



USAID
FROM THE AMERICAN PEOPLE

DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF UKRAINE

FINAL REPORT

NOVEMBER 2015

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

This publication was produced for review by the United States Agency for International Development by Tetra Tech ARD, through a Task Order under the Analytical Services III Indefinite Quantity Contract Task Order No. AID-OAA-TO-12-00016.

This report was prepared by:

Tetra Tech ARD
159 Bank Street, Suite 300
Burlington, Vermont 05401 USA
Telephone: (802) 495-0282
Fax: (802) 658-4247
E-Mail: international.development@tetratech.com

Tetra Tech ARD Contact:

Kelly Kimball, Project Manager
Tel: (802) 495-0599
Email: kelly.kimball@tetratech.com

DEMOCRACY, HUMAN
RIGHTS, AND
GOVERNANCE
ASSESSMENT OF
UKRAINE
FINAL REPORT

NOVEMBER 2015

DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

TABLE OF CONTENTS

ACRONYMS, DEFINITIONS AND KEY PLAYERS	III
ACRONYMS AND DEFINITIONS.....	III
KEY PLAYERS	IV
EXECUTIVE SUMMARY	VI
1.0 INTRODUCTION AND CONTEMPORARY CHALLENGES.....	1
1.1 INTRODUCTION AND METHODOLOGY	1
1.2 CURRENT SITUATION AND CONTEMPORARY CHALLENGES	1
1.2.1 immediate challenges	2
1.3 CONTEXTUAL FACTORS	6
1.3.1 Geography and Natural Resources	6
1.3.2 Economic, and Social Factors	6
1.3.3 Historical Legacies.....	7
2.0 THE KEY DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE CHALLENGES IN UKRAINE	8
2.1 CONSENSUS	8
2.2 INCLUSION	10
2.3 COMPETITION AND POLITICAL ACCOUNTABILITY	12
2.4 RULE OF LAW AND HUMAN RIGHTS.....	14
2.4.1 Rule of Law	14
2.4.2 Human Rights	15
2.4.3 Corruption	16
2.5 GOVERNMENT RESPONSIVENESS AND EFFECTIVENESS	18
2.5.1 E-governance	20
2.6 DISTILLING THE DRG PROBLEM	21
3.0 KEY ACTORS AND INSTITUTIONS	22
3.1 THE EXECUTIVE	22
3.2 THE LEGISLATURE.....	22
3.3 THE JUDICIARY AND LEGAL PROFESSIONALS	24
3.3.1 The Courts	24
3.3.2 The Prosecutors	25
3.3.3 The Police	26
3.4 NATIONAL HUMAN RIGHTS INSTITUTIONS	26
3.5 POLITICAL PARTIES	27
3.6 SECURITY SERVICES	27
3.7 MEDIA	28
3.8 CIVIL SOCIETY	29
3.9 LOCAL GOVERNMENT	31
3.10 OTHER NON-STATE ACTORS	32
3.11 DISTILLING THE ACTORS AND INSTITUTIONS	34
4.0 CONCLUSIONS AND PROGRAMMATIC RECOMMENDATIONS	36
4.1 ANALYTICAL OVERVIEW, DRG OBJECTIVE, AND DEVELOPMENT HYPOTHESIS.....	36
4.2 U.S. GOVERNMENT ENGAGEMENT AND CURRENT USAID DRG PROGRAMMING IN UKRAINE	37
4.2.1 U.S. Foreign Policy in the Ukraine.....	37

4.2.2	USAID's DRG Current Program	37
4.2.3	USAID Resources.....	37
4.3	OTHER DONOR ACTIVITIES	37
4.4	PROGRAMMATIC RECOMMENDATIONS AND ILLUSTRATIVE ACTIVITIES ...	38

ACRONYMS, DEFINITIONS AND KEY PLAYERS

ACRONYMS AND DEFINITIONS

ATO	Anti-Terrorist Operation; Ukrainian military and security operations in eastern Ukraine since April 2014
CSO	Civil Society Organization
DNR	Donetsk People’s Republic separatist enclave
DoJ	United States Department of Justice
DRG	Democracy, Human Rights, and Governance
Eastern Partnership	EU’s policy toward the former USSR with whom Ukraine negotiated (2007–2012) and signed the Association Agreement (2014), within which is included the Deep and Comprehensive Free Trade Agreement and Visa Free regime. The Association Agreement offers European integration but not membership to Eastern Partnership members. Three of the six members of the Eastern Partnership (Ukraine, Georgia, Moldova) have signed the Association Agreement.
EU	European Union
Frozen Conflict	Crimea was invaded and annexed by Russia in March 2014 and constitutes a frozen conflict with no ongoing hostilities. The EU, U.S., Canada, and the majority of United Nations member states do not recognize the annexation.
FTUU	Federation of Trade Unions of Ukraine
Gas Lobby	Term used to describe Ukraine’s oligarch clan with ties to the gas sector
GDP	Gross Domestic Product
GIZ	German Technical Cooperation Agency
GoU	Government of Ukraine
IDP	Internally Displaced Persons
IMF	International Monetary Fund
INL	U.S. Department of State’s Bureau of International Narcotics and Law Enforcement
KPU	Communist Party of Ukraine (since 1993)
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LNR	Luhansk People’s Republic separatist enclave
MEDT	Ministry of Economic Development and Trade
MP	Member of Parliament
NABU	National Anti-Corruption Bureau
NAPC	National Agency for the Prevention of Corruption

NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OPDAT	Office of Overseas Prosecutorial Development Assistance and Training
Opposition Bloc	Former leaders of the Party of Regions and allies of President Yanukovich elected into Parliament (2014)
PACE	Parliamentary Assembly of the Council of Europe
PGO	Prosecutor General's Office
Political Projects	Political parties funded by oligarchs, usually for election cycles
SBU	Security Service of Ukraine
SIDA	Swedish International Development Agency
Ukrainian Orthodox Church	Official name of the Russian Orthodox Church in Ukraine
Unresolved Conflict	Term used to describe the Donbas conflict, in which one side (the central government or the separatists) has not been defeated; Kyiv or Moscow has not achieved its objectives; and there is continued war. An unresolved conflict is different from the frozen conflicts in Moldova, Georgia, and Azerbaijan, where Russian-backed separatists defeated the central governments in the early 1990s, the war ended, and the conflict was frozen in Moscow's favor.
USAID	United States Agency for International Development
USSR	Union of Soviet Socialist Republics
Venice Commission	Council of Europe's European Commission for Democracy through Law

KEY PLAYERS

Renat Akhmetov: Donetsk oligarch and chairperson of Capital Systems Management; owner of TRK Ukayina television channel; one of the top 50 wealthiest persons in the world (until 2014); financier of the Party of Regions; close ally of Viktor Yanukovich (since mid-1990s)

Nikolai Azarov: Head of the State Tax Administration (1996–2002); Prime Minister (2010–2012, 2012–2014); and leader of the Party of Regions (2000–2001, 2010–2014); fled to Russia (2014) and is wanted by Interpol

Dmytro Firtash: Unofficial leader of the “gas lobby.” The U.S. has requested his extradition from Vienna on corruption charges, but the request was not upheld during the initial trial, and it is currently under appeal. He is also co-owner of the Inter television channel with Serhiy Lyovochkin, senior adviser to President Leonid Kuchma and President Yanukovich's chief of staff (2010–2014).

Vitali Klitschko: Mayor of Kyiv (since 2014), leader of the UDAR (Ukrainian Democratic Alliance for Reforms (since 2011), ally of Petro Poroshenko

Ihor Kolomoyskyi: Dnipropetrovsk-based oligarch and co-chairperson of the Pryvat group, governor of Dnipropetrovsk (2014–2015), owner of 1+1 television channel

Leonid Kravchuk: President (1991–1994)

Leonid Kuchma: President (1996–2004)

Oleksandr Moroz: Chairperson of the Rada (1994–1998 and 2006–2007); leader of the Socialist Party of Ukraine (1991–2010)

Viktor Pinchuk: Dnipropetrovsk-based oligarch and chairperson of the Interpipe group, owner of New Channel, ICTV, and STB television channels

Petro Poroshenko: Secretary of the National Security and Defense Council (2005), foreign minister (2009–2010), minister of trade and economic development (2012–2013), president (since 2014), and leader of three Solidarity parties (1999–2000, 2002–2005, and 2013–2014)

Yulia Tymoshenko: Prime minister (2005, 2007–2010), imprisoned (2001, 2011–2014), leader of the Batkivshchina (Fatherland) party (1999–2011, 2014–present)

Viktor Yushchenko: Prime minister (2000–2001) and president (2005–2010); leader of Our Ukraine (since 2002)

Viktor Yanukovych: Prime minister (2002–2004, 2006–2007), president (2010–2014), and leader of the Party of Regions (2002–2010); fled to Russia (2014) and is wanted by Interpol

Arseniy Yatsenyuk: Foreign minister (2007), Rada chairperson (2007–2008), and prime minister (2014–present); leader of Front for Change (2008–2011), Batkivshchina (2012–2014), and Popular Front (2014–present)

EXECUTIVE SUMMARY

It would be hard to overstate the complexity and precariousness of the present situation in the Ukraine. With sections of the country under the control of separatist militias supported by Russia; a potential threat to capture additional territory through the same kind of hybrid warfare; and an economy and financial system in acute crisis with massive debts, a devalued currency, large unemployment, and huge energy bills, the government has its hands full. It has also committed to major political and democratic reforms to address the longstanding grievances of citizens for a more just, equitable, transparent, and effective state. In place of a semi-authoritarian regime, the current government intends to establish and consolidate a democratic one under the rule of law and human rights. It also intends to guarantee basic political rights, such as the right to free speech and assembly, the right to participate in and oversee the state and its decisions, and the right to privacy. These changes require commensurate constituent changes in how the state is structured and how it operates. In particular, for Ukraine to live up to the promises of the Revolution of Dignity, state institutions with their command-and-control authoritarian legacies must be transformed into genuinely democratic institutions.

As part of that new regime, the government has committed to condensing the size and scope of the state, reducing corruption and trimming the power and influence of Ukraine's oligarchs with their clans and patronage networks. President Poroshenko has captured the reforms he intends to pursue in a single slogan of "four d's": deregulation, de-monopolization, decentralization, and "deoligarchization." Notwithstanding the continued support for the government and the Revolution of Dignity, many of the reforms necessary to deal with these challenges are painful. To maintain public support for this government and their reform agenda, the government will need to demonstrate tangible results quickly and continue to engage the public in the reform process.

In addition to the specific reforms in many economic and political sectors and subsectors, the government confronts several "crosscutting" challenges:

- ***The war.*** In April 2014, separatists in parts of the Donetsk oblast and Luhansk oblast declared the secession, respectively, of the "Donetsk People's Republic" (DNR) and the "Luhansk Peoples Republic" (LNR). With direct military, financial, and economic support from Russia, they have sealed their borders with the rest of Ukraine, and so far successfully resisted attempts by the Government of Ukraine to end the secession both by military and economic sanctions. The result of the protracted conflict has been thousands of military and civilian casualties, the devastation of these two enclaves, thousands of internally displaced persons, the suspension (and probable loss) of historic trading relations across the border with Russia, and substantial uncertainty throughout Ukraine (but especially in the east) about the possibility of further direct or indirect military incursions by Russia with the possible loss of additional Ukrainian territory. The economic and humanitarian costs have been considerable, and the anxiety is palpable. The sheer financial cost of the war is estimated at U.S. \$5 million to \$7 million per day. Russia has actively sought to keep the levels of uncertainty and anxiety high by establishing a new base with offensive weapons near its border with Ukraine, by making regular statements supporting the separatists, by suggesting other possible border "adjustments," and by producing constant propaganda and media pressure. The continuing conflict in the east is in addition to the re-annexation of Crimea by Russia.
- ***Economic and financial crisis.*** As noted, the government is confronting massive payments for debts contracted by the Yanukovych government and is footing the bill for the ongoing hybrid

war in the Donbas—while the economy declines in part due to the hybrid war and loss of markets in Russia and Crimea. Unemployment has also soared.

- ***Entrenched oligarchy.*** Ukraine’s oligarchs command political and economic monopolies that bring them enormous profits, prevent competition, hinder small- and medium-size businesses, and breed corruption. The oligarchs, who have much to lose in the reforms, will resist anything that threatens their entrenched interests.
- ***Endemic corruption.*** Corruption was one of the primary grievances behind the Euromaidan and its metastasis across the country. Ukrainian citizens consistently rank corruption as a problem in polls, and they expect to see concrete action by the government to tackle it.
- ***Public skepticism regarding reforms.*** Ukraine has been in a state of transition since 1991, when the Union of Soviet Socialist Republics (USSR) unexpectedly collapsed. Many opportunities to reform the political and economic system have been squandered. Ukrainians, with good reason, lack trust in their institutions and elected leaders. And while they are, in general, supportive of the need for reform, they are concerned that history not be repeated. While a majority of Ukrainians remain guardedly optimistic about the Euromaidan, their expectations are high for significant change for the better.
- ***High expectations and waning patience.*** Patience with the pace and nature of the reforms is wearing thin. Many people complain, rightly or wrongly, that there have been insufficient reforms and that little has changed, as many people are in the same positions they held before the Euromaidan. The government has been woefully inadequate in communicating its efforts and successes to the public, even to its own supporters. If it cannot better explain its accomplishments, manage expectations, and show tangible results, the reforms and reformers in general, and the current government in particular, are in danger of losing their support.

Five elements of analysis: Ukraine confronts challenges in each of the five elements of the democracy, human rights, and governance (DRG) analytical framework¹ utilized for this assessment: consensus; inclusion; competition and political accountability; rule of law and human rights; and government responsiveness and effectiveness.

First, ironically, the Russian aggression has solidified Ukrainians who were previously somewhat divided between Eurasia and Europe to coalesce to an unprecedented degree, creating favorable conditions for consensus that represent a fleeting window of opportunity. But language and ethnic differences may yet resurge if political consensus remains elusive.

Second, Ukraine has ratified all of the major international agreements preventing different forms of discrimination politically, socially, and economically. Still, the inclusion of women, youth, people with disabilities, certain ethnic groups, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) people is limited in practice, and the challenge of inclusion only increases as new groups of vulnerable populations [internally displaced persons (IDPs); anti-terrorist operation (ATO) participants] are created as a result of the crisis in the east and south of the country. The ability of the government to provide assistance/support to these vulnerable populations is weak and may become a source of new frustrations and tensions.

Third, a fundamental problem in Ukraine is that the centralization of power, lack of transparency, inadequate separation of powers, and complications arising from monopolistic practices in the economic sphere have undermined the development of checks and balances in the political system. Although there has been electoral competition in Ukraine since independence in 1991, Ukraine’s political scene continues to be dominated by short-term oligarch-funded political projects rather than political parties, contributing to low levels of trust. Similarly, Ukraine has five major television stations (from which most Ukrainians get their news), but oligarchs control all five. There are some small independent outlets, and social media

¹ USAID. (2014 revised). “Conducting a Democracy, Human Rights, and Governance Assessment: A Framework for Strategy Development.”

has made a difference, but the availability of unbiased information remains severely limited. Competition between oligarch-owned stations and media is robust, but each has its own bias and policy interests aligned with those of the oligarch patrons. Civil society is a bright spot and a strong advocate for the democratic reforms under way, and the government needs to continue to reach out to and tap into the energy and resources civil society brings.

Fourth, among the highest reform priorities is the rule of law and human rights, especially the courts, the prosecutors, and the police. Under the Soviet system, which continued in a modified form after independence, the law, the courts, the prosecutors, and the police were the political instruments of the Communist Party and the state as a whole. The government intends to restore—more accurately, create—a state based on rule of law. Significant efforts are already under way to strengthen the independence and integrity of the judiciary, which in turn is supported by prosecutors and police who are of similar integrity and commitment. All of this is designed to create real rule of law and human rights—including, very importantly, the substantial reduction of corruption in society as a whole, especially among government officials.

Fifth, the government is being reformed to improve its responsiveness and effectiveness. Central ministries are being restructured and reduced to create a smaller state with fewer mandates but with improved performance. Decentralization will increase the resources and authorities of local levels of government: hromadas, rayons, and oblasts. Moreover, at both the central and local levels, e-governance is being introduced to increase efficiency, transparency, and accountability.

DRG programing should be guided by the following objectives:

Of highest priority is to strengthen democratic institutions to increase public trust and confidence in the rule of law and good governance by improving the performance of the state through the adoption and implementation of key reforms to substantially reduce corruption and increase transparency and accountability. Of secondary priority, depending on availability of funds, is to work on the demand side on improving the social foundations of democracy by strengthening independent media, an active civil society, and political parties accountable to voters.

A central thesis to emerge from this DRG Assessment is that highest priority must be given to transforming Ukraine's governing structures into genuinely democratic institutions, whose very rules and procedures will shape incentives so that they promote accountability and transparency and discourage corruption.

I. Strengthening Democratic Institutions

1. Support effective, transparent, accountable rule of law to which the government is also subject

- a) *Assistance in the lustration of sitting judges.* The mission should conduct a more thorough assessment to determine why the process has been so slow and whether (and under what conditions) assistance would be helpful and accepted.
- b) *Assistance to courts, especially the Supreme Court, the courts of appeal and the Constitutional Court.* The remolding of the courts and judges is perhaps the most important long-term element of this strategic objective.
- c) *Training of new and retained judges.*
 - i. *Assistance to the National School of Judges.* The National School of Judges is redesigning the curriculum for new judges and mounting a formal retraining program for judges who will remain on the bench. The United States Agency for International Development (USAID) should seriously explore the potential role of other (carefully vetted) legal education institutions to meet the coming onslaught of demand for updated training to meet a new judiciary's professional requirements.

- ii. *Assistance to the High Council of Justice.* Depending on its final disposition and mission, continued assistance should be offered to the High Council based on a full needs assessment with its leadership.
- iii. *Support to Verkhovna Rada committees dealing with the rule of law and human rights.* To the extent that they continue, these committees should get particular attention because of their engagement in developing policies and providing oversight of reforms in these key areas.
- d) *Assistance for any additional work by the Constitution Commission.* Additional assistance, if requested, would be a high priority for the limited duration of the commission.
- e) *Oversight by civil society within the rule of law and human rights.* As in other areas of assistance to the “state sector,” participation and some kind of oversight by the public will support the long-term goals of transparency, accountability, democracy, and the protection of human rights.

2. Support reforms to produce an effective, transparent, responsive, accountable government

- a) *Support improved central government ministries and presidential administration,* procedural streamlining, and restructuring, including reductions of personnel and redefinition of roles and responsibilities.
- b) *Support e-governance.* The government plans extensive implementation of e-governance at the national and, especially, at the local levels, holding the promise of greater efficiency, greater transparency, and lower levels of corruption.
- c) *Support for decentralization, with effective, transparent, and accountable oblast, rayon, and hromada governments.* Decentralization is a major reform effort. The local governments will be assuming a much broader array of responsibilities for which they have had no experience. This massive effort should be undertaken through donor coordination, perhaps a single multi-donor project or bilateral but coordinated projects.
 - i. *Support effective merger of targeted rayon and hromada governments*
 - ii. *Support effective tax collection and financial managements of local revenues*
 - iii. *Support effective relations between oblast, rayon, and hromada governments*
 - iv. *Support effective local radas, particularly at the oblast level*
- d) *Support an effective Verkhovna Rada.* The Euromaidan has breathed new life into the Rada. It has undertaken serious debates about bills sent to it by the executive branch and has rejected some of them. Assistance to the Rada would be an investment in a critical institution of democracy, not only as a means to check the executive branch, but also as a means to ensure the Rada plays its proper function.
- e) *Support effective public communication and outreach primarily by the central government and secondarily by local governments.* A much more effective internal or, if preferred, external (contracted, turn-key) public communications operation is critical to retain public support for reforms.
- f) *Support effective civil society monitoring of government, especially at the local level.* Some limited assistance should be provided for civil society monitoring of government, but the costs and effort of monitoring should not overwhelm the costs and effort of doing the substantive work.

3. Support reforms to reduce corruption

Anti-corruption is a flagship reform priority because of both its political and economic consequences and because it raises public levels of trust in state institutions and politicians. The government intends to reduce the number of regulations, to examine the economic and legal behavior of oligarchs, to prosecute those who have engaged in corruption, and to reduce their influence over political parties and electoral competition. It also intends to prosecute officials

who engage in corruption. Assistance would cross the mission's bureaucratic boundaries and calls for a mission-wide approach. For DRG, the focus should be:

- a) *Support an effective National Anti-Corruption Bureau (NABU) and National Agency for the Prevention of Corruption (NAPC).* Donors should closely coordinate collection, monitoring, and public availability of asset declarations to share the burden and prevent redundancies or working at cross-purposes.
- b) *Support effective restructuring and operation of the Office of the Prosecutor General (PGO)—especially the special unit dedicated to the prosecution of corruption cases.* While recognizing that this area is the primary responsibility of the U.S. Department of State's Bureau of International Narcotics and Law Enforcement (INL) and of the U.S. Department of Justice's (DoJ) Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), USAID should consider providing assistance if there are important areas that DoJ or INL are not covering or if there are areas in which USAID might be the better vehicle, again assuming political will for reform. At the least, the U.S. Government as a whole should provide this assistance through some mechanism:
 - i. *Assistance to the Office of the Prosecutor General (PGO) in the recruitment, training (of new), and retraining (of retained) personnel, including on the core principles of the rule of law*
 - ii. *Assistance in oversight of operations, including asset declarations, competent management, and oversight of prosecutors, especially by the new, special unit of the PGO for the prosecution of cases of corruption, including those recommended by NABU*
 - iii. *Assistance in bringing evidence-based and non-politically motivated cases.* Because such assistance is normally provided by OPDAT and not USAID, this should not be an integral component of a DRG program. No matter who provides it, any assistance to the PGO and law enforcement in general should be coordinated with more general work on the rule of law, particularly with the courts.

