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CURBING CORRUPTION: IDEAS THAT WORK | SEPTEMBER 2015

The Fight for Ukraine's Soul

Why Ukraine's effort to curb corruption is a Sisyphean task.

by Frank Brown

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ABOUT CURBING CORRUPTION: IDEAS THAT WORK

The *Democracy Lab* and Legatum Institute have commissioned a series of case studies that examine specific interventions against corruption which have produced positive results. The aim is to tell a set of stories that illustrate how combatting corruption works in practice, which may offer insight on some of the larger issues across the globe. The papers will form the basis of a conference in September 2015, and will focus on broader themes, such as developing methods to combat corruption, promoting good outcomes, and measuring success. The goal of this project is to identify ideas that do and don't work and share them with the wider anti-corruption and policy communities.

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The Fight for Ukraine's Soul

Why Ukraine's effort to curb corruption is a Sisyphean task.

About the author

Frank Brown is a Senior Program Officer at the Center for International Private Enterprise (CIPE), a Washington-based non-profit organisation that supports anti-corruption efforts in emerging markets.

Valentina Stoikova is no revolutionary—yet she now finds herself on the front lines of change in her home country of Ukraine. A 57-year-old former aeronautics factory worker, she's spent the past 14 years running an organisation called the Fund for the Support of Entrepreneurship in her hometown, the city of Izmail on the Danube River. So when a maverick governor championing anti-corruption shock therapy asked Stoikova (who was, at the time, a partner of my organisation, the [Center for International Private Enterprise](#)) to take over the local regional administration a few weeks ago, she had to think a bit. "For years I had complained that the government doesn't let business do business," she says. "So joining the government was not a simple decision to make. But I made it." In the coming months, Stoikova's mandate will be a challenging one. She aims to fire up to half of the local government's 90 civil servants, to open up to public scrutiny the process by which lucrative local fishing rights are allotted, and to work with local law enforcement to crack down on corruption.

This is all a perfect fit with the plans of her boss, the governor of the Odessa region, of which Izmail is a part. The city of Odessa, at the region's heart, is a seaport notorious throughout Eurasia for its [smuggling](#), racketeering, and general air of lawlessness. The new governor is none other than Mikheil Saakashvili, the former president of Georgia, who is now leading a second life as Ukraine's most prominent anti-corruption crusader. Using a model that he applied successfully in Georgia in the mid-2000s, Saakashvili is traveling frenetically across the province, meeting with anti-corruption activists like Stoikova, firing officials suspected of malfeasance, and listening to the corruption complaints of citizens on live TV. Since President Petro Poroshenko granted him Ukrainian citizenship and appointed him to the governorship in June, Saakashvili has personified the national campaign against corruption and won material and rhetorical support from Ukraine's friends abroad.

Saakashvili is a figure of intense controversy. In his Georgian homeland, he is currently wanted on charges of abuse of power. Saakashvili denies the allegations, which he dismisses as a ploy of his political rivals; critics insist that his government violated the rights of many Georgians, often in the name of anti-corruption. A year ago, Saakashvili was the subject of a gently mocking *New York Times* [profile](#) detailing his life in exile in Brooklyn. Now he is the most prominent member of a large contingent of former Georgian officials appointed to key positions in Ukraine. As of early September, Saakashvili has been highly visible on the national stage, attacking the prime minister's handling of reforms on television and attracting [26,000 signatures on a petition](#) to have him named prime minister.

Some seasoned Ukraine-watchers dismiss it all as so much theatre. "Saakashvili in Odessa is a sideshow because Odessa is not Kiev," says the Washington-based economist Anders Aslund. "The key is whether the top politicians really want to limit corruption, and there are obvious doubts about that in Ukraine." Aslund has a point. All the anti-corruption laws, negotiations for bailout packages, and pushy Western ambassadors calling for less rhetoric and more arrests are centred in the capital. Others argue that Ukraine's reformist government needs some quick

anti-corruption wins to boost its legitimacy with voters and international lenders. If those wins are credited to a swashbuckling Georgian with a complicated past, so be it.

Ukraine is a unitary state of 45 million people. The political, legal, and financial power to tackle the country's environment of corruption lies overwhelmingly in Kiev. President Poroshenko, a billionaire businessman elected on a pro-reform platform in May 2014, has a strong voice in the composition of various anti-corruption bodies. Most significantly, Poroshenko nominates the head of the Office of the General Prosecutor, an entity that one long-time Western observer of Ukraine corruption describes as "the largest organised crime structure in the country."

