3-17-letter-to-potus-re-human-rights-and-democracy.pdf) (accessed October 3, 2017).

<sup>2</sup> Remarks of Brian Whitmore, senior analyst with RFE/RL, U.S. Commission on Security and Cooperation in Europe. *Kleptocrats of the Kremlin: Ties Between Business and Power in Russia*. 2017, Briefing, 115th Cong., 1st sess., Washington, DC: Government Publishing Office.

<sup>3</sup> U.S. Commission on Security and Cooperation in Europe. *Kleptocrats of the Kremlin: Ties Between Business and Power in Russia*. 2017, Briefing, 115th Cong., 1st sess., Washington, DC: Government Publishing Office.

refuge from prosecution. His abrupt departure enabled protesters to enter the president's extraordinarily lavish residence which some have dubbed "a museum of corruption."<sup>4</sup>

At a 2014 Helsinki Commission hearing on corruption in the OSCE region, then-Chairman Ben Cardin addressed both the general issue of corruption and the specific challenges before Ukraine:

Democratic societies function based on a high level of trust in each other and the institutions that underpin democracies. Corruption undermines that trust, and thus undermines the very foundation of democracies. Research has shown a high level of correlation between failed states and endemic corruption. [ . . . ] component of the Euromaidan protests—the Revolution of Dignity—was the people's disgust with pervasive governmental corruption. With the election of President Poroshenko in May and new, pro-European parliament elected last month, Ukraine has a real opportunity.<sup>5</sup>

Today, the rule of law and corruption are currently engaged in a struggle for dominance in Ukraine. It is both in the interest of the United States and the well-being of the Ukrainian people that rule of law come away victorious.

Finally, for the first time, it seems real reforms are within reach.

## *2.2. Structure of the Report*

Despite an active civil society and an impressive independent media, Ukraine seems perennially unable to tackle its corruption problem. This Helsinki Commission staff report mines the past of independent Ukraine for hints as to why corruption has proven so insurmountable in the country. By pinpointing and analyzing the reasons for the persistence of corruption in Ukraine, it develops recommendations for further reforms and strategies to address these reasons.

This analysis will delve into the development of corruption under each Ukrainian president from independence to present day: how rent was sought, who sought it, and what was done about it. This report will then pull out to a wide lens to pinpoint the phenomena of Ukrainian history that have resulted in the persistence of corruption in the country and offers recommendations and conclusions based on addressing these phenomena.

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<sup>4</sup> Andrew Higgins, "Ukraine Palace Is Still Emblem of Dysfunction," *The New York Times*, Sept. 8, 2014.

<sup>5</sup> U.S. Commission on Security and Cooperation in Europe, *Combating Corruption in the OSCE: The Link Between Security and Good Governance*, 2014, Hearing, Pub. 95-572, 113th Cong., 2nd sess., Washington, DC: Government Publishing Office.

### III. BACKGROUND

#### 3.1. Ukraine and the OSCE

The Helsinki Commission is mandated to monitor the compliance of participating States with commitments made as part of the Organization for Security and Cooperation in Europe (OSCE). These commitments include those in the Second Dimension on what is known as “Good Governance.” These commitments were most recently renewed in a 2012 Ministerial Declaration in Dublin,<sup>6</sup> titled “Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism.” Via this declaration, all OSCE participating States:

... reaffirm[ed] their commitment to tackling corruption and countering money-laundering, the financing of terrorism and related offenses by making them policy priorities back up by appropriate legal instruments, adequate financial, human and institutional resources and, where necessary, appropriate tools for their practical and effective implementation.<sup>7</sup>

The Soviet Union was one of the founding participating States of the OSCE. Following the dissolution of the Soviet Union, independent Ukraine became a participating State of the OSCE. In 1994, the OSCE established a field mission to Ukraine in Kyiv, with a specific focus on the situation in Crimea and related constitutional questions. Among other activities, the mission facilitated the engagement of the OSCE High Commissioner on National Minorities and addressed the status of returning Crimean Tatars who had been forcibly deported from the peninsula by Stalin in 1944.

In 1999, this mission was closed and replaced with a scaled-down OSCE Project Coordinator for Ukraine, which exists to this day.<sup>8</sup> Although on its face the mandate for the new Project Coordinator was broader than the original mission mandate,<sup>9</sup> the Ukrainian government’s goal was to demonstrate that it had “graduated” from the need for a full-scale mission and to diminish the OSCE’s presence.

Corruption issues are not explicitly included within the mandate of the Project Coordinator, although they may be addressed under the favored OSCE euphemism “good governance.” Thus, according to the OSCE website:

The OSCE Project Coordinator supports Ukraine’s reforms and helps the country meet crisis-related challenges. Its projects actively contribute to major transformations,

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<sup>6</sup> OSCE Ministerials are annual meetings of the Foreign Ministers of the 57 participating States of the OSCE and provide the second highest form of political decision-making after a summit, which are irregular meetings of the Heads of State. As such, Ministerial Decisions are the most common source of high-level political direction for the OSCE.

<sup>7</sup> Organization for Security and Co-operation in Europe, Ministerial Council, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, 2012, Journal No. 2, item 7, 19th Mtg., 2nd Day, Dublin: 2.

<sup>8</sup> Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 295*, 1999, Journal No. 231, item 1, 231st Plen. Mtg., Vienna: 1.

<sup>9</sup> The new mandate envisioned that “particular emphasis will be placed on the planning and preparation of a large-scale project entitled ‘Comprehensive Review of Human Rights Legislation’ to be started no later than fall 1999.” DECISION No. 295 Decision of the Permanent Council of Organization on Security and Co-operation in Europe, PC.DEC/295, June 1, 1999, 231st Plenary Meeting of the Permanent Council, PC Journal No. 231, Agenda Item 1.

critical for the stable and democratic future of the country. The Coordinator's approach is multi-dimensional and covers a wide array of activities, such as constitutional reform, legal and criminal justice reform; human rights and legal education; dialogue as a tool to deal with crises and implement reforms; psychological and social rehabilitation of crisis-affected people; the fight against cybercrime and human trafficking; mine action and democratic control of the security sector; environmental protection; border security; media freedom; elections; good governance; and gender equality.<sup>10</sup>

Other OSCE institutions that exist today within Ukraine are the Special Monitoring Mission (SMM), and the OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk. Neither of the missions have an anti-corruption mandate.

According to the OSCE website:

The OSCE Special Monitoring Mission to Ukraine (SMM) was deployed on 21 March 2014, following a request to the OSCE by Ukraine's government and a consensus decision by all 57 OSCE participating States. The SMM is an unarmed, civilian mission, present on the ground 24/7 in all regions of Ukraine. Its main tasks are to observe and report in an impartial and objective way on the situation in Ukraine; and to facilitate dialogue among all parties to the crisis.<sup>11</sup>

### 3.2. What is Corruption?

Corruption features heavily in the narratives of all political systems. Transparency International, a global anti-corruption coalition, divides corruption into three categories: grand corruption, political corruption, and petty corruption. All of these forms of corruption are present in Ukraine.

*Grand corruption:* "The abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished."<sup>12</sup> The most common form of grand corruption throughout Ukrainian history has been gas arbitrage.

*Political corruption:* "Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth."<sup>13</sup> In Ukraine, the parliament has been the center of political corruption.

*Petty corruption:* "Everyday abuse of entrusted power by public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies."<sup>14</sup> This is true of most state administration in Ukraine.

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<sup>10</sup> Organization for Security and Co-operation in Europe, Project Coordinator in Ukraine, "OSCE Project Coordinator in Ukraine," <http://www.osce.org/project-coordinator-in-ukraine> (accessed July 22, 2017).

<sup>11</sup> Organization for Security and Co-operation in Europe, Special Monitoring Mission to Ukraine, "OSCE Special Monitoring Mission to Ukraine," <http://www.osce.org/special-monitoring-mission-to-ukraine> (accessed July 22, 2017).

<sup>12</sup> Transparency International, "Grand Corruption," [https://www.transparency.org/glossary/term/grand\\_corruption](https://www.transparency.org/glossary/term/grand_corruption) (accessed June 18, 2017).

<sup>13</sup> Transparency International, "Political Corruption," [https://www.transparency.org/glossary/term/political\\_corruption](https://www.transparency.org/glossary/term/political_corruption) (accessed June 18, 2017).

<sup>14</sup> Transparency International, "Petty Corruption," [https://www.transparency.org/glossary/term/petty\\_corruption](https://www.transparency.org/glossary/term/petty_corruption) (accessed June 18, 2017).

Transparency International also compiles a yearly “Corruption Perceptions Index” (CPI) that “measures the perceived levels of public sector corruption worldwide based on expert opinion from around the world.”<sup>15</sup>

Currently, Ukraine is ranked 131 out of 176 countries monitored,<sup>16</sup> one of the worst rankings in the entire OSCE region. It ties with Russia, and only Kyrgyzstan (136), Tajikistan (151), Turkmenistan (154), and Uzbekistan (156) are worse. In contrast, Georgia—another late reformer from the OSCE region—ranks 44, right below Spain and tying with Latvia.<sup>17</sup>

### 3.3. *Corruption in Ukraine*

According to Thomas de Waal, senior associate with Carnegie Europe, “‘Corruption’ is an inadequate word to describe the conditions in Ukraine. Since the country achieved independence in 1991, the problem is not that a well-functioning state has been corrupted by certain illegal practices; rather, those corrupt practices have constituted the rules by which the state has been run. Ukraine’s political system is best described as state capture.”<sup>18</sup>

#### 3.3.1. *The Soviet Legacy*

From 1922 until 1991, Ukraine was the Ukrainian Soviet Socialist Republic and a constituent piece of the Union of Soviet Socialist Republics (USSR). During this time, Russia nurtured Ukrainian energy dependence. Edward Chow notes, “It’s not just a matter of pattern of trade or infrastructure that preserves that pattern of trade, but also highly centralized and therefore political allocation of energy assets and energy supply.”

Chow also notes that this is an artificial dependency and does not have to do with Ukraine’s geology, which is actually quite favorable. “Up until the 1970’s, Ukraine used to export gas to the Russian Republic,” he adds.

Chow continues, “The legacy for Ukraine is you have the highest energy-intensive economy in Europe—energy intensity right after independence that remarkably is higher energy intensity than Russia itself. It has about twice the energy intensity of Poland, which had a rather similar structural economy.”<sup>19</sup> At independence, the Ukrainian economy was largely on par with that of Poland, yet these two economies would develop in two very different directions.