II. Assistance to the non-state sector to hold democratic government and the judicial sector accountable and to participate in democratic processes

1. Support for free and fair elections

- a) *Support new electoral laws and implementation.* The government plans to draft and send to the Rada new election laws, including laws governing the upcoming local elections. There are advantages and disadvantages to different election law regimes. If requested, support should be provided to help draft the laws that will structure future elections.
- b) *Support for creation and maturation of independent, organized, long-term, competitive political parties (or other organized forms of electoral contestation).* Some analysts believe that there are no true political parties in Ukraine and that continued support, after years of "failure," is unlikely to produce any. However, there is ample evidence that wide public support exists for real political parties.
 - i. Support for the development of political parties committed to the democratic process and not captured by or instruments of particular oligarchs and business leaders should be provided for the next few years with attendant conditions and continued monitoring.
 - ii. The support should prioritize work with political parties that run on an articulated public policy agenda.
 - iii. The support should be provided only for, or at the very least prioritized for, political parties with mechanisms for internal accountability.
 - iv. Clear benchmarks should be established and monitored so that the next national elections are contested by at least some parties that propose policy alternatives, that are not the instruments of oligarchs, and that are accountable for the electoral outcomes.
- c) *Support for election observation.* Assistance should prioritize domestic election observation.

2. Support for independent, competent media

The primary sources of information—let alone “analysis” for most Ukrainians—comes from the major television stations, which are owned by various oligarchs who are mostly inimical to reforms. Younger Ukrainians, especially those who are urban-based, are much more likely to have access to, and depend more upon, the Internet, including social media. Assistance should 1) provide increased access to independent sources for news, investigative reporting, and analysis, especially at the local level; 2) improve the capacity of journalists to monitor and report on government responsiveness and effectiveness, especially as it relates to the rule of law and human rights; and 3) assist media to support other aspects of DRG programming, not just as a standalone media program.

3. Support for civil society participation and oversight

The post Euromaidan government has encouraged the participation of civil society organizations (CSOs) in its planning and implementation. Many new members of government (and the Verkhovna Rada) come from civil society. Moreover, many CSOs have taken it upon themselves to participate in and monitor the operations of government. CSOs can continue to participate and monitor at a general level, but they will need to increase their expertise if they expect to participate productively or even to monitor the specialized functions of government. The need to monitor and engage effectively with government is greater at the local level than at the national level, especially as the decentralization reforms move forward. Moreover, local CSOs are fragile and dependent on donors for both organizational and financial support.

Over the longer term, USAID’s priorities may well shift away from the state sector and in the direction of civil society and media, which are the areas necessary to keep the reforms going, to deepen them, and to engage in elections or other activities to replenish state actors. In this period of major reform of the state, these are lower-priority programs compared with the rule of law, human rights, and government responsiveness and effectiveness. But, as noted, ideally they should begin now, albeit at a lower priority for the time being.

1.0 INTRODUCTION AND CONTEMPORARY CHALLENGES

1.1 INTRODUCTION AND METHODOLOGY

USAID/Ukraine is in the process of reviewing its programming and undertaking strategic planning for its next five-year assistance strategy for Ukraine. As part of a periodic strategic planning process, USAID contracted an assessment team of international and local experts to conduct an assessment of how USAID can play a constructive role in engaging with Ukrainian partners to advance the post-Euromaidan reform agenda in the area of DRG.

The assessment was carried out using the methodology discussed in USAID’s 2014 revised version of “Conducting a Democracy, Human Rights, and Governance Assessment: A Framework for Strategy Development.” The full document is available on the USAID website at www.usaid.gov. This framework guides the political analysis of a country, helps frame program choices, and incorporates lessons from comparative experience. The fieldwork was conducted May 18–June 6, 2015, and in addition to interviews in Kyiv, the team split up and traveled to nine locations around the country.

Numerous developments since mid-June are not included in this report. But with the exception of the continued slowness of the reforms’ pace, most of them do not affect the basic analysis and conclusions of this report which, in any case, is geared toward the strategic level, not the tactical one. One glaring exception, however, is the increasing doubt about the political will and/or political capacity of the government to implement the reforms of the state institutions it promised. If that continues, it calls into serious question the priority and sequencing argument of this report. Those reforms cannot remain the top priorities if they are not going forward. Indeed, in that event, the entire Euromaidan transformation would be in serious doubt and jeopardy, with appropriate adjustments in the policies and priorities recommended in this report.

A team of consultants assembled by Tetra Tech ARD and a USAID staff member conducted the DRG assessment. The Tetra Tech ARD team consisted of: Gerald Hyman, director of the Hills Program, Center for Strategic and International Studies (CSIS); Taras Kuzio, senior associate at the Canadian Institute of Ukrainian Studies at the University of Alberta; Andriy Meleshevich, dean of the law faculty, Kyiv Mohyla Academy University; Larysa Magdyuk, human rights expert and independent consultant; and Kathy Stermer, senior associate, Tetra Tech ARD. The USAID staff member was Stephanie Molina, USAID Washington, DCHA/DRG.

1.2 CURRENT SITUATION AND CONTEMPORARY CHALLENGES

It would be hard to overstate the complexity and precariousness of the present situation in Ukraine. With large sections of the country annexed by Russia or under the control of Russian-backed separatist militias, the future of the independent Ukrainian state—with the borders established on August 24, 1991—is under threat. Beyond external threats and a hybrid war in the east, the country’s leadership is also grappling with an economy and financial system in acute crisis, as well as the aftermath of a popular revolt

requiring complicated, regime-altering changes. Ukraine's president and parliament, elected in 2014, have major strategic challenges in balancing economic and financial stabilization, with structural reforms that have been repeatedly postponed for the last two decades. Some structural reforms, such as raising household utility prices, are electorally unpopular, while others in the field of the rule of law, human rights, and law enforcement will be widely supported. All of these reforms are interconnected, and are made exponentially more difficult by the continued conflict and humanitarian crisis in the Donbas; the occupation of Crimea; and uncertainty over Russian President Putin's ultimate objectives toward Ukraine. Given the dramatic happenings of the past 18 months and the tremendous impact this has on the country, it is worthwhile to look briefly at the events that started this crisis in motion.

The Revolution of Dignity

The Euromaidan Revolution of Dignity that began in November 2013 meant different things to different people. But for most Ukrainians, it represented a demand for change in the nature and role of the state and a change in how the rulers relate to the ruled. In place of a state in the service of oligarchs and their clans, the citizens of Ukraine clearly proclaimed their desire for the dignity of a state that serves the public to whom it is accountable. It also means the restoration of basic political rights, such as the right to free speech and assembly, the right to participate in and oversee the state and its decisions, the right to privacy, and the rule of law. These changes require commensurate, indeed, constituent changes in how the state is structured and how it operates. In particular, for Ukraine to live up to the promises of the Revolution of Dignity, state institutions, with their command-and-control authoritarian legacies, must be transformed into genuinely democratic institutions. These are the changes that the current government—President Poroshenko and Prime Minister Yatsenyuk—refer to as the “reforms.” They have set out an ambitious reform agenda and have led the Ukrainian public to expect tangible and beneficial results.

While the promise for a better future lies ahead, the pain of the post-Euromaidan reforms is now in acute evidence. First, there is the hybrid war in the east through Russian support for separatists, its own troops, and nationalist volunteers. Every day, news of casualties and fatalities from the DNR and the LNR—the two break-away separatist enclaves in the border region of the Donbas with Russia—dominates media coverage. There is the constant anxiety, especially in the east and the south, that Ukrainian separatists reinforced by Russian “volunteers”—and potentially Russian troops and tanks themselves—will move on additional Ukrainian territory.² Second, the conflict and crisis has caused the economy to contract substantially. Trade and investment patterns have been shattered, especially those with Russia and Crimea. As a result, employment, markets, investment, and trade built up over decades have been lost, leading GDP to decline, consumer prices to rise, and unemployment to grow. Currency devaluation has caused government debt to skyrocket; and pensions and social support payments are not being paid regularly by cash-strapped entities, and are devalued by the inflation when they are paid. Stringent economic reforms to address these myriad problems are urgently needed, but it remains to be seen whether this government, unlike the many that came before it, will have the political will to carry out these unpopular reforms.

1.2.1 IMMEDIATE CHALLENGES

To address the key challenges facing the country, President Poroshenko's bundle of reforms is captured under his alliterative “Four D's” package: deregulation, decentralization, demonopolization, and “deoligarchization.”³ Each of the elements in this package represents a very ambitious set of reforms,

² “Tanks don't need visas,” said the Russian deputy prime minister in charge of the defense industry, Dmitry Rogozin, in a TV interview in response to a question about the Arctic but with clear implications for Ukraine. May 27, 2015; <http://thediplomat.com/2015/05/meet-the-russian-politician-who-thinks-that-tanks-dont-need-visas/>.

³ In his annual address, President Poroshenko announced a “4-D” program: “deoligarchization,” deregulation, decentralization, and demonopolization. In his June annual address, Poroshenko is quoted: “[The tasks are] to keep up the course of deoligarchization, deregulation, and decentralization; to start demonopolization,” Interfax news agency quoted Poroshenko as

which face vested interests and realistically could take years to implement. However, this government does not have years to deliver on the promised reforms, and there are a number of key challenges the current government must immediately confront as it undertakes its unprecedented reform agenda.

Economic, Financial, and Humanitarian Crisis. Crimea's annexation, an extremely large number of internally displaced persons, and the war in the Donbas have had a major impact on Ukraine's economy, with the massive destruction of infrastructure and property and the loss of a territory that produced 10 percent of Ukraine's GDP and 15 percent of its industrial production. Output in the Donbas has declined by two-thirds, accounting for a major proportion of the economic decline in Ukraine.⁴ Coupled with this dramatic economic decline is the huge strain on budgetary resources of building, supplying, and financing new de facto armed forces.

Entrenched Oligarchy. Well-known economist Anders Aslund wrote that "big businessmen have captured the state in Ukraine, more than any other post-communist country" and therefore "[t]he power of the oligarchs has to be broken." Ukraine's oligarchs command political, economic, and media monopolies that prevent newcomers from entering the economic and political system and prevent the development of small- and medium-size businesses. They have outlasted every government to date, they outlasted the Orange Revolution, and they intend to outlast this one. Conversely, the public's expectation is that the government will take on the oligarchs directly. Each of the dozen or so major (but competing) oligarchs controls a conglomerate based, at least initially, on control of a single commodity and industry (most often purchased at such steep discounts as to constitute theft from the state) by virtue of their networks within the *nomenklatura* as the Soviet state collapsed. No matter where they began, all of the oligarchs have become financiers and, in effect, monopolists or oligopolists through their personal conglomerates. Each is the patron of a widespread network of economic, political, and social clients or clans. Each has financed political contenders through which the oligarchs seek to influence local and national politics. Between them, they control the major TV stations and many smaller ones, from which they influence elections, monopolize media coverage, and prevent level playing fields from which genuine political party competitors can emerge. Because these networks are so broad, so multifaceted, and so entrenched, this will be the fiercest and most defining contest of the promised reforms. President Poroshenko, himself a minor oligarch—based on chocolate manufacturing initially but like the others now multifaceted and international—has set a watchword, a slogan, for his administration: "deoligarchization." The most direct way to undermine the oligarchs is by dissolving their monopolies or oligopolies, but it remains to be seen whether the government has the political will to stay the course. If successful, it will be the key to other reforms.

Endemic Corruption. Corruption was one of the primary grievances behind the Euromaidan and its metastasis across the country. Ukrainian citizens are constantly confronted with demands for bribes, and feel that without them they will receive no state services. Many know firsthand about the lavish lifestyles of state officials, prosecutors, and judges which could never be supported by their meager salaries (which most Ukrainians admit are too low). They know, too, about the grand corruption that accompanied the collapse of the Soviet Union and the enrichment of the oligarchs at their expense and that of the state.

saying. "Poroshenko gives Ukraine '4 Ds' in annual address," *Bne ItaliNews*, June 4, 2015. <http://www.bne.eu/content/story/poroshenko-gives-ukraine-4-ds-annual-address>.

Demonopolization and "deoligarchization" are closely linked. If the state can break up the monopolies and oligopolies, including those of the media, it will also break the hold of the oligarchs. They will be forced to compete, and as the economic history of most capitalist states demonstrates, competition usually results not just in better goods and services at lower prices but in changes of wealth overall. Of course, the oligarchs still have major fortunes abroad, and so far, beyond the reach of the Ukrainian state. Those fortunes can still be used to buy influence, support political parties, purchase important Ukrainian assets, and the like. So even a more competitive market would still not fully result in deoligarchization.

⁴ <http://wiw.ac.at/economic-consequences-of-the-ukraine-conflict-dlp-3381.pdf>

With the flight of Yanukovich, Ukrainians were able to peer into the world of the ultra-corrupt for the first time, as his residence, Mezhyhirya, became open to the public with its Spanish galleon, private zoo, and luxury car collection. Ukrainians, therefore, do not need to consult scorecards and indices as evidence of corruption, nor do they need to be persuaded by them. Nevertheless, on Transparency International's Corruption Perceptions Index in 2014, Ukraine ranked 142nd out of 175 countries, the same as Uganda and just slightly better than Bangladesh. In 2013, it scored the same, and in 2012 it scored virtually identically, 144th out of 174. In a recent poll by the International Republican Institute, 87 percent of responding Ukrainians replied that corruption is a significant problem or somewhat of a problem.⁵ For these reasons, in addition to the inherent economic impacts, the Poroshenko-Yatsenyuk coalition knows full well that it must reduce corruption quickly, dramatically, and visibly.

Having been disappointed with previous efforts after the Orange Revolution, it will probably take some high profile, politically and economically difficult cases to convince Ukrainians that the government is serious in these endeavors. While efforts so far have yielded limited results in targeting some high-ranking officials from the Yanukovich government (most of whom have fled the country), the convincing evidence will come if and when the government brings charges against entrenched oligarchs and some of its own high-ranking officials. Civil society and the international community are watching these efforts closely to gauge the seriousness of the current government to fight corruption. When the public says there have been no reforms, they often point to the persistence of corruption, the failure to prosecute any of the oligarchs or major offenders, the failure of the courts to convict them, and the simultaneous high lifestyle of the relevant but poorly paid state officials. As Poroshenko, Yatsenyuk, and the other reformers have stressed, corruption eats away at the economy of the country—but perhaps more importantly, it eats away at the moral fiber and legitimacy of state institutions.

Public Skepticism Regarding Reforms. Ukraine has been in a state of transition since 1991, when the USSR unexpectedly collapsed. However, as is frequently noted, Ukraine has yet to successfully complete the fundamental reforms upon which it set out to undertake in 1991. Ukraine's road to a market economy and democracy has been twisted by the endemic corruption noted above and by the powerful grip of oligarchs controlling the political and economic path of the country, which is mainly why 24 years later it is still very much in transition and a hybrid post-Soviet political economy. In addition, geopolitical factors have stymied the transition to a democratic political system and economy. Ukraine is strategically located at the crossroads between Europe and Eurasia, existing in constant tension between two competing forces, the United States/Europe and Russia. Since independence, Ukraine's leadership has adopted multi-vector foreign policies seeking a balance between Russia and the West. This has skewed the pace and nature of internal reforms, and has been used by the political-economic elite in the country for its own gain.

Recent historical events also contribute to skepticism. The November 2013 protests were not the first on the Maidan. In November 2004, exactly nine years earlier, a parallel set of demonstrations were called to protest the fraudulent election results that would have resulted in the victory of Viktor Yanukovich instead of Viktor Yushchenko. The 2004 government composed of Viktor Yushchenko as president and Yulia Tymoshenko as prime minister also promised many fundamental reforms and a path toward European Union (EU) and North Atlantic Treaty Organization (NATO) membership, but it squandered its mandate and its opportunity through squabbling and corruption. Ukrainians have not forgotten the earlier Maidan and the betrayal of their hopes and aspirations that led to the 2010 election of Yanukovich, his authoritarian rule, and the return of Ukraine to the Russian sphere of influence.⁶

The Euromaidan provides Ukraine with a second opportunity to break from the impasse. However, as a result of their disappointment with the outcome of the Orange Revolution, as well as 20-plus years of

⁵ International Republican Institute Survey, "Ukrainian Municipal Survey, March 2–20, 2015," May 19, 2015; http://www.iri.org/sites/default/files/wysiwyg/2015-05-19_ukraine_national_municipal_survey_march_2-20_2015.pdf; p. 7-8

⁶ *RFERL*. (June 17, 2015). "Unloved but unbowed, Ukraine's Viktor Yushchenko leaves office,," http://www.rferl.org/content/Unloved_But_Unbowed_Ukraines_Viktor_Yushchenko_Leaves_Office/1967436.html

transition, Ukrainians, with good reason, lack trust in their institutions and elected leaders. Indeed, as past DRG assessments have accurately pointed out, Ukraine's state structures must undergo some significant changes to become democratic institutions.

High Expectations and Waning Patience. It was clear from the interviews conducted by the assessment team that patience with the pace and nature of the reforms undertaken since the new government took office a year ago is wearing thin. The results of several opinion polls converge around similar results on the public's patience for reforms, with about 25 percent of the public believing that the proposed reforms will not work; 25 percent opposing the reforms; 40 percent giving the government 1–2 years to show results; and 10 percent prepared to stay the course indefinitely.⁷ Universally, the people the team interviewed outside the Ukrainian and U.S. Government complained, rightly or wrongly, that there have been no or insufficient reforms, and that little has changed—or in fact that things have gotten worse.

People and organizations pointed to many people holding the same positions they held before the Euromaidan, a lack of any real prosecutions for corruption, and a focus on passing laws but either sabotaging them in the details or not implementing them. As this report will document, myriad reforms have been adopted or are in process, but they are either not evident to the public or are not the reforms the public has been expecting. There is a palpable tension between expectations, however exaggerated, and reality, however underestimated. Whatever the government may be doing, it has been woefully inadequate in making its case—even to its own supporters, as demonstrated by the slump in popularity of Prime Minister Yatsenyuk's Popular Front Party, which now polls between 2–4 percent; just on the cusp of the threshold to enter Parliament.

Part of the problem is a lack of momentum and accomplishment, especially in the face of recalcitrant elements in the bureaucracy and the active opposition of the old guard—for example in the now-dissolved but potentially reorganized Party of Regions. But another part of the problem affecting the level of public support is the poor and inadequate communication by the government about its plans and about the reforms that are in fact taking place, which are indeed substantial. If the reforms are not well communicated, the public is not likely to know about them and, from the public's perspective, they have not occurred.

A sustained and sophisticated communications effort is required to inform the public of the reforms taking place, but is hindered by the lack of capacity within the government to implement such a campaign, as well as the difficulty the government has in getting its message out. Except for Channel 5, which is owned by President Poroshenko, all of the major television stations are owned and controlled by oligarchs who are to varying degrees opposed to some of the reforms. Most large television channels don't cover the government except in critical ways. There is social media, the Internet in general, radio, a government television station with a low number of viewers, and print media, but, with the exception of the young and educated, Ukrainians in overwhelming numbers still receive their news, information, and opinion from the major television stations. So getting the message out to Ukrainian citizens will not be easy, even if an effective communications effort is mounted.

Right now, however, the government is losing the politics of perception and with it, potentially, public support for reforms. The government needs to create a better internal machinery of government communications to explain its story and policies and tell it well. The failure to adequately communicate the gains and to be understood is a potentially fatal blow to the reforms, especially in a democracy. While problematic given the oligarchs' control of major television stations, the government needs to make better use of alternative media outlets and the self-interest of the oligarchs to get their message out more broadly and effectively.

⁷ Interview with Iryna Bakeshkina, director, Democratic Initiatives Foundation by Oles Oleksiyenko; "Political Redesign, Shifts in Electoral Preferences in the Countdown to Local Elections," May 18, 2015. <http://ukrainianweek.com/Politics/136675>. Most of the 1–2 year period has already passed.

1.3 CONTEXTUAL FACTORS

1.3.1 GEOGRAPHY AND NATURAL RESOURCES

Of the 15 independent states to have emerged from the Soviet Union, Ukraine is second to the Russian Federation in total population, economy, and security forces. In surface area, it is third behind Russia and Kazakhstan. Ukraine is endowed with fertile land, coal, and mineral resources (including potential gas and oil), as well as a long coastline with ports on the Black Sea. Some of these resources have been annexed by Russia in Crimea, reducing the length of Ukraine's coastline. Other resources, such as coal mines and newly developing gas and shale gas fields, have been destroyed or are in decay as a consequence of the hybrid war in the Donbas (comprising parts of the Donetsk and Luhansk oblasts), or they have come under the control of the DNR and LNR.

1.3.2 ECONOMIC, AND SOCIAL FACTORS

In 1989–1999, Ukraine's economic slump was one of the worst of any post-communist state. The economy grew at relatively high levels in 2000–2007, but the 2008 global financial crisis led to a collapse by 15 percent of Ukraine's GDP that was made more acute by economic mismanagement and high-level, widespread corruption during Yanukovich's presidency. Poor economic performance has in turn affected society with Ukraine's 2013 Human Development Index value at 0.734.⁸ Large numbers of Ukrainians have migrated abroad in search of work and opportunities. Ukrainian expats send the highest level of remittances in Europe, transferring more than \$8 billion annually, accounting for 5.45 percent of GDP. Ukraine's informal economy has been stable and estimated at producing 40–50 percent of the country's GDP and—since it is not taxed—does not directly contribute to the state budget.⁹

The conflict in the east compounds the economic anxieties and hardships the country is facing. In addition to the human suffering, with nearly 6,000 killed, even more wounded, and more than 1 million people displaced, the direct costs of the war reach \$5 million–\$7 million per day.¹⁰ Indirectly, the conflict and crisis has caused the economy to contract substantially—for example, due to lost cross-border trade with Russia. GDP has declined by 5.5 percent so far in 2015, while consumer prices rose by 33 percent.¹¹ The general unemployment rate is 10–11 percent,¹² and the incomes of many of those nominally employed are being delayed or not paid at all. The hryvnia has been allowed to float, and in the last year has depreciated from the artificially supported 8 hryvnias per US \$1 to the current 21 per dollar. In addition, trade and investment patterns have been shattered, especially those with Russia and Crimea. The populations in these areas experience not just the general economic hardships of the country as a whole, but also the particular loss of employment, markets, investment, and trade built up over decades. Pensions and social support payments to the retired, the infirm, the disabled, and the socially disadvantaged in general have remained constant at best or, as with the case of some salaries, are not being paid regularly by cash-strapped entities.

