

CORRUPTION IN UKRAINE 2012

This report summarizes the research carried out in Ukraine by the Institute for Advanced Humanitarian Research as part of an anti-corruption project implemented jointly by the Department of Justice of Canada and the Ministry of Justice of Ukraine.

The views expressed in this report reflect the results of the research. They are not to be taken as representing the views of the Department of Justice of Canada or the Ministry of Justice of Ukraine.

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INTRODUCTION

Ukraine as a formal state is young, having attained independence only in 1991 with the dissolution of the USSR. Since that time, the country has achieved a significant record of accomplishments. Among much else, it has set in place a new constitution; divested itself of its nuclear weapons; maintained the integrity of its territory; and held several presidential and legislative elections. Nevertheless, the country must now contend with numerous political, social and economic problems — all of which are deeply entrenched and present real, defining challenges for the new nation.

According to the State Statistics of Ukraine, the country had a population of 45,665,281 as of 1 October 2011. Ukrainian is the predominant language, spoken by approximately 67% of the population. About 24% of the population considers Russian to be their first language.

Ukraine is undergoing a significant demographic shift. The official population has fallen by almost 6 million since 1991 and, according to the World Health Organization's (WHO) *World Health Statistics* report, the country has among the lowest fertility rates in the world (1.4 children per woman in 2009). These dramatic changes in population will pose fundamental economic and social challenges in the near future, especially to the country's pension system, which already struggles to meet the basic needs of a significant number of pensioners.

The country possessed a highly educated population at the time of its independence. The adult literacy rate is over 99% and, as reported by the UNESCO (United Nations Education, Scientific and Cultural Organization) in its report *Global Education Digest*

2010, the gross enrolment ratio of men and women in tertiary education was 71% and 88%, respectively in 2008. Nevertheless, chronic underfunding of the education system threatens to reduce this advantage. Moreover, the fragility of the system is demonstrated by well-founded allegations that students can buy entry into universities and purchase grades.

The health care system is also inadequately funded and struggles to cope with acute problems created by poor diet and heavy use of tobacco and alcohol. Ukraine also has the highest prevalence of HIV among the former Soviet states (at 11 cases per 1,000 adults in 2009, according to the WHO).

After gaining independence in 1991 from the Soviet Union, with its numerous real and artificial economic ties, the Ukrainian economy suffered almost a decade of severe decline. In 1999, the situation began to improve, with a period of growth in domestic production, coupled with stronger consumption by Ukrainians who began to enjoy increased spending power. But the 2008 global financial crisis and subsequent economic recession has affected Ukraine severely. The national currency depreciated by 35% against the U.S. dollar in the last quarter of 2008. As a result of the crisis, the Ukrainian government was faced with a large and widening budget deficit, which it sought to remedy, or at least alleviate, by increasing its external borrowing. Ukraine's economic system remains under great pressure on various fronts, with the result that numerous practical difficulties prevent the country from achieving a well-functioning market economy.

The overall competitiveness of Ukraine's market is weak. It suffers from an uneven application of the law, weak property rights and overregulation, among other things. On the energy front, it is particularly troubling that Ukraine remains highly dependent on imports to meet its gas needs, given that it is one of the most energy-intensive and -inefficient countries in the region.

All of these problems, difficult in themselves, are compounded by the one that is the sole focus of this report, one that is more fundamental since it is so deeply pernicious: widespread corruption in the public and private sectors.

In quantifiable terms, the Transparency International 2011 *Corruption Perceptions Index*, which measures the perceived level of public sector corruption, ranks Ukraine 152nd in 182 countries around the world, far below Russia and Belarus (tied at 143) and other notoriously mismanaged countries. Between 2003 and 2012, Ukraine also consistently received a corruption score of 5.75 out of 7 in Freedom House's 2011 *Nations in Transit* report, where 7 represents the highest level of corruption. In 2012, the country's score rose to 6.

The problem is widely recognized within Ukraine. According to the Transparency International *Global Corruption Barometer 2010*, 59% of the Ukrainians surveyed in 2010 were of the opinion that their government was not effectively fighting maladministration in their country. This result is particularly discouraging, coming after a range of legislative and administrative initiatives and the adoption over the years of a series of national anti-corruption strategies by the government.

In view of the importance and the worsening severity of these current conditions, the need to bring abuses under control is clearly more pressing than ever.

The current report seeks to contribute to a better understanding of the phenomenon of corruption in Ukraine. In doing so, it draws upon and summarizes the results of fourteen separate research initiatives carried out under a multi-year cooperation project.

1

THE DIFFICULTIES OF THE PRESENT

1.1 Defining corruption

Corruption is a complex phenomenon that tends to defeat any attempt at simple clarification. A useful starting point would seem to be the straightforward view that corruption involves a deviation from certain standards of behaviour. The central issue would then be to simply determine what those standards are. Yet this path to understanding — though initially inviting — soon reaches an abrupt end, for it is complicated by the fact that the notion of corruption is largely subjective and inextricably linked to personal values and morality. Further, these conceptions, being personal views that largely serve self-interest, do not correlate closely with established legal definitions of wrongdoing. At best, the public's understanding of corruption will help to shape only a loose definition of what conduct is deemed socially acceptable and what is deemed condemnable. Moreover, with a view to the creation of practical remedies, any significant difference between the legal definition of corruption and the general understanding of the concept could negatively impact the implementation of laws or other measures directed at modifying behaviour.

With these considerations in mind, the research sought to identify patterns in the public understanding of corruption and to gauge the public's attitudes toward specific questionable behaviours. Through in-depth interviews and an extensive and representative national survey of people from various social, professional and geographic groups, two major findings were uncovered:

- Despite lack of awareness of the country's anti-corruption legislation, a large proportion of the population has a relatively

- accurate understanding of what, from a legal standpoint, constitutes corruption.
- The public tends to be critical of high-level corruption and bribe-takers, but accepting of corruption that is deemed necessary to supplement state funds or involves personal connections.

Legal definition

While there is no universally accepted legal definition of corruption, the term generally comprises some misuse of official power for private gain. The definitions proposed by the *United Nations Convention against Corruption* (UNCAC) and the Council of Europe's *Civil Law Convention against Corruption* (both of which Ukraine is a party to) all align with this broad definition, although they are elaborated to different levels of detail. For example, corruption, as set out at Article 15 of UNCAC is:

The promise, offering or giving, to [or the solicitation or acceptance by] a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

On 1 July 2011, the Law of Ukraine *On Principles of Preventing and Countering Corruption* (law 3206-VI) came into force. The new law expands the list of public sector positions whose holders may be held liable for corruption offences. In addition to government officials, it applies to individuals providing public services, such as auditors and notaries, and to officers of private legal entities

Corruption is defined at Article 1 of the law. Similar to the definition set out in UNCAC, it comprises the acts both of state officials abusing their authority and of other persons provoking

such behaviour. In the case of abusing authority, under the Ukrainian law, the elements of corruption are:

- the use of entrusted official authority or opportunities associated with such authority;
- by a person stipulated in article 4(1) of the law (described below);
- for the purpose of gaining an illegal benefit for him or herself, or for another person.

Under the law, provoking corruption is established as a crime when there is:

- a promise, offer or the provision of an illegal benefit;
- to a person listed in article 4(1), or upon his or her demand to another person;
- for the purpose of inducing the person to unlawfully use his or her official authority or opportunities associated with that authority.

What constitutes an illegal benefit under Article 1 of the Ukrainian law includes money or other assets, advantages, perks, services or non-material assets that are promised, offered, provided or received without lawful grounds and without payment or at a price below the minimum market price.

Congruence between the public and legal definitions

At the time of the survey (1 June – 1 July 2010), 39% of respondents from the general public sample had never heard of the anti-corruption laws that had been adopted by Parliament on 11 June 2009 and were set to come into effect on 1 January 2010 (these laws ended up coming into force on 1 January 2011, were repealed shortly thereafter and replaced by the 2011 law, whose provisions are almost identical). This lack of awareness indicates: that citizens are poorly informed on what measures the government is taking to tackle corruption, and that, for a large portion of them, assessments of what may or may not constitute

corruption are informally based on or influenced by personal views and general public opinion.

Public understanding

The survey asked respondents to assess a number of situations involving dubious activity and to indicate whether they considered it to be an example of corruption, some lesser form of wrongdoing or a harmless act. The responses reveal a number of interesting trends in the public's characterization of corruption.

It was found that the public has a tendency to appreciate the practical benefits that corruption offers and is more critical of passive recipients than of the bribe givers. The responses also demonstrated that corruption was viewed as a necessary source of funding to ensure the functioning of state institutions and that certain forms of corruption are not yet accepted as such in the mind of the public.

Self-serving gifts

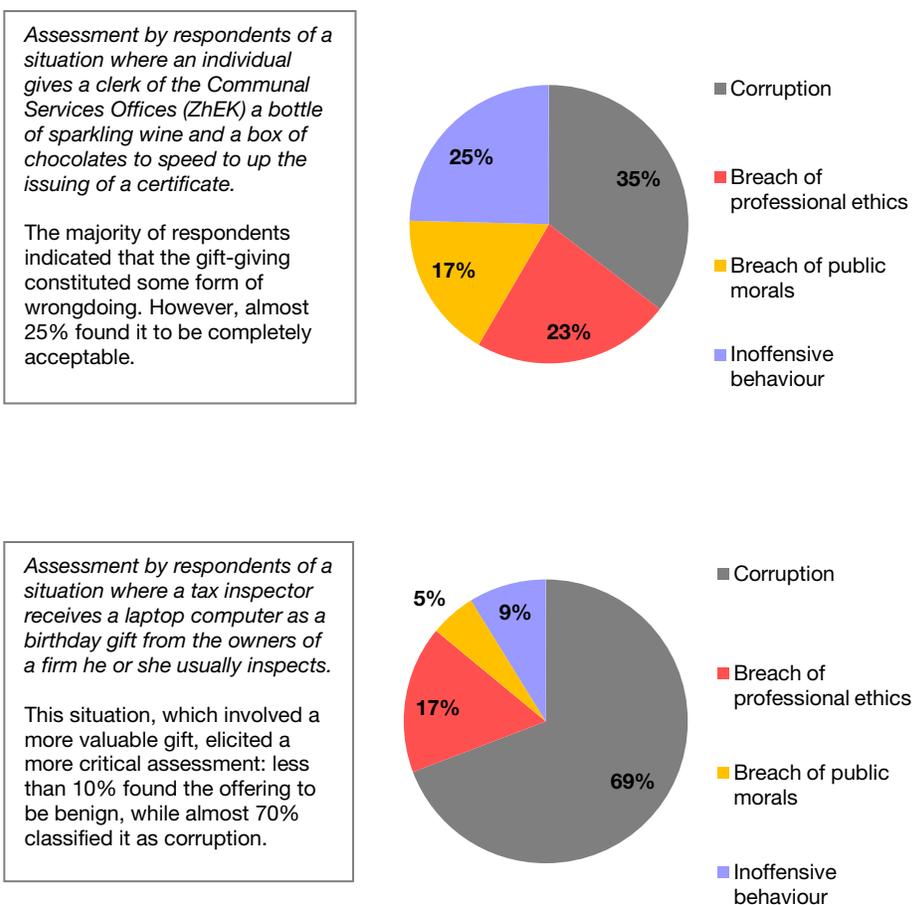
The Ukrainian public distinguishes two types of corruption: small-scale, household level-corruption, for which many have a lenient attitude; and high-level corruption, which is viewed, almost universally, as strongly condemnable. The distinction was clearly elaborated by participants in the in-depth interviews:

When an applicant is willing to thank someone who has helped in dealing with an issue, it is not corruption — it is a sincere gesture of gratitude.

Corruption reigns only at the top, where the big money is. Those things that are going on at the level of ordinary people are just an attempt to simplify life.

It was also found that other factors — such as the nature of the issue to be settled, the personality of the players involved, the outcome of the deal and whether the bribe was offered or extorted — also shape how corrupt transactions are characterized. For example, an action was generally not considered corrupt if it benefitted an individual offering a bribe, the amount paid was relatively small and the transaction and its outcomes did not negatively affect others.

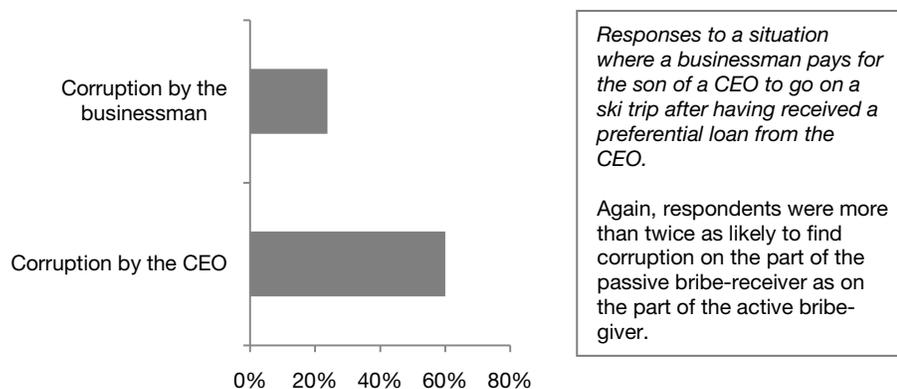
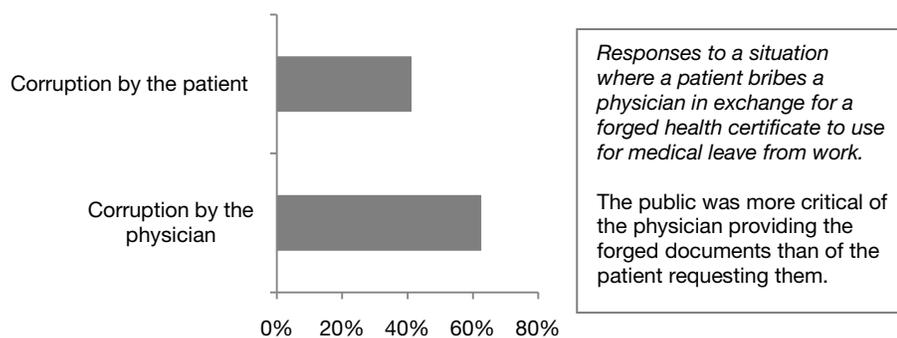
A comparison of the two cases below sheds light on this way of thinking.



The acceptance of corruption as a tool was also demonstrated in responses to a case example in which a citizen bribes a doctor in exchange for a forged health certificate. Under that question, only 41% of the respondents considered this act to be corruption, while 46.8% felt that the patient was merely securing his or her personal interests in accordance with standard behaviour. As one participant in the in-depth interview put it: "*We profess that those who do not give, do not get.*"

Bias against bribe-takers

It is understandable that the public would be more critical of extortion than of situations of voluntary bribe-giving. However, the survey results indicate that the public is also more critical of passive bribe-takers than of active bribe-givers.



In the two case studies illustrated in the graphs above, the recipients of the unsolicited benefit (the physician and the CEO) are viewed more negatively than the bribe-giver.

Interestingly, this bias can also be seen to exist in the state's record for prosecuting individuals on corruption charges. According to information shared by Ukrainian officials with the Group of States Against Corruption (GRECO) evaluation team (and cited in the latter's report on the Third Evaluation Round), the large majority (89.9%) of criminal corruption cases submitted to court between January 2009 and March 2011 involved bribe-takers rather than bribe-givers. As explained in the report, the officials claimed that those giving the bribes tend to be viewed as victims of the situation and are, accordingly, afforded leniency.

Support to the social system

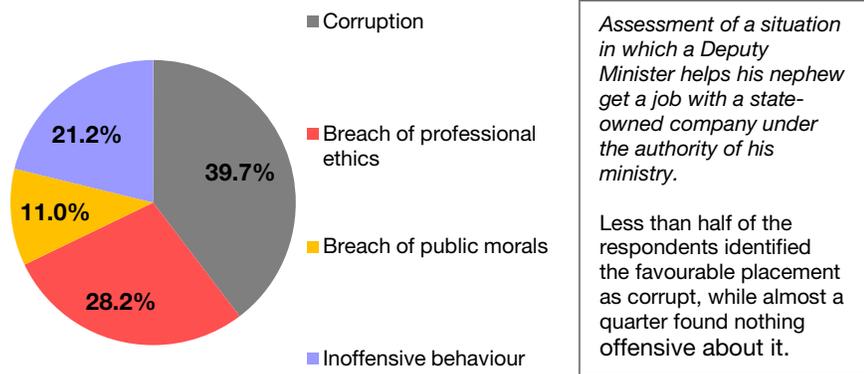
The survey results show that respondents accept that the social system cannot properly function without supplements from informal sources. When asked to assess a situation in which an entrepreneur gives to a charity created for the purpose of financially supporting law enforcement agencies, 32.5% of respondents correctly identified corruption; however, 22.1% identified this activity as a justifiable funding mechanism. When asked a similar question regarding a patient paying money to the charity of a public hospital in exchange for treatment, 42.8% of the respondents deemed the payment to be either a necessary or a standard practice.

Respondents in the in-depth interviews also rationalized paying bribes to civil servants on the grounds of the precarious financial situation state employees find themselves in.

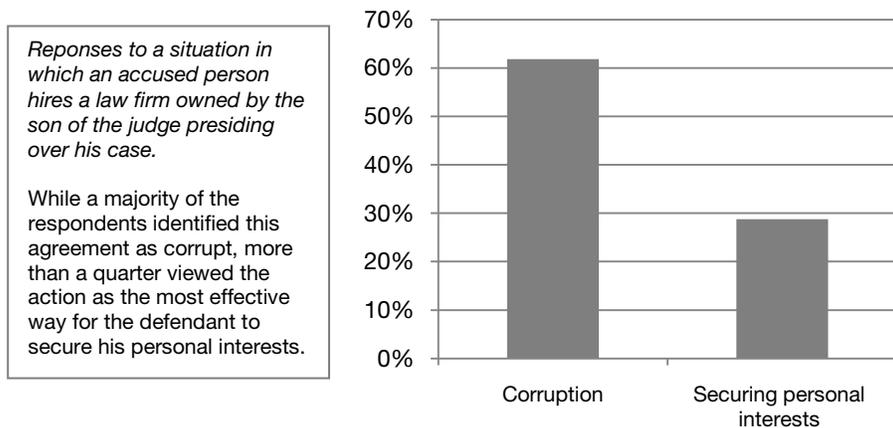
Civil servants cannot survive on their salary. Therefore, from a moral perspective, I close my eyes to such "aid."

Personal connections

Finally, the survey and interviews indicated that the public may not yet be willing to accept that nepotism is a form of corruption. As one respondent explained, "Nepotism or helping someone with a promotion is not really corruption. It is more just mutual help."



In a similar way, there was fairly broad acceptance of using personal connections to distort outcomes while operating within the justice system.



Congruence between legal and public understanding

Despite the Ukrainian public's limited familiarity with the legal notion of corruption, the survey findings revealed a strong overlap between the public and legal definitions.

Overall, an average of 60% of those interviewed identified situations that did, in fact, constitute corruption according to the legal definition of corruption (as set out in the 2009 and 2011 anti-corruption laws). Of the respondents that had a generally correct understanding of what situations constitute corruption according to the law, 38% were between the ages of 26 and 40, and 46% held graduate-level degrees.

About 20% of those interviewed defined acts constituting corruption as immoral, but they did not go as far as to state that those acts should carry criminal or administrative liability. This group was comparatively less educated (with 70% having only secondary education) and had a below-average awareness of anti-corruption legislation. The group also included a notable number of elderly women who, in the in-depth interviews, demonstrated a propensity to excuse the use of corruption out of sympathy for the parties involved.

An average of 15% of respondents considered legally corrupt practices to be inoffensive or normal behaviour. This group showed a fairly good understanding of the law on corruption, but consciously rejected it. As it was expressed by one participant in the in-depth interviews, the laws are thought to be "against common sense and the realities of contemporary life." This group was predominantly male and well-educated, with a significant proportion employed in the business sector. A final group of approximately 20% had a broader conception of corruption, characterizing as corruption acts that would not constitute violations under the law. This group consisted predominantly of

people of a vulnerable social status: 66% were retired, 32% were under or unemployed, and 46% deemed themselves to have below-average incomes.

As the preceding demonstrates, the notion of corruption is varying and subjective. However, the trends identified in the research, though relatively amorphous, are not devoid of interest. Some ideas — for example, that Ukrainians tend to excuse bribe-givers seeking the practical benefits of petty illicit payments, or that they justify unofficial payments as necessary to supplement state funding — provide us with a better understanding of the nature and perceived extent of corruption in Ukraine.

1.2 Nature and extent of corruption

The inherently hidden nature of corruption makes it difficult to form an accurate assessment of the scope of the phenomenon — indeed, some criminologists estimate that only about 1% of corruption offences are detected by law enforcement. Surveys on the perception of the degree of corruption, as well as on victimization — being the extent to which respondents report having been involved in actual acts of corruption — are therefore useful in gauging the scale of improbity.

Public sector

Ukrainian public sector institutions have a poor reputation in matters of integrity. According to Transparency International's public opinion survey, *Global Corruption Barometer 2010*, Ukrainians rated the level of corruption in the police, public officials, the judiciary and educational institutions as between 4 and 4.4, where 1 is not corrupt at all and 5 is extremely corrupt.

In designing effective measures to curb dishonesty in the public sector, knowing both where and how corruption actually occurs and where it is perceived to occur must be taken into account.

The research accordingly gathered information on the following matters:

- how different groups outside and within the Ukrainian public sector assess the pervasiveness of corruption in their country;
- the Ukrainian public's perception and experience of corruption across a variety of public institutions, as well as within the public education and health-care sectors; and
- the factors that drive bribery between citizens and public officials.

The principal conclusions drawn from the survey findings are that:

- most Ukrainians believe that corruption affects all aspects of their society and has remained widespread in recent years;
- there are marked differences in the levels of corruption perceived and experienced across the various public institutions assessed;
- most members of the general public do not report regularly engaging in corruption; and
- the bribery that citizens do engage in with public authorities is driven by practical considerations and tradition, and is more commonly extorted than offered.

Perception and experience

As part of the research, members of various groups (including law enforcement officers, civil servants, NGO members and the general public), were asked to assess the prevalence of corruption in Ukraine.

A majority in each of the groups surveyed perceive corruption to permeate all aspects of Ukrainian society. In this regard, NGO

members have the most pessimistic assessment of the degree of saturation (74%), while civil servants have the most optimistic (53%) estimate. The public's estimation closely follows (57%).

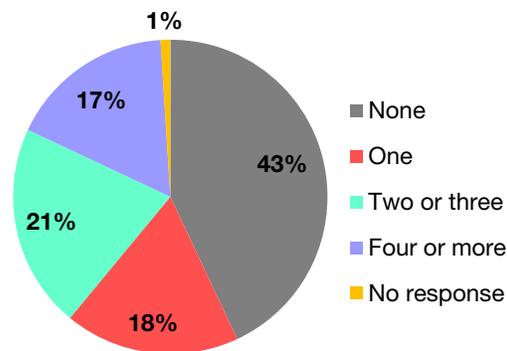
This reported perception that corruption is widespread accords with the conclusion of a July 2011 survey carried out by the International Foundation for Electoral Systems and published in the 2011 report *Key findings: Public opinion in Ukraine*, namely, that the majority of Ukrainians believe corruption to be common and a fact of life.



Only 20% of the general public polled identified corruption as a problem concentrated solely in the internal workings of government that does not involve them, as a group. This finding would suggest that a large majority of respondents who belong to the general public, up to 80%, are aware that they are a part of a group that is engaged in the corruption problem.

Consistent with this data is the fact that 30% of the general public interviewed admitted to having personally taken part in at least one corrupt practice during the preceding year. Over the course of their life, 56% of respondents recalled engaging in at least one act of corruption; however, only 17% of this group reported that they regularly relied on illicit dealings.

Number of corruption experiences involved in (the general public, throughout life)



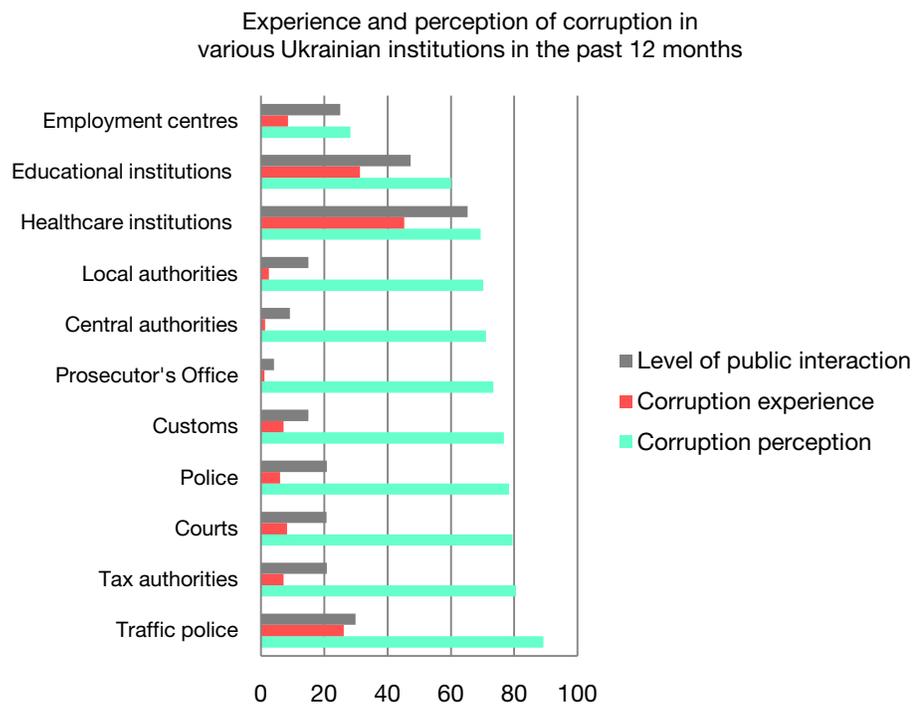
The above findings align with those reported by Transparency International in its *Global Corruption Barometer 2010*: that 34% of their Ukrainian respondents had engaged in an act of corruption in the preceding year when seeking basic services from one of the country's major public institutions.

Corruption by sector

While the majority of respondents see corruption as a phenomenon afflicting all parts of society, some parts are believed to be more afflicted than others. The public institutions in which the largest proportion of respondents perceive corruption to occur "very often" are the traffic police (89%), the courts (80%), the tax administration (81%), the police (78%), customs (77%) and the Office of the Public Prosecutor (73%).

Even in the case of institutions viewed as the least corrupt, a notable proportion of the interviewees perceived them to engage in corruption as a regular course of business. These institutions include governmental bodies, such as the social security services (38%) and the pension fund (32%), as well as non-governmental bodies, including media outlets (37%), employment centres (28%), NGOs (20%) and the church (18%).

The graph below shows a contrast between the negative stereotyping of each institution (in blue) and the number of respondents (in red) who reported a personal experience of corruption with the institutions tested; a baseline number (in green) estimates the rates of public interaction with each institution. As represented in the data, the reported negative perception of certain sectors and public institutions exceeds the reported experience of corruption by more than ten times. This discrepancy suggests that public perception is not necessarily predicated on personal experience with an institution.



In institutions for which a large measure of direct interaction is reported — such as the educational and health-care sectors, with which citizens deal with more regularly — perceptions more accurately reflect experience. That is, expectations are justified, in this case in the equally high reports of true personal experiences of corruption.

In some situations, negative stereotypes do appear to be justified. For example, only 4% of the surveyed respondents had personally interacted with the Office of the Public Prosecutor and other central government agencies. Of that small minority, less than 1.5% had experienced corruption in their respective encounters. Nonetheless, this result equates to one quarter of reported contacts involving corruption, which is a high incidence of wrongdoing. This consideration may explain why 75% of the population believes these particular institutions to be very corrupt.

Beyond word of mouth, a number of concrete explanations were provided that can help explain the gap between perception and experience. For example, the in-depth interviews revealed that it is common to associate corruption with the poor quality of services provided by public institutions. Perceptions of abuses may therefore be unduly heightened by encounters with slow administrative processes, unhelpful or incompetent government personnel, or underfunded programs.

There have also been some highly publicized cases of corruption that may have raised questions on the probity of officials. For example, in 2011, former Administrative Court of Appeal judge Ihor Zvarych was convicted of bribery and sentenced to ten years in prison. Police caught him taking a large sum of money in exchange for an illegal court ruling and ultimately found over one million dollars worth of cash in his possession.

Another plausible explanation for the public's doubts about the integrity of public institutions is the significant discrepancy between the official income of some holders of public positions and their extravagant lifestyle. Local news stories for example, have focused on the impressive properties, luxurious possessions and personal wealth of high level officials of the Office of the Public Prosecutor, the Tax Service, and the Ministry of the Environment. The failure of these officials to even try to explain the source of their wealth only fuels suspicions.

The statistical occurrence and normal features of corruption are best estimated from large numbers of comparable experiences. This type of data exists for reported interactions with the public institutions that Ukrainians engage with more frequently, namely, the health-care, education and court systems and the general public administration.

Health-care system

According to the survey results, 60% of the respondents' interactions with the health-care system involved some form of corruption. A survey conducted in 2009 under the Millennium Challenge Corporation (MCC) Threshold Country Program for Ukraine similarly found that 63% of respondents had experienced corruption in the health-care system.

The extent of impropriety measured can, in part, be explained by the companion data that shows that 40% of respondents are comfortable with providing informal payments to receive medical treatment and do not consider such payments to be illicit acts.

Most institutions (92%) visited by respondents had charged an official fee for medical consultations. Among the respondents, only 62% actually paid that fee (on average, 195 hryvnas or \$24 USD),

while 39% paid an illicit gratuity directly to the examining doctor (on average, 288 hryvnas or \$36 USD).