Louise Shelley, a scholar of transnational organized crime, adds that the contemporary state of affairs is the product of the Soviet legacy, implying Ukraine’s inability to break from it: “The largest element of the Soviet legacy is that of corruption and the

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<sup>15</sup> Transparency International, “Corruption Perceptions Index 2016,” Transparency International, January 25, 2017, [https://www.transparency.org/whatwedo/publication/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016) (accessed June 18, 2017).

<sup>16</sup> Transparency International Ukraine, “CPI-2016,” Transparency International, <https://ti-ukraine.org/en/research/cpi-2016/> (accessed June 18, 2017).

<sup>17</sup> A table of consolidated corruption perceptions index (CPI) rankings of OSCE participating States is provided in the appendix. Data is not available for the Holy See, Andorra, Liechtenstein, or Monaco.

<sup>18</sup> Thomas De Wall, “Fighting a Culture of Corruption in Ukraine,” *The Carnegie Endowment for International Peace*, 2016: 1.

<sup>19</sup> U.S. Commission on Security and Cooperation in Europe, *Energy (In)security in Russia’s Periphery*, 2017, Briefing.

underground economy. The shadow economy has not diminished since 1991 but is now estimated at over 50 percent of the economy.”<sup>20</sup>

### 3.3.2. *A Political System of Oligarchic Competition*

The Ukrainian semi-presidential system has fluctuated significantly since its inception in 1991. The country has existed under an inconsistent constitutional order that has at times given more power to the Ukrainian *Verkhovna Rada* (the parliament) and at times the President. The constant in the history of independent Ukraine is the oligarchs, who emerged in the early 1990s under the Presidency of Leonid Kravchuk. Although the names and fortunes have changed, the oligarchic system of rule has come to characterize Ukraine and is the most significant reason why reforms continue to elude the country.

Many of Ukraine’s political parties are linked in one way or another to the oligarchs, who view business and political life as indivisible. Taras Kuzio, an expert on Ukrainian politics, writes, “Ukraine’s oligarchs do not commit to deeply held ideological preferences, and personalities matter more than political party programs. Western Ukrainians have dominated the pro-Russian gas lobby even though the region was always anti-Russian in its national identity.”<sup>21</sup> Most of the time, two-thirds of parliamentarians have been business millionaires, who look at their seat as an exchange for money and state favors.

A perennial issue is the existence and abuse of parliamentary immunity, afforded to every Member of the Rada, which oligarchs exploit when they feel legally threatened.

### 3.3.3. *Institutionalized Corruption*

Institutionalized corruption is pervasive in Ukraine, stretching from the lowest to the highest rungs of society. Even if they do not want to, most Ukrainians end up participating in and perpetuating the cycle. Swedish political scientist Bo Rothstein writes, “People in severely corrupt systems put the blame on ‘the system’ for forcing them to take part in corruption, thus understanding that they are in a ‘social trap’-like situation.”<sup>22</sup>

The longer this “social trap situation” continues, the more it becomes ingrained in institutions until it becomes the self-perpetuating norm. As Robert Harris, an expert on political corruption, puts it, “Just as a predominantly non-corrupt system will self-correct to deal with corrupt individuals and the legislative or political flaws that facilitated their corruption, so will a predominantly corrupt system self-correct to maintain its corruption following a purge.”<sup>23</sup>

This is reinforced by anticorruption measures that have, until recently, almost exclusively been used to settle political vendettas. For instance, a corruption audit conducted by the Tymoshenko government (2007–2010) was criticized after it labeled only one out of 14 preceding Ukrainian governments as corrupt. Moreover, politicians have been reluctant to support criminal charges against members of their own party and, as Kuzio points

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<sup>20</sup> Louise Shelley. “Organized Crime and corruption in Ukraine: Impediments to the Development of a Free Market Economy.” *Demokratizatsiya: The Journal of Post-Soviet Democratization* 6, no. 2 (1998): 651.

<sup>21</sup> Taras Kuzio, “Oligarchs, the Partial Reform Equilibrium, and the Euromaidan Revolution,” in *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, ed. Henry E. Hale and Robert W. Orttung, (Stanford: Stanford University Press, 2016), 187.

<sup>22</sup> Bo Rothstein, “Anticorruption: the indirect ‘big bang’ approach,” *Review of International Political Economy* 18, no. 2 (2011): 233.

<sup>23</sup> Robert Harris, *Political Corruption: In and Beyond the Nation State* (London: Routledge, 2003), 63.

out, usually “defend their colleagues from accusations of corruption and election fraud by claiming that the charges are product of ‘political repression.’”<sup>24</sup>

### 3.4. *Ukrainian Anticorruption Efforts Today*

The Carnegie Endowment’s April 2017 Ukraine Reform Monitor noted, “In the past year, Ukraine’s reforms proceeded more slowly than previously against the background of consolidation of executive power under President Petro Poroshenko, resistance from oligarchs, and opposition in the parliament.”<sup>25</sup>

Nonetheless, there are reasons to be hopeful and there are many positive indications with regard to anticorruption reform in Ukraine. These primarily include the establishment of an anticorruption architecture and the success of reforms in a number of sectors, most significantly in energy, banking, public procurement, healthcare, economic regulation, and police.

#### 3.4.1. *The Anticorruption Architecture*

Rather than opting for wholesale reform of the system of law enforcement after Euromaidan,<sup>26</sup> Ukraine has instead implemented partial reform of the old system and developed parallel anticorruption bodies.

Additionally, the State Security Service (SBU) has not been subject to reform. The judicial system is currently subject to reforms, but the speed is glacial, offering the corrupt judges within the existing system ample opportunities to manipulate the reforms.

While often a subject of criticism, the anticorruption architecture in Ukraine is new and is a significant improvement on anything that has been stood up in the past. Its subdivisions are as follows:

*The National Anticorruption Bureau (NABU):* NABU is responsible for the investigation of officials thought to have committed acts of grand corruption. It has shown some major success so far, with the website claiming there are 410 proceedings under investigation, 260 notices of suspicion, 141 indictments, and 92 cases in court as of October 11, 2017.<sup>27</sup> Most recently, on October 11, 2017, Deputy Minister of Defense and Igor Pavlovsky and Director of the Department of Public Procurement and Material Supplies of the Ministry of Defense Volodymyr Hulevych were arrested as part of a NABU-led investigation. A NABU-led investigation also led to the stripping of parliamentary immunity from Rada Member Oleksandr Onyshchenko, a rare occurrence that demonstrates

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<sup>24</sup> Taras Kuzio, “Political Culture and Democracy: Ukraine as an Immobile State,” *East European Politics and Societies* 25, no. 1 (2011): 88–113.

<sup>25</sup> “Ukraine Reform Monitor: April 2017,” Ukraine Reform Monitor Team, *Carnegie Endowment for International Peace*, April 19, 2017, <http://carnegieendowment.org/2017/04/19/ukraine-reform-monitor-april-2017-pub-68700> (accessed July 25, 2017), 1.

<sup>26</sup> “Euromaidan” describes the 2013–2014 protests against corruption that were spurred by then President Viktor Yanukovich’s sudden decision not to sign an Association Agreement with the EU at the behest of Russia. Following months of protests that grew violent and included many attacks on protestors by government-hired thugs and at least 100 fatalities, Yanukovich fled the country via helicopter and is now taking asylum in Russia. He is still wanted in Ukraine for his crimes against protestors as well as the massive corruption he indulged in as President. The period that includes Euromaidan to the flight of Yanukovich has come to be known as the “Revolution of Dignity.”

<sup>27</sup> National Anti-Corruption Bureau of Ukraine, *NABU Homepage*, <https://nabu.gov.ua/en> (accessed October 11, 2017).

NABU's influence. He is now a fugitive outside the country. NABU's investigation into his corrupt dealings is ongoing.<sup>28</sup>

Additionally, its investigations have led to the arrest of the head of the State Fiscal Service, Roman Nasirov, and one of the alleged grey cardinals<sup>29</sup> in the Rada, Mykola Martynenko. Both Nasirov and Martynenko have been let out on bail by the courts. In the case of Nasirov, his family managed to pay 100 million hryvnia (\$3.7 million) in bail.<sup>30</sup>

NABU has so far performed impressively, but continues to be under threat from oligarchic interests in Ukrainian society. For example, Hrant Kostanyan of the Center for European Policy Studies points out, "The unreformed prosecutor general's office, which retains its Soviet-style powers of coercion, undermines the work of the NABU, whose detectives even got into fistfights with members of the general prosecutor's office in the course of performing their duties."<sup>31</sup> NABU also requires additional investigative authorities, such as the ability to carry out independent wiretapping, in order to grow in effectiveness.

*The National Agency for the Prevention of Corruption (NAPC):* NAPC is responsible for setting anticorruption policy in Ukraine, and also administers the online financial disclosures (known as e-declarations) of public officials.

The implementation of e-declaration requirements has been lauded by observers as a major anticorruption achievement.<sup>32</sup> According to the Annual Country Reports on Human Rights Practices for 2016 by the U.S. Department of State, there were indications of near total compliance with e-declaration requirements among officials, and the results provoked public outcry at the lavish lifestyles of these officials.<sup>33</sup>

*The Specialized Anticorruption Prosecutor's Office (SAPO):* Although SAPO is not a legislatively created agency like NABU and NAPC, it carries out the prosecutions of cases that are investigated by NABU. The Specialized Anticorruption Prosecutor (SAP) is a deputy to the Prosecutor General of Ukraine, but even so has demonstrated considerable independence and integrity.

The missing piece is a National Anticorruption Court, which is currently a top demand of the International Monetary Fund (IMF), since NABU and the anticorruption prosecutor must complete their cases in an ordinary court system that remains pervasively corrupt.

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<sup>28</sup> "Ukraine 2016 Human Rights Report," Bureau of Democracy, Human Rights, and Labor, *The U.S. Department of State*, March 3, 2017, <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265484.htm> (accessed July 25, 2017), 37.

<sup>29</sup> Individuals who are in charge of a party's corrupt financing.

<sup>30</sup> Daryna Krasnolutska, "Get-Out-of-Jail Cards Frustrate Ukraine's Anti-Corruption Cops," *Bloomberg Politics*, May 5, 2017, <https://www.bloomberg.com/news/articles/2017-05-05/get-out-of-jail-cards-frustrate-ukraine-s-anti-corruption-cops>.

