



Revolution and Reform in Ukraine

Evaluating Four Years of Reform

By Silviya Nitsova, Grigore Pop-Eleches, and Graeme Robertson

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Executive Summary

In February 2014, Ukraine grabbed the world's attention with its second revolution in a decade. The corrupt and increasingly authoritarian administration of President Viktor Yanukovich was overthrown. After the revolution, Ukraine embarked upon a wide-ranging series of economic and governance reforms. In this volume, we assess the progress of these reforms and analyze the main factors that explain the successes and failures we see. Rather than attempt a comprehensive review of all areas of reform, we focus on a number of key areas—economic reform, governance and anti-corruption, security and criminal justice and language policy. Each of these areas is of fundamental importance for the development of Ukraine as a prosperous, independent and democratic state and so is worthy of attention in its own right. However, by focusing on these areas in particular, we also observe variation in the extent of the progress that has been made, allowing us to understand the key factors that have either driven reform forward or hindered it.

We discuss the progress and challenges in each area. In each policy domain, there have been difficulties that reformers have struggled to overcome and many challenges remain. In no single policy domain that we analyze here has the promise of the revolution been fully and irreversibly realized. Nevertheless, there are areas, notably in economic reforms and governance and anti-corruption, where substantial progress has undeniably been made and the environment has been transformed compared to before the revolution. However, progress in the areas of security and criminal justice and language policy is much less clear.

The key to understanding patterns of relative success and failure, we argue, lies in understanding the interaction between Ukrainian civil society and the international community. We develop the idea of the “sandwich model” in which domestic civil society plays a crucial role in elaborating policy ideas and in policing progress in implementation, while the international community presses an often reluctant political elite into adopting reforms. The most progress in reforms has been made where cooperation between domestic civil society and international actors has been close and well-coordinated. In other areas, progress has been more limited. The “sandwich model” represents a new way of understanding how international and domestic actors can contribute to reform in a context where neither the government nor the opposition are unambiguously supportive of essential reforms. Unfortunately, the conditions for success of the “sandwich” are rather stringent and rare. As a result, the battle for reform in Ukraine goes on and is far from won.

Table of Contents

Chapter 1. Reforms by Sandwich	1
Learning the Lessons of Revolution	2
Designing Reforms In and After the Euromaidan.....	5
The “Sandwich” Strategy	6
What’s New About the “Sandwich”?.....	7
Research Strategy – Illustrating the Importance of the Sandwich	10
Conclusion.....	11
Chapter 2. Economic Reforms	12
Gas Price Liberalization	13
Tax Reforms	18
Conclusion.....	19
Chapter 3. Governance: Anti-Corruption	21
Creating New Anti-Corruption Institutions – NABU.....	22
Asset Declarations.....	24
Asset Recovery	26
Public Procurement.....	27
Reform Effects on Corruption Perceptions.....	30
Chapter 4. Security and Criminal Justice	34
Judicial Reform	34
Police Reform.....	38
Security Services Reform.....	41
Reform Effects on Corruption Perceptions.....	43
Conclusion.....	44
Chapter 5. Language Policy	45
Reform Dynamics.....	47
Public Opinion.....	50
Chapter 6. Conclusions	53
The Sandwich	54
Looking Forward.....	56
Bibliography	58

Chapter 1. Reforms by Sandwich

The Euromaidan Revolution was Ukraine’s second revolution in 10 years. The first revolution—the so-called Orange Revolution of 2004—while successful in removing a corrupt autocratic ruler, did little to change the political course of the country. In this, Ukraine’s experience was not that different from that of many of its neighbors. While mass protests have repeatedly demonstrated the capacity to remove autocrats in the post-communist space (Bunce and Wolchik 2011), the record on actually achieving deep and lasting reforms is much more mixed (Pop-Eleches and Robertson 2014). In case after case, it has proven difficult to maintain coalitions of revolutionaries, who are usually more united in opposition to the previous regime than in support for a positive agenda (Beissinger 2013). Moreover, once safely ensconced in the presidential palace, access to the enormous possibilities for corruption and self-dealing that power offers has proved a temptation that most one-time reformers are unable to resist. Such has been the disappointment with popular revolutions in the post-Soviet space, that influential scholars tend to think of mass protests and the ouster of dictators as being part of the lifecycle of autocracies in the region rather than as being meaningful opportunities to make a real democratic breakthrough (Hale 2014). Achieving genuine reform on top of revolutions, it seems, is very difficult indeed.

Nevertheless, as we show in this volume, Ukraine has made real progress along the path of reform in the four years since the Euromaidan. Progress, certainly, is incomplete and uneven, but in some areas it is real nonetheless. Consequently, we seek not just to understand the contours of reform as it has played out, but also to analyze some of the factors that help explain why those contours look the way they do.

In short, we argue that the key factors that shape reform success are a vibrant, experienced and well-organized domestic civil society operating in cooperation with the international community. Where these domestic and international actors are able to work together to squeeze the government in Kyiv in a pro-reform “sandwich,” reform results have often been impressive, at least given the constraints. Where one or both sides of the “sandwich” is missing, the results, by contrast, have been much more disappointing.¹ This emphasis on domestic civil society rather than the political class in driving reforms is quite novel. Most previous analyses of political and economic reform identify the key success drivers as either the push from reformers within the government (Sachs and

¹ Throughout this volume we use the term “sandwich” to refer to a model in which domestic civil society and international actors work together to squeeze a more or less unwilling political class into making reforms. We are uncertain about the origins of the term, though it has some currency in aid and civil society circles in Ukraine. See for example: <https://hromadskeradio.org/en/programs/ukraine-calling/a-big-fail-to-parliament-and-the-reform-sandwich>. We are grateful to Olga Onuch for this reference.

Lipton 1990, Shleifer and Treisman 2000) or pressure from opposition politicians who want to replace them (Vachudova 2005). By contrast, the success of the “sandwich” strategy does not depend on having pro-reform politicians either in power or in opposition. Instead, the model works in spite of reluctant parliamentarians and ministers rather than because of them.

In this chapter we explain how the “sandwich” strategy in Ukraine became possible and how it has worked. We begin by putting the events in Ukraine in the context of the previous “Color Revolutions” in the post-communist space and in particular the Orange Revolution in Ukraine in 2004. While many were disappointed with the results of the Orange Revolution (Kalandadze and Orenstein 2009), the lessons from its failures improved the prospects of real reforms after the Euromaidan Revolution.

We next outline how the nature of the Euromaidan Revolution itself—a protest that was drawn out in both time and space and that was initially led by civil society activists—helped create the conditions in which imaginative and determined people could develop a sophisticated roadmap of reform for the post-revolutionary era as well as an institutional vehicle to pursue those reforms.

Finally, we review the strategy pursued to implement the reforms. This strategy has been based on an effort to exploit the leverage offered by a combination of the high legitimacy of domestic reformers and, at least as important, close cooperation with international donors whose support the Ukrainian authorities desperately needed, especially in the early post-revolutionary period. Despite a vigorous rearguard action from those who benefit from ongoing state weakness and corruption in Ukraine, real if uneven progress has been made. We contrast this strategy with existing understandings of the politics of policy reform and draw out some of the implications of the Ukrainian sandwich model.

Learning the Lessons of Revolution

A central element in understanding the story of reform in Ukraine since the Euromaidan Revolution lies in the history that led up to that revolution. The Euromaidan, after all, was Ukraine’s second revolution in 10 years and it also followed a series of revolutions in other former Soviet states. It was widely agreed that the first revolution—the Orange Revolution—had ended in failure as the new regime turned out to be very similar to the previous one. However, the experience of failure changed perceptions amongst key civil society actors of what was needed to achieve success. A change in leadership was not going to be enough. Instead, activists grew to understand that what Ukraine needed was a complete transformation of its political system.

In the 2000s, a wave of revolutions spread across the states of the former USSR and other post-communist countries. Since the collapse of communism in these countries, new systems of authority had been constituted out of the political rubble. However, instead of the democracy and well-functioning market economies they had been promised, citizens in many of these societies faced autocratic politics and corrupt, monopolistic economies (Hellman 1998). In some countries (e.g., Russia, Kazakhstan, Azerbaijan) the new autocracies were relatively stable, largely as a result of significant natural resource rents that accrued from the high commodity prices of the early 2000s. However, in countries that lacked such natural resources, discontent with corruption and falsified elections often boiled over into mass street protests that destabilized authoritarian governments.

In three post-Soviet cases—Georgia, Ukraine and Kyrgyzstan (as well as in the case of Serbia)—these protests led to the overthrow of authoritarian incumbents and the emergence of new ruling coalitions committed—at least formally—to undertaking political and economic reforms. However, the results were disappointing. In Georgia, anti-corruption took center stage as the Saakashvili administration launched a series of bold and aggressive measures that made significant inroads into reducing low-level corruption, but major problems with human rights, the independence of courts and the quality of elections remained. In Ukraine, anti-corruption measures never got off the ground, though the quality of electoral competition did improve somewhat and there was real and important progress in expanding media freedom. Finally, in Kyrgyzstan, the new regime merely switched control of corruption and rents from clans in the north of the country to clans in the south and moved to consolidate rather than democratize power. The new President, Kurmanbek Bakiyev, was himself overthrown following mass protests in 2010.

Nevertheless, in Ukraine at least, the response to failure was not passivity, but rather a determination to keep on pushing. Although a 2012 nationally representative survey carried out by the authors showed that only 19 percent of Ukrainians at large said they thought that the Orange Revolution had been a mostly positive event, activists in civil society were not put off. Instead, many used the Orange Revolution as a learning experience that taught them some of the hard lessons of trying to carry out reform in a system characterized by powerful vested interests and rampant corruption. In a 2012 interview with the authors, Viktor Yushchenko's former Chief of Staff, reported that in his view, "Yushchenko's mistake was that he thought his job was break down a wall, not to build anything up. But now we know that just giving people freedom is not enough."²

As a result, rather than giving up on politics, many activists redoubled their efforts to make the deep organizational and political changes that they felt would be necessary

² Authors' interview with Oleh Rybachuk, July 2012.

for reform to have a chance. Replacing the President with someone new was not enough. What Ukraine needed, they realized, was the institutional apparatus to make honest and democratic government possible. As a result, a number of new initiatives were launched in an effort to fundamentally reorient political incentives in Ukraine.

One key example of this was the establishment of the non-governmental organization, *Chesno* (“Honestly”) in October 2011. *Chesno* brought together a number of different civil society activists, including President Yushchenko’s former Chief of Staff Oleh Rybachuk, journalist Svitlana Zalischuk and sociologist Iryna Bekeshkina, with the initial goal of “filtering the parliament” – that is to develop a set of criteria of candidate integrity and rank each of the more than 2500 candidates for the Rada elections of October 2012 according to these criteria. The criteria emerged from a “national brainstorming” process involving meetings between journalists and activists that gradually agreed a list of six integrity criteria. The results of the evaluation of the 450 sitting members of parliament found only three who passed all six standards of integrity! A further 900 candidates were declared not to fulfill the *Chesno* criteria and some were excluded from opposition lists.³

What was clear from the project was that corruption and dishonesty were by no means limited to the ranks of President Yanukovich’s Party of Regions. Both the government and opposition parties were severely tainted. These findings highlighted an important lesson that would be important for reformers in the post-Euromaidan era: corruption in the political system, while perhaps at its most vivid and abhorrent in Yanukovich’s circles, was by no means limited to one side of Ukraine’s political divide.

This meant three things. First, in order to be effective, reform would have to be fundamental and systematic and carried out without respect to political party or position. Second, the breadth and depth of the problem meant that reform would be difficult and was likely to be resisted from all sides of the political spectrum. Third, to overcome this domestic resistance, support from outside of Ukraine would be essential. *Chesno* received funding from the US, Sweden and IFES, as well as private international foundations such as the Omidyar Network Fund and this model of cooperation between pro-reform activists in Ukrainian civil society and international actors has been central to the politics of reform in Ukraine.

In fact, the experience of *Chesno* with relatively small amounts of funding from a range of international donors is illustrative of how the international donor community itself changed between the Orange and Euromaidan Revolutions. Rather than relying solely on government to government aid, Ukrainian organizations have benefitted enormously from the increased activity of international civil society organizations such as

³ http://www.chesno.org/en/background_chesno

Transparency International and the German and US political foundations, as well as a range of more focused governmental and non-governmental organizations like USAID, GIZ, SIDA and others. Together these partnerships have provided funding and expertise to help Ukrainian activists make progress on several fronts at the same time.

Designing Reforms In and After the Euromaidan

The second crucial feature shaping reform prospects in Ukraine was the nature of the Euromaidan Revolution itself. In contrast to the Orange Revolution, where politicians had taken the lead and civil society had followed, the Euromaidan was started by civil society activists and involved long weeks and months of continued physical presence together in central Kyiv and in other squares around the country. This face-to-face time had the unexpected consequence of facilitating communication and discussion among activists, which ultimately resulted in the development of a consensus on a sophisticated program of highly specific reforms in a broad range of sectors.⁴ The result was the creation of something truly unique: An organization designed specifically to elaborate and lobby for a wide-ranging and detailed set of reforms in the post-revolutionary era.

This organizational vehicle for civil society input into policy became known as the Reanimation Package of Reforms (RPR). The RPR is an association of 72 NGOs and 23 different expert groups whose primary function is to bring civil society directly into the process of policy-making. To do so, experts working together under RPR's auspices created a thorough-going agenda for reform across the whole of the Ukrainian polity. RPR has played a prominent role in the achievement of a number of key reforms, such as the creation the National Anti-Corruption Bureau (NABU) and the creation of the Specialized Anticorruption Prosecutor's Office, asset disclosure systems for public officials, an online public procurement system (ProZorro), as well as key reforms in the health, energy and local government sectors. Moreover, RPR has an extensive and detailed reform agenda in the areas of anti-corruption, judicial reform, public administration, local self-government, election law, law enforcement, economic development, tax reform and others.

In contrast to the first round of reforms in the 1990s and, indeed to the Color Revolutions, reformers in Ukraine have not relied only upon support and assistance from Western donors. Instead, the experience of previous reform attempts in Ukraine and around the region means that there is now a corpus of politicians, scholars and citizens with first-hand experience of actually implementing reform in the former USSR and other ex-communist countries. In addition, there was a substantial influx of mostly young, western educated Ukrainian émigrés, who participated in the development and

⁴ Authors' interview with Svitlana Zalishchuk, October 2016.

implementation of the reforms.⁵ The deployment and diffusion of this indigenous/regional expertise is one of the distinguishing characteristics of reforms in the post-Euromaidan era.

The “Sandwich” Strategy

While civil society actors established and have retained intellectual leadership of the reform agenda, their political capacity is much more limited. Despite the revolution and the collapse of Yanukovich’s *Party of Regions*, much of Ukraine’s political class remains corrupt and beholden to personal or oligarchic interests rather than the pursuit of good public policy. Consequently, forcing meaningful and effective reforms through the parliament and presidential administration has proven to be much more difficult than drafting a strong package of reforms in the first place. While the government has publicly aligned itself with a pro-reform agenda, in practice each reform has had to be defended against amendments—many of them from government allies—designed to blunt the impact of reforms and provide cover for the continuation of corrupt practices and monopolistic behavior.

A key issue for supporters of reform is the absence of a major political party that is clearly and consistently associated with a pro-reform agenda. In part due to the mixed electoral system used for the Rada, a number of the key pro-reform politicians—actually former civil society activists who moved into politics to support the reforms—were initially associated with the Bloc of Petro Poroshenko, the President’s political party. However, this party represents a broad spectrum of interests and politicians, many of whom are at odds with the reform agenda. Other political parties, such as Samopomich, include prominent reform advocates and have over time come to be more supportive of reforms, but the process remains difficult as paying lip-service to the need for reforms and being willing to vote for legislation with real pro-reform consequences are very different things.

