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Democracy in Danger

Ukraine at a Crossroads Four Years After Euromaidan

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Introduction

The 2013-14 Euromaidan protests brought down the corrupt government of President Viktor Yanukovich and offered Ukrainians the prospect of a brighter and freer future. Four years later, however, momentum toward the creation of a new politics has stalled. Russian aggression, entrenched resistance to change, and weak democratic institutions have severely hindered the ability of President Petro Poroshenko's government to make essential reforms.

While volatility has marked the new era in Ukraine, the country appears to be entering a particularly perilous stretch, as oligarchs—who still in large part run the country—push back against reform efforts that threaten their power. Local civil society leaders, foreign diplomats, and senior international observers say that major reform is urgently required if the country is to avoid endangering gains made to date.

To its credit, Ukraine's current government has enacted the most significant package of reforms in the country's post-Soviet history. These include an effort to combat corruption by giving more authority over government spending to local leaders, who are often seen as more responsive and accountable to citizens. The government has also implemented new protections for the rights of LGBT people, as well reforms to the country's judiciary, banking sector, and healthcare system. In September 2017, a new Deep and Comprehensive Free Trade Area fully came into effect as part of the EU-Ukraine Association Agreement, a deal aimed at opening markets and harmonizing laws between the two entities.¹

Despite this progress, Ukraine has yet to make a clean break with the past, and public trust in state institutions remains dangerously low. The Security Service of Ukraine (SBU) needs radical reform, and comparisons with conditions in Russia are still too easy to draw. The World Justice Project's

2016 Rule of Law Index ranked Ukraine at 78th and Russia at 96th out of 113 surveyed countries, while the 2017 Index of Public Integrity, a new EU-funded anti-corruption body, ranked Ukraine at 68th and Russia 72nd out of 109 analyzed. The World Bank's 2017 Worldwide Governance Indicators put Ukraine on the same level as Russia for quality of governance, while Transparency International's Corruption Perceptions Index lists Ukraine as tied with Russia at 131st of 176 countries around the world. Ukraine's corruption problem threatens to undermine progress made over the last two decades.²

The damage that Russia continues to wreak on Ukraine's sovereignty, territorial integrity, and democratic prospects cannot be overlooked. The United Nations and international NGOs have extensively documented large-scale human rights violations, denial of due process, and expropriation of public and private property in annexed Crimea.³ Through its support for separatists in Ukraine's eastern Donbas region, Russia has fueled a war that, according to the UN, has killed 10,225 men, women, and children, and injured over 24,000 more through mid-August 2017. At the same time, a steady stream of Russian propaganda and disinformation seeks to discredit and damage the Ukrainian government's image both domestically and internationally. Officials say Russia is also behind acts of terrorism, including a string of recent assassination attempts.⁴

The country's problems, however, cannot be solely attributed to Russia. The stakes remain enormous for both Ukrainians and all invested in a Ukraine firmly aligned with good governance, human rights, and the rule of law, including the United States.

This report describes the ways in which the post-Maidan Ukrainian government has and has not made progress on fighting corruption, how far it

allows space for civil society, permits dissenting and critical voices in the media, and accounts for human rights abuses within its security services.

As we approach the four-year anniversary of the Revolution of Dignity, Human Rights First seeks to document the many ways that Washington can continue to bolster respect for human rights and democratic institutions in Ukraine. Most notably, the U.S. government should provide greater support to Ukraine's civil society as it faces new threats to its existence, and push for the creation of an anti-corruption court, which activists say is essential. It should also:

- Consider using existing mechanisms to impose visa bans and asset freezes on government officials and their cronies credibly linked to acts of significant corruption.
- Publicly call for the repeal of legislation targeting civil society, and for the immediate dismissal of all politically-motivated cases against anti-corruption activists and NGOs.
- Visit anti-corruption activists in their offices, and send observers to any court hearings, speaking publicly as necessary.
- Publicly condemn all abuse and torture by the SBU and other Ukrainian security forces, and call for access to all places of detention by national and international human rights groups, and urge that the SBU be reformed in line with NATO standards.
- Publicly and consistently speak out against limits on Ukrainians' freedom of speech.
- Insist on greater reforms within the Ukrainian the military, including the successful prosecution of those guilty of corruption in military procurements.

Fighting Corruption

Under President Poroshenko and Prime Ministers Arseniy Yatsenyuk and Volodymyr Groysman, Ukraine's government has made substantial progress fighting corruption. Yet there is far more to be done, as corruption remains an existential threat to Ukraine's fledgling democracy, and the slow pace of change continues to frustrate many Ukrainians.⁵

The Ukrainian government has established and resourced institutions that expose and investigate high-level corruption. These include the National Anticorruption Bureau (NABU), which is responsible for investigating officials believed to be involved in grand corruption. NABU's investigations have led to the arrests of high-profile figures, including, in March 2017, the head of the State Fiscal Service, Roman Nasirov. In October 2017, the deputy minister of defense was arrested as part of a NABU-led investigation into military procurement, while the son of the minister of the interior was detained on embezzlement charges.