<sup>31</sup> Hrant Kostanyan, "Ukraine's unimplemented anti-corruption reform," *Center for European Policy Studies*, February 10, 2017, <https://www.ceps.eu/publications/ukraine%E2%80%99s-unimplemented-anti-corruption-reform,2>.

<sup>32</sup> Oleksandr Sushko and Olena Prysyatkko, "Nations in Transit: Ukraine," *Freedom House*, 2017, <https://freedomhouse.org/report/nations-transit/2016/ukraine>, 11.

<sup>33</sup> "Ukraine 2016 Human Rights Report," *The U.S. Department of State*, 39.

### 3.4.2. Energy Sector Reform

The most important anticorruption reform has occurred in the energy sector. Domestic gas subsidies coupled with subsidized Russian gas imports have long made this sector the source of massive corruption and the fortunes of many oligarchs.<sup>34</sup>

By ceasing the practice of hidden energy subsidies, Ukraine has dealt a major blow to the corrupt practice of gas arbitrage while also managing to halve the level of domestic gas consumption. The state oil and gas company, Naftogaz, has also undergone significant corporate governance reform, transforming it from one of the most unprofitable companies in Eastern Europe to the largest contributor to Ukraine's state budget. Finally, Ukraine is no longer purchasing gas from Russia and has diversified and significantly increased its gas imports from alternative sources as well as domestic gas production.<sup>35</sup>

### 3.4.3. Banking Reform

Banking reform has been moderately successful in Ukraine. According to a summary of the statements of Valeria Gontareva, a governor of the National Bank of Ukraine, at a recent Atlantic Council forum, "100 percent of ownership in the Ukrainian banking system is accounted for-up from only 40 percent when she took over as governor in 2014."

It continues, "Ukraine undertook further reform in the banking sector to solve issues of insolvency and illiquidity, money laundering, and nontransparent ownership."

Gontareva commented, "One of the biggest prior problems of the Ukrainian banking sector was related-party lending," which she referred to as the "oligarch banking model."<sup>36</sup>

The same summary also notes the comments of Susan Schadler, senior fellow at the Centre for International Governance Innovation, who concluded, "A cleaned-up banking system without concerns of non-performing loans or unclear ownership, and sustainable fiscal practices generally lead to macroeconomic stability ... if Ukraine can keep those conditions in place, the risk of crisis is pretty low."<sup>37</sup>

### 3.4.4. Public Procurement Reform

Another anticorruption milestone has been the implementation of "ProZorro," a web platform through which by law all public procurement in Ukraine must now occur. The platform hinders corruption in public procurement, resulting in significant savings for the state, and was lauded at the Public Procurement Awards as "one of the best public sector procurement technologies in the world."<sup>38</sup>

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<sup>34</sup> Gas arbitrage has been the premier source of corrupt fortunes since Ukraine's independence. Politically connected individuals engaged in gas arbitrage by purchasing either domestically subsidized gas from the state or subsidized Russian gas at cut-rate prices and then selling it at market prices for enormous profits. Russia offered these subsidized imports for two reasons: (1) in order to gain influence over and corrupt Ukrainian officials so as to affect the direction of Ukrainian development and (2) in order to keep the Ukrainian domestic gas market underdeveloped and corrupt so as to preserve Ukrainian dependence on Russian gas supplies, which enables Russia to use gas as a geopolitical tool.

<sup>35</sup> Sushko and Prysytakko "Nations in Transit: Ukraine," 12.

<sup>36</sup> Jack Gloss, "Ukrainian Officials Tout Banking Sector Reforms," *Atlantic Council*, April 27, 2017, <http://www.atlanticcouncil.org/blogs/new-atlanticist/ukrainian-officials-tout-banking-sector-reforms>.

<sup>37</sup> *Ibid.*

<sup>38</sup> Sushko and Prysytakko "Nations in Transit: Ukraine," 11.

The story of how this system came about is illuminating as to the potential ability of civil society to affect reform in Ukrainian society. Per Oksana Huss, a scholar of anti-corruption with a focus on Ukraine at the University of Duisburg-Essen, “In Ukraine, the activists from the civil society developed ProZorro independently from the state. Because of a lack of public trust of the Government, during the test phase, the activists transferred the ownership license for ProZorro not to the state, but to the NGO Transparency International on a free-of-charge basis.”<sup>39</sup>

### 3.4.5. Healthcare Reform

Healthcare has long been a neglected sector of reform in Ukraine and one rife with procurement corruption. However, a 2015 decision of the government to allow only the United Nations Development Program (UNDP), the United Nations Children’s Fund (UNICEF), and the international company Crown Agent to procure medications for the state led to a marked reduction in healthcare corruption related to the procurement of medications.<sup>40</sup>

In addition, a reform plan rolled out by the government on November 30, 2016 seeks to fundamentally transform the sector by making healthcare available to all Ukrainian citizens and funded via general taxation.<sup>41</sup>

Acting Ukrainian Minister of Health, Ulana Suprun, also has been proactive about reforming and rooting out the massive corruption within the country’s health care system. Melinda Haring, editor of the Atlantic Council’s UkraineAlert blog, writes, “Suprun and her team have designed a system that reforms palliative, emergency, and primary care simultaneously. The new National Health Service would be an independent body in the executive branch under the Cabinet of Ministers, much like the National Anticorruption Bureau of Ukraine.”<sup>42</sup>

Unfortunately, the Rada did not pass these reforms. Suprun acknowledged this, stating, “Our team worked effectively to prepare the reform, but there was no political will to continue this at the top level.”<sup>43</sup>

### 3.4.6. Regulatory Reform

Ukraine has also achieved considerable economic deregulation via a package of reforms that came shortly after the Euromaidan. This has been demonstrated by a move on the World Bank’s Ease of Doing Business Index from rank 112 of 189 in 2013 to a

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<sup>39</sup> Oksana Huss, “The Perpetual Cycle of Political Corruption in Ukraine and Post-Revolutionary Attempts to Break Through It,” in *Revolution and War in Contemporary Ukraine*, ed. Olga Bertelsen, vol. 161 ser. *Soviet and post-Soviet politics and society* (Stuttgart: Ibidem-Verlag, 2016), 340.

<sup>40</sup> Oksana Bedrantsenko, “Why I’m Optimistic about Ukraine’s Reforms in 2017,” *Atlantic Council*, December 21, 2016, <http://www.atlanticcouncil.org/blogs/ukrainealert/why-i-m-optimistic-about-ukraine-s-reforms-in-2017> (accessed July 25, 2017), 1.

<sup>41</sup> “Ukraine Reform Monitor: April 2017,” *Carnegie Endowment for International Peace*, 6.

<sup>42</sup> Melinda Haring, “Ulana Suprun: Tough, Tenacious, and Transforming Ukraine’s Health Care,” *Atlantic Council*, June 6, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/ulana-suprun-tough-tenacious-and-transforming-ukraine-s-health-care> (accessed July 26, 2017).

<sup>43</sup> Anna Nemtsova, “The American Doctor Trying to Cure Ukraine’s Corruption,” *The Daily Beast*, July 18, 2017, <http://www.thedailybeast.com/the-american-doctor-trying-to-cure-ukraines-corruption> (accessed July 25, 2017).

rank of 83 in 2015 and 80 in 2017.<sup>44 45</sup> Greater deregulation has helped to counter the corruption that Ukraine's arcane regulatory codes made possible.

### 3.4.7. Police Reform

Among the first reforms in post-Euromaidan Ukraine was the law creating the National Police of Ukraine.<sup>46</sup> This was accompanied by the recruiting of Georgia's Eka Zguladze, former Acting Interior Minister of Georgia, and former Georgian President Mikhail Saakashvili, as First Deputy Minister of Internal Affairs and Governor of Odessa, respectively, in hopes of carrying out police reforms similar to the dramatic ones that were carried out in Georgia.<sup>47 48 49</sup> Both of these individuals have since left their Ukrainian government posts. Nevertheless, the Ukrainian police have undergone significant reform, with a smaller, more professional, better paid police force, who entered through a rigorous recruitment system.

Recently, Ukrainian Chief of Police Khatia Dekanoidze, another Georgian who formerly served in the Georgian government, stepped down. Carnegie's Ukraine Reform Monitor notes that her replacement was chosen via an open process with civil society and international expert participation.

As a practical matter, there is a shortage of qualified personnel.<sup>50</sup> Finally, the public enthusiasm over patrol police reform has faded. The old police have remained in parallel and they often oppose the actions of the new patrol police. When the patrol police arrest a criminal, prosecutors let those with good connections out and sensitive cases rarely reach courts.

### 3.4.8. Skepticism

Despite progress, Carnegie's April 2017 Ukraine Reform Monitor notes, "The public perception is that corruption is still very high."<sup>51</sup>

Last year, Pierre Vimont, senior fellow at Carnegie and former French Ambassador and European External Action Service official, commented, "A vast majority of Ukrainians have little trust in the success of these reforms. Because of perceptions of corruption, the

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<sup>44</sup> Oleh Havrylyshyn, "Reforms and Performance under Poroshenko. 2014–Present," in *The Political Economy of Independent Ukraine*, part of the series Studies in Economic Transition, ed. Jens Holscher and Horst Tomann (London: Palgrave Macmillan, 2017), 172.

<sup>45</sup> "Ease of Doing Business in Ukraine," *Doing Business*, The World Bank, 2017, <http://www.doingbusiness.org/data/exploreconomies/ukraine> (accessed June 25, 2017).

<sup>46</sup> Thomas De Waal, "Fighting a Culture of Corruption in Ukraine," *The Carnegie Endowment for International Peace*, April 18, 2016, <http://carnegieeurope.eu/2016/04/18/fighting-culture-of-corruption-in-ukraine-pub-63364>.

<sup>47</sup> As governor of Odessa, Saakashvili discredited himself by voicing approval for a pogrom carried out against Roma in Odessa in August 2016. Former OSCE Office of Democratic Institutions and Human Rights (ODIHR) Director Georg Link responded by calling "upon the Ukrainian authorities to enforce the law, based on the principles of equality and non-discrimination. Authorities need to firmly counter violence against and scapegoating of Roma."

<sup>48</sup> Pigman, Lincoln. "Mob in Ukraine Drives Dozens of Roma from Their Homes." *The New York Times*. August 30, 2016, <https://www.nytimes.com/2016/08/31/world/europe/ukraine-roma.html>.

