

Reforms, New Elites, and Old Structures: How to Win the Battle for a New Ukraine?

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Reforms, New Elites, and Old Structures **How to Win the Battle for a New Ukraine?**

Iryna Solonenko

Summary In the two years since its “Revolution of Dignity” – also known as Euromaidan – Ukraine has launched important reform initiatives. Most of them are still in the inception phase, however, and much remains to be done to ensure their sustainability. The past two years have made clear the enormity of the challenge Ukraine faces in its transformation. At the same time, it has also shown unprecedentedly strong determination on the part of new reform-minded actors to overhaul the old system. Ukraine today can best understood as a battlefield: the old system and its structures are fighting for their survival, as new actors – from both within the system and outside it – push for a new social contract. This struggle is taking place on an everyday basis at different levels, national and local, in a number of different reform areas. External actors can best contribute by giving stronger support to reformers while promoting development of institutions that limit the space for vested interests to persist. Special attention should be paid to enforcing and implementing already adopted decisions and new laws that change the rules of the game.

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Reforms, New Elites, and Old Structures

How to Win the Battle for a New Ukraine?

Iryna Solonenko

Ukraine's Revolution of Dignity ended just over two years ago in the ouster of Ukraine's then president Viktor Yanukovich.¹ The protest movement's promises and expectations were ambitious at the time, much as they were after the Orange Revolution 11 years ago. Ukrainians and the international community still remember the "reform fatigue" and political infighting that arrived shortly after the events of 2004–05. Voter disappointment, at least partially, was what enabled the backlash that culminated in Yanukovich's authoritarian presidency (February 2010 to February 2014).

In the past two years, Ukraine has managed to hold new elections for its key political institutions. Early presidential elections took place in May 2014, with Petro Poroshenko winning by a clear margin in the first round. Early parliamentary elections were then held in October 2014, followed by the appointment in December 2014 of the new coalition government – the second government to be formed since Euromaidan. Local elections held a year later, in October 2015, offered a chance to elect new leaders at the local level. In mid April of this year the third post-Maidan government took power, ending two months of political stalemate.

It is natural to ask several practical questions at this juncture: Have the renewed political institutions brought any new political forces to lead the country? More importantly, have they improved the quality of policy making? Or do old structures and approaches still dominate? Where does Ukraine stand now on its path to democratic transformation?

In response to creeping "Ukraine fatigue," this paper argues the importance of two factors in particular. First, Ukraine's controversial reform record thus far is deeply rooted in decades of partial, incomplete reforms undertaken since Ukraine achieved independence. This resulted in a system that serves a narrow circle of individuals, leaving out society at large. This legacy has proved stubbornly resilient since Euromaidan. Therefore, many important reform initiatives have gone unnoticed – for they have not yet challenged the foundations of the old system. The second factor is that new, reform-minded actors have entered the system, supported by strong pres-

sure from vibrant civil society that, taken together, are making a big difference. Without carefully considering both of these dynamics, it is easy for observers to succumb to premature disillusionment.

To understand the processes and trends developing in Ukraine today means recognizing the country as a battlefield on which the old system and structures are fighting for survival against progressive new actors. The latter are struggling to overhaul the old system of governance, both within the system and outside it, and to establish a robust and viable social contract. This battle is taking place at different levels, national and local, in different reform areas and on a daily basis. The government and coalition crisis of February–April 2016 offered conspicuous proof of this struggle and the persistence of old legacies. The appointment this April of the new government is a positive achievement, since the dangerous scenario of early elections and continued instability has been avoided in the short term. More decisive reform efforts in dismantling the old system are needed, however, to hold the country on the right course.

Numerous Reform Efforts with Mixed Results

The current developments are of course best understood in the context of Ukraine's overall trajectory. This paper examines reform efforts in terms of how they contribute to shaping what we might call the "new Ukraine." While it is not always useful to look at Ukraine through the prism of Western academic paradigms, some reference to the bigger picture can help put things into perspective. A theoretical framework might be helpful that conceptualizes countries as "limited access societies" (or natural states) or "open access societies" and explains the transformation from the first social order (typical for the majority of countries) to the other (typical for developed democratic countries).² If one looks at what the Euromaidan aspired to and the goals of the documents that supposedly guide Ukraine's reform process, one can conclude that the ultimate goal is to transform the country from a "closed access" social order to an "open access" one – that is, from a

system of governance where the powerful engage in rent-seeking behavior and restrict competition to a system governed by impersonal norms and competition, one that therefore provides a wide spectrum of individuals and organizations with democratic participation and access to resources.³ This desirable system is exactly the new social contract that the Euromaidan protests demanded and that the progressive forces in Ukraine are fighting for.

