

U4 Helpdesk Answer

U4 Helpdesk Answer 2023

Mitigating corruption in the post-war reconstruction of Ukraine

An overview of the debate

This Helpdesk Answer surveys the ongoing commentary on how to prevent corruption in Ukraine's post-war recovery to document the major proposals that are emerging. It finds there is broad alignment on the anti-corruption policy priorities for Ukraine after the war. These include redoubling measures to strengthen the country's anti-corruption bodies, completing rule of law reforms in the judiciary and seeking to eliminate sources of rents in the public financial management system, including in public procurement, state-owned enterprises, licences and taxes.

However, while there is consensus on the need to ensure transparency, competitive approaches and meaningful oversight in reconstruction efforts, discussions about *how* robust anti-corruption mechanisms should be established are more contested.

One point of contention relates to competing prescriptions on the form that reconstruction platforms, instruments and agencies should take. Ukrainian commentators appear to be primarily concerned about the inefficiencies to which uncoordinated financial assistance from multiple sources could lead. Their proposals thus usually centre on nationally owned coordination platforms.

While the risks associated with multiple competing or overlapping externally funded instruments are real, international commentators appear to be more preoccupied with the establishment of new bodies able to track, oversee and audit spending.

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Query

Please provide an overview of corruption risk factors for the future reconstruction of Ukraine, as well as a summary of the debate on the most suitable measures to minimise corruption.

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Caveat

The words 'reconstruction' and 'recovery' are often used in conjunction and even interchangeably in the discussion on post-war Ukraine (see European Commission 2022a). While reconstruction implies the rebuilding of physical infrastructure damaged or destroyed in the ongoing war, recovery encompasses a broader array of social sectors and services, including healthcare, education and social protection.

Most of the proposed anti-corruption actions discussed in this Helpdesk Answer (such as judicial reform, public procurement safeguards or robust audit processes) are at a level of abstraction high enough to be relevant to both reconstruction initiatives and recovery efforts. Indeed, as yet, the majority of commentators make little distinction between reconstruction and recovery when

MAIN POINTS

- Both in Ukraine and abroad, there is a keen sense that military success on the battlefield may only represent a partial victory if Ukraine is unable to emerge from the war on a trajectory towards the rule of law, control of corruption and democratic accountability.
- There is a widespread view that the savvy and strategic use of reconstruction funds can set Ukraine on this path, but that without strong oversight in the use of these funds, international financial support risks "reversing the country's progress in fighting corruption" (Murtazashvili and Shapoval 2022).
- There is broad consensus on the need for continued judicial reform, the engagement of non-state actors and local government, as well as the importance of open data initiatives and procurement safeguards.
- In contrast, there are rival proposals for the appropriate institutional architecture to deliver and monitor reconstruction funds.

discussing the post-war anti-corruption priorities for Ukraine.

Nonetheless, reconstruction of damaged road networks entails very different risks to delivering public services. Therefore, Jackson and Lough (2022: 13) caution that once specific reconstruction and recovery projects begin, "each major investment or sector [will require] its own corruption risk analysis and sector-specific policies."

Introduction

As the war in Ukraine grinds on, the Ukrainian government, its international partners and numerous observers are already planning for the eventual reconstruction of the country.¹ These actors have a common concern in ensuring that corruption does not undermine the effectiveness of recovery programmes, which is currently projected to cost anywhere from US\$500 billion (Radio Free Europe 2022a) to more than a trillion dollars (Walt 2022).

There is anxiety among international analysts and Ukrainian civil society that the incidence of corruption will rise as international assistance shifts from military aid towards the reconstruction of destroyed infrastructure. Faced by the prospect of enormously costly and urgently needed construction projects, donors and partners are confronting the familiar trade-offs in post-conflict settings between speed in providing assistance and the need for robust procedures, oversight and anti-corruption safeguards (see Bray 2009).

This Helpdesk Answer surveys emerging commentary to document the major proposals related to curbing corruption in Ukraine's reconstruction. The purpose is to help make sense of the ongoing debate as well as to identify alignments and disagreements between the recommendations made by different stakeholders.