<sup>49</sup> "Ukrainian authorities must stand against anti-Roma violence, address interethnic tension, restore respect for rule of law, says OSCE/ODIHR Director." Office for Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe, September 2, 2016, Press Release, <http://www.osce.org/odihr/262301>.

<sup>50</sup> "Ukraine Reform Monitor: April 2017," *Carnegie Endowment for International Peace*, 5.

<sup>51</sup> "Ukraine Reform Monitor: April 2017," *Carnegie Endowment for International Peace*, 2.

persistent power of oligarchs, incompetence, or a lack of real commitment, public support seems to be lagging behind.”<sup>52</sup>

The total amounts of corrupt revenues have undoubtedly declined, but what people notice is how often they are asked for bribes, and that frequency does not appear to have declined. In particular, the judiciary continues to resist reform.

Oleh Havrylyshyn, an expert on Ukrainian economic policy, comments:

The lack of real action is most often discussed with reference to prosecutors bringing cases to the courts; it suffices to note that while corruption charges have been laid out, expert observers for the most part consider them low level, and not a single case exists against senior officials of the Yanukovych regime, nor against judges, nor the security personnel responsible for the killing of 100 demonstrators at the Euromaidan.<sup>53</sup>

Does this lack of demonstrable action mean that Ukraine is headed for a post-Orange Revolution<sup>54</sup> return to corruption once Ukrainian people become fed up enough with the slow pace and return to political disillusionment? Havrylyshyn notes, “So far there appears to be a somewhat uneasy consensus among observers that important areas of progress are visible, but on the whole not enough has been done.”<sup>55</sup>

Ultimately, it would seem that the reform currently taking place in Ukraine is having an effect, but must continue to be pushed hard. While there are pitfalls that could yet emerge, Ukraine is moving in the right direction. However, these potential pitfalls are plentiful and require constant vigilance on the part of the international community and Ukrainian civil society.

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<sup>52</sup> Pierre Vimont, “Ukraine’s Indispensable Economic Reforms” *The Carnegie Endowment for International Peace*, April 29, 2016, <http://carnegieeurope.eu/2016/04/29/ukraine-s-indispensable-economic-reforms-pub-63490>.

<sup>53</sup> Havrylyshyn, “Reforms and Performance under Poroshenko. 2014–Present,” 179.

<sup>54</sup> The Orange Revolution describes the peaceful demonstrations that occurred in Ukraine in reaction to the rigging of the 2004 presidential elections. Demonstrators successfully demanded a revote, which occurred with international observers present and led to the election of Viktor Yushchenko.

<sup>55</sup> *Ibid.*, 168.

## IV. HISTORICAL ANALYSIS

### 4.1. *Kravchuk (1991–1994)*

The early days of independent Ukraine were tumultuous. A laser focus on nation-building at the expense of all other state policy left organized crime, and therefore also corruption, to thrive.

When Ukraine regained its independence economic chaos reigned. Serhiy Kudelia, a scholar of Ukrainian politics, comments:

After the Soviet breakup, Ukraine emerged as a financially impoverished state with a factionalized political elite, rapacious entrepreneurial class, and a weak civil society. This situation created a favorable environment in which political and business actors, guided primarily by short-term interests of quick wealth accumulation, could prey on the state without limits.<sup>56</sup>

He calls this phase *atomized corruption*, arguing that it set the stage for the more structured oligarchic corruption that would come later.<sup>57</sup>

Corruption under President Leonid Kravchuk was notable for its free-for-all nature. Kudelia says, “The multitude of actors involved in corrupt dealings with the state maintained their access to spoils largely through personal ties and commitment to share acquired wealth. The system of grand corruption, however, was decentralized and devoid of unified political purpose.”<sup>58</sup>

However, grand corruption was not absent as petty corruption and organized crime thrived. Ukrainian Prime Minister Yushchenko (1993–94) indulged in what Anders Aslund, an expert on post-communist economic transitions at the *Atlantic Council*, calls “unabashed rent seeking” during this phase of history, as he and Kravchuk attempted to rebuild the command economy.<sup>59</sup>

Aslund notes, “The only winners of this policy reversal (back to a command economy) were Zviatilskiy and his business partners. They made money on foreign trade arbitrage between low domestic prices of energy, metals, and chemicals and much higher world market prices. Since they controlled foreign trade licensing, they ensured that profits stayed in their circle.”<sup>60</sup>

Zviatilskiy was a pioneer of corruption. This method of trade arbitrage—buying goods at artificially low prices at home, selling them at global market prices abroad, and pocketing the difference—would become the main method through which the various Ukrainian oligarchs would make their fortunes, specifically through gas arbitrage.<sup>61</sup> The other method of gas arbitrage, via the purchase and sale at global market prices of artifi-

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<sup>56</sup> Serhiy Kudelia, “Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?” in *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, ed. Henry E. Hale and Robert W. Ortung (Stanford: Stanford University Press, 2016), 68.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Anders Aslund, *How Ukraine Became a Market Economy and Democracy* (Washington DC: Peterson Institute for International Economics, 2009), 46.

<sup>60</sup> *Ibid.*, 47.

<sup>61</sup> Anders Aslund, *Ukraine: What Went Wrong and How to Fix It* (Washington DC: Peterson Institute for International Economics, 2015), 186.

cially cheap Russian gas imports originated at this stage as well.<sup>62</sup> State credits and subsidies were also handed out.<sup>63</sup>

To hear Aslund tell it:

In this way, a small group of privileged insiders usurped a huge share of GDP in the early years of transition and grew even stronger. Their wealth was not based on property but on arcane financial flows. For society, the result was untold social suffering and sharply rising income differentials. Ukraine reached a Gini coefficient<sup>64</sup> of 47, about as much as Russia or the Latin American average.<sup>65</sup>

Virtually no efforts at anticorruption were made during this period of Ukrainian history. The chaotic nature of the state, a single-minded focus on nation-building, and a lack of the formal institutions required to address organized crime left Ukraine helpless to confront the cancer of corruption growing in its midst.<sup>66</sup>

Havrylyshyn claims that this interpretation is too generous to Kravchuk and that he really could have done more to kick-start the economy and combat corruption. “History needs to revise its relatively benign interpretation of Kravchuk’s Damascene conversion to the independence cause, as the nation builder who may have made a ‘small’ mistake in giving too little priority to economic reforms,” he says.<sup>67</sup>

Louise Shelley, writing in 1999, comments on the ubiquity of organized crime early on in the country’s history, “The political costs of organized crime for Ukraine are staggering. The pervasive corruption and the penetration of organized crime into the political process are inhibiting the development of new laws needed to develop a democratic free market economy.”<sup>68</sup>

Aslund concludes, “Ukraine’s fundamental problem is that it did not experience any clear break from the communist system. Its tardy transition to a market economy bred pervasive corruption by giving the old elite ample opportunities to transform their power into personal wealth.”<sup>69</sup> The failure to implement liberalizing reforms set the stage for institutionalized corruption that has proven remarkably resilient since. In a manner of speaking, Ukraine got itself into “good governance debt” and has been trying to get out since.

#### 4.2. *Kuchma (1994–2005)*

The two terms of President Leonid Kuchma saw the largest paradigm shift in the history of corruption in Ukraine as the free-for-all of the Kravchuk days gave way to the rise of the oligarchs.

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<sup>62</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 55.

<sup>63</sup> *Ibid.*, 56.

<sup>64</sup> A Gini coefficient is a statistical measure of distribution, most often used as a way to measure inequality.

<sup>65</sup> *Ibid.*, 56.

<sup>66</sup> Louise Shelley, “Organized Crime and corruption in Ukraine: Impediments to the Development of a Free Market Economy,” *Demokratizatsiya: The Journal of Post-Soviet Democratization* 6, no. 2 (1998): 648.

<sup>67</sup> Oleh Havrylyshyn, “Ukraine: Greatest Hopes, Greatest Disappointments,” in *The Great Rebirth: Lessons from the Victory of Capitalism over Communism*, ed. Anders Aslund and Simeon Djankov (Washington DC: Peterson Institute for International Economics, 2014), 172.

<sup>68</sup> Shelley, “Organized Crime and corruption in Ukraine: Impediments to the Development of a Free Market Economy,” 649.

<sup>69</sup> Aslund, *Ukraine: What Went Wrong and How to Fix It*, 40.

The era of Kuchma began with at least the recognition that corruption was a problem for the country and an internal enemy that would have to be defeated if Ukraine ever desired to be a prosperous democracy. The first push to fight corruption came in the form of a series of presidential decrees in 1994 that addressed a large variety of issues from taxation to deregulation in an effort to create a proper free market economy that, on its own, would help to battle corruption.<sup>70</sup> Unfortunately, most of these decrees were later reversed.

The first major piece of legislation targeting corruption, the Law on Combating Corruption, “was adopted in 1995 and detailed ways to control and punish corruption offenses for a relatively broad range of public officials.”<sup>71</sup> This law, like so many after it, proved toothless and unable to address the issues of pervasive grand corruption that had developed in Ukraine.

Kuchma, like all presidents after him, paid lip service to combating corruption. As Huss writes:

Under Kuchma, the Law on Prevention of Corruption and the Concept on Fight against Corruption for 1998–2005 were introduced. Yushchenko developed the Concept of Overcoming Corruption “On the Way Toward Integrity” and formed the National Bureau of Investigation subordinated to the Prosecutor General. Yanukovych advanced the National Anticorruption Strategy for 2011–2015 and the National Anticorruption Committee.<sup>72</sup>

Despite an early reform drive in the first two years of Kuchma’s administration, corruption remained much the same free-for-all that it had been under Kravchuk. This changed with the introduction of the 1996 president-centric constitution, which led to the rise of the oligarchs as Kuchma cultivated “loyal business clans” and developed “clientelistic relationships with subordinate officials who had direct access to cash flows to the state budget and capable of diverting them for his political purposes.”<sup>73</sup> Kudelia calls this phase *patronal corruption*.<sup>74</sup>

This was also the era of another infamously corrupt Prime Minister, Pavlo Lazarenko.<sup>75</sup> During his single year in office, Lazarenko built upon Zviahliiskiy’s legacy of grand corruption with massive fraud and money laundering, which involved “defrauding the state budget of more than \$200 million in the period from 1993 to 1997 through gas trading and other schemes,” according to Kudelia.<sup>76</sup>

Ultimately, Lazarenko was ousted by Kuchma after the latter realized that Lazarenko’s stolen funds were to be used to finance Lazarenko’s own presidential bid.<sup>77</sup> Eventually, Lazarenko wound up in a Californian jail after he fled to the United States and was tried and found guilty for money laundering by a U.S. court.