All respondents interviewed paid some fees for treatments in the hospital. However, only 64% paid money into the hospital's accounts for their treatment, while the remaining 36% gave money directly to their overseeing physician. As with medical consultations, the average amount of the informal payment exceeded what the patients would have been charged through solely legitimate channels (913 hryvnas / \$113 USD compared with 844 hryvnas / \$104 USD).

Given that in both examples the patients paid a higher fee for services that they were otherwise entitled to get, it can be assumed that they were prompted to do so by threat of denial of care. This withholding of service could include instances where the involuntary fees paid were used to cover the cost of medical supplies that would have otherwise been unavailable for their treatment.

Education system

The education sector records an almost equally high rate of questionable activity. Specifically, according to its 2011 survey of households, the Ukrainian State Committee of Statistics reported that 35 to 48% of those surveyed (studying at different levels of education) provided informal payments to their institutions or teachers while in school. In 2010, the research conducted under this project found that the incidence reached 53% when the question was expanded beyond simple bribery to include more insidious forms of malfeasance, such as using contacts or exchanging favours. Charity donations made to educational institutions with ulterior motives are also quite common but are difficult to measure, as their corrupt nature depends on the subjective intent of the donor.

Corruption in the education sector differs from that in the health-care sector in that it is not necessarily used to access a service that is owed. Rather, informal payments can be made to sway decision makers to make favourable assessments (for example, for enrolment into a particular program or school, or for higher grades), when on merit, such a conclusion may not be justified. This practice can result in undeserved or fraudulent accreditation, which poses an obvious risk to the integrity of Ukraine's professionals and the quality of their services. The level of corruption in this area should therefore be a major concern.

Court system

The majority of the general public does not regularly interact with Ukrainian courts. Nonetheless, the belief that the court system is highly corrupt is widespread.

While this negative perception exceeds empirical estimates drawn from this survey, the confirmed level of dishonesty is nevertheless significant. Among the respondents who used court services, 12% made some form of informal payment and an additional 3% made a contribution into a charity fund suggested to them by a judge.

General public service

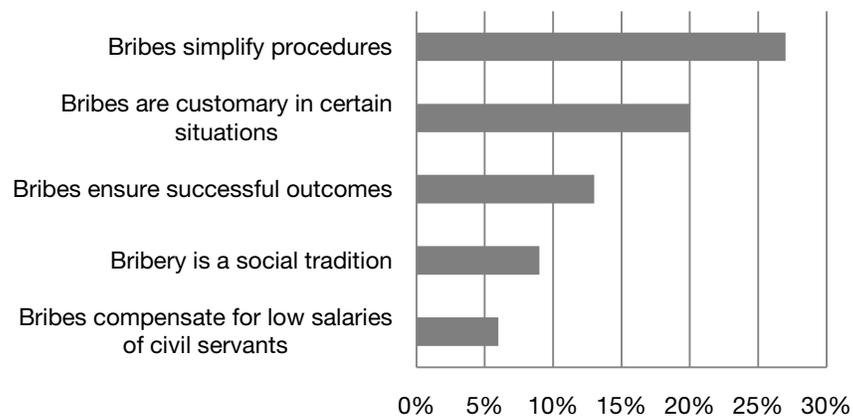
Among the survey respondents, 32% had made contact with government institutions, principally to receive a certificate or documentation, to consult with an official, to apply for a subsidy, pension or other social benefit or to file a complaint. According to the data, 51% of the respondents did not rely on any unofficial means to have their service rendered, 25% used personal connections, and 16% provided gifts. When asked by a public official, 10% made a donation into a specific charity fund, while 8% gave money or other assets or rendered a service.

A consistent thread can be seen to run through the spectrum of sectors evaluated: citizens interacting with public institutions pay premiums that do not necessarily translate into any system-wide improvements in the quality or value of the services they receive. This finding suggests that either coercive force is at play or that personal motivation or acceptance is driving citizens to willingly engage in bribery or other forms of misconduct.

Public motives for engaging in corruption

According to the survey of the general population, people bribe public officials for a range of reasons. The most common is the belief that bribery is a practical tool. More than half of the people surveyed believe that corruption — either through bribes or connections — can open doors that are otherwise closed (for example, to get a child admitted into a kindergarten class), while 27% indicated that it is an expedient means to simplify or circumvent procedures. In a similar way, some respondents pointed to the fact that corruption can be viewed as a means to compensate for low wages (6%) or to influence outcomes so that a service is satisfactorily rendered (12%).

What motivates Ukrainians to bribe public officials
(in the opinion of the general public)



In the in-depth interviews, unsolicited bribes used for these practical purposes were described as "mutually beneficial" and "good investments." The benign view that people tend to take of these illicit transactions makes the likelihood of their elimination appear rather slim. In the words of one respondent, "Corruption is useful. As long as it continues serving its purpose, it will continue to thrive."

A notable segment of the population interviewed believes that corruption is used because it is customary and expected within Ukrainian society (9%) or, at least, in particular situations (20%). Indeed, some respondents to the survey explained that certain institutions have a reputation for corruption that leads citizens to expect unfair dealing and to submit to bribery without protest or even to initiate the payment themselves. In the in-depth interviews, one respondent explained the risk that these expectations pose for perpetuating corruption:

While on one hand, corruption is believed to be socially unacceptable and is denounced, on the other hand, it is seen an integral element of life for average Ukrainians. Many of us attempt to bribe, even when nobody is asking for it.

Nevertheless, it is clear where the public places responsibility: three times as many respondents identified public authorities as the primary initiators of bribes, compared with those who identified citizens as the initiators.

At the same time, a survey of civil servants suggests that the willingness of individuals employed within their sector to engage in corruption is concentrated in a minority of the group. When asked if they would be willing to take a bribe offered by a citizen making an application to their agency, not more than 12% of the civil servants indicated that they would. However, when citizens were

asked to share their experience of offering gifts to public officials, the data found that those gifts were accepted 75% of the time.

Private sector

An inquiry into corruption limited to the public sector would have the undesirable effect of propagating the mistaken assumption that state-run entities are the sole or primary source of abuses.

Accordingly, while the research project dealt mainly with the public sector, it was recognized as necessary to also look at the situation prevailing in the business sector.

With the adoption in 2011 of new anti-corruption legislation that establishes, specifically, the liability of officers of private corporations for corruption offences perpetrated by their organization, Ukraine is taking steps to combat corruption in business. It remains to be seen, however, whether these measures will actually curb questionable practices in the private sector. With this consideration in mind, the research carried out under the project sought to:

- get a better understanding of the attitude toward and motivations behind corruption carried out by businesses in Ukraine; and
- identify the manifestations and features of the corrupt practices that business people face in dealings with private and public sector actors.

Surveys and in-depth interviews conducted with business people and law enforcement officers specializing in corruption control led to the following conclusions:

- Corruption is deeply engrained in the Ukrainian business environment. It is considered to be a necessary survival tool.
- Corruption is widely found in the private sector. In dealings with other businesses, kickbacks are the most common form of

impropriety. In engaging with the government, businesses mostly rely on influential connections.

Difficult business environment

As a backdrop, it is important to understand the main features of the Ukrainian private sector, for these directly affect the propensity to engage in illegal activity:

- Ukraine's business environment has no established standards of fair and socially responsible entrepreneurship. Its formation has been largely shaped by the special pressures and norms of the criminal underworld of the Soviet era and the early years of economic reforms.
- Ukraine has a very large shadow economy, accounting for an estimated 54.9% of the country's GDP, according to the 2010 World Bank report *Shadow Economies All over the World*. As a result, informal deals, unfair competition and the replacement of normal ethical standards with those of the criminal world appear to be widespread.
- The existence of strong informal networks involving business people, politicians, public officials and law enforcement officers routinely generates, at the very least, conflicts of interest and, not infrequently, systematic corruption.
- Bribes, kickbacks and conspiracies to circumvent any bidding process are considered as normal business practices.

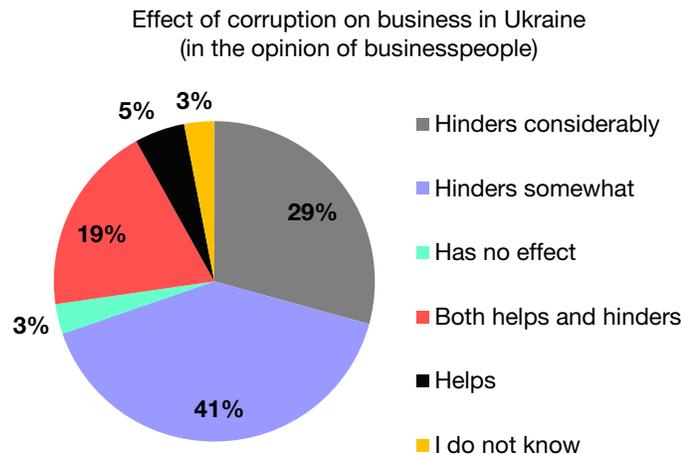
The notion that corruption is an important feature of doing business in Ukraine has been formally established by numerous recent studies conducted by Ukrainian and international institutions, including the World Bank, the Millennium Challenge Corporation and the International Financial Corporation. Foreign investors have long identified corruption as one of the main factors that makes investing in Ukraine unattractive, along with the country's taxation system, unstable legislation, exceedingly burdensome government regulation and weak property rights.

The extent of the problems that all businesses must contend with is confirmed by global rating systems. Ukraine consistently ranks poorly in economic evaluations, including — most recently — the World Bank's *Ease of doing Business* index (ranking 152 out of 183 countries in 2012) and in the Heritage Foundation's *Index of Economic Freedom* (ranking 163 out of 179 countries in 2012).

Ukraine has made significant efforts to improve its regulation of business. Many potential sources of corruption in key areas such as registration, licensing, tax administration and inspections have been eliminated. Yet, the situation is complex and difficult to control. Among other things, the fragmentary and isolated nature of most changes often exacerbates the problem by creating or failing to foreclose further opportunities for more sophisticated forms of corruption.

Perception and experience of corruption

Corruption dominates the manner in which much of the private sector interacts with other businesses and with government — it is how things are done. Surveys conducted under this research found that over 40% of the respondents believe that business people regularly bribe government officials. At the same time, a large majority (89%) of the business people interviewed generally believe that corruption is a hindrance to business, at least to some extent. This finding accords with that of the World Bank's *Business Environment and Enterprise Performance Survey* (BEEPS) on Ukraine, which indicated that, in 2008, only 16% of the firms in the country did not consider corruption to be a problem.

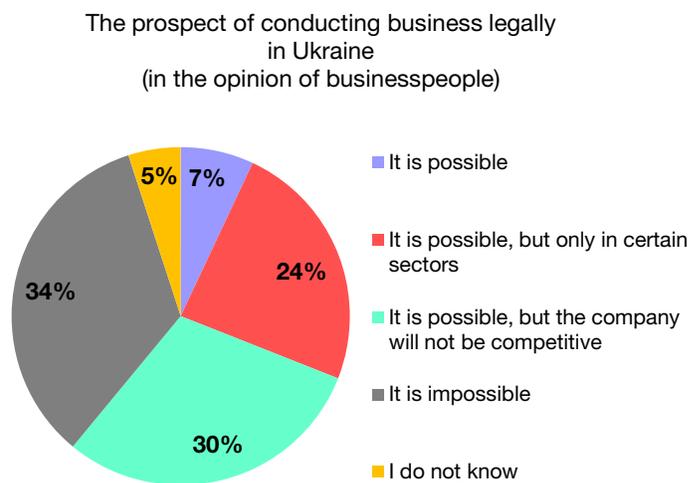


While such illicit dealings threaten the broader economic viability and competitiveness of the Ukrainian market, corruption also extracts a cost from individual firms in time and money. Almost three quarters (72%) of respondents indicated that they spend at least part of their budget on bribes or other unofficial payments, with most (44%) paying between 1 and 10% of their budget. This finding indicates a seemingly forced participation into a resented system that is well understood to damage competitiveness. As one respondent lamented, the financial burdens of corrupt dealing take away from opportunities for business development:

Unfair claims of public authorities hinder normal business. If I had not had to deal with these issues, I would have used this money for business development; for instance, for advertising or additional retail space.

At the same time, in-depth interviews with business people showed that corruption is viewed as a useful tool that can provide benefits. It allows things to get done more quickly and easily, and favourably influences decisions. For this reason, it is seen by many of those interviewed as a normal part of doing business and as something that should not necessarily be frowned upon. Given the widespread use and acceptance of corruption within broader Ukrainian society, these findings are not particularly surprising.

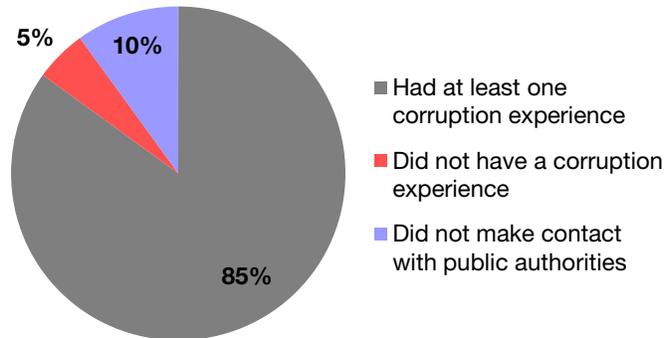
Corruption has come to be understood as a necessary element of operating within Ukraine's commercial environment. Only 7% of the business people surveyed expressed a belief that it is possible to operate a business in Ukraine in full compliance with the law; 34% believed it to be impossible, while another 30% indicated that it is possible, but that the company that did not comply could not remain competitive. One respondent went so far as to say, "There's no business without corruption."



In the in-depth interviews, it was explained that corruption is a necessity because a competitor will always be willing to use it if you are not. As one respondent asserted, "If you want to get lucrative contracts, you have to share with those who give them — or someone else will." Some international corporations were even said to have relaxed their normal corporate ethics to avoid being placed at a significant disadvantage when operating in Ukraine.

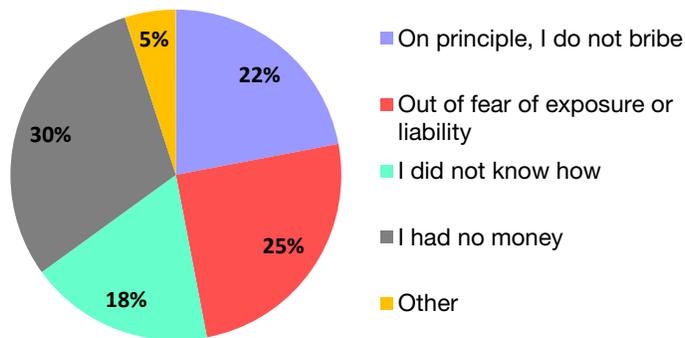
Consistent with the perception that corruption is necessary and advantageous to commercial activity, there was a high level of illicit dealings experienced by business people: of those interviewed, 85% had experienced corruption when dealing with a public authority within the preceding year.

Rate of corruption experience with public officials
(within the last 12 months)



On the other hand, 52% of the business people interviewed claimed to have, at some point, refrained from giving a bribe in a situation where it would have helped them to solve a problem. This finding may seem reassuring, were it not that most of these interviewees were dissuaded, not by considerations of morals or possible consequences, but simply because they lacked the necessary money or know-how.

Reasons businesspeople have decided not to bribe



Corruption in business-to-business dealings

The use of corruption in business dealings between private corporations is widespread, takes many forms and is driven by a broad spectrum of business-related and personal motivations.

The survey results found that over 80% of the business people surveyed believe that corruption is ingrained in business-to-business transactions. According to law enforcement officers specializing in private sector offences, some of the most common forms of dishonest behaviour corporations engage in are corporate espionage, recruitment-related fraud and bribery, kickbacks and manipulating the bid and tender process. Information gained through in-depth interviews with business people provides insight into the use of several of these forms of corruption.

A kickback is the provision or promise of an informal payment or benefit for the purpose of influencing decision making. In business-to-business relations, kickbacks are seen as a routine element of everyday operations — indeed, in the opinion of many respondents, kickbacks are not even considered offensive behaviour. Some of these views were expressed in the in-depth interviews:

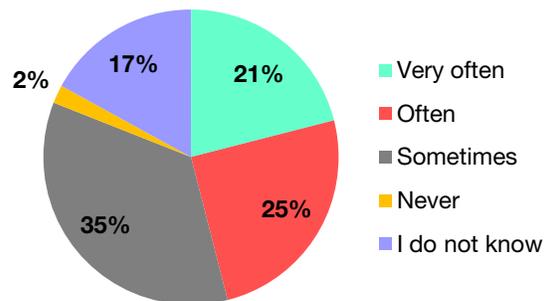
In our company, the price includes a 10% kickback fee. And if a client for some reason does not ask for a kickback, you get a 10% windfall. I don't see anything wrong with kickbacks. As a rule, everybody wins.

You buy shelf space, put your beer there, and then find out it has been pushed behind another brand. You ask for it to be moved back, but this goes on all season. There is an easier way; that is, give the supermarket manager an incentive, and he will make sure your beer takes up the entire shelf. But then sometimes a competitor pays too, so you have to start over again.

One interviewee noted that kickbacks are so ingrained in Ukrainian commerce that some companies automatically include kickback percentages in the prices of their products, while others train their sales force in dealing with offers of and demands for kickbacks.

This anecdotal evidence of the pervasive use of kickbacks in the Ukrainian private sphere is confirmed by the survey's findings. In the opinion of 31% of the business people interviewed, kickbacks are a common feature of private sector dealings in Ukraine. Law enforcement officers regarded the practice as being even more prevalent: almost half (46%) believe kickbacks to occur often or very often.

Prevalence of kickbacks in the private sector
(in the opinion of law enforcement officers)



Discussions with business people revealed a broad scope of situations in which kickbacks are used to advance commercial interests: to make a sale or win a bid; to convince a purchaser to accept unmarketable goods; to secure prime retail shelf space; and to get approval for a loan that the applicant would otherwise not qualify for. Kickbacks can be paid in cash, in kind or through discounts or gifts.

The value of a kickback is usually based on a percentage of the contract value, ranging, according to respondents, from 1% to 60%, depending on several factors, including the relationship with

the client, the trading corporation's nationality and the level of competition in the industry (kickbacks being more common in monopolized industries). In the case of a potential client's nationality, as one respondent explained, "Kickback rates by country are clear: Russian businesses, 15–25%; Central Asian, up to 30%; Ukrainian, 50–60%."

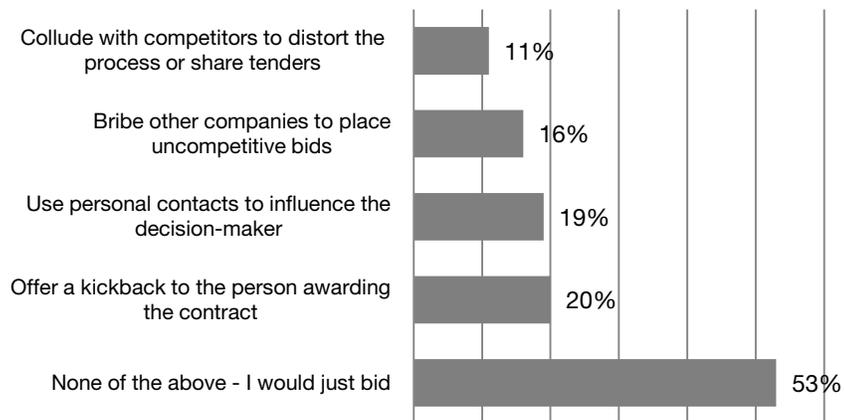
Although most commonly a feature of private sector dealings with the public sector, corruption in the bid and tender process within the private sector was also found to be widespread. The business people interviewed believe this to be a learned behaviour. As one respondent explained:

It's a result of the corruption of public officials, a chain reaction. Having tasted a simplified resolution to problems or the possibility of avoiding them altogether, business people have transferred these methods to their sector.

Indeed, of the business people interviewed, 47% indicated their willingness to use some form of corruption to secure a tender bid. In this context, corruption might be used against a competitor — by bribing one of their employees for access to the bid specifications; against the contractor — by colluding with other competitors to fix prices or share contracts; or to influence the outcome — by paying a bribe or kickback to secure a bid.

When asked which forms of corruption they would be willing to engage in to secure a tender, business people indicated that they would be most likely to use kickbacks (20%). Over half of the respondents said they would compete fairly without relying on any manipulation of the process by corruption.

Percentage of businesspeople willing to engage in various forms of corruption to win a tender



The law enforcement officers interviewed also understood the bid and tender process to be regularly affected by corruption. Three quarters were of the opinion that businesses collude to distort the bid and tender process at least some of the time, while almost 40% believed collusion to occur often or very often.

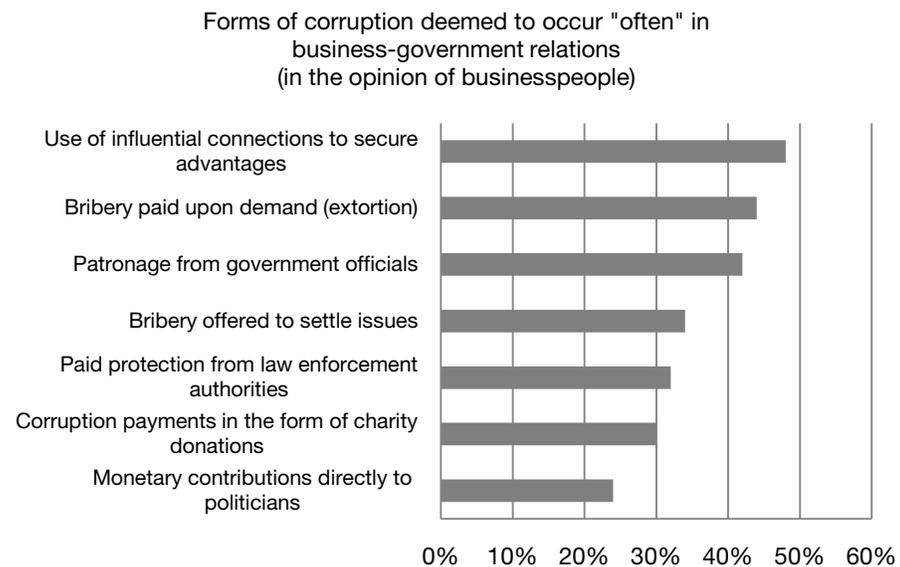
Recruitment in the private sector is also plagued with corruption. The most obvious forms involve bribery in exchange for employment and nepotism. Other fraudulent activities related to recruitment were revealed in the in-depth interviews: bribery in exchange for fake employment record so as "not to spoil a CV" or for a forged income certificate to substantiate a loan or travel visa application. Law enforcement officers perceived corruption in recruitment to be widespread, with over 30% of those interviewed regarding it as common.

Corruption in business-to-government dealings

There are numerous situations in which businesses and state authorities interact as regular course of business. Illicit dealings that take place in these interactions take different forms and are

driven by different factors than those occurring purely in the commercial context.

Based on the information gathered, bribery is not the most pervasive form of corruption in this sector, contrary to widely held beliefs. Rather, of all the forms of corruption occurring between businesses and government officials, the use of connections is thought to be the most pervasive. Connections are used to gain advantages over competitors in, for example, tenders and public procurement procedures or to secure sought-after development locations. Connections are also used to overcome obstacles. About a third of the respondents said they would use connections to help speed up the resolution of a problem, while 17% said that they are in the habit of using their connections every time they encounter a problem. The reliance on this practice is easy to understand, given the success business people achieve with these efforts: in their interactions with the Customs Service, 90% of the respondents indicated that their use of connections resulted in a positive outcome.



When businesses engage with government authorities, the imbalance of power between the two entities creates situations in which corruption can easily arise. Extortion is said to be common

during official audits performed by authorities such as the tax, sanitary and fire inspection agencies. One of the business people interviewed explained how extortion is facilitated:

Often, public officials abuse their offices, create obstacles in issuing of papers and expect that business people will be willing to pay to speed up the process.

When interactions with particular authorities or departments are repetitive, illicit behaviours occurring between them become routine. One respondent explained the regularity of his illicit dealings with the traffic police:

I face corruption every day.... I am in a shipping business, and it is a regular operation on designated routes, so I have to deal with the traffic officers all the time.

When bribes or other forms of corruption are initiated by business people, rather than extorted from them, the in-depth interviews suggests that they are driven by pragmatic considerations of time and money. As stated by one interviewee:

Business people themselves often provoke public officials to settle issues by means of corruption. It is cheaper and faster to do it this way than to work according to the law.

In this regard, a number of respondents interviewed identified the tax system as a driver of illicit activity. One participant justified his experience:

I used to work legally; I paid all my taxes.... Then, there was a tax audit, and I told them over and over again that I pay all my taxes, and they would reply, "We do not care how much you pay in taxes and how you work. You have to pay us." Now I have a "membership"

in the Tax Inspection, the Police and the Sanitary Inspection. It turns out to be much cheaper.

The desire of business people to speed up or bypass administrative processes is a reflection of the heavy bureaucratic burden some business procedures — even routine ones — entail. The World Bank report *Ease of Doing Business in Ukraine* reports that it takes on average 22 procedures and 374 days to obtain a construction permit in Ukraine (in this, Ukraine ranked 179 out of 183 countries) and an average of 657 hours and 135 transactions, annually, to file and pay taxes (placing Ukraine in the 181st position). The report notes that burdensome processes in the construction industry drive builders to corrupt practices, such as bribing inspectors and removing their operations from the formal economy altogether.

Given that much of the commercial activity in Ukraine occurs underground, it is not surprising that many businesses are in the habit of offering law enforcement officers payments, in the form of bribes or profit sharing, to turn a blind eye to illegal activity. Law enforcement officers are also commonly engaged to act as a "shield" for the business, preventing interference from other government bodies. One respondent elaborated on the nature of this protection:

I had a case with the police once. Some officers came, probably from the economic crime unit, and started extorting money by threatening me that they would not let me work. After that, I got a "shield," and now nobody bothers me.

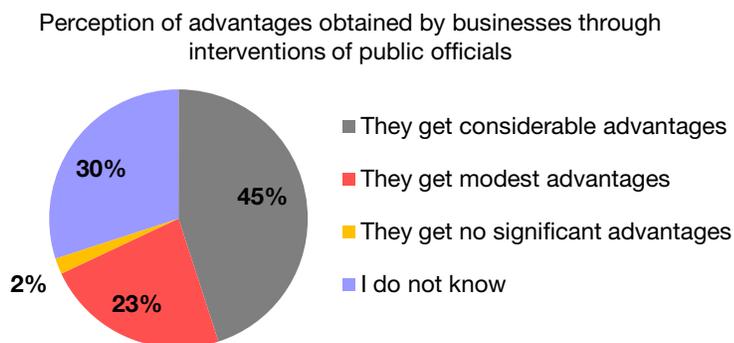
The development of Ukraine's business sector allowed for strong ties to be forged between business and government at the national and regional levels. As one participant stated:

We need to change our upper circles of power to crack the close connection between economic crime and politics. Many markets have

been monopolized secretly. Oligarchs are behind this, and their interests are advanced and protected by authorities.

The existence of such close ties is shown by the preferential treatment given to businesses most closely affiliated to the administration in power, particularly in sectors that depend on public contracts (for example, in construction or equipment procurement for state institutions) or in highly regulated industries (such as transportation services). As big businesses are generally those that can compete in such industries, they are understood to be more affected by government–business relations than are small or medium-sized enterprises.

Among the business people surveyed, almost half (48%) knew of businesses that were under the control of persons of power in the government, including politicians, local administrators, law enforcement officers and judges. Given the clandestine nature of many of these relations, the true figure could well be significantly larger. In such a situation, competition naturally becomes distorted. The survey indicates that only 2% of the business people interviewed see no benefit to being under the protection of a public official, compared with 45% who view the benefit as considerable. Given such a perception, there seems to be little reason for otherwise legitimate business owners not to seek out connections to level the playing field.



Corrupt interaction with various public entities

The portion of interactions business people have with different government authorities that result in corruption varies. The highest levels of corruption were found to involve the traffic police, customs service, state property management funds and the Bureau of Technical Inventory. Over half of respondents' interactions with these authorities resulted in corruption. The State's fire inspection, heating, water and gas administration and tax authority were found to pose a slightly reduced — but still significant — threat of corruption, with 30–45% of interactions of those agencies with businesses involving some form of transgression.

The extent to which an interaction with an authority may be susceptible to corruption depends on the type of transaction. The survey findings show that corruption is more common when there are opportunities for ongoing inspections during the course of business operations, rather than during a simple, initial interaction with agencies, such as for business registration.

The ways in which corruption manifests itself vary depending on which organization is involved. About half of the corrupt interactions involving traffic police consisted of respondents complying with a request for a bribe; 27% consisted of the citizen successfully offering a bribe. In instances with Customs, 42% were situations of extortion, while 26% were bribe offers. Since Customs has the power to hold goods at the border, businesses can easily be forced to choose between bearing losses or paying the bribe. In dealing with the Bureau of Technical Inventory, the offering of gifts (of a value of up to 350 hryvnas) was found to be as common as extortion, both comprising 39% of corruption experiences.

Gift giving was also found to be the most prevalent form of corruption in contacts with the Public Sanitary and

Epidemiological service (30%). When resolving issues with local councils; with public and municipal heat, water and gas suppliers; and with local public administrators, it was found that personal connections were most important: 25%, 42% and 25% of those who engaged in corruption with these authorities, respectively, did so through influence peddling.

The preceding discussion illustrates that business people believe that they can benefit from corruption, and are willing to take part in it, despite the knowledge that the personal gains are only temporary.