We ask three questions. First, what will be the main emerging sources of risk that will hinder the effectiveness of reconstruction efforts? Second, what is the likely anti-corruption readiness and capacity? Third, what anti-corruption policies are being put forward by different actors as the most

urgent and feasible to help advance the control of corruption in Ukraine?

In summarising the ongoing debate, the paper's purpose is chiefly descriptive rather than prescriptive; the author's intention is not to endorse particular proposals.

This review was conducted in December 2022 and it does not cover in detail the most recent allegations of corruption in defence procurement that came to light in January, which have a potential to shift the ongoing discussion. However, where appropriate, these are referred to briefly to provide a description of the situation as of January 2023.

Main emerging sources of risk

Since the full-scale Russian invasion in February 2022, some anti-corruption experts have expressed concern that the armed conflict will create conditions for corruption to proliferate. Mungiu-Pippidi (2022), for instance, points out that the war will reduce constraints on and create new opportunities for corrupt behaviour, particularly given the vast influx of foreign funds and materiel.

Nonetheless, several observers argue that the most important factors in determining the country's ability to absorb and disburse reconstruction funds in a proper manner are structural and pre-date the war (Kos 2022; Becker et al. 2022a: 92).

While Ukraine is generally thought to have been on a positive trajectory in terms of controlling corruption since 2014 (Transparency International 2023), significant drivers of corruption remain.

¹ High level discussions have taken place at the Ukraine Recovery Conferences in Lugano (July 2022) and Berlin (October 2022) to discuss the scale, process and modalities

of reconstruction. See Ukraine Recovery Conference (2022) and the Federal Government of Germany (2022b).

According to Jackson and Lough (2022: 4-5) these structural factors include:

- strong oligarchic influence in the national parliament
- ownership by big business interests of large parts of the media environment
- tendency of large state-funded programmes to award contracts to politically connected firms
- regulatory capture, resulting in the development of monopolies in important economic sectors
- penetration by organised crime of law enforcement agencies and security services
- a compromised judiciary that is unable to adjudicate in an impartial and independent manner
- poor governance practices and low integrity in the private sector

In addition to these legacies, there are more recent governance trends that have developed or accelerated since the Russian invasion that potentially affect the risk of corruption during reconstruction. These are: growing centralisation, oligarchic spoilers, as well as a lack of prioritisation and coherence of anti-corruption efforts.

Centralisation of power in the executive branch as part of the war effort

Since February 2022, the pressures of war have led to the imposition of martial law and growing centralisation of power in the executive branch. This appears to be largely supported by both international and local actors as a necessary measure to heighten Ukraine's cohesion during the war. Even after the eventual end to hostilities, there is an appreciation that centralisation has certain advantages in the early phase of reconstruction, including better oversight and control of recovery

funds (the Rise Coalition 2022a: 5), as well as greater efficiencies in decision-making and resource allocation (Mylovanov and Roland 2022: 47-8).

However, there has been some unease about the longer term implications of centralisation among observers, not least given that the central government will likely be the greatest source of economic opportunities after the war. Rudolph and Eisen (2022a), for example, argue that the fact that power has become highly concentrated in the Office of the President is concerning given that this “allows for informal decision-making that favours powerful interests and bypasses democratic accountability”. Jackson and Lough (2022: 2) also point out that “opaque emergency decision-making and the influence of the security services [...] may not recede quickly.”

Overall, there is broad agreement among observers that post-war Ukraine will be characterised by a more centralised state with weaker public administration than was the case before the war. Nonetheless, there is some uncertainty about how exactly Ukraine's other political institutions will emerge from the war, and whether the existing system of checks and balances on presidential authority will be suitable for the peacetime needs.

There is some anxiety that the additional operational constraints imposed by the war on “Ukraine's anti-corruption institutions, its law enforcement agencies and its courts” may make it easier for them to be dominated by the executive branch (Jackson and Lough 2022: 4). Kos (2022), for instance, asserts that “the centralised chain of command essential during the war may ... result in the state capture of many other institutions”.

Several decisions that have already been taken by the country's political leadership to concentrate power and curtail transparency, and accountability mechanisms are viewed critically in some quarters.

While careful not to criticise the Ukrainian government in a manner that could be seen as undermining the war effort, many Ukrainian CSOs opposed the decision to shut off access to numerous open datasets relating to more than 30 public institutions, state-owned enterprises and local administrations² (Anti-Corruption Headquarters 2022; Ukraine Gate 2022; Hryshko 2022).