In this environment, pro-reform activists have had to rely on two sources of influence. The first source is the reputation for honesty and integrity of many of the former civil society activists now in politics. Civil society actors in Ukraine, in contrast to many parts of the former Soviet Union actually enjoy relatively high public esteem. In our 2012 survey, 39 percent of respondents felt that NGOs played an important role in politics. By 2015, this number had increased somewhat to 43 percent, while only 15% thought they played an unimportant role. Furthermore, on balance in 2015 Ukrainians

⁵ See also Kamran Musayev, *Die postsowjetische Transformation im Baltikum und Südkaukasus: Eine vergleichende Untersuchung der politischen Entwicklung Lettlands und Aserbaidschans 1985-2009*. Mit einem Vorwort von Leonid Luks. Ediert von Sandro Henschel (Stuttgart: ibidem-Verlag, 2007).

supported NGO involvement in political and governance reforms, with 38% supporting an important NGO role in fighting corruption (compared to 23% favoring an unimportant role), and the support was even stronger in the case of civil rights (48% vs. 15%). While these public support figures may not be overwhelming, they are considerably higher than the trust in national-level political institutions, such as parliament or the presidency (averaging less than 10% in our post-2015 surveys) and contrast sharply with widespread skepticism towards NGOs in other parts of the former USSR.

However, the primary resource for civil society and reformers seeking to hold the government's feet to the fire has undoubtedly been the international community. The economic crisis and war Ukraine faced in the aftermath of the Euromaidan—in addition to having terrible consequences for millions of Ukrainians—have made Ukraine heavily reliant on international support, most notably from the IMF and the European Union. Pro-reform activists inside and outside the country have taken advantage of this situation to embed key elements of reforms into the conditions for international support, most notably in a \$17 billion loan agreement with the IMF and the visa liberalization process with the EU.

What's New About the “Sandwich”?

To understand the extent to which the current reform dynamics in Ukraine represent a new phenomenon, we consider two questions: first, how does the sandwich strategy differ from the approach to reforms in the aftermath of the Orange Revolution? Second, how does the “sandwich” model compare to other explanations of policy change in the context of external conditionality and/or domestic pressures?

The failure of the post-Orange Revolution reforms was to a large extent due to the fact that there was very little domestic or international pressure on the post-revolutionary government. Domestically, despite the important role of civil society in the massive popular mobilization during the Orange Revolution, the ability of civil society to shape and promote post-revolutionary reforms was limited. This was in part because of a mistaken assumption among both domestic and international reformers that with the right people in charge the right policy would naturally follow, and that, therefore, the key was to get the right people in office and to support them.⁶

However, as we noted above, it was precisely the recognition of this mistake in the years following the Orange Revolution that seems to have triggered the impressive and sustained civil society mobilization in the Euromaidan, and which provided the bottom-up part of the sandwich strategy. Ukrainian civil society was in a completely different

⁶ Authors' interview with Oleh Rybachuk, June 2012.

position after the Euromaidan than it had been after the Orange Revolution. Qualified, talented and engaged local actors were already active in identifying and designing key reform policies, as well as being able to provide the kind of monitoring and fire-alarm activities that even the most adept international organizations are unable to carry out on their own. As a result, at key moments in the reform process, local actors not only assisted but even guided international institutions in driving the formulation and implementation of the reform agenda.⁷

There are also important differences in the international dimension of Ukraine's reform incentives following the two revolutionary episodes. While the West reacted enthusiastically to the victory of the Orange Revolution, its subsequent involvement in Ukrainian reforms was much more limited than in the post-Euromaidan period. For example, it was not until November 2008, almost four years after the Orange Revolution, that Ukraine signed its first post-revolutionary IMF agreement. By contrast, in 2014 it took only two months for the new post-Euromaidan government to enter its first standby agreement with the Fund. While this difference was arguably triggered by Ukraine's much worse economic situation in 2014 compared to early 2005, it nevertheless meant the scope for IMF influence was much weaker in the first episode. Similarly, the involvement of the World Bank in Ukraine was much more intense (in terms of both the number of projects and the size of financial resources committed) in the 2014-17 period than in the three years following the Orange Revolution.⁸

Another important international change has been in how the EU has approached the issue of conditionality in the two episodes. The Orange Revolution happened soon after the EU had signed an Action Plan with the Kuchma administration and took place in the context of the European Neighborhood Policy (ENP). Somewhat bizarrely, in retrospect at least, this Action Plan was not substantially revised following the Orange Revolution. While the ENP built on earlier institutional models using the EU enlargement promise as a "carrot" to induce governance reforms, and the EU more than doubled the amount of its assistance to Ukraine in the years following the Orange Revolution, the lack of a clear signal from Brussels about the prospects of full EU membership for Ukraine weakened the effectiveness of EU conditionality (Sasse 2008, 307-8). By contrast, following the annexation of Crimea and the war in Eastern Ukraine, the new context of geopolitical

⁷ One key example of this process is the constant communication between Iegor Soboliev, a Ukrainian MP, leading anti-corruption campaigner and former Chair of the Rada Anti-Corruption Committee with international supporters of anti-corruption measures. At every key stage in the process of setting up anti-corruption institutions, Soboliev has given guidance to the international community on the often arcane details of the legislation and the practical implications of specific proposals or amendments. Similarly, news, technical updates and campaign guidance are regularly provided by Ukrainian anti-corruption NGOs, such as the Anti-Corruption Action Center, see: https://twitter.com/ANTAC_ua.

⁸ For data on World Bank projects in Ukraine, see: <http://www.worldbank.org/en/country/ukraine/projects>.

competition between the West and Russia has meant that the success of reform in Ukraine has become a key foreign policy objective for the EU. This greater salience has meant that, even if the question of potential EU membership for Ukraine has still not been resolved, both the EU and other international institutions have been willing to commit greater economic and political resources to promote the governance reforms that are crucial for a stable and functional Ukrainian state.

In addition to the clear differences between the political contexts after the two revolutions, the “sandwich model” as we have described it also differs significantly from how analysts have traditionally understood the interaction between domestic and international actors in shaping reform processes. While a detailed overview of the large literature on reforms in developing countries is beyond the scope of this volume, we focus on a few different explanations of the interaction between external and domestic drivers of reforms and illustrate how the sandwich model is different. One set of explanations highlights the limited maneuvering space of domestic actors in politically and economically vulnerable developing countries. While such studies acknowledge that domestic political interests can undermine external conditionality (Vachudova 2005, Pop-Eleches 2008), these interests are primarily seen as resisting rather than promoting reforms. Furthermore, while existing analyses have acknowledged that domestic reform supporters can be important allies for international organizations, these supporters are usually thought of as being the parliamentary opposition rather than civil society activists. Even to the extent that the range of political actors includes civil society, and such actors are supportive of the externally driven reform agenda, the role of civil society is usually thought of as providing domestic legitimacy for reforms rather than actively shaping the reform agenda (Ban 2016).

At the other extreme, Vreeland (2003) has argued that domestic reformers (typically in the finance ministries of developing countries) use the pretext of international conditionality to legitimize or at least excuse the adoption of unpopular economic reforms. While this explanation allows for a more active role for domestic reformers, it downplays the role of external pressures in driving reforms. This difference is rooted in the fact that for Vreeland the reformers are part of the government. However, in Ukraine’s sandwich coalition the key domestic impetus for reforms comes from a civil society that has only weak links to the political leadership (despite the presence of a few prominent reformers in the Ukrainian parliament and government).

The Ukrainian sandwich model is also different from the dynamics of reforms in Georgia after the Rose Revolution. While domestic political actors with roots in civil society played a crucial role in the design and execution of Georgia’s remarkably ambitious and rather successful anti-corruption reforms after 2003, in Georgia the civil society activists migrated *en masse* into the ranks of the government following the

revolution. As a result, the political dynamics of those reforms were very different—reform proponents had direct access to the levers of power and, therefore, did not have to lobby international institutions to force the government to adopt the promised governance reforms.

Consequently, the experience of Ukraine since the Euromaidan writes a new, and rather different chapter in the story of the relationship between international policy pressures and domestic political actors. Beyond the potential theoretical contribution to the reform literature mentioned above, this model could have significant practical implications. In particular, it suggests that even in the absence of a committed government or an active parliamentary opposition, under certain conditions, it is possible to pursue an active strategy of domestically driven reforms as long as a well-organized civil society sector can build an effective alliance with international actors who have sufficient leverage over the government.

Research Strategy – Illustrating the Importance of the Sandwich

While we have established that the post-Euromaidan context in Ukraine was characterized by a combination of domestic and international reform pressures that had been absent during the failed reforms following the Orange Revolution, we are still left with the analytical challenge of showing that it is the combination of these two elements (i.e., the sandwich) rather than just one of these elements (or possibly some additional factor) that helps explain the greater reform progress in the post-2014 period. In other words, how do we know that Ukraine would have not achieved similar reform outcomes even if only one or other of the two parts of the sandwich had been present? What would have happened had either the civil society push from below or the international pressure from above been missing?

As with most counterfactuals, this is a difficult question. However, in the following chapters we illustrate the importance of both sides of the sandwich by drawing on a series of analytic case studies of post-Euromaidan reforms in four broad issue areas: economic reforms, anti-corruption measures, judicial and security sector reforms and language policy.⁹ While these areas do not exhaust the full list of Ukraine’s ongoing reform challenges, they nevertheless cover a broad range of important policy issues. Just as importantly, from an analytical perspective they provide us with significant variation in (1) the success of reforms in a particular policy issue; (2) the extent to which the different components of the sandwich were present for that issue and (3) the preferences of other political actors (such as the government and the broader public). This set of comparative cases allows us to probe the extent to which the politics of the sandwich coalition can help

⁹ We discuss multiple policy dimensions within each of these broad issue areas.

us explain the evolution of reform dynamics in the different issue areas. In the final chapter we provide an analytical overview that summarizes the empirical support for the sandwich hypothesis across the different reform types and discuss the theoretical and policy implications of our findings.

Conclusion

History matters. To understand what has taken place in the country since 2014, it is important to understand how Ukrainians have learned from and repurposed their past into a set of useful tools for shaping the present and the future. The Euromaidan Revolution was not only Ukraine's second in a decade, but the very nature of what the revolutionaries were trying to achieve was different from the Orange Revolution due to the lessons learned from that past experience. Ukrainians entered into the new reform era with a deeper understanding of the challenges they would face and with first-hand experience of how revolutions can be lost even after the citadels of power have been taken.

What was truly remarkable was how civil society activists used this history and the happenstance of how the Euromaidan functioned to draft probably the most detailed set of policy proposals ever created in the context of revolution. However, as is typically the case with revolutions, power was not handed directly to these civic activists but to a combination of those who managed the forceful seizure of power and former regime insiders who switched with the changing winds. As a result, the task of implementing the Euromaidan agenda has required careful strategy and relentless work to carry out.

As we show in the pages that follow, the key to this strategy has been cooperation between pro-reform actors in civil society and the international community. Where reform has gone furthest—in anti-corruption for example—it has been because the government has been “sandwiched” between civil society actors with high domestic political profile on the one hand, and the international community, with resources Ukraine needs, on the other.

Chapter 2. Economic Reforms

Although the Euromaidan Revolution was driven primarily by concerns about corruption, authoritarianism and European integration, economic concerns have consistently been the most salient problem in post-Communist Ukraine. When asked to identify the most important problems facing their country, 50 percent of respondents in our June 2015 survey identified economic problems as being the most important,¹⁰ and these economic concerns increased to 55 percent in 2016 before declining slightly to 47 percent in 2017. As a result, whether central to the goals of the revolutionaries themselves or not, for the Ukrainian public at large, a key measure of the success of the revolution will be the record on economic reforms.

These economic concerns are very justified. Over the post-Soviet period, Ukraine has fallen increasingly behind its neighbors. By 2012, before the Euromaidan, Gross National Income (GNI) per capita in Ukraine was only \$3500, about a quarter of per capita income in Russia. Moreover, the country's economic problems have been significantly exacerbated by the massive economic costs of the conflict in the East and the broader confrontation with Russia. The Ukrainian economy contracted by 6.6 percent in 2014 and 9.9 percent in 2015, and private consumption declined even more sharply, by 8.1 percent of GDP in 2014 and 20.1 percent in 2015 (EIU 2016: 10). This created massive pressures to reverse the country's economic decline through decisive reforms. In addition to these domestic political pressures, the gravity of the crisis and the high risk of a debt default made Ukraine extremely dependent on Western bilateral and multilateral financial support, and therefore highly susceptible to pressure from international donors.

Given the magnitude of the crisis and the highly distorted economic policy environment after the collapse of the Yanukovich regime, the government has had to tackle a broad range of economic reforms, including tax reforms, energy sector reforms, banking sector reform, pension reform and reforming/privatizing state-owned enterprises. Considering the number and complexity of these economic reforms and the space constraints of this volume, we will here focus primarily on two reforms: efforts to liberalize gas prices and tax reforms. From a policy perspective these two issues are interesting for similar reasons—both are essential for creating stable sources of state revenues, for tackling corruption and for creating an environment for the long-term economic development of the country. Gas subsidies have long been a major drain on the state budget and a source of corruption for political and business elites. Moreover, reforming the provision of gas to residential and business customers is crucial given

¹⁰ By comparison, 23 percent mentioned corruption, 10 percent the weakness of state authorities and 9 percent the war as the most important problem.

Ukraine's excessive reliance on cheap energy and its quest for energy independence from Russia. However, though reform of the gas sector is essential, it is also highly sensitive since the end of subsidies is likely to have substantial political repercussions due to its economic impact on the lives of Ukrainian citizens.

Reform of the tax system is similarly essential. The system that developed over the post-communist era featured high marginal tax rates, complex rules and arbitrary enforcement. As a result, the tax system was a major source of corruption and failed to provide either the appropriate incentives for economic development or a reliable source of state revenues.

In analytical terms the two reforms are also useful to study because they illustrate in different ways the importance of the policy sandwich for achieving reform. For energy reforms, we show how the post-Euromaidan crisis finally broke years of resistance to reform on the part of successive Ukrainian governments. With assistance from civil society, the international community was able to get the government to enact a series of potentially far-reaching reforms. However, these reforms have increasingly come under pressure, both from elites reacting against the reduced opportunities for corruption under the new system and from the public affected by some of the economic repercussions of gas price liberalization. On tax reform, by contrast, progress so far has been modest. We argue that this is primarily due to the effective absence of the sandwich – international pressure has been weak and cooperation between domestic civil society and international organizations has been limited.

Gas Price Liberalization

Reforming the gas sector has been one of the most crucial and challenging tasks facing the Ukrainian government. Prior to the post-revolutionary reforms, the energy sector in general and natural gas in particular were one of the main sources of economic and political vulnerability. This vulnerability was reflected in a variety of ways. Domestically, heavily subsidized gas prices were a major drain on the country's budget as the economic losses of the state-owned Naftogaz company accounted for an enormous 7% of GDP in 2014. At the same time subsidies encouraged the country's continued low energy efficiency among both households and commercial enterprises (Kononczuk 2015). Internationally, the inefficient and corrupt gas sector perpetuated the country's high dependence on Russian gas imports, which in turn contributed both to Ukraine's growing foreign debt and to its vulnerability to Russian political pressures, especially following the Orange Revolution (Mammadova 2016).

As a result, the reforms were absolutely necessary to improve the alarming state of Ukrainian public finances and minimize the country's dependence on Russian gas.

However, reformers faced considerable political challenges as gas reform is one of the few areas where the interests of Ukrainian elites and of the Ukrainian public seemed to coincide (in the short run at least). Resistance to reform at the elite level centered on the fact that the gas sector has been a source of enormous rents for the post-independence political elite, while the public was extremely worried about the consequences of reform for gas prices. According to one survey, while 81 percent of Ukrainians felt that people should pay prices that reflect the “real” cost of communal services like gas, some 82 percent felt that people they knew could not afford to do so (Kyiv International Institute of Sociology 2015). Despite the difficulties, Ukraine has made significant progress on this issue. These reforms were adopted largely due to international pressure and supported by Ukrainian civil society and expert community. Nevertheless, as reforms have started to bite, evidence of renewed resistance has become increasingly worrying.

The importance of reforming the gas sector in Ukraine has long been recognized by the international community. There are two key kinds of reform – increasing consumer prices by reducing budget-busting subsidies and restructuring the sector to increase competition and reduce the scope for corruption. For space reasons, we focus here primarily on the consumer prices side of the reforms.