The arrest of Nasirov, the country's top tax official and a figure close to President Poroshenko, was particularly significant. Senator John McCain (R-AZ) described it as:

“[A] positive step forward for the Government of Ukraine in its fight against the corruption. The National Anticorruption Bureau (NABU) has done commendable work on this investigation and in its tireless efforts to tackle official corruption. This success highlights the importance of NABU's independent investigative work as well as the value of establishing a specialized anti-corruption court to ensure the integrity of verdicts. Ukraine's long-term stability and success depend on its commitment to reform, including strengthening rule of law and fighting corruption.”⁶

Other new bodies include the National Agency for the Prevention of Corruption (NAPC or NAZK)—responsible for setting anticorruption policy and administering online financial disclosures (known as e-declarations) of public officials—and the Specialized Anticorruption Prosecutor’s Office (SAPO)—which prosecutes cases investigated by NABU. Neither of these bodies has yet managed to make a significant impact, with the NAPC seen as lacking the required independence to achieve convictions and its own officials reportedly under NABU investigation.^{7,8}

Transparency in government procurement is likewise a qualified story of progress. Reform to the procurement of medicines in the Ministry of Health is seen as a significant improvement, as is the establishment of ProZorro, a new, innovative digital public procurement mechanism that makes publicly available the system for state procurement tenders. Other achievements include the elimination of gas sales from Russia (previously, a large source of corruption) and the new e-declaration system that requires senior government officials to declare their assets.⁹

In October 2017, Ukraine’s parliament passed a long-awaited law to reform the health sector, replacing a Soviet-style model. The reform introduced an “e-health” system in which patients first register with doctors of their choice, and then doctors sign contracts with the health ministry. Payment amounts are based on patient loads, as well as the costs of procedures, hospital visits, and other services. Significant new reforms on pensions and tax inspection are expected before the end of the year.¹⁰

Public support for the fight against corruption remains strong, and there is growing support for civil society’s efforts in this area. In 2009, 56 percent of Ukrainians thought it pointless to fight corruption; in 2015, only 34 percent shared this view. In a 2015 survey, 28 percent of respondents considered NGOs effective in tackling corruption,

up from 14 percent in 2007. Among all institutions listed in the survey, NGOs registered the largest increase in perceived effectiveness at fighting corruption. A commonly expressed hope is that the younger generation of Ukrainians won’t tolerate the old corrupt system.¹¹

But reform efforts haven’t gone far enough. Low salaries for government workers encourage everyday bribery. To wit, the Security Service of Ukraine (SBU) has avoided much-needed reforms, and while the judicial system has been partly reformed, corrupt judges negate much of the progress. The fact that there have been no cases successfully brought against senior Yanukovich regime officials or security personnel, despite the killings of over one hundred Euromaidan protesters, starkly highlights the lack of movement in these critical areas.

A crucial missing element in Ukraine’s search for sustainable rule of law is a dedicated anti-corruption court. The broad consensus among activists and foreign diplomats is that Ukraine’s existing judicial structures lack the independence necessary to fairly try, much less convict, those alleged of corruption by NABU and others. To date, for all of the investigative work done, the system has largely failed to hold senior officials to account. Activists repeatedly stressed the necessity for a genuinely independent anti-corruption court, with a role for international advisors to help select judges.¹²

Typifying this view, Dmytro Bulakh, the head of the board of the Kharkiv Anti-Corruption Action Center, noted in an interview with Human Rights First that, “All previous ‘success’ on anti-corruption reform, NABU et cetera, depends on the successful establishment of the anti-corruption court. The reforms so far are necessary background music, but it all depends on the last step.”¹³

Bulakh believes that the Trump Administration should act aggressively, adding, “Washington can help push this [the impetus to establish an anti-corruption court] by imposing visa bans on corrupt government officials and freezing their assets in the U.S.”

Ukraine’s reform agenda is not stalling because of a lack of international financial support. According to analysis from experts at Chatham House, roughly one billion dollars per year is now directed to reform-related projects, with about a third of such aid channeled through civil society. In 2016, USAID allocated 67 million dollars to programs supporting anti-corruption efforts, good governance, and civil society.¹⁴

Encouragingly, the U.S. government has shown itself willing to complement its robust financial support by speaking out—and acting against—corruption and other abuses in Ukraine. At the end of 2016, the United States Agency for International Development (USAID) publicly ended its funding for a prominent customs reform project in the Odessa region when the Ukrainian government’s plans to address bribe-taking at its Black Sea ports stalled. “As the situation in Odessa changed and it became apparent that there was no clear way forward for continuing our partnership with Odessa Customs, the program was concluded,” an unnamed USAID official told the press. “USAID is in the process of reclaiming the computers that have not been used and will redistribute them to other USAID projects and partners in support of Ukraine’s reform process.”¹⁵

During a July 2017 visit to Ukraine, Secretary of State Rex Tillerson noted that “creating the anti-corruption court...[is among] essential first steps in reforming the judiciary.”¹⁶

On December 4, 2017 the State Department also publicly criticized attacks on NABU when its staff were arrested and an investigation into the sale of Ukrainian passports was disrupted. Olena

Halushka of the Anti-Corruption Action Center said the attacks were “well planned and orchestrated revenge” against NABU by the Prosecutor General and the SBU, and that “Nabu’s future is at stake” from those who “aimed at blurring the line between new independent and old-style law enforcement agencies, putting them all in one basket.”¹⁷