Without underestimating the efforts of the Ukrainian authorities to stabilize the macroeconomic situation and to initiate numerous reforms in many areas (assessment of which can be found elsewhere ⁴), this article examines in particular four areas where changes are essential for the above-mentioned transformation: promoting political accountability, breaking monopolies on public resources, furthering the rule of law (including fighting corruption), and strengthening implementation capacity (in essence, reforming the civil service). This overview shows two things: First, important changes that have the potential to undermine the very pillars of the old system have taken root. Second, most of them have so far taken the shape of adopted laws or newly established institutions but have hardly been implemented – either because changes objectively take time or because there has been resistance and lack of capacity. This means that the changes have yet to reach critical mass and as such are still quite fragile.

Promoting Political Accountability

Accountability starts with access to information and transparency. In this respect a lot has been achieved. The public finance system has become more transparent. The official web portal *E-Data* was launched in September 2015 to deliver information on public spending.⁵ The project offers free online tracing of public spending at national and local levels. As of 2016 it also includes information on the use of public funds by state-owned and municipal enterprises. The data is updated every day and comprises approximately one million transactions daily.

Since February 2015, it has been possible to follow online a portion of the public procurement operations. This makes the bidding process and selection of tender winners more transparent and competitive, which, according to experts, has already reduced the degree of corruption in transactions from 30 percent to 10–12 percent. As of 2016, this online system, called ProZorro, began covering all public procurement operations in Ukraine.⁶ Experts claim this will help save Ukraine's state budget about 50 billion hryvnia (about 1.7 billion euros) in 2016.⁷

Property and asset registers have become open, making it possible to search not only by the property but also

by the name of the owner. Moreover, a separate law on ultimate beneficiaries of companies was adopted. The latter step reduces the risk of corruption, as it obliges companies to disclose information about ownership structure, founders, and ultimate beneficiaries, who may maintain their legal address outside of the country.

Access to public information in general has increased. The procedure for requesting and receiving information has become more user-friendly, and the spectrum of information that is subject to disclosure has broadened.

This is an impressive list. Yet these initiatives only offer tools. To use those tools requires willingness and competence on the part of public authorities; competent bureaucracy is needed on the one hand, while capacity and initiative of the people is needed on the other. Transparency as such does not automatically translate into accountability. By the same token, better access to the authorities does not guarantee having an impact on decision making. Civil society activists in Kiev and in the regions confirm that there is lack of capacity in many cases at the grass-roots level to use these tools.⁸ While authorities in Kiev have become more open and while civil society in Kiev has proved very capable, this has not always been the case at the regional and local levels.⁹

Breaking Monopolies

A number of initiatives have been launched to break the monopolies on public resources, be they economic, political, or informational. Since Ukraine has functioned as a “captured state” – meaning that only a limited group of actors has controlled nearly all public resources – releasing these resources should be a vital task.¹⁰

To this end, public broadcasting was introduced with an independent supervisory/editorial board. (The board includes eight representatives appointed by the authorities and nine representatives from civil society.) Importantly, this reduces the monopoly of commercial and political interests in public discourse, since it offers impartial and potentially higher quality media products. In a situation where most influential television channels are owned by oligarchs, who often use the media to further a certain political agenda, public television can make a difference.

Additionally, a law on transparency in media ownership was passed. Coupled with the law on state funding to political parties, which will decrease party dependency on funding by oligarchs, it will create a more competitive environment for young political forces.

Initiatives aimed at ending monopolies in some sectors of the economy and revising or eliminating state subsidies

to businesses have also been launched. Reform of the natural gas market is well underway; the introduction of market prices has already helped to diminish sources of money flowing into private pockets instead of into the state budget. There have also been attempts to reform the system of state enterprises. At the moment there are 3300 state enterprises. They are jointly responsible for a loss of five billion dollars annually.¹¹ Many of them are poorly managed and provide enormous opportunities for corruption. In some of these enterprises, management has been replaced, but there is strong resistance to this process, backed by influential lobbies. In the longer run, the plan is to privatize the majority of these enterprises, while bringing the most important ones together into a state-owned consortium.

A number of decisions on deregulating the economy were taken. Ukraine moved up four positions in the *World Bank Doing Business* ranking for 2016, mainly to reflect substantial reduction in the time required for starting a business. By the end of 2015, the number of permission documents for starting a business was reduced from 143 to 84.¹² These changes will contribute to establishing free and equal market access and to the development of entrepreneurship.

Despite these measures, genuine removal of monopolies has not yet occurred; only initial steps have been taken and still need to be implemented.

Fostering Rule of Law

Promoting the rule of law is an essential area of transformation, and reforming Ukraine's judiciary is key to achieving this end. Fair, impartial, and efficient enforcement of law and norms is what creates a system based on the rule of law and serves as a safeguard against arbitrary rule.

Progress in this area has moved more slowly than expected. Probably the most visible success was the launch of the new police force, which came into existence in November 2015. Inhabitants of Kiev, Odessa, L'viv, and other cities could already sense the change as new police cars with new trained officers appeared on the streets. The presence of police became more visible than before, yet in a very positive way, since the attitude of the new personnel is service-oriented. Bribes, which were previously omnipresent, are now impossible.