Many experts argue that a vibrant middle class is the social foundation of a well-functioning democratic society. There have not been systemic government efforts supporting the development of a sustainable middle class due to government support to big business and oligarchs. Nonetheless, there is a vibrant middle class in Ukraine that has shown itself to be a main advocate for political and economic reform. The middle class first showed its public face during the Orange Revolution, which it strongly supported.

⁸ <http://hdr.undp.org/sites/default/files/Country-Profiles/UKR.pdf>

⁹ Chapter 9, "The Rule of Law and Corruption," in Taras Kuzio. (2015). *Ukraine. Democratization, Corruption and the New Russian Imperialism* (Santa Barbara, CA: Praeger), pp.327–380

¹⁰ Finance Minister Natalie Jaresco, June 12, 2015, <http://www.npr.org/2015/06/12/413995642/ukraine-finance-minister-says-economic-success-is-key-to-ending-conflict>

¹¹ International Monetary Fund, <http://www.imf.org/external/country/ukr/>

¹² <http://www.tradingeconomics.com/ukraine/unemployment-rate>

Ukraine's middle class again played a major role in support of the Euromaidan. Support for the small and medium business sector—or at least a fair legal and economic playing field—would assist in the growth of the middle class, which in turn would increase the contribution of this sector to Ukraine's GDP from its current low levels of under 20 percent to double that figure, which is the norm in central Europe. However in the past year, the economic crisis, the loss of traditional markets, increasing consumer prices, depreciation of the hryvnya, bankruptcy of many banks and lost savings, and growth of unemployment have contributed to the shrinkage of Ukraine's middle class.

1.3.3 HISTORICAL LEGACIES

The multilayered relationship between Ukraine and Russia is anchored in different perceptions of their history and visions of the future. Ukrainians view Kyiv Rus as the birthplace of Ukrainian statehood, whereas Russia has viewed the medieval principality as the birthplace of three eastern Slavic peoples fated to somehow remain forever united. Eastern and southern Ukraine was part of the Tsarist Russian Empire from the late eighteenth century. These and other historical influences upon Ukraine have produced regional diversity and a country with Russophone majorities in the east and south and Ukrainophone in the west and center. The majority of Ukrainians are bilingual and alternate between both languages. Ironically, the Russian annexation of Crimea and its support for the DNR and LNR have united Ukrainians and strengthened a consensus among both Ukrainophones and Russophones for its position as an independent sovereign state, at least for the moment.

Ukraine has traveled a long way since 1991 in building many of the institutions required to run a state and forge a unified civic nation. However, as the foundations of these institutions remain rooted in their communist past, their transformation into fully democratic institutions is incomplete and they have continued to operate in many respects as they did under communism. This is evidenced by the low levels of popular trust in these institutions as well as the ruling elite's weak commitment to rule of law and high levels of corruption. In 2013, the last year of Yanukovich's presidency, only two out of 15 former Soviet states (Tajikistan, Uzbekistan) had worse rankings in Transparency International's 2014 Corruption Perceptions Index.¹³ Indeed, a central thesis to emerge from this DRG Assessment is that highest priority must be given to transforming Ukraine's governing structures into genuinely democratic institutions, whose very rules and procedures will shape incentives so that they promote accountability and transparency and discourage corruption.

¹³ <http://www.transparency.org/cpi2014>

2.0 THE KEY DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE CHALLENGES IN UKRAINE

This section evaluates Ukraine’s performance in the DRG area by focusing on the five key variables used in the DRG Strategic Assessment Framework (SAF): consensus, inclusion, competition, political accountability, rule of law and human rights, and government responsiveness and effectiveness. The discussion below briefly summarizes key trends in each of these areas, drawing on insights provided by key informants with whom the team met in Ukraine’s capital city of Kyiv and the western (Chernivtsi), northern (Chernihiv), central (Poltava), eastern (Kharkiv, Dnipropetrovsk), and southern (Kherson, Mykolayiv, Odesa) regions. The discussion also draws on a review of a wide range of secondary sources, including press reports, donor documents, and published articles and reports.

2.1 CONSENSUS

There appears to be greater consensus in the country now than at any time since independence, although how long this consensus will last is hard to predict. The current situation with regard to consensus is vastly complicated by the fact that large sections of the country are not under the control of the Government of Ukraine (GoU). On one hand, the annexation of Crimea by Russia and the hybrid war in the Donbas mean that the domestic consensus that previously existed regarding the territorial boundaries of the country—i.e., that they must coincide with those of the pre-1991 Ukrainian Soviet Socialist Republic—is shattered by the actions of the separatists in the east and the apparent consensus on the Russian annexation of Crimea by its residents. On the other hand, consensus about what it means to be a Ukrainian and the orientation of the country toward a European, democratic future is stronger than ever. While there are still large segments of the population that remain ambivalent about the country’s geopolitical orientation, there is almost universal consensus about a unified Ukrainian state independent of outside interference and able to decide its own path.

Ukraine, as the successor state to the Ukrainian Soviet Socialist Republic, inherited a regionally and linguistically plural country with Ukrainophones a majority in the west and center and Russophones a majority in the east and south. Other minority linguistic and culturally diverse groups live scattered in various regions of the country, especially near border areas. By and large, Ukraine’s presidential and hybrid parliamentary-presidential constitutions have promoted a civic concept of Ukrainian nationhood;

guaranteed national minority rights; defined Ukrainian as the state language while permitting the continued use of Russian in eastern and southern Ukraine; and offered wide-ranging autonomy rights for Crimea. Inter-regional tensions and conflicts have flared on occasion, and often manifest themselves during election periods—most commonly in “East vs. West” dichotomies, although not exclusively. While the country has largely been able to manage these inter-regional tensions, a winner-take-all political culture has traditionally led to one side feeling disenfranchised, whether it’s supporters of Yanukovich after 2004 or “Orange” voters after 2010.

While opinion polls have always shown that a significant majority of Ukrainians supported the preservation of their state’s territorial integrity, historically there has been separatist sentiment in the Donbas and Crimea, where ethnic Russian Ukrainians are largely concentrated. Crimea and the Donbas also had relatively low levels of support (compared with other regions of Ukraine) for Ukrainian independence and high levels of identification with their region. Although those in favor of some form of separatism did not constitute a majority in these regions, the fact that the remainder of the population in the Donbas and Crimea were either passively pro-Ukrainian or neutral gave the pro-separatists more voice and power than they might otherwise have had.

As a result, in the spring of 2014, central government authorities found limited support in these two regions for stemming the rise of separatists in the Donbas and invading Russian troops in Crimea. In both regions, local law enforcement [Ministry of Interior, Security Service of Ukraine (SBU), Prosecutor General’s Office] defected to the separatists and Russians. Crimea was illegally annexed by Russia and is defined as a frozen conflict, beyond the scope of this DRG Assessment. In the Donbas, separatist forces are being covertly supported by Russia, which is helping to transform them into a formidable army by providing training and equipment.

While there may be internal consensus on the territorial boundaries of the Ukrainian state, there is no solution in sight with regard to the annexation of Crimea and the separatist movement in the Donbas without serious engagement by the international community. Many in Ukraine seem to have already written these regions off. Achieving a solution in the Donbas will be made more difficult by Moscow’s control of the separatist forces and its opposition to their demobilization, and the mechanics of holding free and fair elections throughout the Donbas. Rebuilding consensus in these troubled regions should be a government imperative, but these policies will compete with the economic, financial, and security crises faced by the Ukrainian government.

The one area where consensus issues are most problematic, other than the separatist conflict in the east, is around the notion of the “rules of the game” in Ukraine. For decades, the sway of oligarchs over politics, media, business, and justice was understood by almost all as the way things worked in Ukraine. A new paradigm has emerged about what the rules of the game are, or should be, in Ukraine—as reflected in the latter stages of Euromaidan, in the greater concept of the Revolution of Dignity, and in the continued expectation of consultation, participation, accountability, and rule of law by citizens and civil society alike.

The assessment team heard from many key actors, both in and out of government, that the government had not reached the point of no return in terms of reforms and restructuring—but that the public had reached the point of no return in its own concepts about voice and accountability. If those at the pinnacles of power, both official and unofficial, do not align their vision and practice of the rules of the game with those of society in the near future, the risk for further demonstrations or loss of confidence in the current reform process —i.e., the Third Maidan—will increase greatly. To alter the governance dysfunctions that have led to political instability on numerous occasions since the Orange Revolution, the reforms must begin with the transformation of established state structures into democratic institutions.

2.2 INCLUSION

Formally, Ukrainian legislation and international covenants provide for the inclusion of all groups in the country's political, social, and economic life. However, in practice, there are significant barriers to the full inclusion of many Ukrainian citizens. This is compounded by the lack of systematic social dialogue between government and citizen stakeholders, which leads to socially insensitive policies and approaches to the provision of services, as well as poor infrastructure.

Ukraine has ratified international agreements preventing different forms of discrimination in the social and economic spheres. Nevertheless, Ukrainian legislation contains certain norms that limit citizens' inclusion—due to either how it is written or how it is (or is not) implemented. Certain occupations continue to be identified as male or female professions. A 4 percent quota for people with disabilities is not mandatory for employers because there are no sanctions if it is violated. Age discrimination is becoming one of the strongest obstacles in the labor market both with regard to the elderly (both women and men) and young people. These factors are reinforced by other vulnerabilities (disability, internal displacement, LGBTI) that lead to deeper marginalization of these groups, poverty, forced migration, etc.

Despite all efforts, the formal institutional framework for human rights, which is quite extensive, does not ensure the efficient political, social, and economic inclusion of all vulnerable citizens. In Ukraine, inclusion as an aspect of human rights is narrowed mainly to the issues of persons with disabilities (LoU “On Social Services”¹⁴). Weak government mechanisms to assess and analyze the needs of vulnerable population groups, let alone respond to them, has resulted in ineffective policies, programs, and weak communication. These vulnerable groups are not regularly consulted or included in discussions about the reforms being undertaken, and therefore, reform proposals being prepared do not take into account the specific needs of these populations.

Attitudes regarding the sexual minorities in Ukraine are not homogeneous, but stereotypes and stigmas are deeply ingrained, and the country is only starting to openly discuss the challenges faced by this population. There is a degree of tolerance for LGBTI individuals on condition that they do not publicly raise their sexual orientation, a sort of don't-ask-don't-tell policy. Ukraine's government and political parties sidestep the issue of LGBTI rights by ducking the question rather than dealing with it publicly.

Due to the efforts over the past twenty years to increase gender equality in Ukraine, women's participation has improved as illustrated by the adoption of gender quotas for certain elected positions¹⁵ and prohibitions against discrimination in posts for job vacancies. However, there remains a gap between the laws and policies adopted and the application in practice. For example, despite the gender quota for the party lists introduced in the Law of Ukraine “On Political Parties of Ukraine,”¹⁶ most politicians are not aware of this requirement, or chose to ignore it, including women themselves. While there is greater reporting and analysis available on the gender aspects of political inclusion in Ukraine carried out by international agencies and programs/projects,¹⁷ by some think tanks,¹⁸ and by civil society organizations

¹⁴ For example, the policy on inclusive education is supposed to support the integration of persons with disabilities into the system of general education. However, the majority of these citizens are only able to be educated in special boarding schools, as the practicality of inclusive education has not been properly developed. “Vulnerable citizens” are defined as “persons, experiencing complicated life circumstances due to either their disability, age, health, social status, life habits or mode of life, which prevent them from self-supporting personal (family) life and societal activeness.”

¹⁵ The second draft of a new Law of Ukraine “On the local elections,” which includes gender quota, was adopted on July 14, 2015.

¹⁶ LoU “On political parties in Ukraine” (05.04.2001 № 2365-III; amended 21.05.2015) [<http://zakon4.rada.gov.ua/laws/show/2365-14>].

¹⁷ Examples of programs/projects: World Economic Forum's Gender Gap Report, IFES, NDI, others.

¹⁸ Think tanks: Democratic Initiatives' Center.

(CSOs),¹⁹ the overall levels of participation remain low. According to the Gender Gap Report, the level of women's political empowerment²⁰ in Ukraine is 105th out of 142 countries ranked. In three Ukrainian parliaments elected in 1990, 1994, and 1998, women's representation initially declined and then slightly increased from 3.5 to 8 percent. The highest proportion of women MPs is in the parliament elected in 2014, where it has grown to 12 percent (51 women out of 423 deputies²¹), many of whom are Euromaidan and civil society activists. At the local level, there is a higher representation of women, but at the same time, working conditions for women in local councils are complicated with limited opportunities for professional growth and lower levels of remuneration.

There are new groups of vulnerable citizens who have emerged as a result of the military conflict in the east (Donetsk, Luhansk) and south of Ukraine (Crimea), as well as due to the unstable situation in the western part of Ukraine (Mukachevo); these are internally displaced persons (IDPs) and demobilized and wounded participants of the ATO. Many of these citizens are experiencing serious problems in obtaining their basic human rights and full social inclusion. The ability of the GoU to provide the necessary medical, social, and psychological support for IDPs and soldiers returning from the ATO, as well as for the families of soldiers wounded or killed in action, does not come close to the level of service required. In many cases, non-governmental organizations (NGOs) and the private sector are stepping in to help fill the gap between the need and the services available, but even this falls short and cannot be expected to continue indefinitely. The data on the number of individuals wounded in the ATO vary, but according to the UNO data²² 15,397 persons have been wounded.²³ However, the data differs by source, and the official GoU data reports the number as lower than the numbers provided by international or independent sources. There is also no official public data on the instances of human rights violations such as captures, tortures, kidnappings, but there are rumors of numerous cases. The lack of transparency in reporting by the GoU leads to suspicion and lack of trust in the government, and makes it difficult to judge the extent of the problems the wounded or demobilized ATO participants may be dealing with. In many cases, families are left to try and care for these ATO participants alone. To some, it seems the government is trying to avoid its responsibility to those who have fought for the country.

For IDPs, once they have been relocated from the conflict area, there are significant services required in terms of helping them settle into their host community, such as housing, renewal of documents, voter registration, employment, school enrollment, registration with medical and social service institutions, etc. The burden of supporting these IDPs is falling primarily on local government bodies, which are ill-equipped and which lack the financial means to support the number of IDPs they are receiving. Again, NGOs and the private sector have been working with local government to help fill the gap, but still the needs far outweigh the resources available.

Ukraine is a multiethnic country, including almost 130 nationalities. Twenty-two percent of Ukraine's population is made up of ethnic minorities.²⁴ Ethnic minorities in Ukraine are not officially excluded from participation in politics or the economy. However, some minority groups (Romanians, Hungarians, Russians) are better able to exercise their right to participate than others (Roma, Crimean Tatars). For example, the situation of Roma in Ukraine remains problematic. The main challenges facing Roma include difficulties in obtaining personal documents, accessing quality education and employment,

¹⁹ Civil society organizations: Women's Consortium of Ukraine, Ukrainian Women's Fund, OPORA, others

²⁰ <http://www.weforum.org/reports/global-gender-gap-report-2014>

²¹ The Ukrainian parliament was unable to elect 450 deputies because of Russia's annexation of the Crimea and separatist control over approximately one-third of the Donbas. In 2012, these regions included elections in Donetsk (20 election districts), Luhansk (10), Crimea (10), and Sevastopol (2). Of these 42 seats, 27 were unable to hold elections in in 2014.

²² http://ukr.lb.ua/news/2015/03/31/300329_chislo_zagiblih_donbasi_syagnulo_61.html (as of March 31, 2015)

²³ <http://www.unian.ua/politics/935689-u-rnbo-nazvali-utochneni-dani-schodo-kilkosti-zagiblih-ta-poranenih-biytsiv-ato.html>

²⁴ <http://www.ewi.info/idea/understanding-national-identity-ukraine%E2%80%99s-ethnic-diversity>

inadequate housing conditions, and harassment by the police. Roma in Ukraine are a heterogeneous community, and their situation varies between different regions of the country. There is a lack of official, comprehensive, and accurate data available on the number of Roma in Ukraine and their socioeconomic situation. Negative attitudes toward Roma persist within society, while there is limited recognition of the discrimination Roma face in many areas of life. With its adoption of the Strategy on the Protection and Integration of the Roma National Minority into Ukrainian Society up to 2020 (Strategy), and the subsequent National Action Plan (NAP) on Implementation of the Strategy, the GoU has signaled its recognition of the need to address the situation of Roma through the development of specific policies.²⁵ At present, the issues of Roma citizens are addressed mostly by CSOs and activists with the support of international donors (e.g., CSO “Chirikly,” mediation groups, etc.).

In some ways, the most pressing issues of inclusion relate to the unemployed and poor. Social polarization is a significant and growing problem as the gap between the rich and the poor is great. The poor in Ukraine tend to fall outside of the mainstream, which leads to isolation and a lack of ownership and participation in the system. Owing to economic weaknesses, limits in education, and collective action difficulties, the poor in Ukraine are generally politically weak. Despite reliance on rural voters during election periods, the political class has generally ignored this group once in office. Beyond this, formal mechanisms that might allow the marginalized more effective access to the political system (such as local courts or local-level councils) are weak, non-responsive, or undermined. In this context, “participation” in political life is limited, and the marginalized must either rely on civil society groups to speak for them, or hope for some form of patronage by politicians seeking their support.

2.3 COMPETITION AND POLITICAL ACCOUNTABILITY

A fundamental problem in Ukraine is that the centralization of power, lack of transparency, inadequate separation of powers, and complications arising from monopolistic practices in the economic sphere have undermined the development of checks and balances in the system. The requisites of the patrimonial system that dispenses patronage and serves the interests of the oligarchs include a judiciary that is pliant to the interests of the ruling elite. In Ukraine, the rules of the game have been heavily weighted in favor of the ruling elite, leaving little room until recently for those who seek a more democratic state to enter the debate or bring about a change in the system. A changing of the fundamental rules by which the political game is played is part of the larger change that the public expects the current government to produce.

While it can be said that Ukraine has possessed a competitive political system since independence, except during the semi-authoritarian Yanukovich presidency of 2010–2014, by and large the political competition has been a competition among the oligarchs who each sought to use the political system for his own political and economic gain. Citizens were largely left out of the equation, except as votes to be manipulated for elections. While there is a form of competition, political accountability has been absent in Ukraine, both among the ruling elite and among the political parties that claim to aggregate the interests of groups of voters. Ukraine’s elites have remained above the law and have used the political system as a means of maintaining their privileged positions and economic advantages.

Competition and political accountability are often thought of in terms of elections, and while elections in Ukraine have generally been considered free and fair, the fairness of elections has been overshadowed by pressure exerted on state employees and on employees in private companies affiliated with the various oligarch-sponsored parties to vote for their party. Ukraine has held five presidential and seven parliamentary elections since 1991. Of these presidential elections, all five have been free and fair; the exception has been the second round of the November 2004 election that was re-held a month later. Six out of seven parliamentary elections were deemed to be free and fair by the OSCE with the one exception

²⁵ ODIHR. (August 2014). Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis, <http://www.osce.org/odihr/124494?download=true>

in October 2012. Ukraine's positive record of organizing democratic procedures for elections should be placed within the context of declining levels of turnout. In opting not to exercise their right to vote, voters are using the only means available to them to voice their disillusionment with the lack of real competition and accountability in the system.

In a larger sense, ruling parties and individuals are held accountable at election time; although it is obvious that results of elections in Ukraine prior to 2014 do not reflect the judgment of the citizenry regarding the persons and parties that are governing the country. In Ukraine's political culture, the distinction between personal and political accountability is very thin. The majority of Ukrainian parties remain leader-driven, with opaque funding from oligarchs and big business and with a pattern of presenting ambivalent programs. Ukraine's political scene continues to be dominated by short-term oligarch-funded political projects, rather than political parties, contributing to stable levels of low trust in them. Ukraine's presidential authorities and oligarchs, separately or in collusion, have launched countless political projects since the 1990s that have had short-term lives of one election cycle.

While there is a degree of pluralism in the advancement of political parties, the limited financial and human resources of the independent parties as compared with those established or dominated by the oligarchs means the playing field is vastly uneven. The independent political parties lack the resources to maintain expanded operations, especially in the regions; they lack regular access to television, the main source of news for the majority of Ukrainians; and they lack the necessary logistical and expert support to mount a credible legislative challenge to the dominant parties. Political parties have, by definition, their programs and party platforms; yet differences between programs, where such exist, are rarely the subject of public debates during the elections.

Healthy systems for political competition also require checks and balances, such as those achieved through a separation of the powers of the executive, legislative, and judicial branches of government. Although the Constitution and relevant laws provide adequate delineations of power between these three branches and sufficient checks and balances, in reality the executive, led by the president, continues to dominate all three branches. Such control has been maintained over the judiciary partly because of loopholes and partly because of a lack of tradition of an independent judiciary. Technicalities are often used to reach decisions in court that, at the least, do not antagonize the executive and the oligarchs. Self-censorship is often the most important factor in the behavior of judges at all levels. As discussed below in the section on Rule of Law, major reforms are under way to reform the judicial branch, including establishing a more independent and credible judiciary, prosecution, and police.