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<sup>70</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 74.

<sup>71</sup> Kudelia, “Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?” 62.

<sup>72</sup> Huss, “The Perpetual Cycle of Political Corruption in Ukraine and Post-Revolutionary Attempts to Break Through It,” 320.

<sup>73</sup> Kudelia, “Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?” 69.

<sup>74</sup> Kudelia, “Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?” 68.

<sup>75</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 95.

<sup>76</sup> Kudelia, “Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?” 70.

<sup>77</sup> *Ibid.*, 70.

In 2000, Ukraine was at the brink of default. An alliance of oligarchs requested that Viktor Yushchenko, a young reformer and head of the national bank, be made Prime Minister. As a result, “The first four months of 2000 saw the greatest reform drive that Ukraine had seen since the fall of 1994.”<sup>78</sup>

Yushchenko was ousted by Kuchma after little more than a year after having been too successful for the taste of the oligarchs. Aslund comments, “In April 2001 Yushchenko was ousted, but Ukraine had been reformed, and its rent-seeking society had been transformed into a productive market economy.”<sup>79</sup>

Productivity does not mean an end to corruption though, and rent-seeking may have been transformed, but it did not stop.

In 2000, Prime Minister Yushchenko was the first to make a dent in Ukrainian corruption. His reforms targeted large swaths of the economy, with regulatory reform and privatizations that helped fight the state policies that made arbitrage possible. Most importantly, Yushchenko teamed up with Tymoshenko for the first time to take on rent-seeking in the energy sector.

Aslund comments that an important reason why these reforms stuck and the 1994 ones did not was that “the 2000 reforms were largely legislated, while the 1994 reforms had been imposed through decrees.”<sup>80</sup>

He writes, “They (Yushchenko and Tymoshenko) had transformed the oligarchs from rent seekers to producers, and the producers needed a functioning market economy, although they did not mind tax privileges and some protectionism.”<sup>81</sup> Corruption in Ukraine had fundamentally transformed from an entity that continually threatened the existence of the state to one that had merged with it.

Kuchma’s loss of political legitimacy as a result of audio tapes implicating him in the murder of journalist Georgiy Gongadze, among other scandals and corrupt activity, neutered his power and brought on the era of Ukrainian corruption as it has largely existed, with many fluctuations, from 2001 to today: a grand political competition of self-serving oligarchs that precludes most reform.

By the end of the Kuchma era, the oligarchs had come to dominate the political as well as business worlds of Ukraine as Kuchma himself became a lame duck. Nonetheless, the situation had strangely improved since the beginning of the era thanks to a clever set of anticorruption reforms that made it in the interest of the oligarchs to not milk the corrupt system to the brink of financial ruin.

#### 4.3. *Yushchenko (2005–2010)*

Corruption during the Yushchenko administration, which immediately followed the Orange Revolution, is best described by the word “retrenchment.” The hopes of the Orange Revolution came to a screeching halt and started moving in reverse, setting Ukraine up for its worst era of corruption yet. Despite a handful of victories such as the Law on Joint Stock Companies, this era “restored the gridlock of the Kravchuk presidency.”<sup>82</sup>

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<sup>78</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 133.

<sup>79</sup> *Ibid.*, 128.

<sup>80</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 150.

<sup>81</sup> *Ibid.*, 153.

<sup>82</sup> *Ibid.*, 232.

While many instances of dubious political financing existed in the saga of the Orange Revolution, as in many Ukrainian elections, this triumph of the Ukrainian people was much more about the democratic development of Ukraine and its rejection of authoritarianism.

Despite initially high hopes for combating corruption and making necessary reforms during Yushchenko's presidency, those individuals that led the Orange Revolution, notably Yushchenko and Tymoshenko, quickly fell into infighting and enabled corruption to thrive once again.

The 2004 passage of the reactionary constitutional amendments, backed by oligarchs opposed to Yushchenko and the Orange Revolution had led to a significant neutering of presidential power. Combined with the implosion of the Orange Coalition, this resulted in what Kudelia calls "*party cartel*" corruption, which he claims continues in Ukraine to this day.<sup>83</sup>

These "party cartels" are a clean break with ad hoc funding and individual-driven politics of the past. They function largely as bureaucratic rent collection and financing mechanisms to which oligarchs can contribute large sums anonymously and oftentimes still be in compliance with Ukrainian law.

In addition to being better financing mechanisms and remaining politically engaged year-round, "party cartels serve as a reassurance mechanism to funders concerned with the durability of the politicians' commitments." Kudelia continues, "The notorious practice of party leaders to offer positions on the parties' electoral lists in exchange for campaign contributions, which became widespread in the early 2000s, has been one of the most effective ways for them continuously raise funds."<sup>84</sup>

Yushchenko's first Prime Minister, Tymoshenko, initiated a policy of re-privatization that largely targeted her political enemies. This was followed by the short-lived Yekhanurov government before Viktor Yanukovich, who had only recently been defeated in the 2005 presidential election, even after attempting to win via electoral fraud, became Prime Minister in 2006.

As Prime Minister, Yanukovich pursued a policy of corruption. Aslund writes, "Corporate raiding was thriving as never before, and the government did nothing to stop it. Gas trade corruption was rampant, as was tax corruption. A constitutional court judge was caught red-handed accepting a bribe of \$12 million. Yushchenko sacked her, but Yanukovich's side reinstated her."<sup>85</sup>

The Yanukovich government was eventually followed by a second Tymoshenko government, but the damage had been done. Yushchenko became an uncooperative, combative President who no longer engaged on reform.

If the Kuchma era led to the rise of the oligarchs as the dominant movers and shakers of the Ukrainian political system and therefore also of Ukrainian corruption, the Yushchenko era displayed for all to see the supposed futility of trying to defeat them. The disillusionment that resulted from the failure of Yushchenko and the Orange Coalition led to the most corrupt era in Ukraine's history following the election in 2010 of an unlikely candidate: Viktor Yanukovich.

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<sup>83</sup> Kudelia, "Corruption in Ukraine: Perpetuum Mobile or the Endplay of Post-Soviet Elites?" 68.

<sup>84</sup> Ibid., 72.

<sup>85</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 219.

#### 4.4. Yanukovych (2010–2014)

Grand corruption on the grandest scale was the modus operandi of the Yanukovych administration. In particular, Yanukovych did everything he could to enrich his family, going to lengths that none before him had gone. This grand corruption was made much more easily attained by a reversion to the 1996 president-centric constitution of Kuchma after the Constitutional Court of Ukraine found the 2004 amendments limiting presidential power unconstitutional. Yanukovych was the first president to enjoy a steady durable majority in both parliament and government, and he quickly seized control over the Constitutional Court as well.

Aslund comments:

The Yanukovych family allegedly enriched itself during its four-year reign through energy subsidies, discretionary public procurement, embezzlement from the state, privileged privatization, fraudulent refunds of value-added tax to exporters, extortion, and corporate raiding (i.e., forcing a businessman to sell his enterprise involuntarily at a low price).<sup>86</sup>

He adds, “Another source of corruption was outright theft from the government ... the Yanukovych family mastered this art.”<sup>87</sup>

The system was being transformed from the productive, if corrupt, equilibrium that had been established by the 2000 Yushchenko reforms back into the rent-seeking Kuchma era. Had this kept up, the state would have been in danger of eating itself alive, as it had nearly done in the past. Indeed, Aslund writes, “In its last year, the Yanukovych regime grew increasingly surreal. The president concentrated power and wealth to an ever smaller group of family and friends, while doing nothing to satisfy his population. Ukraine’s already fragile institutions were further undermined.”<sup>88</sup>

The Euromaidan was a protest movement that started as a demonstration against corruption in as much as it was a protest against Yanukovych’s pulling out at the last second of the European Union Association Agreement. Unlike the 2004 Orange Revolution, which was bloodless and peaceful, Euromaidan saw over a 100 fatalities.

#### 4.5. Poroshenko (2014–Present)

Shortly following Yanukovych’s flight to Russia, Russia unilaterally annexed Crimea and initiated the conflict in the Eastern Donbas through a combination of backing for pro-Russia militant forces in Ukraine and an invasion by Russian military personnel. Amid this aggression, Ukraine held presidential elections, which led to Petro Poroshenko becoming president of Ukraine.

For the first time in the history of Ukraine, it looks as though reducing the power of oligarchs significantly enough to render them nothing more than influential businessmen may be within sight. Aslund comments, “The oligarchs have suffered considerable

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<sup>86</sup> Aslund, *Ukraine: What Went Wrong and How to Fix It*, 92.

<sup>87</sup> *Ibid.*, 94.

<sup>88</sup> *Ibid.*, 101.

damage to their assets in the war-torn areas of Ukraine, rendering them weak. The crisis offers a chance to finally break their disproportionate influence over the state for good.”<sup>89</sup>

The efforts to combat corruption in post-Euromaidan Ukraine have been many, although some have criticized that they have been too slow. Sympathetic commentators have argued that it is difficult to fight corruption when a country is being invaded by Russia. However, Havrylyshyn points out that other commentators argue, “Instead of pointing to the war as an excuse for slow reforms, one should, on the contrary, see the war as further reason to move as quickly as possible.”<sup>90</sup>

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<sup>89</sup> Aslund, *Ukraine: What Went Wrong and How to Fix It*, 23.

<sup>90</sup> Havrylyshyn, “Reforms and Performance under Poroshenko. 2014–Present,” 182.

## V. MAIN FACTORS BEHIND THE PERSISTENCE OF CORRUPTION IN UKRAINE

Even though the persistence of corruption in Ukraine has been remarkable, it by no means is insurmountable. The following factors are the three most important behind the persistence of corruption in Ukraine:

- **The oligarchs** represent the single most significant factor behind the persistence of corruption in Ukraine.
- **Incomplete economic liberalization** enabled the consolidation of power for the early oligarchs.
- **Gas arbitrage.** Although other sectors have been the source of rampant corruption in Ukraine, nothing has engendered corruption quite like the gas trade, which has also offered Russia a back door to political influence in Ukraine. Luckily, much has already been done in post-Euromaidan Ukraine to combat corruption in this sector.

### 5.1. *The Oligarchs*

Ukrainian oligarchs have successfully managed to block the creation of parties that could have promoted reforms that would have been in the interest of all Ukrainian citizens.