Nearly two years ago, peaceful street protests broke out in the heart of Kiev—the Maidan—over then-President Viktor Yanukovich's abrupt decision not to pursue closer ties with the European Union. The protests escalated, turned violent, and spread nationally, simultaneously destabilising the country and empowering citizens. Many of the most diehard protesters were particularly angry about corruption, whether expressed by the state capture of entire industries, the predatory police, or bribe-seeking kindergarten directors.

Now, with the dust settled, Ukraine has a reformist, Western-facing president and parliament. They have declared reducing corruption a top priority. Prominent Maidan leaders are either in elected office or leading the non-government organisations that are busy holding government accountable to its promises of reform. Western donors have pledged to help fulfil those promises.

But the costs are high and the distractions many. Ukraine has lost both the Crimea and control of a chunk of its industrial heartland, the Donbas, that had accounted for 20 percent of GDP. The Donbas appears to be in the early, violent stage of what could become a long, frozen conflict with Russia, a familiar pattern in the former Soviet Union. 1.4 million people have been displaced. 7,800 soldiers and civilians are dead. The economy is in free fall: forecasts predict negative growth of 9 percent for this year along with a 46 percent rate of inflation. An estimated \$27 billion in foreign support will be necessary in 2015 to avoid systemic collapse.

Has it been worth it? EU accession is many, many years away, if ever. Peace in eastern Ukraine depends on the whims of an unpredictable neighbour with vastly superior resources. A dramatic economic turnaround will not happen without painful austerity measures, higher home energy prices, and the reduction of workforces at inefficient government-owned factories that employ tens of thousands. In the near term, the one area where the government can begin to deliver tangible, positive results to the population is the battle against corruption.

Nearly a year ago the president signed a set of anti-corruption laws based largely on international best practices and designed with citizen oversight in mind. Despite tremendous demand from the populace and constant entreaties from Western governments, two of the three key anti-corruption institutions have yet to start functioning. According to a recent report from Transparency International Ukraine, the biggest brakes to progress are the oligarchs' capture of political parties and the

government's slowness in actually creating the independent anti-corruption bodies as required by law.

Now, after months of dithering and haggling, some progress is visible. The government has quickly moved to establish its credentials with a few, easy-to-implement populist moves on the Georgian model. Education officials are piloting an online admissions process aimed at eliminating the need to bribe officials in charge of state-run kindergartens. The Interior Ministry has overseen the mass firing of long-time traffic police officers and their replacement with deployed or soon-to-be-deployed, newly trained, Western-style cops by the thousands in Kiev and a number of other cities.

Less visible to the average Ukrainian, but fundamental to reducing corruption, is the reform of government procurement systems. A joint program between ProZorro, a Ukrainian alliance of dozens of private and public sector bodies, and the Washington-based Open Contracting Partnership, is yielding results in the Ministry of Defense and other government institutions that are now saving up to 12 percent on contracts. Contracts are now awarded based on their objective merits, rather than on opaque personal connections. The results of the procurement pilot project are expected to inform a sweeping draft law "On Public Procurement," under consideration by Parliament.

For business, revamped customs procedures are designed to simplify a process long exploited as a revenue source for corrupt offices. So far, the new customs regime is getting mixed reviews: some smaller importers are seeing more paperwork, not less. In Odessa, the gateway for 70 percent of Ukraine's marine imports, the man coordinating anti-corruption reforms, Zurab Adeishvili, is focused on reducing customs clearance times as key to both reducing corruption and boosting investment. "Our target is to clear goods within 15 minutes for the green corridor and about an hour for the red corridor," says Adeishvili, a former Minister of Justice in Georgia, who, like his current and former boss Saakashvili, faces charges in his native country stemming from his own time in office.

While such initiatives undoubtedly have their value, larger systemic issues that would really demonstrate progress remain to be tackled. For a sense of how the overall anti-corruption fight is faring, scrutiny must focus on the high-profile constellation of efforts in Kiev, home to the anti-corruption infrastructure of interlocking government institutions, reformist elected officials, watchdog NGOs, and investigative journalists.

An anti-corruption unit of the Office of the General Prosecutor that is still being formed is, many believe, the most vulnerable element of Ukraine's emerging anti-corruption machinery. With years' worth of files implicating the country's elites and the discretion to either pursue an investigation or let it languish, this office, in the eyes of watchdog organisations, has the power to upend the status quo—or not.

Another important player in the anti-corruption fight is Prime Minister Arsenii Yatsenyuk, who is elected by parliament and presides over the Cabinet of

Ministers, a body that plays a key role in implementing anti-corruption reforms, especially the low-profile but essential work involved in reorienting 300,000 bureaucrats from venality to integrity. Like Poroshenko, Yatsenyuk has proven deft at translating the anti-corruption demands of international lenders into concrete laws and structures. Those anti-corruption reforms require the approval of Ukraine's parliament, the Verhovna Rada, a rambunctious body long known for its fistfights and for attracting legislators more interested in gaining immunity from prosecution than in serving their constituents. (The photo above shows a parliamentary brawl last December after one group of lawmakers accused others of accepting bribes.)