The reform of the judiciary and the prosecution, however, has not yet succeeded. A piece of good news is that amendments to the constitution concerning the judiciary (which also include substantial reduction of the role of

prosecution) have finally been agreed to by all stakeholders and are expected to be voted in the first reading soon. In the best-case scenario, the reform will come into force in autumn 2016 and will pave the way for the overhaul of the entire judiciary – both the system and the judges.¹³

Fighting corruption is an indispensable aspect of fostering the rule of law. New important institutions have been established to take on this issue, most notably the Anti-Corruption Bureau, which is supposed to fight corruption at the highest levels. When achieved, its goal of bringing corrupt high-level officials to justice will provide a key signal to society that things have changed. The law enabling the bureau's work ensures its independence from political influences and that the selection procedure of its staff and the bureau's work are supervised by independent experts from civil society. After some initial tension, the anti-corruption prosecutor was appointed and the institution began operating. By February 2016 the bureau had launched 56 criminal investigations, some of them against MPs and judges.¹⁴ Yet, according to experts, it needs more staff to accelerate its work. Moreover, collecting evidence is often complicated.

At the same time, there was strong resistance to setting up a National Agency for Preventing Corruption and launching efficient electronic declaration of assets, and the Agency started its work only in March 2016, much later than expected. Both of these reforms were conditions for establishing visa-free travel to the EU.

In practice, corruption continues to persist in a number of critical areas. The Ukrainian state budget has been losing 500 billion hryvnia (roughly 17 billion euros) a year merely through the inefficient work of its customs services.¹⁵ The Ministry of Health has been a substantial source of corruption, costing the state budget billions of hryvnia while depriving patients of access to medicine.¹⁶

Although many corruption scandals have not yet been followed up, there have already been some notable exceptions. Ihor Mosiychuk of Oleh Liashko's Radical Party, and Henadiy Korban of the UKROP party were detained last year in two prominent cases. Others, such as the MP Mykola Martynenko (a close ally of former Prime Minister Arseniy Yatsenyuk) and the Prosecutor General, Viktor Shokin (a personal friend of President Poroshenko) had to give up their respective posts after tremendous pressure was exerted, including from the West. Yet many other individuals from the former Party of Regions or allies of Poroshenko and Yatsenyuk who featured in corruption investigations, continue to exercise political influence.

Reforming the Civil Service

This is an important area that ensures successful implementation and sustainability of legislative initiatives. Basically, it is about the state's capacity to implement decisions and turn them into functional rules. So far there has been too much resistance for positive change to take root in this area. The new law on civil service passed in December 2015 and coming into force as of May 2016 offers the opportunity to launch a new system of civil service with new, quality personnel. It largely incorporates the demands of civil society and international donors, although it does not yet tackle the problem of low salaries. The newly appointed vice prime minister for European integration, Ivanna Klymush-Tsyntsadze, announced that this will be one of her priorities. In June an action plan of transformation for this area is supposed to be adopted. In the above-mentioned areas that are essential for Ukraine to adopt a new social contract, changes have been initiated to take matters in the right direction, but they have hardly been implemented as yet to make a real difference. Ukraine is still locked in the old system, although it has been shaken.

The Extent of the Challenge: Old Legacies as a Source of Resistance

To understand why change has been so uneven, it is important to understand the extent of the challenge and the degree of resistance that Ukraine's reform-minded actors are currently facing.

Post-Euromaidan Ukraine inherited difficult legacies, ranging from Yanukovich's four-year rule to previous governments going all the way back to the early 1990s. No serious change ever took place. Rather, cosmetic changes and partial reforms created a system of "state capture" by a small circle of political and economic actors, which offered society at large only limited access – or no access at all – to decision making and public resources. Twenty-five years of halting reform left behind dysfunctional institutions, so the latter in many cases have to be built from scratch. Moreover, underdeveloped political culture makes it complicated for the branches of power to reach consensus and for the entry on the scene of genuine political parties that would replace top-down and short-lived political projects.

It is important to bear these factors in mind when assessing the pace and success of genuine reform. More time and effort will be needed for it to succeed, as radical change is not possible overnight.