Until the Euromaidan, the effects of Western conditionality on reform in the gas sector were limited. The IMF listed the liberalization of consumer gas prices as a requirement in all of its lending agreements with Ukraine, including the ones from 2008 and 2010, each worth more than \$15 billion. The requirement, however, remained unfulfilled under both the Tymoshenko and the Azarov governments. In fact, the failure to bring consumer gas prices closer to market prices led to the suspension of the IMF program under Azarov.¹¹ Ukrainian elites kept subsidies for consumer gas prices in place as it helped them ensure electoral support and kept extremely profitable revenue streams open to self-enrichment (Wolczuk 2016, Kononczuk 2015).

The situation changed drastically, however, after the Euromaidan as the Ukrainian government found itself operating under dire economic and geopolitical conditions. As a result, IMF and EU conditionality has been able to achieve much more since 2014 in comparison to earlier periods. Foreign partners had an important ally in members of Ukraine’s civil society and expert community who were committed to working towards deep and comprehensive reform of the sector. This is particularly interesting, as gas reform is one area where the agenda of organized civil society most sharply diverged from the anti-price increase sentiment that was prevalent amongst the Ukrainian public at large. Civil society groups participated in the drafting of the two main laws (Press Service

¹¹ <https://www.reuters.com/article/us-ukraine-crisis-imf/factbox-ukraines-history-with-imf-bailouts-idUSBREA1O1DT20140225>

2015, Dixi Group 2015), sought backing from international partners when the adoption or implementation of key legislation was jeopardized (Dixi Group 2016), promoted public awareness (Dixi Group 2015), engaged in monitoring of the implementation process, and pressured the government to deliver on its commitments (RPR 2017).

The government initially raised consumer prices for gas and heating by 56 percent and 40 percent respectively in mid-2014 (IMF 2015:21). Though in budgetary terms these increases were largely offset by high inflation (which averaged over 40 percent from late 2014 through mid-2015), the potential impact on households was significant given the much slower growth in nominal wages during this period (under 20 percent during the same period.) Then as part of the negotiations leading up to the February 2016 Extended Fund Facility (EFF) agreement with the IMF, the Ukrainian government raised both gas and heating prices in April 2015 and committed to further raise the prices to 75 percent of cost recovery levels by April 2016 and to 100 percent by April 2017. This amounted to an average increase of 285 percent in gas prices for Ukrainian households (IMF 2015:21). This ambitious schedule was fulfilled one year ahead of schedule, when in April 2016 the new government of Volodymyr Groysman took advantage of lower international gas prices to bring Ukrainian gas and heating tariffs to full cost recovery levels starting on May 1, 2016. (IMF 2016:15)

This ambitious push to liberalize energy prices is widely seen as one of the key economic reform achievements of the post-Euromaidan period (EU Commission 2016). The IMF highlighted it as a key reason for Ukraine's ability to reduce the budget deficit from 10 percent in 2014 to 2.3 percent in 2016 (IMF 2016). Furthermore, the shift to market-level energy prices reduced demand and contributed to significant reductions in Ukrainian natural gas imports and an even sharper drop in gas imports from Russia, which were completely eliminated by 2016 (Naftogaz 2016).

Despite their economic justification, the massive price increases in the name of convergence to international market prices were politically risky. After all, most Ukrainians believe that the state should intervene in setting energy prices. Both in our pre-Euromaidan survey (December 2012) and in the three survey waves during the price liberalization process (2015-2017), roughly 60 percent of respondents reported that the government should be "highly involved" in setting energy prices and another 30 percent thought it should be "fairly involved."

The government and its international backers recognized the potentially high economic and political costs of rising energy consumer prices and tried to counter them by offering targeted subsidies, which were supposed to offset the higher energy costs for poorer households. The government allocated significant funds for these subsidies (1.1 percent of GDP in 2015 and 2.4 percent in 2016), and, after some initial implementation

problems, roughly 30 percent of households received subsidies under the program by late 2015/early 2016 (Maksymenko 2017).

Nevertheless, our surveys indicate that the share of Ukrainians who reported being unable to afford paying their utility bills increased from 20 percent in December 2012 to 54 percent in June 2015 before declining to 44 percent in August 2017. While these alarmingly high rates were partly caused by the declining real incomes in the context of Ukraine's deep recession and high inflation in 2014-16, they nevertheless paint a stark picture of the short-term costs of energy price liberalization. Among poor Ukrainians, the inability to afford rising utility prices rose from 38 percent in December 2012 to 71 percent in June 2015 before declining slightly to 61 percent in August 2017. This suggests that despite the government's targeting efforts and some recent progress, energy liberalization continues to impose significant costs on many Ukrainians, especially among the poor.

Not surprisingly, almost 90 percent of Ukrainian respondents in our post-Euromaidan surveys reported that they were very concerned about rising utility prices. In the early period these concerns could be blamed on the initial shock of the rising energy bills and the difficulties of many households to access the subsidies (Kyiv International Institute of Sociology 2015). However, the fact that these numbers barely changed from 2015 to 2017 despite the growing subsidy coverage and a massive public relations effort by the Groysman government to illustrate how the subsidies would in fact reduce the net energy bills for many families, suggests that the government has not yet found a way to sell these reforms Ukrainian citizens in an effective manner.¹²

The political costs of these economic frustrations are clearly visible in our public opinion surveys. By using panel surveys, which ask the same people the same questions at different time periods, we can analyze the effects of growing problems in paying utility bills on a variety of political attitudes. We compared respondents who reported being able to pay utility bills on time in December 2012 but were no longer able to do so in 2015/16 (about one third of the sample) to people whose ability to afford utility prices had stayed constant or had improved over this time period.¹³ As expected, "utilities losers" were noticeably more likely in 2015 to disagree strongly that economic reforms had been worthwhile (33 percent vs. 23 percent) and more likely to agree strongly that reforms were carried out at the expense of the poor while the interests of the rich were protected (80 percent vs. 70 percent). Moreover, the impact of utilities-related pocketbook considerations carried beyond such reform-specific attitudes to broader political assessments: respondents who had lost the ability to pay for utilities from 2012-16, were less likely in 2016 to think that their country was moving in the right direction (9 percent

¹² <https://www.facebook.com/volodymyrgroysman/posts/432237450278508>

¹³ Comparing objective assessments of ability to afford utility payments reduces the likelihood of politically motivated biases that can arise if asking respondents to evaluate such changes retrospectively.

vs. 18 percent), and they were more likely to expect their personal economic situation to continue to deteriorate over the following year (75 percent vs. 50 percent) and over the next five years (65 percent vs. 43 percent).

Predictably, public discontent about the economic costs of price liberalization found its way into Ukrainian political competition. Two of the main opposition parties, Samopomich and Batkivshchyna, criticized the price increases as excessive. Batkivshchyna even filed a series of lawsuits against the National Energy and Utilities Regulatory Commission and the Cabinet of Ministers for what its leader, Yulia Tymoshenko, saw as an illegal and unconstitutional set of measures. However, the partisan effects of this politicization of energy price liberalization have been mixed so far. In our July 2016 survey, respondents with diminishing ability to pay utility bills were more likely than other Ukrainians to express no trust in the government (51 percent vs. 37 percent) and the presidency (48 percent vs. 34 percent), but they were no less likely to distrust the opposition (41 percent vs. 40 percent). This suggests that while energy price liberalization has hurt the government, the opposition has not yet been able to turn it into an effective political weapon.

Nonetheless, over the past year, there is growing evidence that the unpopularity of the energy tariff increases is starting to undermine the Ukrainian government's commitment to gas price liberalization. Already in February 2017 Prime Minister Groysman emphatically rejected suggestions by Naftogaz Chief Commercial Officer Yuriy Vitrenko about further possible gas tariff increases for the population in 2017 (Interfax-Ukraine 2017). The government's reluctance to agree to further energy price increases also became a major sticking point in the negotiations with the IMF in the fall of 2017. To avoid the 18% increase in gas prices under the initial formula agreed with the IMF as part of the 2015 EFF agreement, the government asked to renegotiate the formula. However, the IMF insisted that the government stick to the original agreement and criticized it for deviating from the automatic formula intended to depoliticize gas pricing (Reuters 2017). As of the writing of this chapter, the standoff has not yet been resolved, and has triggered a further delay in the disbursement of IMF funding to Ukraine. While both the Fund and the government are committed to finding a solution to this impasse, the prospects for significant concessions by the Ukrainian government are undermined by the approaching parliamentary and presidential elections of 2019 and by Ukraine's reduced dependence on IMF funding in the context of the current economic recovery and the significant already disbursed IMF funds (Ash 2017).

Tax Reforms

Beyond the gas sector, Ukraine also faces the challenge of overhauling the entire tax system, which is inefficient and often generates perverse incentives. According to a 2013 World Bank Enterprise survey, 16 percent of Ukrainian firms cited high tax rates as the greatest obstacle to doing business (just behind corruption and access to finance with 19 percent and 21 percent respectively), while an additional 6 percent identified tax administration as the biggest problem (World Bank 2013). This combination of high tax rates and an unnecessarily complicated tax system was a legacy of President Leonid Kuchma's efforts to control the business sector by building sufficient discretion into the system to allow the government to reward its allies and punish its opponents.¹⁴ Furthermore, this discretion facilitated the proliferation of corruption in the tax administration: fully 50 percent of the over 1000 firms in the 2013 World Bank survey reported that they were expected to give gifts in meetings with tax officials (World Bank 2013).

Not surprisingly, there were some pressures from the business sector and civil society groups to prioritize tax reform in the post-Euromaidan period. The Tax and Budgeting Reform group of the Reanimation Package of Reforms formulated a detailed justification of the importance of tax reforms and identified a series of concrete policy steps that would move Ukraine towards a more efficient tax system.¹⁵ Furthermore, RPR has issued a number of public calls on the government to advance specific pieces of legislation related to tax reforms, such as the call in July 2017 to finalize the withdrawn capital tax law.¹⁶

Despite these civil society pressures, progress in tax reforms has been limited so far. This failure has arguably been due to the weak international pressure on the Ukrainian government. Even though international actors have been nominally committed to promoting tax reforms, in practice the civil society-international organizations partnership has not functioned as well for tax policy as for other policy areas, and therefore the sandwich effect has been weaker. While international policy pressures for tax reforms have not been completely absent, part of the problem has been a lack of coordination among donors. For example, while the IMF successfully pressured the Ukrainian authorities in December 2015 to adopt a series of tax reforms as a precondition to disbursing the third installment of the IMF loan, these reforms were temporary and were primarily focused on the tax increases necessary to balance the budget for 2016 rather than dealing with the structural institutional reforms required to overhaul the tax

¹⁴ Authors' interview with Vladimir Dubrovskiy, head of RPR working group on tax reform, October 2016.

¹⁵ <http://rpr.org.ua/en/groups-rpr/08tax-reform/>

¹⁶ <http://rpr.org.ua/en/news/the-public-calls-on-the-government-to-finalize-the-draft-law-introducing-withdrawn-capital-tax/>

administration. (RFE-RL 2015) While such structural reforms are often part of the World Bank agenda, in the Ukrainian case the World Bank has focused primarily on the country's dire infrastructure needs and, as a result, there was weaker involvement in the design of tax administration reforms.

Relatedly there was less cooperation between domestic civil society and Western donors/institutions on tax reform. This weaker cooperation was partly reflected by the weaker Western support for civil society efforts to promote tax reforms than for other more visible areas of post-Euromaidan reforms such as anti-corruption initiatives. As a result, groups promoting domestic tax reform have struggled to attract the types of resources of some of their civil society counterparts in other reform areas.¹⁷ Furthermore, the coordination between domestic reformers and international financial institutions was not as effective for tax reforms as in other areas. This weaker input of civil society into the design of tax reforms was in part due to fact that the International Monetary Fund prioritized the Ukrainian Finance Ministry when discussing tax reforms, which in turn may have been due to the greater credibility of US-born former Finance Minister, Natalie Jaresko, in the 2014-2016 period.¹⁸

Conclusion

Although most of the key demands expressed in the Euromaidan Revolution were not directly related to the economy, there has nevertheless been widespread agreement in political and international circles that successful economic reforms are a necessary condition for the success of the revolution overall. This is particularly so because of the economic crisis that followed the revolution. Consequently, economic reforms have been front and center of the government, civil society and the international community's attention in the last four years.

The results, however, have been mixed. In this chapter we focused on two of the most important reforms—gas sector price liberalization and tax reform—that illustrate some of the basic similarities as well as some of the differences across different reforms in Ukraine. Both sectors illustrate the difficulty of implementing reform in contexts where there are strong incentives for political elites to resist reforms in order to protect incentive structures that, while damaging for the country as a whole, are useful for the political class. Both the structure of the gas sector and the tax system provided opportunities for corruption and, hence, have been used as political tools. Attempts at reforms over the years have, therefore, broadly failed.

¹⁷ Authors' interview with Vladimir Dubrovskiy, October 2016.

¹⁸ Authors' interview with Vladimir Dubrovskiy, October 2016.

However, the economic and political crisis that followed the revolution dramatically changed the situation. Much more dependent on international support than ever before, Ukraine's political class was no longer able to merely simulate reform. In return for essential international support, real and quite dramatic steps have been taken in the area of gas reform in particular. While pressures to weaken or unravel reforms still remain, the changes that have been implemented are truly important. By contrast, much less progress has been made in tax reform, which has been less of a priority for international donors, despite considerable technical and political input into the process from domestic civil society.

The variation in progress between these two sectors illustrates the key role of the sandwich of international and domestic civil society in achieving success in reforms. Where both sets of actors work together and prioritize an issue, real change is achievable even in the presence of a reluctant political class or population. Where the focus and coordination is less intense, however, progress is harder to make. This is a pattern that we see across the range of reforms analyzed in this volume.

Chapter 3. Governance: Anti-Corruption

Ukraine has consistently been ranked as one of the world's most corrupt countries over the last 25 years. Even by post-Soviet standards, Ukraine has performed poorly on corruption indices and the Orange Revolution of 2004 did little to change that as politics continued to be dominated by oligarchic interests. As a result, in 2012 Ukraine was ranked 144 of 174 countries on Transparency International's Corruption Perceptions Index. That same year, more than half of respondents in a national opinion survey conducted by the authors thought corruption a serious problem within the presidency and the government. Perceptions of the Rada, the courts, the police and local administrations were no better.

Consequently, anti-corruption measures have been at the heart of the reform agenda since the Euromaidan Revolution. After all, a key element driving people into the streets to challenge Yanukovich was revulsion at rampant corruption. Moreover, the aftermath of the Euromaidan Revolution did much to raise public awareness of the corruption crisis in the country. The preposterous opulence of Yanukovich's Mezhyhirya residency provided a vivid illustration of just how much money was being stolen from Ukrainian citizens. An even more chilling illustration of the costs of corruption, perhaps, was the parlous state of the military when faced with the challenge of meeting Russian aggression.

Consequently, governance and anti-corruption reforms have been at the core of Ukraine's second revolution. However, the very reforms that Ukraine needs to implement go directly against the personal interests of Ukraine's political class which, as asset declarations since the revolution reveal, has enriched itself massively at citizens' expense over the years. The challenge then has been to design a set of reforms that can effectively cut off access to corruption and have these reforms accepted and implemented by a political and bureaucratic class with a lot to hide and a lot to lose from these changes.

As we show in this section, perhaps surprisingly, much progress has been made in facing this enormous challenge. At times, the rearguard action of Ukraine's elites has made the task seem Sisyphean in nature – at every turn subtle (and not so subtle) efforts have been made to water down, complicate and stymie the reforms, preserving the appearance of reform while removing most of the substance. Nevertheless, real progress has occurred. We analyze progress in four areas – asset declaration, the recovery of stolen assets, public procurement and the establishment of national anti-corruption institutions. As we detail here, despite setbacks and resistance, the intellectual and political capacity of Ukrainian civil society and the political clout of the international community have together done much to push the agenda forward, though victory for reform has yet to be secured.