The founder of YouControl, Serhii Milman (2022) has argued that these registries should be reactivated, as “in the absence of open registries, corruption grows exponentially”. Indeed, this data on companies, public officials and land rights would be a valuable source of information to identify potential red flags during reconstruction efforts.

In a similar manner, the Association of Cities of Ukraine (2022) expressed its opposition to a draft law intended to overhaul the urban planning system in a way that would deny local governments the authority to issue construction permits or inspect construction sites to ensure that planning standards are being complied with.

There is also some disquiet about the longer term effect of wartime measures taken by the government that have reduced political competition. In March 2022, the National Security and Defence Council (NSDC) of Ukraine suspended eleven – mostly marginal – political parties suspected of having ties to Russia for the duration of martial law (Radio Free Europe 2022b). After amendments to the law “on Political Parties in Ukraine” in May 2022, the Ministry of Justice reportedly sought to ban a total of 16 opposition

parties, as well as confiscate their property, money and assets (Radio Free Europe 2022c).

Centralisation of power by the executive branch appears to be a sensitive and highly charged topic, though most stakeholders both at home and abroad seem to acknowledge the rationale for outlawing political factions that might undermine national cohesion.³ Nonetheless, there is consensus that while a “need for speed in reconstruction” might justify the concentration of power during the recovery, it will be necessary to ensure that emergency provisional measures are reined in after the cessation of hostilities with Russia (Mylovanov and Roland 2022: 67).

Oligarchic spoilers

Ukraine’s historically high incidence of corruption is often attributed to a type of crony capitalism described by Lough (2021) as *systema* and by others as oligarchy (Minakov 2022). According to the IMF (2017: 15), over time this cronyism resulted in state capture that became “entrenched throughout public institutions and the economy.” Powerful private interests were able to use their economic clout to establish servile financial institutions, dominate the media landscape, dictate the regulatory framework of entire markets, and shape the country’s trajectory through the strategic use of political finance (Becker et al 2022a: 76).

In the aftermath of 2014’s Revolution of Dignity, the Ukrainian government began to take steps to curtail the influence of the so-called oligarchs and rein in corruption. These reforms included an overhaul of the banking sector, improvements to

² Particularly concerning in terms of controlling corruption, Hryshko (2022) notes that the following registries have been closed: the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations, the Unified State Register of persons who have committed corruption or corruption-related offenses, the Unified State

Register of declarations of persons authorised to perform the functions of the state and local self-government and the State Land Cadastre of Ukraine and the Public Cadastral Map.

³ Discussion with Ukrainian anti-corruption experts #1, #2, #3 and #4 on 15 December 2022.

public procurement and public financial management, and the establishment of new anti-corruption institutions (Radio Free Europe 2020; Kyiv School of Economics 2017; Jackson and Lough 2022: 6).

Despite the governance reforms introduced after 2014 with the support of the country's international backers, some commentators record that Ukraine's oligarchs have been able to protect their position through proxies in the political and judicial establishment (Åslund 2014; International IDEA 2022). In 2017, the US Helsinki commission concluded that "oligarchs have captured the Ukrainian state, crowding out non-corrupt political parties and competing with one another to steal Ukraine's wealth". More recently still, a report by the European Court of Auditors (2021) concluded that oligarchs and vested interests represented the foremost barrier to economic development in the country.

There is a difference of opinion about whether the Russian invasion will prove to be the beginning of the end for Ukraine's oligarchs. Some observers suggest that the country's social contract is being reforged in the fires of war and the country will emerge with higher rates of socio-economic mobility (Jackson and Lough 2022: 4). Other analysts are more pessimistic, contending that the war has "delayed... the deoligarchisation process" (Minakov 2022), or that the oligarchs will be able to entrench their position by capturing decision-making during the post-war recovery (Mylovanov and Roland 2022: 59; Lohsen 2022).