Kuzio writes, “Oligarchs prevent the emergence of a level playing field in politics by blocking the entrance of genuine political parties into the political arena.”<sup>91</sup> Every party is a piece in the oligarchs “politics-as-business” and reliant on oligarchs for the funding necessary to compete. Thereby, parties become indebted to oligarchs and support their political preferences, which are non-ideological and tolerant of corruption. This influence peddling is facilitated by Ukraine’s lack of constraints on political donations.

Moreover, Ukraine’s “winner-take-all” political system makes it possible for oligarchs to prevent the emergence of any truly national force that could crack down on corrupt practices.

Oligarchic interest groups have promoted politicians and parties of all kinds who have focused solely on securing clear regional voting bases, and pitting different segments of Ukrainian society against each other, by exploiting the fault lines in Ukrainian identity and historical memory for their own political and economic purposes. Kuzio comments, “Their funding of pro-Western political forces (for example) should not be misunderstood as backing reforms, fighting corruption, or promoting European integration, but instead understood as opportunism and survival tactics.”<sup>92</sup>

For example, a pro-Russian campaign targeting primarily southeastern Ukrainian citizens, mainly Russian-speaking and ethnic Russian, led to Kuchma’s first electoral win in 1994. Only five years later—once his oligarch supporters’ personal, political, and economic calculations required a change in political orientation—he managed to campaign and win elections on a pro-Western, ethnic Ukrainian platform targeting mostly western Ukrainians, a traditionally more nationalist voting base.

While Presidents Yushchenko and Yanukovich did not flip-flop on their core constituencies, both built their presidential campaigns, and later governed, based on the divisions

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<sup>91</sup> Kuzio, “Oligarchs, the Partial Reform Equilibrium, and the Euromaidan Revolution,” 181.

<sup>92</sup> Kuzio, “Oligarchs, the Partial Reform Equilibrium, and the Euromaidan Revolution,” 187.

of identity in Ukrainian society, instead of attempting to build real national parties. Kuzio concludes, “The key to Ukraine breaking free of the partial reform equilibrium and entering the path of European integration is the political will to demonopolize Ukraine’s economy, politics, and media by reducing the power of the oligarchs and separating business and politics.”<sup>93</sup>

Now is the moment for Ukraine to strike. The general weakness of the oligarchs in the post-Euromaidan world, exemplified by Rinat Akhmetov’s tremendous financial losses, has led to corruption retreating to the Rada, where parliamentary immunity protects against, or at least delays, prosecution and grey cardinals finance parliamentary factions through corrupt funds in exchange for loyalty guarantees.<sup>94</sup> Until this holdout is tackled, business and politics will not be separate in Ukraine.

### 5.2. *Incomplete Economic Liberalization*

A major reason that Ukraine continues to lag behind other post-Soviet states, and post-communist states more generally, is Ukraine’s lack of reforms early on. The years under Kravchuk exacerbated Soviet-era corruption and led to the development of institutionalized corruption in the country that only became worse over time.

This failure to complete economic liberalization is exacerbated by the crisis situation that Ukraine currently finds itself in. If the necessity of reforms was not clear enough, the war in the eastern Donbas and Crimea have further amplified the need to address Ukraine’s institutionalized corruption because Ukraine will be more successfully able to confront those problems with its internal house in order.

### 5.3. *Gas Arbitrage*

No single corrupt activity has been more destructive to Ukraine than the gas trade. It has built more fortunes of more oligarchs than any other. It is arguably more vital to the life of every Ukrainian citizen than any other. Most importantly, it is the only one that has been traded at such high volumes with Russia, almost always at an absurd discount, in its efforts to export corruption into Ukraine.

By and large, Russia has succeeded. Oleh Havrylyshyn writes, “In Ukraine, the very low price of imported gas . . . not only fed the rents of gas oligarchs, but induced related corruption with payoffs to politicians.”<sup>95</sup>

Aslund comments, “Gazprom should be treated as an organized crime syndicate with which no links are advisable.”<sup>96</sup> He notes that Ukraine is not the only country that Russia has implemented this policy against. “Russia’s oil transit through Latvia and Lithuania was the main source of high-level corruption in those two countries, and its end greatly helped both countries to check corruption.”<sup>97</sup>

Local gas subsidies and the subsidized gas that is offered by Russia has hobbled the development of the local energy sector and enabled the gas arbitrage that has been taken

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<sup>93</sup> Kuzio, “Oligarchs, the Partial Reform Equilibrium, and the Euromaidan Revolution,” 196.

<sup>94</sup> “Rinat Akhmetov,” *Forbes*, June 25, 2017, <https://www.forbes.com/profile/rinat-akhmetov/> (accessed June 25, 2017).

<sup>95</sup> Oleh Havrylyshyn, “Controlling Corruption: The Elusive Golden Fleece?” in *The Political Economy of Independent Ukraine*, part of the series *Studies in Economic Transition*, ed. Jens Holscher and Horst Tomann (London: Palgrave Macmillan, 2017), 266.

<sup>96</sup> Aslund, *Ukraine: What Went Wrong and How to Fix It*, 203.

<sup>97</sup> *Ibid.*, 204.

advantage of time and again throughout Ukraine's history. The dependence of the oligarchs on subsidized gas to continue growing their fortunes provides a strong incentive for them to keep the energy sector underdeveloped and corrupt. This also enables Russia to use its gas monopoly as a geopolitical tool to demand concessions when necessary.

Ukraine's recent energy sector reforms are extremely welcome and should be lauded. They speak to the ability of Ukraine to implement reform successfully. Although those who have built their fortunes through gas arbitrage will be able to seek rents elsewhere, these reforms are a serious blow to impunity, especially given the Russia connection. Nonetheless, more must be done to create a competitive energy sector.

## VI. RECOMMENDATIONS

Three main recommendations follow from this analysis. These are aimed at realizing a democratic and prosperous Ukraine with robust public institutions and rule of law. All policy leaders and activists involved in Ukraine's fight against corruption can play a part in implementation, monitoring, or advocacy, depending on how they are positioned. Taken together, these make up the three most important pieces to defeating corruption in Ukraine.

- Ukraine must implement **remaining reforms**. Ultimately, the oligarchs must come to realize that the rule of law is favorable to them in the long run and cease corrupt political manipulation, becoming productive private sector businessmen. This is sure to be an exceptionally difficult and complicated process.
- Ukraine must **safeguard and take advantage of its civil society, including independent media**. Anything further that can be done to increase their effectiveness should be. Nothing should be done to hinder them.
- The international community, and specifically the United States, the EU, and the international organizations that are a part of the Ukrainian struggle against corruption, **should keep up the pressure and assistance**.

In general, those that wish to see successful reform in Ukraine should keep in mind the lessons of Georgia, a country that successfully saw through its catch-up reforms. Havrylyshyn writes, “[Georgia] achieved the same rapid results in reforms and performance as the [central European and the Baltic countries] CEB, but did so in an environment of deeply entrenched rent-seekers, those with vested interests, their political pawns and pervasive corruption, perhaps worse than Ukraine.”<sup>98</sup>

He goes on to summarize some of the World Bank's lessons for combating corruption that it derived from the Georgian case:

- Exercise strong political will
- Establish credibility early
- Launch a frontal assault
- Attract new staff
- Limit the role of the state
- Adopt unconventional methods
- Develop a unity of purpose and coordinate
- Tailor international experience to local conditions
- Harness digital technology<sup>99</sup>

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<sup>98</sup> Oleh Havrylyshyn, “Controlling Corruption: The Elusive Golden Fleece?” 275.

<sup>99</sup> *Ibid.*, 272.

## 6.1. Remaining Reforms

Sector-based reforms should be tackled in whatever order possible, simultaneously when possible or one-at-a-time as necessary. The most important thing is for the international community and Ukrainian civil society including independent media to keep a close watch for backsliding and sound the alarm at any deviations. Another danger that should be considered is the tendency of reforms to be enacted, but not implemented. Continued monitoring is necessary following the passage of any given reform. If Ukrainian officials know they will not get away with cheating, they may not try to.<sup>100</sup>

### 6.1.1. Judicial Reform

The judiciary is far and away the sector most in need of reform in Ukraine in order to successfully combat corruption. While the new anticorruption investigation architecture is impressive and is working, it will amount to little if cases continually come before corrupt judges.

Although constitutional amendments and a new legislative framework have been approved by the Rada that could eventually lead to the necessary reforms, they must be implemented properly.<sup>101</sup>

These amendments will overhaul the Supreme Court with new judicial appointments based on an open and transparent selection process. They will also streamline lower courts and establish a Citizens' Integrity Council, to consist of 20 NGO representatives. This Council will oversee judges and communicate to the Higher Qualification Committee of Judges regarding the extent to which judges are upholding professional standards. This will hopefully result in speedier and more transparent trials.<sup>102</sup>

A new "High Council of Justice" has also been formed to monitor the judiciary, with the power to submit judicial appointments to the President and pursue disciplinary action, including dismissal. Previously, only the Rada could dismiss judges, resulting in a high level of political rather than professional dismissals. This Council can also void judicial immunity, enabling arrest and prosecution of judges thought to be corrupt. However, the President continues to influence decisions with regard to transferring and promoting judges. This power should also be ceded to the Council so as to guarantee the independence of the judiciary.<sup>103</sup>

The new legal framework also calls for the establishment of an anticorruption court, a missing link of the anticorruption architecture, where NABU's cases of grand corruption can be tried independent of the standard, unreformed judiciary itself mired in corruption until such a time as the standard judiciary is fully reformed.

This report strongly recommends that this be the next large civil society and international community push. The IMF and the EU are also strongly in favor; establishment of an anticorruption court is a structural benchmark included in the IMF's most recent review.<sup>104</sup> A selection procedure for judges that includes international involvement would be a central part of this process.

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<sup>100</sup> Antonidis et al., "Strengthening Ukraine: Policy Recommendations for the New Administration," 7.

<sup>101</sup> Sushko and Prysytcko "Nations in Transit: Ukraine," 3.

<sup>102</sup> Ibid., 10

<sup>103</sup> Antonidis et al., "Strengthening Ukraine: Policy Recommendations for the New Administration," 8.

<sup>104</sup> International Monetary Fund, European Department, "2016 Article IV Consultation and third review under the Extended Arrangement, Requests for a Waiver of Non-Observance of a Performance Criterion,

The proper implementation of this new judicial framework will be fought every step of the way by the oligarchs. Civil society and the international community must remain vigilant in their push to see that it is implemented to the highest possible standards.