The legislature is by definition a potentially important institution in realizing a greater separation of powers. The legislative branch until now has largely been an extension of the executive and served as a platform for the oligarchs. For this reason, Parliament has been viewed with the same mistrust as political parties. The reputation of the Rada is changing with the current parliament, which includes members from civil society. The development of a consolidated parliamentary democracy and European integration, however, cannot be undertaken without functional, internally democratic political parties that represent an aggregation of citizen interests and provide a means for a broad base of citizens to both hold officials accountable and align themselves with a set of ideas versus a set of patrons. In hand with this is the need for an evolution of citizens' mentality about what it means to be civically and politically active and how to engage in the political process beyond the two extremes of street protests and mindless voting based on pre-election handouts or alliances to oligarchs.

Another element of healthy political competition is a clear delineation between levels of government, with the authority and autonomy of local governments plainly laid out in a way that allows for responsiveness to the immediate and daily concerns and needs of their constituents. As will be detailed elsewhere in this report, the government's plans to decentralize power and empower the institutions of local government are well advanced, with the goal of shifting more resources and authority to the local level and enhancing local democracy.

Yet another manifestation of healthy political competition would be a competition of ideas, with a vibrant civil society, including a free media, able to contribute to a public dialogue. Since the 2000 “Kuchmagate” scandal and two democratic revolutions, Ukraine’s civil society and independent media have become increasingly influential actors seeking to hold Ukraine’s political and economic ruling elites accountable for their words and actions. Civil society in post-Euromaidan Ukraine is more professional; influential; public relations- and media-savvy; and internationally connected than at any time since 1991.

Ukraine’s civil society will continue to remain important as a service provider, public advocate, source of government oversight, and channel for public engagement, as well as a platform for individuals to enter politics/policymaking, as per the Euromaidan. Some civil society members went from the Euromaidan into parliament, while others remained as independent journalists and businesspersons in the small and medium business sector. They have participated in governmental and private commissions to develop and recommend reforms in a variety of sectors—in fact, civil society has been welcomed into policy-making and government decision-making at unprecedented levels since the Euromaidan. Respected and effective organizations have voiced concerns on policy and performance, and have even conducted investigations regarding the slow pace of reform, for example in lustration and in the reconstitution of the PGO.

Ukraine’s media environment is largely pluralistic, although oligarchs control the major television channels. The hand of the oligarchs can be clearly seen in the editorial policies of the various media outlets, which tend to mirror the political perspective and interests of their owners. Oligarchs use their channels to attack their business opponents and provide airtime for populist criticism of government reforms and policies. The government routinely complains it is unable to get its message across to the public on television, forcing ministers to resort to using Facebook. Alternatives have progressively grown to oligarch-controlled television. Social media and a growing public interest in objective information has permitted the emergence of Internet-based television, such as Hromadske TV.

2.4 RULE OF LAW AND HUMAN RIGHTS

2.4.1 RULE OF LAW

A fundamental element of democratic governance is the existence of the rule of law, especially an independent judiciary of integrity. The assessment team heard regularly from those it spoke with that there is no, or limited, rule of law in Ukraine.

While there are situations where justice is served, especially at lower levels where the stakes are lower, there are serious widespread deficiencies with the application of the rule of law in the country and with the key institutions responsible for upholding the rule of law. The laws in Ukraine are applied in an arbitrary manner based on who one is and his/her socioeconomic position, with one set of rules, those codified in the nation’s laws, applied to the average citizen and a seemingly different set of rules (undefined) applied to the political and economic elites of the country.

The overall impression is that the elites are untouchable in Ukraine, and regularly flout the rule of law without consequence. Despite the constitutional provision for an independent judiciary and the reforms that have been carried out to establish the legal framework and institutions necessary to support an independent judiciary, it is clear that the development of an independent judiciary in Ukraine remains a work in progress. The absence of an independent judiciary undermines confidence in the rule of law, restricts basic human rights, and hinders economic development. Businesses and citizens alike do not perceive courts as a place for impartial dispute resolution. The issue of judicial independence shapes the public’s views on corruption because the judicial system reflects the values of the overall system. According to public surveys, the vast majority of Ukrainians agree that there is no judicial independence in the country, and they see the judiciary as an extension of the executive branch, enforcing the decisions as instructed by those in power. The system of rule of law is not transparent, and most judges are seen as holdovers from the Soviet times and as practitioners of the Soviet style of judiciary, or continuing in that

tradition, despite their age. In situations such as Ukraine's, where the judicial system is considered to be corrupt and dependent upon the executive branch, public officials are perceived as being above the law and acting with impunity. Similarly, the prosecutors and the police have unmistakably acted as instruments of the state, (i.e., the executive branch in general and the presidency in particular). The reforms are intended to rectify this problem, but they are moving very slowly to say the least.

The philosophy around the judicial system apparatus as a means to govern and control, serving as an expression of the executive and its politics, versus providing justice, is a Soviet legacy both in its structure and mindset. Part of the great “switch” that was flipped in the minds of most Ukrainians through the Revolution of Dignity is a demand for a rule of law that serves the ideals of justice and the public good; however, if the judicial system, the prosecutors, the police, the education of all of them, and the other elements of a rule of law do not evolve to reflect that change in expectations, citizens will not truly believe there has been any fundamental change. The rule of law, especially the courts, is where democratic values and commitment to democracy are truly tested and demonstrated. The assessment team heard frequent lamentations about needing to see the “proof” of commitment to democracy and reforms, and in most cases that referred to bringing previous and current officials to justice (beyond just removal from office or opening cases) and in developing a confidence that the average citizen had an equal chance of finding justice in the legal system without fear of corruption or influence from above impeding the process.

For these reasons, the reform of functions, structures, and mindsets involved with the promotion of the rule of law—especially the courts, prosecutors, and police—are a top priority. The public now expects what it has been promised: a *Rechtsstaat* as the Germans call it, a “legal state,” a state of law, a state of justice and integrity, a state based on and itself subject to the rule of law. The public expects that the courts and the police will now be places of justice, at the service of the public benefit. For these reasons, the assessment team determined that the lack of rule of law is one of the most critical challenges facing Ukraine in the post-Euromaidan era.

2.4.2 HUMAN RIGHTS

Ukraine has signed and ratified all of the major international and European human rights agreements and covenants, including the Universal Declaration of Human Rights; European Convention on Human Rights and Fundamental Freedoms; International Covenant on Economic Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women (and the UN Optional Protocol); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and European Social Charter. The constitution contains a substantial list of human rights guarantees and prevention of discrimination provisions (e.g., on gender, age, social disability), particularly Chapter II (Rights Freedoms and Duties of The Persons and The Citizens). The constitutional provisions and guarantees are buttressed by dozens of statutes, including most recently, laws relating to IDPs.²⁶

The primary issue for Ukraine's track record on human rights has been implementation of these agreements to which Ukraine has become a party. In most cases, Ukraine has adopted laws and legal codes to give effect to the basic compacts. However, acceding and ratification of the instruments on human rights has been more routine and theoretical than focused on actual implementation. Much of the legislative framework around human rights was adopted under authoritarian or semi-authoritarian regimes, whom at best paid lip service to the principles of human rights.

²⁶ In particular The Law of Ukraine, “On ensuring of rights and freedoms of internally displaced persons,” was passed on October 20, 2014 (<http://zakon4.rada.gov.ua/laws/show/1706-18>). IDPs have received a remarkable degree of support and succor from the public. As in other areas of the war, this burden falls disproportionately on the east and the south, the first and often the last stops for the IDPs. However, because these hosts are exactly the same populations disproportionately affected by the other hardships of war, including greater economic depression, their patience is wearing thin. They are having enough difficulty dealing with their own dislocations, but still they have shown generosity toward the IDPs. Donors have provided some assistance as well, but far less than local populations. For a longer discussion, see Kharkiv (2015). “Protection of Rights of Internally Displaced Persons,” Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine – 2014*.

However, the new, post-Euromaidan government has taken both civil and political rights much more seriously. Numerous human rights advocates prominent during the Euromaidan demonstrations are now members of the Rada, have been appointed to government positions, or are members of many official and unofficial bodies set up by the central and local governments. The lag time in the preparation and publication of public indices on human rights means that the dramatic differences between the Yanukovich regime and the new, democratic one are not reflected in the country's 2015 scores. Freedom House, for example, gives Ukraine a score of 3 for civil liberties and 3 for political rights in 2015.²⁷ That is an improvement over the 2014, 2013, and 2012 scores of 3 and 4, respectively, and equivalent to the 2011 scores. It is worse than the 2010 scores of 2 and 3, respectively. One could expect that the 2016 scores will more accurately reflect the improvement in this area given that the Poroshenko/Yatsenyuk government is manifestly more sympathetic to both elements than was the Yanukovich government. At the very least, the government is now more committed to these values than its predecessor, and certainly is not trying to subvert them. Moreover, the Ukrainian Helsinki Human Rights Union, for example, ranks Ukraine better than Freedom House. While there is almost universal agreement among those interviewed that the situation for human rights protection and promotion in Ukraine is dramatically improved with the current government, the human rights of many Ukrainians is nonetheless negatively impacted by corruption, inadequate rule of law, and poor provision of government services.

Violence against women, including domestic violence, seems to be on the increase, as is trafficking in both genders (women for labor and sex, men mainly for labor). Ukrainians who are lesbian, gay, bisexual, transgender, or intersex (LGBTI) suffer social discrimination despite some legal protections. However, these laws are rarely enforced and would depend on a more vigilant prosecution by the state or through civil cases. Of course, the courts would need to enforce these laws. According to some human rights observers, however, the courts have been more sympathetic to the perpetrators of such abuses than their victims. Without vigilance by the courts, the rights of these minorities are not likely to be enforced. Most LGBTI citizens still hide their sexual orientations, and rarely seek judicial redress against the violators of their rights.

2.4.3 CORRUPTION

As already noted, endemic corruption was a primary grievance behind the Revolution of Dignity. Indeed, once President Yanukovich fled, his Mezhyhirya palace—a state property which he had privatized in a series of transactions and de facto fully transferred to himself sometime around 2007—became a tangible manifestation of the greed and corruption of the entire regime. Complete with its own zoo, it is now a state museum attracting thousands of citizens to gawk at the poor but opulent taste and to understand the concrete manifestations of endemic grand corruption.

For that reason, Poroshenko's anti-corruption campaign has high salience, but also provides significant exposure for his personal and political reputation and that of the regime as a whole. It is easy, tempting, and all too common for a new government in any country to announce an anti-corruption program by targeting its predecessors, especially if they were political rivals. The Poroshenko government has engaged in some of that, as it has attempted to target Yanukovich and his network. As evidence of the risk, however, Prosecutor General Viktor Shokin has been "in hot water" because his prosecutors have so far brought too few such cases to court, and he is accused of "dragging his feet." However, prosecutors have recently asked courts to try in absentia (because they have fled to Russia) former Deputy Prime Minister Serhiy Arbusov and ex-Health Minister Raisa Bohatryyova, as well as her suspected accomplice Oleksandr Stashchenko, the first such cases.

²⁷ The Freedom House scores, released in January, are based on the events of the previous year, so the scores for 2015, released on January 28, 2015, purport to capture the record of 2014. For the full Freedom House discussion of its analysis, see <https://freedomhouse.org/report/freedom-world/2015/ukraine#.VXsdDfVhHw>

Ultimately, however, pursuing the *ancien regime* fools no one if those are the only targets, and it denigrates any serious attempt to control or reduce corruption. The real test of the anti-corruption effort will come in four forms: first, when high-profile oligarchs and businessmen known to have gained (and kept) their positions through corruption are prosecuted; second, when some relatively high official(s) close to the current government, especially President Poroshenko but also other ministers, are prosecuted (unless they are also prosecuted as part of a political vendetta should the current coalition fall apart); third, but less important, when ordinary officials, such as police or tax collectors, are prosecuted in sufficient numbers to create significant demonstration effects; and fourth, when these prosecutions result in convictions after fair trials under the rule of law.

To pursue these goals and as part of what he has called “the anti-corruption treaty between society and the authorities, in which officials do not take and people do not give [bribes],” Poroshenko created a new, special entity, the National Anti-Corruption Bureau (NABU), with independent authority to *investigate* cases of corruption and a second new entity—the National Agency for the Prevention of Corruption (NAPC)—to work on deterrence. Poroshenko announced the establishment of NABU in June 2014, and after a long search a prosecutor in Kyiv oblast, Artem Sytnik (who resigned because of “disagreements” with Yanukovych) was appointed on April 16, 2015, to head NABU. A former Georgian deputy prosecutor general, David Sakvarelidze, became his deputy. NABU will have a staff of 700 and is intended to be operational by October 2015. The creation of NAPC, to be part of the Ministry of Justice, was announced in March 2015, but it has yet to be established. NABU will rely for the prosecution of its investigative findings on a new, special unit to be established in the PGO, and putatively, to be insulated from the other procedures and decisions made by the prosecutor general.

Clearly, its success will depend on presidential political will, its own capacity and integrity, on the special unit of the general prosecutor, on their ability to work together, and of course on the courts.²⁸ As Poroshenko acknowledged in reference to his social contract on corruption when announcing the NABU, “no party observes this treaty.”²⁹ A credible, equitable, sustained effort by NABU and the special unit of prosecutors would go a long way in giving credence to the proposed “treaty” and in ensuring that all parties observe it. However, already criticisms are being lodged by anti-corruption NGOs and academics that NABU is too slow in being organized and that few prosecutions have been brought, let alone successfully completed.

²⁸ Societies, like Ukraine, with deeply embedded oligarchs and clans, pose particular problems for controlling corruption. In short, even courageous and intrepid prosecution is often insufficient to reduce this kind of corruption dramatically. Reducing corruption requires a systemic change in which the power and control of the oligarchs and their clans are themselves dramatically reduced. These are the kinds of fundamental reforms to which the current government has committed itself but which are extraordinarily difficult to accomplish even if pursued with vigor. See Chapter 6, “Oligarchs and Clans” in Michael Johnston (2015). *Syndromes of Corruption: Wealth, Power and Democracy*. Cambridge: Cambridge University Press. Ukraine has one advantage not so common among oligarchs in other countries: They dislike one another and have been one another’s most concerted adversaries. Yanukovych took advantage of that, although he was himself closely identified with the Donetsk oligarchs, as against, for example, those from Dnipropetrovsk with whom Tymoshenko was identified. Of course, jealousies and betrayals exist within the regions as well as between them. Because of the rivalries among the oligarchs and because of their interlocking networks, movement against them on charges of corruption will be complicated and intertwining. Each has evidence against the others, including Poroshenko, Yatsenyuk, and their associates. Each can and will expose dirty linen, a benefit for the prosecutors if they are allowed to use it, but with potential for political and personal embarrassment, so it’s an incentive for political leaders to constrain honest prosecutors and judges. See, for example, “Anti-corruption Tide Sweeping Across Ukraine,” *Eurasia Daily Monitor*, Volume 12, Issue 60; April 1, 2015; http://www.jamestown.org/programs/edm/single/?tx_ttnews%5Btt_news%5D=43729&cHash=8b0873cf55e68a09233ae060d0817d2d#.VYM7OfVhHw

²⁹ “A year ago in this hall I presented the anti-corruption treaty between society and the authorities: Officials do not take and people do not give [bribes]. Today, I can say no party observes this treaty,” Poroshenko said. To counteract bribery, he proposed a law that would encourage low-ranking officials caught taking bribes to inform on higher ranking officials doing the same, as well as encouraging bribe givers to inform on bribe takers. <http://www.bne.eu/content/story/poroshenko-gives-ukraine-4-ds-annual-address>

The NACP has been even slower in its formation, and the government came under criticism for its initial NACP appointments.³⁰ In the timeframe since the assessment fieldwork was conducted, things have changed, with the GoU agreeing to reboot the NACP appointment process in response to legal contestation from civil society oversight groups. However, delays in the formation of this body has contributed to increased frustration regarding the pace of reforms. Finally, the purposes and goals of the NACP are less concrete and less easily visible than those of NABU. Prosecutions are clear and observable, as are convictions. The prevention or, more appropriately, reduction of corruption as a whole will be harder to measure.

The entire anti-corruption effort is engendering growing criticism for its slow pace and lack of convictions. For example:

*Transparency International Ukraine together with partner organizations and independent experts who are specialized on anti-corruption have analyzed Ukraine's progress on the implementation of anti-corruption reforms. The research focuses on the period of October 2014 to May 2015. The main conclusion is that on the one hand Ukraine has achieved notable progress in reforming anti-corruption legislation, but on the other hand there is lack of political will from the Cabinet of Ministers, the President and the Verkhovna Rada to implement the new laws.*³¹

The donors need to decide the extent to which these delays really are evidence of resistance and inadequate political will or the extent to which, for example, they are evidence of the need precisely to subject even anti-corruption efforts to the rule of law and due process. Either way, public patience is waning. The success of the current government will depend to a great extent on how well the public perceives its efforts to fight corruption.

2.5 GOVERNMENT RESPONSIVENESS AND EFFECTIVENESS

Surveys show that citizens do not have a high degree of trust in most government institutions, which would indicate that they do not have confidence that the government will fulfill their expectations in terms of services and solving key problems of the society. In broad terms, indicators show that both overall government effectiveness and control of corruption remain significant challenges for the Government of Ukraine, scoring a 6.0 on a 7.0 scale in both categories on the Nations in Transit Index for 2015.³²

The capacity of the government to deal with the myriad of problems the country is facing and to roll out the reforms envisaged is low. The issue is not the number of staff, but rather the skills and motivations of the existing staff, and how few there are with the skillsets required to manage in a modern, democratic manner. The government's staff are stretched very thin in seeking to move the reforms forward and at the same time in coping with the economic and financial crises, both of which are complicated by the conflict in the east and the south. Government ministers are working 12–18 hours per day. They are exhausted and do not have enough help. They often rely on volunteers to assist because they do not have confidence in bureaucrats who lack the skills and motivation required.

The size of the Ukrainian state, central and local, is far too large for the country's size, for its economy, and for its long-term prosperity and democracy. It is the remnant of the communist state and its centralization. It is the carcass on which the oligarchs depend and feed. It enriches them and their

³⁰ Transparency International Ukraine, "Ukraine: Government's half-hearted approach undermines significant gains"; June 17, 2015; http://www.transparency.org/news/feature/ukraine_governments_half_hearted_approach_undermines_significant_gains

³¹ Transparency International Ukraine; "Research on Anti-Corruption Reforms: Laws are Good, But They Lack political Will"; press release; July 22, 2015, <http://ti-ukraine.org/en/news/oficial/5426.html>

³² Freedom House, Nations in Transit 2015; <https://freedomhouse.org/report/nations-transit/2015/ukraine>

bureaucratic clients at the expense of the public as a whole, and it enables their clans, their patronage, their networks, and their dysfunctions.

In 2014, the International Monetary Fund (IMF) assessed Ukraine's public expenditures at 53 percent of gross domestic product (GDP), while the successful countries in this region have public expenditures of around 35 percent of GDP, for example, Lithuania, Latvia, Slovakia, and Bulgaria. Clearly, Ukraine is on the wrong track, and its excessive public expenditures are a prime issue. The oligarchs have enriched themselves with state subsidies, notably in the energy sector. Ukraine has ended up in the worst of all worlds. First of all, it has among the highest public expenditures in Europe, competing with France, Sweden, and Denmark. Second, it has one of the most corrupt states in Europe, so it does not even offer the most elementary public services such as law and order, not to mention good education and health care. Third, its high public expenditures have forced the country to impose the highest taxes in the region, which further aggravate corruption and hinder growth and entrepreneurship. Finally, Ukraine cannot finance its giant public expenditures, but goes from one fiscal crisis to the other, now enjoying its tenth IMF program in just over two decades. This cannot continue. Ukraine must start cutting its public expenditures drastically, from 53 percent of GDP to 35 percent of GDP, if it aspires to become a normal market economy that can grow.³³

Reductions in public expenditures are also necessary for Ukraine's democracy, not just its economy. The bloated state represents an enormous political and economic prize for those who can capture it. Its capture in turn enriches its captors at the expense of the public and therefore increases the value of winning elections or bribing the winners. Those who cannot match the investments needed for winning or even contesting the elections—and they are exactly that, investments—are enormously disadvantaged in competing for public office and hence left out of the process for debating and setting public policies that could bring about the changes needed in the system. The result, as discussed elsewhere, is that political parties (the contestants) have also been captured by oligarchs and their cronies, leaving little room for poorer parties and for the prospects of electoral contestation by those unconnected to, and therefore unsubsidized by, the economic and political elites.

Consistent with the reduction of the state more generally, the GoU is planning a major restructuring of the central government. It intends that restructuring to accomplish several purposes, including (1) reducing the over-regulation by government, freeing the formal economy of unnecessary regulation, and reducing corruption by rent-seeking behavior; (2) reducing the size of the government staff and capturing efficiencies and savings; (3) making government more transparent; and (4) including and incorporating citizen participation and oversight. If accomplished, these reforms will make an enormous difference in the size of the central government, how it operates, and how citizens interact with it. In short, it would transform the size and operation of government from a post-Soviet behemoth to a modern, responsive, participatory state apparatus. If it were accompanied as well by the “deoligarchization” already discussed, it would help transfigure the state and economy of Ukraine. It is a tall order, but the transformation would

³³ Anders Asland. (June 9, 2015). “Ukraine Needs a Smaller and More Humane State,” VoxUkraine, <http://voxukraine.org/2015/06/09/ukraine-needs-a-smaller-and-more-humane-state>. Anders notes the particular distortions arising out of economic subsidies, especially energy, which allow oligarchs to reap large rents from their arbitrage between subsidized and market prices. The main problem in eliminating or even reducing these subsidies is the cost of energy to the poor and disadvantaged, especially home heating in winter. His answer, like that of any other market economist, is to provide specific, transparent payments to those in need but eliminate the general market distortions of a general subsidy. The distortions are also political, and the payments should perhaps also be conditional. Pensions represent a second large and unsustainable cost to the state. Some are specific, for example to the old nomenklatura, and others are pegged to an unsustainably early retirement age of 57 for women and 60 for men, the same problem vexing the discussions between Greece and its European creditors. “The conclusions are plain and clear. Ukraine needs to sharply reduce its public expenditures in the next few years to achieve economic growth. The first and biggest step is to abolish energy subsidies of 10 percent of GDP. The second big step is to trim the pension costs over a few years by 9 percent of GDP. No dramatic costs cuts are required in other areas.”

redeem many of the expectations of the Euromaidan and would move Ukraine much closer to a European model.