Writing in the New York Times, Coy (2022) argues that "war has interrupted the oligarchs ... it's [become] harder for them to move money seamlessly between Kyiv, Moscow, London, New York and offshore tax havens". It is certainly true that there are now more restrictions on and scrutiny of oligarchs' transnational operations than before February 2022. In Ukraine itself, Jackson and

Lough (2022: 6) observe that several of the large business conglomerates that dominated the business environment before the war appear to be less able to shape decision-making to their advantage.

Minakov (2022) argues that the oligarchs' diminished domestic influence is due to the marked reduction in their fortunes that has occurred due to the widespread destruction of assets, workforce shortages and supply chain disruption. This decline in wealth has implications for the post-war period; even after the expected resumption of political competition and media freedom, less capital means fewer opportunities for oligarchs to bankroll political allies and media outlets to advance their narrow set of interests (Fenton and Lohsen 2022).

The reduced influence of the oligarchs since the outbreak of all-out war with Russia also relates to the growing power of the president. In an attempt to overcome the durability of the oligarchs' hold on the country, the Ukrainian government introduced an anti-oligarch law in November 2021 that was implemented in July 2022 (Kyiv Post 2021). According to Mylovanov and Roland (2022: 60), critics of the law argue it is populist and vague, and mainly serves to enhance the powers of the president.

Many oligarchs have been at pains to stress their fealty to the Ukrainian state in the face of Russian aggression, likely conscious of what they stand to lose (the New York Times 2022). As Fenton and Lohsen (2022) point out, in the event of a Ukrainian victory, being viewed as collaborators will not play well, while in areas controlled by Russia, Ukrainian oligarchs risk having their assets redistributed to Putin's inner circle.

With multiple oligarchs providing large donations towards Ukraine's defence and humanitarian needs (Forbes Ukraine 2022) and vowing to support Ukraine's reconstruction (Piper 2022), it remains

to be seen whether they are able to reassert their political clout once martial law ends. These attempts to improve their public image seem to be gaining some traction (Michel 2022; Економічна правда), but may be insufficient to preserve their position in post-war Ukraine.

Despite the considerable challenges the war poses to their influence, at present it is reported that oligarchs continue to control large sections of the Ukrainian economy, such as energy, construction and infrastructure that are crucial to reconstruction (Rudolph and Eisen 2022a). As such, Jackson and Lough (2022: 8) acknowledge that the country's legacy of policy capture presents a considerable risk to the appropriate use of reconstruction funds as the oligarchs are likely to attempt to ensure these resources are disbursed in a manner "designed to serve elite interests rather than the public good".

Insufficient attention to anti-corruption planning

Despite pledges made in relation to transparency and accountability in reconstruction at the Lugano and Berlin conferences in 2022, some commentators have argued that neither the Ukrainian government nor its international backers have adequately prioritised anti-corruption safeguards.

On the side of the Ukrainian government, the immediate priority besides warfighting is securing much-needed financial assistance for the recovery and reconstruction, rather than curbing corruption (Kos 2022).

On the side of Ukraine's international partners, there has reportedly been some reluctance to assign

much political capital to prioritising anti-corruption measures, because the immediate priority has been supplying military materiel (Lipin and Tsikhanenka 2022).

According to local experts interviewed for this Helpdesk Answer, multilateral bodies that were heavily invested in the anti-corruption agenda before the Russian invasion, such as the EU and the IMF, are now having to balance immediate war related priorities, such as budget support and macroeconomic stabilisation, alongside anti-corruption reform efforts.⁴ Interviews with local stakeholders also point to a lack of coordination between staff at international agencies who have been working on anti-corruption programming in Ukraine for several years and the new teams tasked with designing reconstruction funding mechanisms.⁵

Until recently, there also seems to have been some anxiety about drawing attention to corruption risks, lest this makes it politically more difficult for Ukraine's supporters to provide financial support (NPR 2022) or plays into Russian narratives about a corrupt Ukrainian state (Melkozerova 2022).

The observed lack of attention being paid to corruption after February 2022 has been criticised by some commentators in the west. Lipin and Tsikhanenka (2022) have argued that by neglecting corruption during the armed conflict, policymakers are falling victim to a false dichotomy between fighting a war and fighting corruption. In this view, corrupt practices take root during conflicts that later erode the post-war political settlement and undermine the effectiveness of reconstruction efforts (Murtazashvili and Shapoval 2022; see also Chayes 2015). While in the case of Ukraine, this stance is not shared by all analysts, there is broad

⁴ Discussion with Ukrainian anti-corruption expert #4 on 15 December 2022.