1.3 Factors contributing to corruption

It is clear from the research findings that — among citizens, businesspeople and public sector workers alike — corruption is, by and large, regarded as something to be expected and accepted. It is worth considering, then, if any factors in the current environment contribute to this way of thinking.

Certainly, those seeking more expeditious services or more favourable results play a role in instigating corruption. However, a question important to an understanding of the dynamics of corruption is that of civil servant motivation and the tendency to extort bribes or other gains for their services.

In that perspective, it seemed useful to examine two matters that are generally seen as influencing the level of integrity: the level of remuneration of civil servants and the risks associated, in the public sector as well as in the private sector, with improper practices.

Economic necessity

The idea that the low pay of public officials helps to explain corruption is widespread and certainly seems reasonable: if someone is poorly paid, the temptation to supplement their income by stealing or taking bribes may be greater. Following this reasoning, the simple measure of raising compensation would therefore seem to be certain to have an effect on curbing corruption. But the connection between a high level of remuneration and honesty is in fact a tenuous one, as it presupposes that officials are corrupt because of financial need. This assumption is shown to be false by the familiar fact that the largest cases of fraud and bribery usually involve people who are already well-compensated or even financially independent. Consequently, there is no reason to believe that corrupt individuals are likely to give up illegitimate benefits in exchange for an increase in legitimate income.

Despite the lack of a clear causal connection between inadequate salaries and workplace abuse to generate illicit income, the Ukrainian government has regarded low pay as one likely contributing factor to corruption in the public sector. Accordingly, it has been expressly incorporating salary increases as an element of its successive national anti-corruption strategies.

The research carried out under the project therefore sought to assess the extent to which economic necessity might explain corruption within the Ukrainian civil service. Specifically, the following matters were examined in detail:

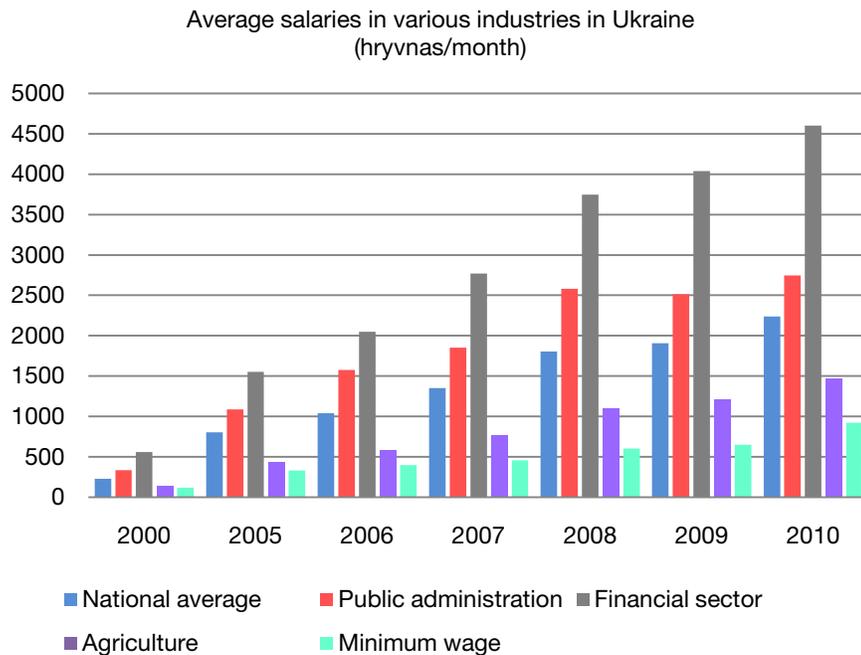
- the levels of remuneration in the public service and in Ukraine's labour market in general, in objective terms;
- the perception of whether civil servant salaries are adequate;
- a determination of what would be deemed a "sufficient" or "fair" level of remuneration; and

- the potential for salary increases to curb, at least to some degree, corruption within the public sector.

The findings of the research show that while civil servants, as a whole, are in a better financial position than the average Ukrainian, a large gap in the pay scale places some employees' wages at near-subsistence levels. This gap is reflected in the varying lifestyles of public sector workers and in how they perceive their salaries. Moreover, the pay gap was found to be exacerbated by unequal opportunities to earn extra, illicit income.

Objective assessment of civil servant salaries

According to the State Statistics Service of Ukraine, the average salary in 2011 in the public administration of Ukraine (which includes civil servants as well as other public officials, such as law enforcement officers) was 3,054 hryvnas (or \$378 USD). This amount is 16% higher than the national average salary of Ukrainians in the labour force for that period (2,633 hryvnas or about \$326) and significantly more than both the minimum wage and the state-defined minimum subsistence income level (both set at 1,073 hryvnas or \$133 per month as of 1 February 2012). As points of comparison, in 2011, the average salary in the financial sector (where the highest salary rates have been recorded for at least the past decade) was 5,340 hryvnas or \$661 (203% times the national average), while those in agriculture earned on average 1,800 hryvnas or \$223 (68% of the national average). Countrywide, only 11.1% of the population had an average salary over 5,000 hryvnas (\$619) in December 2011. Considered by sector, 19.3% in the public governance sector earned over 5,000 hryvnas, compared with 4.1% in the education sector and 2.4% in the healthcare sector.



Source: State Statistics Service of Ukraine: Ukraine in numbers 2011

The average salary of civil servants working in different regions or major cities of Ukraine varies. However, in all cases, these salaries surpass their respective regional and national average salaries. As for the range of variation for civil servant salaries, the city of Kyiv, which has the greatest number of high-ranking officials, is somewhat of an anomaly with an average public servant salary of 5,261 hryvnas (\$651) per month; otherwise, Lviv reports the highest average civil servant salary (2,398 hryvnas or \$297) and the Autonomous Republic of Crimea the lowest (2,150 hryvnas or \$266). The comparative wage advantage enjoyed by civil servants across the cities and regions shows a much greater discrepancy: government employees working in Kyiv make 66% more than the broader labour force, while the difference in the Donetsk region is only 3%.

While figures for the reported average salaries and the unemployment level should be read with caution, given the pervasiveness of the informal economy in Ukraine, the data above

clearly shows that, as a whole, civil servants in Ukraine are not worse off than the average person in the labour market.

Additionally, any comparison of salaries across sectors must take into account the many benefits that civil servants are eligible for, which are not reflected in official compensation numbers. These include, for example, significant pensions, state-funded housing, access to interest-free loans and supplemental health care. The value of these benefits is not insignificant: in a 2007 working paper on the adequacy of civil servant salaries, the Ukraine country office of the World Bank estimated that in-kind remuneration paid to civil servants costs the government an additional 10–15% of the total value of wages paid.

Pay structure and disparities

However, the situation is not equally positive for all civil servants. When disaggregated, large discrepancies between civil servant salaries can be seen. These pronounced discrepancies are rooted in a complex pay structure that consists of several guaranteed contributions, now outdated, determined by Cabinet and various bonuses distributed at the discretion of management. The core compensation comprises three elements: base salaries, specific to a position within a particular government body; rank bonuses, associated with each of the 15 possible ranks; and a years-of-service bonus, which is a set percentage of the base salary.

Base salaries are tied to the minimum wage of 2005 (332 hryvnas per month) or a multiple thereof. Base salaries are adjusted only for inflation and pursuant to increases only by government resolution. Rank bonuses were last adjusted in 1999 and currently range between 45 and 160 hryvnas. Years-of-service bonuses range from 10% for those with 3–5 years of service up to 40% for those with over 25 years of service. Other bonuses are paid for, among other things, special accomplishments, professional development and job performance, and may account for a significant proportion of the

total salary (up to 50–70%). The wage gap across the civil service can be clearly seen even at the base-salary level, where the ratio of minimum and maximum wages within one agency may be as significant as 1:25. For example, the Prosecutor General earns a base salary of 6,142 hryvnas / \$758 (18.5 times the minimum wage), while bailiffs and "specialists" — general, lower-level civil servants — earn a base rate of 467 hryvnas (\$58) and 888 hryvnas (\$110) , respectively. The overall disparities in pay under this structure were underlined in the in-depth interviews conducted under the project. In one regional public administration office, the Head of Public Administration was said to receive a total monthly salary of 9,000–10,000 hryvnas (\$1,111–1,235 ; the Deputy Head, 5,300–7,000 hryvnas (\$654–864; and specialists between 1,100 and 1,800 hryvnas (\$136-222) .

Notably, according to these figures, lower-level civil servants, such as bailiffs and specialists, earn base salaries lower than the statutory minimum wage (922 hryvnas / \$114) and total amounts less than the national average (2,239 hryvnas / \$276). The dissatisfaction voiced by some respondents is therefore understandable.

The disparity of the situation is further exacerbated by the fact that bribery risks and opportunities vary in different public offices. Indeed, bribery does not necessarily work to supplement the salaries of those at the bottom of the hierarchy. A somewhat outdated but still telling publication of Gorodnichenko and Peter (2006) found that, between 1997 and 2003, civil servants as a group earned an additional 20%, annually, of their total wages through corruption. However, those at the top end of the wage distribution benefited disproportionately: they were estimated to earn up to an additional 60% of their salary in illicit dealings.

The need to make changes to the civil servants' remuneration system is widely recognized. In fact, the new law *On Civil Service* (law 4050-VI, adopted on 17 November 2011 and coming into

force on 1 January 2013) changes the remuneration system with a view to eliminating the excessive differences between salaries of civil servants of different ranks.

Also under the new law, the terms of civil servants remuneration — base salary rates, benefits, supplements and bonuses — will be defined by law instead of by the Cabinet, as was the case under the previous legislation. The new approach favours increasing the proportion of base salary in the overall pay structure and reducing the number of "incentive" payments, which are recognized to have little connection to or effect on performance.

The base salary of civil servants depends on the complexity of duties and the level of authority of a specific position, as classified by categories and subcategories. The base salary chart is determined annually by setting minimum and maximum base salary rates for each subcategory of the public service positions within one month from the date of the adoption of the law *On the State Budget of Ukraine*. Notably, under the new law, the base salary and years of service bonus and rank bonus have all been considerably increased. The law provides that civil servants of the lowest category and subcategory (in particular, specialists in district-level public authorities) are guaranteed the statutory minimum base salary rate, equal to a multiple of at least two times the minimum wage (2,146 hryvnas or \$266 as of February 2012). For a person employed in such a position, this change can mean about a 4.5-times increase in salary.

As was the case under the previous law, the additional remuneration of civil servants consists of bonuses (years-of-service and rank bonuses) and premium bonuses. The years-of-service bonus and the rank bonus are set as a percentage of the minimal wage for respective years of service or rank. The new law considerably reduces the number of ranks applicable to civil servants (from 15 down to 9 rank categories). Under the previous

law, civil servants were entitled to the years-of-service bonus after three years of service. Under the new law, they are entitled to receive a bonus equal to 20% of the minimum wage after their first year in civil service.

Under the previous legislation, bonuses and premiums made up over 50% of the civil service pay structure. Some of the bonuses were payable on a permanent basis, while others are distributed at the superior's discretion. Previously, the premium bonuses constituted a part of the core civil servant compensation and were withheld only in cases of negligence or bad behaviour, therefore acting more as a deterrent than an incentive.

It is also worth noting that because of the low proportion of base salary in the civil servants' pay, new civil service recruits received an unjustifiably low salary. This has resulted in a discouraged segment of the workforce and high turnover rates among them. The principal achievement of the new law governing civil service lies in the diminished role of premium bonuses in civil servants' compensation. The distribution of the bonuses is to be determined according to categories and subcategories of the civil service positions.

Overall, the law *On Civil Service* seeks to ensure transparency of the civil service remuneration system by striving to embody the principle of fair pay and eliminating inequalities that existed on interdepartmental and territorial bases. In this light, it is important to consider in general terms how this new model might meet current expectations and perceptions of standards of pay.

Perceptions of the adequacy of remuneration

The wide disparities in civil service salaries are reflected in both household purchasing power and levels of satisfaction with pay —

each of which factors could, in theory, generate a need or a desire to engage in corrupt acts.

About one third (35.6%) of the civil servants interviewed indicated that they spend all of their money on basic living expenses — 4.4% indicated that they can afford only food. About half (48%) reported that, within their household, there is enough money to cover basic living expenses but not expensive items such as a television set or furniture, which require extra savings effort. Only 11.8% of those interviewed indicated that they live well and are able to make purchases without undue difficulty; however, even of this number, 91% would have to use credit.

Looking to the broader Ukrainian context shows that civil servants, as a group, are not necessarily worse off than other groups: income inequality and spending restraints are the norm. According to the State Statistics Service of Ukraine, in 2010 the richest 20% of the population earned 3.7 times more than the poorest 20%; households spent, on average, 53% of their income on food products; and, for every 100 households there were 110 colour TV sets but only 85 washing machines, 25 computers and 21 cars.

The civil servants interviewed had an accurate perception of where their salaries stand with respect to the national average. Recalling that the national average was 2,239 hryvnas (\$277 USD) per month in 2010, it was to be expected that 62% of those earning between 2,000 and 3,000 hryvnas (\$248 and \$371) considered their salary to be low, while the balance considered it to be average. Nearly all (93%) of the civil servants earning more than 3,000 hryvnas (\$370) regarded their salary as average. Of the civil servants interviewed who earned less than 2,000 hryvnas (\$247), 89% believed that their salary was low.

Despite the recognition by civil servants that their salaries are not, as a rule, outside of the norm, the survey results indicate that the

current levels of remuneration in the public sector are not sufficient to either satisfy or motivate employees. In assessing the satisfaction of public servants with respect to various elements of their work life, salary was the factor for which the fewest respondents indicated satisfaction (17%). Satisfaction was much greater in the case of, for example, social security (43%), relations with superiors (74%) and the nature of the work carried out (71%). Proportionally, many more high-ranking officials (43%) than lower-level public servants (7%) indicated at least partial satisfaction with their salary. Financial compensation was found to be an incentive for only 6.7% of the civil servants interviewed (the lowest of any other factor assessed). Working conditions (33%), status (33%) and retirement benefits (27%) were found to be more important motivators for working in the civil service.

In in-depth interviews, low-level civil servants earning between 1,200 and 1,500 hryvnas (\$149–186) indicated their frustrations with their pay level. Specifically, they cited the fact that their pay is equivalent to that of unskilled labourers and does not take into account the extra cost of conformance with the civil service dress code.

The in-depth interview discussions and survey findings as a whole established that, according to the surveyed respondents, if the current levels of benefits were maintained, a market ("fair") level of compensation for lower-level employees would be between 3,000 and 7,000 hryvnas (\$371 and \$866) monthly, which is more than three times the salaries that some of them currently earn. Importantly, this amount is lower than the amount civil servants would be entitled to receive under the new remuneration scheme to be introduced as of 2013. High-ranking officials earning upwards of 5,000 hryvnas (\$619) similarly noted that, to be sufficient, their salaries would need to be increased to an amount at least three times their current levels.

Remuneration and corruption

When asked to assess the potential that various reforms may have in effectively fighting corruption within the public sector, 64.5% of the civil servants interviewed indicated that salary increases would be effective. Yet the general public was much less confident: only 32% of those interviewed believe salary increases would have a positive effect on curbing corruption.

Civil servants' belief that salary increases would have a significant impact on corruption in their sector seems contradicted by their answers to other questions related to remuneration. Just over 95% of respondents indicated that salaries would have to be above 5,000 hryvnas (\$619 USD) before officials would be dissuaded from taking bribes. Of those respondents, 27% reported that a salary between 5,000 and 7,000 hryvnas (\$619–866) would be sufficient, while another 27% estimated that at least 15,000 hryvnas (\$1,857) would be needed to have that effect. These numbers are far greater than what public servants stated would be a fair salary for their work (3,000 and 7,000 hryvnas / \$371–865 monthly), which suggests that a fair wage would not necessarily dissuade civil servants from corruption.

The survey results, in fact, suggest that for some within the civil service, participation in corruption is determined not by morals but by situation. As was expressed during in-depth interviews, low-level employees are in situations that limit the possibilities to supplement their income: either they do not interact with the public, or, if they do, their clients have few means to offer bribes. Indicative of the limited prospects low-level employees have to engage in corruption, the survey found that few of the new recruits interviewed are motivated in their jobs because of opportunities to earn illicit income (6.7%). However, when asked to consider career advancement within the civil service, the prospect of being in a

position to benefit from corruption was found to be a significant factor: 41% of those interviewed felt that opportunities to earn illicit income would make a particular position attractive. In the in-depth interviews, respondents confirmed that certain positions are, indeed, sought after because of their opportunities for an illicit income. Such was the case, as the interviews revealed, with controlling and licensing bodies, which are popular places of employment precisely because they offer such opportunities.

In the end, the government's belief that the civil servant pay scale is in need of reform is shown to be well-founded. Nevertheless, in light of the other factors at play, it remains doubtful that increases in salary may have any effect in curbing corruption, particularly if these increases are not accompanied by stronger enforcement of anti-corruption laws.

Low risk

Public sector

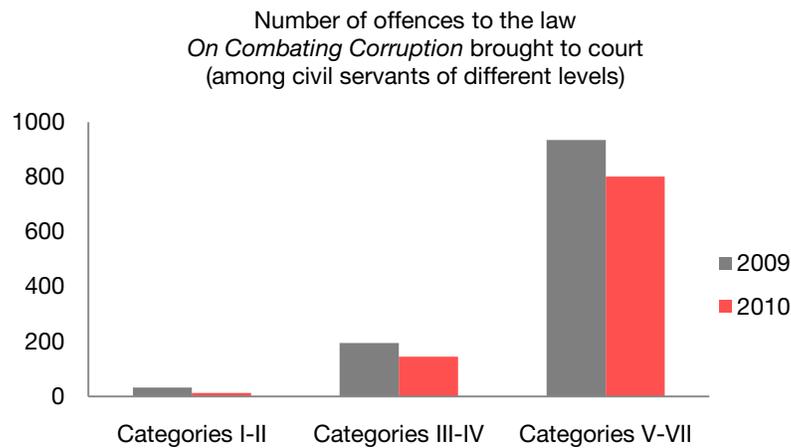
A significant portion of the civil servants interviewed believed that corrupt practices are occasional or widespread at the executive level, particularly bribes (57%), kickbacks (51%) and corruption in recruitment (80%), which many (20%) regarded as the only way to obtain an appointment to a position where informal revenue can be extorted. At the same time, there was a perception that high-level officials, through their power and connections, enjoy complete impunity against charges of corruption. As expressed by one public employee interviewed:

There are many public officials, civil servants and law enforcement officers engaged in corruption, but I am not aware of any cases that have brought high-level officials to liability.

Another recalled:

My friend who is an investigator was convicted for eight years for a \$2,000 bribe. Meanwhile, the head of his district department owns half the retail stores in town.

Data of the Main Department of the Civil Service (MDCS, now the National Agency of Ukraine on Civil Service), published on their website in December 2010, demonstrates a clear bias against lower-level employees when it comes to reporting cases of corrupt behaviour.



Despite the decline in overall cases of reported corruption in 2010, data published in the MDCSU 2009 Annual Report in the table below does suggest that — at least between 2007 and 2009 — more effort was directed at making more high-level government employees accountable. At the same time, this data is telling of the relative immunity or leniency in punishment that high-level civil servants appear to enjoy, even when cases of misconduct lead to prosecution.

Reported offences of the law *On Combating Corruption*
committed by civil servants
(Years 2007/2008/2009)

Employee category by year		Cases sent to court	Cases tried by a court	Outcome of case		
				Fine	Criminal conviction	Case dismissed
I-II	2007	12	10	3	0	6
	2008	15	7	3	0	4
	2009	33	18	3	0	15
III-IV	2007	1258	1145	939	0	183
	2008	1358	1252	1072	0	159
	2009	200	181	88	0	90
V-VII	2007	1864	1720	1406	8	287
	2008	1826	1671	1344	4	299
	2009	958	869	622	1	242

Source: Main Department of the Civil Service - 2009 Annual Report

Looking specifically at the 2009 data, about 50% of the cases related to offences committed by Category I or II employees (higher level employees) never proceeded to trial, compared to less than 10% of those relating to lower-level employees. Similarly, of the cases that do go to trial, over 80% of those involving Category I- or II-level employees were dismissed without charge, compared with less than 50% for subordinate employees. Comparable trends can be observed in the 2007 and 2008 data.

One encouraging development is that, while criminal convictions of public officials of Categories I and II used to be nonexistent, according to the Ministry of Justice's *Report on the Results of Measures Taken to Prevent and Counter Corruption* for 2011, nine of such employees were found guilty of criminal corruption offences in 2010 and 2011.

The prospect of being fired for violating corruption-related legal provisions also appears to be a weak deterrent. According to data of

the MDSC, in 2009, only 35 civil servants were dismissed because they had committed a corruption offence (with an additional three losing employment for violating asset declaration requirements and another 14 dismissed for conflicts of interest). Although remarkably low, this level of punishment was an increase from those of previous years (there were 24 fired in 2008, 13 in 2007 and 5 in 2006).

Ukraine's new law *On Civil Service* has the potential to increase the threat of punishment public officials could face. But it will only have a deterrent effect if it is enforced vigorously and systematically.

Private sector

The results of surveys with business people show that those operating within the private sector do not feel at all threatened by current anti-corruption efforts. Rather, a strong sense of impunity prevails among this group as the result of low levels of reporting and detection, combined with the practices and precedents of a corrupt public sector.

The majority of business people interviewed had a low opinion of state efforts to curb illicit activity in the private sector. Moreover, there was little awareness among them of the country's anti-corruption legislation then in place. Moreover, the prospect of liability does not affect the decisions of business people or their employees when they are faced with an opportunity to engage in corrupt actions, due to a widely held perception of impunity.

The complex and clandestine nature of commercially driven corruption makes detection difficult. Reporting, therefore, becomes crucial. However, cases of dishonesty in the private sector are seldom reported. Indeed, of the business people surveyed, only 2% would report to law enforcement an incident of an employee

receiving a kickback. To resolve dishonest dealings of a business partner, only 11% claimed they would file a complaint with the public prosecution office or law enforcement. Rather, there is a strong preference to address problems privately, whether on one's own (38%) or with the help of a lawyer (26%). This low level of reporting of irregularities is consistent with the generally strong disinclination within Ukrainian society to disclose abuses. According to the business people interviewed, the lack of reporting of misdeeds is due to both a fear of losing the benefits of corruption and a desire to protect corporate and personal reputations.

The perceived ineffectiveness of the agencies responsible for anti-corruption enforcement also discourages reporting and fosters the perception of impunity among the business community. Those business people interviewed claimed that anti-corruption efforts are enforced inconsistently and that the number of dishonest law enforcement and court officials makes it relatively easy to have charges dropped in exchange for a bribe. Moreover, it is believed that since the public sector generally benefits from corruption in the private sector, it allows the latter to operate with disregard for the law. It must be observed, in this respect, that over half of the law enforcement officers interviewed admitted that private sector executives are rarely brought to justice for corrupt conduct.

The in-depth interviews with business people revealed some reason for hope. Many of the interviewees expressly called for stronger enforcement of anti-corruption laws. Some suggested better deterrence could be achieved through greater publicity of corruption trials or more severe punishment. Of those business people surveyed, 78% indicated that they believe that tougher criminal penalties would curb abuses. It was also noted that increased disclosure should be promoted in two ways: through the establishment of stronger reporting mechanisms and through

public awareness campaigns highlighting corruption's negative effects on businesses.

Business people recognized their role in curbing corruption. Some felt that the state should support the development of more business associations and internal codes of conduct. Independent of state support, business people also suggested that owners and managers can contribute to the fight against corruption by reforming corporate and personal practices.

However, despite this apparent willingness to recognize the importance of establishing a clean business environment, there seems to be little motivation to be the first to act honestly in a competitive market. Moreover, to the extent that dishonesty in the business sector continues to be closely connected to corruption in the public sector, any move away from deeply entrenched habits of improbity appears most unlikely.

2

THE WEIGHT OF THE PAST

The causes of the corruption prevailing in Ukraine are many and seem to be rooted to a significant extent in the country's history.

2.1 Limited will to act

Change is only possible when there is widespread discontent with the existing order. Pervasive corruption in the management of public affairs will continue if the population is indifferent to the problem. That said, it is difficult to form an accurate view of either the extent or the sources of discontent with corruption in Ukraine. Indeed, it appears that corruption is pervasive and often accepted by the population as a customary means of getting things done. Studies conducted in recent years by organizations such as the Kyiv International Institute of Sociology and by Management Systems International claim that 25% of Ukrainians — at most — consider corruption to be unacceptable under any circumstance. However, most of these surveys present this fact without providing any further explanation or analysis of the phenomenon. The research, therefore, sought to gauge attitudes toward corruption in Ukraine, to determine which groups have the potential to express discontent against corruption and to identify the motivations and inhibitors to such expression.

Through a survey and in-depth interviews involving members of key groups implicated in anti-corruption activity — the general public, law enforcement officers, media, NGO workers and civil servants — the following conclusions were reached:

- While there is general discontent within Ukraine regarding corruption, Ukrainians feel unable or unwilling to combat it.

- Of the groups surveyed, NGOs have the greatest confidence in their commitment and capacity to actively engage in anti-corruption advocacy.
- The general population is disinclined to become involved in measures seeking to counter corruption.
- This disinclination can be explained by personal interests in engaging in corruption and by broader factors that make anti-corruption advocacy seem unimportant or futile.
- Ukrainians are, generally, reluctant to publicly voice their disapproval of corruption; informal, low-involvement and private forms of counteraction are preferred.

General attitudes toward corruption

In assessing the attitudes of Ukrainian people with regard to corruption in the in-depth interviews, it became apparent that frustration and disillusionment exist broadly among the population. These tendencies were confirmed by the survey results: 66% of those interviewed indicated that they believe that the majority of Ukrainians are unhappy about the situation of corruption in the country, but feel unable to affect any change.

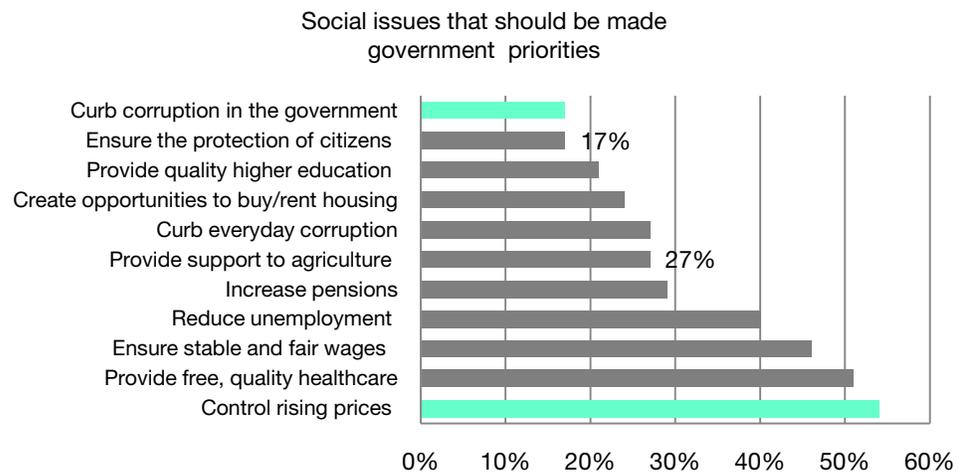
Within this context, 76% of the respondents believe that the majority of Ukrainians are willing to take only a passive approach to fighting corruption. Most of those surveyed expect that only certain groups will become actively engaged in either supporting or counteracting corruption: those benefiting or expecting to benefit from corruption, and those determined to combat corruption.

The people interviewed believed that the most likely response of the general public to corruption would be indifference and inaction (35%) or avoidance (22%). Only 13% expected that the public would actively combat corruption.

Inhibiting factors

Personal interest is a key inhibitor of the public's protest capacity. Individuals may criticize the actions of corrupt officials and, at the same time, be open to engaging in illicit transactions that offer a personal benefit to them. Of the people interviewed, about half indicated that they feel hatred toward systems that make corruption possible. At the same time, there is high involvement in corrupt activity: 56% of the individuals interviewed have engaged in corruption in their lifetime; 30% within the last year. The majority of respondents to the survey (64%) believe that self-interest explains why people offer bribes. This generalized habit of offering bribes to persons of authority is deemed to pose a threat to anti-corruption efforts by 74% of the public, 73% of civil servants and 43% of law enforcement officers interviewed.

The overshadowing of corruption by other social issues in the mind of Ukrainians also limits the potential for public outcry against corruption. Of the members of the general public interviewed, 27% agreed that curbing corruption that affects people in their everyday life should be a government priority; 17% agreed that curbing corruption in the government should be a priority. Comparatively, stabilizing rising prices, improving state-funded health care and ensuring secure and fair wages were given more support as government priority areas (54%, 51% and 46%, respectively).



A survey conducted by the International Foundation for Electoral Systems in 2011 similarly found corruption to be less of a concern among Ukrainian citizens than inflation, poverty and unemployment.

These findings also correlate with those of a survey carried out by the Gorshenin Institute in May 2011, which found that 37% of respondents would be willing to protest rising prices in the country, compared with just 17% who would be willing to protest high corruption rates. The fact that other social issues are deemed to be more pressing limits the attention given to remedying corruption. As one respondent claimed:

Ordinary people are so concerned with the deteriorating economic situation that they have stopped paying any attention to corruption.