There are a handful of practical measures that can also be taken in addition to pursuing a new judicial framework to combat corruption in the judiciary. One such measure is increasing judicial wages. Much like the abysmal wages for police that have led to petty corruption in the past, low wages for judges make them particularly vulnerable to bribes.<sup>105</sup> Relatedly, judges have been included in e-declarations processes and have come under investigation, which is a welcome development.<sup>106</sup> An even more potent combination of carrots and sticks should be pursued. In addition, more judges and prosecutors need to be replaced.

The “Strengthening Ukraine” report of the Bush School and U.S.-Ukraine Foundation also recommend judicial exchanges. These exchanges would enable Ukrainian and European legal officials to better understand one another’s judiciary with the goal of bringing Ukrainian judicial standards more in line with the European ones.<sup>107</sup>

### 6.1.2. Energy Sector Reform (Cont.)

Despite steps forward, necessary reforms remain in the energy sector. While the reduction in energy subsidies, the corporate governance reform of Naftogaz, the cessation of purchases from Russia, the increase of gas imports from the rest of Europe, and the increase of domestic gas production is a start, what is needed now is the privatization of the energy sector. Regional energy distribution companies must be the targets of privatization efforts.<sup>108</sup> Ukraine is on its way to accomplishing this thanks to the signing of the recent electricity market law.<sup>109</sup> Now, this law, accompanied by deregulation, must be successfully implemented.

In addition, corporate governance reform and the introduction of ever greater transparency must continue and should include areas like procurement and transfer pricing. Chow argues, “The aim should be to break up state-owned energy monopolies in order to promote competition and market efficiency, release the value of state assets, and remove the temptation for special interest groups to control energy franchises. It is not just the management, but the business model of Ukraine’s energy sector that must change.”

Finally, regulations governing the taxation of independent companies should be simplified to enable the development of a competitive and independent market.<sup>110</sup> While the

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Waiver of Applicability, Rephasing of Access and Financing Assurances Review—Press Release; Staff Report; and Statement by the Executive Director for Ukraine,” *International Monetary Fund*, p. 29.

<sup>105</sup> Antonidis et al., “Strengthening Ukraine: Policy Recommendations for the New Administration,” 9.

<sup>106</sup> Natalia Zinets, “Fighting corruption, Ukraine starts to judge its judges,” *Reuters*, May 25, 2017, <http://www.reuters.com/article/us-ukraine-corruption-insight-idUSKBN18L0HC>.

<sup>107</sup> Antonidis et al., “Strengthening Ukraine: Policy Recommendations for the New Administration,” 11.

<sup>108</sup> IMF, “2016 Article IV Consultation and third review under the Extended Arrangement, Requests for a Waiver of Non-Observance of a Performance Criterion, Waiver of Applicability, Rephasing of Access and Financing Assurances Review—Press Release; Staff Report; and Statement by the Executive Director for Ukraine,” p. 95

<sup>109</sup> Interfax-Ukraine, “Law on electricity market enters force,” *Kyiv Post*, June 12, 2017, <https://www.kyivpost.com/ukraine-politics/law-electricity-market-enters-force.html>.

<sup>110</sup> This should occur not only in the energy sector, but in the private sector as a whole and especially with regard to small and medium-sized, i.e. non-oligarchic, enterprises (SMEs). Non-oligarchic businesses are harmed by corruption unlike their oligarchic brethren and have interests that line up with those of civil society and the international community. They could potentially become a powerful voice in advocating for reforms.

introduction of corporate governance structures to Naftogaz as part of reforming the company was a good start, the unbundling of former Soviet bureaucratic behemoths must continue. Additionally, the exploration of oil and gas fields is still governed by outdated regulations that need to be revised in order to boost domestic gas production.<sup>111</sup>

Supporting the development of domestic production should be a key priority as, once Ukraine's domestic energy production is no longer captured by corrupt interests, it could achieve energy independence. "The problem is not geology, but the absence of a stable and attractive business climate for non-politically connected and honest investors," argues Chow.<sup>112</sup>

### *6.1.3. Safeguarding and Further Empowering the Anticorruption Architecture*

NABU's independence and jurisdiction over all high-profile corruption cases in Ukraine should be preserved. NABU's external audit commission, which can provide the grounds to dismiss the head of NABU, should also be selected via transparent and accountable processes and consist of independent individuals with impeccable reputations and experience in investigations in international corruption cases.

To promote transparency and curtail the ability of the oligarchs to manipulate Ukrainian politics,<sup>113</sup> NABU should be strengthened to more effectively perform its investigative duties. Besides being granted the authority to independently wiretap, NABU should also be empowered to monitor donations to parties and politicians. Accompanying reforms that establish limitations and regulations on political donations would be needed, and the party financing law that was passed in July 2016, but has not been enforced, must be implemented.<sup>114</sup>

NAPC's admirable work in e-declaration can also be improved by establishing verification mechanisms for e-declaration.

### *6.1.4. Banking Sector Reform (Cont.)*

Although the Ukrainian banking system has seen significant reform and is not as rife with corruption as it was in 2014, experts agree it still has a long way to go.<sup>115</sup> The "Strengthening Ukraine" report of the Bush School and the U.S.-Ukraine Foundation recommend consolidation and full transparency as ways to further combat corruption in the banking sector. These reforms will make Ukraine's banks easier to monitor, enabling the government to ensure that they are complying with the law. Given the centrality of a corrupt banking sector to the wealth of the oligarchs, this sector will be especially difficult to reform.<sup>116</sup>

According to Francis Malige, the managing director for Eastern Europe and the Caucasus of the European Bank for Reconstruction and Development, the most important four building blocks of any future banking reform are "good conditions facilitating lending from banks which lower interest rates and shift lending to the real economy, rather than

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<sup>111</sup> Edward Chow, "The High Stakes of Ukraine's Energy Reforms," *The American Interest*, October 21, 2016, <https://www.the-american-interest.com/2016/10/21/the-high-stakes-of-ukraines-energy-reforms/>.

<sup>112</sup> *Ibid.*

<sup>113</sup> Antonidis et al., "Strengthening Ukraine: Policy Recommendations for the New Administration," 6.

<sup>114</sup> Kostanyan, "Ukraine's unimplemented anti-corruption reform," 3.

<sup>115</sup> Gloss, "Ukrainian Officials Tout Banking Sector Reforms."

<sup>116</sup> Antonidis et al., "Strengthening Ukraine: Policy Recommendations for the New Administration," 14.

to the government; the development of capital markets; land reform that would allow banks to accept land as collateral; and privatization in the banking sector.”<sup>117</sup>

### 6.1.5. *Limit Parliamentary Immunity*

Parliamentary immunity should be carefully limited so that it is no longer a form of *de facto* blanket immunity. Ranking Helsinki Commission Senator Cardin has worked to limit parliamentary immunity in the OSCE region.

Most notably, this included the adoption by the OSCE Parliamentary Assembly (OSCE PA) of a resolution proposed by Senator Cardin calling for the limiting of parliamentary immunity, entitled “Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance, Public Integrity and the Rule of Law.”<sup>118</sup> The OSCE PA is an independent international institution related to, but not part of the inter-governmental OSCE made up of parliamentary delegations from the 57 participating States of the OSCE, which every year gather in an annual session to pass resolutions based on majority votes.<sup>119</sup>

## 6.2. *Civil Society Including Independent Media*

The Ukrainian people have proven now on three different occasions—as protesters during the Orange Revolution and the Euromaidan, and as volunteers assisting troops fighting Russian aggression—that their organizational capacity and desire for democracy and prosperity is greater than the forces that would bankrupt their country.

Civil society has played a fundamental role in Ukraine’s democratic transition, and remains a critical element of combating corruption. It is the first to the scene, pushes for change, and, ultimately, sees to it that changes stick. The independent media is no different. Ukrainian journalists played a critical role in the Euromaidan Revolution and continue to play an essential role as corruption watchdogs to this day.

The big question then is how to safeguard and take advantage of these comparative advantages of Ukraine’s. First, do no harm. Civil society and especially independent media should continue with their work without the introduction of any additional constraints. It is largely thanks to them that Ukraine remains politically competitive and that the country has not long since fallen to the siren song of authoritarianism. Moreover, their ability to uncover corruption is unparalleled. Who knows where Ukraine would be today without publications such as *Ukrainska Pravda* and *Dzerkalo Tyzhnia*.<sup>120</sup>

Unfortunately, harm is being done. A recent law requires civil society activists who are working in anticorruption to complete e-declarations similar to those that officials are now required to complete in an attempt to burden them needlessly.<sup>121</sup> In addition, a recent article by Josh Cohen also explains how the Security Service of Ukraine (SBU) is harassing civil society activists on behalf of oligarchs. In order to counter this harassment,

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<sup>117</sup> Gloss, “Ukrainian Officials Tout Banking Sector Reforms.”

<sup>118</sup> Organization for Security and Co-operation in Europe, Parliamentary Assembly, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the Fifteenth Annual Session*, 2006, Brussels: 32–33.

<sup>119</sup> Troy C. Ware and Shelly Han, “Corruption: A Problem that Spans the OSCE Region and Dimensions,” *Helsinki Commission* 41, no. 13, December 30, 2009, <http://lawandorderinrussia.org/2009/corruption-a-problem-that-spans-the-osce-region-and-dimensions/>.

<sup>120</sup> Aslund, *Ukraine: What Went Wrong and How to Fix It*, 97.

<sup>121</sup> Adrian Karatnycky, “Watching the Watchdogs: Why Ukraine’s NGOs Should Disclose Assets, Too,” *Atlantic Council*, March 29, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/watching-the-watchdogs-why-ukraine-s-ngos-should-disclose-assets-too>.

the SBU should be reformed in line with NATO standards. Any harm to civil society must be condemned and prevented such that civil society can do its job and continue to push for reforms.<sup>122</sup> That said, it is also a demonstration of the fear that oligarchs have for civil society. Oligarchs would not be working so hard to stop Ukraine's civil society if they were not profoundly active and effective.

In her piece "Corruption in Ukraine in Comparative Perspective," Daphne Athanasouli, a scholar of corruption at the University of Derby, recognizes Ukraine's civil society including independent media as a comparative advantage that it has to combat corruption.