⁵ Discussion with Ukrainian anti-corruption expert #3 on 15 December 2022.

agreement that more thought already needs to be given to the design of anti-corruption mechanisms in reconstruction, and that safeguards cannot simply be added as an afterthought (Kos 2022).

As such, recent media investigations into alleged corruption in defence procurement, which have resulted in resignations and criminal investigations, serve as a reminder to all stakeholders of the need to prioritise anti-corruption during recovery and reconstruction, and have brought renewed attention to the issue (TI Ukraine 2023).

Anti-corruption capacity and readiness

There are multiple constraints on the ability of anti-corruption actors in Ukraine, from the low capacity of state agencies to inefficiencies in public administration, technological challenges and lack of integrity among private sector contractors. This part of the Helpdesk Answer restricts itself to considering challenges related to three of the most important anti-corruption actors: specialised anti-corruption institutions, civil society and the judiciary.

Specialised anti-corruption institutions

The establishment of new dedicated anti-corruption bodies since 2014 has been at the core of anti-corruption reform.⁶ This process was met with strong resistance from some vested interests: the efforts to preserve the independence of these institutions were constantly contested and, despite

sustained pressure by Ukrainian civil society activists, donors and financial institutions, the process of their consolidation is far from over. This explains the existence of a diverse range of opinions on the current state of specialised anti-corruption institutions in Ukraine.

Fenton and Lohsen (2022) express a common view among western observers that the NACP, the NABU, the SAPO, the HACC and the ARMA are imperfect, lacking resources and challenged by “interference from vested interests” and undue political influence. Past presidential administrations have attempted, albeit not very successfully, to embed allies in senior positions in these institutions. Fenton and Lohsen (2022) note that several individuals nominated by presidential administrations for these positions lacked the necessary qualifications or impartiality and, in some cases, had links to the country’s oligarchic class.

Despite pressure from donors and financial institutions, key permanent leadership positions in some of these agencies are still unfilled⁷ (Rudolph and Eisen 2022a). Moreover, even those parts of the institutional framework that operate effectively rely on the cooperation of “unreformed bodies staffed by political appointees”, which can impair effective investigations (Fenton and Lohsen 2022). This became apparent when prosecutors reportedly tried to sabotage a high-profile NABU investigation in 2020 (Myroniuk and Kossov 2020).

Nonetheless, there have been some steps taken to improve the independence of anti-corruption agencies, notably by mandating the inclusion of

⁶ These included the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau (NABU), the Special Anti-Corruption Prosecutor’s Office (SAPO), the Asset Recovery and Management Agency (ARMA) and the High Anti-Corruption Court (HACC). The NACP is a central body of the executive branch tasked with developing anti-corruption policy, NABU investigates cases of potential corruption, SAPO is an independent unit of the

Office of the Prosecutor General that prosecutes cases investigated by NABU, while the HACC is responsible for all corruption cases that fall under NABU’s jurisdiction. ARMA deals with the recovery of stolen assets. See Becker et al. (2022a: 79).

⁷ A new head of SAPO was appointed in summer 2022, the processes to appoint leaders to NABU and ARMA is ongoing as of January 2023.

people nominated by Ukraine's international donors in selection panels to appoint heads of the anti-corruption bodies (Reuters 2021).

Despite these shortcomings, Eka Tkeshelashvili, the former foreign minister of Georgia who has worked on anti-corruption projects in Ukraine, argues that the incremental successes of the country's anti-corruption institutions were slowly but surely disrupting "Putin's control-via-corruption strategy" (Rupert 2022). She suggests that the fact Putin resorted to all-out invasion is a "testament" to the country's growing capacity to resist what has been termed Russian "strategic corruption" (Rupert 2022).⁸ In this view, the significant if incomplete institutional reforms were gradually putting Ukraine on course to reduce high-level corruption in the country.