Motivations

The survey results also indicate that if a person is to advocate against corruption, his or her motive is more likely to be based on self-interest than on deeper considerations of morality or public good. According to respondents, the common good (15%) and expressing support for an ideological or political position (12%) are significantly less likely to generate action than personal motivations (42%). According to the findings of a survey carried out by the Gorshenin Institute in May 2011, 17.1% of the surveyed chose "high corruption rates" and 36.6% "rising prices" as motives to take part in street protests. These findings are consistent with those of a previous study conducted by the Institute of Applied Humanitarian Research (IAHR) that found that social engagement in Ukraine is more likely to result from problems affecting individuals than from broader concerns for the common good. As a consequence, people cannot normally be expected to mobilize against corruption unless the latter becomes the source of real difficulties for them in their daily life.

One of the principal factors explaining the disinclination amongst Ukrainians to engage actively in anti-corruption is their lack of trust in the authorities and systems charged with fighting abuses. In fact, the general public interviewed identified corrupt courts, judges, law enforcement officers and politicians enjoying immunity as the most significant inhibitors to curbing corruption in Ukraine. Only 4% of the public interviewed perceived law enforcement as having a positive anti-corruption potential, and only 2% demonstrated such confidence in judges.

Related to this, participants in the in-depth interviews explained that the unwillingness of the public to speak out against illicit dealings is bolstered by a sense that other groups who benefit from corruption either will not support or will actively counteract any attempts made to expose wrongdoing. Such attempts are therefore seen as pointless, if not dangerous. These sentiments are apparent in the ways the public chooses to express its dissatisfaction, as the following section shows.

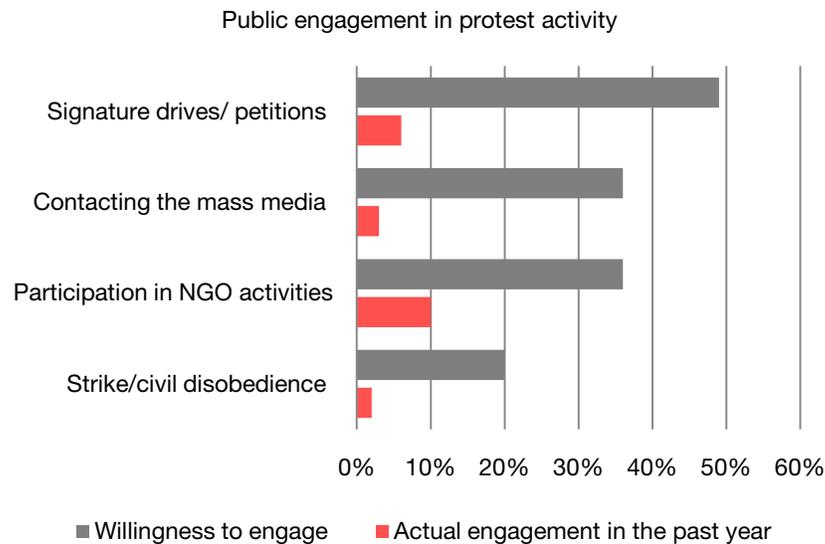
Preferred forms of social engagement

Anti-corruption efforts on the part of the public can be passive or active.

Avoidance — that is, limiting exposure to institutions and situations where corruption is expected to exist — is the most passive way of opposing corruption. In-depth interviews revealed a preference for this form of counteraction because of fear of the potential consequences of either engaging in corruption or decrying illegal experiences.

Active efforts can take several forms. For instance, some individuals who confront solicitations for corruption choose to refuse to comply and, instead, insist that the services to which they are

entitled be rendered without some form of bribery. In such situations, however, the view was expressed that the only ones likely to prevail with this response are those with much time and resolve. A general preference exists, however, for activities requiring limited interaction or direct involvement. Thus, petitions and signature drives were seen as the most appealing form of protest, with 49% of respondents indicating their willingness to participate in such activities. Over a third of respondents also showed support for participation in public consultations and rallies, communicating with the media and with members of Parliament, and participating in the activities of NGOs. Forms of social engagement requiring greater personal investment or risk — such as participating in street demonstrations, becoming an active member of a political party or going on strike — drew noticeably less interest (6%, 18% and 20%, respectively). There is, similarly, little readiness to use the legal system (19%).



In spite of this apparent openness to various forms of social engagement, actual participation remains minimal. For example, only 6% of respondents had signed a petition within the past year, and only 3% had contacted the media. Therefore, at present, engagement in anti-corruption activity can be said to remain

essentially an aspiration. This same trend can be found in the public's limited willingness to report corruption.

Reluctance to report corruption

Combating corruption involves relying on people to disclose what they believe to be unethical or illegal practices occurring in their organizations to people or agencies they believe may be able to change or prevent these practices.

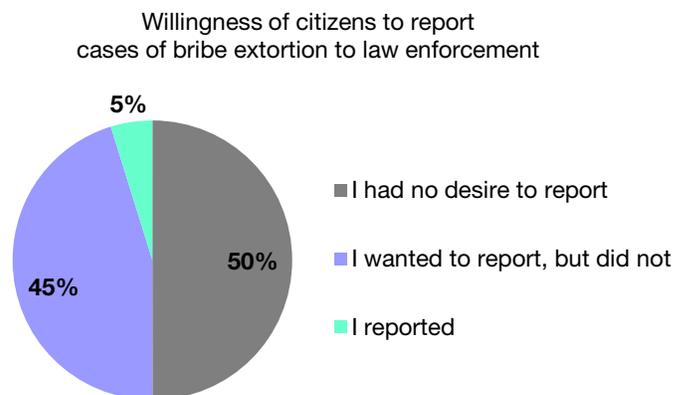
In Ukraine, as in most other former totalitarian countries, reporting the misdeeds of others has traditionally been viewed in an extremely negative light. While this attitude seems to have started to change in the past few years, it should be kept in mind that those denouncing instances of possible misconduct are not always acting out of altruism but may, in some cases, be pursuing their personal interest. It is therefore important to carefully design the mechanisms to deal with the exposure of corruption.

In that perspective, the following matters were examined through research involving members of the general public, civil servants and law enforcement officers:

- the reality of the increase of the reporting of abuses in various areas of the public sector;
- the motivations of those who denounce instances of alleged improbity;
- the attitude of civil servants and of the population at large toward those reporting abuses;
- the motivations of those who abstain from bringing legally or ethically dubious practices to public attention;
- the problems that the person reporting an abuse encounters as a result of making charges of maladministration;
- the adequacy, in theory and in practice, of the existing measures to protect those exposing a possible abuse.

This research showed that, while the popular view of those reporting abuses is generally positive, the prevalence of such reporting nevertheless remains low. Those that do report abuses are driven primarily by self-interest, while those that do not report perceive many personal risks associated with reporting. In this light, there seems to be a potential for increased reporting, provided that proper improvements are made to the system.

The negative view of the reporting of abuses (sometimes referred to as "whistleblowing") thought to be pervasive in the population appears to be dwindling. The majority of Ukrainian society (66%), in fact, views the denunciation of misdeeds in a positive rather than a negative light. This represents a 24% increase in positive attitudes since 2004 (when compared with data collected by the Institute of Advanced Humanitarian Research that year). Moreover, a significant portion of those interviewed (42%) considers the reporting of abuses to be a highly effective anti-corruption tool. Still, actual engagement in reporting the illegal or improper practices of others remains low. Interviews revealed that only 5% of respondents reported incidents of corruption they had witnessed to law enforcement officials. Another 45% indicated a desire to report but were prevented or discouraged from doing so for some reason, perhaps indicating the possibility for increased reporting under more hospitable circumstances.



The attitude held within the Ukrainian civil service toward the exposure of incidents of misconduct, fraud or corruption differs significantly from that held by the broader public. The environment within public institutions — with their strong organizational cultures and interpersonal relationships — is not conducive to colleagues exposing one another's malpractices. This is particularly true when incidents are brought to outside authorities (such as the media or law enforcement agencies) for resolution rather than disclosed through existing internal mechanisms. The majority of civil servants describe those reporting abuses in a negative light: as greedy, envious, career-seeking or traitors. Internal disclosure of misdeeds is viewed positively by only 33% of civil servants, and external disclosure by merely 20%. Almost a quarter of the civil servant respondents indicated that they consider internal reporting to be immoral.

The negative opinion that civil servants have of those divulging cases of possible corruption and their preference for internal reporting are reflected in practice. Despite the prevalence of corruption in these institutions, only 23.5% of civil servants surveyed knew of cases that had been reported internally, and only 8% cited known cases of external reporting. Equally noteworthy is the low willingness among public servants to become actively involved in drawing attention to questionable practices. Three quarters of the civil servants surveyed indicated they would do nothing if they became aware of corrupt activity on the part of one of their colleagues. Only 20% would be prepared to approach a superior to report the incident. Very few would consider exposing the incident externally to law enforcement, the media or a non-governmental organization.

Law enforcement officers have an inconsistent opinion of those making corruption allegations that reflects both their reliance on the general public as a valuable source of corruption intelligence and their cohesive institutional culture. When asked their opinion

about public officials, generally, reporting abuses, 80% of law enforcement officers viewed them favourably. When asked the same question with respect to law enforcement colleagues who report corrupt behaviour, that number dropped to 48%. In fact, nearly half of the law enforcement officials interviewed deem informing against colleagues to be immoral. Consistent with this negative view of internal reporting is the fact that known cases of reporting within law enforcement agencies are as low as those within the civil service.

A decision whether or not to report corruption incidents can be assumed to be usually influenced by a weighing of incentives and deterrents.

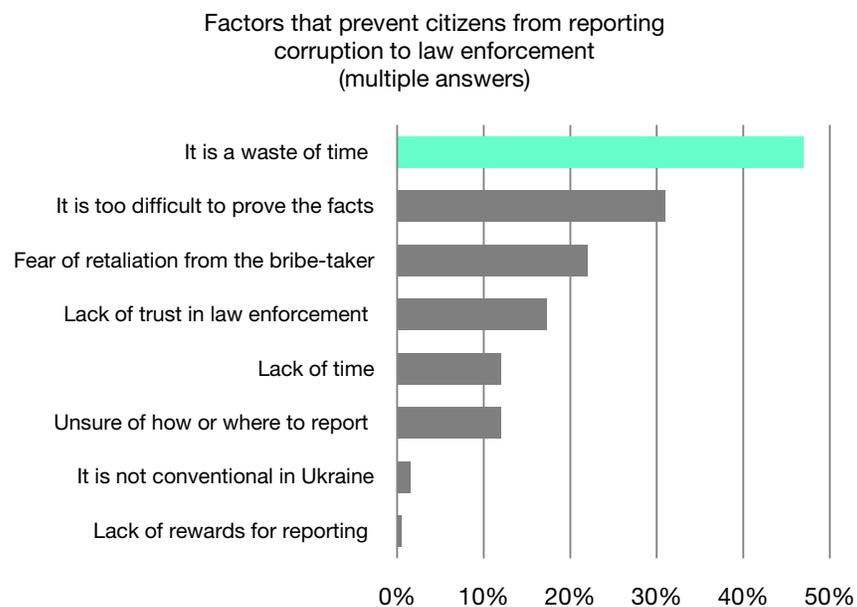
Reporting abuses, as an anti-corruption tool, offers citizens a means by which they can contribute to the betterment of society. However, few people denouncing misdeeds (15%) are driven to act by a desire to contribute to the public good; rather, the large majority of those disclosing suspected corruption-related cases cited various self-interests, such as the protection of their rights, as their primary motivating factors. In-depth interviews with officials who had relayed suspicions about the actions of their colleagues to superiors confirm that reporting is largely driven by self-interest: to pursue grievances, retaliate or seek career advancement. Only a few people claimed that their decision to act was motivated by disinterested concerns: to protect moral values, to take action against the inappropriate behaviour of superiors or to improve an unhealthy work environment.

Among citizens, the most important deterrent to revealing dubious conduct stems from a lack of confidence in the effectiveness of existing mechanisms in responding to complaints. It should be noted that 47% of those surveyed who did not report corruption, but wanted to, believe that efforts to expose such illicit dealings to law enforcement officials would not lead to any action being taken

against the perpetrator. This perception seems accurate: among those who did report abuses, 43% indicated that their disclosure yielded no outcomes; only 22% indicated a positive result; and 35% claimed that their disclosure in fact harmed them, the source of the disclosure.

In addition to the questionable usefulness of reporting abuses in the Ukrainian context, there is also a lack of trust in law enforcement authorities among civilians in terms of assurances of confidentiality and an appropriate level of protection in the face of threats or retaliation. This last concern seems justified, since most law enforcement officials (80%) agreed that individuals who report corruption are poorly protected.

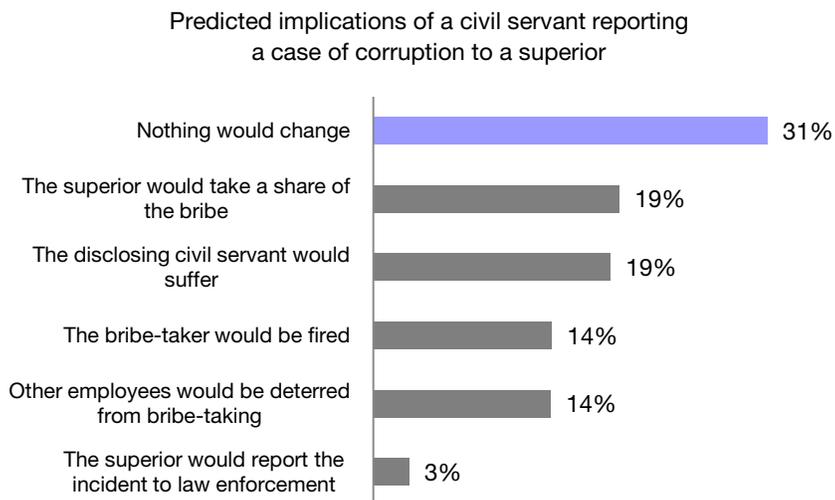
Legal ignorance and the accessibility of reporting channels also play a part in dissuading citizens from reporting. There is uncertainty as to what constitutes corruption under the law and, consequently, what incidents should properly be reported and what evidence might be necessary to substantiate allegations. Some citizens simply do not know to whom complaints of corruption can be made.



As previously mentioned, 45% of the citizens interviewed responded that they at one time considered reporting corruption, but did not. For these individuals, reforms that would remedy the perceived deficiencies in the system may be sufficient to encourage their active participation.

The negative image of those disclosing abuses within the civil service and law enforcement agencies is evident in the reasons invoked by the employees of those institutions to abstain from exposing the corrupt acts of their colleagues.

Both groups cite uncertainty about the consequences that an individual might face after reporting a colleague as the most significant consideration discouraging them from acting. In fact, more civil servants foresee negative consequences being felt by the official disclosing the misbehaviour (19%) than by the corrupt employee (14%), and law enforcement officers predict that the one reporting an abuse is more likely to be viewed with contempt by his colleagues and superiors (35%) than with respect (6%).



Other cited concerns are a lack of trust in those investigating allegations and doubts as to the capacity of internal procedures to satisfactorily resolve reported incidents. Thirty-one percent of civil

servants anticipate that disclosing corruption would have no effect at all. An additional 19% consider that the money received by officials through corruption would be shared with their managers and the issue dismissed.

The central concept of a disclosure system is that the protection of those revealing abuses is essential to the improvement of the integrity of the public service and other workplaces. Accordingly, the intent of the measures set in place should not simply be to protect employees who disclose illegal or wasteful activities, but also to foster government efficiency by bringing problems to the attention of officials who can solve them. Ideally, the success of these measures should be judged not in terms of the number of employees who go outside of the normal hierarchical structure to report abuses and seek protection from reprisal but by the number of employees who bring problems to the attention of their management and have no need to go any further.

It is clear from the above discussion that the existing disclosure mechanisms in Ukraine do not come close to meeting this standard. The pervasive mistrust in the system dissuades citizens, public servants and law enforcement officials alike from bringing their concerns to the attention of those in a position to address them.

2.2 Limited capacity to act

Civil society has a strong role to play in promoting and upholding integrity. However, Ukraine's civil society is not robust enough to take up such a role in the fight against corruption.

Media

The media has a particularly important role in the fight against corruption. An independent media is one of the principal vehicles for informing the public about corrupt activity. By investigating and reporting on corruption, it provides the knowledge and detailed facts that enable concerned citizens and the public at large to hold both public and private institutions to account. In addition, a functioning, independent media can promote effective civil society action against corruption. The impact of citizens is dependent not only on the simple availability and reliability of information but also on the means to stimulate debate by disseminating their opinions and raising issues of public concern. Thus, the media plays a dual role in countering corruption: it can draw attention directly to corrupt practices through reporting and investigation, and it can disseminate information about the anti-corruption efforts of other actors.

In Ukraine, the development of a fully functioning, independent media has been impeded by the particular way in which the democratization process has evolved. Over the past few years, with the support of international donors such as the Millennium Challenge Corporation and USAID, some large-scale projects were undertaken to mobilize the mass media in the fight against corruption. But, for a number of reasons, including the media's lack of independence, the results achieved have been very limited. In this regard, Ukraine ranked 116 out of 178 countries worldwide, just above Cambodia and Zimbabwe, in the *2011 International Press Freedom Index* published by Reporters Without Borders; in 2010, Ukraine ranked 131st — an all-time low for the country — due largely to the disappearance of journalist Vasyl Klymentyev that year.

In line with these dismal results, Freedom House's 2011 assessment, *Ukraine: Freedom of the Press*, reported that, despite the

elimination of criminal libel from Ukraine's legal system in 2001, civil libel lawsuits continue to be used as a tool to discourage journalists from criticizing government officials.

Within this environment, it is important to understand the actual capacity of the Ukrainian media to contribute to government integrity. Through general surveys and personal, in-depth interviews with journalists, together with an analysis of corruption stories in Ukrainian media outlets from July 2009 to July 2010, a body of information was gathered on the following topics:

- What the media environment looks like in terms of the number, distribution and variety of forms of mass media operating in Ukraine.
- The level of public confidence in journalists and the sources of information on corruption that are regarded as the most reliable.
- The anti-corruption potential of Ukrainian media, in view of its capacities and engagement in awareness-raising campaigns, its willingness to collaborate with law enforcement and its pursuit of independent investigative journalism into corruption stories.
- The impact of media reports on public opinion and government action.
- Factors that limit the media's capacity to fight corruption.

The findings show that:

- The media themselves are generally interested in the issue of corruption and consider it to be a subject of importance to the public.
- The public, however, is only somewhat interested in news coverage of corruption, preferring to learn about it through direct experience or personal interactions.
- The public perceives the media's coverage of corruption to lack legitimacy and independence and, generally, is sceptical of the media's trustworthiness as a source of information.

- Neither journalists nor the public feel that media reporting has a measureable effect on curbing corruption.
- Cooperation among journalists, law enforcement officers and NGOs is sporadic, unstructured and perceived to be of doubtful value.
- Journalists believe that their capacity to investigate and report on matters of corruption is limited by several factors, including various pressures from media owners and other outside actors.
- At the same time, journalists agree that they, as a group, are themselves corrupt and engage in questionable practices.

According to a study by the market research firm TNS Ukraine in 2009 and 2010, television constitutes the most important source of information for the public, with an average of over 15 million viewers each week. Print media reaches approximately 12 million readers. Radio is the least popular of the traditional media sources, but is still significant, with an estimated 10 million listeners (according to the Ukraine State Service for Special Communication and Information Protection).

Internet usage is quickly gaining importance in Ukraine but remains relatively low compared with Western European countries, according to the State Statistics Committee of Ukraine, which measured 3,821,000 households with Internet connectivity in January 2012. The World Bank's *2012 Development Indicators database* found that 44.6% of the Ukrainian population (20,451,748 people) used the Internet in 2010, compared with 79.5% of the German population and 90% of the Dutch population that year.

The television sector also continues to experience growth. The National Council of Ukraine on Television and Radio Broadcasting (NBC) reports that there were 1,704 television and radio stations in Ukraine in 2011. According to the Ukrainian government, 96% of radio and television channels are privately held.

The NBC, Ukraine's regulatory body in the field, issues television and radio broadcasting licenses and monitors the activity of broadcasters. The NBC is not free from politics: its eight members are appointed by the President and Parliament (four appointees each) for a term of five years.

The experts of Telekritika, a media monitoring Internet site, consider that the quality of news content on television has been deteriorating. According to a content analysis study that it conducted in July 2010, television channels failed to cover about 56 important news stories each month; in September 2011, that number was 456. The group found that the state-run First National Channel showed the most self-censorship. The change of focus from important stories of political, economic and high-level wrongdoing to sensationalistic petty crime and gossip-column journalism was explained by Telekritika to be driven by a combination of political pressures and viewer preferences.

The statistics of the Ministry of Justice of Ukraine show that, as of 2009, certificates for 27,696 printed periodicals had been issued in Ukraine since 1993, including 16,366 for newspapers and 8,194 for magazines. However, the number of periodicals in print is much smaller: according to the Ukrainian Association of Press Publishers, only 4,187 were actually being published in 2008.

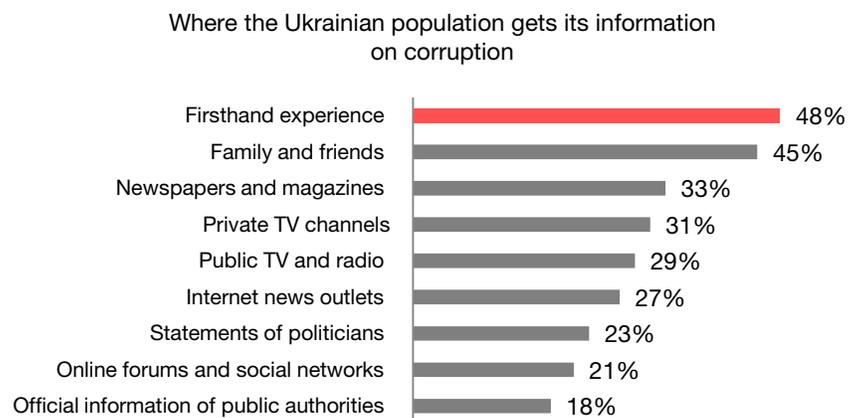
At the local level, newspapers are the most widespread form of printed media, while at the national level magazines prevail. The majority of periodicals are published in Ukrainian or have a bilingual Ukrainian/Russian format.

Ukrainians are spending increasingly less time reading print media and are instead showing preference for Internet resources. According to a study conducted by the market researcher TNS Ukraine, the average time that a Ukrainian spends on print media

per week has decreased by 23% (from 217 to 167 minutes) from 2007/2008 to 2010/2011.

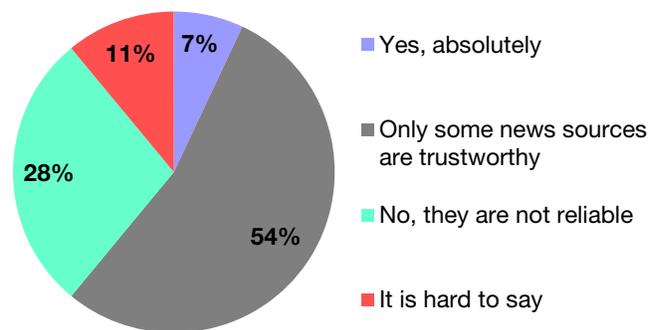
The findings of the research survey showed that the majority (75%) of the journalists interviewed are interested in the issue of corruption. Within this area, the news topics of the greatest interest to the journalists interviewed were court rulings against public officials (58%), exposure of new corruption cases (57%) and corruption in law enforcement agencies (43%). The raising of public awareness on matters such as changes to anti-corruption legislation was of decidedly less importance (21%).

The data on public interest in reporting on corruption is interesting. While almost half (49%) of the respondents indicated that they take an interest in corruption coverage when they come across it in the news, only 7% claimed to actively seek out news on this topic. More than a third of those interviewed admitted that they tend to ignore news on corruption, while another 8% avoid it systematically. The mass media is a less important source of corruption-related information to the public than first-hand experience and word-of-mouth from family and friends. Of all the mass media, printed periodicals (newspapers and magazines) and privately owned TV channels were found to be the primary sources of corruption information.



One significant explanation of the lack of interest in media coverage of corruption found through the survey is the public's suspicions of such stories. Only 7% of the people interviewed have complete trust in media stories on corruption, while the majority (54%) trust only some specific news sources. More than a quarter (28%) do not trust corruption reporting at all.

Are media reports on corruption cases reliable?
(public opinion)



These results reflect the fact that only 9% of those interviewed consider the media to be completely independent and that almost half (46%) think that reporting on corruption is commissioned by interested outside parties. As is discussed later, these suspicions may not be entirely unfounded

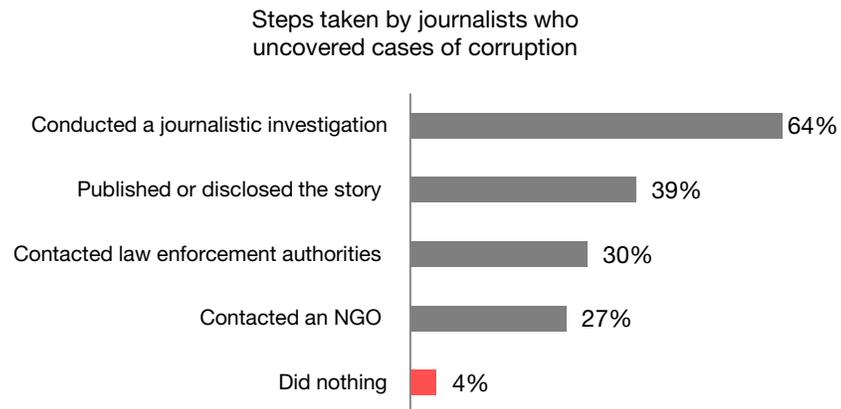
Journalists view their work on anti-corruption matters to be largely useless in altering public opinion. When asked to assess the effects of disclosing a corruption scandal involving an incumbent minister, only 17% of the journalists interviewed indicated that such a disclosure would affect the minister's political rating among the public, while over half (55%) believed it would have no negative consequence at all for the minister in question. The public agrees that media reporting is not effective: only 21% of those interviewed believe that news reports of public malfeasance have some anti-corruption impact.

However, in cases where information relates to legal or technical details of anti-corruption initiatives, the research found that the media does play an important role. Both the general public and business people cited the mass media as the most persuasive source in the formation of their opinions of the 2009 anti-corruption legislation (adopted at the time of the survey). On this issue, in particular, some respondents were of the opinion that journalists should do more to educate the public. Referring to the media coverage of 2009 anti-corruption legislation package and the postponement of its coming into force, one respondent from the public explained:

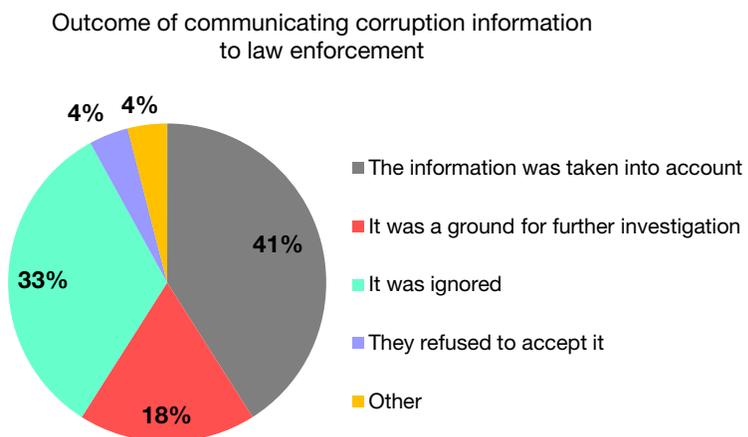
The public is inert and indifferent to the adoption of the package of the anti-corruption laws. In many respects, it is the result of insufficient information. Ordinary people are not aware of many things, and nobody explains to them what this anti-corruption legislation is about and why it is being amended.

The research suggests that members of the Ukrainian media are willing to take an active part in investigating and exposing illegal activity. While 33% of the journalists interviewed claimed to have never uncovered evidence of corruption in the course of their work, of those who did, 64% said they investigated the matter further.

However, only 39% of the journalists went on to publish their findings. Even fewer journalists with suspicions of malfeasance contacted law enforcement (30%) or NGOs (27%) with their evidence, demonstrating a reluctance to work with outside entities. Only 4% took no action whatsoever after becoming aware of a possible case of corruption.



According to the majority of journalists interviewed, the key reason for the media's reluctance to collaborate with or pass on corruption information to law enforcement is that such efforts are useless (52%). Of the journalists interviewed, 37% claimed that information submitted by them or a colleague was ignored or rejected by the receiving law enforcement officer. Moreover, over half of the journalists interviewed (56%) had never heard of a criminal investigation being launched as the result of media exposure of illegal dealings. Even among law enforcement officers, only 27% of those interviewed had heard of criminal cases being initiated on the basis of media reports.

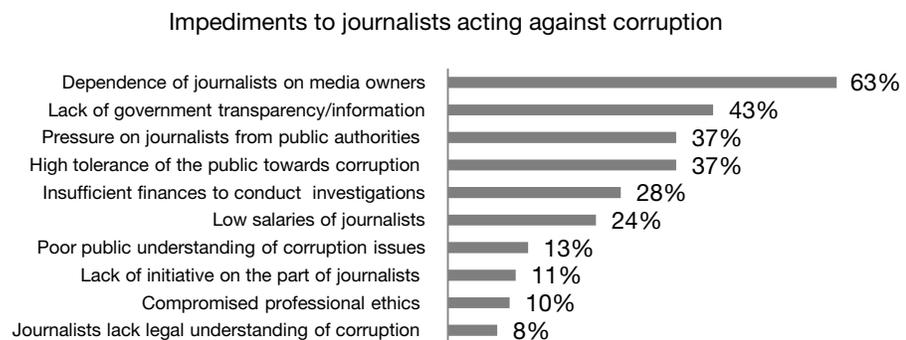


The lack of collaboration between law enforcement officers and journalists can also be explained, in part, by the former group's

professional disinclination to enter into such a working relationship. Over half (55%) of the law enforcement officers interviewed believe that pressure from the media interferes with investigations of corruption offences, while more than a third (34%) think that clear rules need to be established to outline acceptable forms of cooperation with journalists.