Ukraine's public sector employs nearly 4.5 million people, a tenth of the population and over a quarter of the total workforce. The state itself employs almost 450,000 officials, about 335,000 at the center and nearly 100,000 at the local level. The state bureaucracy has several levels: some 16 ministries, five national commissions, 25 national services, 14 state agencies, and nearly a dozen state inspection agencies. While the government intends to reduce this bloated bureaucracy, there is skepticism that this will be sufficient. According to Aslund, "Ukraine has already closed or merged several state agencies but a large number of superfluous and harmful agencies persist."³⁴

In addition to reductions, the government intends to restructure the state organs that remain, including a reduction in internal divisions and offices, a redefinition of roles and responsibilities, and decentralization of management with more authority and responsibility at lower levels. A new "strategy" on public administration is being drafted, with EU support conditional on the strategy. The current law on central executive bodies defines in great detail the authorities and responsibilities of each minister and office director, almost like statutory position descriptions. The proposed revisions would make ministers responsible for policy but move responsibility for implementation to lower-level officials, granting them authority to make decisions. Heretofore, they were not tasked with planning or strategy, just implementation of the prime minister's orders, entirely top-down management.

The proposed restructuring, including the proposals of public administration experts, would also reduce and standardize the number of sub-units in each level of administration. "Now no one does anything until ordered to do so," said one public administration advisor to the government. "The minister was personally responsible for everything from janitors to policy. Ministers should deal with policies not minor management like in the rest of Europe." An entirely different training program will be necessary, he said, as well as a different attitude toward responsibility and public service. The number of departments should be reduced, and the principles by which they operate need to be changed. However: "... Most bureaucrats are afraid of reform. It is in the nature of a bureaucracy and its bureaucrats to strive for stasis and stability. Even the prime minister resists these changes because he is used to command and control and does not want to give up either one. We are trying to go upstairs on an escalator going down." Many changes in public administration have begun quickly, via presidential directive, but deeper structural changes will require changes to the law on civil service. The new law on civil service has just passed its first reading.

Reducing the size of the state is therefore one of the most important DRG reform priorities, linked, for the reasons just described, to economic reforms, including any kind of economic structural adjustment and debt reduction. Those who benefit from this circle of political and economic capture will not, to say the least, easily relinquish their trophies. Too much is at stake. This will be a long, hard fight of still-uncertain success, but it ranks among the 2–3 highest priorities. It will drain a substantial amount of political capital to fight, let alone win. For that reason, it should trump other desirable but less vital reforms, both for the reformers and the donors who support the reforms.

2.5.1 E-GOVERNANCE

Among the changes proposed for government, both central and local, is the greater efficiency and transparency afforded by e-governance. In addition to actual interactions between government officials and citizens—for example, in the delivery of and payment for services, the ability of the public to query public officials, and the registry of citizens' complaints and suggestions—e-governance is designed to improve access to public information, augment the amount of publicly available information, increase the transparency of government, and reduce opportunities for corruption through open data, streamlined processes, and minimizing personal interactions. In short, it is expected to transform the relation between

³⁴ Aslund, *Ukraine: What Went Wrong and How to Fix It*, p. 134.

government and the public, especially the accountability of the government to the public. The GoU is substantially expanding both the amount of information and the number of business services it offers to the public online.

The current focus for e-governance in Ukraine is taking on the issue at multiple levels. At the national level, a focus on open data, e-procurement, and process streamlining is aimed at reducing corruption and increasing transparency to meet public demands for information and accountability. At the sub-national level, the assessment team learned of myriad initiatives under way by every oblast and rayon-level official the team met with. Everything from local government procurements to tracking snow removal were being experimented with, largely independent of each other and of the efforts ongoing at the national level.

Electronic procurement is of particular interest in the full range of e-governance to decrease the costs of entry, open the competition, increase transparency, and reduce corruption; so that is where the focus has been greatest, at least initially. E-procurement is more than just a new form of procurement process—it encompasses completion of and managing all stages of the procurement cycle in an electronic environment, including marketing research, identifying economic agents (potential suppliers), e-purchasing, e-ordering, e-sourcing and e-payment, e-budgeting, and e-planning (drafting and execution of procurement budgets).

E-governance is not a panacea for corruption, transparency, or governance efficiency problems. It's better suited for some services and functions than others, and also can skew toward younger, urban beneficiaries. In the case of Ukraine, estimates are that just over half of the population use the Internet regularly, but in rural areas and among less advantaged parts of the population (like senior citizens), Internet use may be less than 30%. It will be important to ensure that those who are computer-illiterate have alternatives and access as e-governance reforms are rolled out. One advantage Ukraine has, and which has been leveraged with some success already, is its extensive system of libraries. USAID programs have helped convert thousands of these libraries into community centers, with access to the Internet and trained librarians capable of working with civil society and local populations to provide access to government services and tools.

2.6 DISTILLING THE DRG PROBLEM

Review of the five elements of democracy, human rights, and governance in Ukraine helps us understand the challenges and paradoxes facing both citizens and the state as they make their way forward into a difficult future. While the team found problems in all five of the dimensions analyzed, the team concluded that the problems are not of equal magnitude, and that government transparency and accountability, as well as effectiveness and rule of law, are the two elements most pressing of the DRG problems the country is facing, with endemic corruption contributing to all areas of deficiency. Expectations of reform in these areas is high among the citizens, and tangible progress is essential for this government to maintain public support and its legitimacy. As a result, the assessment team's problem statement is as follows:

Ineffective governance and rule of law, both exacerbated by and contributing to deep-rooted systemic corruption, has eroded citizen trust and democratic values, consolidated oligarch power, and contributed to a breakdown in the social contract between the rulers and the ruled.

Newly heightened expectations for change in these areas, coupled with a newly empowered citizenry, create a highly vulnerable environment for social conflict if tangible results are not seen in these areas quickly, which is why the team sees these areas as the top priorities for assistance in the short term.

3.0 KEY ACTORS AND INSTITUTIONS

This section of the assessment explores how the key political actors operate within their institutional environment and how they are influenced by the structures and incentives of such institutions. It sheds light on those who are likely to be allies in the push for needed reform as well as those likely to oppose them. In addition, it looks at the enabling institutional environment for various types of political reform.

3.1 THE EXECUTIVE

Like some other European countries, Ukraine has both a president elected by popular vote, and a prime minister elected by the Rada. Ukraine has a hybrid presidential and parliamentary system in which both the president and the prime minister exercise executive authority, in fact overlapping authority but without clear delineation. In Ukraine, this structure by itself creates inherent institutional competition between the two, quite apart from any personal, ideological, or political party differences. Prime Minister Yatsenyuk ran for the presidency in the 2010 elections (indicating his clear ambition to assume that office) and he and Poroshenko have, perhaps in part for that reason, had several public disagreements.

However, on major policies—for example the general reform agenda, the response to Russia, the approach to Europe, and the like—President Poroshenko and Prime Minister Yatsenyuk have worked in tandem if not always in complete harmony. On specifics, particularly where their political or institutional interests diverge, there have been differences in policy, implementation, public pronouncements, and in personalities. Assuming Yatsenyuk remains prime minister, those differences are likely to grow over the next three to five years, as they are confronted by greater public skepticism and as elections approach.

From the perspective of democracy, the constitutional duality of authority provides definite benefits as well as costs. Like any separation of powers, each position (president and prime minister) is a check on the other. Together they prevent the kind of authoritarian regime of the communist period or of Yanukovich. The normal constitutional architecture to create a separation of powers divides authority between different branches or between central and local government. In Ukraine’s case, the separation is between dueling executives. This kind of duality is inherently unstable and will lead to greater tensions and frictions once the existential threats to Ukraine—the economy with its donor conditionality and the confrontation with Russia—have subsided and the basic reform agenda has been addressed. It cannot survive “normal” political life. However, in the current environment, none of the major political actors proposes to address this fundamental constitutional problem. Sooner or later, preferably when democracy is so deeply rooted that the insurance of duality is no longer needed, its inherent frictions and inefficiencies will need to be addressed.

3.2 THE LEGISLATURE

Since independence, Ukraine’s system of governance has been primarily driven by the executive, and it continues to be heavily weighted toward the executive even with the drastic improvements in the Rada since the 2014 elections. A 2012 evaluation contracted by USAID to assess its legislative strengthening

program in Ukraine³⁵ found at that time that there was little room for debate or deliberation within parliament. Proposed laws were rarely substantively debated; public hearings were almost never held; and input was only occasionally sought from civil society. The majority of members of parliament (MPs) had paid money for their spot on the list and sought to leverage their position in parliament for financial gain. They did not go to parliament to legislate or govern, but for self-interest. According to the evaluation, this set “a tone that makes it very difficult to develop the parliament into an effective national legislature.”

The situation in the Verkhovna Rada has drastically changed since the Revolution of Dignity. Today, the Ukrainian national legislature is a qualitatively new body comprising many new MPs. A substantial number of them (approximately 40 of the 423 total representatives) were formerly active participants of Ukraine’s vibrant civil society (journalists, CSO activists, etc.). The Rada is the center of legislative activity in the country, and draft laws are now vigorously debated in a mostly transparent, if at times chaotic and disorganized, manner. Currently, virtually all Rada committees conduct public hearings of legislative drafts, inviting representatives of civil society and other major stakeholders. The parliament is no longer a body controlled or subordinated to the executive branch; it is largely an independent institution and, while still not a totally equal partner in governance, its status and stature is vastly improved over the Yanukovych era.

Despite these improvements and the strengthened role of the national legislature in the system of governance, there are quite a few problems that affect the Rada, both internal and external in nature. The first is the impact of remnants of the “old” Rada and the electoral system, i.e., the pervasive close relationship between business and politics that has led to many wealthy Ukrainians seeking a parliamentary seat to lobby for their commercial interests and receive immunity from prosecution. This practice has led to low levels of public trust in parliament and a breeding ground for corruption. The mentality stemming from this system can still be found at play for many Rada members, especially those that have carried over from the pre-Poroshenko era. Both the parliament and civil society are well aware of what needs to be done to deal with this problem. First, they need to lift parliamentary immunity, and second, they need to ensure greater and more consistent transparency and predictability of public procurement and financial decisions. Ultimately, changes to the electoral system that increases member accountability to its constituency would also be important. Those parliamentarians who sought membership precisely to enjoy its immunity and privileges will and do forcefully resist these changes.

The second problem area remains the weakness and fluctuating dynamic of political parties or “factions” both inside and outside parliament that has led to defections, weak faction discipline, and unstable parliamentary coalitions. Some of those problems have declined in this Eighth Convocation of the Rada. For example, the number of “tushkas” among MPs, those who switched membership among parliamentary factions for monetary gain or other personal reasons, has dropped primarily because the Party of Regions (the major buyer of loyalty in the previous Rada) has disintegrated and its quasi-successor, the Opposition Bloc, is not in a position to buy MPs.

The Eighth Convocation of the Rada elected on October 26, 2014, is very active. During the first one hundred days after the newly elected MPs took their oath of office, more than 2,000 draft bills were introduced into the parliament (53 drafts were introduced by the president, 197 by the cabinet, and 1,700 by MPs). Out of this number, 379 have been enacted into law (36, 107, and 236, respectively).³⁶ However, some CSOs that regularly monitor the work of the Rada see the large number of draft laws introduced to the Rada as a lack of strategic planning and systematization as well as a lack of

³⁵ Mitchell, Lincoln; Karpyk, Tamila; Meleshevych, Andriy. (2012). *Legislative Strengthening/Good Governance Program Assessment in Ukraine*. Prepared under Task Order AID-121-TO-12-00003 under the Democracy and Governance Analytical Services Indefinite Quantity Contract AID-OAA-I-10-00004.

³⁶ “Old Diseases of New Rada,” March 13, 2015, BBC-Ukraine, available at http://www.bbc.com/ukrainian/politics/2015/03/150312_new_rada_first_hundret_vs

understanding of the legislative process and role of a legislature.³⁷ One key informant noted that there is a concept of “rule by laws, instead of rule of law.”

Regarding transparency, in the past 18 months, the activities of the Ukrainian national assembly and its bodies have become considerably more public and transparent. Virtually all committees of the Rada now conduct public hearings on a regular basis. Major stakeholders including executive agencies, local self-government, representatives of civil society, and experts are invited consistently to the committee meetings/hearings and are given an opportunity to express their views on the issues under discussion. A step toward greater transparency and publicity would be systematic publication of both minutes and audio-video recordings of these hearings on the official websites of the parliamentary committees.

3.3 THE JUDICIARY AND LEGAL PROFESSIONALS

Reform of the judiciary and legal profession is a central tenet of the government’s plan to establish a state based on rule of law, and significant efforts are already under way to strengthen the independence and integrity of the judiciary that in turn is supported by prosecutors and police of similar integrity and commitment.

Under the Soviet system, which continued in a modified form after independence, the law, courts, prosecutors, and police were the political instruments of the Communist Party and the state as a whole. After independence and the demise of the Communist Party, the law enforcement institutions and the judiciary remained the instruments of the state and its new masters—the oligarchs and their clans. The various governments and political leaders controlled for their respective benefits the prosecutor’s office, the Ministry of Interior, the judiciary, and the Security Service. Judges were minor figures who, in cases important to their real masters, did what they were told, as did the police and the prosecutors. To oversimplify, the judiciary served the state and the state served the oligarchs.

Meanwhile, the politicized courts were infused with corruption; part of the patronage networks. Low salaries and low status combined with the politicization of appointments conspired to put judicial positions up for sale. Those who financed the appointments expected a return on their investment, and they got it. Judges took their share. One representative of the legal community noted that many of his former colleagues, now judges, drove their Mercedes sedans to their country homes, all far beyond the ability of their meager salaries to finance. “We have had political influences, not always high quality of judges, and extremely high levels of corruption,” confirmed another legal professional interviewed by the team. “The heads of courts often acted as the bosses of their colleagues, not just the administrators of the [independent] courts, and instructed them on their holdings. Now the heads will be elected by their colleagues, not appointed by the government.”

Entirely apart from their performance, there are more judges and more prosecutors than Ukraine needs due in part to over-regulation by the state and to the complexity of the regulations (the steps needed to comply and the number of offices responsible for each step). Both create rent-seeking opportunities. As a result, positions are bought through bribes and other payoffs. The prices can be high, so applicants often need to borrow. In any case, whether self-financed or financed by a benefactor, these are treated like financial investments. A hefty return is expected and received whether in cash or in kind. Any attempt to reform these institutions will encounter the resistance of the investors.

3.3.1 THE COURTS

At the time the fieldwork for this assessment was conducted, Ukraine has approximately 8,000 judges in a series of courts: courts of general jurisdiction, administrative courts, commercial courts, and appellate courts, including the Constitutional Court. As already discussed, the judges and their courts have

³⁷ Ibid.

traditionally served the instructions and interests of their political “masters.” Under previous governments, particularly Yanukovich, they were given explicit instructions in certain cases and they followed instructions, irrespective of evidence or due process. They were tools of the presidency, not independent jurists, and they did not create a rule of law with respect for human rights. The most egregious recent examples were their treatment of Euromaidan protestors and the *Berkut* special forces that beat them. The courts tried and convicted the demonstrators while at least tacitly accepting the police behavior.

Notwithstanding pessimistic public perceptions, reforms are under way, however slowly. The team heard a spectrum of opinion about what should be done to lustrate (or as the Ukrainians put it, “cleanse”) the courts of judges politically or financially corrupted. At one end, they should all be fired and the entire judiciary should be reconstituted. “The easiest way,” said one judge, would be to fire everyone and start anew, but that would not be the best way. Who would replace them?” More balanced or realistic observers believe that judges were not irrevocably tainted or corrupted and, quite apart from practical reasons (for example who should replace them), should not be all dismissed. They were subject to perverse incentives, which some tried to circumvent, the observers argue. These judges would presumably respond with (greater) integrity to a different set of incentives based on their independence and the rule of law.

Still, whether radical or more moderate, reformers agree that some replacement, recruitment, and retraining is necessary to create a judiciary committed to the rule of law: “We have many good, detailed laws,” said another judge, “but the procedural mechanisms and instruments that would allow a response, for example, to abuses by the prosecutors, are not employed. We lack political will because some of the old Soviet-era officials and judges are still in office. Moreover, they try to sabotage reforms. They need to be retained and retrained, but none of that has been conducted in the 18 months since the Euromaidan. We need new judges as well and we need to return some of the judges dismissed under Yanukovich.”

Based on the Law on the Restoration of Trust in the Judiciary, the High Council of Judges will “submit proposals to the President of Ukraine as to dismissal of judges.”³⁸ The president will act upon those recommendations but not necessarily adopt all of them. The prosecutors can of course bring charges for violations of the criminal code. As part of this law and the more general Law on the Purification of Government, a Department of Lustration (or “cleansing” to use the preferred Ukrainian translation) has been established in the Ministry of Justice to vet the remaining, currently sitting judges for past abuses. Moreover, under the Law of Ukraine on the Judiciary and the Status of Judges, all sitting judges will be “reevaluated” based on a different standardized test and a vetting process of their performance which, *inter alia*, will include a review of their asset declarations compared with, for example, their current standard of living. By one knowledgeable observer’s estimate, up to half of them are likely to be dismissed. In short, if plans hold, over the next 2–5 years about 5,500 judges might be left consisting of “cleansed,” vetted, retested, and retrained judges and newly recruited and trained ones. The training of new judges and the retraining of sitting judges will be conducted by the National School of Judges with some monitoring by CSOs. A new batch of 1,000 judges has already been recruited through a competition including a rigorous and transparent (even photographed) national standardized test, followed by background checks, specialized training that will include a component of judicial ethics, and passing a qualifying examination.

3.3.2 THE PROSECUTORS

In Ukraine, unlike in some countries, judges can only rule on criminal cases brought before them by prosecutors. Judges cannot reach out to decide cases or bring charges on their own initiative or authority. Therefore, the rule of law in Ukraine depends on the quality and performance of the prosecutors, not just the judges.

³⁸ Article 3. 1). *Ibid.*

Like the judiciary, the prosecutors and the PGO are being reformed in a very similar way. The lead has been assumed by a new, special department in the PGO, supervised by a new deputy prosecutor general from Georgia, where he headed a reform effort similar to the one now proposed for Ukraine. The reform department will have 7–8 members, including a public relations manager. In addition, a small inspector general unit is being created to deal with internal corruption and other malfeasance.

“Corruption is endemic,” said one key informant interviewed by the team. “It is the incentives that need to change, not just the personnel but they need to change as well.” A new law was passed and was to be implemented in April 2015, “but there is no new blood yet,” he said. “Still, the old prosecutors remain and don’t want to change. They think the more prosecutors the better.” With 18,500 current prosecutors and 638 local prosecutors’ offices, there is a real need to reduce and restructure the prosecutors. By the end of the reforms currently planned for 2017, the number of prosecutors should be reduced to 10,000 and the number of local offices reduced to 178. As in the case of the judiciary, a four-stage vetting and screening process is to be effected, including an online test, general skills interviews, and checks of past performance and of assets held beneficially, not just legally.

3.3.3 THE POLICE

The militia, and since July 2015 the police, are the immediate enforcers of law and make up the third leg of the stool of the criminal justice system. Critically, the police bring the cases and the evidence to the prosecutors. Without police investigations and arrests, the prosecutors would have far fewer cases to try, only those they could bring based on their own limited investigative resources.

Like the courts and the prosecutors, the police have been riddled with corruption. Indeed, for ordinary citizens, the police are among the most visible of the state’s legal apparatus, and under-the-table payments to police to avoid threats of arrest or ticketing are among the public’s most common experiences with state corruption.

As with the prosecutors, the most substantial reforms of the vast (and centralized) national police force are being planned and implemented by a Georgian, First Deputy Minister of Internal Affairs Ekaterine “Eka” Zguladze. Like other government officials, the police have been imperious when dealing with the public, according to those interviewed, but the reforms under way are designed to change the way the police see themselves: as public servants and protectors of the public first and state officials second. Public trust in the police is very low, especially after the Euromaidan, but the reforms will professionalize the police, by separating the police from political powers and considerations, enhancing its transparency and accountability as well as its connection to, if not oversight by, the public, for example through CSOs.

As with the courts and prosecutors, the police reforms also emphasize recruitment and training of new personnel using a different set of techniques, more open and more transparent, with more public participation. Like the reforms planned for the prosecutors, the police reforms contemplate flattened hierarchies, more horizontal and informal networking, public and transparent tendering, and the construction of special forces with internal investigative units, control procedures, and fewer, more transparent market procedures to reduce the opportunity for corruption. Most important, the reformers argue, the police will be trained to serve the public, change their attitude when dealing with public—and smile. The changes are now being piloted in Kyiv, and due to its great successes, roll out in a number of other large cities will follow quickly.