"State Capture" by Vested Interests

In Ukraine's 25 years of independence, a system evolved whereby a handful of rich men gained unique access to public resources, including influence on decision making by public institutions. The latter has consolidated the privileged position of these individuals compared to the majority of society. These individuals have come to own the most popular and influential TV channels and continue to finance political parties. This has allowed them to have their interests represented in public institutions, including courts, and to preserve monopolies over entire sectors of the economy, while engaging in rent-seeking behavior – that is, extracting profit from public resources. Even now, two years after Euromaidan, the assets of the one hundred richest Ukrainians equal approximately one fourth of Ukraine's GDP, and 60 percent of these assets belong to only ten individuals. This is the case despite the fact that between 2013 and 2015, the one hundred richest Ukrainians together lost half of their wealth.¹⁷

This explains why any attempts to undermine this system and establish new rules of the game have faced so much resistance. The most prominent example was the conflict around the semi-state energy company Ukrnafta, where Ihor Kolomoisky, the third richest Ukrainian, owns 42 percent of the shares. For years he blocked the state from accessing its dividends, since a 60-percent quorum for shareholder meetings was needed to enable this. (The state owns a stake of 50 percent plus one share.) The law that changed this situation was passed with many difficulties, while the replacement of the company's management, previously controlled by Kolomoisky, resulted in a direct confrontation with law enforcement. Because of this conflict, Kolomoisky had to resign as governor of Dnipropetrovsk region, a position he held between March 2014 and March 2015.

A fresh example of how informal arrangements override formal institutions was the parliament's failure on February 16 to pass a no-confidence vote for the government, although immediately prior to this, a majority of MPs voted to express a negative opinion of the government's performance. The fact that several influential MPs – from Petro Poroshenko Block, the majority of the Oppositional Block, and two independent groups, Vidrozhennia (Renaissance) and Volya Narodu (People's Will) – did not support the no-confidence vote gave some reformers and journalists grounds for claiming that the outcome of the vote had been agreed to in advance by Poroshenko and Yatsenyuk in tandem with the oligarchs Rinat Akhmetov, Ihor Kolomoisky, and Serhiy Liovochkin.¹⁸

Weak Democratic Institutions

Ukraine also inherited unstable democratic institutions. The constitution has been changed back and forth several times. After both the Orange Revolution and Euromaidan, constitutional provisions were introduced to allow for more power sharing between the president and the parliament, while stronger presidential rule was largely restored in 2010. Although Poroshenko and Yatsenyuk managed to avoid the sort of crippling political infighting that was seen after the Orange Revolution, the fact that tension is still enshrined in the constitution hardly guarantees efficient cooperation between the branches of power.

Election legislation has changed every time before new elections. Ukraine has experienced a purely majoritarian system, a mixture of majoritarian and proportional systems, a proportional system, and a return to the hybrid one again in 2012. The new law on local elections came into force less than a month before the elections of October 25, 2015 – against internationally recognized standards. The system continues to undergo changes.

The old, dysfunctional system has been deeply enshrined in the law-enforcement authorities, the judiciary, and the civil service in particular. It was particularly evident during the Maidan demonstrations, when both the judiciary and the police were used as repressive bodies against the protesters. As *Kyiv Post* rightly pointed out, Ukraine has 18,000 prosecutors, 10,000 judges, and 150,000 police officers and investigators, and “none of them can deliver justice or rule of law.”¹⁹ This is coupled with an oversized and dysfunctional civil service, and many reforms are blocked or delayed at this level.

Underdeveloped Political Culture

Poor political culture manifests itself in many ways. One of them is poor coordination of efforts among public institutions and different branches of political power. Thus, since the parliament started work in December 2014, it has passed only 36 percent of bills prepared by the government.²⁰ Among the various reasons given by MPs and government representatives are that the volume of bills is too large (approximately forty laws a day are considered and passed); that expertise behind the bills is lacking; and that vested interests penetrate the bills at different stages.²¹

Moreover, the government has not acted as a coherent team. Instead, individual ministers have been pushing for some reforms within their own spheres of competence. There is a limit to such a mode of policy making, especially when the cabinet has to deal with conflicting objectives

(for instance, the collision between securing more budget revenue and creating a more favorable taxation environment for small and medium-sized enterprises).

The lack of ideals and values around which certain political actors could unite is another manifestation of the deficiencies in political culture. There are almost no political parties in Ukraine that have an ideology and program representing certain societal interests. Their regional and local membership base is also weak. Instead, Ukrainian political parties are mere political projects, organized in a top-down way and often centered around one leader. Moreover, parties that succeed in entering parliament are mostly backed by oligarchs, both financially and through media resources. Of the six political parties that entered parliament in the October 2014 elections, only Fatherland (led by Yulia Tymoshenko) had existed as a party before. Most others were created in 2014 after Euromaidan.²² Local elections held in October 2014 showed the strong role of oligarchs behind political parties. While Rinat Akhmetov succeeded in Zaporizhia and Donetsk regions, Ihor Kolomoisky did the same in Kharkiv. Both oligarchs competed with each other in Dnipropetrovsk region and came to share influence there following the elections.²³

An additional challenge that complicates the situation has to do with the strong disillusionment of society and the related growth of populism. Public opinion polls show that by the end of 2015, 60 percent of citizens felt things were moving in the wrong direction.²⁴ One of the reasons has to do with the fact that authorities have focused on macroeconomic measures. Indeed, Ukraine has been able to avoid a financial default, managed to stabilize its financial system, and has already showed some growth in 2016. But people hardly feel the impact of these measures. Moreover, although citizens consider the “fight against corruption and corrupt individuals” to be the second biggest priority the authorities should focus on (after securing peace in Donbas), not much has been achieved in this direction.²⁵ This feeds disappointment.