Effective collaboration between NGOs and media is also weak. While it is common for NGOs to contact journalists in order to make information widely known, only 22% of the NGO members interviewed believe that cooperation with journalists is strong. Similarly, and in confirmation of this finding, most of the journalists surveyed view interactions with NGOs to be rare or sporadic (61%).

The research indicates that a number of external factors limit the capacity and willingness of journalists to expose cases of malfeasance. In the opinion of the journalists interviewed, the most significant inhibitors to the anti-corruption capacity of Ukraine's mass media are the dependence of journalists on media owners (63%) and the lack of transparency of government information (43%). Other serious barriers to journalists actively fighting corruption were found to be pressures from authorities (37%), the high tolerance of the public toward corruption (37%) and poor salaries (24%).



These findings agree with Freedom House's assessment of Ukraine's media environment in its report *Nations in Transit 2011*:

Ukraine. That report highlights a number of disturbing trends identified during the preceding year: an increased politicization of the media, stronger pressures felt by those operating in the media from both judicial and non judicial actors, the continued refusal of the government to respond to requests for official information and a growing number of violent attacks against journalists.

With regard to the latter concern, there are many examples of journalists who face physical risks in trying to expose abuses. The best known story is that of Georgiy Gongadze, founder and editor of the *Ukrainska Pravda* website and an outspoken critic of state corruption. Gongadze was kidnapped in September 2000 and, a few days later, his body was found burned and decapitated. Three police officers were eventually convicted of conspiracy in the crime. In March 2011, former President Kuchma was indicted for ordering the killing — a charge that was dropped later that year. Prior to his murder, Gongadze's website had reported extensively on allegations of corruption and vote-rigging in the Kuchma administration.

There have been other recent attacks on journalists. In October 2011, Oleksandr Vlaschenko, a reporter for the *Nash Gorod Nikolaev* newspaper, was left in critical condition after being shot in the head. His colleagues suspect that the attack was connected to his journalistic activities, which included investigations into corruption implicating local authorities. In 2010, Vasyl Klymentiev, the editor-in-chief of the Kharkiv-based *Novyi Styl* newspaper, disappeared. He was last seen on 11 August 2010, and is presumed dead. His disappearance is assumed to be connected to his professional activities, since he had reported on the alleged corruption of at least four local officials in 2010.

Journalists may also be intimidated by legal action. In 2010, a court ordered journalist Olha Snitsarchuk to pay Member of Parliament Yuriy But 20,000 hryvnas (almost \$2,500 USD) in damages for

pain and suffering after Snitsarchuk referred to him as a "*vidshchepnets*" (turncoat, renegade) in the course of her reporting.

The issue of independence is of paramount concern for journalists. When asked "What would happen if a disclosure were made to your editorial board by a civil servant on corruption offences in a ministry?", 34% of the journalists interviewed replied that the chief editor would consult the owner of the periodical before acting on the matter. For almost half of the journalists interviewed (46%), story selection is directly determined by editorial instructions or policy; only 26% of those interviewed claim that their reporting always expresses their independent opinion of what is newsworthy.

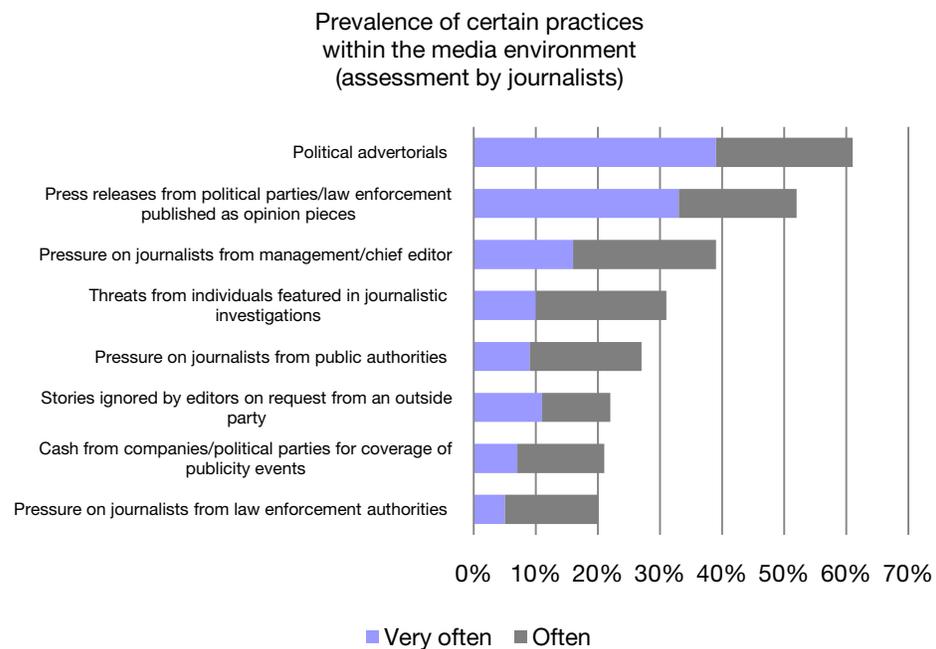
People seem quite aware of the situation prevailing in the media. In the opinion of approximately half of the general public (46%), the civil servants (59%) and the law enforcement officers (59%) interviewed, cases of corruption are, as a rule, revealed or concealed by the media on the order of an influential figure. Almost a quarter of the journalists (22%) agreed that editorial boards ignore certain events or potential news stories because of outside pressure.

Contributing to their lack of independence, the media in Ukraine are subject to pressures from the players they deal with in the course of their work. Many journalists believe that it is common for those reporting on corruption to become the target of threats made by the individuals exposed (31%) or of pressure from law enforcement authorities (21%). A third of those interviewed cited situations where reporters in their cities had been persecuted after exposing a case of corruption.

Generally, the risk perceived by journalists is not insignificant: over half (54%) of the journalists interviewed believe that taking part in a journalistic investigation on corruption is at least somewhat dangerous, while another 37% believe it to be dangerous. Beyond

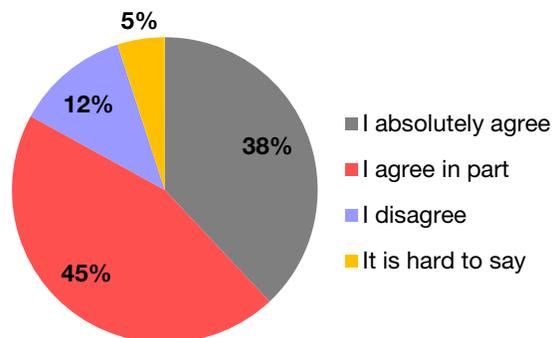
personal security, there are also the professional concerns relating to job security. One in ten of the journalists interviewed claimed that it is common for journalists to be fired after disclosing the illicit actions of civil servants.

Journalists are also part of the problem, and they themselves strongly recognize that their field is plagued with dubious practices. For example, according to the majority of the journalists interviewed, it is routine to publish advertorials (a media advertisement giving information in the style of an editorial or objective journalistic article — also known as "play-for-pay" news coverage) or biased press releases under the guise of independent reporting.



Further, 83% of the journalists interviewed agreed that they, as a group, are at least somewhat corrupt. In such conditions, it comes as no surprise that only 22% of the public perceive journalists to have a real potential in battling corruption.

Is the mass media in Ukraine corrupt?
(opinion of journalists)



NGOs

No effort to prevent and detect corruption can succeed without the active involvement of civil society. The importance of its role in the fight against corruption was recognized by the Ukrainian government in the law *On Principles of Preventing and Countering Corruption*, which, in its article 5, lays the ground for the participation of institutions, organizations and citizens in anti-corruption efforts in the country. Non-governmental organizations (NGOs) constitute a fundamental element of civil society and, in this regard, are well placed to participate directly in anti-corruption efforts.

The capacity of NGOs in Ukraine to contribute to the advancement of integrity is well established. For example, with the active support of the USAID-funded project "Promoting Citizen Engagement in Combating Corruption in Ukraine" (the ACTION project), a number of Ukrainian NGOs undertook advocacy campaigns directed at government authorities demanding positive change. According to the project's final report, 65.8% of those campaigns resulted in at least one concrete reform. However, it seems that many Ukrainian NGOs are pursuing dubious mandates, are being used for tax evasion purposes and receive funding that is conditional on advancing the personal interests or politics of the

donor. As a result, some NGO-led anti-corruption initiatives are, in fact, counterproductive since they serve mainly to fuel distrust.

The research gathered information on the following points:

- the number of NGOs registered within Ukraine and their level of activity;
- the public's awareness and opinion of NGO-led anti-corruption initiatives;
- the extent to which NGOs themselves are engaged in questionable behaviour;
- the nature and scope of NGO involvement in anti-corruption activities in Ukraine;
- the level and nature of cooperation between NGOs and public authorities in countering corruption; and
- NGO employees' opinion of government anti-corruption initiatives.

Through a broad national survey and interviews with NGO workers, law enforcement officers and members of the public, the following key conclusions emerged:

- Ukraine has a shortage of active NGOs.
- Members of Ukrainian society interact rarely with NGOs and have little awareness of NGOs' anti-corruption efforts.
- NGOs are viewed by the public as having the largest anti-corruption potential compared with other political and social players.
- At the same time, the fact that some NGOs engage in questionable activities limits the capacity of the sector to protect the public interest and sustain a positive reputation among the population.
- NGO interactions with law enforcement officers raise certain questions as to the proper role of NGOs in fighting corruption and their capacity to do so independently.

- Most NGO activists working in the field of anti-corruption are familiar with the relevant laws and, generally, have a positive assessment of them.

Non-governmental organizations

The law *On Associations of Citizens* (law 34 of 16 June 1992) defines NGOs as associations of citizens established to advance and protect their legitimate social, economic, creative, national, cultural and other common interests. Under Ukrainian law, NGOs are distinct from political parties, trade unions, artistic unions, religious organizations and charities.

As of 1 May 2011, according to the Consolidated State Registry of Corporations and Organizations of Ukraine, there were 69,200 registered NGOs in Ukraine. However, various indications suggest that the number of NGOs actually operating is markedly smaller. Thus, the Charity Fund of the Counterpart Artistic Centre reports that only an estimated 3,000–4,000 NGOs are actively operating in Ukraine, only about 5% of the number of officially registered organizations.

The phenomenon of NGO inactivity was explained by one of the NGO employees interviewed:

Based on my experience, I would assume that, in reality, not more than 10% of registered organizations actually operate. Others are just frozen or abandoned by their founders. The majority of them were created for very specific purposes, most often during elections or for a specific grant. Then, they become useless and it is quite difficult to close an organization. So, there is an illusion that there are many NGOs.

A number of the NGO workers interviewed share the belief that inactivity in their sector is widespread.



Nevertheless, the Ukrainian public attributes great value to the NGO sector. According to the report *Public Opinion in Ukraine* of the International Foundation of Electoral Systems (IFES), Ukrainians feel that NGOs are a more important element of society than ever. In 2011, 76% of the respondents to that survey indicated that NGOs were either essential or necessary to the country — a percentage up from 62% in 2009 and 45% in 2007. At the same time, a study conducted by the Institute for Applied Humanitarian Research in 2005 found that only 21.3% of the Ukrainian citizens interviewed believed that their NGOs were sufficiently active.

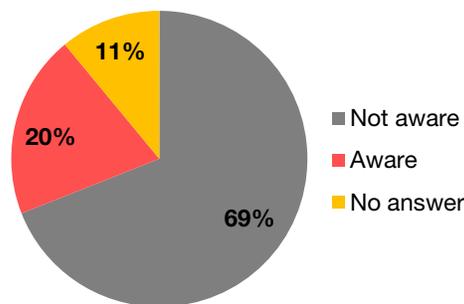
A report by Freedom House, *Nations in Transit 2011: Ukraine*, commends Ukrainian civil society for continuing to take an active role in defending the rights of citizens and engaging in dialogue with government officials to affect policy and legislative decisions. However, the report recognizes the fact that many NGOs are guided only by personal motives while others lack the capacity to bring about real change. The survey results of the current research appear to support these criticisms.

Perception of NGOs

The ability of NGOs to help curb corruption by promoting civic engagement hinges on the public's awareness of these NGOs and their anti-corruption efforts, as well as on those NGOs enjoying a positive reputation.

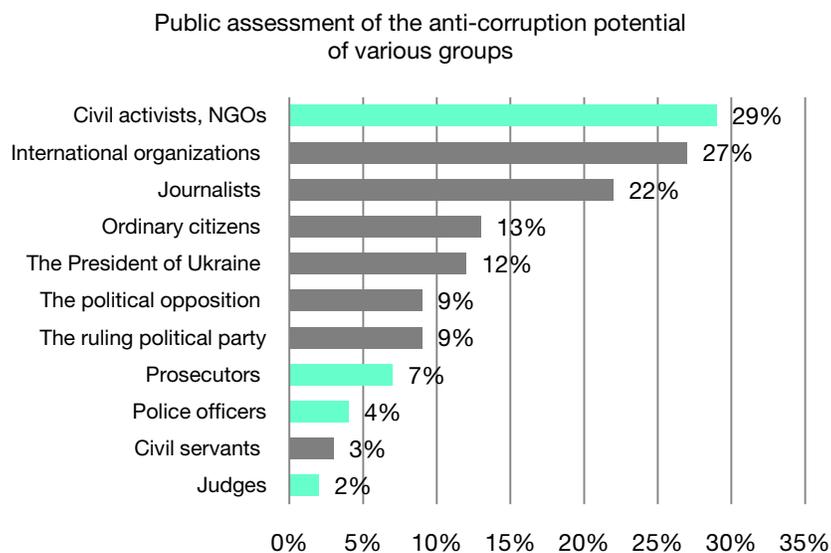
The survey found that the Ukrainian public is poorly informed of NGO activities aimed at fighting corruption. Only 20% of respondents from the general public indicated that they were aware of such activities. The majority (69%) had no knowledge of NGO anti-corruption activity. This low level of public awareness can be partly explained by the public's limited contact with NGOs: only 12% of respondents indicated that they had personally been in contact with NGOs within the preceding year.

Public awareness of NGO anti-corruption activities



The NGO workers interviewed agreed that the level of public awareness of NGO-led anti-corruption initiatives is low. A third of them believe the public to be informed to some extent of such activities, while only 3% consider the public to be well informed. This low level of awareness of the anti-corruption work of NGOs seems understandable when taking into account that, according to the 2011 IFES study mentioned earlier, 58% of Ukrainians are unsure what NGOs do generally.

While awareness and levels of interaction of the general public with NGOs are quite low, the survey carried out under this project found that NGOs, at the same time, enjoy a considerable amount of public confidence when compared with other actors involved in the anti-corruption effort. Almost a third of respondents were of the view that NGOs can be relied on to take an active role in fighting corruption. This level of confidence is impressive, compared with the public's limited trust in police officers (4%), the President of Ukraine (12%) and even journalists (22%).



Yet despite the fact that NGOs are generally well perceived by the population, their ability to contribute significantly to the promotion of integrity is hampered by some major difficulties.

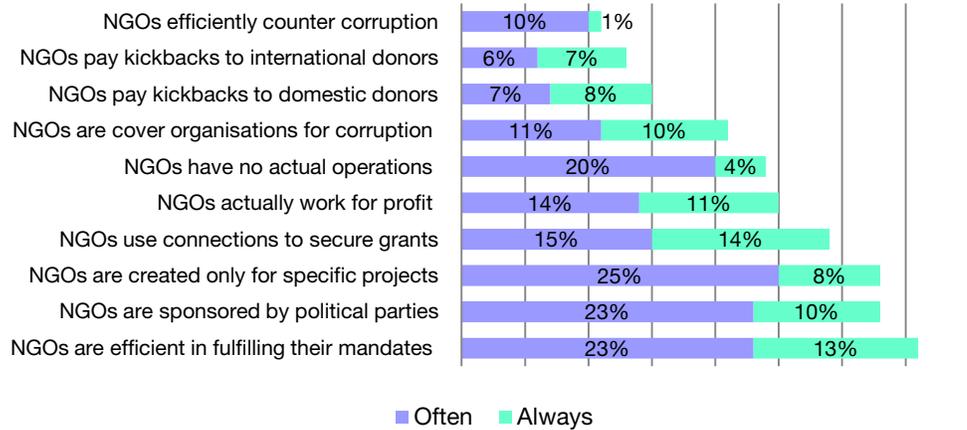
Improper practices

Ukrainian NGOs have an uneven record of integrity. For example, Ukrainian news reports described a case in 2011 in which the head of an "anti-corruption committee" in the Ternopil region was found to have extorted thousands of euros in exchange for employment within his organization. The Ministry of Justice's *Report on the results of taken measures on prevention and countering*

corruption in 2011 further gives account of a crackdown in the Kirovohrad oblast involving 21 members of a criminal organization who had defrauded 6.3 million hryvnas (\$781,638) under the guise of operating as an anti-corruption NGO. According to discussions with NGO workers, such abuses are not particularly rare. In their opinion, it is not, for example, uncommon for for-profit entities to use NGOs as fronts for the purpose of evading taxes or for NGOs to be created only to obtain funding for a specific project. There are also doubts about the true motives behind the actions of some NGOs. Those working in the NGO sector highlighted the fact that "sponsored social activities" are becoming increasingly common in Ukraine. Under these schemes, NGOs are used as instruments to advance the personal, political or business interests of the funding providers, which are not necessarily aligned with the actual needs of society or those of the segment of the public that the NGO purports to serve. The dubious activities that many NGOs engage in damage the reputation of the sector and undermine the activities of legitimate organizations. In fact, 25% of the general public interviewed believe that NGOs are integrated into the country's broader system of corruption and are, consequently, more interested in preserving the current situation than fighting dishonesty.

Self-assessments offered by NGO workers confirm that NGO engagement in these questionable practices is quite common. Over a third of NGO respondents believe that NGOs are sponsored by political parties, particularly during election campaigns, and are created expressly to implement a particular project or to receive a specific grant. In the opinion of 25% of the NGO workers interviewed, NGOs are commonly used to conceal business operations or to make profits in some other way. A quarter of the respondents were of the opinion that NGOs do not engage in any activity at all.

Characteristics of NGOs in Ukraine
(as assessed by NGO workers)



Corruption is also seen to plague the funding process of NGOs. Almost a third of those interviewed believe that connections and influence are used to secure grants and funding, and that kickbacks are a regular feature of agreements with both Ukrainian and international donors (15% and 13%, respectively).

Anti-corruption activities of NGOs

The 2011 law *On Principles of Preventing and Counteracting Corruption* provides specifically that NGO representatives have the right to:

- report corruption cases;
- receive information on government anti-corruption initiatives;
- review draft legislation for possible corruption risks;
- take part in parliamentary hearings related to corruption;
- submit recommendations to improve anti-corruption legislation;
- carry out research on matters related to corruption; and
- take measures to keep the public informed on matters related to corruption and the government's anti-corruption progress.

However, a NGO's willingness to take on corruption issues cannot be accepted at face value. In the course of the survey, members from 111 NGOs were selected for interviews on two criteria: that they claimed to be active in anti-corruption work and that they had, in 2009, expressed an interest in becoming a member of the community council at the Office of the Governmental Commissioner for Anti-Corruption Policy (which has since been abolished).

Within the sample group of 111 declared anti-corruption NGOs, there was a large variation in the level of demonstrable commitment to fighting corruption. Through an assessment of actual programming directed at curbing corruption, it was found that only 30 of those NGOs (27%) were in fact substantially active in anti-corruption activities, while the other 81 NGOs (73%) had not taken any meaningful steps to promote integrity.

Among the NGOs found to be active, the initiative that most carried out with on a rather regular basis (six times or more within the preceding two years) was found to be attending public meetings or sitting on community boards (over half claimed to do this regularly). Other popular forms of NGO action (each of which were identified as a regular activity for about 40% of respondents) were found to be: exposing cases of corruption to the community and media; disseminating anti-corruption information to the public, the media and other NGOs; providing legal aid to persons needing assistance in matters of corruption; monitoring the public sector for wrongdoing; and providing training or seminars on corruption control.

The workers from NGOs active in fighting corruption were asked to evaluate the efficiency of various anti-corruption measures employed by NGOs. The activities rated as the most effective were exposing corruption offences to the community and media, monitoring the public sector for wrongdoing and disseminating

anti-corruption information. The particular strength of the NGO sector in the last of these activities was expressed by one respondent in the in-depth interviews:

Only the non-governmental community is able to disseminate knowledge efficiently to develop intolerance toward corruption among the people.

Interaction with public authorities

Some NGO initiatives to counter corruption demand that organizations cooperate with public institutions and authorities. In Ukraine, the character of this collaboration presents some difficulties.

The survey of NGO workers and law enforcement officers suggests that most cooperation between NGOs and public authorities in Ukraine relies on informal and personal connections rather than on formal processes. The covert nature of these interactions poses some risks. In relationships occurring outside of the public eye, NGOs are susceptible to becoming entrapped in the corruption schemes of dishonest public officials. Moreover, these close connections may inhibit the capacity and willingness of NGOs to impartially monitor public institutions and report questionable activities.

The in-depth interviews also revealed the existence of differing views on the proper role of NGOs regarding corruption control. Some anti-corruption NGO employees insist that, to be effective, their organizations should be granted broader powers akin to some of those held by public bodies and law enforcement authorities. Others believe that such activities should remain outside of NGO mandates. These opposing opinions were expressed by two NGO interview participants:

First participant

The law should expand the powers of NGOs, particularly as far as civic monitoring of public authorities is concerned. Currently, there are almost no real or efficient powers.

Second participant

I do not support the idea that corrupt officials should be exposed by the public. That's a job of law enforcement (...). NGOs should be proactive in the field of public education instead of trying to replace law enforcement authorities.

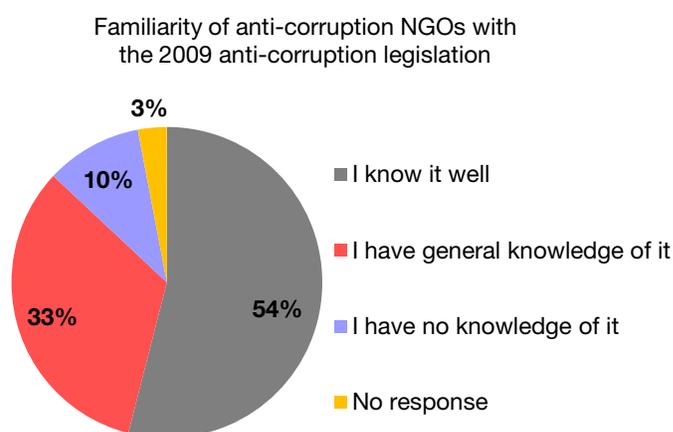
To some law enforcement officials, cooperation with NGOs can be frustrating because the two groups are not bound by the same rules. For law enforcement authorities, a particular behaviour must satisfy a legal definition to be defined as corruption. NGOs tend to have a looser notion of corruption. As explained by one law enforcement officer interviewed:

We are often contacted by NGO activists who call themselves fighters against corruption. However, when you start to look into the matter, it turns out that corruption for them is anything that goes against their interests. If a judge does not allow a claim, it means that he is corrupt. It is very difficult to work with them.

Relations between these two groups are further complicated by the growing tendency of government to intervene into the work of NGOs. The Ukrainian Helsinki Human Rights Union recorded more illegal actions taken against human rights and civil activists in the first half of 2010 than in all of the preceding five years combined. Increasing hostility will presumably only serve to disrupt any potential for cooperation.

NGO assessment of government measures

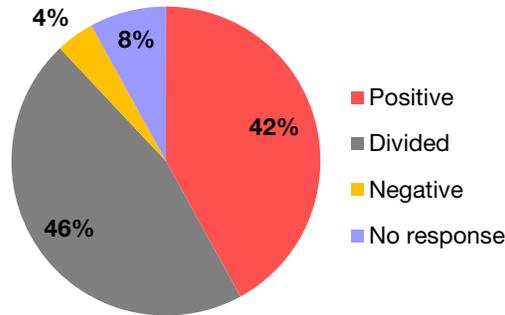
While the perception of some police officials is that NGO workers are misinformed about anti-corruption law, the survey shows that NGO workers disagree. Among employees of NGOs active in anti-corruption work, over half claimed to have a strong understanding of the 2009 package of anti-corruption laws (adopted at the time of the survey, now repealed), while another third claimed to have a general knowledge of it.



The assessment of the 2009 package of anti-corruption laws among anti-corruption NGO workers was predominantly positive. Just over 40% had a favourable opinion of the laws, while only 4% viewed the laws negatively. The most significant number of respondents felt that the legislation had both good and bad components.

In forming their opinions on anti-corruption measures, employees of these organizations tend to rely on a personal assessment (84%) and expert opinions (52%). Friends, politicians and the media are comparatively unpersuasive (8%, 12% and 16%, respectively).

Opinion of anti-corruption NGOs of the 2009 anti-corruption legislation



Members of the NGO community actively engaged in anti-corruption efforts were asked to assess which government-led initiatives would have the most significant impact on curbing corruption in Ukraine. The measures that attracted the most support were toughening criminal sanctions, banning individuals convicted of corruption offences from civil service appointments, introducing administrative liability for executives who fail to take measures to curb corruption and promoting the active involvement of the public in corruption control. Apart from the last point, these results suggest that, even among NGOs, repression is favoured over prevention.

2.3 Limited political will

Unsupportive political environment

In the in-depth interviews with experts, a number of characteristics of Ukraine's political system were identified as inherent obstacles to greater integrity. The most prominent of these obstacles result from the reinstatement in 2010 of the 1996 constitution. The return to the 1996 provisions has significantly strengthened the powers of the President, weakened the authority of Parliament and decreased the autonomy of the Cabinet. This centralization of power has

curtailed public debate, and is seen as having transformed Parliament into a body whose role is essentially to mechanically approve the decisions made by the President and his inner circle.

Simultaneously, the holders of high-level positions within the public service have all been replaced by individuals having or believed to have a close connection to the President. While the experts admit that this approach has increased the capacity of the state to get things done, they also expressed concern that such an arrangement clearly creates fertile ground for considerable conflicts of interest. The situation is made worse by the fact that a number of high-ranking officials have or are suspected of having important business interests. Experts interviewed under the research commented that it is becoming increasingly rare to see senior government officials who are not in some way involved in the private sector.

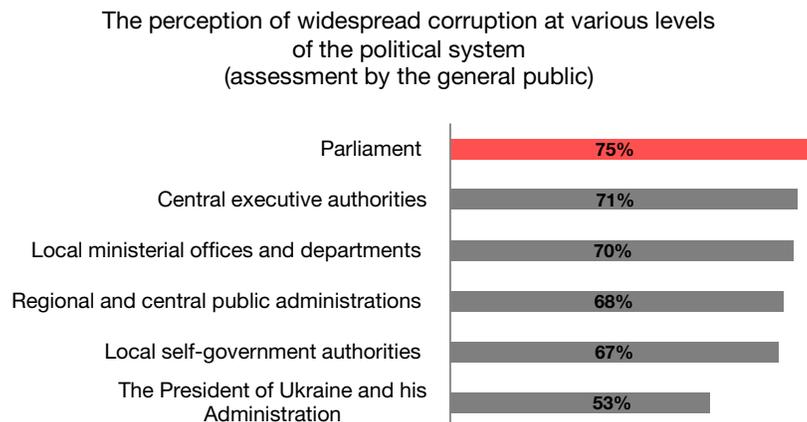
Politicians in Ukraine openly admit the existence of corrupt practices within their field of work. Bribes are paid for changing factions, voting for or against laws, and putting pressure on law enforcement agencies or the courts.

The courts are also seen as subject to political interference. The experts interviewed were particularly critical of the Constitutional Court, which is considered to have become a tool that can be used to selectively undo the legislative work of Parliament. A survey conducted under this project in 2010 found that almost one third of the judges interviewed claimed to experience pressure from public authorities in certain cases.

The financing of politics remains largely obscure in Ukraine. The Council of Europe's GRECO, in its Third Round Evaluation of Ukraine, was critical of both party and election campaign funding. In this regard, its report cited a number of concerns, including: significant influence of powerful business interests on the political

process, illegal early campaigning and shadow financing in elections, and transparency rules that can be easily circumvented and are likely being abused.

Given the above, it is easy to see why the public views key political players in Ukraine as deeply involved in corruption. Members of Parliament were considered by 75% of survey respondents to be the most engaged in illicit activity. The President and his office were deemed to be the least corrupt, but a majority of the public (53%) still perceived this group to have corrupt tendencies.



An excerpt from the GRECO report referred to above noted a dangerous cycle in which decreasing public support for politicians is leading to greater corruption:

The [GRECO evaluation team] was seriously concerned to hear from a number of interlocutors that there was some resignation and a pervasive sense among Ukrainians that political parties are established and used for private gain, that politicians have not served them well and that democracy has failed to deliver on its promise. Therefore, it is clear that the lack of public funding might induce parties and election candidates to seek funding from hidden or even prohibited sources.

There is no doubt that, on the whole, politics and politicians are viewed with great suspicion.

Political talk and political action

Across the political spectrum, there is little disagreement that corruption has become a threat to the country's democratic future and economic prosperity. The issue of corruption occupies a prominent place in the public statements politicians make and in the documents released by their political parties. Anti-corruption was one of the leading issues in both the 2007 parliamentary and the 2010 presidential election campaigns.