3.4 NATIONAL HUMAN RIGHTS INSTITUTIONS

The institutional framework for human rights is formally developed and includes parliamentary committees that are theoretically obliged to act in accordance with Ukraine’s international obligations for human rights protection. There is a parliamentary committee responsible for human rights, national minorities, and interethnic relations. Representatives of the LGBTI community promote their interests

through this parliamentary committee, and a representative of one LGBTI NGO serves as a voluntary assistant to the committee chair. The Cabinet of Ministers has special responsibilities for anti-violence and anti-trafficking within the purview of the Ministry of Interior. The Ministry of Social Policy is the central executive and coordinator for policies relating to gender equality, social support, and assistance and protection of vulnerable citizens (elderly, disabled, women, children, IDPs, etc.). In the civil society space, there is a strong network of professional NGOs working both in Kyiv and the regions in the field of human rights. The role of these NGOs in advocating for human rights is significant in Ukraine. They have been at the forefront of efforts to raise awareness of and address the needs of IDPs, including children, as well as the veterans of the ATO.

3.5 POLITICAL PARTIES

Ukraine has more than 200 registered political parties, many of which are regional, active only in local races, or inactive. In the proportional half of mixed elections, or when full proportional systems have been used, 4–6 political forces have successfully crossed the 3–5 percent threshold to enter parliament. The majority of Ukrainian parties remain leader-driven with little semblance of internal democracy; opaque funding from oligarchs and big business; and presenting ambivalent programs. Ukrainian parties are not accountable to their members or voters except during elections, when voters can and do vote them out of office. But the fact that the country’s political scene continues to be dominated by short-term oligarch-funded “political projects,” rather than parties, contributes to the low levels of public trust in political parties, which polls consistently show to be less than 5 percent.

Ukrainian political parties have ten structural problems. These include: (1) weak ideology and policies; (2) corruption; (3) fragmentation; (4) lack of accountability of politicians and distance from voters who are estranged from the political system; (5) absence of internal democracy; (6) a gap between leaders and youth members; (7) financial unsustainability; (8) lack of social bases; (9) weak programs; and (10) excessive dependence on popularity of leaders. These factors have produced consistently low levels of public trust in political parties, with few people joining political parties because a large proportion of Ukrainians view them as self-serving institutions. Weak confidence in political parties and their leaders and widespread recognition that some of the elected are primarily instruments of their funders (who seek political power but also the immunity from prosecution that comes with their membership in the Rada) was vividly witnessed during the Euromaidan when protesters and civil society activists voted against the compromise reached by the opposition party leaders during round-table negotiations with President Yanukovich. The Euromaidan was organized horizontally rather than vertically with a hierarchy.

Ukrainian political parties have relied upon funding from oligarchs and big business, which deepens close ties between business and politics and contributes to unequal access to resources and an uneven playing field during elections. Elections in Ukraine are expensive, and presidential and parliamentary candidates spend approximately three times more than they officially declare, while for political parties the levels are even higher. Ukraine’s 2014 presidential elections were twice as expensive as those held a year later in Poland, a country whose GDP is three times larger.³⁹ Sources of funding for political parties have been traditionally opaque, with an absence of legal accountability for false reporting.

3.6 SECURITY SERVICES

The Security Service of Ukraine and the Foreign Intelligence Service are far larger in personnel than European and North American analogous intelligence services. The Security Service has overlapping duties in the realm of corruption and organized crime with the Ministry of Interior and NABU. The

³⁹ See the comparison by the Committee of Voters of Ukraine of spending in the Ukrainian and Polish presidential elections in 2014 and 2015, respectively, at <https://www.facebook.com/photo.php?fbid=908994855808938>

Security Service has been accused of surveillance of opposition politicians and organizing election fraud on behalf of the president in 2004 and 2012. The Security Service continues to remain a closed institution despite different bouts of reform since 1991. This is unlikely to change while Ukraine is engaged in active conflict; intelligence services are a crucial component of the country's national security. The Security Service will be more of a neutral force than under Yanukovich, when it increasingly resembled the former Soviet KGB and was heavily penetrated by Russian intelligence. However, it is unlikely to become an ally of reform in the light of the political allies who were appointed as chairpersons by President Poroshenko.

3.7 MEDIA

Ukraine has largely maintained a pluralistic media environment except during the Yanukovich presidency, although oligarchs control the major television channels. Oligarchs own Ukraine's major television channels, and the two with the greatest number of viewers are Inter (Lyovochkin) and 1+1 (Kolomoyskyi). Oligarchs use their channels to attack their business opponents and provide airtime for populist criticism of government reforms and policies. Media ownership is viewed generally not as a moneymaking businesses but as an agent of influence and control. The hand of the oligarchs can be clearly seen in the editorial policies of the various media outlets, which tend to mirror the political perspective and interests of their owners.

With the exception of Channel One, the major television stations, which are especially important during election campaigns, are controlled by oligarchs who seek to ingratiate themselves with those in power by encouraging self-censorship. Television channels become especially important in negotiating opaque deals with presidential incumbents during elections. While the official campaign of "deoligarchization" is unlikely to lead to removal of oligarch control over television channels, proposed legislation would reduce the influence of oligarchs during elections by reducing the ability for parties and presidential candidates to buy extensive air time.

President Poroshenko and Prime Minister Yatsenyuk routinely complain of the difficulty of getting airtime to promote and explain their policies on television. Competition to oligarch channels remains limited in scope. The new public broadcaster that will be built on State Channel One will take time to emerge and become a professional channel. Zurab Alasaniya, founder of Hromadske TV, was appointed Head of State Channel One. State Channel One is unpopular, and during the transition, regional television channels that come under its control will be cut back, leading to unemployment. Channel 5, owned by Poroshenko, has remained an independent channel since it was founded in September 2003. Internet television channels are popular among civil society activists, intellectuals, and the middle class but reach an audience limited to those with access to the Internet—those primarily living in large towns and cities. Internet-based newspapers are popular with the same groups of people. In Ukraine, similar to European and North American democracies, the majority of citizens receive their news from television.

Ukrainian media in print and television have become highly professional in investigating abuse of office and corruption. Ukrainian readers and viewers receive regular and detailed information and news about political and economic scandals, and these often pressure the authorities to react against high-level corruption. Investigative journalists can be more professional and timely in their investigations than the prosecutor general's office and Security Service. Until recently, there continued to be little integration between the uncovering of corruption, scandals, and abuse of office in the media and follow-up criminal investigations by law enforcement. However, aside from a few independent investigative journalists, known nationally for their endeavors, most journalists the assessment team met with were frustrated with the lack of opportunity for investigative journalism due to editorial policies influenced by oligarchs and other outside influence (threats of retribution, firings, etc).

While formal censorship does not exist in Ukraine, there is the problem of self-censorship. In addition, there is the practice of “jeanzy,” the term used for pre-paid articles in the media praising a candidate or political party and used for attacking electoral competitors. Journalists working in oligarch-controlled television are pressured and instructed to write critical articles about government and presidential policies, as our team was often told during the fieldwork in Kyiv and the regions.⁴⁰ Attacks on journalists have declined since the Euromaidan, but operating in the ATO can be dangerous for journalists.

The war with Russia and the ATO have brought new difficulties to Ukraine’s journalists, who heretofore had not been trained for reporting from conflict-zone environments and have had to learn in the field—with mixed and often tragic results. Preparations for personal security, such as flak jackets and helmets, took time to purchase and distribute. A total of seven journalists and one interpreter have been killed in the ATO. Journalists are still grappling with the question of how to utilize official information sources, and many continue to report at face value daily military briefings but (for fear of disclosing “confidential” information which is a criminal offense) not their own reporting. Meanwhile, journalists remain skeptical of official casualty figures, believing these to underreport the true extent of military and civilian losses on all sides. The newly formed Ministry of Information Policy, established to counter Russian propaganda, was criticized by independent journalists and civil society, as well as warily watched by the international community, which is concerned about infringement on democratic norms.

3.8 CIVIL SOCIETY

It is Ukraine’s civil society that is its real bright spot. Ukraine’s regional pluralism and the strong pro-European orientation of its civil society mitigated against the possibility of consolidation of an authoritarian political system; attempts by Yanukovich to use massive election fraud and build a Russian-style “managed democracy” provoked the Orange Revolution and Euromaidan, respectively. The strength of civil society sits in stark contrast to the weakness of political parties in Ukraine. Indeed, many new political leaders post-Yanukovich have emerged from NGOs or other parts of civil society. Public recognition of civil society’s role in fomenting change and democratization has been proven by support for candidates at the ballot box. Yatsenyuk did not participate in the Orange Revolution but went on to establish an NGO, lead a political party, and became one of the opposition leaders who supported the Euromaidan. Democratic Alliance has worked diligently in eastern and southern Ukraine for the last decade in civil society and local government. Democratic Alliance fought the 2014 elections with Civic Position, led by former Defense Minister Anatoliy Grytsenko. Euromaidan civil society activists and independent journalists were elected to parliament in the Poroshenko bloc, Popular Front, Batkivshchina, and Samopomych.

Trade unions are the largest CSOs in Ukraine. However, workers’ concerns have not played an important role in the programs of political parties or the policy agendas of the various governments to date. The Federation of Trade Unions of Ukraine (FTUU)—the largest trade union organization, like other institutions inherited from the former USSR—retains much of its deeply embedded Soviet-era operating culture. This includes a close relationship with management, operating in the interests of management more than workers, close cooperation (until 2014) with the Party of Regions, and consequently weak action on behalf of workers and continued low levels of union efficacy (in the more industrialized east and south of Ukraine). Independent trade unions have grown in popularity but remain far smaller in size. Increased labor disputes in 2014–2015 led to a return of Security Service surveillance and pressures. “Demonopolization” if applied to FTUU and if successful, would open up space for real and independent trade unions that would more faithfully represent workers’ interests while reducing the power of oligarchs over their employees, especially in factory towns.

⁴⁰ Telekrytyka, a well-established and respected media publication, monitors television channels and then political bias of some of their programs. <http://www.telekritika.ua/type/6>

Many Euromaidan civil society activists and independent journalists were elected into parliament in 2014. As noted elsewhere, many of their colleagues remain active at the local and national levels, for example as participants in reform commissions, watchdogs, and advocates. However, in the future, their inability to forge strategies for successful engagement and the slow pace of reform may well reduce their activism and engagement in national-level reform.

Civil society in Ukraine will continue to play a strategic role in maintaining Ukraine on the path of reforms and European integration, and in naming and shaming law enforcement and political and business elites over their involvement in corruption. In June 2015, a civil society activist in Mykolayiv videotaped over a long period of time routine corrupt payments made by drivers to the traffic police. His video blogs led to the Minister of Interior travelling to Mykolayiv, firing the entire oblast traffic police, and instituting criminal investigations.⁴¹ The struggle against abuse of office and high-level corruption has traditionally been pursued with weak political will at the presidential and parliamentary levels.

The story of civil society outside the capital is still positive, but pales in comparison with the capacity and voice of that in Kyiv. CSOs and activities in the regions are doing strong work on very local issues, but with very minimal support from donors, from larger Kyiv-based NGOs, or even from each other outside of immediate localities. Where there was support for local organizations, the team was told that it was almost always filtered through capital-based organizations that provided little value added (but greater expense). The need to build capacity for greater agency at a local level with direct support, in addition to increasing horizontal linkages among organizations and activists outside of Kyiv, was apparent. Vertical linkages are also needed, but they need to be two-directional, with regional organizations having the capacity and strategy to feed up into national processes as well as harness information and programs flowing downward into local activities. It was clear that the Kyiv-based organizations do not represent the whole picture, and assistance programs should very strategically address this difference and engage with regional and local organizations directly.

A new social norm of accountability has taken root, or at a minimum the appearance of accountability, and has translated into civil society having more power than ever before in influencing the government to respond to civil society demands. While this is generally positive, we heard from GoU officials that civil society leaders—especially those in the inner circle of organizations relied upon by the government for consultation and advice—have almost developed a sense of entitlement and “veto” power over government functions and policies. This “hyper-participation” results in very consultative processes that are somewhat shielded by the traditional political horse-trading and self-interest, but it also means that the policymaking process is sometimes hijacked by organizations with particularly strong views who are unable to compromise on policies or legislation that requires finding a middle ground.

Volunteerism and civil society activity expanded into eastern and southern Ukraine during the Euromaidan and in response to Russian aggression, in the process integrating Russophones and Ukrainophones into a new civic Ukrainian nation. A large proportion of the volunteers in eastern and southern Ukraine do not receive international donor support and are often staffed by women, some of whom participated in the “Women’s Sotnya (One Hundred, or Company) of the Euromaidan.” Volunteer movements bridged the gulf that traditionally existed between “elite” groups such as think tanks and the civic grassroots, including at the local level. Freedom House reported, “The large-scale grassroots activism associated with the movement was without precedent in the country and the broader region.”⁴² A Volunteer Solidarity Forum was held in Kharkiv in September 2014 with 300 participants from 20 cities. The Reanimation Package of Reforms emerged from the Euromaidan, uniting 300 experts and 50 civic organizations and movements with the aim of lobbying for strategic reforms. Another civil society initiative, New Country, brings together 300 Ukrainian experts. Other outgrowths from the Euromaidan

⁴¹ <https://www.youtube.com/watch?v=mLu4CMX5fTY> and <https://www.youtube.com/watch?v=gICAQQOJkX4>

⁴² *Nations in Transit 2015*, Freedom House, pp.670–671. <https://freedomhouse.org/report/nations-transit/nations-transit-2015#.VYwgohNViko>

include “Maidan-SOS,” “Krym-SOS,” and civic movement *Chesno (Honesty)*. *Opora*, which emerged from the wing of *Pora (Its Time)* with black symbols in the Orange Revolution, continues to remain active.

3.9 LOCAL GOVERNMENT

A centerpiece of the governance reform package contemplated by President Poroshenko and Prime Minister Yatsenyuk is the planned decentralization and restructuring of government at the sub-national levels; i.e., the oblasts, their constituent rayons, and in turn their component hromadas. According to current plans, the oblasts will not be much reformed, but the rayons and hromadas will. President Poroshenko and Prime Minister Yatsenyuk have made decentralization a flagship reform, and the Constitutional Commission has approved the package of constitutional amendments proposed to the Court. As a result, the Verkhovna Rada of Ukraine (VRU) can vote for it in the next parliamentary plenary session, putting this historic step away from Soviet state structural legacies within reach. The two central tenets of the reforms are (1) increased independence and accountability at the sub-national level and (2) territorial consolidation at the hromada and rayon levels. While initially voluntary (with significant financial resources to those communities that consolidate voluntarily in the first wave), the ultimate plan is reduction of self-governing rayons from approximately 500 to 120–150, and 15,000 village administrations to 1,500–1,800 hromadas. According to the constitutional amendments submitted by President Poroshenko to the Verkhovna Rada, the boundaries of oblasts, rayons, and hromadas would be “set forth by law ... while taking into consideration their historical, economic, ecological, geographic, and demographic characteristics as well as ethnic and cultural traditions.”⁴³ Local self-governance would be in the hands of hromada, rayon, and oblast councils elected by secret ballot every four years.⁴⁴ The primary local executive heads would be elected by the residents or, in the case of rayons and oblasts, by the respective councils, but be “subordinated and accountable” to the councils.⁴⁵ Currently, proposals call for the post of regional governor to be replaced by a “President’s Representative” or “prefect,” whose power is limited to monitoring and oversight of the legality of local government decisions. The prefects would be selected by the president and confirmed by the Cabinet of Ministers.

The decentralization scheme is designed to accomplish five main goals. First, to transfer a greater degree of power and authority from the central government to local government units; second, to increase the efficiency, effectiveness, and transparency of these local government units; third, to increase the transparency and accountability of government to citizens; fourth, to increase citizen participation and oversight; and fifth, to reduce the power and influence of local patron/client and oligarch control over local governance structures.

Many of the hromadas are too small, geographically and demographically, to sustain services efficiently and effectively, and it would be very costly to increase the level of service in these areas. More importantly, in the pre-reform system, tax revenues, to the extent collected, are sent to Kyiv and then remitted back to the local government units to administer. Kyiv makes decisions about their use in a non-transparent process often based on relationships—and of course the process entails bureaucratic costs. Retaining a greater percentage at the local level from the start, and allowing local communities to decide for themselves on the allocation of the funds, opens the door to increased citizen oversight over how resources are spent and provides an incentive for them to monitor the quality of services provided. In

⁴³ Proposed article 132 and 133 of the proposed amendments to the constitution relating to decentralization. Council of Europe, Venice Commission Preliminary Opinion CDL-PI(2015)008 relating to the “Draft Law on Amending the Constitution of Ukraine as to Decentralization of Power” introduced by the President of Ukraine to the Verkhovna Rada on 1 July 2015; [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2015\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2015)022-e)

⁴⁴ Proposed article 140. Ibid

⁴⁵ Proposed articles 140–141. Ibid

theory this would also make the process more transparent and responsive to the needs of citizens, while also rendering local government more accountable and effective, resulting in improved local democracy.

The consolidation or amalgamation of local units (hromadas and rayons) would, in theory, increase the quality and range of service provided by local government through economies of scale. This would allow services to be extended to areas that may not have the population to warrant such services otherwise, and allow for the services to be more consistently and cost-effectively provided over a wider geographic area.

While some of the decentralization reforms (e.g., the change in status of oblast governors to prefect) would require constitutional amendments, many of the reforms (for example, fiscal decentralization and local retention of revenues) have been handled through the regular legislative process. Many local governments reported additional revenues of 30% or more already in 2015.

Several obstacles will need to be overcome, however, in order for these reforms to succeed. First of all, the capacity of local officials to assume these new competencies is questionable. Secondly, the willingness and ability of the newly consolidated communities to work together effectively is unknown—especially in parts of the country where local communities are very diverse and relatively disengaged from mainstream Ukrainian politics (e.g., southern Odessa and other border areas). The amalgamation or “consolidation” of units will merge populations that have not previously cooperated and that may have antagonisms to, or at least frictions, between them arising out of ethnic, linguistic, religious, or historical differences. Thirdly, consolidation triggers a response by locally affected citizens and officials that they are “losing” something, which requires extensive outreach, presents a vulnerable point for spoilers to exacerbate for political gain, and requires extraordinarily high performance by the new system to overcome. Fourthly, consolidation will inevitably mean loss of power and/or employment for some, and however small their official remuneration, this will be threatening to many, especially in locations with limited employment opportunities or where the position provides opportunities for rent-seeking behaviors. Finally, the constitutional-level reforms and other legislative projects undertaken around decentralization are only the tip of the iceberg. Even if the decentralization amendments pass, it is estimated that more than 500 pieces of legislation, regulations, etc. will need to be passed to fully empower local government authorities to carry out their responsibilities.

Among the above challenges, the human capacity deficit at the local level will be the greatest challenge to overcome. “Most officials don’t know or understand their new authorities and the laws that govern them, and we have a desperate need for retraining, especially how to include working with civil society members directly and as overseers,” said an advisor on public administration to the Rada. Plans for the use of TV programs, webinars and online resources, governance institutes, and mobile staff officials have been proposed to help educate the public and local officials on the changes. There is a significant role for donors to support the recruitment, training, and retraining of local officials in all their core capabilities. Failure of this flagship decentralization process—as measured by a reduction in the quality or quantity of government services to citizens, continued lack of accountability and transparency by local officials, and/or an increase in corruption at the local levels—would severely undermine the credibility of this government for both supporters and detractors alike.

3.10 OTHER NON-STATE ACTORS

The poor state of Ukraine’s armed forces, a product of budgetary neglect and corruption since 1991 and malfeasance during Yanukovich’s presidency, left Ukraine largely defenseless in spring 2014. The need to quickly rebuild an army was critically assisted by the rapid emergence of 40–50 volunteer battalions. Initially these raised their own resources and fought in the ATO as independent units. A minority of the battalions has links to nationalist political forces. The majority of the battalions are made up of patriots who wished to defend their country from what they perceived to be Russian aggression, and many of the battalions include large numbers of Russophones from eastern and southern Ukraine.

Volunteer battalions used flexible military tactics similar to those used by NATO armed forces. This, coupled with high levels of patriotism and support from volunteer civil society groups, gave them flexibility, determination, and perhaps lower casualty figures. Ukraine's military, in contrast, were still ensnared in outdated Soviet military strategies run inflexibly by senior officers in Kyiv. While indebted to the volunteer battalions, President Poroshenko is also wary of them; after all, their equipment and weapons were purchased by private means and belonged to the volunteers and not the state. Frozen conflicts in Eurasia have led to the proliferation of weapons. Crime has grown in the Rostov region bordering the Donbas, which is Russia's staging post for proxy forces and nationalist volunteers, and also in the separatist-controlled Donbas.

Volunteer battalions are anti-Russian, highly patriotic and in some cases nationalistic supporters of the Euromaidan. They are composed of volunteers with disparate political views from different regions of Ukraine. Some of the volunteers will be undoubtedly strong supporters of reforms and European integration. Others will be more focused on exacting justice for the murder of unarmed Euromaidan protesters and in fighting oligarchs and high-level corruption. The latter, who are more populist nationalist and more sanguine on European integration, may become a source of political instability if they continue to feel there is no change and it is business as usual. Their potential threat to political stability was seen in March 2015 when oligarch Kolomoyskyi brought armed paramilitaries into downtown Kyiv during his confrontation with President Poroshenko over Ukrnafta (state oil company). Serhiy Leshchenko, a Poroshenko bloc deputy and well-known *Ukrayinska Pravda* investigative journalist, wrote, "It looked like the first act of an armed overthrow (of the authorities)." On July 3, 2015, different volunteer battalions held marches in downtown Kyiv to show their power and influence and to voice their displeasure at what they viewed to be the slow pace of change.⁴⁶

Since spring 2015, all of the volunteer battalions have been incorporated into the Ministry of Defence or the Ministry of Interior's National Guard. *Pravyi Sektor* (Right Sector) and Azov nationalist battalions are under the jurisdiction of the military and National Guard, respectively. The discrediting of special force militia units during the Euromaidan led to the disbanding of the *Berkut* riot police accused of murdering protesters, many of whose officers fled to join Crimean law enforcement and separatist forces. Ministry of Interior Internal Troops, traditionally composed of conscripts, were transformed into the National Guard, similar to paramilitary Italy's Carabinieri and Spain's Civil Guard.