The State Department said “Recent events—including the disruption of a high-level corruption investigation, the arrest of officials from the National Anti-Corruption Bureau of Ukraine (NABU), and the seizure of sensitive NABU files—raise concerns about Ukraine’s commitment to fighting corruption. These actions appear to be part of an effort to undermine independent anti-corruption institutions that the United States and others have helped support. They undermine public trust and risk eroding international support for Ukraine.”¹⁸

The attacks on NABU and the failure to establish an anti-corruption court are evidence that the pendulum is swinging away from the spirit of Euromaidan and back towards the old rule by oligarchy. Disillusioned by Ukraine’s failure to punish the guilty, many people who entered the government in the post-revolution flush of enthusiasm have departed. As a further setback, anti-corruption activists now face new challenges from their opponents inside and outside of government in the form of repressive laws, judicial harassment, media smears, and physical assaults.

Fighting Those Who Fight Corruption

In a move widely seen as a reprisal against anti-corruption activists, in March 2017 Ukraine’s parliament adopted a law requiring anti-corruption activists to file detailed annual personal financial and asset declarations. Lawmakers justified the decision by noting that the law largely mirrors the much-hailed requirement for state officials to

declare their assets. Under the new law, failing to file can result in two years imprisonment.

Regarding the new requirements, Olga Stefanyshyna, executive director of Patients of Ukraine, an NGO fighting corruption in the healthcare sector, said, “The legislation passed in March is designed to block our work, an attempt to show people we’re suspiciously rich. Owning an apartment or a house is suggested as evidence that we must be personally corrupt, somehow getting rich from our NGO work.”¹⁹

“Everyone from the companies who sell our offices photocopying paper to those who supply our events with coffee and sandwiches are covered by this. It’s a disincentive for local businesses to work with us - that’s how the state can paralyze the work of local NGOs,” said Igor Cherniak, deputy head of the board of Kharkiv’s Anti-Corruption Action Center. “From the outside, it might look like there’s big difference between this government and the last, but many of the same methods being used by the Poroshenko government were those used by Yanukovich—it’s a Russian model. Harass NGOs, attack the credibility of activists.”²⁰

In July 2017 President Poroshenko introduced two draft laws. Nominally proposed to help fix the problems of the March legislation, they would in fact make them worse, replacing the obligatory personal financial declarations for anti-corruption activists with a general requirement for all NGOs with an annual budget of more than 20,000 dollars to publish detailed annual financial declarations, including all staff salaries, consultant fees and payments for services, along with the names of each individual who receives them.²¹

Some attacks are more than legislative. The SBU has opened criminal investigations against prominent NGOs fighting corruption.²² Former USAID officer Josh Cohen has detailed SBU attacks on civil society in Ukraine. In a May 2017

piece for the Atlantic Council, he reported that in the previous month, “Vitaly Shabunin, Chair of the Anti-Corruption Action Center, was the victim of a fake ‘protest’ which...activists were able to determine was directed by SBU officer Roman Matkovskiy.”²³

“The security service badly needs reform. International aid should be linked to improvements in the SBU,” Daria Kaleniuk, Executive Director of the Anti-Corruption Action Center said. “People are being assassinated in downtown Kyiv, while too many security sector officials are busy enriching themselves through corruption and intimidating businesses. They should focus on countering terrorism and protecting people instead of organizing fake protests and putting NGOs under surveillance.”²⁴

In an October 2017 piece for the Atlantic Council, Cohen noted that, “Any resources used by the SBU to prey upon legitimate activists represents manpower and money subtracted from what should be its main job—combating the Russian intelligence services’ effort to undermine Ukraine’s independence. Put simply, the SBU’s predatory behavior helps Moscow and hurts Ukraine.”²⁵

In February 2017 Ukraine’s Prosecutor General’s Office opened a criminal case against two organizations fighting health sector corruption, Patients of Ukraine and The All-Ukrainian Network of People Living with HIV/AIDS, for allegedly misusing foreign funds provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria. The SBU also opened criminal cases against the two NGOs, and in October the tax police raided both of the NGOs’ offices. The organizations could have their bank accounts frozen.

Patients of Ukraine’s work has in recent years focused on what many consider a major success in the fight against corruption in the healthcare sector—the breaking of the cartel of drug procurement. Working with others, Patients

of Ukraine successfully pushed for legislation opening the sector to international competition and removed one of the most corrupt elements: middlemen. Before 2014 the Ministry of Health was obliged to source its medicine from only a few national companies through distributors in deals controlled by a handful of oligarchs.

The progress has been stunning. “According to the government’s own accounting office figures, there has been an annual saving in procurements of 39 percent, around \$15m,” said Stefanyshyna. “For instance, a brand-name pill for leukemia that cost 90 dollars in 2014 now costs under 2 dollars for the generic version. The security services used to benefit from this corruption at the Ministry of Health, so we’ve made some powerful people angry.”²⁶

Patients of Ukraine also reports that since the reforms were enacted, the Ministry of Health has saved more than seven hundred thousand dollars annually in the price of hepatitis medicine, more than one million in hemophilia drugs, and more than five million in TB treatment.²⁷

“The General Prosecutor’s office opened an investigation after someone made an allegation in a Facebook post,” said Stefanyshyna. “In October 2017 we were summoned to court, and the charges against us are absurd. They include that we are involved in profiting from drug procurements when we have never been doing any procurements of drugs. But the formal investigation means our offices can now be legally bugged.”²⁸

Tax audits, judicial harassment, and surveillance are mounting problems for anti-corruption activists. Those based outside of the Kyiv, far from the protective glare of international media and foreign embassies, feel particularly vulnerable.