Creating New Anti-Corruption Institutions – NABU

The central challenge of moving Ukraine from the high corruption equilibrium that has characterized the post-Soviet period is the creation of strong institutions that can sustain good governance over time. This is a challenge many countries have faced and the record of success is less than inspiring. However, Ukraine’s reformers have learned not only from their previous revolution, but also from the experience of other post-communist states, such as Georgia and Romania.¹⁹ As a result, in the aftermath of the Euromaidan a consensus existed amongst reformers that the key to success was less to try to reform existing heavily politicized and compromised investigation agencies (the National Anti-Corruption Committee, the Office of the General Prosecutor, the Security Service and court system) but instead to create new institutions to take over the responsibilities of promoting good governance.²⁰ Such an approach has a number of potential advantages. New institutions are more likely to be independent, the public is more likely to perceive them as such, and they are likely to deliver results more quickly. On the other hand, the disadvantage is that the existing institutions are likely to do what they can to resist losing their power. The experience of Ukraine in the last three years seems to confirm both the up and the downsides of creating new institutions.

The list of new law enforcement and anti-corruption agencies in Ukraine is long—the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor, and the National Agency for Corruption Prevention. However, amongst them, the most significant is the National Anti-Corruption Bureau of Ukraine (NABU). Established by a law of 14 October 2014, NABU is headed by Artem Sytnyk, who was appointed as a result of an open competition.

The creation of NABU is a classic example of the so-called “sandwich” at work—a small group of pro-reform MPs with roots in civil society working in close alliance with Ukraine’s foreign partners. Both the IMF and the EU conditioned their financial assistance on the establishment of NABU and other new anti-corruption institutions, and in the early post-Euromaidan period the government agreed to these demands to demonstrate its commitment to governance reforms.²¹ Moreover, at times when the political establishment has pushed back against reform, the joint efforts of civil society, pro-reform MPs, and foreign partners have proven to be essential for saving the new institutions.

The launch of NABU was delayed by about a year due to resistance to change, as well as practical organizational, financial and human resource constraints associated with creating new institutions (Zochowski and Jaroszewicz 2017). However, the most serious

¹⁹ Authors’ interview with Yuliya Ivakhnina, Head of NABU Open Office, October 2016.

²⁰ Authors’ interview with Clemens Mueller, European Union Assistance Mission, October 2016.

²¹ Authors’ interview with Yuliya Ivakhnina, Head of NABU Open Office, October 2016.

obstruction to reform was political. MPs from different factions across the political spectrum, including the Opposition Bloc, the Bloc of Petro Poroshenko, and the People's Front, tried on multiple occasions to introduce legislative changes that would weaken the NABU (Zochowski and Jaroszewicz 2017). Pro-reform MPs and civil society activists were quick to react in such situations and sought the support of foreign partners. For instance, it was only after foreign partners intervened that NABU received a much needed eight-fold increase of its budget in comparison to the initial allocation proposed by the government (De Waal 2016). Civil society and foreign partners have also been important in thwarting attempts to establish political control over NABU's audit committee (Romanyuk 2017, RPR 2017).

However, efforts to neutralize Ukraine's anti-corruption institutions seem to be relentless. In November 2017, a coalition of MPs from both President Poroshenko's own ruling party and the main opposition bloc – on opposite sides in the revolution – united to fire Iegor Soboliev, Chair of the Rada's anti-corruption committee and a leader in the fight against corruption. The same anti-reform forces proposed legislation that would have removed the head of NABU. This legislation was withdrawn under pressure from key international partners, including the US, the EU, Canada and the IMF. Nevertheless, the threat remains and in the meantime NABU's day to day work is undermined by the office of the Prosecutor General, which has publicly revealed details of ongoing investigations.²²

Despite the range of anti-reform forces arrayed against it, NABU has managed to establish itself as a largely independent body and its record to date has, under the circumstances, been positive. By December 31, 2017, NABU had opened 489 investigations, served 149 notices of suspicion and issued 165 formal accusations. The losses associated with crimes under investigation by the Bureau at the time stood at 153.3 billion Ukrainian hryvnas (approximately \$5.8 billion) (NABU 2017a).

NABU has also marked significant progress in tackling high level corruption. A key accomplishment has been the launch of investigations against several high-level politicians. The two most prominent cases involve the head of the State Fiscal Service and former MP, Roman Nasirov, and a former MP and key ally of former Prime Minister Arseniy Yatsenyuk, Mykola Martynenko, who are accused of misappropriating millions of dollars from state-owned companies in the gas and mining sectors, respectively. Another example is the case of MP Oleksandr Onyschenko who is indicted for engineering a corruption scheme in the gas sector. Most recently, the NABU has opened investigations against two other MPs, Boryslav Rosenblat and Maxim Polyakov, who are suspected of bribery in the so-called "amber scheme" (Replianchuk 2017). The fact that

²² <http://en.interfax.com.ua/news/general/466786.html>. See also: <https://nabu.gov.ua/en/novyny/undercover-operation-conducted-nabu-and-sapo-was-failed-due-lack-right-autonomous-wiretapping>

NABU takes on active politicians demonstrates the institution's independence and potential to fight corruption effectively.

With courts unwilling to decide on corruption cases, however, NABU's impact on Ukraine's fight against corruption has been significantly limited—of 107 cases that the Bureau and Specialized Anti-Corruption Prosecutor submitted to courts, only 19 convictions have resulted (NABU 2017a). As a result, the Bureau and its allies have insisted on the creation of specialized anti-corruption courts, untainted by the practices of the current judicial system (NABU 2017b, RPR 2017). Here, yet again, reformers face a pushback from old elites who see keeping the courts and other law enforcement institutions unreformed as a way to counterbalance NABU's activity.

Asset Declarations

One of the clearest achievements in governance reform has been the establishment of a new asset declaration system for public officials. This system was created in response to a strong public demand for greater transparency and accountability and was also the result of joint efforts of civil society, international actors, and reformers in parliament and government. The legal basis for its introduction was laid with the Law "On Prevention of Corruption" which was adopted in October 2014 and came into force in April 2015. The law envisioned a new procedure for asset disclosure of public officials and created a new body, the National Agency on Corruption Prevention (NACP), whose main tasks are to run the asset declaration system and verify declarations.

The new law requires that public officials declare all of their assets, as well as those of their family members. Two features of the asset declaration process make it superior to the old system (Homenko 2016). First, the current disclosure requirements are much more comprehensive. Public officials now have to declare assets in cash, which had been an important loophole in the past. Second, false asset disclosure and the failure to disclose assets in a timely fashion have been made into criminal offences. Public officials who violate the declaration requirements now potentially face imprisonment for up to two years and risk being barred from public office for up to three years.

The law on asset declarations survived several attempts by lawmakers to delay or weaken it (GRECO 2017, Cohen 2016, Rzhetskaia 2016). Due to administrative and legislative delays, the NACP did not start operating in full capacity until August 15, 2016, more than a year after its creation. The launch of the electronic declaration system was also delayed until September 1, 2016 (Miskyi and Halushka 2016). The pushback came from various factions in Parliament, including the Bloc of Petro Poroshenko and the Opposition Bloc, once again demonstrating that politicians on different sides of the revolution can still be on the same side in protecting corruption. For example, in February

2016 a member of parliament from the Bloc of Petro Poroshenko, Vadim Denisenko, proposed changes to the anti-corruption law that would have delayed criminal responsibility for false disclosure until 2017, giving officials time to rearrange their asset holdings (Rzheutskaia 2016).

What saved the reform was the pressure of civil society groups and the carrots and sticks of the international community. Both visa-free travel within the EU and financial assistance from international partners were made conditional on the successful establishment of a functional e-declaration system (GRECO 2017). It was under pressure from the EU that President Poroshenko vetoed the subversive amendments initiated by MP Denisenko. After consultation with civil society and with EU approval, the president proposed alternative amendments that envisioned the immediate entrance into force of criminal responsibility for false disclosure. The amendments were adopted by parliament in March without support from the Opposition Bloc (Rzheutskaia 2016).

As a result of the new legislation, more than 107,000 officials filed electronic declarations between September and October 2016 (Miskyi 2017). The results were stunning. The declarations brought to light enormous fortunes in the hands of public officials in the form of jewelry, art, property, bank deposits, and cash. For example, the disclosed assets of 410 members of parliament taken together amounted to \$470.3 million (Nizhnikau and Moshes 2016). The second wave of submission of asset declarations took place between January and April 2017 and covered some 800,000 officials.

The asset declaration system has the potential to become an effective corruption prevention mechanism. There had been speculation that the sheer scale of the asset declarations could have the perverse effect of making future illegally obtained assets easier to justify (Homenko 2016). However, it seems more probable that the large amounts declared by public officials demonstrates a belief on the part of officials that there are likely to be real teeth in the asset declaration system.

It is clear, nevertheless, that the battle on this issue is not yet over. The NACP has yet to carry out a comprehensive verification process of asset declarations. The agency's performance to date is far from satisfactory – by July 2017, it had finalized the verification of only 29 declarations submitted by high-level officials and registered no major violations (RPR 2017). Moreover, the resignation of a reform-minded member of the leadership, Ruslan Riaboshapka, in June 2017 introduced significant challenges to the agency's decision-making process, essentially making the prospect of improving performance even grimmer (RPR 2017). The lack of progress has generated public dissatisfaction, raised concerns over the agency's independence and led to demands for the resignation of the NACP leadership (Civic Lustration Committee 2017, Miskyi 2017). Civil society activists, however, have warned against the attempt of politicians to use public dissatisfaction with

the NACP to introduce legislative changes that would further increase the agency's dependence on the government (Civic Lustration Committee 2017).

A serious pushback against anti-corruption activists came in March 2017, when the Rada adopted highly controversial amendments to the Law "On Prevention of Corruption," that made members of anti-corruption NGOs subject to submitting electronic declarations. Due to pressure from the international community and Ukrainian civil society, in less than three months President Poroshenko proposed legislative changes that revoked the e-declaration requirement for anti-corruption activists (RPR 2017). However, the Verkhovna Rada failed to adopt these changes.²³ As a result, anti-corruption activists were compelled to file e-declarations by April 1, 2018.

It is clear that challenges will continue to arise and that vigilance will be needed both from Ukrainian NGOs and from the international community. Nevertheless, despite the difficulties and lack of comprehensive verifications, the establishment of the electronic declaration system is a major accomplishment for Ukraine.

Asset Recovery

In addition to the broad scope of asset declarations, there remains the more specific issue of trying to reclaim the vast funds stolen under the Yanukovich presidency. Conservative estimates put the amount misappropriated by Yanukovich and his cronies as a result of VAT and procurement fraud alone at about \$60 billion (Riley 2016). The massive scale of theft and overall dissatisfaction with corruption triggered high public demand for returning the stolen money back to the country's budget. Nevertheless, while the government has expressed willingness to pursue asset recovery, the results after four years are extremely modest.

At the request of the Ukrainian government after the revolution, the EU imposed sanctions on twenty-one individuals linked to President Yanukovich and on Yanukovich himself, effectively freezing the assets they kept under the jurisdiction of EU member states. However, due to the slow and ineffective handling of proceedings by Ukrainian law enforcement authorities, the EU had to lift sanctions against seven of these individuals, resulting in losses for Ukraine estimated at billions of dollars (Shevchuk 2017, Anticorruption Action Centre 2017a). According to experts from the Anticorruption Action Centre, between 2015 and 2016, the Ukrainian authorities managed to bring back to the state budget a mere 265,071 Ukrainian hryvnas (approximately \$9,800) (Shevchuk 2017).

²³ <https://www.unian.info/politics/10066970-ukraine-s-parliament-fails-to-cancel-e-declarations-for-anti-corruption-activists.html>

The lack of progress in this issue area is in part due to the nature of asset recovery. It is a legally complicated, time-consuming, and expensive process, whose success rate globally is low. OECD countries report a total of merely \$2.623 billion in frozen assets between 2006 and 2012, of which only \$423.5 million have been recovered from foreign jurisdictions (Gray et al. 2014).

Nevertheless, political factors are also at play. A significant proportion of Ukraine's current political class is believed to have benefited from the system of corruption before the revolution and has few incentives to promote major asset recovery initiatives (Riley 2016). In 2014, Ukraine had almost no effective mechanisms of asset recovery (Shevchuk and Kaleniuk 2015). What the country needed was political will to make the necessary legislative changes and to ensure quick investigations. However, the two institutions responsible for the investigation of Yanukovych's crimes—the prosecutor's office and the judiciary—have remained politicized and ineffective (Shevchuk 2017, Anticorruption Action Centre 2017b), with progress on both fronts being deliberately stymied by the current ruling class.

Once again, those positive steps that have been undertaken, were due to civil society pressure and Western conditionality. A particularly important achievement has been the creation of the Asset Recovery and Management Agency (ARMA) in November 2015 and the appointment of its director in December 2016 (Anticorruption Action Centre 2016). The establishment of a specialized agency tasked with tracing and management of stolen assets was a requirement set by the IMF and the EU and supported by Ukrainian anti-corruption experts.²⁴ ARMA is not yet fully-operational. Currently, the agency is in the process of recruiting and training staff. Another positive development has come from the work of the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office. The new agencies have managed to seize assets worth millions of dollars, which demonstrates the institutions' effectiveness. The seized assets come from investigations of corruption-related crimes that involve current politicians and provide some hope for the future, while the prospect of repatriating the assets stolen by Yanukovych and his associates seems rather low (Shevchuk 2017). Nevertheless, the success of these new institutions, as mentioned previously, will depend on the creation of an independent anti-corruption court.

Public Procurement

Public procurement accounts for more than 15% of Ukraine's GDP (Shapoval, Metodieva and Palamarchuk 2017) and has traditionally been a major source of

²⁴ <http://uacrisis.org/31597-natsionalne-agentstvo-ukrayini-z-pitan-rozshuku-ta-rozporvadhennya-aktivami>

corruption. Recognizing the window of opportunity that opened up after the revolution, anti-corruption activists decided to work towards a profound reform of the sector. Their strategic cooperation with pro-reform members of government and parliament, private sector, and international partners, led to the successful establishment of ProZorro, an online public procurement system whose aim is to improve the efficiency of public procurement, increase transparency, and bring about higher levels of business and public trust.

A major strategy civil society activists used to push through the reform was actively seeking out allies in government and parliament. They found political support in two pro-reform economy ministers and several parliamentarians. After he assumed the position of minister of economy in February 2014, Pavlo Sheremeta signaled his commitment to reform by encouraging volunteers to come forward with suggestions about ways to improve the economy (Kyiv School of Economics 2017). A group of activists and experts coalesced around the idea that a comprehensive reform of the procurement sector would require digitization and began developing a concept for an electronic procurement system inspired by international best practices, in particular, public procurement reforms in Georgia. They found support for their ideas at the Ministry of Economic Development and Trade (MEDT) and Parliament, and together with the two institutions drafted legislative changes that would pave the way for digitization of the sector.²⁵

However, political support for the reforms was short-lived. In August 2014, Sheremeta resigned and early parliamentary elections were announced. This forced supporters of public procurement reform to work outside of the government. With the support of private sector actors and Transparency International, a new system for small tenders involving commercial marketplaces for bids was created (Kyiv School of Economics 2017).²⁶ A pilot project was successfully launched in February 2015. The project, however, lacked the official support of the government.

The reform regained impetus under the new economy minister, Aivaras Abromavicius, who was one of several foreigners President Poroshenko appointed to senior positions in government in an attempt to demonstrate commitment to reform and win international support. Abromavicius assigned the portfolio of public procurement reform to his deputy minister, Maxym Nefyodov, previously a manager in a private equity firm. The new leadership facilitated the recruitment of civil society activists as civil servants to work on reform from within the ministry and provided key support on the legislative front. As a result, the law “On Public Procurement” was adopted in December

²⁵ https://www.slideshare.net/ProZorro_slides/history-of-prozorro-73379060

²⁶ *Ibid.*

2015 and ProZorro became a state-owned enterprise. On April 1, 2016 ProZorro became mandatory for central government bodies and natural state monopolies and began covering all other contracting agencies from August 1, 2016.²⁷

Temporary setbacks in the development and introduction of the online procurement system came from political factors. Both economy ministers Pavlo Sheremeta and Aivaras Abromavicius resigned because of their inability to push through economic reforms and fight corruption. The key reason for Abromavicius' resignation, for example, was his conflict with Igor Kononenko, a businessman and MP of the Bloc of Petro Poroshenko. Kononenko allegedly used his ties to President Poroshenko to pressure Abromavicius into making high-level appointments at the ministry and state-owned enterprises (Zinets 2016). Civil society groups and the ambassadors of nine western governments and the EU issued statements expressing support for Abromavicius' work on reforms and disappointment at his resignation.²⁸ These statements demonstrate the importance civil society and foreign partners attach to having pro-reform allies in government to advance the reform agenda.