Is It Different This Time? New Trends that Give Hope

While the old legacies that resist reform have been around for years, the emergence of progressive enclaves within the system and strong social capital and pressure from civil society are the features that make post-Euromaidan Ukraine different from the situation that prevailed after the Orange Revolution. The opening up of opportunities for new reformers to enter the system and to exert some leverage is a game changer. Not only

can they promote and implement new legal norms and practices, they also make the old system's deficiencies more visible and help channel pressure from civil society. Strong social capital reflected in active civil society and volunteer activities is also a new phenomenon and an important prerequisite for the development of a new social contract in Ukraine.

Enclaves of Reform within the System

Both President Poroshenko and former Prime Minister Yatsenyuk, although not considered reformers themselves, allowed progressive actors to enter the parliament and take positions in public authorities. Thus, despite an overall lack of political will, important enclaves of reformers have emerged in the public authorities, both at the central and local levels. They promote certain modifications and change practices in their areas of competence. According to different estimates, there are currently some fifty reformist MPs in Ukrainian parliament. Since they entered parliament on different party lists, many of them joined the cross-party group Euro-optimists and are seeking to promote initiatives that represent new values and a new type of political behavior.²⁶ Recently, reformist MPs from the Petro Poroshenko Bloc protested alleged corruption in their faction and among MPs in general and announced an initiative to fight this.²⁷

According to different sources, new reformers in the government include around 200 people. (The civil service consists of about 300,000 people in all.) Some used to be foreign nationals who have accepted Ukrainian citizenship. Others were recruited through the Professional Government Initiative, an initiative created by Ukrainians with degrees from Western universities.²⁸ They mostly took the posts of ministers, deputy ministers, and heads of departments, with varying degree of success. Vox Ukraine rated the Ministry of Economy and Trade, the National Bank of Ukraine, and the respective ministries of Finance, Justice, Social Policy, and Agriculture as the best performers in the previous government.²⁹ There are reform-friendly enclaves at the local level as well. In Odessa region, Mikheil Saakashvili – despite the controversy surrounding the former Georgian president and current Odessa regional governor – replaced all heads of district administrations with new reform-minded professionals with management backgrounds and educational degrees from abroad, selected through open competition.³⁰

Young political parties are slowly making their way into big politics. One example is the party People's Power (Syla Liudei), which received 230 seats in 62 local councils or mayoral positions in twenty regions of Ukraine.

This party had only 200 members in 2014. By the 2015 local elections, membership had increased to almost 3,000.³¹ The party is transparent in reporting all sources of financial support, and the statute prohibits individual donations exceeding 40,000 hryvnia (or about 1400 euros), making it impossible for the party to accept support from oligarchs. In some cities and towns in Ukraine, even candidates that had no administrative resources or strong financial backing were elected as mayors or showed good results. Such cases include Mykolaiv in southern Ukraine, where the representative of the Self-Reliance party beat the Opposition Bloc representative, and Glukhiv, a town in Sumy region where a French businessman with Ukrainian roots won despite many obstacles presented by local authorities and law-enforcement.

New police and the above-mentioned Anti-Corruption Bureau are examples of new structures that represent a new system. In both cases employees were hired through rigorous selection procedures, and they are well paid; there are also safeguards to ensure the integrity and professionalism of their work.

Strong Social Capital and Pressure from Below

Two important outcomes of Ukraine's Revolution of Dignity are society's higher expectations and strong pressure from civil society. Euromaidan made it possible to fill major political posts through fresh elections: the presidency, the parliament, the government, and recently, local authorities as well. Large numbers of Ukrainians took to the streets and some lost their lives for the chance to transform the country. Many more lives have been lost in the military conflict with Russia, and Ukraine's borders have been altered. This is too high a price, and it needs to be justified; it puts the political elite under pressure in ways it has not experienced before.

Numerous advocacy and watchdog initiatives with strong expertise pressure the authorities on a daily basis. A notable example is the platform Reanimation Package of Reforms (RPR), which emerged right after Euromaidan and brought together over thirty civil society organizations from all over Ukraine who have accumulated substantial expertise in various areas of reform over the years. It is mostly due to the expertise and pressure of civil society that the above-mentioned changes were initiated. According to RPR, since the end of Euromaidan, 75 initiatives with RPR involvement were passed as laws.³²

Another important trend is the boom in investigative journalism and media coverage of corruption cases. Numerous Internet resources exposing corruption at the highest level were launched and have gained a broad

audience. Television programs have also played a role here (which was not the case before). The Anti-Corruption Bureau has launched several investigations based on media reports.