“We suspect our offices are wiretapped, and a member of our board was harassed at the

airport by a fake journalist we believe was really from the security services,” said Kaleniuk. “We’d have fake news smearing us, and colleagues outside of the capital have been physically attacked.”²⁹

The Anti-Corruption Center, an NGO based in Kharkiv—about three hundred miles east of Kyiv, 25 miles from the border with Russia—helped to expose illegal land giveaways by Kharkiv’s city council, and made powerful enemies. “Basically, more than nine hundred hectares with a value of around four hundred million dollars were given as gifts to commercial developers over ten years,” explained Igor Cherniak, deputy head of the board of the Center. “We fought this in our courts and in the media and there are criminal procedures now against the former mayor of Kharkiv, the deputy mayor and three directors of city departments. Some of the businesses have started to return the land to the city, claiming they didn’t know the deals were illegal - so far about 150 hectares have been given back, and we expect more.” He said their members have been subjected to “physical pressure” in recent months.³⁰

Dmytro Bulakh, head of the Kharkiv Anti-Corruption Center’s board, recounted being attacked by two men on August 30, 2017 in the middle of the day near his home. “The whole thing only lasted 20 or 30 seconds,” he said. “They punched me in the head with knuckle dusters and broke three ribs. I was in hospital for nine days.” He has no doubt the attack was connected to his anti-corruption work. “I had credit cards, a phone, cash on me but they didn’t try to steal anything. I reported it to the police but there seems to be no progress in the investigation. My lawyer asked the authorities to provide protection for me but nothing’s happened.”³¹

Less than three weeks later there was a similar incident in Kharkiv. The Center reports that another anti-corruption activist, Yevhen Lisichkin, was also attacked by two men, who told him that

he would be killed if he continued his activities. In a bizarre twist, police claim that two men turned themselves into a police station, admitted full responsibility, signed confessions, and claimed that they had been paid by the activist to simulate an attack. “It’s an attempt to discredit both attacks, by claiming they weren’t real,” Cherniak said. “These attacks are worrying. We try not to be out alone at nighttime Kharkiv now. We also think there are other cases of activists being physically attacked in smaller places that go unreported. We get ‘soft threats’ from officials sometimes calling us to suggest we don’t pursue certain investigations.”³²

Bulakh said that following the attack on him he was visited by Marie Yovanovitch, the U.S. Ambassador to Ukraine. Anti-corruption activists in Kyiv and Kharkiv say they would welcome more visible support from the U.S. government, including more regular visits by U.S. officials, as well as monitoring of their court hearings by trial observers from the embassy.

On November 22, 2017 Transparency International reported that two men in masks severely beat Judge Larysa Holnyk and her husband Ihor Havrylenko in Poltava. Holnyk is well-known for her anti-corruption work. In May 2016 she issued a video where the mayor of Poltava tried to “negotiate” closure of administrative proceedings against him. Protesters arrested at anti-corruption demonstrations in the capital in mid-October are reportedly still in jail.³³

Human Rights First is alarmed that Ukraine appears to be following the sort of targeting of activists typical of authoritarian regimes. The stigmatization of activists often precedes judicial and legislative harassment, which, if left unchecked, can escalate into physical threats and violent attacks. Many targeted activists were drivers of the Euromaidan protests. The repression they face is a frightening indicator of

how far the pendulum is swinging back towards the old politics. The U.S. should speak out publicly and clearly against attacks against activists.³⁴

Media Control

Ukraine’s media is largely controlled by a handful of powerful actors who use the platforms to further the interests of their political and business associates. As an October 2017 Chatham House report explains: “Ukrainian tycoons still own seven of the country’s eight major television stations ...President Poroshenko has retained ownership of his 5 Kanal channel, despite widespread calls for him to give it up.”³⁵

At the same time, the Ukrainian government muzzles critical voices, providing ready ammunition to those keen to question the country’s commitment to democracy. The U.S. government’s response has thus far been muted, further encouraging limits on freedom of speech.

In May 2017 President Poroshenko signed a decree imposing sanctions on 468 companies. The decree blocked popular social networks and an email service, requiring Ukrainian internet providers to restrict access to their sites—consisting of Russian social media sites and search engines. The rationale for the ban was, in addition to cybersecurity, was to prohibit the anti-Ukrainian content on these platforms. The blockage has been partially successful, although authorities don’t have the capability to prevent people from finding roundabout ways of accessing them.

In September 2017 the UN’s Office of the High Commissioner for Human Rights in Ukraine noted an increase in “defamation campaigns on social media targeting activists and media professionals engaged in investigative journalism and promotion of accountability.” The office also indicated that, “Physical and online attacks are often not investigated, or investigations are protracted.”