Activists dealt with these political challenges by remaining flexible, notably by adapting the concept of public procurement when the first draft law failed and by seeking backing from commercial marketplaces when government support was beyond reach. Later, with MEDT backing the project, ProZorro activists applied for and received much needed funding and expertise from international partners, including the US, Germany, the EU, and EBRD (Kyiv School of Economics 2017).

The results of the reform have been truly remarkable. ProZorro has made public procurement more efficient and transparent by providing all market agents with a single platform of operation and allowing for easy monitoring (Shapoval, Metodieva and Palamarchuk 2017). Systematic analyses show that in 2016 the public procurement market increased by 35% in volume and attracted three times more participants in comparison to 2015 (Shapoval, Metodieva and Palamarchuk 2017).

Moreover, there is also some evidence that ProZorro has played a role in improving corruption perceptions in the business sector. According to a survey conducted in 2016, the majority of Ukrainian entrepreneurs were of the opinion that the new electronic system “significantly (27%) or partially (53%) reduces corruption in

²⁷ https://www.slideshare.net/ProZorro_slides/history-of-prozorro-73379060

²⁸ <http://novakraina.org/opinion/spilna-zayava-gromadskikh-organizac>;
<http://www.swedenabroad.com/en-GB/Embassies/Kyiv/Current-affairs/News/Statement-on-the-Resignation-of-Minister-of-Economic-Development-and-Trade-Aivaras-Abromavicius-sys/>;
http://eeas.europa.eu/archives/delegations/ukraine/press_corner/all_news/news/2016/2016_02_03_en.htm.

procurement.”²⁹ The study further showed that entrepreneurs experienced 25% less corruption in the sector after switching from the traditional paper-based system of public procurement to ProZorro. According to government estimates, by May 2017 ProZorro has saved the state budget some 24 billion hryvnas (approximately \$887 million).³⁰ For all these achievements, ProZorro has been acclaimed as one of the most successful reforms in Ukraine and has won a number of prestigious awards.

Reform Effects on Corruption Perceptions

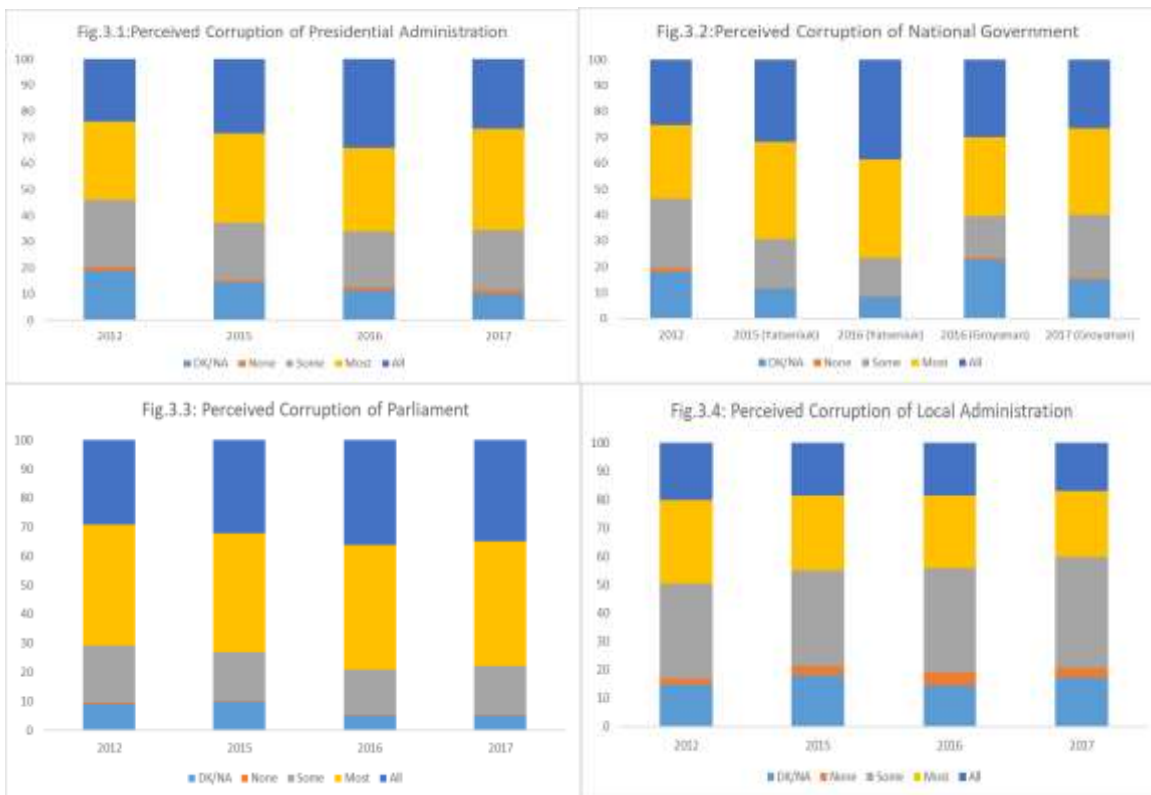
In this final section we briefly address the question of how the reforms described above have affected citizens’ perceptions of corruption among public officials. These public opinion dynamics are important both because they offer one possible metric for assessing Ukraine’s governance reforms and because perceptions of the success or failure of anti-corruption measures are likely to shape the broader legitimacy and popularity of the post-Euromaidan political order.

In interpreting these trends, a few caveats are in order. First, it is possible that the time frame of our analysis may be too short to capture the full effect of the most ambitious reforms, such as the asset declarations system and the ProZorro public procurement system. Both of these reforms were implemented in the second half of 2016, which means that by the time of our last survey wave in August-September 2017, they had been in place for only about a year. Even if this time frame were sufficient for these institutions to affect the behavior of public officials, the impact of reforms may not yet be fully reflected in public perceptions. This may be a particular problem given the fact that bitter experience has bred a deep-seated distrust of the political class on the part of many Ukrainians. Second, reforms may actually trigger a short-term increase in corruption perceptions even if they reduce actual corruption. The asset declarations revealed the extent to which many public officials had enriched themselves over the past two decades, while the growing frequency of corruption investigations (and a growing number of convictions) by the newly established anti-corruption agencies may have reinforced the already widespread view that much of this wealth was linked to corruption. Finally, the combination of an increasingly prominent anti-corruption campaign and the greater media freedom following the fall of the Yanukovich regime arguably resulted in greater media coverage of corruption scandals, which can be expected to lead to worsening public perceptions even if the actual incidence of corruption was largely constant.

²⁹ http://1qswp72wn11q9smtq15ccbuo.wpengine.netdna-cdn.com/wp-content/uploads/Ukraine-Corruption_MSI-eTender-D3-Survey-Report-En-FINAL-1.pdf

³⁰ https://censor.net.ua/news/440994/groyisman_prozorro_sekonomila_dlya_ukrainskogo_byudjeta_24_mlrd_griven

To analyze the temporal patterns in corruption perceptions, in Figures 3.1-3.4 below we illustrate the perceived incidence of corruption for three national political institutions (the presidential administration, the government, and Parliament) and elected local government officials. To ensure the comparability of our results, we have restricted our analysis to 553 respondents who participated in all four waves of the survey, thereby ensuring that any changes in national averages are not an artifact of changing sample compositions. Responses are weighted to deal with the possibility that different kinds of people may be more likely to drop out of our survey over time.³¹



The first three figures suggest a pessimistic story – the current reforms have not done much to improve public evaluations of national political institutions. In fact, judging by the results in Figure 3.1 the presidential administration of Petro Poroshenko holds the dubious distinction of being viewed as more corrupt than the notoriously kleptocratic Yanukovich presidency. Perhaps not surprisingly, the 2016 survey, which was fielded a few months after the Panama papers revelations about Poroshenko’s offshore accounts, marks the low point of this evolution (when two thirds of respondents thought that all or

³¹ Response are weighted by the inverse of the probability of someone with a particular set of demographic characteristics being interviewed in all four rounds.

most of the members of the presidential administration were corrupt.) However, we cannot put the low rating down to the Panama papers scandal alone: public evaluations of the Poroshenko presidency were only marginally better in 2015 and 2017.

Corruption perceptions for the other main national-level political institutions were also largely disappointing. According to Figure 3.2, the first post-revolutionary government of Arseniy Yatseniuk was seen as noticeably more corrupt than the pre-Euromaidan Azarov government. Furthermore, while the Groyzman government receives more favorable evaluations in both 2016 and 2017, it is still seen as broadly corrupt by a majority of Ukrainians. Figure 3.3 reveals a similar pattern for the new parliament, with post-revolutionary MPs receiving worse corruption scores than their predecessors even in the 2015 survey (less than nine months after the October 2014 elections) and deteriorating even further by 2016.³²

The only relative bright spot in terms of anti-corruption perceptions was with respect to local elected officials. As illustrated in Figure 3.4, local officials had been viewed as less corrupt than national-level politicians even before the Euromaidan, and these evaluations further improved with each successive survey wave. The (albeit minor) improvements in the 2015 and 2016 surveys could plausibly reflect the results of two rounds of post-Euromaidan local elections in May 2014 and October 2015, when many incumbents were defeated (Nitsova, Pop-Eleches, and Robertson 2017). However, the slightly larger improvement between the 2016 and 2017 survey waves cannot be attributed to either turnover or a post-electoral honeymoon. While further research is necessary to confirm this conjecture, this improvement could reflect the reduced leeway for local-level corruption given the national-level rollout of ProZorro in August 2016.

On balance, it appears that Ukrainian citizens seem to distinguish between different political institutions in terms of both levels and trends of corruption, but these assessments so far paint a rather negative picture of the concrete achievements of anti-corruption efforts discussed in this section. If recent Ukrainian history is a guide, the pervasive distrust in national-level politicians does not bode well for the political fortunes of the current incumbents and raises questions about the broader viability of the current reform efforts (especially given that much of the opposition is hardly more committed to the anti-corruption agenda). However, this pessimism should be tempered by two considerations. First, there are some modest improvements in corruption perceptions in the most recent survey (from 2017) suggesting that a turnaround may be starting to happen. The small improvements might be particularly significant since the extent of

³² However, this difference could be at least partly due to the fact that the 2012 survey took place in December 2012 shortly after the late October parliamentary elections. The fairly positive evaluations probably reflect a post-electoral honeymoon effect in 2012, whereas this effect had probably already worn off in the 2015 survey.

corruption has become much clearer in the last year due to both the broad-based asset declarations of the past year and the extensive media coverage of corruption scandals. Second, the noticeably more positive assessment of local-level corruption suggests that Ukrainians are not reflexively opposed to updating their views about the corruption of their elected officials, which provides some grounds for optimism that genuine anti-corruption progress could reap at least some political rewards.

Chapter 4. Security and Criminal Justice

A key lesson from the Orange Revolution was that securing control of the presidency or achieving a parliamentary majority is not enough in a country like Ukraine to achieve real reform. Even though reformers had theoretically controlled key political institutions, their ability to govern was undermined by corrupt courts, an ineffective police force and security services that were at least partially infiltrated by former KGB officers with close relations to Russia. As a result, a major priority of Ukraine's reformers since the Euromaidan has been deep restructuring in the area of courts, criminal justice and security.

However, reforms in the courts, criminal justice and security sectors have proceeded very unevenly, with impressive success in some areas and very little even being attempted in others. In this section, we review progress in three key areas – judicial reform, police reform and security service reform. On the whole we find that progress has been less than in the arenas of public procurement and asset declarations discussed in the previous chapter. We argue that this is in part due to the importance and sensitivity of reforms in this sector. Vested interests are very powerful in this area and the executive branch has jealously guarded its prerogatives, with civil society actors being more likely to be excluded than on other policy dimensions. Nevertheless, with the help of international actors, some changes in the right direction have been made, even if much more needs to be done. We also present some evidence on the effects of reform on public attitudes. Interestingly – and perhaps surprisingly – public perceptions of changes in these areas actually track quite well our own analysis of reform progress. While the public continues to have very little confidence in the honesty of the courts, reforms to the police force have actually had the effect of increasing public confidence.

Judicial Reform

Judicial reforms have centered on four goals – replacing judges with links to the Yanukovich regime, increasing judicial independence, improving the efficiency of the courts and eradicating corruption in the court system. Before the Euromaidan, Ukraine's courts and prosecutors were amongst the least trusted institutions in the country. In our 2012 national survey, less than one percent of respondents thought these institutions clean. Three quarters thought that most or all of the judges and prosecutors took bribes. Nevertheless, almost four years after the Revolution, the results of the reform are mixed at best. Some positive results have been achieved, but the process continues to be marked by political and bureaucratic blockages, partial legislative changes, and modest implementation.

Due to the importance and sensitivity of judicial reform to political elites, the effectiveness of civil society in shaping change has been less than in other issue areas such as public procurement or e-declarations. Although civil society has engaged in advocacy work, provided expertise, and has worked with international organizations to have some expert recommendations incorporated into the new legislation (Zhernakov 2016), the Presidential Administration has played the central role in shaping reforms.

The scope and results of the initial reform efforts were undermined by resistance from the judicial system itself and a lack of political will on the part of the Presidential Administration and Ukrainian political elites (Gressel 2016, Zhernakov 2016). The “Law on Restoring Trust in the Judiciary,” which was adopted in April 2014, illustrates well the pushback on the part of judges against reform. The legislation opened up the system to renewal by mandating the removal of all court chairpersons. However, no real change took place—the large majority of courts reelected the same chairpersons (Zhernakov 2016). Some progress was made with regards to the High Qualification Commission of Judges and the High Council of Justice, whose staff was completely renewed (Zhernakov 2016). However, these changes came after considerable delays. Moreover, they did not result in much progress on important issues such as the dismissal of judges linked to the Yanukovich regime. As of fall 2017, only about 10 percent of the judges who had unlawfully prosecuted activists during the Euromaidan, were released from duty (Drik 2017).

The reluctance of political elites to push reform forward became even clearer with the adoption of the “Law on Assuring the Right to Fair Trial” in February 2015. The legislation reflected only some of the recommendations of international experts and failed to introduce meaningful changes that would increase judicial independence and boost public trust in the system (Zhernakov 2016). A central problem was that major reforms could not, as a matter of law, be tackled through regular law-making, but required amendments to the constitution. Amending the constitution, however, would require strong Presidential commitment, which was missing in 2014 and 2015.

However, in 2016, things changed. Due to intense pressure from international donors, the Presidential Administration did finally propose a major reform, attempting to comply with international demands while at the same time keeping control of the process. As a result, the proposed constitutional amendments, and the accompanying legislation expounding these amendments, reflected primarily administration priorities, incorporating only some of the recommendations suggested by international organizations and civil society.

Even with Presidential support, the proposed constitutional and legal changes had to be pushed through the parliament. However, the supposedly pro-reform parliamentary

factions of Samopomich, the Radical Party and Batkivshchyna were split on judicial reform and many of their deputies abstained during the vote on June 2, 2016. Interestingly, decisive support for the adoption of the legislative package came from the Opposition Bloc, itself under pressure from public support for judicial reform (Olszanski 2016). Speculations about how President Poroshenko managed to ensure the party's votes range from intimidation to secret guarantees and business arrangements with oligarchs (Olszanski 2016).

Nevertheless, the constitutional changes and the Law on the Judiciary and the Status of Judges laid the groundwork for a comprehensive reform. The judicial system was simplified and made more efficient by reducing the number of tiers from four to three: local courts, courts of appeal, and a Supreme Court. The constitutional amendments vested the Supreme Council of Justice, a new judicial body, with the competence to nominate and dismiss judges, thus constraining the powers of the president and parliament and strengthening judicial self-governance. Despite these positive changes aimed at limiting the dependence of judges on politicians, the president's powers remain significant. For example, the president reserves the exclusive right to appoint judges after their nomination by the Supreme Council of Justice (Ukraine Reform Monitor 2017, Yakubovskyy and Vergeles 2016).