However, the corruption issue is more often than not raised principally for partisan political purposes. Indeed, it seems that when the time comes to make important decisions, the positions of the parties are influenced less by a desire to fight corruption than by a will to advance their own interests. The problem was summarized by one expert interviewed under the research:

Since 1991, corruption has been growing stronger in Ukraine. Ministers, prosecutors and anti-corruption "advocates" only declare publicly that they are fighting corruption while, in reality, there have been no real achievements.

With that in mind, the proposed research gathered information on:

- the position of the key political parties regarding corruption, as reflected in official statements or publications, and
- the behaviour of political forces when it comes to making decisions regarding anti-corruption activity in the country.

The main conclusions that can be drawn from this research are that:

- The idea of corruption is used as a propaganda tool to both bolster one's position in the public eye and discredit the opponents.
- There have been undue delays in enacting anti-corruption laws in Ukraine caused primarily by partisan political considerations.
- The slow progress in establishing an anti-corruption framework casts doubts on the commitment to reform.

Corruption rhetoric

During the country's early years — a time of relative political stability — concerns about corruption issues were overshadowed by more immediate preoccupations, such as economic reform and privatization. However, the subject quickly gained prominence with the spread of suspicion of illegal activity and of abuse of power at the highest levels of the state. By the 2004 presidential election, Ukraine was entering a period of political turmoil, and corruption had become a key issue. The subject was at the centre of the protest movement that became known as the Orange Revolution (which began in November of that year) and has since continued to dominate debates in the country's highly charged political context.

In line with this tendency, corruption became a major theme of the 2010 presidential election. Through the analysis of the public statements made and the documents released by candidates during the election campaign, as well as through discussions with experts, the project identified a number of trends in the discussions related to integrity.

The use of vague and sweeping statements is a feature common to all of the candidates who took part in the 2010 presidential election. According to the experts interviewed, this unfortunate situation precluded any meaningful debate on the corruption phenomenon. However, the experts were of the view that empty

statements were almost unavoidable, since most political parties lack the professional capacity necessary to come up with a serious analysis of the corruption problem and propose realistic solutions. Moreover, they explained, politicians rarely resist the temptation to oversimplify issues. Some excerpts taken from the election platforms of candidates in the 2010 presidential election illustrate this point:

There must be severe and, more importantly, unavoidable punishment for corruption.

Arseniy Yatsenyuk, Front of Change Political Party

To curb corruption, the regime of public scrutiny must be restored.

Petro Symonenko, Communist Party

We must relieve the state of functions that pose a bribery risk.

Mykhaylo Brodsky, Party of Independent Democrats

When the candidates were somewhat more specific on the subject, they framed their position in the manner most likely to appeal to voters. This approach inevitably led to calling for a "firm-hand" approach to corruption and remaining silent on prevention measures. As one expert explained, "In Ukraine, it is hard to win voters' trust without saying that corrupt officials will be put in jail. The idea of corruption prevention has low or no appeal."

In the electoral programs of the 2010 presidential candidates, the emphasis was clearly on punishment. Mykhaylo Brodsky (the Party of Independent Democrats) called for strong criminal sentences for bribery (which should be punishable by 15 years of imprisonment), with particularly severe punishments for law enforcement officers and judges involved in illicit activity (who should be liable to imprisonment for life). Oleksandr Moroz (the Socialist Party of Ukraine) asserted that he would move to reintroduce the death penalty for certain corruption crimes and eliminate any possibility

of pardon. Oleksandr Pabat (the Peoples' Salvation Army) similarly claimed that if imprisonment and the forfeiture of assets failed to dissuade public officials from abusing their position, he would also support reinstating the death penalty. Yulia Tymoshenko (Yulia Tymoshenko Bloc — BYuT) called for tougher criminal penalties, up to life imprisonment, for corruption offences.

The issue of income and asset disclosure by public officials is a similarly important topic for the Ukrainian electorate. One of the experts interviewed considered that this subject is of particular relevance in a society that must cope with the abrupt transition from the communist ideal of social equality to a culture based on inequality and the ruthless pursuit of self-interest.

In their 2010 electoral platforms, Volodymyr Lytvyn (independent) and Oleg Riabokon (independent) both called for civil servants and their family members to disclose their income and expenses. Mykhaylo Brodsky advocated that family expenditures over \$1,000 be reported. He also proposed giving state employees amnesty from legal liability in exchange for making a full disclosure of their illegally obtained assets, paying a 5% tax thereon and foregoing any future employment in the civil service. Sergiy Ratushniak (independent) promised to levy a 25% tax on any assets of public officials or their families that could not be justified by their official income.

Ukrainian politicians compete fiercely to position themselves as being at the forefront of the fight against dishonesty. This often leads them to sow doubts about the integrity of their opponents. In 2010, the *Korrespondent* magazine interviewed various candidates in the election, asking them "How will corruption in the country be overcome?" "Where should we start? With you?"

In response, incumbent Viktor Yushchenko (Our Ukraine) touted his past achievements and his demonstrated commitment to fighting corruption:

During my Presidency, 1,230 officials were prosecuted. In 2008, the Security Service solved 1,152 crimes related to abuse of office. I consistently support the idea of depriving MPs of immunity and making judges accountable... I will make every effort to keep the fight against corruption going.

Inna Bohoslovska (Independent) used the opportunity to distance herself from her opponents:

My main competitive advantage in these presidential elections — if we talk about the five leaders in the campaign [Viktor Yanukovich, Yulia Tymoshenko, Viktor Yushchenko, Arseniy Yatseniuk and Inna Bohoslovska] — is my clean reputation. I have never been involved in a corruption scandal. I am a politician who is able to overcome corruption because I have never been involved in it.

Yulia Tymoshenko stated:

I have never received an apartment or country house from the state. I have never taken a kopek from the state budget. That it is why change does not need to start with me. But I do have a very long list of people with whom the fight against corruption should start. Those same people need to be held accountable for what they have done to the country over the past 18 years.

Allegations of corruption against the administration were also made in the candidates' electoral platforms. Arseniy Yatsenyuk recognized that corruption in the political system produces and serves clans and oligarchs, and promised that he would replace Members of Parliament and local authorities to end the abuse of power. Two other candidates, Lyudmila Suprun and Oleg

Tiagnybok, similarly called for a complete elimination of corrupt staff from the political structure.

Actions of elected officials

The history of establishing the country's anti-corruption framework indicates that the political elite's commitment to reform may not be as strong as its public statements would seem to imply.

In 2005, when Ukraine announced its intention to move toward European integration, it became apparent that its existing 1995 anti-corruption legislation would have to be revised to comply with European standards. In 2006, President Viktor Yushchenko submitted to Parliament legislative measures aimed specifically at combating corruption. The package comprised six laws. The first three texts — *On Principles of Corruption Prevention and Counteraction; To Amend Certain Legal Acts of Ukraine on Liability for Corruption Offences; On Liability of Legal Persons for Corruption Offences* — were of an internal nature. The three other laws related to the ratification of international instruments in the field of combating corruption: the *United Nations Convention against Corruption*; the Council of Europe's *Criminal Law Convention on Corruption*; and the *Additional Protocol* thereto. The last three laws were adopted on 18 October 2006. The first three laws passed only their first reading.

At the time, the country was entering a time of considerable political instability. The 2006 parliamentary elections had resulted in two coalitions holding an almost equal number of seats (the Communist Party, the Socialist Party and the Party of Regions held 230 seats; the opposition coalition composed of Our Ukraine and the Block of Yulia Tymoshenko held 210), leading to the frequent paralysis of the legislative progress. At the same time, the power struggle between the ruling parliamentary coalition and the

President intensified, eventually resulting in the dissolution of Parliament on 2 April 2007.

Parliament reconvened on 23 November 2007. That same day, the three remaining draft laws from the 2006 "anti-corruption package" were resubmitted to Parliament by the Party of Regions. They were introduced as new laws and, therefore, had to go through the whole parliamentary review process. In the end, the 2006 package of laws was approved by Parliament on 11 June 2009 and set to come into force on 1 January 2010. However, their entry into force was postponed twice by Parliament, first, until 1 April 2010 and then until 1 January 2011.

The official explanation for the repeated postponement of the laws' coming into force can be found in an explanatory note to the law *To Amend Certain Law of Ukraine on Corruption Prevention and Counteraction* submitted on 10 March 2010 by Member of Parliament Oleg Novikov (Our Ukraine – People Self-Defence block). The note indicates that the delays were due to several reasons: inconsistencies in the texts, which required substantive revisions; the unreasonable deadlines imposed on Parliament to remedy the problems; and the fact that a number of laws that were necessary to enforce the anti-corruption laws — such as the law *On Conflict of Interest in the Work of Public Servants* and the law *On the National Bureau of Anticorruption Investigations of Ukraine* — had not yet been adopted.

Those were the ostensible reasons for delay. But, according to the views expressed at a roundtable of corruption experts held at the Gorshenin Institute in March 2011, these delays were, at least in part, driven by more simple political considerations. At the session, one Member of Parliament indicated that the delay resulted from President Viktor Yanukovich's desire to position himself as the country's anti-corruption leader. President Yanukovich had come to power in February 2010 and, it was claimed, was reluctant to

support the laws developed under the previous administration. Another Member of Parliament asserted that the resistance stemmed from a reluctance of those in power to be subjected to the laws in question, particularly in the case of the provisions relating to the disclosure of their income and assets. Another Member of Parliament added that there was strong opposition to the proposed law's provisions banning the use of charitable donations as a mechanism to funnel funds to public institutions. Finally, one participant considered that the delays were also influenced by upcoming elections, since the politicians did not want to subject employees of the electoral commission too rapidly to the new legislation, given the influence the commission can have on the outcome of a vote.

On 5 January 2011, a law *To Repeal the Anti-corruption Package of Laws* came into force, annulling the 2006 laws just four days after the latter had started to have effect. However, during their brief lifespan, the 2006 laws repealed the 1995 law *On the Fight against Corruption*, which had, until that time, constituted the country's general framework on corruption control.

The fact that the 2006 laws were repealed was not a surprise. President Yanukovich had, on 17 December 2010, tabled in Parliament a new set of proposed anti-corruption laws. However, this new legislation slowed down the legislative progress once again. The 2010 package of anti-corruption laws, comprising the law *On Principles of Corruption Prevention and Counteraction* (law 3206-VI) and the law *To Amend Certain Legal Acts of Ukraine on Liability for Corruption Offences* (law 3207-VI) were not adopted by Parliament until 7 April 2011. Both laws came into force on 1 July 2011 — almost six months after the legislative void on corruption control had been created and five years after the country's first package of anti-corruption laws had been submitted to Parliament.

A substantive comparison of the 2006 and 2010 laws does not support the argument that the difficulties raised by the first set of legislative measures were of a technical rather than a political nature. According to several of the experts and Members of Parliament who participated at the Gorshenin Institute roundtable, the 2006 and 2011 anti-corruption laws are almost identical in substance, and where differences do exist, the 2011 texts are considered weaker, rather than stronger, than the previous version.

Moreover, despite the fact that the current and previous versions of the anti-corruption laws are widely viewed to be similar, the opposition (the Block of Yulia Tymoshenko and others) expressed the same criticisms toward the 2011 draft laws as the Party of Regions had toward the 2006 laws: both sides claimed the laws to be a tool aimed at covertly strengthening totalitarian rule and reducing democracy in the country.

The official votes cast in relation to the 2006 and 2010 anti-corruption draft laws (adopted in 2009 and 2011, respectively) illustrate the polarization that exists within Ukraine's Parliament.

The results of the voting on the 2006 anti-corruption measures reflect the sharp political divides: 96% of the Block of Yulia Tymoshenko representatives voted in favour of the proposed laws, and 100% of the Party of Regions representatives — who were at the time in the opposition — abstained from voting.

The positions taken by the various parties in the 2011 vote show the opposite pattern: a strong majority (96%) of the ruling party (by then, the Party of Regions) supported the proposed legislative package, while 85% of the members of the official opposition (the BYuT) were absent or did not vote.

It should be noted that, on both occasions, no Member of Parliament (with one exception) was bold enough to formally vote against the laws.

At the second reading of the proposed laws, on 15 March 2011, Block of Yulia Tymoshenko leader Andriy Kozhemiakin explained his party's position:

First, everybody understands that the absence of asset declaration obligations for close relatives in article 12 totally weakens this draft anti-corruption law. Second, our political force, faction "BYuT - Motherland" supports fighting corruption — but fighting corruption in accordance with fair rules, in accordance with the law. Today we are adopting this draft law under corrupt conditions... In other words, this draft law is not about combating corruption, it is about combating the opposition. Our faction is not going to participate in this farce anymore.

While the passing of Ukraine's first comprehensive anti-corruption law — the law *On Principles of Preventing and Countering Corruption* — is an achievement claimed by the Party of Regions, that party's determination to implement the legislation is seen by some as uncertain.

According to the *Ukrainska Pravda* on-line newspaper, in February 2012, 53 Members of Parliament representing the Party of Regions filed proceedings with the Constitutional Court to challenge the constitutionality of two elements of the law they had so recently supported: article 7.1.2, which prohibits certain persons listed in the law, including government officials and Members of Parliament, from sitting on governing bodies of profit-seeking enterprises; and Item 2 of Chapter VIII, which imposes a financial declaration obligation on certain people, including government officials and Members of Parliament, for the year 2011 (from the day the law came into force, that is 1 July 2011). The provisions of Item 2 are distinct from the more general ones requiring an annual financial declaration, which only came into force on 1 January 2012.

In the decision it delivered on 13 March 2012 (decision No 6-rp/2012), the court upheld the prohibition set out in article 7.1.2 but struck down Item 2 of Chapter VIII. As a consequence, 2012 will be the first year for which those subject to the law will have to submit financial information, and will only have to do so by 1 April 2013. Had the law not been struck down, financial information on 2011 would have been due on 1 April 2012 and would have been publicly available soon thereafter.

The experts interviewed as part of the research point out that this delay is meaningful, since parliamentary elections are set for October 2012. This view is shared by the Carnegie Endowment, which, in its report *Reforming the Ukraine Economy under Yanukovich*, stated: "To many in Ukraine this serves as a clear sign that the ruling party is not interested in fighting corruption and is trying to avoid transparency and accountability on the eve of parliamentary elections."

Whether the 2011 legislation was challenged for strategic purposes or for more mundane reasons, this particular event illustrates the fact that, in Ukraine, progress tends to occur extremely slowly in matters of government integrity.

3

THE PROSPECTS FOR THE FUTURE

3.1 Anti-corruption strategies

A *National Program of the Fight against Corruption* was set in place in 1997 (Presidential Decree 319/97). This first initiative aimed at tackling the integrity issue was followed by the more comprehensive strategy *On the Concept of combating corruption in Ukraine for 1998-2005*, adopted on 24 April 1998 (Presidential Decree 367/98).

In September 2006, another broad framework — the *Concept of overcoming corruption in Ukraine : On the way to integrity* (Presidential Decree 742/2006) — was adopted. The 2006 Concept remained Ukraine's guiding document on reform initiatives until 21 October 2011, when the *National Anti-Corruption Strategy for the years 2011-2015* came into force (Presidential Decree 1001/2011). Both of these strategies generated numerous legislative and administrative measures aimed at giving them effect.

Despite all this activity, the level of corruption has by all accounts been increasing year after year in all areas. In an effort to shed some light on the possible reasons for this lack of significant progress, the project:

- sought to determine the extent to which the provisions of Ukraine's anti-corruption strategies have been implemented;
- tried to identify any inherent shortcomings that might explain the limited impact of the strategies; and
- looked for external factors that may have negatively influenced the implementation of the strategies.

As part of this exercise, the text of the various strategies was examined and a number of officials involved in the design or implementation of the strategies were interviewed.

From this research, three main conclusions can be drawn:

- Ukraine has a poor record of carrying out what it committed to do in its anti-corruption strategies. In this regard, some progress has been achieved with the coming into force of the country's 2011 anti-corruption laws.
- Flaws in many of the country's guiding anti-corruption documents make them inherently difficult to implement. These flaws include overly vague wording, a lack of key practical provisions and a bias toward repressive measures.
- The strategies were developed without sufficient reflection and consultation, and their implementation was unsystematically monitored and has met with much resistance.

Record of implementation

Many of the measures that were first envisioned in Ukraine's anti-corruption policy in the late 1990's were not implemented or were only implemented many years later. The adoption in 2011 of the law *On Principles of Corruption Prevention and Counteraction* can be seen as progress, since that law set in place a number of anti-corruption measures provided for in the 1997 *National Program against Corruption*. These measures include restrictions on the use of charitable donations to support the operational costs of government institutions; provisions for dismissing public servants guilty of corruption offences; and the setting of ceilings on the value of gifts or rewards that state officials can accept. The *Concept of combating corruption in Ukraine for 1998-2005* recommended the establishment of a corruption offender database and an expansion of the list of people to whom the provisions creating corruption offences apply. Both of these measures were introduced by the 2011 law.

Substantive shortcomings

A review of Ukraine's three major anti-corruption strategies (the 1998 and 2006 *Concept Papers* and the 2011 *National Strategy*) reveals certain shortcomings in their content and format that may have impeded their proper implementation.

Misaligned strategies and action plans

On the approach taken in Ukraine, the measures to be adopted as part of an anti-corruption strategy are defined in general terms in a first official document (a national program, strategy or concept paper), and the implementation details are dealt with in another (an action plan or annual plan). However, there has frequently been a lack of coordination between the main policy and the implementation plan. The problem is particularly acute in the documents stemming from the 1998 and 2006 strategies.

The annual plans aimed at implementing the 1998 strategy reproduced only about half of the initiatives provided for in the strategy. Some of the significant measures that were not reflected in the annual plans include: waiving parliamentary immunity and limiting judicial immunity; developing databases of corruption offenders and business entities involved in corruption; introducing liability of legal persons for corruption offences; and recognizing corruption as an accepted ground for dismissal from the public service.

The action plan to implement the 2006 *Concept Paper "On the way to Integrity"* was similarly silent on about half of the measures that the paper contemplated. And when the action plan was revised in 2009, the number of activities set out in it was reduced from 55 to 24.

Vague language

All the strategies under consideration use very vague language, making it difficult to determine exactly what is to be done and rendering the monitoring of progress next to impossible. For example, the national anti-corruption program of 1997 ordered to "take measures to improve spending by courts and judicial bodies," but did not specify what these measures could be. Similarly, the same program called for the system of the registration and publication of laws to be "improved" without providing any indication of the type of improvement envisaged. More generally, loose and nebulous expressions such as "expand opportunities," "improve legal regulation" and "address the issue" are common in Ukraine's main anti-corruption documents.

The action plans, which are meant to lay out the specifics of the measures outlined in the strategies, were found to be equally imprecise in their wording. They, too, contain vague instructions such as "take measures to improve" and "submit proposals to improve," often merely rephrasing the main document.

The anti-corruption strategies also lack of clarity and precision because of the use of convoluted language. For example, when talking about the improvement of the legislation on the responsibility for corrupt practices, the 1998 *Concept Paper* (Part IV) calls for the

elaboration of legal instruments (methods, recommendations, comments etc.) for the adequate determination of the degrees of social danger of specific corrupt practices, the forms of responsibility for such practices, the criteria of separation and interconnection of sanctions and penalties.

Such technocratic language is not only impossible to understand for the public at large but also fails to give clear guidance to those charged with implementation.

Another source of vagueness is the incomplete nature of many of the directives set out in the anti-corruption strategies. In many cases, the strategies indicate the initial step in a process — such as "consider whether it would be expedient," "study the practices," "examine the issue" or "examine the capacity" — but fail to specify any subsequent steps. Some action plans even manage to be less precise than the main strategic document. For instance, the 2006 *Concept Paper* provided for the creation of a registry of corruption offenders, but the action plan only required that the creation of such a registry be considered.

Repressive bias

Prior to 1998, nearly all official documents dealing with corruption addressed, simultaneously, matters of organized and economic crime. This approach reflected the concerns of the time: organized crime and racketeering were rampant, the shadow economy was growing rapidly, and strong ties between businesses and criminal organizations were being forged. Still, viewing corruption in such a narrowly criminal perspective inevitably led to relying extensively on repressive measures and to ignoring almost totally the practical benefits of prevention.

The situation in this regard has evolved very slowly. The 1998 *Concept Paper* purported to favour prevention, but the majority of its provisions dealt with liability for corruption offences. It is only with the 2006 *Concept Paper* and the 2011 *National Strategy* that some balance between repression and prevention was achieved.

Many of the experts interviewed consider that the failure of the strategies can be largely explained by their overemphasis on

punishment at the expense of prevention and education. As one expert stated, "The law enforcement system is unable to deal with such a complex issue on its own — it should be dealt with jointly by the state and society."

Insufficient resources

Financial support

The implementation of many of the measures provided for in the earlier national strategies, such as the creation of new agencies or the increase of personnel, required financial resources. However, the funding implications of the initiatives contemplated were never taken into account. For example, none of the action plans supporting the 1998 *Concept Paper* contained an estimate of the implementation costs or identified the source of the funding. And the state budget, which was already strained, allocated no funds to the realization of the action plans.

The situation did not significantly improve in 2006. The 2006 action plan implementing the 1998 concept paper only stated that funding for anti-corruption measures should come from within the existing budgets of the organizations involved. A revised implementation action plan adopted in 2009 required these organizations to seek funding for their anti-corruption measures in their requests for allocation from the state budget.

The 2011 National Strategy finally provided that its implementation would take place through a National Program — a mechanism that guarantees financing from Cabinet. However, some major difficulties still remain. An amount of 820.52 million hryvnas (or \$101.5 million USD) has been allocated to anti-corruption measures, but the bulk of that is destined to the Ministry of Health (807.48 million hryvnas), with the balance going to the Ministry of Social Policy. No funds have been allocated to the Ministry of Justice or any other body required by

the law *On Principles of Preventing and Counteracting Corruption* to participate actively in the fight against corruption.

Delegation of authority

Another shortcoming common in Ukraine's anti-corruption strategies is their failure to assign responsibility for the implementation of the envisioned measures to specific institutions. This oversight was expressly noted by the OECD (Organisation for Economic Co-operation and Development), in Ukraine's Second Round Monitoring Report on the Istanbul Action Plan regarding the 2006 *Concept Paper*. Referring to the "Concept Implementation Mechanism" section of the paper, the report notes that it, "contains a reference to the action plan and general principles of formulation of anti-corruption policy, but does not expressly identify responsible institutions and mechanisms for coordination, monitoring and reporting about implementation."

Monitoring and evaluation capabilities

A further weakness of Ukraine's comprehensive strategies is the failure to establish mechanisms to monitor the implementation of the measures required and evaluate their impact. Recognizing the importance of the issue, the 2011 *National Strategy* assigned responsibility for monitoring and evaluation to the National Anti-Corruption Committee. Still, the European Commission noted in its 2012 Visa Liberalisation evaluation of Ukraine that the 2011 strategy does not adequately define specific targets or objectives, or the mechanism and methodology for monitoring and evaluation. The European Commission's report states that:

"The Strategy is a rather general document, which sets out a number of areas for further action. It is not clear whether any consultation with stakeholders has taken place. It is also not clear what were the criteria on the basis of which the directions for future action were

chosen and what are the specific targets envisaged for the end of the implementation period (...). Also, there are very few references to the monitoring and evaluation mechanisms, and no precise indication of the methodology to be followed"

Deficient process

Improvisation

Many of the experts interviewed noted that thoughtfulness, consistency and continuity are key factors in developing an effective response to corruption. That being said, they were of the view that Ukraine's anti-corruption strategies have all been developed hastily for purely political purposes, are not based on a good understanding of the extent and evolution of corruption, and do not learn from the errors of previous strategies.

Insufficient consultations

There has, for the most part, been inadequate consultation of the general population and of experts regarding Ukraine's strategic anti-corruption documents.

Prior to 2006, reforms were designed by the Secretariat of the President and by the Cabinet of Ministers. The process was completely closed to the public, the international community and independent experts. This lack of transparency sometimes continued after a strategy had been adopted. For instance, the action plan for 2004 (supporting the 1998 Concept Paper), was approved in 2004 but remained out of the public domain until 2008.

A different, transparent approach was taken for the 2006 Concept and its initial action plan, which were widely discussed in professional circles and subject to international review. The draft

version of the action plan was made available online on the Ministry of Justice's website, where members of the wider public had the opportunity to review the documents and provide comments.

In 2010, the process again became relatively closed. While the proposed strategy was made available to international experts, domestically, only members of the National Anti-corruption Committee (which had been created that year) had the opportunity to comment on it.

Weak monitoring

From 1995 to 2005, significant effort was put into monitoring the implementation of the mandated measures. During that period, a number of resolutions were passed by the Cabinet of Ministers reporting on the level of implementation and deploring the lack of progress.

In July 1997, for example, four months after the approval of the *National Program "On the Fight against Corruption,"* the Cabinet of Ministers adopted a resolution concluding that no sufficient progress had been made. The resolution noted that, overall, less than half of the prescribed measures had been implemented, and it reprimanded specific ministers for failing to take steps to prevent corruption and for violating provisions of the laws *On the Fight against Corruption* and *On Civil Service*. Eight months later, the Cabinet of Minister again reported on the level of progress (about a third of the measures remained unimplemented) and reprimanded some ministers and managers.

After 1998, monitoring diminished significantly. It was not until 2008 that a full evaluation of the implementation of anti-corruption measures was again carried out. The Office of the Prosecutor General was subsequently requested to determine the

reasons of the government agencies' apparent disregard of the anti-corruption laws. That inquiry was either not completed, or its results were never made public.

Limited commitment

Almost all the experts interviewed considered that the main obstacle to reform is corruption within the government, including within the bodies responsible for the fight against corruption.

3.2 Anti-corruption infrastructure

To be effective, a broad strategy has to be completed by an adequate legal and institutional framework. It therefore seemed useful to review Ukraine's anti-corruption legislation and to describe the organizations involved in the control of corruption.

To that end, the project examined the relevant legislation and also carried out an empirical study that gathered data through surveys with 730 law enforcement officers, 292 civil servants and 87 judges, as well as through 20 in-depth interviews with individuals from these groups.

The main findings of this work are that:

- The development of Ukraine's legal and institutional anti-corruption framework has been haphazard, with little evident progress achieved over the years.
- A number of recommendations put to Ukraine by international organizations to improve its anti-corruption infrastructure have not been implemented.
- Recent developments regarding Ukraine's anti-corruption framework nevertheless offer some hope for progress.

Legislation

1995

The first piece of anti-corruption legislation was the 1995 law *On the Fight against Corruption*. This law was quite advanced for its time. It defined corruption and corrupt actions; identified the people subject to the law; set out anti-corruption measures; named the agencies responsible for combating corruption; established administrative liability for corruption offences; and provided for remedies, including indemnification for damages and the annulment of court decisions made under illicit influence.

Over time, however, with the ever-deteriorating situation of integrity in the country and Ukraine's declared intention to move toward European integration, it became evident that the legislative framework was in need of reform.

2006

To that end, in 2006, an "anti-corruption package" was tabled in Parliament. That package consisted of the law *On Principles of Preventing and Counteracting Corruption*, the law *To Amend Certain Legislative Acts of Ukraine on Liability for Corruption Offences*, the law *On the Liability of Legal Persons for Corruption Offences* and three laws on the ratification of corruption conventions.

As previously mentioned, the ratification laws were adopted relatively quickly, but the remaining laws were only adopted by Parliament in June 2009 and came into force on 1 January 2011, repealing the 1995 law. However, four days later, on 5 January 2011 a law (which had been adopted by Parliament on 21 December 2010) repealed the 2009 laws. As a consequence, Ukraine did not have a general law on corruption and could not enforce any administrative liability for corruption offences from 5

January 2011 until the new 2011 anti-corruption laws came into force on 1 July 2011.

2011

The 2011 "anti-corruption package" comprised the law *On Principles of Corruption Prevention and Counteraction* (law 3206-VI), and the law *To Amend Certain Legislative Acts of Ukraine on Liability for Corruption Offences* (law 3207-VI), which contains changes to Ukraine's *Criminal Code*, *Criminal Procedure Code* and *Administrative Offences Code*.

The 2011 law *On Principles of Corruption Prevention and Counteraction* improves in many ways over the 1995 legislation and addresses some weaknesses previously identified by international and European institutions. Among other things, the law can be said to be oriented more toward prevention than repression. It introduces new concepts, such as illegal benefits, and it imposes limits on the acceptance of gifts or donations and on the employment of relatives. It further establishes mechanisms to increase transparency, including better processes for screening persons applying for government positions, obligations to report expenses (in addition to assets) in financial declarations, and a ban on state bodies accepting services or property through charities that they control. The law also sets out a process for screening legislation for corruption risks, creating an agency responsible for the coordination and monitoring of anti-corruption activities, and facilitating broad public participation in anti-corruption initiatives. Finally, the law requires agencies authorized to combat corruption to report annually on the measures taken to prevent and counter corruption.

The law considerably extends the list of the persons — predominantly public officials — who may be liable for corruption offences to include persons providing public services, such as

auditors and public notaries, officials of foreign states and international organizations, and officers of privately held legal entities.

The list of corruption offences was extended. It is now an administrative offence for persons to offer illegal benefits to public officials to violate their anti-corruption obligations. Administrative liability was also extended to public officials who accept gifts whose value exceeds the amount prescribed, who fail to disclose conflicts of interest or who unlawfully use information obtained in the course of their functions. New corruption crimes include offering a bribe, trading in influence and illegal enrichment. To help ensure that persons convicted of corruption offences are not employed in the public service, the law also provides for the creation of a state registry of corruption offenders. It should be noted that, while the repealed 2009 anti-corruption law had provided for the liability of legal persons, the 2011 law does not.