Another sign of stronger social capital in post-Euro-aidan Ukraine is widespread voluntarism. According to an opinion poll conducted in September 2014, 77.7 percent of Ukrainians provided support to the army and to internally displaced persons between May and September of that year.³³ This trend continued, and it is therefore not surprising that volunteer initiatives topped opinion polls on the level of trust in public and civic institutions in Ukraine: in December 2015, 68 percent trusted volunteer initiatives more than other institutions.³⁴

One of the new important trends in Ukraine is the appearance of small entrepreneurs producing a diversity of goods that in previous years were imported. “Made in Ukraine” rapidly became a sought-after brand, mainly among middle-class Ukrainians in the big cities. Electronic petitions, which citizens can now file online and present to national and local authorities (provided they bear the required number of signatures) have become quite popular. This shows that there is a share of society ready to take things into its hands without merely waiting for change to come from above.

Conclusions and Recommendations

For many observers of Ukraine, the enthusiasm connected to Euromaidan was quickly followed by disappointment. Various factors contributed to disillusionment: the war, the country’s catastrophic economic situation, the strong presence of the Russian narrative of developments in Ukraine transmitted by Western media (of civil war, of Ukraine as a failed state), the continued visibility of oligarchs and corruption, and the lack of political will. This, in turn, soon turned to fatigue and apathy. The latest political crisis – the break-down of the coalition and the two-month stalemate, which was finally resolved with Prime Minister Yatsenyuk’s resignation in April 2016 and the appointment of the new government – once again exposed the persistence of vested interests, further undermining faith in the idea that Ukraine might succeed.

Another problem has to do with too strong a focus on the Minsk Process. The situation around Donbas is seen by many Western decision makers as a burden that needs to be removed as soon as possible – a precondition for, among other things, paving the way for returning to “business as usual” with Russia (that is, lifting sanctions). Since it is difficult to make Russia comply with the provisions outlined in the Minsk Process, too much pressure is

put on Ukraine to conduct local elections in Donbas without considering the long-term implications such a step might have for the country. (Here we assume that elections there cannot be free and fair and that they would only legalize the current criminal regimes in Donbas and their leverage on developments in Ukraine.)

Against this background, many important albeit less visible developments in Ukraine go unnoticed. While many of these developments do give grounds for pessimism, observers fail to comprehend that those developments are in fact the natural result of almost 25 years of partial reforms – or even pseudo-reforms. If anything, they emphasize the degree of challenge Ukraine is facing.

A key point to understand is that there is a constant struggle between the new actors who want change and old structures and actors who protect the status quo. The struggle is taking place at different levels and in different areas, with uneven progress in each of them. The outcome of the struggle remains unclear. While many expected changes have yet to occur, achievements outlined earlier in the paper deserve attention as well. Those successes can be attributed to the new actors, who bring a heretofore unseen degree of enthusiasm, skill, and commitment.

It is also important to understand that, in the countries where it succeeded, the process of changing the social contract took decades. Ukraine, too, needs time, and its success will be an important contribution to the project of European integration.

Recommendations

What can *Germany and the West* do to support positive change in Ukraine today? In the current context of struggle, the role of external actors can help bring about a tipping point in favor of reform. Within public discourse, open support for progressive initiatives in Ukraine by Western politicians and Western diplomats can make a difference, and there are many successful examples of this. (It is, moreover, a relevant thing to do, since in many cases the West already supports those reforms financially.) It was thanks to several public statements and letters to Ukrainian authorities from the EU Ambassador to Ukraine Jan Tombinski that the composition of the commission responsible for selecting an anti-corruption prosecutor was changed to respond to civil society’s demands. Under similar external pressure, a number of laws demanded by the EU to make Ukraine eligible for visa-free travel were passed, albeit some shortcomings still have to be removed. Thus, the key factors are stronger conditionality, which links domestic reforms to benefits

from the EU (and other international institutions); public communication of positions on reforms; and joining forces with reformers inside the country.

On a more practical level, Germany and the EU should support the establishment of new structures. Careful observation suggests that reforms have succeeded in two types of context: a) when new parallel structures were established with the hope that they would overtake the old ones in the long run, and b) when new structures emerged where nothing existed before. Reorganizing the old structures has proved rather ineffective. Examples of newly created structures include the new police, the Anti-Corruption Bureau, and the online public procurement system.

While maintaining a focus at the decision-making level, it is also important to redouble efforts to implement and enforce new laws. Benchmarks and conditionality have to become more precise at this level. Moreover, reform of the civil service and the judiciary are of the utmost importance for enforcement and sustainability of efforts to transform the system. They therefore require special attention.

The success of Ukraine's transformation will depend greatly on the ability of actors at the local level to use the opportunities offered by decentralization and numerous transparency initiatives. Civil society's capacity at the local level to take the initiative and hold the authorities accountable is still limited, however. International donors need to pay special attention to this.