Though the reform is still new, there are some signs of positive results. Following the introduction of higher professional standards for judges, including a requirement to submit annual asset declarations, some 1,000 magistrates chose to leave the system instead of complying with the new rules (Zhernakov 2016). As a result of a year-long competitive selection process, the Supreme Court was nearly completely overhauled. In November 2017, President Poroshenko appointed 114 new Supreme Court judges, many of whom would serve the institution for the first time. Somewhat less encouraging was the fact that about a quarter of the judicial candidates selected by the High Qualification Commission of Judges did not meet the requirements for judicial integrity and professional ethics according to the Public Integrity Council, a judicial body with civic control functions over the selection and evaluation process of judges.³³

As noted in the previous chapter, a major sticking point in judicial reform remains the issue of the creation of a High Anti-Corruption Court to deal with cases of high-level corruption. Civil society and international organizations have continuously insisted on the establishment of an independent anti-corruption court, as envisioned by the 2016 Law on the Judiciary and the Status of Judges. The Reanimation Package of Reforms and the Anticorruption Action Centre have participated in the development of the reform concept and played important watchdog and advocacy roles, while the IMF and the EU have used

³³ <https://www.unian.net/politics/2237781-sudi-obnovlennogo-verhovnogo-suda-prinyali-prisyagu.html>

conditionality and diplomacy respectively to press the government into adopting the necessary legislation.

So far, the Presidential Administration has demonstrated a remarkable ability to resist pressures from civil society and international partners and has skillfully maneuvered the specifics of the issue. For example, in July 2017 President Poroshenko seemed to have convinced the President of the European Commission Jean-Claude Juncker that the creation of an anti-corruption chamber within the existing court system instead of a separate anti-corruption court was a good enough tool for fighting corruption in Ukraine.³⁴ The President's proposal reflected a concept registered in Parliament as draft law No. 6529 by an MP from the Block of Petro Poroshenko. The bill was designed as an alternative to another draft law, No. 6011, developed by pro-reform MPs and envisioning the establishment of a specialized High Anti-Corruption Court. In response to this perceived EU endorsement of the President's plan, activists sought clarification on the EU position on anti-corruption courts and demanded consistency in its dialogue with Ukrainian authorities (Kergueno 2017). The EU later expressed full support for the creation of a specialized anti-corruption court, confirming that it stood with Ukrainian civil society, the IMF and other international partners on the side of a decisive reform.³⁵

Civil society, pro-reform MPs and international partners made a major breakthrough in October 2017 when President Poroshenko finally agreed to the creation of a separate anti-corruption court. The change in the President's position was most likely the result of international pressure as it came right before the Venice Commission issued an opinion on the two draft laws on anti-corruption courts registered at that time in the Verkhovna Rada. According to the Venice Commission, the draft law initially supported by the President "deviates from the current law and international obligations of Ukraine to set up a specialized anti-corruption court" (Venice Commission 2017, 20). The Venice Commission identified fewer shortcomings of the pro-reform MPs' draft law and recommended its use as the basis for a new bill. The latter had to be submitted to Parliament by the President as to avoid potential problems with regards to constitutionality.

The struggle for a functioning anti-corruption court, however, is not yet over. While President Poroshenko declared readiness to submit his own draft law on the matter, his party in parliament, the Bloc of Petro Poroshenko, and coalition partner, the

³⁴ <https://www.unian.info/politics/2030349-eu-clarifies-junckers-position-on-anti-corruption-court-in-ukraine.html>. See also: <https://www.kyivpost.com/ukraine-politics/ti-ukraine-director-eu-hasnt-change-position-regarding-anti-corruption-court.html>

³⁵ <https://www.kyivpost.com/ukraine-politics/ti-ukraine-director-eu-hasnt-change-position-regarding-anti-corruption-court.html>. See also: <https://www.unian.info/politics/2179671-eu-insists-on-separate-anti-corruption-court-in-ukraine-will-help-select-judges.html>

People's Front, repeatedly blocked the withdrawal of draft law No. 6011, which would have cleared the way for the submission of a new bill. In an attempt to speed up the process, committed civil society activists organized a rally on October 17 and set up a protest camp near the parliament building. At least partly as a result of their actions, the president finally registered his legislative proposal in parliament on December 22.³⁶ The draft law, however, fell short of expectations. The IMF and civil society organizations criticized the bill and demanded it be reworked in line with Ukraine's international obligations and the recommendations from the Venice Commission.³⁷ After much debate and international pressure from the US and EU, notably in connection with the a new round of IMF loans, President Poroshenko and the parliamentary majority agreed to the principle that the Anti-Corruption Court should only consider high level corruption cases—those under the jurisdiction of NABU and SAPO (Specialized Anti-Corruption Prosecutor's Office). A compromise on the role of international experts in the appointment of judges was also reached and on June 7, 2018 the parliament finally adopted the Law on the High Anti-Corruption Court. The new institution is expected to become operational within the next 12 months.

Given the experience with reform so far, the continuous efforts of both international partners and civil society are likely to prove critical for the establishment of an effective anti-corruption court and, thus, for the successful completion of the cycle of anti-corruption reforms started with the Euromaidan Revolution.

Police Reform

Alongside courts and prosecutors, the police in post-communist Ukraine was one of the most unreformed and corrupt institutions. Moreover, police behavior was visible to the public and demand for reform was high. In our 2012 survey, 77 percent of Ukrainians thought that most or all police were corrupt. However, the ability of the police to resist reforms was seriously weakened by public outrage over repressive police actions during the Euromaidan. As a result, despite some problems, police reform has been recognized by international donors, civil society, and even the public as one of the signature successes of the post-Euromaidan era. Nevertheless, the most significant change was the introduction of a new patrol police, while the criminal police, border police and financial police remained largely unreformed (Gressel 2016).

The design and implementation of the reforms illustrates a key feature of the reform project in Ukraine—the close involvement of actors from the former communist

³⁶ <https://mailchi.mp/06839681af57/newsletter-february-march-1524409?e=96faed0415>

³⁷ <http://www.pravda.com.ua/rus/news/2018/01/15/7168394/>; <https://www.kyivpost.com/ukraine-politics/ti-proposes-poroshenko-re-work-draft-law-high-anti-corruption-court.html>

space with specific experience of conducting similar reforms in other countries. In this case, the government recruited Georgians—Eka Zguladze, deputy minister of interior, and Khatia Dekanoidze, advisor to the minister, later appointed as head of the National Police – to lead the reform process. The experience and personal involvement of these people has lent the reforms credibility, freeing those leading the reforms from the need to develop long-term careers in Ukraine itself and so making them less vulnerable to the vested interests in the institutions they are charged with reforming. More traditional international support for the reforms has also come from western governments and international agencies in the form of technical and financial support for the payment of salaries for the new police force.³⁸

However, civil society has had limited input into the reform process (Gressel 2016). The Ministry of Interior has been criticized for its lack of transparency and failure to actively draw on independent expertise and cooperate with civil society (Gressel 2016, Goncharuk 2016). In fact, the draft law that laid the foundations of the reform of the sector was developed almost entirely by the Ministry of Interior and adopted by parliament in July 2015 without prior public consultation as prescribed by law (Goncharuk 2016).

The reform program has three main elements—establishment of a new National Police, creating a new patrol police and putting in place a vetting program to establish the suitability of existing officers to continue service. The underlying concept of creating a National Police was to create an institution that is separate from the Ministry of Interior and so create a buffer between the police and politicians seeking to influence police actions. While this is a major step forward, the law still makes the Head of the National Police dependent on the Minister of Interior with regards to some personnel and financial questions (Malyshev 2017). This has resulted in a number of non-transparent appointments to senior positions in the police during 2016 (Miskyi 2017).

The other reason to establish a new National Police was to break away from the past where law enforcement was used as a coercive instrument of the state. The new institution was designed to serve the people instead. This change in mission is symbolized by the renaming of the force from the old name of *militiya* to the new name, *politsiya* (“police”). The new mission is also reflected in Article 11 of the Law which makes the level of public trust the main criterion for evaluation of police effectiveness, although implementation of this provision has been delayed (Malyshev 2017).

The second key element of the reform was the replacement of the former traffic police with a new patrol police. The new officers, who are outfitted in new uniforms and drive shiny new Prius hybrid cars, get competitive salaries intended to eliminate the

³⁸ Both the Georgian and Ukrainian police reforms were designed to follow an American model (Gressel 2016).

“need” to collect bribes from motorists. External donors, US, Canada, EU and Japan paid for the salaries, equipment, and training of the new police. The reform started with a pilot project in Khmeltnisky and by the end of May 2016 new patrol police were operating in 32 cities and 3 regions (Kyiv, Lviv and Kharkiv).

While it was possible to build a functioning patrol police entirely with new people, untainted by the old system, restaffing the National Police as a whole was simply unfeasible. On the other hand, keeping the former *militsiya* officers as members of the National Police could threaten the success of the reforms. To deal with this situation, the Ministry of Interior subjected the remaining *militsiya* officers to an evaluation process to assess their professional qualifications. Only those who passed the evaluation could continue to serve as police officers.

A study by the Association of Ukrainian Human Rights Monitors on Law Enforcement (Krapivin 2017) provides interesting insights into the dynamics and results of the attestation process. The evaluation lasted from November 2015 to October 2016. As a result, only 8 percent of the former *militsiya* officers were released from duty, which may indicate that the process overall was ineffective or at least superficial. Results also varied across regions. The proportion of dismissed officers was higher in the oblasts that started the attestation process earlier (11-18 percent) than in the oblasts that started later (less than 5 percent).

For the first time, civil society representatives and members of the public were given the right to sit on attestation commissions and exercise civic control over the process. However, there were cases in the regions where civic control was compromised and the effectiveness of the evaluation process undermined by “pocket activists” (Krapivin 2017: 5). As a result, the attestation of regional police leadership was relocated to the capital in May 2016 where control could be exercised by genuine civil society organizations.

Ultimately, many of even those police officers who were dismissed as a result of the attestation process were reinstated by court decisions. The Interior Ministry blamed the unreformed judicial system and former police officers in obstructing the reform. However, there were also real systemic problems related to attestation itself. Experts and civil society repeatedly raised concerns over the organization and legality of decisions of attestation commissions (Krapivin 2017).

The future of the reform seems less clear. In December 2017, the Ministry of Interior published a strategic document outlining the development of the institution until

2020. According to analysts, however, the strategy is too broad.³⁹ This suggests that, while likely to continue, the reform process will probably be uneven and slow.

Security Services Reform

The third crucial area for reform in the sector of security and criminal justice is the Security Service of Ukraine (SBU). There are myriad problems to be dealt with. The SBU has traditionally been used more as a tool to consolidate power by political elites and less as an intelligence-gathering organ (Kuzio 2015), a practice that continued after the Orange Revolution.⁴⁰ Journalistic investigations have recently illuminated continued corrupt practices whereby SBU officers coerce businesses for self-enrichment (Verstyuk 2017, Halushka and Krasnosilska 2018) and the fact that the SBU goes beyond the scope of its lawful powers has been recognized and criticized by international experts. In addition, many have argued that the Secret Service has been infiltrated by Russian spies, with estimates of the proportion of Russian agents running as high as about 30 percent (Usenko and Usenko 2014). Although some 2,000 SBU employees either linked to Yanukovich or claimed to be Russian spies had been replaced by March 2017, analysts still consider progress on lustration to be unsatisfactory (Drik 2017).

Furthermore, since the Euromaidan international observers have noted perhaps the opposite problem from Russian infiltration, namely, the prevalence of the use of torture, physical violence, and political killings, with the SBU allegedly playing a significant role alongside far-right militias such as the Azov and DUK Right Sector battalions in the disappearances of suspected “separatists” (Kudelia 2017). The United Nations Office of the High Commissioner for Human Rights reports at least 115 extrajudicial killings by May 2016 (OHCHR 2016).

Beyond these highly political problems, there are serious organizational issues too. The SBU, has been largely unreformed since it was inherited from the Ukrainian Soviet Republic’s KGB and so it continues to suffer from overlap of competences with other law enforcement institutions, responsibilities that are not usually considered within the purview of a security service such as investigation of economic crimes and anti-corruption, massive over-staffing (SBU officers number around 30,000), inefficiency, militarization and corruption.

Unlike in other areas of security and criminal justice, no major substantive reforms of the SBU have been launched. Minor changes related to reducing the powers of the SBU

³⁹ <https://en.hromadske.ua/posts/ukraines-police-reform-whats-really-going-on>

⁴⁰ Indeed, an unreformed SBU was cited by some in the Yushchenko administration as one of the major obstacles to reform in the Orange Revolution period (Pop-Eleches and Robertson 2014).

in the pre-trial investigation phase of the criminal process were introduced in response to EU visa liberalization requirements, but that is about the extent of reform so far.⁴¹

Nevertheless, the EU and NATO have been pushing for the adoption of a broad SBU reform (Bugriy 2017). In January 2016, an international consultative group tasked with the development of a reform concept was established with EU and NATO help. The concept was finalized and presented for approval to the National Security and Defense Council in the summer of that year. However, the decision of the Council is still pending.

The reform concept envisions three main changes (Gor 2017). First, the SBU would give away some of its powers related to the investigation of cases of organized crime and malfeasance to the National Anti-Corruption Bureau, the State Bureau of Investigations, and the National Police. Second, the institution would expand and strengthen its counter-intelligence activity. Third, a mechanism of parliamentary oversight would be introduced, intended to increase the independence of the institution from political influence. Although, international advisors have repeatedly insisted on the oversight measure, experts say this is one of the main reasons for the delay of the reform. In March 2017 President Poroshenko announced that the SBU would soon be reformed in accordance with NATO and EU best practices, but at the time of writing, reform is yet to get seriously underway. Most recently, in June 2018, the parliament adopted a new law on national security that provides for the establishment of a parliamentary oversight committee. However, the law seems to also preserve the right of the SBU to carry out investigative activities associated with economic and corruption-related crimes and effectively postpones the reform of the institution until the end of 2018.⁴²

There are many obstacles in the way of reform, including a lack of experienced personnel to substitute released officers, resource constraints, and resistance to change from the SBU itself. A lack of political will on the part of President Poroshenko has also been a major obstacle. It seems plausible that Poroshenko feels the need to retain SBU control of economic and corruption investigations as a traditional lever of presidential power and as a counter-balance to NABU.

Finally, civil society involvement in the reform process seems to have been rather limited. In July 2017, the Reanimation Package of Reforms issued a statement calling on the president to reform the SBU, starting with the adoption of the SBU reform concept developed with NATO and EU assistance, and offered expertise for the development of

⁴¹ https://lb.ua/news/2015/11/10/320541_rada_prinyala_bezvizoviy_zakon.html

⁴² <https://www.kyivpost.com/ukraine-politics/new-national-security-law-falls-short-of-expectations.html> ; <http://uacrisis.org/67656-ukraine-s-new-law-national-security-key-facts>; <https://www.obozrevatel.com/politics/reforma-sbu.htm?obozrevatellang=ru>

the necessary legislation.⁴³ However, the organization does not seem to have much expertise in this issue area (Bugriy 2017).