Parliament and the President have taken measures to ensure the implementations of the new law. On 17 May 2012, Parliament adopted the law *On Amending Certain Legislative Acts of Ukraine in connection with the adoption of the Law of Ukraine "On Preventing and Counteracting Corruption,"* which introduced amendments to 46 other laws. Some of the important changes are related to asset declarations, the screening of civil servant applicants, restrictions on the hiring of relatives, and the dismissal of public employees convicted of corruption. On the same day, the law *On the Rules of Ethical Conduct* was adopted. This law prescribes enforceable rules of conduct for civil servants.

A significant number of other legislative and administrative measures — including the adoption of a regulation providing for the establishment of a registry of corruption offenders — were also taken to ensure the implementation of the 2011 anti-corruption law. Additional measures are under consideration.

Evaluation of current legislative framework

Despite what has been accomplished, both national anti-corruption experts and European institutions have noted a number of shortcomings and gaps in the current legislation.

The European Commission, in its 2012 *Second Progress Report on Ukraine's Implementation of the Action Plan on Visa Liberalisation*, recommended that Ukraine introduce mechanisms for preventing, monitoring and verifying conflicts of interests; strengthen provisions on the disclosure of assets; lift immunities; and improve public procurement processes, seizure and asset recovery and whistleblower protection. Importantly, it also urged Ukraine to further revise legal provisions related to the criminalization of corruption offences, particularly, regarding:

scope (rationae personae) of criminalization of bribery in the private sector; scope of the definition of 'bribe' that needs to also cover non-material advantages; criminalization of all elements of active and passive bribery and trading in influence in the public and private sectors to broaden the scope of completed criminal offences; broadening of the scope of corruption offences to cover instances of third party advantages; level and coherence of criminal sanctions; limit/eliminate the risk of abuse of the special defence of effective regret; extra-territorial jurisdictional powers.

Many of these same recommendations had been put to Ukraine in 2006 by the Group of States against Corruption (GRECO) in its First and Second evaluation reports. GRECO also suggested reforms regarding the confiscation of proceeds of crime, the procurement process, whistleblower protection, the system of immunities and the liability of legal persons for corruption. According to the second Addendum to this report, published in March 2012, a number of these recommendations remained unimplemented. In its Third Round Monitoring Report of

Ukraine, adopted in October 2011, GRECO made other recommendations regarding the broadening of the definition of bribery under the criminal law and the improvement of the rules aimed at ensuring the transparency of the financing of political parties and election campaigns.

It should be noted that many of the interviewees who work under Ukraine's anti-corruption legislation (81% of the civil servants and 91% of the law enforcement officers interviewed) indicated that the legislation is more of a hindrance than of a help in curbing abuses. Law enforcement officers were equally critical of Ukraine's criminal and criminal procedure legislation, with 86% and 80% of the interviewees from that group pointing to shortcomings in those laws. In the in-depth interviews, a number of people suggested that criminal procedures enabling the collection of evidence through audio or video surveillance would significantly strengthen investigative and prosecutorial capabilities in the area of corruption. On 13 April 2012, Parliament adopted a new *Criminal Procedure Code* (set to enter into force in November 2012) that corrects a number of deficiencies and simplifies operational and investigative procedures.

Institutions

Numerous government officials and organizations are involved in the fight against corruption. It seemed useful to mention here some of the key players in this area.

Article 5 of the law *On Principles of Preventing and Counteracting Corruption* identifies the individuals and organizations responsible for preventing and detecting corruption in Ukraine and outlines their specific duties. This group includes the President of Ukraine, Parliament, the Office of the Public Prosecutor, the Cabinet of Ministers and a specialized body for anti-corruption policy.

The President

The powers and the responsibilities of the President of Ukraine are set out in the constitution. One of the President's central responsibilities is national security, which has been interpreted to include the control of corruption. The powers vested in the President are broad, allowing him or her to influence and direct the development and implementation of anti-corruption efforts. Among many other things, the President appoints people to key positions within all branches of the government, leads the National Security and Defence Council, can veto laws passed by Parliament and issues decrees and directives that have the force of law.

Ukraine's successive Presidents have issued a number of decrees aimed at tackling corruption, including three broad national anti-corruption strategies (1998, 2006 and 2011). A number of anti-corruption bodies have also been established.

Parliament

The parliamentary committee responsible for controlling corruption related activities is the Committee on the Fight Against Organised Crime and Corruption. Pursuant to the law *On Organisational Legal Framework for Fighting Organised Crime*, the Committee is, among other things, responsible for developing, and for monitoring the implementation of, anti-corruption and organized crime legislation.

Cabinet of Ministers

The Cabinet of Ministers is the supreme decision-making body within the executive branch of government. Pursuant to the law *On Principles of Preventing and Counteracting Corruption*, Cabinet directs

and coordinates the work of the executive in the area of corruption control.

Centralized anti-corruption units

The Coordinating Committee on the Fight against Corruption and Organized Crime, was created in 1993 under the authority of the President. Its main objectives were to coordinate the efforts of the various state actors operating in the sphere of anti-corruption and to provide centralized guidance and ensure effective implementation of the state's anti-corruption policy. In 2003 the Committee was transformed into an advisory body to the President on national security, but retained responsibility for the coordination of the agencies working on anti-corruption. In 2004, the Constitutional Court found the existence of this body under the President to be unconstitutional and the committee was dissolved.

In 2005, the Interdepartmental Commission of the National Security and Defence Council for the Comprehensive Resolution of Corruption Problems was created to take on the functions of the Coordination Committee.

In 2008, the Interdepartmental Working Group on Corruption Counteraction was established, again with the mandate to coordinate anti-corruption work. An evaluation of publicly available sources suggests that neither of these bodies achieved any result.

In 2006, GRECO's First and Second Round Evaluation reports contained advice on the establishment of a centralized anti-corruption agency. The reports recommended the creation of an independent body, distinct from law enforcement agencies and inclusive of civil society, to oversee the implementation of the

national anti-corruption strategy and its action plans and to propose new measures to fight corruption.

This recommendation led to the establishment in 2009 of the Governmental Commissioner for Anti-Corruption Policy. The main goal of this body was to design a national anti-corruption policy and ensure its implementation. To that end, it was to coordinate and analyze the initiatives undertaken by central agencies; review legislation for corruption risks; draft regulations; collect statistics; collaborate with international organizations; improve cooperation with civil society; and share information with the public, the President, Parliament and the Cabinet of Ministers. A Bureau of Anti-corruption Policy was created within the Secretariat of the Cabinet of Ministers specifically to support the work of the Commissioner.

GRECO and other European and international institutions recognized the appointment of a Commissioner as a positive measure. However, in 2010, soon after the presidential election that brought in a new government, the Interdepartmental Working Group was abolished and the Commissioner and the Bureau were deprived of their responsibilities.

At the same time, the newly elected President established the National Anti-Corruption Committee. The main responsibility of the Committee is to provide support to the President by analyzing the situation of corruption and the measures being taken to control it, monitoring the implementation of anti-corruption legislation, and providing recommendations on legislative measures. The President chairs the Committee and appoints all its members. The Executive Secretary of the Committee is the head of the National Security and Defence Council.

According to the first and second Addendums (published in 2011 and 2012, respectively) to GRECO's 2006 evaluation report of

Ukraine, the National Anti-Corruption Committee does not meet the expected standards. The main sources of concern are the committee's lack of independence (given the President's central role) and the insufficient involvement of civil society representatives. In its February 2012 *Report on Ukraine's implementation of the Action Plan on Visa Liberalisation*, the European Commission echoed this position, calling for the establishment of an independent oversight agency to coordinate implementation and partake in the development of anti-corruption policies.

The 2011 law *On Principles of Preventing and Counteracting Corruption* provides that the coordination and implementation of the national anti-corruption strategy will be the responsibility of a new Special Agency for Anti-corruption Policy. As of March 2012, the Special Agency had not yet been established, and its responsibilities had been provisionally assigned to the Ministry of Justice.

Internal anti-corruption units

Beginning in 2009, corruption prevention and detection units have been established within central government organizations. The role of these units is to: develop and implement measures to prevent corruption; provide guidance on matters of compliance with anti-corruption legislation; carry out awareness-raising activities; assist in the preparation of financial declarations; identify factors that contribute to corruption offences; report suspected abuses to the head of the agency; and keep a record of employees convicted of corruption offences.

According to the OECD Anti-Corruption Network's Second Monitoring Report on Ukraine, published in December 2010, 90% (78) of the government organizations had set in place an internal anti-corruption unit. The research carried out under this project suggests that internal units are fairly well accepted and active.

More specifically, 55% of the civil servants and 75% of the law enforcement officers interviewed regarded the units favourably. Moreover, 46% of the civil servants, 32% of the Ministry of Interior staff and 23% of the tax administration officials surveyed had personal knowledge of corruption cases initiated by these internal units that had led to the conviction of the accused.

Some specific anti-corruption responsibilities have been assigned to some government organizations: the Ministry of Justice reviews legislation for corruption risk and maintains the Integrated Registry of Corruption Offenders, and the National Agency of Ukraine for Civil Service monitors compliance with the laws *On Civil Service* and *On Principles of Preventing and Counteracting Corruption* within public bodies, takes measures to prevent corrupt practices among civil servants, and submits financial disclosure information to Parliament.

Prosecutor General

The Office of the Prosecutor General plays a central role in the enforcement of anti-corruption legislation. In line with its general responsibilities, the prosecution service can direct investigations and launch criminal proceedings. The Office also has a broader role in fighting corruption. Pursuant to the law *On the Public Prosecutor's Office*, the Prosecutor General coordinates activities aimed at fighting crime, including those aimed at curbing corruption. Under the law *On Principles of Corruption Prevention and Counteraction* the Prosecutor General is responsible for monitoring compliance with anti-corruption legislation.

Investigation agencies

The Tax Police are a unit of the Tax Service. Among other things, they are charged with preventing and detecting corruption and other abuses in the bodies of the tax administration. In this regard,

members of the Tax Police are authorized to carry out investigations. Cases of alleged wrongdoing discovered by the Tax Police can be forwarded to the police or the prosecution service.

Specialized anti-corruption units within the Ministry of Interior and the Security Service of Ukraine (*Sluzhba Bezpeky Ukrayiny* or SBU) are responsible for detecting suspected instances of corruption and referring those cases to the appropriate authority, with administrative cases being sent to the courts and criminal cases to the prosecution service for further investigation. These specialized agencies carry out the bulk of the corruption detection work in Ukraine.

A specialized anti-corruption agency

In its Monitoring Report on Ukraine's compliance with the Istanbul Anti-corruption Action Plan, the OECD called on Ukraine to set up an autonomous, specialized corruption investigation agency and to ensure the independence and specialization of law enforcement agencies and the prosecution service. The European Commission similarly urged Ukraine to set up a specialized anti-corruption agency in its second progress report on Ukraine's compliance with the Action Plan on Visa Liberalisation:

Ensure without further delay effective anti-corruption specialization in the law enforcement system by creating by law and setting up an autonomous specialized anti-corruption investigative agency, structurally independent from the existing law enforcement and security agencies, to target high-level corruption and empowered with adequate guarantees of independence, authorities and resources in line with international standards and best practices.

The idea of creating a centralized and specialized anti-corruption body in Ukraine has been around for some time, but has not yet led to any concrete result. In 1997, a National Bureau of

Investigations was created with a mandate to investigate the most socially dangerous crimes, but it was deemed unconstitutional in 1998. A 2008 Presidential Decree approved the *Concept of Criminal Justice Reform in Ukraine*, which envisioned the establishment of an anti-corruption agency vested with investigation and prosecution powers. However, no steps were taken to implement the ideas set out in the Concept.

The 2011 National Anti-Corruption strategy and its supporting State Program for the years 2011–2015 call for the creation of a group of specialized investigators and prosecutors. As of March 2012, two bills on specialized anti-corruption law enforcement agencies had been submitted for review to the Parliamentary Committee on Organized Crime and Corruption. The first bill proposed the creation of a National Service for Corruption Counteraction that would deal mainly with high-profile corruption cases; this bill was rejected by Parliament. The second bill provided for the establishment of a National Anti-corruption Bureau. While similar in many respects to the National Service for Corruption Counteraction, the National Anti-corruption Bureau would be vested with broader powers and operate under the authority of Parliament rather than the President. As of May 2012, the bill was still awaiting its first reading.

It should also be noted that the new *Criminal Procedure Code* approved by the President on 14 May 2012 provides for the creation of a State Bureau of Investigation that will be responsible for investigating crimes committed by law enforcement officers and high-ranking officials.

Financial control agencies

A number of financial control agencies play an important role in detecting and preventing corrupt activity.

Operating under the Ministry of Finance, the State Financial Inspection is Ukraine's principal body in the field of financial inspection. It is required to inform law enforcement agencies of any detected violations of legislation.

The Chamber of Accounts is an independent external audit body monitoring the spending of public funds. It brings detected abuses to the attention of Parliament and forwards any evidence of an offence to law enforcement authorities.

The State Service for Financial Monitoring deals with money laundering and the funding of terrorism. The Service collects and analyses information on financial transactions, which can help detect cases of corruption or illegal enrichment. Any incriminating intelligence gathered is sent to law enforcement officials.

Assessment

In the final analysis, it can be said that efforts have been made to create an anti-corruption infrastructure through which the country's anti-corruption strategy can be implemented. With some improvement, this infrastructure could have the capacity to support change.

3.3 Commitment to reform

Much progress has been made in setting in place the legislation and the institutions required to fight corruption. However, this will not make a significant difference without a strong commitment to tackle the problem of integrity.

The sources of resistance to change in this area are numerous and powerful. They are likely to include part of the political elite, which has a vested interest in keeping control over anti-corruption

activities; officials at the national and local levels who stand to lose the benefits of bribery and other forms of dishonesty; entrepreneurs who operate in the underground economy or rely on corruption as a business tool; and ordinary citizens who see corruption as an efficient means of solving many difficulties. Opposition from these groups could take various forms, ranging from passive resistance to deliberate efforts to hinder reforms.

With these considerations in mind, it was deemed necessary to identify the potential sources of resistance to reform and to assess the risks that they pose. To these ends, the research attempted to determine:

- which official actors implicated in anti-corruption efforts are the most likely to oppose reforms aimed at reducing corruption;
- how those groups or actors might counteract or be prevented from reinforcing anti-corruption efforts; and
- the capacity of certain implementing organizations.

The research found that:

- All of the entities evaluated are perceived by a varying but sizeable proportion of Ukrainians to be opposed to anti-corruption efforts.
- There is a widely shared belief that before any organization or group can legitimately contribute to an anti-corruption strategy, corruption in its own internal practices must be eliminated.
- The organizations engaged in anti-corruption work lack the resources necessary to fulfil their responsibilities and require better coordination of their activities.

Sources of opposition

Members of the general public, NGO representatives, civil servants, law enforcement officers and journalists were asked their

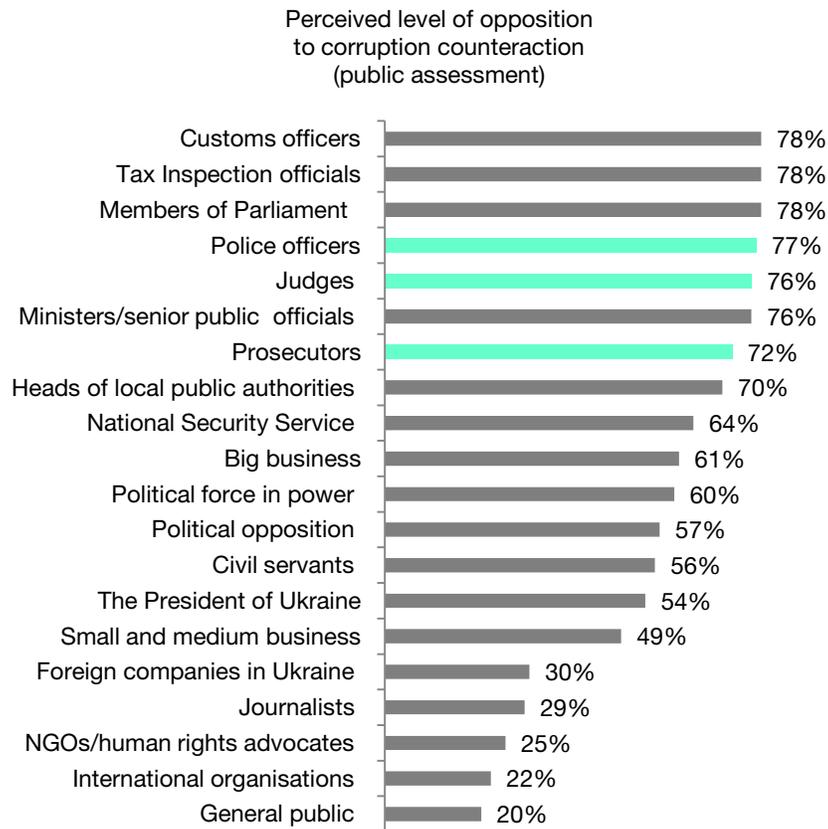
opinion on the commitment to the fight against corruption of various officials and organizations. The results permitted three groups to be identified:

- The opponents - Those who, in the view of respondents, are hostile to anti-corruption reforms. Members of this group benefit from corruption. They are interested in preserving the current state of affairs, even if they regularly express their opposition to corruption.
- The activists - Those who, in the opinion of the respondents, demonstrate the most active anti-corruption potential, evident in their genuine desire to eradicate corruption and their willingness to act against it.
- The indifferent - Those who do not seem to have a definite position on the subject or any particular will to act.

Among the various groups surveyed — the general population, government officials, business people, journalists and NGO workers — there is strong consistency in the views of who is most likely to oppose anti-corruption measures. And interestingly enough, but perhaps unsurprisingly, each group surveyed tended to see itself as more supportive of reform than the others. A particularly important finding was that there is a widely held belief that the officials and organizations that are the least interested in ridding the country of corruption are often those formally responsible for driving the anti-corruption effort. As some respondents commented:

Everybody who directly or indirectly rules the country is interested in maintaining the status quo, including the political leadership and oligarchs. They are in power now, and they are united. They have everything divided and decided on who gets what and for what. They get access to resources and, primarily, to the public budget. Now, they feel good and do not want to change anything. And even if anything is to change, it is only for their benefit.

In this country, there is no benefit for anyone fighting corruption. Everyone — particularly the country's leadership and high-ranking officials — makes their living on it. Why would they be willing to give up millions?



The survey results reflect these views. Those interviewed firmly believed that customs and tax officers, prosecutors, police officers, judges and Members of Parliament have a strong interest in preserving the current state of affairs. The determination of the President to fight corruption was also seen as doubtful by all groups except law enforcement officers.

Three of the groups assessed — international organizations (such as the United Nations or the Council of Europe), NGOs and journalists — enjoy a relatively higher, but not particularly impressive, level of public trust in this regard.

The other groups — including businesses, civil servants and the general public — all received ratings that fell between the two extremes. These particular actors were also perceived to be the most passive and indifferent to anti-corruption efforts, indicating that they are least likely to actively engage in initiatives that either support or hinder the progress of reforms.

Many interviewees warned that apathy can be just as damaging as active resistance. They explained that although some anti-corruption measures may have been implemented over the years, the pervasiveness of corruption in Ukrainian society and its acceptance by much of the population exclude the prospect of any significant improvement.

Forms of opposition

The President

The President of Ukraine undoubtedly plays a crucial role in directing and supporting the country's efforts to reduce corruption. It is, therefore, troubling that all of the groups surveyed displayed scepticism about his commitment to government integrity. Within the surveyed groups, 54% of the public, 48% of the civil servants, 42% of the police, 81% of the journalists and 68% of NGO representatives indicated a belief that the President is opposed to a genuine anti-corruption effort. Moreover, 74% of the public and 73% of the civil servants interviewed identified lack of political will in the country's leadership as a factor that contributes to the spread of corruption. A smaller majority — 63% of the public and 51% of civil servants — feels that the absence of a realistic anti-corruption strategy precludes any progress.

Members of Parliament and the ruling political party

Parliamentarians received the most consistently negative evaluation. They were deemed to be opposed to reforms aimed at controlling corruption by between 78% and 87% of each of the groups surveyed.

In the in-depth interviews, the main criticisms put forward by participants regarding Members of Parliament include their reluctance to depart from the corruption entrenched in political life; their tendency to use the fight against corruption as a weapon against political opponents; their use of influence to prevent certain corruption offences from being exposed, investigated or prosecuted; and their wealth — openly flaunted by them and their families — which cannot be explained by their official revenues. It was further claimed that Members of Parliament attempt to give the impression of tackling abuses but, in reality, engage in a high degree of corruption themselves, understate their income and inappropriately intermingle their business and government interests.

In the opinion of the respondents, the primary responsibility that Members of Parliament and senior government officials have in promoting integrity is to design and ensure the implementation of a coherent anti-corruption policy. It was also repeatedly noted that these personalities must lead by example, which involves properly disclosing their income and expenses, reporting any illegal dealings by their colleagues and withdrawing from their outside commercial interests.

The judiciary

In the opinion of 74%–94% of the respondents in each of the groups surveyed, judges rank among the players most likely to actively oppose the anti-corruption effort.

Some of the questionable practices that the respondents believe to be common in the judiciary include: making illegal or unfair decisions in exchange for bribes or because of outside influence; extorting bribes, even for legal and fair decisions; showing undue leniency toward corrupt officials; and succumbing to political pressure.

The perception that those involved in the enforcement of anti-corruption laws are unable or unwilling to take action against government officials is particularly troubling. One participant in the in-depth interviews elaborated on the issue of impunity:

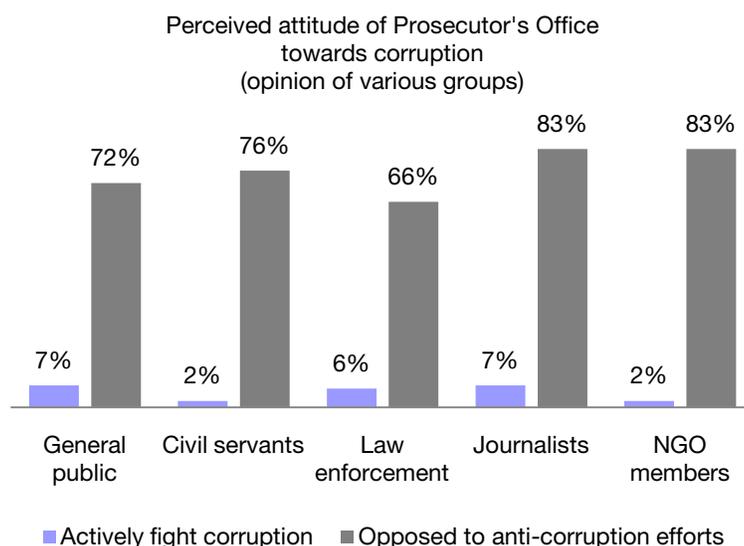
The main problem is that corruption has advantages for the government. By the government, I mean, first of all, those who make decisions at all levels of the government... Corruption is fundamental to their well-being, and they will do everything not to change anything in the country. And there is nobody to challenge this system. Law enforcement and the courts are under their total control.

Prosecutors

The Office of the Public Prosecutor has extensive responsibilities in the fight against corruption. However, no more than 7% of any group surveyed regarded prosecutors as active supporters of anti-corruption initiatives. Rather, they are generally seen to be likely opponents to progress.

The integrity of the Office of the Public Prosecutor is highly questionable, in the opinion of the respondents. The many corrupt practices that the office is believed to employ include: concealing or disregarding acts of corruption, particularly those involving law enforcement agencies; extorting bribes through threats of disclosure of incriminating information; closing the investigation or prosecution of corruption cases in exchange for bribes;

downgrading the legal classification of criminal offences in exchange for bribes; and assisting corporations in carrying out or concealing illegal transactions.



Law enforcement officers

Only 2–4% of members of the general public, NGOs and the civil service interviewed believe that law enforcement officers are committed to fighting corruption.

According to in-depth interviews that included law enforcement officers, the law enforcement agencies will not be able to carry out their anti-corruption role until the problem of their own corruption is addressed.

Customs and tax officials

For the members of the public interviewed, customs and tax inspection officers are the officials most likely to oppose anti-corruption efforts (both at 78%). A majority of each of the other groups surveyed also perceived these officials as a significant source

of resistance (consistently above 60%). Given the nature of their responsibilities, these agencies have a real capacity to resist anti-corruption efforts, particularly those that might eliminate the sources of illicit income that their officials rely on.

People in these positions could disrupt efforts to control corruption by concealing or ignoring information on, for example, undeclared income or illegal enrichment, or by using incriminating information in their possession to extort bribes. Customs and tax officers may also benefit from helping corporations evade taxes or gain an unfair advantage in bidding processes. The importance of the means available to these officials is demonstrated by the fact that 36% of the business people interviewed identified tax authority officials as "persons of influence" whom they rely on for informal assistance in their operations.

Capacity of organizations

A survey of law enforcement officials of anti-corruption units was conducted to assess their capacity to properly carry out their work.

With regards to staffing, the majority of respondents (54% of those from the Ministry of Interior, 56% from the tax police and 69% from internal security units) believe that at least three quarters of the employees in their units are properly qualified. Personnel development is assessed more critically. Of the law enforcement officers interviewed, 75% were of the opinion that flaws in their training programs hinder the detection and investigation of corruption offences. The in-depth interviews revealed a general lack of interest in dealing with anti-corruption matters, and the existence of widespread corruption among the main law enforcement agencies.

Inadequate funding is also a serious impediment to law enforcement activities. Of those law enforcement officers

interviewed, 93% were of the opinion that inadequate funding of law enforcement agencies inhibits their proper functioning, and 92% indicated that low salaries paid to the employees of those agencies hinders the detection and investigation of corruption cases.

The basic supplies and equipment necessary to carry out the work are also in dramatically short supply. More than half of those interviewed claimed that they did not have regular access to pens, papers, computer equipment, the Internet, communication devices, means of transportation or fuel. Frustrations were also voiced over a lack of funds to support surveillance operations or forensic investigations.

This lack of resources — beyond merely hindering anti-corruption work — encourages illegal activity within the enforcement agencies. As one officer stated:

Petty corruption allows police officers to make it through the week. It is money that can be used to eat, fill the gas tank to be able to arrest a criminal, or buy paper.

Similarly, low salaries were identified by 70% of law enforcement officers as a factor that prevents them from fighting mismanagement more effectively.

Beyond driving individuals to engage in corruption, the lack of adequate official funding has led agencies to rely on donations made through charitable foundations closely connected to them. Arguably, this is institutionalized corruption. As mentioned in the TORO Creative Union's 2011 *National Integrity System Assessment of Ukraine*, the Accounting Chamber reported that in 2007 over 400 million hryvnas (close to 50 million dollars) was given to law enforcement agencies and courts through private donations, and that in 2010, the Ministry of Interior admitted that about 500 automobiles are donated every year to police organizations.

Such donations are now proscribed by the 2011 anti-corruption law. It is too early to tell if this prohibition will have the expected effect.

Coordination

In the conduct of anti-corruption work, regular interaction and open communication between various agencies and within each agency are essential.

As part of the research, a survey aimed at gauging the level of cooperation between the Ministry of Interior, the tax police, internal security units and the Security Service with other agencies was conducted.

Overall, law enforcement officials favourably evaluate their cooperation with the prosecution service. Still, 28% of the Ministry of Interior employees surveyed, 36% of the tax police officers and 32% of the internal security officers believe that there are serious difficulties in the relationship with prosecutors.

With respect to collaboration with the Security Service, 28% of the Ministry of Interior employees, 30% of internal security officers and 11% of the tax police officers view it as problematic.

The Ministry of Interior seems to pose the most difficulties: cooperation with it is deemed to be poor by 41% of the surveyed tax police officers and 50% of the internal security officers.

Finally, 32% of the Ministry of Interior employees and 33% of the internal security officers believe that their units have serious issues in cooperating with the tax police.

The most common problems identified were an unwillingness to share information, the lack of uniformity in the statistical indicators used by the different agencies and competition in

achieving the required quotas. Other shortcomings identified were the flawed legal framework governing cooperation, conflicts of interest between central and local levels of administration, statistics-driven performance measurements and overlapping powers between agencies.

The European Commission, in its 2012 Visa Liberalization progress report for Ukraine, recommended that Ukraine:

Clarify the coordination between the prosecution service and the agencies conducting criminal investigations in corruption cases, and in particular the distribution of tasks among the special divisions of the Ministry of the Interior, those of the Security Service, the Military Law Enforcement Service and the tax police.

Similarly, GRECO in its 2006 First and Second round evaluation of Ukraine recommended improving the coordination between the various law enforcement agencies and improving the use and distribution of statistics. It also recommended that police and prosecutors working on matters of corruption receive specialized training.

Annex 1

RESEARCH METHODOLOGY

The survey methodology was designed in view of the need to develop a comprehensive understanding of corruption as a social and legal phenomenon in Ukrainian society. The research strategy employed quantitative methods to measure the scale and extent of corruption in the country and qualitative techniques to shed light on the socio-cultural factors contributing to the problem of corruption and the complexity of its uses in practice.

Quantitative methods

National survey

A national opinion survey of Ukraine's population was conducted from 1 June to 1 July 2010 (sample size $n = 2,027$ respondents) through face-to-face interviews. The survey used a quota, multilevel sampling method in the sample design to ensure a statistically accurate representation of Ukraine's population. Quota subsets included age, gender, profession and place of residence.

The statistical margin of error (0.95 probability, 2.3 without design effect, 1.62 with design effect) does not exceed 2.8% for values close to 50%, 2.1% for values close to 25% and 1.3% for values close to 10%. Ninety-five percent (95%) of the sample mean falls within ± 2 of the standard error of the mean of the sampled population.