Although the number of physical attacks on journalists seems to be decreasing, more than a year after a car bomb killed prominent journalist Pavel Sheremet in Kyiv, no-one has been arrested or prosecuted.³⁶

The U.S. government's reaction to the blocking of websites was low key with no immediate condemnation from the State Department. An unnamed State Department official, speaking on background and in response to a question from a Voice of America reporter, said, "Freedom of expression is a key element of every healthy democracy, and it is enshrined in the Ukrainian Constitution... We call on the Ukrainian government to find a way to protect its national interests that does not undermine its constitutional principles."³⁷

Since May Kyiv's attacks on the media have intensified. The SBU barred two Spanish journalists for their negative coverage of the conflict in Ukraine's east. The Committee to Protect Journalists wrote to Poroshenko in September 2017, noting at least seven occasions in the previous two months in which the SBU "targeted newsrooms and journalists on accusations that appear politically motivated, and in retaliation for critical reporting."³⁸

In May 2017 a Kherson district court sentenced Eduard Kovalenko to five years imprisonment for expressing opposition to military mobilization during a 2014 public assembly. The following month another court annulled the previous acquittal of journalist and blogger Ruslan Kotsaba, who was charged with treason for an online video he posted opposing Ukrainian's military mobilization, and for his perceived cooperation with Russian media.³⁹

In August 2017 the SBU arrested blogger and journalist Vasyl Muravytsky, accusing him of "preparing and circulating anti-Ukrainian material on the instructions of Russian supervisors." The

charges, which include state treason, carry a potential sentence of 15 years in prison. As prominent Ukrainian journalist Halya Coyalash observes, these actions mirror what is happening to Ukrainians in Russia who criticize the Kremlin's aggression, and that "the self-proclaimed 'Donetsk and Luhansk people's republics' are following in the same repressive tracks."⁴⁰

"The reality is that there are political prosecutions for expressing opinions," said Yevgeni Zakharov, executive director of the Kharkiv Human Rights Monitoring Group.⁴¹

In Freedom House's 2017 Freedom of the Press report, the U.S.-based NGO warned that Ukraine was one of ten countries to watch in the coming years, noting that "restrictions on Russian outlets and attempts to foster 'patriotic' reporting raise questions about the government's commitment to media autonomy."⁴²

The U.S. government should publicly and consistently speak out against the government of Ukraine limiting its citizens' freedom of speech, blocking of websites, and targeting of journalists and bloggers.⁴³ While the threat of Russian propaganda and disinformation in the Ukrainian media environment remains alarming, the Ukrainian government plays directly into Russia's desired narrative when it curtails the speech of its citizens as a means to silence dissent.

Conflict in the East

The appointment in July 2017 of Ambassador Kurt Volker, former ambassador to NATO, as U.S. special representative for Ukraine, and his subsequent diplomatic efforts, have encouraged some in Ukraine to believe that the Trump Administration is determined to push for a sustainable settlement with Russia over eastern Ukraine, which could include a role for U.N. peacekeepers. But despite talks between American and Russian officials in mid-November

2017, prospects for an agreement at this point seem remote.⁴⁴

Although most people living in the eastern areas of the country still identify as Ukrainian, their loyalty is being tested, as they feel abandoned by Kyiv, which appears reluctant to provide them with better services. Some communities have been living without gas for many months, cut off by utility companies for falling behind on payments.

The U.S. government should urge Ukraine to take greater interest in the day-to-day needs of its citizens in the east, not least of which, to secure a future in which the Donbas region can be more readily reintegrated into the rest of the country.

The Ukrainian government should also better support, and control, its security forces in the conflict zone. Senator Rob Portman (R-OH), founder and co-chair of the Senate Ukraine Caucus, is a leading proponent of supplying the Ukrainian military with lethal and non-lethal assistance. In April 2017 Portman said that “corruption and weak institutions fuel the spread of Russian influence both in Ukraine and throughout the world...political and economic reforms [in Ukraine] are national security priorities.” His proposed security package to Ukraine links the aid to specific reforms, including increased transparency and accountability in defense procurement.⁴⁵

Although Ukraine’s military has increased its professionalism since 2014, Senator Portman is right to push for better performance. Incompetence and corruption undermine the public trust in the country’s security services. The Ukrainian government needs the public to have confidence in its military if it is to continue the fight against Russia. As Chatham House reports, “Many more Ukrainians will have to continue to be prepared to fight, with the risk of joining the 10,200 of their countrymen who have already died in the conflict.”⁴⁶

Major scandals revealing military incompetence and corruption, however, continue to emerge. In October 2017, anti-corruption investigative journalists from the *Nashi Groshi* news program reported that senior Ukrainian defense industry figures used shell companies in 2014-2015 to siphon off almost 3.8 million dollars in funds allocated to buy spare parts for armored vehicles. The news outlet reported that although Ukraine’s military had opened investigations into the issue, there was no progress. It also noted that all of the key posts in Ukraine’s defense industries are occupied by Poroshenko’s immediate and long-time business partners.⁴⁷

In November 2017 NABU Director Artem Sytnyk explained to Ukraine’s parliament the details of a corruption scheme involving the purchase of backpacks for National Guard soldiers, which he said amounted to losses for the state of more than 540,000 dollars. He reported that an order for five thousand backpacks was placed despite the Ministry of Internal Affairs already having a surplus of two thousand, that money was channeled through a “series of fictitious companies,” and that the ministry “received poor quality backpacks that did not meet the requirements listed by the Ministry itself.” The backpacks case has generated significant media coverage in Ukraine, and has further damaged public confidence in senior security officials.⁴⁸

Some families of missing or imprisoned Ukrainian soldiers say their concerns are met with official disinterest or worse from Ukraine’s military. Anna Mokrousova, herself a kidnapping survivor, is the co-founder of the NGO Blue Bird, an organization tracking information about civilians and soldiers kidnapped or disappeared in eastern Ukraine. Blue Bird provides psychological, legal, and humanitarian help to their families.