Kos (2022) disagrees, arguing that before the war there had been "no significant improvements on the ground; independent, newly established, specialised anti-corruption bodies were being hindered from doing their job".⁹

Most commentators concur that the conditions of the war have reduced the capacity of these institutions. A survey of anti-corruption experts in Ukraine in April 2022 found that 84% of respondents were no longer primarily engaged in anti-corruption work, having switched their focus to war related matters, including in many cases joining the country's armed forces (Kos 2022). However, experts consulted for this paper believed that by late 2022, many of the people who had

focused on war related issues in the first months of the war had returned to anti-corruption roles.¹⁰

Nonetheless, there are reports that the NACP, NABU and SAPO have been compelled to reduce the scope of their activities due to the lower number of trained staff available to them (Kos 2022). According to AntAC (2023a), dozens of NABU staff have taken part in the country's defence, while twelve SAPO prosecutors have been mobilised in the territorial defence forces.

Despite this reduced capacity, TI Ukraine (2023) argues that the country's anti-corruption agencies are holding up well to the stresses of war, noting that the new head of SAPO was appointed in summer 2022, while the competition for the election of the head of NABU is reportedly making progress. Other experts consulted for this paper pointed to the growing number of convictions secured by the HACC as a positive indication that impunity for high-level officials is waning.¹¹

Moreover, TI Ukraine (2023) contends that the institutional response to the January 2023 procurement scandals in the infrastructure and defence sectors that implicated senior officials demonstrates that these agencies are in fact able to hold powerful people to account.

Nonetheless, there is a widely held view that as soon as practical after the cessation of hostilities, anti-corruption agencies' staff deployed with the military should return to their specialist civilian duties. Kos (2022) argues that these agencies should also launch a new recruitment drive with

⁸ For a discussion on strategic corruption, see Zelikow et al. (2020).

⁹ GIS (2022) and Yahoo News (2022) note that between February and July 2022, 651 criminal proceedings were opened into employees of the state security service and the prosecutor's office who were accused of collaborating with Russia. However, there is little suggestion that Ukraine's

specialised anti-corruption institutions have been infiltrated or compromised by pro-Russian interests.

Discussion with Ukrainian anti-corruption experts #1, #2, #3 and #4 on 15 December 2022.

¹⁰ Discussion with Ukrainian anti-corruption expert #3 on 15 December 2022.

¹¹ Discussion with Ukrainian anti-corruption expert #2 on 15 December 2022.

international support to increase their capability to oversee the use of reconstruction funds.

Civil society and media

It is not only state agencies that have shifted to a war footing. Ukraine's vibrant civil society, widely acknowledged as an important actor in driving forward anti-corruption reform,¹² has also seen a drastic drop in its capacity to analyse, monitor and advocate (Kos 2022). Some NGO staff have joined the armed forces, while many organisations have switched focus from human rights and good governance to humanitarian assistance, medical provision and the investigation of war crimes (Prokscha 2022; Sushko 2022).

Together with the casualties, displacement and destruction caused by the Russian invasion, this has disrupted civil society's ability to operate. International IDEA (2022: 38) notes that "human networks that were vital for the robust functioning of civil society may be irreparably damaged by the war". Local actors emphasised that the psychological toll of operating in a dangerous and unstable environment should not be underestimated, as civil society activists are subject to unprecedented levels of stress and exposed to deeply traumatic incidents. Overall, there is consensus that there will need to be considerable investments in human capital and financial resources to allow civil society to fully regain its pre-war function as an effective watchdog (International IDEA 2022: 38).

In the anti-corruption field, the Rise Coalition (2022b) is a notable coordination platform for the remaining civil society activists working on a

blueprint for the country's reconstruction that prioritises integrity, transparency and accountability. However, some local interviewees noted that NGOs are much less active in challenging government actions than they were before the war, and less present in discussions such as in the arguments over appointments to key posts in anti-corruption bodies. The experts consulted for this Helpdesk Answer attributed this reduced activism to a desire to maintain social cohesion and not undermine trust in the country's political leadership.¹³ Other observers have pointed to a "concerning trend" that the government is not providing meaningful opportunities for civil society input during the development of important policies, including those related to reconstruction (Basel Institute on Governance and TI Ukraine 2022a: 2).