Separatist forces in the DNR and LNR number upwards of 40,000 and are financed, equipped and trained by Russia. These operate alongside Russian nationalist volunteers and Russian special-forces (GRU) throughout the separatist-controlled regions and as 1–3 man terrorist cells⁴⁷ outside the Donbas in eastern and southern Ukraine. The cities of Kharkiv and Odesa, the scene of bitter street-fighting between pro-Ukrainian and pro-Russian forces in spring 2014 until the victory of the former, have been subjected to repeated terrorist attacks. Larger battalions of Russian forces are brought into the Donbas to capture specific military objectives, such as Ilovaysk (August 2014), Donetsk airport (January 2015), and Debaltseve (February 2015). Commander of U.S. Army Europe, Lt. Gen. Ben Hodges, said in March 2015 that there were 12,000 Russian troops supporting the separatists in eastern Ukraine.⁴⁸ Estimated Russian casualties range from in the hundreds to the thousands and are a sensitive question, and on May 28, 2015, a Russian presidential decree outlawed disclosure of military deaths in peacetime. The murder

⁴⁶ Dmitry Beliakov, Shirokino, and Mark Franchetti, "Revolt Stirs Among Ukraine's Defender's," *The Sunday Times*, 5 July 2015. http://www.thesundaytimes.co.uk/sto/news/world_news/Europe/article1576987.ece?shareToken=3e3dd41268cefb23d7d79a7145925335

⁴⁷ See T. Kuzio, "Why Russia Should be Added to the State Sponsors of Terrorism List," *Foreign Affairs*, 25 January 2015. <https://www.foreignaffairs.com/articles/russian-federation/2015-01-25/ukraine-reignites>

⁴⁸ <http://cdn3.videos.bloomberg.com/bview/documents/russian-aggression-against-ukraine.pdf>

of opposition leader Borys Nemtsov in February 2015 came on the eve of the release of his report into Russia's undeclared and illegal war in eastern Ukraine.⁴⁹

The 40,000 separatist forces are larger than 15 out of 28 NATO members⁵⁰ and the same size as Portugal's army. Added to their large size is a modern arsenal of military equipment. The large and well-equipped separatist forces make it very difficult for Kyiv to negotiate a compromise over the status of the Donbas, as no central government would agree to an autonomous region possessing its own large army. Russia continues to push for a federal solution to Ukraine's separatist conflict that gives veto powers to the Donbas over Ukrainian domestic and foreign policies. Ukraine would never agree to Russian-backed federal proposals viewed by Kyiv as the loss of sovereignty and an end to European integration. Accepting Russian demands would probably also provoke a nationalist-populist backlash. Foreign and security policies are controlled by the federal (central) authorities not by states, provinces or lands in democratic countries with federal political systems. The unresolved conflict in the separatist-controlled Donbas will lead to the growth of soft security threats to the Ukrainian state from human, narcotics, and arms trafficking. The large size of the separatist forces and their Russian backers will prevent the exercise of Ukrainian sovereignty over their enclaves and the border.

3.11 DISTILLING THE ACTORS AND INSTITUTIONS

As already discussed, the new government is the result of a spontaneous but growing set of demonstrations by ordinary Ukrainians, some established CSOs, some new ones, and mostly ordinary citizens. They seem fairly united now in their commitment at least to the basic institutional reforms, in part because the dire economic and financial crisis militates against the usual strategy of postponing structural reforms. In particular they support the reforms of the police, prosecutors and courts, already discussed. Similarly they support the reduction in central government bureaucracy and the outlines of how those reductions should be accomplished. They all publicly support the need for lustration. They are all rhetorically committed to addressing and dramatically reducing corruption, and they see the legal and governmental reforms as vehicles to do so, albeit hardly the only vehicles. As noted, the test of governmental support will come when the leadership's own allies are threatened with dismissal or with prosecution in courts of integrity and independence committed to the rule of law. The reformers in government continue to enjoy support of Euromaidan activists, both in Kyiv and in other cities, some of whom have joined the government while others have remained outside in CSOs born (or reborn) out of their Euromaidan participation and experiences. The "Euromaidan CSOs" have become a strong voice for reform and they remain supportive of the government, which has incorporated them into its formal and informal (advisory) functions. But, like many ordinary Ukrainians, they are becoming more impatient and vocal in their criticism of the pace and reach of reform. The government needs to continue to engage with these new (and newly vibrant) CSOs as long-term allies in the struggle for democracy and reform. These CSOs want to make a difference, and they want to be involved in and contribute directly to the political change that is underway.

There remain many forces, however, who will resist the reforms and changes to the political system. The oligarchs constitute the single most powerful element in Ukrainian society opposed to many, although not all, of the major reforms. They are powerful and they have good reason to oppose some of the major reforms. After all, two of the President's "4-d's" are de-monopolization and "deoligarchization" both in direct confrontation to the oligarchs and their interests. However compelling the case for these fundamental reforms may be, it is hardly surprising that the oligarchs would instigate or at least reinforce opposition to Poroshenko's programs among those who will be targeted by them. If Poroshenko and Prime Minister Arsen Yatsenyuk follow through on their promises, the assets of the oligarchs would be

⁴⁹ <http://www.putin-itogi.ru/putin-voina/>

⁵⁰ Albania, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Slovakia, Slovenia, and Norway have smaller armies than the DNR-LNR.

subject to investigation for illegal activities in their acquisition and anti-competitive actions to protect and enhance those assets. For example, the officers of an association of small and medium enterprises in Dnipropetrovsk complained that as soon as their members' enterprises gained even relatively modest market share, they were pressured or forced to sell them to an oligarch. De-monopolization would diminish both that capability and power. Even deregulation will have a similar although more indirect effect by challenging the legal regimen that keeps any competitors from gaining much traction. These are not men who fail to read the winds of change, especially when President Poroshenko has been so explicit and public about "deoligarchization." In addition to legal defenses, they can be expected to create, build, and fund opposition political organizations for every election. Their control of the primary media outlets hinders the government's communication with the public. Allied with the oligarchs are their employees and clients, especially those who work in obsolete and uncompetitive enterprises. Many of them are nominally represented by labor unions, but those in the FTUU—which is descended from the Soviet period and more aligned with the interests of enterprise managers, oligarchs, and the state—will now oppose the kind of rationalization of business and government enterprises that will occasion layoffs. There are others who resist particular reforms, of course, and not just out of personal interest. There are policy reasons to object to some of them, quite aside from personal interest. Nevertheless, varied entrenched interests have reason to object to the major reforms, and the practical and political window to implement them is narrowing. For this reason, the assessment team recommends a heavy focus on institutions as part of responding to the DRG problem identified in Section 2. While support for civil society will continue to be important, especially with a focus outside of Kyiv, it is crucial to maximize this window of opportunity to institutionalize reforms and finally "lock in" crucial reforms to the underlying governmental structures that contribute to the uneven playing field for power.

While the opportunity is better than ever, it will not be easy. The Ukrainian bureaucracy is another serious source of resistance if not opposition. The government's reform programs incur significant costs for state officials. The reduction in the scope and cost of the state is being proposed for three reasons, primarily (1) to reduce over-regulation and free blockages to economic growth; (2) to reduce the bloated bureaucracy and reduce state expenditure; and (3) to reduce corruption. All will result in reduced employment, loss of authority, and opportunities for corruption.

Finally, the donors should play an outsized role, at least in the early stages of the reforms which, of course they should support. Ukraine's economic recovery, which is absolutely crucial, depends on continued support by international financial institutions (especially the IMF and the World Bank) and most definitely the EU and its member states, which have a strategic stake in the success of Ukraine. Stalwart support from the donors, not just financial but also in technical areas, will be critical for the success of the reforms even as everyone agrees these reforms can only be undertaken by the Ukrainians themselves.

4.0 CONCLUSIONS AND PROGRAMMATIC RECOMMENDATIONS

4.1 ANALYTICAL OVERVIEW, DRG OBJECTIVE, AND DEVELOPMENT HYPOTHESIS

The momentous, potentially paradigm-shifting, even revolutionary results of the Euromaidan have exposed the need for fundamental economic and political reforms across a wide range of institutions and procedures, both within the state and outside. They have also resulted in an extremely unusual combination of reformers in positions of authority, publicly exposing Ukraine's fundamental systemic dysfunctions and publicly committing to implementing wide-ranging reforms to address them. Even the "Orange governments" of 2005–2010, governments of ostensible reformers, articulated no such broad recognition, nor did they even propose to undertake commensurate reforms. If successful, virtually no dimension of public life and governmental operations would be left untouched. Moreover, all of the reforms could use donor support. Some prioritization is required for a donor strategy and plan given the limitations of resources. That prioritization should be premised on a combination of substantive importance and sequencing, and potentially also with a geographic prioritization, as discussed below.

Leaving aside the critical economic reforms that are not the subject of this report, the most and immediately important DRG priorities lie in the strengthening of democratic institutions, while less immediate but longer-term assistance should be provided in the "non-state sector." If only because they take time, the latter should begin or continue, albeit at lower levels, even as the former takes central stage. For example, the national elections, presumably in 2019, will require attention over the next four years, not just in the year before they are scheduled. Nevertheless, proximate, even urgent, attention should be focused on the subsectors of rule of law and human rights as well as on government responsiveness and effectiveness, where immediate and absolutely critical reforms are pending. The chance to support those reforms is now. If that chance is lost and if those reforms founder, the momentum of reform in the courts, prosecutors, police, and executive branch as well as decentralization is likely to be lost. These are the reforms for which the public is waiting, for which public support is critical, and on which many other reforms, including the economic ones, depend.

In short, the reformers, whether officials of the state or in civil society, stand on one side. The anti-reform elements, especially but not exclusively the oligarchs (their clients and networks) and the entrenched bureaucracy (including the courts), stand on the other. The reformers have a limited and perhaps temporary upper hand ... unless they can continue to mobilize the public's support through a combination of ideological and performance legitimacy. However, as already noted, the public's patience is waning and with it, the public's support. Hence the urgency in supporting and institutionalizing reforms, particularly within state institutions and especially regarding the rule of law and human rights and regarding government responsiveness and effectiveness, with anti-corruption efforts understood to be a component of achieving both those and other goals.

4.2 U.S. GOVERNMENT ENGAGEMENT AND CURRENT USAID DRG PROGRAMMING IN UKRAINE

4.2.1 U.S. FOREIGN POLICY IN THE UKRAINE

For more than 20 years, the U.S. Government, primarily through USAID, has provided critical development assistance in support of the Ukrainian people, and USAID has been working to support Ukraine in this transition since the collapse of the Soviet Union in 1991. The U.S. Government maintains a strategic interest in assisting Ukraine's transition toward greater democracy and a sustainable free market economy.

4.2.2 USAID'S DRG CURRENT PROGRAM

The Mission's DRG work falls under **Development Objective 1: More Participatory, Transparent and Accountable Governance Processes**. The goal of this objective is a more stable, democratic, and prosperous Ukraine. This goal is founded upon the principle that greater participation and oversight by the public in all areas of society will lead to a more democratic and economically viable Ukraine. Benchmarks of progress toward this goal include the development of democratic processes compliant with European norms and conventions; an increased commitment to combat corruption; and increased public awareness and participation in democratic and economic governance.

USAID is working to help Ukraine continue on a path of democratic development. Working with the Ukrainian parliament, USAID supports improvements to the legislative process and increased public engagement and accountability. USAID programs strengthen the rule of law through improved judicial accountability and independence, and through established networks of advocacy organizations and legal clinics that increase access to justice in the areas of health care, employment, and property rights. Civil society is critical for sustaining democracy in Ukraine. USAID is providing assistance to develop the capacity of non-governmental organizations to have an impact on government policy and decision making. Through support to Ukraine's independent media, USAID is enhancing journalistic professionalism, ethics, and monitoring capabilities. Finally, USAID provides targeted support to ensure that elections are free and fair, while also working to increase the accountability of political parties and elected officials to Ukraine's citizenry.

4.2.3 USAID RESOURCES

The budget reality for USAID/Ukraine moving forward is headed toward an important shift from recent trends. After hovering near \$20 million for the past few years, funding for DRG in Ukraine looks to be set at a new "normal" of approximately \$40 million for FY16 and beyond. While the final numbers are still very much in flux, given the geostrategic importance of Ukraine for the U.S. Government, it seems clear there is a commitment to a higher level of engagement in Ukraine for at least the medium term—barring any significant democratic backsliding or waning of political will for reform. In the immediate period post-Euromaidan and after the separatist conflict began in the east of the country, significant resources were mobilized from ad hoc central funds (Complex Crisis Fund, EPP Fund, Human Rights Grant Program, etc.). These funds provided a critical response capacity for the mission and U.S. Government when the U.S. Congress made no supplemental funds available other than sovereign loan guarantees. The assessment team considers the draft DRG budget numbers for FY16 and FY17 to be much more in line with an appropriate budgetary response to both the crisis and opportunity in Ukraine, considering other factors and donor presence.

4.3 OTHER DONOR ACTIVITIES

The post-Euromaidan DRG assistance environment has become quite crowded, with previous donors re-engaged at historically high levels, and new donors—including emerging donors from the former Soviet

space—joining the scene. The EU and USAID remain the largest donors. Of the European bilateral donors, Germany and Sweden remain the most significant. USAID exerts significant influence on the other donors. However, many recognize that the EU has a direct interest and influence on the GoU, given European integration expectations and the association agreement. Even with support for the association agreement and European leanings, many GoU officials and other stakeholders noted that USAID is more flexible, responsive, and politically influential. The International Renaissance Foundation should also be counted among the largest and most important in the DRG sector, and the Canadian government has been increasing its support as well.

The technical areas that merit the greatest consideration of other donor activities due to the number, size, and scope of other donor activities are rule of law and local governance/decentralization. The EU and Canada have significant resources planned for supporting the rule of law in the next two to three years; however, while the EU's program most closely matches in scope what USAID will likely seek to support (anti-corruption, judicial reform, criminal procedure code implementation, bar reform), the amount of resources dedicated to those areas by the EU fall far short of overall needs. The Canadian government is also dedicating significant resources to juvenile justice and legal aid (as well as judicial training in support of a business-enabling environment). In sum, any future programming in rule of law will need to be closely coordinated with these (and other) donors.

Donor coordination documents reviewed by the team did indicate a significant amount of support by the EU and Canada for human rights through 2017 (and to a lesser extent by the United Nations Development Program through 2016), and therefore may call for phasing in greater support for human rights defenders/organizations as those programs phase out.

In the second subsector area requiring careful coordination with other donors, decentralization, and local governance, there are greater resources and a larger number of significant donors with whom to coordinate. Canada plans to program nearly \$40 million through 2020 in support of local democratic governance. In addition, the EU is set to provide EUR 50 million in budget support for Ukraine's regional policy over the next three years. The Swedish International Development Agency (SIDA) and German GIZ are smaller but still important contributors to support decentralization/local governance in the medium term. Working with these donors to divide up geographic areas may be the most effective approach for coordinating this level of support for local governments, especially as many donors are only just beginning their support in this area as reforms emerge.

Donor coordination is a challenge, given the multitude of actors and the sheer magnitude of activities under way on DRG reform issues. However, the Ministry of Economic Development and Trade (MEDT) is the primary organization that liaises with all donors and tracks their activities. MEDT has reform-minded leadership, and the USAID Mission has a solid relationship with the ministry.

4.4 PROGRAMMATIC RECOMMENDATIONS AND ILLUSTRATIVE ACTIVITIES

Unlike many, even most, countries in which USAID is working, the post-Euromaidan government in Ukraine is itself the primary engine of its own reform. That makes an enormous difference. The current government is so far demonstrating verifiable will to be a true partner, beyond rhetoric—although there are certainly cases of reforms being undermined or poorly implemented despite apparent commitments. If that political will—or, what will amount to the same thing, critical implementation of the reforms—lags, these recommendations, especially those depending on political will by officials and those proposing assistance to state institutions, would need to be revisited and modified accordingly. The opportunity this represents to have deep and lasting impact through U.S. Government assistance in this environment, where USAID is truly assisting and not coercing, cannot be underestimated.

Donor support for the reforms will be crucially important for their success, particularly in the absence of EU membership, which was an important stimulus for central European reformers. Long-term support for the economic and financial structural reforms and short-term economic support to keep the economy and financial system afloat is absolutely critical. The economy must be stabilized, and standards of living improved. In the DRG arena, short-term and long-term support is also necessary. Tangible evidence of change is decisive to avoid the growing feeling that no changes have been made since the Euromaidan, except that hardships have grown without commensurate benefits. In addition to financial and technical assistance, U.S. Government diplomatic pressures are a crucial part of ensuring that some of the more politically difficult reforms are actually implemented.

Within the deep and multifaceted transformation the Ukrainians are undertaking, the highest and the most immediate priority for DRG programming should be provided to assist in (1) the rule of law and (2) government responsiveness and effectiveness. These two areas are critical for democracy, the rule of law, human rights, and governance as well as for economic reforms. Moreover, without reforming these two areas (e.g., greater financial transparency; reducing the relative power of oligarchs and the dominance of the oligarchic aspects of business and politics), the majority of the activities of non-state actors will have more difficult headwinds (e.g., moving from political projects to genuine parties). First, these are the areas non-state actors believe form the most critical parts of the reform agenda. Second, if the state bureaucracy, courts, police, and prosecutors are not reformed and if, on the contrary, they create obstacles for activists, as they have in the past, clearly that will mean headwinds against which reformers outside the state will need to contend. The lower, but simultaneous, priority should be for the elements in the non-state sector that are necessary to create or strengthen improved non-state partners for reform to maintain the reform momentum, keep the government on track, and strengthen weak non-state actors and processes. The assessment team recognizes that civil society and media will be a crucial part of support for reforms in the two priority areas, even with an emphasis on supporting democratic state institutions. The exception to the latter is for work with local, non-Kyiv-based organizations, as will be detailed below.

Based on the key DRG problem statement identified earlier in the report, the assessment team proposes that USAID DRG programs should move forward under the overall objective to **support the institutionalization of reforms that promote effective, responsive, and democratic governance in an environment where the government and other actors are required to be both transparent and accountable in judicial and political spheres.**

The first component of the team's recommendations, and suggested programmatic emphasis in support of this objective, is:

1. Support Reform to Produce and Consolidate the Rule of Law as the highest priority

To support effective, transparent, accountable rule of law, to which the government is also subject, the team recommends:

- (a) *Assistance in the lustration of sitting judges.* The Department of Lustration of the Ministry of Justice seems to have the lustration process well in hand and did not suggest the need for assistance. However, it has processed relatively few cases, perhaps appropriately consistent with the requirements of fairness, due process, and effective results (e.g., dismiss only the guilty but keep the innocent and retrainable). However, as noted in the analysis, the public is becoming impatient with this slow process, perhaps because too few details are publicly known. The lustration process is important politically and substantively. Directly or through one of its implementers, the Mission should conduct a more thorough assessment to determine why the process has been so slow and whether (and under what conditions) assistance would be helpful and accepted.

(b) *Assistance to courts undergoing reform, especially the Supreme Court, the courts of appeal and the Constitutional Court.* The remolding of the courts and judges is perhaps the most important long-term element of this strategic objective. The courts are expected to deliver justice and be seen delivering it. By definition, but also by public verdict, the strategic objective will fail if judges and courts continue to serve the interests of “the power” (i.e., vested interests inside and outside government, particularly as instruments of the president). As was noted previously, in the long term, it is not by new faces but by new procedures and experiences that the public will appropriately judge the reforms.

Support should be offered to the courts primarily through the judges themselves and only secondarily through the Ministry of Justice: Judges need to understand in very practical terms that they are not ministerial employees but part of an independent branch, administering justice and a rule of law to which the ministries are themselves subject. That will require not only formal retraining through courses and seminars but also a change in the judicial mindset, not just structure and process. Human rights education, including how to interpret and apply findings of the European Court of Human Rights, should be a key part of that focus on judicial mindset.

It will also require a major change in the daily work of operating courts open to the public, insisting on fairness and due process, and adjudicating the cases under the rule of law irrespective of the parties. Because Ukrainian judges have been instruments of the executive branch, they have little if any experience in doing so. They need to understand the new laws and procedures, European and (perhaps) American jurisprudence, and how they are applied by courts in Europe and the United States. Assistance should be offered, for example in the form of judges and court administrators from the United States or other countries (like those of Central Europe) that have experience in implementing a true rule of law. Similarly, as investments in the future, court clerkships should be offered to top graduates of law schools with sufficient language capability to profit from them. The lead here should be taken by the Ukrainian judiciary and Ukrainian law schools.

This kind of change in behavior and attitude requires long-term engagement, mentoring, peer-relationship and community building, both within Ukraine and with relevant neighboring judicial communities in the region, Europe, and the United States. The heaviest burden will rest on the Ukrainian judiciary itself, but assistance can be offered in the form, for example, of *long-term* resident assignments or mentorships in courts or in law schools by distinguished judges (perhaps retired) from the United States but more importantly from Germany and Central Europe (because Ukrainian jurisprudence is German-influenced—for example by the idea of a *Rechtsstaat*).

(c) *Training of new and retained judges and support for reforms to legal education*

Assistance to the National School of Judges. Under the direction of the recently appointed rector, the National School of Judges is redesigning the curriculum for new judges and mounting a formal retraining program for judges who will remain on the bench. The socialization of judges is critical to the creation of a new kind of judiciary implementing the rule of law. Some assistance has already been provided through USAID’s Fair, Accountable, Independent and Responsible (FAIR) Justice Project and other donors, but additional assistance is desired for all of these undertakings.

In addition to curriculum development and training support for the National School of Judges, the school seemed to retain some vestiges of its history as a personal instrument of authoritarian and semi-authoritarian presidents. In this vein, the team recommends promoting citizen or civil society engagement in the institution—including by human rights groups and by organizations that represent judges, court staff, and other actors like bar associations and academics—to promote accountability and quality assurance. Close monitoring by USAID staff, not just the implementer of any assistance program to the school, is important as well.