“Families of civilians and soldiers who have been disappeared are under enormous pressure, and the state doesn’t help them nearly enough,” she

said. “We know families who have been asked to identify a body the authorities say is their dead relative. There are at least 50 cases where the families are contesting whether the body is who the state says it is. Despite the fact that DNA examination is a fairly accurate method of body identification, in 2014 it was conducted by the police, which did not have sufficient qualifications, and a number of violations were committed. This has meant that many relatives still do not believe the results.”⁴⁹

Mokrousova says that hundreds of military personnel are still missing, and that a combination of horrific bureaucracy and callous disregard for family concerns risks undermining public trust in the military. She cites a case from a couple of months ago when Ukrainian police found a soldier’s body near Mariupol: “Even though he had multiple forms of ID on him, including his passport, no-one told the family. They only found out weeks after he’d been buried.”⁵⁰

Lilia Dyashevskaya said her husband Alexey joined Ukraine’s military in 2014 and was captured in fighting at Savuz Mogyla in August of that year. But the military didn’t notify her of his capture until January 2015, she told Human Rights First. She says he’s been held prisoner by Russian-backed separatists since his capture, but bureaucratic confusion between SBU and the military has made getting more information about him very difficult. Also, Dyashevskaya says the Ukrainian military refuses to categorize him with Non-Combatant Status (which would allow his family to claim certain benefits), because he has yet to return from the conflict.⁵¹

A failure to reform the SBU also undermines the struggle for democratic values and the rule of law. The SBU’s remit covers counterterrorism and counterintelligence and is therefore very active in the eastern conflict. Since the Euromaidan revolution, it has closely co-operated with the U.S. government. It’s also known for its use of torture.

There are numerous reports of abuse of detainees in SBU custody.⁵²

The UN Monitoring Mission reported that in May 2017:

“a woman in Mariupol was lured to an Azov battalion position, where she was blindfolded and transported to an unknown destination. She was hit in the knees with a rifle butt and threatened to be buried on the spot, and therefore forced to cooperate. After the perpetrators informed the police that they had caught a member of an armed group, the police interrogated her without a lawyer, and she signed the interrogation protocol, incriminating herself as a member of an armed group. The next day, her “confession” was filmed, and then she was brought to the Mariupol SBU building where she had to repeat her confession to two officers. After one of the officers left the room, the other one locked the door and ordered her to undress for a physical examination. He photographed her scars and tattoos without explanation, making her uncomfortable. OHCHR notes that forced nudity during such an examination, which was not conducted by a medical professional, may amount to sexual violence. The victim was then taken to her flat, which had been searched, and she was held there by two SBU officers for three days. She was then taken to court, where an SBU officer punched her twice in the stomach in the corridor, causing severe pain.”⁵³

Yaropolk Brynykh documents war crimes and crimes against humanity at the Ukrainian human rights organization Truth Hounds. The NGO researches violations of international humanitarian and criminal law by both Russia-backed separatists in the conflict zone and Ukrainian security forces and army members. “There’s no question the SBU still has torture chambers and cells for inhuman treatment in its basements,” he

says. "They use traditional methods: beatings, psychological pressure on the prisoner and his family, the electrocution of genitals. It's old school Soviet-style torture with an accumulator and wires attached to the body. Then there's sleep deprivation, long periods of solitary confinement."⁵⁴

The U.S. government, which has reportedly provided support to SBU since Poroshenko took power, has been largely silent about its abuses. A *New York Times* article on October 7, 2017 reported that the SBU has had "its powers of surveillance greatly enhanced by monitoring equipment provided by the United States after Mr. Yanukovych decamped to Russia." It reported that the SBU is controlled by President Poroshenko, and "has become a tool in domestic political and business battles." The article cited former senior SBU official Viktoriya Gorbuz, who said that after the CIA removed a Russian-provided cellphone surveillance system and put in American computers, the SBU would translate phone intercepts "and immediately, 24 hours a day, be in full cooperation with our American colleagues."⁵⁵

A joint report by Amnesty International and Human Rights Watch released in July 2016 featured interviews with people who "alleged that after being transferred to SBU premises they were, variously, beaten, subjected to electric shocks, and threatened with rape, execution, and retaliation against family members, in order to induce them to confess to involvement with separatism-related criminal activities or to provide information."⁵⁶

The SBU remains widely feared. Yevgeni Sakharov has been executive director of the Kharkiv Human Rights Protection Group for 20 years. It's one of the oldest and most active human rights organizations in the country, globally recognized for its work.