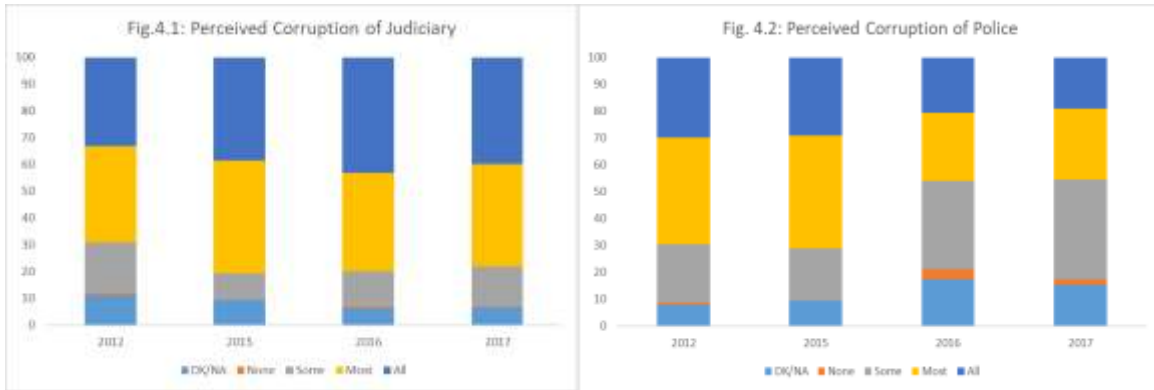
Reform Effects on Corruption Perceptions

As in the preceding section we conclude the assessment of institutional reforms with a brief survey-based overview of how security sector and judicial reforms (or lack thereof) are reflected in popular attitudes towards these institutions over the course of the almost five years covered by our panel survey. Since the surveys did not include a question about the SBU, we are limited to analyzing corruption perceptions of the judiciary and the police.

The patterns in Figure 4.1 confirm the lack of genuine progress with judicial reforms we discussed in the first subsection. In fact, as in the case of national-level political institutions in Figures 3.1-3.3, the survey suggest that public views of judicial corruption deteriorated sharply from 2012 to 2015, and then largely stabilized at abysmally low levels: roughly 80 percent of respondents considered that most or all prosecutors and judges are corrupt in each of the three post-Euromaidan survey waves. Since personnel turnover has been minimal—and whatever turnover happened should have been at least marginally helpful—it seems safe to assume that these deteriorating evaluations are largely driven by the much greater public scrutiny of judicial corruption in the context of the debates about the need for faster and deeper judicial reforms. This greater transparency is reflected in the lower share of respondents who were unsure of the extent of judicial corruption in the more recent surveys.

By contrast, Figure 4.2 confirms that the genuine progress with police reforms discussed earlier in this section actually resonated strongly with the Ukrainian public. Whereas from 2012 to 2015 police corruption perceptions displayed the same stagnant/slightly deteriorating trend as most other political and state institutions, Figure 4.2 reveals a significant improvement after the introduction of police reforms in late 2015. Between the 2015 and 2016 survey waves, the share of respondents who thought that most or all police members were corrupt declined by 25 percent (from 71 percent to 46 percent). While progress from 2016 to 2017 was more modest despite the continued rollout of reforms, the fact that these improvements persisted in the context of Ukraine's broader political malaise suggests that police reforms yielded significant political dividends. Hopefully these political dividends will provide the impetus for Ukraine's political leaders to broaden the scope of genuine reforms beyond the traffic police.

⁴³ <http://rpr.org.ua/news/hromadskist-zaklykaje-prezydenta-ta-rnbo-nahalno-reformuvaty-sluzhbu-bezpeky-ukrajiny/>



Conclusion

Despite the importance of reforms in the area of security and criminal justice, the road has been, perhaps predictably, hard. Given the stakes, the presidential administration has fought hard to retain close control of the reform agenda, largely keeping civil society on the outside looking in. Moreover, the institutions themselves have proven very reluctant to embrace reform and have been successful in pushing back in many areas.

Nevertheless, progress in some key areas has been made. As in other areas of reform, the role of the international community and domestic civil society—the sandwich—has been crucial in securing progress where it has occurred. Where little progress has been made, the sandwich has not been effective. For example, in the Security Service reform there has been consistent pressure from international actors, but domestic civil society has been quite limited in what it has been able to achieve. As in so many other areas, the ultimate success of reforms depends heavily on details that are often hard for international donors themselves to assess without the watchdog role performed by domestic civil society actors. The road to successful reform will require maintaining both domestic and international vigilance over the long term, a task that opponents of reform hope will prove too difficult to achieve.

Chapter 5. Language Policy

In this chapter, we turn our attention to language policy. Although undoubtedly an important element of civil and minority rights policy in Ukraine and one that has provoked significant political conflict over the years, progress on finding a policy that is acceptable to both the country's Ukrainian-speaking majority and its large and numerous linguistic minorities has been limited. As we illustrate here, this lack of progress is largely due to an absence of both domestic civil society and international consensus on the appropriate policy, which has left key parts of policy-making in the hands of parliament and its committees.

The area of language policy reforms can serve in many ways as a shadow case to the "sandwich" reform model we have discussed in the preceding chapters. While opposition to the Language Law of 2012 was one of the drivers of public discontent with the Yanukovich regime, and triggered some of the more important protests in the years leading up to the Euromaidan, the evolution of language policy reforms in the post-Euromaidan period has differed in a number of significant ways from the economic and governance reforms discussed above. As we will show below, although language policy is both important and contentious, language policy reforms have been largely absent from the agendas of both international institutions and many of the civil society groups that had been heavily involved in promoting other types of policy reforms. In the absence of such pressures from the "sandwich coalition," reforms have proceeded slowly, and are highly politicized.

On February 23, 2014, just a couple of days after the Euromaidan Revolution, the Verkhovna Rada voted on a bill to revoke the 2012 Law on the Principles of State Language Policy, which had established Ukrainian as the state language, while providing for the use of Russian and seventeen other regional languages in local and regional administrations as working languages. The unexpected vote on the repeal bill provoked protests in the largely Russian-speaking southern and eastern regions of the country and allowed political entrepreneurs in Ukraine and Russia to use the language issue to mobilize opposition to the revolution. Due to domestic and international pressures, acting president Turchynov decided not to sign the repeal bill until a new language law was drafted, leaving the 2012, Yanukovich-era legislation in force. In July 2014, a group of 57 MPs submitted a request to the Constitutional Court to review the constitutionality of the 2012 language law. At the end of February 2018, the Constitutional Court finally came forward with a decision that ruled the 2012 language law unconstitutional.⁴⁴

⁴⁴ https://censor.net.ua/news/3053131/zakon_ukrainy_ob_osnovah_gosudarstvennoyi_vazykovoyi_politiki_2012_goda_utratil_silu_ks_dokument

Despite the promises of many politicians, a new language law has not made its way through parliament for the last four years. Indeed, the government has avoided formulating its language policy in concrete terms. Nevertheless, at the same time, it has taken steps towards reducing the use of Russian in different policy areas. For example, the Law on Television and Radio Broadcasting was amended in June 2016 and May 2017 to incorporate quotas for Ukrainian-language content and to limit the use of Russian language in radio and television programs. In the area of public service, the Cabinet of Ministers passed a decree in July 2016 that made knowledge of Ukrainian a requirement for holding senior leadership positions in the civil service. The government has been careful to frame the adoption of these legislative measures as matters of national security and not as matters related to language policy *per se*.

The most significant change pertinent to language policy to date came with the adoption of a new education law in September 2017. The education law was promoted by the government as a major step towards bringing the Ukrainian school system closer to European educational standards (Dabrowski, Piechal, and Sadeck 2017). The law lays the foundations of a comprehensive reform of the sector—it extends the school attendance period by one year, resulting in a total of 12 years of education to obtain a high school diploma, provides conditions for the modernization of school curricula and teaching methods, and envisions pay raises for teachers. However, the new legislation also includes provisions that significantly limit the rights of national minorities to obtain education in their native languages. Since the effect of the law is most significant for the Russian-speaking minority, the education law has been seen by experts and commentators as an act aimed at de-Russification rather than an act of modernization (Sasse 2017, Dabrowski, Piechal, and Sadeck 2017).

The issue of the language of education emerged as one the most contentious provisions already during the parliamentary discussions of the bill. A comparison of the original draft that was presented in the Verkhovna Rada and the final version of the bill adopted by MPs on September 5, 2017 and signed into law by President Poroshenko three weeks later reveals significant differences, which were the result of last-minute changes (Dabrowski, Piechal, and Sadeck 2017). The original draft law envisioned separate educational institutions and classes with minority and indigenous languages as the language of instruction together with the Ukrainian language. It also guaranteed the right of students belonging to national minorities and indigenous nations to learn their native languages in public schools without imposing any limits on the schooling period.

By comparison, the law as signed limits the use of minority languages as the language of instruction to separate classes only and does not specify what will happen to existing national minority schools. Moreover, minority students are granted the right to study in their native languages in kindergarten and elementary school only. From fifth

grade onwards, Ukrainian becomes the sole language of instruction. The law makes an exception for Crimean Tatars, Karaites and the Gagauz people who will be able to complete their high school education in their respective native language and Ukrainian (Dabrowski, Piechal, and Sadeck 2017).

The law will affect about 400,000 students belonging to national minorities or about 10% of the student population of the country. With its 581 minority schools and 365,000 students, the Russian minority will be hit the hardest. 75 Romanian, 71 Hungarian, 5 Polish and 3 Moldovan minority schools will also face significant challenges.⁴⁵

Reform Dynamics

The language question, and minority rights more broadly, are complicated and sensitive issues for both of the key types of actors in the sandwich coalition. For Ukraine's international partners, particularly the US and the European Union, the issue presents difficult tradeoffs between the West's traditional emphasis on minority rights and the significant practical complications arising in the Ukrainian context due to both Russia's rhetorical use of minority rights to justify its military interventions in Crimea and Eastern Ukraine and the reality of widespread Russian language use in large parts of Ukraine's South and East.

Furthermore, unlike the broad agreement about the importance of certain economic and governance reforms, there is much more heterogeneity in minority rights standards across different Western countries, which has undermined the EU's ability to speak with one voice on many of these issues. Therefore, language policy has not figured very prominently on the agenda of international organizations. While this lack of involvement is unsurprising for the international financial institutions, since the issue may not be seen as directly relevant to the economic and governance challenges they are dealing with, it also extends to institutions with a broader political mandate. For example, the EU Advisory Mission in Ukraine has focused primarily on the reform of the civilian security sector, and while the EU Delegation to Ukraine has supported a broader range of projects, ranging from infrastructure to women's rights, language policy issues have been conspicuously absent from the agenda.⁴⁶

⁴⁵ <https://www.slovoidilo.ua/2017/09/26/infografika/polityka/skilky-ditej-ukrayini-navchayutsya-movamy-naczionalnyx-menshyn>

⁴⁶ <http://www.euam-ukraine.eu/our-mission/our-priorities/>. See also: https://eeas.europa.eu/delegations/ukraine/1938/eu-projects-ukraine_en <http://www.euam-ukraine.eu/our-mission/our-priorities/>

Similarly, civil society has been split between Euromaidan activists eager to reverse what they consider to be the consequences of centuries of Russification and other actors committed to a civic and multi-ethnic/multi-lingual vision of Ukraine. To prevent such disagreements from undermining the broader reform agenda, language policy was also largely absent from the reform blueprint of the Reanimation Package of Reforms, the main umbrella organization that had promoted many of the governance reforms discussed in earlier sections.⁴⁷ For example, in the RPR's *Roadmap of Reforms for Ukraine* document for 2016-17, there is no dedicated working group for language policy, which is only mentioned as part of the National Memory Policy agenda. Furthermore, while the discussion highlights language policy as an important area, it is vague about the specifics, merely noting that "the first stage of reform should involve the implementation of detailed analysis to identify key challenges and problems." (RPR 2016, 59)

In fact, while its general record of professionalism, non-partisanship and liberalism is strong, issues of language and history and memory represent much more challenging terrain for civil society groups in Ukraine in general and for RPR in particular. This has been evident in the National Memory Policy subgroup which has been heavily criticized by a broad range of experts in Ukraine and the west for whitewashing the reputation of the OUN(b) and "advancing a heroic, quasi-mythological rendition of the "Liberation Movement" (Rudling 2017:158-9).⁴⁸

In the absence of clear policy pressures from the two key actors shaping the governance agenda in other issue areas, language policy reforms have been driven by a different set of actors and interests. For example, the initial parliamentary repeal of the 2012 Language Law was initiated by Vyacheslav Kyrylenko, a Batkivshchyna MP, and received broad parliamentary support on February 23, 2014, before a combination of domestic backlash and international concerns prompted acting President Turchynov to refuse to sign the repeal bill until a replacement was adopted. Even though Turchynov at the time appointed a working group to draft a replacement, that initial urgency has not produced tangible results. Similarly, a parliamentary request to review the constitutionality of the 2012 law has taken more than three years to work its way through the Constitutional Court review process.

The controversial changes to article 7 of the Law on Education in 2017, which introduced the language requirement, were not included in the original draft law submitted to the Rada, but were instead added as an amendment in the context of a turbulent parliamentary meeting. Despite opposition from many MPs representing

⁴⁷ Authors' interview with Olena Halushka, RPR, October 2016.

⁴⁸ <http://foreignpolicy.com/2016/05/02/the-historian-whitewashing-ukraines-past-volodymyr-viatrovych/>

Russian-speaking areas in the East and South, the law was adopted in Parliament on September 5th and signed into law by President Poroshenko on September 25.

The reaction to the adoption of the education law also differs from other issue areas. Internationally, the law was met with vehement criticism not only from Russia but also from other countries with ties to ethnic minorities affected by the change, including Hungary, Romania, Poland, Moldova, Bulgaria and Greece. The Hungarian reaction went as far as to call for revising Ukraine's EU Association agreement and insisted that the issue be placed on the agenda of the meeting of the EU Council for Foreign Ministers.⁴⁹ The Hungarian (and Romanian) efforts eventually resulted in a resolution of the Parliamentary Assembly of the Council of Europe, which criticized the Ukrainian education law on both procedural grounds and for not being conducive to minority protections, and recommended that the government comply with the forthcoming recommendations of the Venice Commission (PACE Resolution 2189).

Nevertheless, unlike the very explicit reactions to reform setbacks in other policy areas, the reaction from the EU and the US was quite muted.⁵⁰ The issue was covered critically by a number of international observers and media outlets, but the emphasis was primarily on the tactical disadvantages of the law for Ukraine's European integration (Sasse 2017, Stormont 2017). Overall, while the international reactions are still evolving and it is conceivable that they could trigger more intense and concrete policy pressures, it is fair to conclude that language policy in education (and more broadly) has not been subject to the type of clear and consistent international policy conditionality as some of the governance and economic reforms discussed earlier.⁵¹

Similarly, on the domestic front, the RPR issued a press release on September 5 (signed by a number of additional NGOs) urging parliament to adopt the Education Law but its justification did not mention the minority language issue in any way and instead focused on a range of issues related to the modernization of the Ukrainian education system.⁵²

⁴⁹ <http://www.dw.com/en/hungary-threatens-ukraines-eu-ties-over-new-education-law/a-40944967>

⁵⁰ This may in part reflect the fact that bilingual education is limited in the US and several EU countries and that Ukrainians in neighboring countries are not entitled to monolingual/bilingual education (PACE Resolution 2189, Article 12).

⁵¹ In particular, the current version of the law seems to be at odds with the OSCE recommendation that "in secondary school, a substantial part of the curriculum should be taught through the medium of the minority language." (See Article 13 of The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note: <http://www.osce.org/hcnm/32180?download=true>).

⁵² <http://rpr.org.ua/en/news/the-public-calls-on-the-president-of-ukraine-to-finally-launch-the-reform-of-the-national-commission-for-state-regulation-of-energy-and-public-utilities/>

Domestic opposition to the law was muted. There were protests organized by both the Hungarian and Romanian minorities.⁵³ Interestingly, however, there appears to have been little public protest on the part of those likely to suffer most—the large Russian-speaking minority. Of course, as is well known, there are many factors that are necessary for protest, including organization and sense of political efficacy, the absence of which might have mitigated against open political action on the part of Russian speakers. As in all cases, a lack of protest should not necessarily be equated with a lack of grievance.