USAID should seriously explore the potential role of other (carefully vetted) legal education institutions to meet the coming onslaught of need and demand for updated training to meet professional requirements. This would both serve to broaden the number of institutions like law schools and universities with degree programs in legal education working to train sitting and new judges—vastly amplifying the reach of training efforts—and serve to potentially influence the curricula and development of upcoming legal professionals still in law school.

Assistance to the High Council of Justice. The High Council of Justice, as designed in its new iteration, has the potential to be an extremely valuable partner and essential actor in the judicial system. The Mission is already providing some assistance to the High Council of Justice. Depending on its final disposition and mission, assistance should be offered to the High Council based on a full needs assessment with its leadership—if the Mission determines that the political will in and around the institution merits assistance. Ensuring this revamped entity has the expertise, systems, and internal procedures and processes in place to adequately and effectively oversee the hiring and discipline of judges should be a top priority for rule of law programming assistance to Verkhovna Rada committees dealing with the rule of law and human rights.

(d) *Assistance to the Verkhovna Rada for its work on legal reforms.* The Verkhovna Rada has several committees whose work touches on the rule of law and human rights. Unlike some of its other elements, the legal committees seem to have taken their responsibilities seriously, perhaps because the reforms in the rule of law are so widely recognized to be critical for Ukraine’s future as a democracy and for its role in European integration. To the extent that they continue, these committees should get particular attention. Appropriate members of legislatures and their staffs from Europe and the United States could make useful contributions (e.g., in mentoring the active engagement of the Rada in considering, drafting, and amending pieces of legislation and in engaging in serious legislative oversight of the executive). But they would need to be willing to remain over weeks and months, not just days.

(e) *Assistance for any additional work by the Constitution Commission*

The largest burden of work for the Constitutional Commission is now nearly completed. Its report is due imminently. It has received some donor support in the form of material and external expertise. Additional assistance, if requested, would be a high priority for this limited window.

(f) *Oversight by civil society within the rule of law and human rights*

As in other areas of assistance to the “state sector,” participation and some kind of oversight by the public will support the long-term goals of transparency, accountability, democracy, and the protection of human rights. Some limited funds should be provided for that purpose, but the costs and effort of monitoring should not overwhelm the costs and effort of doing the substantive work. The number of organizations capable of the specialized work of overseeing the legal system, especially the judicial system, are few. Some law firms may be available, but they would probably be expensive. The law faculties might be willing to undertake the effort, as would some lawyers practicing pro bono either in specialized firms or as individuals. Perhaps this would be an area for cooperation with the training institutions, like the National School of Judges, as has already been indicated. Bar associations and universities could be engaged as well.

2. Support Reforms to Produce an Effective, Transparent, Responsive, Accountable Government

To support improved governance, at national and local level, the team recommends:

(a) *Support improved central government ministries and presidential administration*

Provide technical assistance to broader efforts for procedural streamlining and restructuring, including reductions of personnel and redefinition of roles and responsibilities. The government is intent on reducing the bureaucracy, in part for efficiency, in part to reduce the wage bill, and in part to make it more democratic and accountable. Naturally, unless the plans will only be implemented through attrition (which would take a long time), the bureaucracy will resist. A plan for the structure of each ministry will be needed. New roles and responsibilities will need to be defined and established. The plans will need to be implemented, which is the longer and more expensive aspect of the reforms. Some remuneration may well need to be provided, for example to induce early retirement. The World Bank and the EU are prepared to offer both technical and budgetary support. This will be a long and expensive venture for which these two other donors are better suited than USAID. However, at least the EU would welcome continued targeted technical assistance from USAID, for example in training, operating systems revisions, and new methods of supervision and accountability. A rapid response mechanism should be designed to provide strategic short- and medium-term technical assistance to broader civil society monitors and reform partners and to support structural reform programs implemented by other donors. This would include an emphasis on developing a bullpen of potential experts from the region (including former Soviet countries in Eastern Europe and Eurasia with a more relevant experience base).

(b) Provide robust support to E-governance efforts

The State Agency for E-governance is taking the lead on e-governance initiatives, and seems to have the potential to be a strong partner for support in this area. However, a variety of ministries, agencies, and local governments also intends to strengthen and expand e-governance procedures—often in an uncoordinated and ad hoc manner. E-procurement should be one of the top priorities for support within the e-governance basket. In addition, part of the plan for decentralization is a greater reliance on e-platforms for paying taxes and other bureaucratic requirements. This would be one programmatic area particularly ripe for a local solutions approaches, given the ample local capacity in systems and technology, especially among young, tech-savvy (and unemployed) residents around key cities. Agreements between the government and civil society, for example as in the National Development Plan, should be reported online as well as through traditional media outlets.

The network of libraries could potentially be mobilized to support training and awareness for citizens on e-services and open data/information, including in areas where information flow is limited and access to technology is poor. In fact, the libraries and their trained librarians with IT resources should be considered as a prime inherent resource for many of the activities recommended.

(c) Support for decentralization effort with effective, transparent, accountable oblast, rayon, and hromada governments

Local governments will need to learn how to govern more generally. They will be assuming a much broader array of responsibilities for which they have had no experience. Unless some other donor takes responsibility for a nationwide effort at the local level, it will be necessary to find some kind of wholesale training effort to which local governments could send staff and, for local *radas*, even members. No such effort seems to be imminent. This would be an excellent area for much-discussed, and rarely implemented, real donor coordination on a single multi-donor project or on individual but coordinated projects (not just exchange of information). Perhaps this could be done through some joint training facility in Kyiv and one in the west (perhaps Lviv), east (perhaps Kharkiv or Dnipropetrovsk), and south (perhaps Odessa). Another option is to use the extensive and capable network of libraries to support training for local officials. The basics of the functions in the following strategic objectives would constitute the curriculum, perhaps with outreach staff to provide direct assistance on a visiting basis at the local levels. Given the commitment of other donors to local governance, it would make even more sense for USAID to refocus some of its planned resources in

local governance to elections and political competition, where the U.S. Government appears to be the only donor engaged outside of support for the electoral process itself during electoral periods.

[1] Support for effective merger of targeted rayon and hromada governments

Under the merger dimensions of decentralization plans, some facilities will be abandoned, others expanded, and new ones may be created. As noted in the analysis, there will be resistance by communities whose facilities will be closed or whose functions will be changed in other ways. That resistance will be muted if the new facilities and operations provide better or cheaper services, albeit at greater distances. Assistance for the design and management of these changes should be provided by the central government and augmented by assistance from a collection of coordinated donors.

[2] Support for effective tax collection and financial managements of local revenues

Perhaps the heart of the decentralization plan consists of the collection, management, and disposition of local revenues rather than their remittance to Kyiv and then return to local levels with specific instructions for their use. These are functions new to the local levels, particularly the rayons and hromadas. Consequently, mismanagement, even corruption and theft, is likely. The benefits should be captured, and the dysfunctions should be minimized, through training and oversight by internal government officials (akin to inspectors general but perhaps at a more regional level) and by CSOs. Both may well need assistance; certainly CSOs will request support.

[3] Support effective relations between oblast, rayon, and hromada governments subsequent to decentralization

Among the new challenges of decentralization will be inter-governmental relations more broadly beyond just inter-governmental fiscal relations. With greater independence, the rayons and hromadas will have different relations with their oblast governments and the central governments as well as with one another, for example, altered relations of their staffs. These new relations will need to be managed. Some assistance should be provided, but at a lower priority than these other areas of Strategic 1.2.2.

[4] Support effective local councils, particularly at the oblast level

The local councils will also have broadened responsibilities as well as little experience in dealing with them. Assistance could be provided, again perhaps by the central government with the support of donors.

(d) Support an effective public communication and outreach primarily by the central government and secondarily by local governments

[1] Assistance in providing effective internal or, if preferred, external (contracted, turn-key) public communications operations to selected central ministries (at least the Ministry of Finance, Ministry of Defense, and Ministry of Justice) and the presidential administration

The modalities for providing this kind of assistance are clear, simple, and straightforward. Contacts for long-term, paid, full-time assistance to ministry and presidential administration officials can be provided by specialists within the government or by specialized firms outside the government. There is enough supply within Ukraine for either approach. However, if necessary, more than ample supply exists in Europe, Canada, and the United States, including appropriate members of the Ukrainian diaspora with this professional experience. Members of the Ukrainian diaspora would have the advantage of knowing both Ukrainian and Russian.

[2] Assistance in providing effective public communications operations to selected oblasts, rayons, and hromadas

A much less concentrated and lower priority effort in public communication should at least be considered for local-level governments, perhaps through a central training facility. Although more directly accessible to the public, these governments are still new at best to public outreach, for example in explaining their decisions. The training and employment of local young graduates, professionals, and businesspersons would, as in e-government, provide jobs to precisely the part of the work force most likely to understand democratic procedures and most interested in implementing them. Being local, the costs would also be much lower than at the central level, and the long-term gains could be significant.

(e) Support effective monitoring over government by civil society, especially at the local level

There are dozens of old and newer civil society groups, particularly in Kyiv, and (proportionally) fewer at the local level anxious to do this type of work. The supply of organizations interested in donor support for doing so exceeds the demand and the resources. The decentralization effort will require particular monitoring as well as engagement by local CSOs.

3. Support to National and Local Legislatures

(a) Support an effective Verkhovna Rada

The Rada should serve as the major arena for public debate about policy. It is the one most open to transparency and public participation. It ought to be the governmental arena most sensitive to public opinion, if only because its members are elected from localities around the country. It should be the most important check on executive power. However, it is hampered by the poor state of political parties and electoral contestation on which it depends for the “recruitment” of its members, for its own internal discipline, and to curb the past abuses of vote buying and corruption, encouraged by the immunity from prosecution that its members traditionally enjoyed. Nevertheless, especially in its newly energized form, some assistance should be provided to build the kind of European parliamentary institution the Rada ought to become. Assistance to the Rada would be an investment in the future, so it should be carefully monitored. In the past, it was an unlikely investment to produce returns, but the new members, the engagement of civil society activists, and the seeming interest among at least some of its leadership to build a new democratic institution warrant another look.

4. Support Reforms to Reduce Corruption

Corruption lies at the intersection of economic and political dysfunctions. It does not fall neatly into DRG or economic growth, for example. Nor does assistance to reduce corruption fall neatly into rule of law and human rights or government effectiveness and responsiveness. However, it is a critical and crosscutting factor in every other DRG problem facing Ukraine, and must be considered a top priority activity in its own right, as well as built into other activities and sectors as a crosscutting issue.

To garner a critical mass of effort from a multi-dimensional front against corruption, the team recommends:

(a) Support effective National Anti-Corruption Bureau (NABU) and National Agency for the Prevention of Corruption (NAPC)

NABU, established in April 2015, will investigate allegations of corruption but will not prosecute them. NAPC, not yet fully established, will work on corruption prevention. They may be able to use assistance in their respective investigations, and for NAPC, designing effective ways to reduce corruption. As has been argued in the analysis, one of the most effective ways to tackle corruption is through the reduction of the state’s size and its reach (i.e., the reduction of rent-seeking opportunities)

and the close ties between oligarchs and government. However, some more direct assistance in addressing and reducing corruption through these new bodies will likely be both expected and needed. The assessment team recommends, given assurances about the intentions and empowerment of the two bodies, supporting their internal capacities (staff recruitment processes, staff training, internal procedure and regulatory development, communications planning, and monitoring and evaluation plans) as well as their relationship with other actors in the anti-corruption space (civil society, media, prosecutors, etc.).

- (b) *Support effective restructuring and operation of the Office of the Prosecutor General (especially the special unit dedicated to the prosecution of corruption cases, for example pursuant to the investigations of the National Anti-Corruption Bureau)*

While recognizing that this area is the primary responsibility of the Department of State's Bureau of International Narcotics and Law Enforcement (INL) and the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) of the U.S. Department of Justice (DoJ), USAID could augment that assistance if necessary or provide assistance for which USAID is better positioned. The assessment team recommends that the U.S. Government, regardless of entity, should provide the following assistance:

[1] Assist the Office of the Prosecutor General in the recruitment, training (of new) and retraining (of retained) personnel, including on the core principles of the rule of law

[2] Assist in operations oversight to help ensure reduction of corruption, including asset declarations, competent management, and oversight of prosecutors, especially by the new special unit of the PGO for the prosecution of corruption cases, including those recommended by NABU

[3] Assist in developing internal systems and incentive structures that promote bringing evidence-based and non-politically motivated cases to justice

- (c) *Support other ministry or local government initiatives to streamline corrupt practices and processes*

Given the environment for reform, many ministries and local government entities have initiated their own anti-corruption agendas. For example, the Ministry of Interior is attempting to rationalize the processes around driver's licenses and car titling, which are handled by the ministry at the central level. These and other efforts will continue to emerge. Development of a mechanism that has a flexible, rapid response component capable of responding to these initiatives will be important.

In addition, given heightened public attention to anti-corruption efforts, the environment is ripe for also introducing a positive incentive-based approach to promoting transparency and anti-corruption efforts. Creating positive competition among local governments and among ministries or national-level entities for innovations and success in reforming corrupt processes or promoting transparency can be an effective tool.

5. Support the Non-State Sector to Hold Democratic Government and Judicial Sector Accountable and to Participate in Democratic Processes

Support to civil society in Ukraine laid the foundations for the movements that grew into the Revolution of Dignity, and the place that civil society holds in protecting the values and objectives of that revolution are not questioned. However, for this particular moment in the democratization process, with the opportunity for reform that is at hand, it is time for civil society to become included as part of the toolkit, not only as the ultimate objective. Support for the non-state sector should be geared increasingly—although not exclusively—toward that end, and to the extent that supporting civil society capacity in general will continue, it should be a lesser priority than the above. Critically important is the ability to be flexible in programming to shift resources away from supporting government reforms if the necessary

political will for true systemic change does not materialize or dissipates. Within these guidelines, the team recommends:

6. Support for Free and Fair Elections

(a) Support new electoral law and implementation

New laws and regulations for electoral reform are being drafted and will be debated. No doubt such reforms are needed and appropriate assistance should be provided where requested. However, electoral legal reform is not the highest priority if only because legal deficiencies are not the greatest impediments to contested elections that capture public opinion about important public policy issues. More important, for example, is the state of existing and potential political parties to contest those elections. In addition, election monitoring, especially by domestic monitors, is important to diminish electoral fraud in practice. Some assistance may be required as well to implement electoral law for local elections, which will be more consequential in light of decentralization. Still, there may be need for some assistance to deal with the legal system for elections, national and local.

Given that there is likely to be fallout from the decentralization process during the local election process in 2015, it is important for USAID to engage immediately in helping with voter education so that the electorate is not easily manipulated by parties exaggerating potentially negative consequences of decentralization. For the longer term, but starting immediately after the local elections in 2015, USAID should support the implementation process of pending legal reforms. The proposed systems are complex, and will require extensive voter and political party education and engagement on the reforms well in advance of the next election.

(b) Support for the development of independent, organized, long-term competitive political parties

Some analysts and democracy promotion practitioners believe that there are no true political parties in Ukraine and that continued support, after years of “failure,” is unlikely to produce any. As past efforts have admittedly been disappointing—with only a handful of parties or quasi-parties surviving more than one election cycle and almost all parties dominated, if not entirely controlled, by 1–2 individual oligarchs and other businesspersons—the Euromaidan activists intend to remain engaged in public policy. However, many are discouraged about building or joining independent political parties as a way of doing so, because the only obvious source of financial support seems to be from private sources with attendant control. However, if the local elections and the next parliamentary and presidential elections do not offer real contestation by long-term accountable political parties, it is hard to see—and certainly hard for activists to see—how they can expect a democratic future for Ukraine. Moreover, USAID’s current grantees have evidence that there is wide public support for the concepts behind functional, representative political parties. Programmatic support for parties should include:

- Support for the development of issue-based political parties committed to the democratic process and not captured by or instruments of particular oligarchs and business leaders should be provided and carefully monitored for the next few years. The best prospect seems to be beginning at the very local levels, with CSOs and perhaps incipient parties running in local elections, and then to build from the bottom up. This is a long-term endeavor for Ukraine, and parties without personalities at the helm will be a difficult objective to achieve. But there are some parties at the national and local levels that are beginning to move in that direction, and that are beginning to understand the concept of party constituencies and internal party structures. These incipient trends should be supported.
- Internal democracy and accountability within parties should be supported.
- New leadership should be developed within parties, especially for women and youth.
- Constructive constituent outreach should be supported, coupled with voter behavior change about what to expect from parties/candidates, in terms of favors and “handouts” before elections.

Still, however critical political parties are to elections and however critical elections are to democracy, continued assistance for a plurality of organized political parties committed to the democratic process should also depend—or at least be constituted to help achieve—a serious, actual plan with some reasonable chance of success. Merely providing assistance absent such a plan is not likely to produce the kind of contested election with public policy implications that will capture support from the electorate and have meaningful implication for their electoral choices. Assistance grantees should be asked to produce such a credible plan.

(c) Support for election observation

Domestic election observation has long been recognized as far more effective than international observation for stopping electoral fraud. Local observers and monitors speak the language, know the people, have seen the abuses, have personal and vested interests in the results, and will be on-site over much, much longer periods. Continued support for national observer organizations for the 2015 local and 2019 elections should be planned.

7. Support for Independent, Competent Media

As noted in the analysis, the primary sources of information, let alone “analysis,” for most Ukrainians come from the major television stations, which are owned by various oligarchs mostly inimical to reforms. Younger Ukrainians, especially those who are urban-based, are much more likely to have access to, and depend more upon, the Internet, including social media. In addition, there are some other sources of free broadcast news and analysis.

1. Provide increased access to independent sources for news, investigative reporting, and analysis. That could mean direct support for media outlets, especially at the local level.
2. Professionalization of journalists and their ability to monitor and report on government responsiveness and effectiveness, the rule of law, and human rights
3. Work with media on portrayal of women, LGBTI citizens, and marginalized groups as a basis for shifting public perceptions about these groups and contributing to greater respect for their political and social rights
4. Media assistance should consider opportunities to support cross-cutting DRG goals, and not just as a stand-alone program.

8. Support for Civil Society Participation and Oversight

As discussed several times in the analysis, the post Euromaidan government has encouraged the participation of CSOs in its planning and implementation. Also, many new members of government (and the Verkhovna Rada) come from civil society, including NGOs, business, and other domains. Moreover, many CSOs have taken it upon themselves to participate in and monitor the operations of government. No one proposes that this should or will end, and there will be a need to continue support for constructive engagement and oversight on national policy issues.

However, USAID support for civil society at this stage should prioritize building capacity for greater agency at a local level with direct support, in addition to increasing horizontal linkages among organizations and activists outside of Kyiv. Vertical linkages are also needed, but need to be two-directional, with regional organizations having the capacity and strategy to feed up into national processes as well as harness information and programs flowing downward into local activities. Assistance programs should strategically address these local needs and opportunities by focusing on development of regional and local organizations explicitly.

9. Geographic Prioritization

The fundamental shifts in the context require not only a strategic reconsideration of the “what” USAID should prioritize in its assistance, but also in the “how” assistance is provided. The interrelated nature of the challenges and the roles of critical actors across various spheres do not easily lend themselves to sub-sectoral prioritization. However, the need clearly outstrips even the greater level of resources anticipated in the medium term for DRG programming in Ukraine. Therefore, this important window of opportunity to make a unique accelerated impact, combined with deep and complex structural challenges to consolidating democratic reforms, led the team to consider the potential benefits of an integrated territorial approach to DRG (and other) assistance.

Geographic focus is a potentially powerful way to focus limited resources while achieving maximum impact on entrenched DRG problems. This is an additional layer of prioritization on top of the priorities named above. By making the strategic decision to program all assistance not dedicated to national-level reforms and institutions to a small number of selected *oblasts* (e.g., Kyiv Oblast, Kharkiv, Dnipropetrovsk, Zaporizhzhya, and Odessa), USAID might be able to achieve a critical mass of support and synergies among different programs working in the same space on interrelated challenges. This approach also empowers local stakeholders to work together on common issues, promotes coordination and cooperation, and has the potential to dramatically increase impact as problems are addressed from all sides in an integrated way. There could be a positive magnet effect of the focus regions, assuming they become successful as well—neighboring oblasts could mirror their successes, expectations could change in neighboring oblasts, and replication could follow successes (and lateral learning can/should be built into this approach in later stages).

In some countries where there are deep, structural issues that cut across technical subsector lines—such as in Latin America, where DRG funds are often linked with counternarcotic and/or citizen security strategies—USAID missions have successfully implemented an integrated territorial approach mission-wide, across all sectors (e.g., Peru). Even without cross-sectoral resources, concentrating DRG resources in this manner could dramatically increase impact.

There will always be initiatives and programming around national-level issues, reforms, and institutions—in the proposed territorial approach, this is unchanged. However, under a geographic approach, resources that would be spent on the ground would be focused on the selected priority *oblasts*. Operationalizing this approach would begin even at the concept and design stage. Implementing partners would be required to establish regional offices in the selected *oblasts*, staffed with locals and partnering directly with local organizations (not funneling resources through national organizations downwards, unless the organization already had an independent and well-functioning permanent regional presence, which is the exception and not the norm). Partners must be required to coordinate at the local level and work together on *oblast*-level issues. Implementing partners working on national-level issues/institutions, to the extent they differ, would also be part of the coordination efforts so that their outreach activities prioritize the selected regions as well. When pursuing a territorial approach, it would be important to select one to two oblasts that have the potential to be easier wins and leaders for the others. This approach could also be a useful way to promote better donor coordination in sectors where other donors are also working.

U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523
Tel: (202) 712-0000
Fax: (202) 216-3524
www.usaid.gov