Many of its members were dissidents during Soviet rule of Ukraine. "When the Ukrainian military liberates villages, the SBU arrest and torture residents and many relatives of torture victims are afraid to complain," he says. He adds that he can't remember any SBU officer ever being successfully prosecuted for human rights violations. His organization reports, "The SBU are torturing defendants in order to extract confessions or force cooperation with the investigation. Previously in independent Ukraine, we did not observe such practice in the work of the SBU." It also indicates that the SBU stocks up on detainees to be exchanged for prisoners held by Russian-backed separatist groups.⁵⁷

The UN reports that four people tortured by the SBU in Kharkiv in May 2015 remain in custody. Three of them:

"were interrogated and tortured separately for hours by methods including suffocation with a gas mask, dislocation of joints, electric shock, and mock execution. The detainees also received death threats and threats of a sexual nature against their families. SBU officers forced these men to sign self-incriminating statements and refused them access to a lawyer. They were transferred to a hospital where a doctor refused to document visible injuries. ...also in May 2015, a[nother] man was arrested by SBU. On the way to the Kharkiv SBU building, the perpetrators stopped the vehicle and tortured him with electric current. Upon reaching the SBU building, the victim was further tortured until he 'confessed' to planning terrorist acts. As of 15 August 2017, all four of these victims remained in pre-trial detention."⁵⁸

In the face of such credible allegations, the U.S. government should demand better from Ukraine's military and the SBU. The picture is further complicated by the ongoing operations of Russian security personnel in Ukraine, with reports that

some agents move back and further between the services.⁵⁹

The United States should continue to support and protect Ukraine's sovereignty. At the same time, it should use its leverage to urge the Ukrainian government to assert that sovereignty by more closely addressing the needs of those living in the conflict area. The U.S. government should also press Ukraine's security services to undergo radical overhaul. In July 2017 Poroshenko announced plans for Ukraine to meet NATO membership requirements by 2020. The United States should use this aspiration to insist on much greater reforms to the military and other institutions, and link future political support and aid to measurable results, including successful prosecutions of those responsible for corruption in military procurements.

Additionally, the United States should publicly criticize the SBU's torture and abuse. It should also publicly press for access to SBU custody centers by national and international human rights monitoring groups, and insist that the SBU be reformed in line with NATO standards.

Recommendations

As a partner dedicated to seeing Ukraine achieve the goals its people demanded four years ago, the United States should not shy away from tough conversations with its allies in Kyiv, and from using its leverage to encourage progress. If Ukraine is to realize the spirit of the Maidan, it urgently needs to redouble its efforts to achieve accountability for corruption, a free media environment, and reform of the security services.

The U.S. government should:

- Continue to push, publicly and privately, for the establishment of an independent anti-corruption court.
- Consider using existing authorities, including Presidential Proclamation 7750 and the Global Magnitsky Human Rights Accountability Act, to impose visa bans and asset freezes on government officials and their cronies credibly linked to acts of significant corruption.
- Publicly call for the repeal of the March 2017 law that targets anti-corruption activists, and for the proposed new legislation attacking NGOs to be abandoned.
- Publicly call for the immediate dismissal of all politically-motivated cases against anti-corruption activists and NGOs.
- Visit anti-corruption activists in their offices, and send observers to any court hearings, speaking publicly as necessary.
- Publicly condemn all abuse and torture by the SBU and other Ukrainian security forces, and call for access to all places of detention by national and international human rights groups.
- Urge that the SBU be reformed in line with NATO standards.
- Publicly and consistently speak out against limits on Ukrainians' freedom of speech, the blocking of websites, and the targeting of journalists and bloggers.
- Insist on greater reforms within the Ukrainian the military, and link aid to measurable results, including the successful prosecution of those guilty of corruption in military procurements.
- Encourage the Ukrainian government to be more attentive to civilians living in eastern Ukraine, including with respect to service provision.
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Endnotes