Under martial law, the national government has also taken steps to exert more control over the media landscape, notably through the monopolisation of television news (Koshiw 2022), the closure of channels perceived to be pro-Russian (Mylovanov and Roland 2022: 65) and the imposition of state censorship (GIS 2022). One expert interviewed for this Helpdesk Answer suggested that some of these restrictions were targeted at former president Poroshenko, whose TV channels had their licences revoked in 2022.¹⁴

Becker et al. (2022a: 82) concede that these actions may serve to limit the "influence of oligarchs in democratic and political processes", given that previously many channels were dominated by competing oligarchs. Nonetheless, they also point out that it constrains the ability of independent outlets and investigative reporters to uncover

¹² Murtazashvili and Shapoval (2022) for instance, point out that since 2014, Ukraine witnessed growing civic participation, the development of a vibrant civil society landscape and the emergence of investigative journalistic networks.

¹³ Discussion with Ukrainian anti-corruption experts #3 and #4 on 15 December 2022.

¹⁴ Discussion with Ukrainian anti-corruption expert #4 on 15 December 2022.

potential abuses of power. Unless these restrictions are eased soon after the war ends, this will be a major impediment for journalists reporting on wrongdoing and corruption affecting reconstruction projects.

Nonetheless, recent media investigations into highly sensitive issues demonstrate that independent media and civil society remain important players in the Ukrainian political system, and that some of its representatives are still able to fulfil their role of anti-corruption watchdogs despite the ongoing war. This includes the revelations that emerged in January 2023 in relation to the procurement of food for the Ukrainian armed forces at hugely inflated prices (TI Ukraine 2023).

The war has also caused major shifts in citizens' perception of corruption. According to the 2022 Civic Engagement Poll, compared with 2021, the proportion of respondents who stated that they would participate in collective protests against corruption officials on national and local levels doubled (78% vs 40%; 81% vs 42% respectively). Readiness to report corruption cases grew to 84% from 44% in September 2021 (USAID 2022).

Thus, the current state of the civil society and media landscape is characterised by shifting trends. Although at the start of war, civil society activists appeared to become less critical of the central government, USAID's 2022 poll suggests that societal demands for anti-corruption reforms are growing. The central question is whether the war can be an inflection point in Ukraine's anti-corruption struggle, presenting an opportunity to "forge a renewed social contract between citizens and government to finally defeat endemic corruption" (Rupert 2022).

Judiciary

The court system will be key in adjudicating any disputes related to the potential misuse of construction funds, as well as for prosecuting those suspected of misappropriating resources. The judicial branch is, however, widely viewed as compromised and ineffective. Indeed, in a concerning sign for the viability of private sector investment in post-war Ukraine, international business associations made it clear before the invasion that corruption in the judiciary presents a major barrier to foreign investment (Radio Free Europe 2021).

In 2014, Ukraine had some of the lowest rates of citizen trust in the court system in the world, with only 7% of people expressing confidence in the judiciary (Democracy Justice Reforms Foundation 2022). While a series of reforms was introduced in 2016 to improve the independence and accountability of the judiciary, these measures encountered stiff opposition from the judges.

A key point of contention has been the process of appointing judges to influential positions in various judicial organs including supreme court and the High Qualification Commission of Judges, which continue to be dominated by an old guard of judges opposed to reform (Fenton and Lohsen 2022).

Renewed steps have been taken by the government since 2021 to improve the process of filling judicial vacancies by ensuring the participation of independent foreign experts in the selection of members of the high council of justice and High Qualification Commission of Judges (Radio Free Europe 2021). However, these have run into concerted opposition from within the judiciary and the process for vetting new members of the high council of justice has been heavily criticised by civil society (Jackson and Lough 2022: 4).

The Democracy Justice Reforms Foundation (2022) reports that many judges in senior positions in the constitutional court and the high council of justice continue to be linked to oligarchic interests, while judges in lower criminal and administrative courts are reportedly open to bribery and vulnerable to undue influence. The constitutional court has repeatedly obstructed government reforms, including ruling in 2020 that the NACP's powers were unconstitutional and unpicking the country's asset declaration system, thereby triggering an unresolved constitutional crisis (Leshchenko 2020; Minakov and Pomeranz 2021; Channell-Justice 2022).