Survey of civil servants

A total of 292 civil servants were interviewed in the public sector in five parts of Ukraine, 17 regions (oblasts), the Autonomous Republic (AR) of Crimea and the City of Kyiv. Within the sample, 18.9% worked in rural areas, 18.6% in district centres and 62.4% in cities. A snowball sampling method was used based on the officials' gender, rank, years of service, sector and level of public agency employment. The interviews were conducted face-to-face; for particularly sensitive data, some questions were answered in writing to increase quality and reliability.

Survey of law enforcement officers

A total of 730 law enforcement officers were interviewed. The survey was held in five parts of Ukraine, 23 regions, the AR Crimea and the City of Kyiv. In selecting the sample, anti-corruption units (departments, sections) of law enforcement authorities specializing in corruption counteraction were identified. Respondents were chosen based on the quota principle and subject to their position level, level of the employing agency (central, regional, district), employing authority (the Ministry of Interior, the National Security Service of Ukraine, the tax police, customs, the National Border Service, the Military Law Enforcement Service and internal security sections/departments) and years of service in law enforcement. The sample is representative of officers in specialized anti-corruption units. The survey was conducted in interview format.

Survey of journalists

A total of 100 journalists were interviewed. The interviews were held in the following regions: the City of Kyiv; the Regions of Lviv, Kharkiv, Donetsk, Poltava and Kherson; and the AR Crimea. Within the sample, there was representation across media formats: 49% printed media, 31% electronic media (television and radio), 12% Internet outlets and 8% freelance journalists. To be included in the sample, journalists also had to have reported on an anti-corruption issue within the preceding year. The interviews were conducted face-to-face. Some questions were answered in writing to increase the quality and reliability of particularly sensitive data.

Survey of NGO members

A total of 111 non-governmental organization representatives were interviewed. The sample was selected from a list of organizations that, in 2009–2010, had directly or indirectly expressed their willingness to become members of the community council at the Office of the Governmental Commissioner for Anti-corruption Policy. Selection from this pool was based on the assumption that these organizations would be the best informed on anti-corruption issues. In the subsequent analysis, the organizations were divided into two groups: "more active" organizations with anti-corruption experience and "less active" organizations with no or insignificant anti-corruption experience. The interviews were held in the following regions of Ukraine: the City of Kyiv; the Regions of Lviv, Ivano-Frankivsk, Kharkiv, Donetsk, Poltava and Kherson; and the AR Crimea. The interviews were conducted face-to-face. Some questions were answered in writing to increase the quality and reliability of particularly sensitive data.

Survey of businesspeople

A total of 304 respondents were interviewed across five parts of Ukraine, 13 regions, the AR Crimea and the City of Kyiv. The sample included business owners and senior executives (directors, deputy directors, unit heads). Respondents were selected using a snowball technique subject to gender, size of business (small, medium and big) and the business's main field of activity. The interviews were conducted face-to-face. Some questions were answered in writing to increase the quality and reliability of particularly sensitive data.

Survey of judges

A total of 103 judges were interviewed. The interviews were held in six regions of Ukraine that are representative of the main parts of country, and canvassed the views of judges in district courts and courts of appeal who had experience presiding over corruption cases. The interviews were conducted face-to-face.

Qualitative methods

Two series of qualitative studies were conducted. One was carried out simultaneously with the qualitative research. The other was carried out after they survey findings had been processed and analysed. The following methods were used:

In-depth interviews

A total of 278 in-depth interviews were held, encompassing two main groups of respondents: (a) "the general public," defined as representatives of the major social demographic groups of Ukrainian society, and (b) "target groups" that included the following categories of respondents: business people, civil servants, judges, journalists, "whistleblowers," political analysts, politicians, law enforcement officers, heads of public authorities in the anti-corruption field, and active NGO members. Respondents were selected using a snowball technique. The interviews were held in nine regions representative of the major parts of Ukraine.

Focus groups

A total of 15 focus group interviews involving a total of 129 participants were carried out over the course of the study. Respondents largely included members of the "target groups" identified in the preceding section, specifically, business people, civil servants, judges, journalists, "whistleblowers," political analysts, law enforcement officers, heads of public

authorities in the anti-corruption field, and active NGO members. Respondents were chosen according to a variety of criteria to ensure that the data collected was relevant to the objectives of the study. The focus groups were organized in nine regions of Ukraine.

Media content analysis

A qualitative and quantitative analysis of the content of press and Internet news reports published between 1 July 2009 and 1 July 2010 was carried out. The number of media stories containing the words or phrases "bribery," "corruption," "anti-corruption law," "corruption counteraction" and "corruption crime" was measured. The sample included the national weekly periodicals *Dzerkalo Tyzhdnia*, *Gazeta 2000*, *Syogodni*; the magazines *Focus* and *Korrespondent*; the specialized periodicals *Uriadovy Courier*, *Yurydychnyy Visnyk*, *Golos Ukrainy* and *Zakon i Bizness*; and the Internet news outlets *Ukrainska Pravda* and *Glavred*.

Annex 2

**NATIONAL ANTI-CORRUPTION STRATEGY
FOR THE YEARS 2011-2015**

Unofficial translation
Canada-Ukraine Combating Corruption in Ukraine Project

Decree of the President of Ukraine no 1001/2011

**ON THE NATIONAL ANTI-CORRUPTION
STRATEGY FOR 2011–2015**

In order to improve the legal and organizational framework to prevent and counter corruption, I hereby decree:

1. To approve the National Anticorruption Strategy for 2011–2015 (attached).
2. The Decree of the President of Ukraine of September 11, 2006, №742, "On the Concept Paper for Overcoming Corruption in Ukraine *On the Way to Integrity*," shall be deemed to have lost force.
3. The Decree comes into force on the day of its publication.

The President of Ukraine
Viktor Yanukovich
October 21, 2011

APPROVED
by the Decree of the President of Ukraine
of 21 October 2011, No 1001/2011

**THE NATIONAL ANTICORRUPTION STRATEGY
FOR THE YEARS 2011–2015**

I. General provisions

Corruption in Ukraine shows signs of being a system-wide phenomenon that afflicts all areas of social life and is becoming entrenched as an instrument to solve problems and achieve goals. The scale of the proliferation of corruption threatens the national security of Ukraine.

Therefore, it is required to urgently take systematic and consistent steps of a comprehensive nature in line with the National Anticorruption Strategy for 2011–2015 (hereinafter, the National Anticorruption Strategy.)

In the context of the socio-economic reforms currently being implemented in the state, the key priorities of the anticorruption policy should be to identify and eliminate factors that contribute or may contribute to corruption, as well as to prevent attempts to generate such factors.

The National Anticorruption Strategy builds on an analysis of the situation with regard to various forms of corruption in Ukraine, international experience and the recommendations of international organizations arising from the results of monitoring and evaluating the prevention and counteraction of corruption in Ukraine.

II. Situation analysis

Launching the process for reforming national anticorruption legislation — in particular, adopting the Law of Ukraine "On the Fundamentals of Corruption Prevention and Counteraction" and the Law "To Amend Certain Legal Acts of Ukraine on Liability for Corruption" — is the key feature of the current situation in the fight against corruption in Ukraine in 2010–2011. With a view to curbing corruption, court, tax and administrative reforms have been undertaken; a reform of criminal justice system has been started; and mechanisms for public access to information and free legal aid for citizens have been enhanced.

Nevertheless, despite the range of measures undertaken, the process of reforming national anticorruption legislation is incomplete. The following issues require legislative regulation:

- streamlining administrative procedures and the rendering of administrative and other public services;
- providing for the liability of legal persons for corruption offences committed by their designees;
- improving the instrument of seizure; and
- prosecuting corruption offences of individuals who have immunity.

Based on research results, including social surveys, the following sources for the generation and proliferation of corruption in Ukraine have been identified:

- a lack of integrity among individuals authorized to perform functions of the state or local self-government;
- pitfalls in administrative procedures (a lack or vagueness thereof);
- a broad spectrum of discretionary powers of public authorities or persons authorized to perform functions of the state or local self-government;
- a lack of correlation between the scale of remuneration and the scope of duties of persons authorized to perform functions of the state or local self-government;

- an unfavourable regime for business operations and preferential economic privileges for certain categories of entrepreneurs;
- low efficiency of measures taken by law enforcement and public prosecution bodies and courts to bring to account those liable for committing corruption offences;
- tolerance of and a lack of critical attitude toward corruption among the public; and
- public perceptions of corruption as one of the means to achieve desired outcomes.

The proliferation of corruption in the state inflicts considerable damage on the entire system of administration and, unless relevant measures are taken, can produce or aggravate the following effects:

- undermine the reputation of public and government authorities;
- delay the modernization and growth of the national economy and interfere with the principles of competition;
- lead to an increase in prices due to the inclusion of the costs of bribery in the pricing of goods and services;
- undermine the investment prospects of the state; and
- compromise the role of the law as a universal regulator of social relations and its transformation into a tool to serve private and corporate interests.

III. Purpose and objectives of the National Anticorruption Strategy

The purpose of the National Anticorruption Strategy is to reduce the rate of corruption in Ukraine by eliminating the factors that generate corruption through implementing preventive measures, strengthening the due process of law and developing intolerance for and disapproval of corruption as a socially dangerous phenomenon by means of the joint efforts of governmental and non-governmental institutions, together with the participation of international organizations.

The National Anticorruption Strategy has the following objectives:

- to outline the range of sources and factors that generate corruption in order to identify the ways to minimize the factors that contribute to corruption and its adverse effects;
- to identify government policy priorities in the area of corruption prevention and counteraction;
- to enhance trust in public authorities and local self-government bodies; and
- to establish a system to monitor the effectiveness and enforcement of the legislation.

IV. Principles of enforcement of the National Anticorruption Strategy

Successful corruption counteraction is impossible without the following elements in place:

- adequate anticorruption legislation, its effective enforcement by respective public and local self-government authorities, and the coordination of their activities;
- an efficient corruption counteraction system in place in all sectors of activity of the public and local self-government authorities at all levels;

- transparency and public awareness of the measures taken to prevent and counter corruption;
- cooperation between associations of citizens and public and local self-government authorities in the development and implementation of the government anticorruption policy; and
- support of civil society for the anticorruption efforts of the state.

The implementation of the National Anticorruption Strategy shall be based on the following fundamental principles:

- equality before the law;
- the enforcement of citizen and human rights and freedoms in interactions with public and local self-government authorities;
- compliance with legal provisions in the area of corruption prevention and counteraction; the unavoidability of legal liability for committing a corruption offence;
- priority given to preventive anticorruption measures;
- openness and transparency of public and local self-government authorities in implementing the National Anticorruption Strategy; and
- the joint efforts of the government and the public in curbing corruption as a system-wide phenomenon in all areas of social life.

V. Main areas of implementation for the National Anticorruption Strategy

To implement the National Anticorruption Strategy, coordinated efforts of public and local self-government bodies are required with several aims in view:

- 1) to reform the system of public governance and administrative procedures:
 - a) by finalizing the division of responsibilities among public authorities for rendering services and performing monitoring and oversight functions (inspections);
 - b) by employing new techniques to enhance the objectivity and ensure the transparency of decisions made by public authorities, including the accelerated introduction of computerized document management systems and electronic digital signatures at the national and regional levels;
 - c) by broadening the scope of application of the principle of "tacit consent" in issuing endorsement, appraisal and licensing documentation, etc.;
 - d) by the rendering of administrative services solely by public authorities and state-funded organizations;
 - e) by providing through legislation for an exhaustive list of administrative services, together with their fee-based or fee-free basis and their reasonable terms for providing such services;
 - f) by terminating the practice of breaking down administrative services into individual fee-based services and by ensuring result-oriented work;
 - g) by introducing a ban on public and local self-government bodies rendering services of a business nature; and

- h) by abandoning the practice of territorial monopolism in the rendering of administrative services and by creating alternatives for choosing public bodies that provide administrative service.
- 2) to relieve entrepreneurs from administrative pressures and to prevent the operation of a shadow economy:
 - a) by considerably reducing the number of licences and permits in the area of business activities, and by simplifying and reducing the time frames for licensing procedures to the highest extent possible;
 - b) by eliminating technical barriers, introducing "single points of contact" and ensuring the computerization of document management to the highest extent possible;
 - c) by limiting the number of inspections by tax and oversight authorities; and
 - d) by preventing undue pressures on entrepreneurs from law enforcement and public oversight authorities.
- 3) to maintain integrity in the civil service and in local self-government service:
 - a) by improving the civil service and the local self-government service on a systematic basis, in particular with respect to the competitive selection of candidates (mechanism for staffing decisions), staff deployment, employment in the civil service and the local self-government service;
 - b) by legislatively setting ethical standards of behaviour of persons authorized to perform public or local self-government functions and by establishing mechanisms for resolving conflicts of interest in their activities, based on the Model Code of Conduct for Public Officials of member states of the Council of Europe, and by accounting for other international legal standards in this area; and
 - c) by optimizing the ratio of the base salary (official salary flat rate) depending on the complexity of duties, the level of authority and any additional remuneration (bonuses, supplements), to be determined based on performance at management's discretion.
- 4) to improve the terms governing access to information on the activities of public authorities and local self-government bodies for physical and legal persons and for associations of citizens without a legal person status:
 - a) by continuing to design an effective mechanism of access to information on activities of public authorities and local self-government bodies, their officials and staff members for physical and legal persons and associations of citizens without a status of a legal person;
 - b) by fostering the active exchange of information among associations of citizens, the mass media and public authorities and local self-government bodies; and
 - c) by ensuring transparency in the operations of public authorities and local self-government bodies.

- 5) to improve the system for the use of public property and the spending of public funds:
 - a) by improving the practice of conducting external independent audits to monitor spending of funds from local budgets;
 - b) by completing an inventory of publicly owned companies and organizations and by compiling a Consolidated Registry of Public Properties;
 - c) by improving the legislation governing public procurement procedures and by establishing a system for their external audits, to ensure transparency in the public procurement process;
 - d) by improving the system of control over the use of public property with a view to preventing illicit proceeds being obtained by civil servants or, with their assistance, by other persons or groups;
 - e) by creating an effective mechanism for legitimizing the (shadow) equity market and equity contract payments;
 - f) by monitoring the effectiveness of public budget spending in the course of implementing national programs for economic, scientific and technical, social and national cultural development and environmental programs by the Chamber of Accounts; and
 - g) by improving the mechanisms for engaging the public in the monitoring of the lawful and effective use of public property and the spending of public funds.
- 6) to optimize the funding of political parties and election campaigns by setting clear financial rules and by introducing an efficient and independent financial monitoring system.
- 7) to improve the expert review of anticorruption by introducing a multi-level methodology for the assessment of corruption risks in legislation, including at the level of legislative drafters (formalized self-assessment); the level of the Ministry of Justice (official anticorruption expertise of legislative drafts); and the level of public review ensured through a transparent legislative drafting procedure and public accessibility to information.
- 8) to ensure public support of the government efforts to prevent and counter corruption:
 - a) by facilitating broad media coverage of anticorruption measures taken by public authorities and local self-government bodies; and
 - b) by providing for a procedure for regular reporting on corruption prevention and counteraction by the public authorities responsible for the implementation of the government anticorruption strategy.
- 9) to enhance the framework of special agencies responsible for corruption counteraction: by analyzing the performance of special designated entities (commissioners) in the area of corruption counteraction and, based on the results of analysis, by taking measures to improve these entities' performance:
 - a) by developing the uniform application of laws in law enforcement and judicial bodies in cases related to corruption;

- b) by introducing the specialization of prosecutors and investigators in cases concerned with abuse of public office; and
 - c) by promoting cooperation between law enforcement authorities and non-governmental organisation and the mass media.
- 10) to improve the professional level of judges, prosecutors and law enforcement officers: by developing and introducing a system of ongoing training on the application of the new anticorruption legislation for professional judges and nominees for the positions of professional judges, staff members of law enforcement and public prosecutor's bodies.
- 11) to prevent corruption in the law enforcement authorities:
- a) by undertaking an institutional reform of the public authorities conducting inquiries, investigations and criminal prosecution;
 - b) by improving the system for the professional recruitment and training of staff members of law enforcement authorities countering corruption;
 - c) by replacing quantitative indicators for the evaluation of law enforcement authorities operations with performance quality-based criteria; and
 - d) by developing a range of initiatives to ensure the effective and objective prosecutorial oversight of the operations of law enforcement authorities.
- 12) to improve the enforcement of liability for corruption offences:
- a) by providing for the liability of legal persons for corruption offences committed by their designees;
 - b) by improving the instrument of seizure;
 - c) by reviewing the procedure for issuing warrants to bring to criminal liability, detaining or arresting persons who have immunity in cases when they are caught in the act of committing grave crimes (*in flagrante delicto*), including corruption;
 - d) by developing a mechanism to recover property damages and losses resulting from corruption offences committed by physical and legal persons; and
 - e) by developing protection mechanisms for persons who, in the event of detection of a corruption crime, have taken measures to stop it and have reported such offences immediately.
- 13) to reduce the corruption rate in the private sector:
- a) by promoting legal anticorruption awareness of citizens through implementing public education campaigns and establishing a system of anticorruption education in comprehensive, vocational and higher education institutions, regardless of their form of ownership;
 - b) by promoting transparency in the activities of non-governmental organizations and private law corporations; and
 - c) by contributing to the development of internal mechanisms for the monitoring and prevention (detection) of corruption offences in the private sector.

- 14) to lower corruption rates in high corruption-risk areas, including the sectors of law enforcement, medicine, land, education and customs, in the public procurement and civil service:
- a) by updating the legislative framework in high corruption-risk areas (law enforcement, medicine, land, education and customs, in the public procurement and civil service);
 - b) by improving the wage rates and social security of employees;
 - c) by raising professional standards and enforcing a stricter professional selection of staff members; and
 - d) by reducing the number of formal procedures.
- 15) to promote international cooperation in the area of corruption prevention and counteraction:
- a) by bringing the anticorruption policy of Ukraine into compliance with international standards in the area of corruption prevention and counteraction;
 - b) by developing and signing international (interdepartmental) bi- and multilateral cooperation agreements in the area of corruption prevention and counteraction;
 - c) by ensuring further cooperation with partner special agencies and law enforcement bodies in the area of corruption counteraction;
 - d) by introducing best international practices in the area of corruption prevention and counteraction, primarily in respect of whistleblowing;
 - e) by building an image of Ukraine as a state where corruption is being actively countered; and
 - f) by securing international support for these efforts.

VI. Expected outcomes

The implementation of the National Anticorruption Strategy will allow the following:

- developing domestic legislation in the context of compliance with the international anticorruption standards provided for by the *United Nations Convention Against Corruption*, the *Criminal Law Convention on Corruption*, the *Civil Law Convention on Corruption* approved as binding by the Verkhovna Rada of Ukraine, as well as in the context of compliance with GRECO and other international institutions' recommendations;
- improving the efficiency of a corruption prevention and counteraction system;
- reducing the corruption rates in the law enforcement system and in other public authorities and local self-government bodies;
- scaling down the shadow economy; and
- developing an active attitude among the public toward corruption prevention and counteraction.

VII. Funding the implementation of the National Anticorruption Strategy

The implementation of the National Anticorruption Strategy shall be funded from the public budget, local budgets and other lawful sources.

An annual review of the effective spending of public budget funds on the implementation of the National Anticorruption Strategy through the State Programme for Corruption Prevention and Counteraction for years 2011–2015, with further consideration of its outcomes at the National Anticorruption Committee meetings, shall be performed by the Chamber of Accounts.

VIII. Scientific support for the implementation of the National Anticorruption Strategy

Leading scientific institutions of the state shall provide scientific support for the implementation of the National Anticorruption Strategy.

IX. Mechanism for the implementation of the National Anticorruption Strategy

The National Anticorruption Strategy shall be implemented through the design and approval of the State Programme for Corruption Prevention and Counteraction for the years of 2011–2015 that, in its structure, shall comply with the National Anticorruption Strategy and contain a list of initiatives, their scope and sources of funding, expected outcomes, indicators, deadlines and executive agents as well as partners in the implementation of initiatives.

X. Monitoring and evaluation

Developing and implementing a system of monitoring and evaluation is a prerequisite for the successful implementation of the National Anticorruption Strategy. The monitoring and evaluation of the implementation of the National Anticorruption Strategy shall be performed by the National Anticorruption Committee. With a view to ensure objective and impartial monitoring, non-governmental organizations and independent institutes shall be involved.

Evaluation of the implementation of the National Anticorruption Strategy shall be based on the results of the implementation of the State Programme for Corruption Prevention and Counteraction for the years of 2011–2015, the ranking of Ukraine in international ratings (economic freedom, investment potential, transparency etc.), the results of monitoring of Ukraine by international organizations, social studies and public opinion polls.

Head of the Administration of the President of Ukraine S. LYOVOCHKIN

Annex 3

TIMELINE

SELECTED MAJOR EVENTS 1991 – 2011

- 1991** 24 August
Parliament of the Ukrainian Soviet Social Republic declares the independence of Ukraine from the USSR.
- 1 December
Referendum on the independence of Ukraine. 84.18% of the electorate takes part in the referendum; 90.32% of people vote in favour of independence.
Leonid Kravchuk is elected Ukraine's first President.
- 1992** 14 October
Leonid Kuchma is appointed Prime Minister of Ukraine.
- 1994** 27 March
The first parliamentary elections of independent Ukraine are held.
- 19 July
Leonid Kuchma is elected President of Ukraine.
- 1995** 9 November
Ukraine becomes a member of the Council of Europe.
- 1996** 28 June
The Constitution of Ukraine is adopted.
- 1999** 14 November
Leonid Kuchma is re-elected President of Ukraine.
- 18 December
Viktor Yushchenko, former director of the National Bank of Ukraine, is appointed Prime Minister.
- 2001** 26 April
Viktor Yushchenko is dismissed by a parliamentary vote of no confidence.
- 2002** 20 November
Viktor Yanukovych is appointed Prime Minister by President Leonid Kuchma.
- 2004** 1 November
First round presidential vote.
Yushchenko wins 39.87% of the vote; Yanukovych, 39.32%.
- 24 November
Second round presidential vote.
Yanukovych is declared the winner with 49.64% of the vote.

International and domestic election observers cite irregularities. Citizens nationwide protest the election results. The events are dubbed the "Orange Revolution".

27 November

Parliament passes a non-binding resolution declaring it will not accept the results of the election.

3 December

The Supreme Court declares the presidential election results invalid and orders a new vote.

8 December

Parliament adopts amendments to the constitution that replaces the strong presidential system with a parliamentary system.

26 December

Second-round presidential vote. International observers declare the election to be free and fair.

2005

10 January

The Central Election Commission declares Viktor Yushchenko elected with 51.99% of the vote.

25 January

Yulia Tymoshenko is appointed Prime Minister.

8 September

President Yushchenko dismisses Prime Minister Yulia Tymoshenko and her cabinet, bringing to an end the "Orange" coalition.

2006

1 January

The constitutional amendments that shifted the balance of powers from a strong presidential system to a parliamentary system enter into force.

26 March

Parliamentary elections.

Viktor Yanukovich's Party of Regions wins the most seats, but fails to win a majority.

10 July

The Party of Regions signs a coalition alliance agreement with the Socialist and Communist Parties of Ukraine, forming a majority in Parliament.

4 August

Viktor Yanukovich is appointed Prime Minister.

2007

2 April

The President signs a decree dissolving Parliament. Early elections are called.

30 September

Parliamentary elections. A majority of seats is gained by a coalition of Yulia Tymoshenko's Bloc and Our Ukraine-People's Self-Defence Bloc.

18 December

Yulia Tymoshenko is elected as Prime Minister.

- 2010** 17 January
First round presidential elections are held. Viktor Yanukovich and Yulia Tymoshenko qualify to progress to the second round vote.
- 7 February
The second round presidential vote is won by Viktor Yanukovich with 48.95% of the vote.
- 3 March
Parliament dismisses Yulia Tymoshenko's cabinet through a vote of non-confidence. She resigns as Prime Minister.
- 11 March
The Stability and Reform coalition is formed by President Yanukovich's Party of Regions, the Communist party and the Lytvyn Bloc. Mykola Azarov is appointed Prime Minister.
- 1 October
The Constitutional Court of Ukraine strikes down the 2006 constitutional amendments. The 1996 constitution is reinstated, increasing presidential powers.
- 2011** 17 November
Parliament adopts a new electoral law, setting the next parliamentary elections for October 2012 and instituting a mixed majoritarian-proportional system.
- 2012** 28 October
Parliamentary election

SELECTED SOURCES

Carnegie Endowment. — Reforming the Ukrainian Economy under Yanukovich : The First Two Years. — 2 April 2012.

<http://carnegieendowment.org/2012/04/02/reforming-ukrainian-economy-under-yanukovich-first-two-years#>

Charity Fund of the Counterpart Artistic Centre. — Стан та динаміка розвитку неурядових організацій в Україні. 2002-2010 роки./Любов Паливода, Світлана Голота.- Київ, ВД КуПол, 2010.

Chekoukhine, Serguei and King, Joseph. — Corruption networks as a sphere of investment activities in modern Russia. — Communist and Post-Communist Studies, Volume 40, January 2007, pages 107-122.

European Commission. — Second progress report on the implementation by Ukraine of the Action Plan on Visa Liberalisation. — Brussels, 9 February 2012.

Freedom House. — Nations in Transit 2011 : Ukraine.

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Ukraine.pdf>

Freedom House. — Freedom of the Press 2011 : Ukraine.

www.freedomhouse.org/report/freedom-press/2011/ukraine

Gorodnichenko, Yuriy and Peter, Klara Sabirianova — Public Sector Pay and Corruption : Measuring Bribery from Micro Data. — 25 November 2006.

Group of States against Corruption (GRECO). — Joint First and Second Evaluation Rounds : Evaluation Report on Ukraine. — GRECO Eval I-II Rep (2006) 2E — Strasbourg, 21 March 2007.

Group of States against Corruption (GRECO). — Third Evaluation Round : Evaluation Report on Ukraine, Transparency of Party Funding (Themes II). — GRECO Eval III Rep (2011) IE — Strasbourg, 21 October 2011.

InMind Factum Group. — Каждый третий украинец пользуется интернет не реже раза в месяц.

<http://www.inmind.com.ua/press/openresult/244/>

International Foundation for Electoral Systems. — Key Findings : Public Opinion in Ukraine. — July 2011.

International Labour Organization and Main Department of Civil Service of Ukraine. — Report on the National Seminar on Social Dialogue on Remuneration and Pension Matters in the Ukrainian Civil Service. — Kiev, 2006.

Kharkiv Human Rights Protection Group. — UHHRU : Stop persecution of human rights activists.

<http://khp.org/en/index.php?id=1288302633>

Main Department of Civil Service. — 2009 Annual Report (ГОЛОВНЕ УПРАВЛІННЯ ДЕРЖАВНОЇ СЛУЖБИ УКРАЇНИ). — Kiev, 2010.

Management Systems International and Kiev International Institute of Sociology. — Corruption in Ukraine : Comparative Analysis of National Surveys : 2007-2009 for the MCC Threshold Country Program. — May 2009.

Ministry of Foreign Affairs of Ukraine. — Mass Media in Ukraine.
<http://www.mfa.gov.ua/mfa/en/280.htm>

Ministry of Justice of Ukraine. — Report on the results of taken measures on prevention and countering corruption in 2011 — Kyiv, April 2012.
http://www.minjust.gov.ua/0/anti_corruption_report_11

OECD Anti-Corruption Network for Eastern Europe and Central Asia. — Ukraine : Istanbul Anti-Corruption Action Plan Second Round Monitoring Report. — Paris, 8 December 2010.

Razumkov Centre. — 2009 survey - Експертна і громадська думка про політичну корупцію в Україні: опитування Центру Разумкова // Національна безпека і оборона №7. - 2009 – с. 48 –
http://www.uceps.org/ukr/files/category_journal/NSD111_ukr.pdf

Reporters without Borders. — 2011-2012 International Press Freedom Index. — Paris, 2012.
http://en.rsf.org/IMG/CLASSEMENT_2012/EUROPE_ANG.pdf

Raiser, Martin. — Are Wages in Ukraine too Low? What Could Be Done to Increase Them? — World Bank Working Paper No. 47372. — Washington, The World Bank, April 2007.

State Statistics Committee of Ukraine. — Ukraine in figures 2010. — Statistical publication, Kiev 2011.

Telekritika. — «Стоп цензурі!», УМА та НМПУ : 2011-й став роком погіршення свободи слова
http://www.telekritika.ua/news_cenzura/2011-12-22/68285

The Heritage Foundation. — 2012 Index of Economic Freedom : Ukraine.
<http://www.heritage.org/index/country/ukraine>

The World Bank. — Business Environment and Enterprise Performance Survey (BEEPS) At-A-Glance 2008 : Ukraine. — Washington, The World Bank, January 2010.

The World Bank. — Ease of doing business in Ukraine 2012.
www.doingbusiness.org/data/exploreeconomies/ukraine/

The World Bank. — Shadow Economies All over the World. — Policy Research Working Paper No.5356. — Washington, The World Bank, July 2010.

The World Bank. — World Development Indicators databank, 2011.
http://data.worldbank.org/data-catalog/world-development-indicators?cid=GPD_WDI

TORO Creative Union. — National Integrity System Assessment: Ukraine 2011. — Kirovohrad, TORO Creative Union, 2011.

Transparency International. — Corruption Perception Index 2011.
<http://cpi.transparency.org/cpi2011/results/>

Transparency International. — Global Corruption Barometer 2010.
http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results

United Nations Education, Statistics and Cultural Organization. — Global Education Digest :
Comparing Education Statistics across the World. — Montreal, UNESCO Institute for Statistics,
2010.