But a new Rada elected in October 2014 has a critical mass of reformers, many of them prominent veterans of the Maidan movement. One of the new Rada's first orders of business a year ago was to approve three pieces of anti-corruption legislation demanded by civic activists, the international community, and the president's office. Those laws, based upon international standards that have proven effective in countries ranging from [Croatia](#) to [Indonesia](#), offer a strategy for shifting Ukraine out of its long-standing place as one of the world's most corrupt states. (It [ranks](#) 142 out of 175 countries in Transparency International's most recent Corruption Perceptions Index.)

In the year since then, progress in implementing these new laws has been steady but slow. The negative bottom line: pre-Maidan officials with a strong taint of corruption have avoided investigation; the number of high-level convictions has been precisely zero. As a result, citizens are increasingly indignant—despite the recent passage of the populist measures described above. That [frustration with corruption](#) is palpable.

Answers to three questions from a [July 2015 poll](#) of 1,200 Ukrainians by the International Republican Institute are especially telling. First, a majority of respondents believe that the fight against corruption is going less well under the current government than under the previous government of Viktor Yanukovich. Second, the poll found that Ukrainians believe corruption to be the biggest issue facing the country after the war in the East. Finally, approval ratings for Poroshenko and Yatsenyuk are low, at 24 percent and 11 percent respectively. Another poll, this one by the Kiev-based Razumkov Center in May 2015, captures the primal rage many feel towards venal politicians. Asked whether they would "support the implementation of the death penalty for officials who are guilty of corruption," respondents were evenly split.

If the stakes are so high for Ukraine's elected leaders, why the [sluggish progress](#)? Observers offer several explanations. The war in the East is one. "Conflict just adds to the opportunities for non-transparency. It makes corruption easier," says [Oleh Havrylyshyn](#), a Canadian academic who worked as Ukraine's deputy finance minister in 1992 and later with the International Monetary Fund. Based partly on conclusions drawn from his experience of conflict-torn countries in Africa, Havrylyshyn observes that "if the leaders who talk about corruption are not

actually that serious, the war effort provides a diversion from other social and political problems.”

Robert Orttung, a professor at George Washington University and assistant director of its Institute for European, Russian, and Eurasian Studies, agrees that Ukraine’s entrenched political and economic elites are slowing down the fight against corruption. And yet, he adds, “the good thing is that you have a whole coalition of groups like Transparency International that are pressuring the government.” Orttung, who spent several weeks on the ground in Ukraine earlier this year assessing the corruption environment, notes that “civil society is mobilised,” which helps to maintain the momentum.

On the national level, that pressure is relentless and effective. In the month of August alone, anti-corruption activists stepped in twice to foil what they saw as attempts to thwart the implementation of the new laws.

First, Transparency International asked a court to intervene in what it said was the Cabinet of Ministers’ non-transparent choice of dubious “puppet” civil society groups to oversee the operation of the National Corruption Prevention Agency. Before the court ruled, the Cabinet of Ministers reversed itself, promising a do-over.

Later in the month, the Kiev-based Anticorruption Action Center launched a public campaign to challenge General Prosecutor Viktor Shokin over appointments to key anti-corruption positions. One of the men in question was the supervisor of the so-called “diamond prosecutor,” an official who has been accused of accepting bribes in the form of 104 uncut diamonds. Daria Koleniuk, the Action Center’s Executive Director, saw Shokin’s move as a potentially ominous effort to undermine the anti-corruption prosecutor’s work before it even starts. With allies in the Rada and a following among anti-corruption experts worldwide, Koleniuk, known for her uncompromising voice, is one to be reckoned with. In the summer of 2014 in Prague, she attended a buttoned-down, international anti-corruption conference sponsored by the Brookings Institution sporting a t-shirt emblazoned with “Fuck Corruption.”

Putting Ukraine’s anti-corruption infrastructure into place is an extremely delicate affair, requiring actions that gain the public’s confidence but avoid politicization. Ultimate success requires creating a culture of transparency and trust, two values that were antithetical to Ukraine’s Soviet-era modus operandi. Although Estonia, Georgia, and Lithuania are held out as post-Soviet success stories, the comparisons with Ukraine are weak, especially given Ukraine’s ten-times greater multi-ethnic population and the war in the East.