Given the absence of coherent pressure from international actors or domestic civil society on behalf of linguistic minorities, the future of language policy is likely to continue in the general direction of promoting the use of Ukrainian at the expense of other languages. With the 2012 language law no longer in force, the Verkhovna Rada is likely to move forward with the review of the draft laws on language policy already registered in parliament.⁵⁴ All three of these bills envision broadening the use of the Ukrainian language in the spheres of politics, governance, media, education and culture.⁵⁵

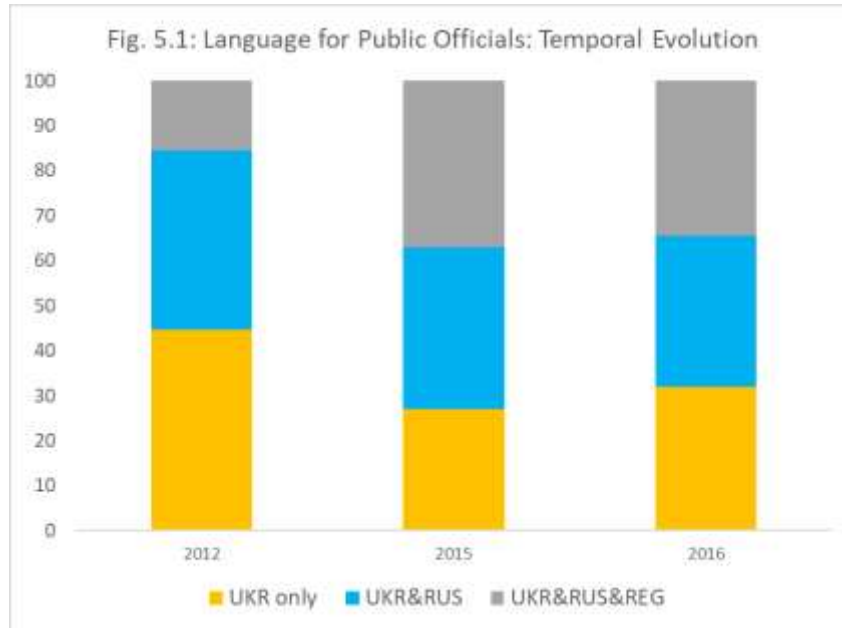
Public Opinion

The fact that both the Language Law repeal in February 2014 and Education Law of September 2017 were passed along partisan lines in the Rada raises the possibility that these measures reflect the political incentives of parliamentary elites to attract popular support in the context of the low overall popularity of the country's political class. To illustrate this, we turn once again to public opinion data from our panel surveys. While our surveys did not include a question about language policy preferences in education, we did ask respondents what languages public officials should have to speak, with the options being “Ukrainian only,” “Ukrainian and Russian,” and “Ukrainian, Russian and the languages of other ethnic minorities with strong local presence.” Although this question is general rather than specific, it can serve as a useful guide to public opinion on the issue of language use in different aspects of policy.

⁵³ <http://www.pravda.com.ua/rus/news/2017/09/8/7154433/>;
<http://www.pravda.com.ua/rus/news/2017/09/21/7155909/>;
<http://www.pravda.com.ua/rus/news/2017/09/8/7154433/>;
<http://www.rfi.ro/politica-97577-romanii-din-ucraina-sunt-nemultumiti-de-noua-lege-educatiei>

⁵⁴ <https://www.pravda.com.ua/rus/news/2018/03/1/7173245/>

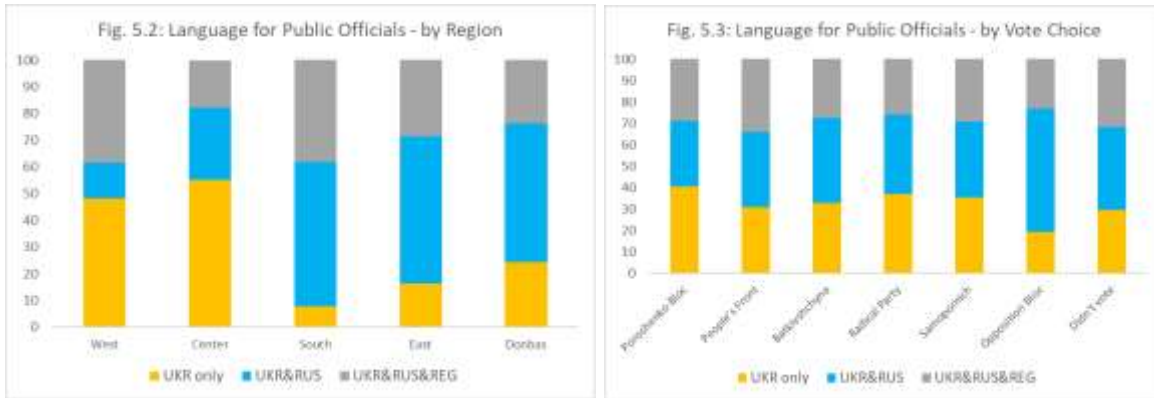
⁵⁵ <https://apostrophe.ua/article/politics/2017-01-24/sovkovyie-metodyi-k-chemu-privedet-nasilstvennaya-ukrainizatsiya/9727>



In Figure 5.1 we illustrate the temporal evolution of responses to this question using a common sample of citizens who were included in the 2012, 2015 and 2016 waves of our survey. In line with the findings in Pop-Eleches and Robertson (2018), the patterns in Figure 5.1 suggest that support for restricting official interactions to Ukrainian-only actually declined significantly from 45% in 2012 to 27% in the 2015 survey, and while the proportion bounced back a bit (to 31%) in 2016, it was nevertheless well below pre-Euromaidan levels. It is also worth noting that the increase in support for multilingual official interactions was driven by the response category which included other locally important languages in addition to Russian, which suggests that, in the context of the ongoing military conflict with Russia, the option that emphasized a broader set of languages was more politically palatable than the one that singled out Russian as a linguistic alternative. From this perspective, the strong negative reactions of non-Russian minorities to the language provisions of the Education Law might undermine popular support for the law to some extent.

Views on language policy, of course, are not evenly distributed across the country. In Figure 5.2, we breakdown language preferences by region and by a respondent's vote choice in the 2014 parliamentary elections (Figure 5.3). These figures are based on data from a public opinion survey from August 2017, just prior to the adoption of the Law on Education.⁵⁶

⁵⁶ The survey was part of a second panel (with waves in 2015, 2016 and 2017), and included an oversample of voters from Eastern Ukraine, including the government-held parts of the Donbas.



We find qualified support for the idea that the greater restrictions on minority language use are driven by populist desires to appease particular constituencies. Figure 5.2 suggests that support for minority language use was significantly weaker in Western and especially Central Ukraine than in the more Russian-speaking East and South. This means that for politicians targeting voters from the West and Center, where roughly half the electorate supported monolingualism, promoting more restrictions against minority languages could be politically advantageous. However, such an approach would presumably entail significant political losses in other parts of the country, where large majorities supported bilingual/multilingual policies. Similarly, judging by Figure 5.3, support for monolingualism was higher among voters of several of the parties that supported the Law on Education (particularly Petro Poroshenko Bloc, Radical Party and Samopomich) than for the Opposition Bloc voters. However, it is worth keeping in mind that monolingualism supporters represented less than half of the voters of all parliamentary parties (as well as among non-voters). Therefore, unless preferences for minority language use in education is significantly different than for interactions with public officials, the immediate political payoffs of more restrictive language policies are not entirely clear.

Chapter 6. Conclusions

The Euromaidan Revolution, or the Revolution of Dignity, meant different things to different people, but if there was a shared sense of the meaning of the revolution it was that the people of Ukraine deserve the chance to live in a modern state with a decent government that provides citizens with the security and opportunities they need to pursue their goals in life. Four years after the revolution, it is possible to make at least an interim assessment of the progress achieved along this path. This is what we have tried to do.

No single analysis can do full justice to all the different areas of reform and change in the past four years. However, by focusing on some key areas of reform in the economy, governance, security and language reforms, we have tried to draw attention to crucial dynamics in the reform process and to evaluate the strengths and weaknesses that time has revealed.

It is safe to say that Ukraine has made more substantive progress towards the goals of a democratic, well-governed state in the last four years than at any time since independence. This, however, is a low bar and it is equally clear that progress has been uneven and that the ultimate success of the reform agenda is far from secured.

The progress that has been made so far can in large part be credited to the enormous efforts of Ukrainians themselves. Over the last decade and half, but particularly in the years since the Euromaidan, Ukraine has seen extraordinary development in the sphere of civil society. The development of civil society in the country is unparalleled in the rest of the former Soviet space, not so much in terms of the number of organizations, but more importantly in the quality of the engagement of those organizations with public policy and the political process.

However, Ukraine has lacked some of the other ingredients that the experience of other countries has shown to be important in achieving large-scale political and economic reform. Neither the party in power nor the opposition has shown itself consistently committed to a pro-reform agenda. Instead, the Ukrainian political system remains heavily influenced by oligarchs and political players with a vested interest in limiting the scope of reforms. In the absence of a pro-reform constellation of domestic forces, those fighting for change in Ukraine have had to rely repeatedly upon the support of the international community. This support has been crucial at various stages and, as we were reminded by moves against the National Anti-Corruption Bureau (NABU) and the leadership of the parliamentary anti-corruption committee towards the end of 2017, an active and engaged international community is likely to remain a crucial element of the reform process moving forward.

The Sandwich

The model of reform in Ukraine that we have tried to illustrate is sometimes thought of as a “sandwich.” As we have noted, this term refers to a rather unusual situation in which reform is produced by an alliance of domestic civil society and international actors, even in a context in which neither the government nor the opposition – the political forces most political scientists think of as crucial to reform – is a consistent source of pressure for change. In the sandwich model, domestic activists act both as a source of ideas for reforms and as a watchdog that calls out backsliding or sabotage on the part of anti-reform forces in the elite. The international community, for its part, provides the pressure on the other side, using detailed and active conditionality to help discourage deviation from the reform path.

Table 6.1 illustrates the importance of “the sandwich” to the success of reforms. The columns of the table identify areas of policy that we have examined in this analysis. Specifically, these are tax reform, gas liberalization, police reform, public procurement, asset declarations, anti-corruption institutions, judicial reform and language policy. The rows represent a summary assessment of progress in each of the areas and the position of key actors on the issues as suggested by our analysis – civil society, western donors, political elites and the population as a whole.

Creating such a table is necessarily a reductive exercise. Reducing the complexity of the reform experience across these different headings (which themselves are amalgamations of a range of different policies and issues) to simple statements like no progress, some progress and substantial progress requires judgment calls on which there is room for legitimate disagreement and debate. In the same vein, summarizing interested parties as supportive, opposed, split or indifferent leaves enormous scope for debate. Nevertheless, efforts to model political outcomes and understand their sources by definition require us to abstract from the complexity of “real life” in order to draw meaningful lessons.

Table 6.1, we think, does provide meaningful lessons about the reform process in the time since the Euromaidan. Across all the areas we analyzed, significant progress (on gas liberalization, police reform, public procurement, asset declaration and building anti-corruption institutions) has only been made where civil society and western donors have worked closely together to keep the government held firmly in “the sandwich.” This is true even in areas such as gas liberalization or asset declaration where much of the political elite has publicly or privately opposed reforms. Where either part of the sandwich lacked a coherent policy position (language policy) or where the two parts of the sandwich were unable to coordinate sufficiently (tax policy), progress has been much more limited.

However, while united pressure from international donors and domestic civil society might be necessary for reform, it does not appear to be sufficient. Most notably, this has been true in the area of judicial reform and SBU reform where a combination of foot dragging on the part of the political elites and a policy-making context that reserves a high degree of control for the president, has meant that progress in this areas has been very limited despite more or less coordinated support from both international institutions and domestic civil society.

Finally, it is interesting to note that public support for reforms, while fairly consistent in the areas we have analyzed, is not as important as a straightforward reading of democratic politics might lead one to expect. Particularly in the area of gas liberalization, where our surveys show significant public opposition, the more technocratic approach of civil society and the international donors has prevailed. Moreover, even in those areas where there seems to be consistent and strong support for reforms, such as anti-corruption, the absence of strong political accountability in the parliament has meant that popular attitudes have at best an arms-length relationship with policy. This phenomenon is, of course, familiar from the whole history of reforms in the post-Soviet space where popular sectors have generally taken a back seat to elites in either driving reform ahead or blocking it (see, for example, Hellman 1998).

Table 6.1. The Importance and Success of Reforms

Area	Tax reform	Gas liberalization	Public procurement	Asset declaration	Anti-corr. institutions (NABU)	Police reform	Judicial reform	SBU reform	Language policy
Reform progress	None	Significant	Significant	Significant	Significant	Significant	Limited	None	Limited
Civil society	Support	Support	Support	Support	Support	Support	Support	Excluded	Split
Western donors	Split	Support	Support	Support	Support	Support	Support	Support	Split
Political elites	Oppose	Oppose	Oppose	Oppose	Oppose	Oppose	Oppose	Oppose	Split
Population	Unclear	Oppose	Support	Support	Support	Support	Support	Support	Split

Looking Forward

Analyzing the progress of reforms as of June 2018 can, of course, only give us a partial and interim picture of the process as a whole. We have neither reached a stage where reform has been consolidated and Ukraine has passed a point of no return, nor a position whereby the hopes and dreams of those in the Euromaidan have been irretrievably lost. As Ukraine of all places has reminded us, the road to reform is full of unexpected moments of hope and despair.

Whether one assesses progress in Ukraine as encouraging or disappointing (or more likely somewhere in between) depends very much on expectations and the particular framework of analysis. To our minds, the situation is clearly very challenging. Recent attacks on NABU and other key elements of the reform have led some important reformers, including the former Chair of the Rada anti-corruption committee, Iegor Soboliev, to characterize the situation as critical.⁵⁷ Nevertheless, while the threat is real, the progress to date is also real. And that progress was achieved largely in the absence of consistent support for reform either from the Presidency or from the parliament. If the electoral process is somehow able to move either or both of these institutions in a clearly more reformist direction, the prospects for lasting change in Ukraine – and in the region more broadly – could improve significantly.

However, this optimism needs to be tempered by an acute awareness of the potential vulnerabilities inherent in the very nature of the sandwich reform model, which requires a combination of consistent and effective external conditionality and relentless domestic pressure. As a result, a weakening of either component or of the coordination between them could critically undermine the effectiveness of the model.

Probably the greatest challenge to the sustainability of the sandwich model is the difficulty of maintaining the right mix of external pressures and incentives to attain effective policy conditionality. International conditionality could be undermined by a number of factors originating in the current political challenges facing Ukraine's Western allies. One such factor is the possibility of Ukraine fatigue, as Western partners become frustrated with the pace of Ukrainian reforms and focus on other more pressing domestic or international challenges. Another possibility could be a growing rift between different international allies, driven either by the increasingly visible foreign policy disagreements between the US and the EU or by tensions between the prescriptions of different international organizations.

Alternatively, even if Western governments and international institutions maintain a unified front about the need for certain governance reforms, it may be difficult

⁵⁷ <https://us12.campaign-archive.com/?u=96326c07261e11663fc2a63d6&id=bee1135df7>

to find the right mix of incentives to overcome the domestic obstacles to certain reforms. For example, while the promise of EU visa liberalization played an important role in promoting anti-corruption reforms until late 2016, it is less clear what the next big “carrot” would be (given that EU membership is not a realistic medium-term goal at this point.) Moreover, to the extent that Ukraine’s economic situation continues to improve, such a recovery is likely to reduce the government’s dependence on bilateral and multilateral financial support, which in turn would weaken the effectiveness of Western conditionality. Finally, it is conceivable that future elections could strengthen anti-reform/populist forces in the Ukrainian parliament, in which case external incentives would have to be further strengthened to overcome the growing domestic political costs to the government of implementing certain elements of the Western-backed reform agenda.

On the civil society side, two threats seem particularly important. The first is the danger of a split within the pro-reform camp due to disagreements over reform pace or tactics or along some unrelated cleavage such as the nationality/language divide. Arguments and disagreements are inevitable, but recent signs of more significant splits are worrying. Without strong civil society voices and some connection between them and the policy process—which may mean at least a partial consolidation of pro-reform activists in a political movement—civil society’s ability to act as an effective watchdog of government reforms will be limited. The second, and related, danger is that civil society could lose its legitimacy (either domestically or internationally) as the “domestic conscience” of the reform process. Were such a legitimacy loss to happen (either because of the types of divisions mentioned above or because of corruption scandals affecting key reformers), this would weaken its political clout and undermine its ability to coordinate with international institutions.

Transforming a state takes time, commitment and intelligence. But it also takes good luck and strong political will. All of these qualities have helped Ukraine get half way along the road of successful reform. Much more will be needed both from Ukraine and from the international community to complete the journey.

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