- 1 http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf; <http://carnegieendowment.org/2017/10/10/ukraine-reform-monitor-october-2017-pub-73330>
- 2 https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf;
<http://info.worldbank.org/governance/wgi/index.aspx#doch><http://integrity-index.org>;
https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table
- 3 http://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf
- 4 <http://www.latimes.com/world/la-fg-ukraine-bomb-20171026-story.html>;
http://www.ohchr.org/Documents/Countries/UA/UARreport19th_EN.pdf
- 5 <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-10-18-struggle-for-ukraine-ash-gunn-lough-lutsevych-nixey-sherr-wolczukV3.pdf> p.60.
- 6 <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=E723994C-E54A-47CB-988D-DBB4409C94CF>
- 7 For a more detailed description and evaluation of Ukraine's anti-corruption architecture, see The Internal Enemy, A Helsinki Commission staff report on corruption in Ukraine (October 2017)
https://www.csce.gov/sites/helsinkicommission.house.gov/files/The%20Internal%20Enemy_Final.pdf;
<https://www.state.gov/e/eb/rls/othr/ics/2017/eur/269964.htm>
- 8 <https://www.reuters.com/article/us-ukraine-corruption/ukraines-anti-corruption-bureau-launches-case-against-sister-agency-idUSKBN1DE2FX>
- 9 <https://prozorro.gov.ua/en>
- 10 <https://www.pressreader.com/ukraine/kyiv-post/20171020/281500751490107>
- 11 <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-10-18-struggle-for-ukraine-ash-gunn-lough-lutsevych-nixey-sherr-wolczuk.pdf> p.60
- 12 See http://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_3ANTI-CORRUPTION-COURTS-.pdf
- 13 Interview with Human Rights First, November 2017
- 14 <https://www.chathamhouse.org/publication/struggle-for-ukraine> p. 64.
- 15 <https://www.reuters.com/article/us-ukraine-crisis-corruption-usaid/usaid-ends-funding-for-troubled-ukraine-customs-reform-idUSKBN14J10Z?il=0>
- 16 <https://www.state.gov/secretary/remarks/2017/07/272446.htm>
- 17 <https://www.rferl.org/a/us-state-department-cites-concern-ukraine-backtracking-fight-against-corruption/28897255.html>;
<https://www.irishtimes.com/news/world/europe/bitter-war-erupts-between-ukraine-s-anti-corruption-agencies-1.3315214>
- 18 <https://www.state.gov/r/pa/prs/ps/2017/12/276235.htm>
- 19 Interview with Human Rights First, November 2017
- 20 Interview with Human Rights First, November 2017
- 21 See Amnesty International analysis <https://www.amnesty.org/en/documents/eur50/7408/2017/en/>
- 22 Articles 190, 200, 209, 258-5 and 364 of the Criminal Code of Ukraine;
- 23 <http://www.atlanticcouncil.org/blogs/ukrainealert/something-is-very-wrong-in-kyiv>
- 24 Interview with Human Rights First, October 2017.
- 25 <http://www.atlanticcouncil.org/blogs/ukrainealert/something-is-still-very-wrong-in-kyiv>
- 26 Interview with Human Rights First, November 2017
- 27 <http://patients.org.ua/en/achievements/>
- 28 Interview with Human Rights First, November 2017
- 29 Interview with Human Rights First, October 2017.
- 30 Interview with Human Rights First, November 2017

- 31 Interview with Human Rights First, November 2017
- 32 Interview with Human Rights First, November 2017
- 33 <https://ti-ukraine.org/en/news/whistleblower-judge-larysa-holnyk-attacked-ti-ukraine-demands-investigation/>;
<https://www.rferl.org/a/ukraine-kyiv-protesters-block-street-parliament-tents/28801739.html>
- 34 https://www.huffingtonpost.com/brian-dooley/when-closing-civil-societ_b_8676120.html
- 35 <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-10-18-struggle-for-ukraine-ash-gunn-lough-lutsevych-nixey-sherr-wolczuk.pdf> p.56.
- 36 http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf; see <https://cpj.org/reports/2017/07/justice-denied-ukraine-pavel-sheremet-murder-probe-journalist.php>
- 37 <https://www.voanews.com/a/us-scrutinizes-ukraine-ban-on-russian-websites/3858894.html>
- 38 <https://www.reuters.com/article/us-ukraine-media-spain/ukraine-bars-two-spanish-journalists-over-war-coverage-idUSKCN1B91IO>; <https://cpj.org/2017/09/cpj-calls-on-ukrainian-president-petro-poroshenko-.php>
- 39 http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf
- 40 <http://khpg.org/en/index.php?id=1501702619&w=SBU>
- 41 Interview with Human Rights First, November 2017
- 42 <https://freedomhouse.org/article/new-report-freedom-press-2017-press-freedom-s-dark-horizon>
- 43 <https://www.chathamhouse.org/publication/struggle-for-ukraine>, p. 87
- 44 <https://www.rferl.org/a/volker-surkov-meeting-ukraine-u-s-russia/28853193.html>
- 45 <http://www.atlanticcouncil.org/blogs/ukrainealert/secretary-tillerson-here-s-why-taxpayers-should-care-about-ukraine> and
<https://www.portman.senate.gov/public/index.cfm/press-releases?ID=825F1725-81FD-4393-8514-E576946E9122>.
- 46 <https://www.chathamhouse.org/publication/struggle-for-ukraine> p.5
- 47 <https://www.kyivpost.com/ukraine-politics/officials-siphoned-hr-100-million-via-defense-procurement-journalists-claim.html>
- 48 <https://nabu.gov.ua/en/novyny/nabu-has-sum-total-evidence-backpacks-case-artem-sytnyk>
- 49 Interview with Human Rights First, October 2017
- 50 Interview with Human Rights First, October 2017
- 51 Interview with Human Rights First, November 2017.
- 52 <https://www.kyivpost.com/ukraine-politics/activists-say-sbu-top-human-rights-violator.html>
- 53 http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf p.11
- 54 Interview with Human Rights First, October 2017.
- 55 <https://www.nytimes.com/2017/10/07/world/europe/ukraine-russia-manafort-corruption.html>
- 56 <https://www.amnesty.org/en/documents/eur50/4455/2016/en/> reports 2016
- 57 Interview with Human Rights First, November 2017; <https://www.kyivpost.com/ukraine-politics/activists-say-sbu-top-human-rights-violator.html>; <http://khpg.org/en/index.php?id=1487620320&w=Zakharov>
- 58 http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf
- 59 <https://www.wsj.com/articles/requiem-for-a-hit-man-1511461865>