She recommends improving upon this advantage further through the introduction of greater e-government, essentially giving Ukraine's civil society including independent media a megaphone. She comments, "Progress in e-government can decrease corruption, rent-seeking, and regulatory capture in Ukraine by strengthening the accountability of public officials and politicians."<sup>123</sup>

She adds, "E-government can also reduce the time of interaction with public officials and their discretionary power, thereby reducing administrative corruption."<sup>124</sup> Finally, she concludes, "The development of e-government and access to online information about government services help increase accountability and tackle petty corruption by limiting the discretionary power of government officials and public servants."<sup>125</sup>

Already, Ukraine has made some progress here. Athanasouli writes:

In 2012, Ukraine endorsed a new Open Government Plan (OGP) with the active participation of civil society organizations and the United Nations Development Program (UNDP) office in Ukraine. The OGP included initiatives to improve the provision of public services to citizens and the introduction of administrative services in digital format by the end of 2014. Many of these reforms were successful.<sup>126</sup>

A second method to empower civil society including independent media recommended by Athanasouli is increasing press freedom. She writes, "An environment that can also support free media is pivotal for (combating corruption) since it helps support an anticorruption agenda, expose corrupt practices, and exert pressure on the government for reforms."<sup>127</sup> While even during Yanukovich's presidency, when Ukraine was threatened by an unfree media environment, independent publications stepped up to fill the void, Athanasouli is correct when she states, "Oligarchs continue to own the main television networks and they determine the content of their broadcasts."<sup>128</sup>

One need look no further than Ukraine's President, Petro Poroshenko, owner of Kanal 5, to find an example. Although Poroshenko has largely allowed Kanal 5 to be a

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<sup>122</sup> Josh Cohen, "Something Is Very Wrong in Kyiv: Ukraine Brags about Reforms and Harasses Activists," *Atlantic Council*, May 18, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/something-is-very-wrong-in-kyiv>.

<sup>123</sup> Daphne Athanasouli, "Corruption in Ukraine in Comparative Perspective," in *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, ed. Henry E. Hale and Robert W. Orttung (Stanford: Stanford University Press, 2016), 80-105.

<sup>124</sup> *Ibid.*, 98.

<sup>125</sup> *Ibid.*, 100.

<sup>126</sup> *Ibid.*, 99.

<sup>127</sup> *Ibid.*, 100.

<sup>128</sup> *Ibid.*, 100.

home for real journalists, this has not been the case for much other media in Ukraine, and it remains a significant issue. Dunja Mijatovic, former Representative for the Freedom of the Media of the OSCE, has commented, “If Mr. Poroshenko intends to sell his assets, in my view, his TV station should be the first to go.”<sup>129</sup>

Ukraine’s impressive independent media will not evolve into an impressive free media until this oligarchical stranglehold on the main television networks has been broken. Yet, “Following the Euromaidan revolution, the media situation improved considerably.”<sup>130</sup> As with other reforms relating to the oligarchs, now is the time to deal the knockout punch.

Athanasouli writes, “The citizens and the media can act as monitoring agents against both administrative and grand corruption, promote anticorruption reforms and the work of law enforcement agencies, and increase political accountability by tracking the progress of reforms and exposing mischief or delays in the implementation of specific measures.”<sup>131</sup> This report could not agree more.

The reality in Ukraine is that it will come down to “citizens and the media” to make reforms happen and keep them in place. This is the Ukrainian people’s greatest test, but they need not go it alone. The international community should push the Ukrainian state as hard as it can too and offer as much assistance as is responsible to assist Ukraine in realizing a democratic and prosperous future.

### 6.3. *The International Community*

External pressure was critical to the successful implementation of the all-important 2000 Prime Minister Yushchenko reforms. Aslund describes the influence of external pressure on these reforms:

External pressure was important. The IMF defined the threat of external default and made the rulers ware of the dangers. Paradoxically, its pressure was stronger when it provided no credit. The West strongly influenced the government’s ideas, notably the German advisory group, but also the IMF and the World Bank. Ukrainian officials were anxious to be respected by the West and Yushchenko greatly benefited domestically from being considered so highly in the West.<sup>132</sup>

Then, as now, Ukraine is in a position where it needs the West more than ever, having cut many ties with Russia. Many western-educated Ukrainians are in Ukrainian government and civil society and Ukraine is seen in the foreign policy of western countries as the litmus test for democracy and anticorruption in an era where both are falling out of favor globally.

It is imperative that the international community not become frustrated with the pace of reform in Ukraine. The historical analysis of this report provides insight into the resilience of the oligarchs. Ultimately, the international community, along with Ukrainian civil society, will have to show that it is even more resilient. As such, the international

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<sup>129</sup> Simon Shuster, “Ukraine’s New Leader Clings to His TV Channel,” *Time*, May 29, 2014, <http://time.com/137020/ukraine-petro-poroshenko-channel-5/>.

<sup>130</sup> Athanasouli, “Corruption in Ukraine in Comparative Perspective,” 100.

<sup>131</sup> *Ibid.*, 101.

<sup>132</sup> Aslund, *How Ukraine Became a Market Economy and Democracy*, 149.

community should prepare itself to be invested in Ukraine for the long term, so as to avoid past mistakes.

### 6.3.1. *The IMF*

The IMF is the international organization with which Ukraine has had the most interaction. After a board meeting on April 3, 2017, the IMF decided to proceed with a \$1 billion loan payment to Ukraine, the fourth installment of a \$17.5 billion aid-for-reform program spanning four years. Financial support for the program is being released in installments contingent upon progress in reforms in the country.

When the IMF board initially adopted the stabilization program on March 11, 2015, it decided to issue a credit of \$5 billion immediately. The green-lighting of additional funding in April surprised many experts, as the Ukrainian government has struggled to implement many of the structural reform conditions outlined for the fourth tranche, only meeting five out of fourteen conditions from the agreement. In the press release that accompanied the most recent disbursement, the IMF commented on the successes of implemented macroeconomic policies, while calling for additional anticorruption efforts.<sup>133</sup>

Ukraine has received funding totaling \$8.8 billion under the program. Aslund credits these loans with stabilizing exchange rates and containing inflation, as the Ukrainian economy outperformed expectations when finishing 2016 with a budget deficit at only 2.3 percent.<sup>134</sup> Furthermore, he credits the IMF program for the creation of NABU, as the corruption bureau was created at the behest of the reform program. The IMF is applying pressure for the establishment of a Ukrainian anticorruption court.

While additional structural conditions need to be implemented, economic reforms have proven easier to enact than judicial reforms, where opposition from private interests blocks attempts to strengthen and enforce anticorruption frameworks.<sup>135</sup>

### 6.3.2. *The United States*

The United States has shown and must continue to show its support for the territorial integrity as well as the ongoing reform process in Ukraine. It continues to put pressure on as well as support Ukraine both symbolically and via financial, security, and technical assistance. There are multiple bills in the 115th Congress that could increase or change the nature of this aid. USAID and Department of State International Narcotics and Law Enforcement Affairs Initiatives are highly active in Ukraine and provide assistance, financial and otherwise, to a variety of programs.

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<sup>133</sup> International Monetary Fund, “IMF Executive Board Concludes 2016 Article IV Consultation and Completes Third Review of Ukraine’s EFF, Approving US\$1.00 Billion Disbursement,” *International Monetary Fund*, April 3, 2017, <https://www.imf.org/en/News/Articles/2017/04/03/pr17111-imf-executive-board-concludes-2016-article-iv-consultation-and-completes-third-review> (accessed June 18, 2017).

<sup>134</sup> Anders Aslund, “Why Does the IMF Keep Funding Ukraine?” *Atlantic Council*, April 11, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/why-does-the-imf-keep-funding-ukraine>.

<sup>135</sup> Anders Aslund, and John Herbst, “Take It to the Next Level: Create a Biden-Poroshenko Commission,” *Atlantic Council*, December 7, 2015, <http://www.atlanticcouncil.org/blogs/ukrainealert/take-it-to-the-next-level-create-a-biden-poroshenko-commission>.

### 6.3.3. *The EU*

The Euromaidan advocated for a European direction for the country and the goal remains the eventual accession of Ukraine to the EU. The EU has an active assistance program within Ukraine. In addition, a new Danish-led initiative focused on combating corruption has become active on Ukrainian issues. The recent realization of the EU–Ukraine visa-free travel agreement was a significant achievement for Ukraine.<sup>136</sup>

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<sup>136</sup> Diane Francis, “It Was a Very Good Spring for Ukraine,” *Atlantic Council*, June 7, 2017, <http://www.atlanticcouncil.org/blogs/ukrainealert/it-was-a-very-good-spring-for-ukraine>.

## VII. CONCLUSION

The persistence of corruption in Ukraine can be explained by the influence of the oligarchs, who were enabled early on by the incomplete economic liberalization of the country and the corrupt gas trade, which historically was the most corrupt sector of the Ukrainian economy and deeply influenced by Russia. The oligarchs' capture of the state structure has proven exceptionally resilient; civil society and the international community must prove that they are more resilient.

Indeed, Ukraine's civil society including independent media is and will continue to be the most central piece of the struggle against corruption in Ukraine. As the Nations in Transit 2017 Report on Ukraine states, "Civil society remains the strongest element in Ukraine's democratic transition."<sup>137</sup> The international community and the Ukrainian state should do everything it can to improve the capacity of civil society including independent media to hold politicians' feet to the fire.

Vested interests will do everything in their power to prevent meaningful reform in Ukraine. It is bound to be an arduous battle, but it will be well worth it if Ukraine is finally able to defeat its internal enemy.

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<sup>137</sup> Sushko and Prysytcko, "Nations in Transit: Ukraine," 7.

## VIII. Appendix: Consolidated Corruption Perceptions Index (CPI) Rankings of OSCE Participating States

1—DENMARK	54—SLOVAKIA
3—FINLAND	55—CROATIA
4—SWEDEN	57—HUNGARY
5—SWITZERLAND	57—ROMANIA
6—NORWAY	60—ITALY
8—NETHERLANDS	64—MONTENEGRO
9—CANADA	69—GREECE
10—GERMANY	72—SERBIA
10—LUXEMBOURG	75—BULGARIA
10—UNITED KINGDOM	75—TURKEY
14—ICELAND	79—BELARUS
15—BELGIUM	83—ALBANIA
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This is an official publication of the **Commission on Security and Cooperation in Europe.**



This publication is intended to document developments and trends in participating States of the Organization for Security and Cooperation in Europe (OSCE).



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