Finally, reforms and Ukraine's long-term developments should not be held hostage to the Minsk Process. 1) It is desirable to detach decentralization reform from the Minsk Process. The country's constitution is not the appropriate document for reflecting on the temporary occupation of a part of Ukraine. In any case, it is unlikely that the amendments on decentralization will be passed in the second reading (300 votes will not be secured), which will stall decentralization reform. 2) Free and fair local elections cannot take place until all conditions stipulated by international norms and Ukrainian legislation are secured. Some sort of control over the Ukrainian-Russian border (perhaps by international observers) and the presence of international observers in the occupied territories

are necessary prerequisites for this. Elections cannot take place before these conditions are met (and this is where cooperation on Russia's part is needed).

Ukraine's political leaders need to be more aware of the historic opportunity their country received after Euro-maidan and their responsibility to make use of it. The past two years – and especially the most recent government and coalition crisis – showed that the sense of responsibility is weaker than short-term interests. This has to be changed.

Important foundations for genuine transformation have already been laid, but they are not yet sufficient to make a breakthrough toward the “new Ukraine.” Moreover, society is losing patience and wants to see results. Several success stories in fighting corruption – namely bringing to justice individuals from the current high political establishment and former Yanukovich associates who feature in media investigations – would be an important sign of political will.

Acceleration of civil service and judiciary reforms are other important priorities for the reasons detailed above. Success in both areas will guarantee efficient implementation of reforms in general and ensure that the new rules of the game will be respected.

Finally, initiatives that ensure a more competitive and equal-opportunity environment in terms of access to public resources have to be accelerated. These include liberal taxation reform, reform of public enterprises (including through privatization), and more deregulation efforts. Such reforms will eliminate many of the channels through which vested interests pursue “state capture,” while making it possible for smaller economic actors to unlock their potential.

Implementing the measures outlined above requires strong and visionary political leadership. This, together with pressure from below and from external actors, will make a real difference.