Institutionally, three elements need to work in harmony to win a corruption conviction: the investigators at the National Anti-Corruption Bureau (NAB), the anti-corruption prosecutor lodged within the Office of the General Prosecutor, and a judiciary trained in hearing such cases. Of these three entities, the NAB is the point of the spear.

The NAB came into being this April. When it comes to showing Ukrainians that the government means business about fighting corruption, the NAB is the most

important institution, charged with investigating high-level (deputy minister and above) and high-value (bribes over \$20,000) corruption cases. It began with a six-person team headed by a previously unknown prosecutor and the usual Georgian in the number two spot. One staffer donated a coffee machine. By late summer, the coffee machine had been joined by a copier and two truckloads of used furniture given by the Canadian Embassy.

Working in a run-down government building in an unfashionable neighbourhood of Kiev, the NAB staff has expanded to 30 people with plans to hire 70 investigators in early fall. According to Donald Bowser, a Canadian who serves as NAB's Capacity and Institutional Building Advisor, 2,752 people have applied for position as investigators. "We pay more than any other law enforcement agency in Ukraine," he explains. "It works out to about \$600 a month."

Meanwhile, NAB head Artyom Sytnyk is growing into his role, judging by his 40-minute interview on a leading Kiev radio station in late August. In it, he deflects questions about those government anti-corruption efforts over which he has no control, explains that his wife covered her own expenses during a recent official trip to London, and describes in tantalising terms two recent tips received by his bureau.

Elsewhere around the city, the NAB's prophylactic counterpart, the National Corruption Prevention Agency (NCPA), is off to a delayed and bumpy start as the aforementioned coalition of anti-corruption NGOs objects to the process by which NCPA leaders will be chosen. Over at the Office of the General Prosecutor, where a special unit is needed to actually prosecute the yet-to-be developed NAB cases, staffers are being trained but no leadership is in place. Under the Ukrainian legal system, prosecutors must take action before nascent cases unearthed by investigators can move forward.

The ongoing turmoil at the General Prosecutor's Office, as well as President Poroshenko's inability or unwillingness to take action, thus put NAB staff in a tricky position. "If there is a corrupt prosecutor's office, it's going to be difficult for us to do our job," says Bowser. "The prosecutor's office needs to be cleaned up. It is the key to every reform. The war between the reformers and the non-reformers within the prosecutor's office is ongoing. It is very public."

Watching all this is yet another corruption-monitoring body, the National Reforms Council (NRC), housed within the Presidential Administration, which monitors and rates progress being made in easy-to-follow charts. Throw in international development banks keeping a close eye on how their billions of dollars in government loans are being spent, foreign law enforcement bodies working to recover billions of dollars in state assets stripped by the previous regime, and a trickle of investors keen to clarify beneficial ownership, and you have a level of scrutiny of corruption issues that Ukraine has never before experienced. One of the more accessible tools is the Carnegie Endowment for International Peace's Ukraine Reform Monitor memo, put together by a team of Ukraine-based scholars.

With so many institutions and experts in play, it is possible to lose sight of the big picture. Bowser, who has completed a doctoral dissertation on post-Soviet corruption at Australia's University of Melbourne, offers some perspective. "This is the last stage of de-Sovietisation. The question is: How does Ukraine escape its past?" It's not fundamentally different, he notes, from the challenge faced by many anti-corruption agencies elsewhere. "The state needs to be allowed to do its job after a period when private interests had become more important than public interests. You had absolute state capture."

Ultimately, any long-term improvement of Ukraine's corruption environment will depend on changing the public's acceptance of what, today, is an accepted (if resented) part of life. Key to that process is altering the behaviour of the hundreds of thousands of government workers who can deny, provide, or enhance services based on opaque incentives.

For Drago Kos, a Slovenian lawyer who chairs the OECD's Working Group on Bribery, training officials on the mechanics of ethical behaviour is a specialty. It is something he has done in 12 post-communist European countries (as well as Afghanistan). In Ukraine, where Kos is training Presidential Administration staff, changing mind-sets is the biggest challenge of all. (Disclosure: Kos is doing this work for a project run by my organisation, CIPE, with funding from the United States Agency for International Development.) "The majority of people, including decision-makers, still think that fighting corruption and enhancing integrity is the exclusive task of specialised state anti-corruption institutions," says Kos. "Therefore, they even don't understand the need for integrity training of the whole civil service as a very useful and effective anti-corruption preventive measure."

Kos knows of what he speaks. In various capacities, he has been working in Ukraine on anti-corruption issues for 20 years. While this is certainly a time of tremendous opportunity, Kos cautions, "The single biggest challenge in changing the 'culture of corruption' in Ukrainian public institutions for the moment is the very visible and almost absolute impunity of all the biggest corruption perpetrators."



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