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Notes

- 1 The author thanks Stefan Meister and Henrik Hallgren for their constructive comments on earlier drafts of this paper.
- 2 See Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge, 2009).
- 3 The official documents guiding reform efforts include the Coalition Agreement, the 2015 Government Plan, to be replaced by the new one soon, “Strategic Vision 2020” prepared by the president of Ukraine, the EU-Ukraine Association Agreement, and the Ukraine-IMF Memorandum. Based on these documents, the National Reform Council, which aims to ensure consensus in reform implementation, developed 18 reform areas on which it sets objectives, monitors implementation, and perception. For more information see the website *Reforms in Ukraine* [in Ukrainian] <<http://reforms.in.ua>> (accessed March 14, 2014).
- 4 See National Reform Council, “Reform Monitoring Progress for 2015,” brochure, February 2016 <http://reforms.in.ua/sites/default/files/upload/brochura_eng.pdf> and Reanimation Package of Reforms, *Ukrainian Reforms Under the Microscope 2015*, Kiev, 2015 <http://rpr.org.ua/uploads/files/source/zzzz_briefs_ENG_tabl_print.pdf> (both accessed March 14, 2016).
- 5 <http://e-data.gov.ua/>
- 6 <https://prozorro.gov.ua/>
- 7 Interview conducted by the author with Oleksii Khmara, Executive Director of Transparency International Ukraine, September 2015.
- 8 In keeping with DGAP house style, city names like Kiev and Odessa are spelled according to Merriam Webster English-language dictionary.
- 9 Author’s interviews with civil society activists from Kiev, Odessa, Dnipropetrovsk, and Kharkiv in February 2016.
- 10 There is an extensive body of literature on “state capture.” The *Encyclopedia Britannica*’s short definition sums up the post-Communist context very well: “A situation in which decisions are made to appease specific interests, maybe even through illicit and nontransparent private payments to public officials, rather than to suit the national interest aggregated and mediated through a democratic process. State capture takes place when the basic rules of the game are shaped by particularistic interests rather than by the aggregated national interest” <<http://www.britannica.com/topic/state-capture>> (accessed March 4, 2015).
- 11 “Neue Hoffnung in der Ukraine,” *Frankfurter Allgemeine Zeitung*, October 23, 2015.
- 12 National Reform Council, “Reform Monitoring Progress: 2015,” September 2015 <http://reforms.in.ua/sites/default/files/upload/brochura_eng.pdf> (accessed March 14, 2016).
- 13 In the second reading, 300 votes will be needed; then the president will have to approve the law.
- 14 See National Anticorruption Bureau of Ukraine (NABU) “Report for August 2015–February 2016” [in Ukrainian], pp. 14–15 <http://www.nabu.gov.ua/sites/default/files/reports/NAB_report_02_2016_site.pdf> (accessed March 14, 2016).
- 15 Bohdana Kostiuk, “Due to Misconduct of Customs Authorities, State Budget Loses 50 Billion Annually – [According to] Experts” [in Ukrainian], *radiosvoboda.org*, October 17, 2013 <<http://www.radiosvoboda.org/content/article/25140166.html>> (accessed March 14, 2016).
- 16 “Interview with Dmytro Sheremby, Expert of the Patients of Ukraine Charitable Fund” [in Ukrainian], *2plus2.ua*, June 24, 2015 <<http://2plus2.ua/pnews/dmitro-sheremby-4-mlrd-hochut-rozdiliti-v-ministerstvi-ohoroni-zdorov-ya-444594.html>> (accessed March 14, 2016).
- 17 The weeklies *Forbes*, *Novoye Vremia*, and *Fokus* undertake assessment of assets annually. The figures differ somewhat due to different methodology of assessment, but the relative figures in the context of the GDP are the same.
- 18 See blog by MP Serhiy Leshchenko, “Molecular Analysis: New Details of How Yatsenyuk was Saved” [in Ukrainian], *Ukrainska Pravda*, February 20, 2016 <<http://blogs.pravda.com.ua/authors/leschenko/56c8dfa835585/>> (accessed March 14, 2016).
- 19 Editorial, “Cosmetic Fight,” *Kyiv Post*, October 9, 2015 <<http://www.kyivpost.com/opinion/editorial/cosmetic-fight-399610.html>> (accessed March 14, 2016).
- 20 Ivan Mikloš, “Quo vadis, Ukraine? Is there a Chance for Success?” CASE Seminar Proceedings 139 (2015), p. 13 <http://www.case-research.eu/sites/default/files/publications/mbank-case_139_final.pdf> (accessed March 14, 2016).
- 21 Interviews conducted in Kiev in November 2015.
- 22 Oleg Liashko’s Radical Party has a somewhat longer history, dating back to 2010, but in the 2012 parliamentary elections the party received only 1.08 percent of support. Self-Reliance was created in 2012. The parties Petro Poroshenko Block, Arseniy Yatsenyuk’s People’s Front (Narodnyi Front), and Oppositional Block, which took over the remnants of Yanukovich’s Party of Regions, were all created in the months leading up to the 2014 elections.
- 23 See for instance Radio Free Europe <<http://www.radiosvoboda.org/content/article/27321260.html>> (accessed March 14, 2016).
- 24 One has to note, though, that disillusionment with the work of public institutions is not a new phenomenon; 60 percent is only 8 percent more than at the end of 2013 and 2 percent more than at the end of 2014. Democratic Initiatives Foundation, “2015: Political Overview: Public Opinion” <<http://dif.org.ua/en/publications/press-relizy/2015-i-politichni-pja.htm>> (accessed March 14, 2016).
- 25 Of those surveyed, 78.5 percent said the state’s highest priority should be to achieve peace in Donbas, while 56 percent named fighting corruption as the highest priority. Democratic Initiatives Foundation, “2015: Political Overview: Public Opinion” <<http://dif.org.ua/en/publications/press-relizy/2015-i-politichni-pja.htm>> (accessed March 14, 2016).
- 26 The Facebook page for the Euro-Optimists is <https://www.facebook.com/EuroOptimists/> (accessed March 14, 2016).
- 27 “Within Petro Poroshenko Block, They Launched a Group That Will Fight Corrupt Authorities” [in Ukrainian], *Ukrainska Pravda*, November 25, 2015 <<http://www.pravda.com.ua/news/2015/11/25/7090106/>> (accessed March 14, 2016).
- 28 Yuliana Romanyshyn, “Western-educated Ukrainians Seeking to Transform Government From Key Posts,” *Kyiv Post*, August 13, 2015. <<http://www.kyivpost.com/content/ukraine/western-educated-ukrainians-seeking-to-transform-government-from-key-posts-395711.html>> (accessed March 14, 2016).
- 29 Editorial, “The Year of Work of the Government: Assessment by VoxUkraine” [in Ukrainian], *VoxUkraine*, January 8, 2016 <<http://voxukraine.org/2016/01/08/rikroboty-uryadu-otsinka-vid-voxukraine-ua/>> (accessed March 14, 2016). Five different indicators were used to measure performance, including expert opinion and popular perception.
- 30 The author was in Odessa on February 9, 2016 and met some of these individuals. Civil society activists in Odessa confirm these observations.
- 31 Interview with Oleksandr Solontai, one of the leaders of Syla Liudei Party, in November 2015.
- 32 Rpr.org.ua.
- 33 Support took many forms, including financial contributions, donations of clothing, food, medicines, and participation in volunteer activities. For more detail, see “32.5 percent of Ukrainians Personally Transferred Funds to the Accounts of the Ukrainian Army: The Rural Population was more Generous than City Dwellers” [in Ukrainian], Democratic Initiatives Foundation, October 21, 2014 <http://dif.org.ua/ua/commentaries/sociologist_view/32anizh-miski-zhiteli.htm> (accessed March 14, 2016).
- 34 See the results of the public opinion poll carried out by the Democratic Initiatives Foundation, “2015: Political Overview: Public Opinion” <<http://dif.org.ua/en/publications/press-relizy/2015-i-politichni-pja.htm>> (accessed March 14, 2016).

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