In December 2022, a law was passed to dismantle the Kyiv district administrative court, shortly after the head of the court was sanctioned for bribery by the US Department of State (Sukhov 2022). This court had become notorious, with its lead judge boasting of the court's "political prostitution" (Financial Times 2020). The dissolution of a court mired in allegations of abuse of power and obstructions of justice is viewed as an important step in "resetting" the judicial system (Dorontseva 2023). As of January 2023, cases before the Kyiv district administrative court have been temporarily transferred to the Kyiv Oblast administrative court, which is currently where presidential and government decrees can be challenged.

In 2019, the compromised nature of the judicial system led to the establishment of the High Anti-Corruption Court (HACC), which is a specialised court created to hear high-profile corruption cases, mainly investigated by NABU. The impetus came from the fact that many of the courts to which NABU sent cases were unable or unwilling to pursue them, and cases often floundered until they

reached the statute of limitations (De Vrieze and Glusac 2020).

Appointments to the new HACC were vetted by independent international experts who had the power to veto dubious candidates (Becker et al 2022a: 79). Despite the promising early results of the HACC (see Democracy Justice Reforms Foundation 2022),¹⁵ there is widespread agreement that one of the most urgent priorities for Ukraine is the need to improve its judicial system (Jackson and Lough 2022: 4).

Policy options in Ukraine's reconstruction

The following section provides an overview of the ongoing discussion among anti-corruption experts about *how* to reduce the impact that corruption will have on effectiveness and value for money in the reconstruction of Ukraine.

Numerous anti-corruption proposals have been made by a wide range of actors, and this paper documents these, while bringing out the most prominent points of agreement and disagreement among anti-corruption practitioners and analysts. Proposed approaches are categorised according to the level of consensus they appear to enjoy among the anti-corruption community both in Ukraine and abroad.

Approaches that enjoy general consensus

¹⁵ During 2019-2021, NABU issued 381 indictments on high-level corruption, and 57 people were found guilty on

corruption charges by the Higher Anti-Corruption Court. See Gorodnichenko et al. (2022).

Give a central role in reconstruction to civil society and investigative journalists

Virtually all commentators point to the positive contribution of civil society in anti-corruption efforts before the war, including its contribution to public procurement reform and opening up budget data.

Despite the constraints imposed by the war on CSOs, as mentioned above, Ukrainian civil society has been widely praised for its strength in depth, with networks of anti-corruption activists extending well beyond Kyiv (Fenton and Lohsen 2022).

Numerous analysts argue that CSOs should play a key role in supporting and overseeing reconstruction to ensure local ownership of the recovery beyond just the government (Rudolph and Eisen 2022a; Ganster et al. 2022: 43; Mungiu-Pippidi 2022). This position is widely endorsed by Ukrainian CSOs (see Rise Coalition 2022a: 3).

There is a widespread view among western observers that civil society has a dual role to play in reconstruction. The first function relates to the pressure that Ukrainian civil society can build “from inside” to compel state institutions to implement needed governance reforms in areas such as judicial reform and procurement. This is viewed by Fenton and Lohsen (2022) as a useful complement to pressure “from outside” exercised by international partners.

The second function relates to steering reconstruction funds to where they are most needed, and monitoring their use. International IDEA (2022: 1) recommends that, after the war, Ukrainian civil society “should be involved in decision-making, subject-matter expertise and service delivery questions”. Jackson and Lough (2022) point to the inherent difficulties of monitoring the use of reconstruction resources due to the rapid disbursement, information overload and the reliance on intermediaries or local fixers.

They therefore suggest supporting “specialist local NGO watchdogs and social accountability tools” (Jackson and Lough 2022: 12). Fenton and Lohsen (2022) note that the extensive experience of civil society groups at the regional and municipal level in overseeing decentralised budgets is an asset that could prove highly valuable in monitoring the use of reconstruction funds.

Beyond civil society groups, analysts also recommend involving Ukraine’s “world-class cohort of investigative journalists who are well versed in corruption trends”, particularly to help track financial flows and uncover illicit schemes (Fenton and Lohsen 2022). Rudolph and Eisen (2022a) even suggest earmarking around 3% of the total volume of reconstruction funds to explicitly support the anti-corruption efforts of non-state actors, with a focus on “boosting the number of independent investigative journalists”. Specific proposals in this regard have already been made by Patrucic et al. (2022). A corollary to the central role of non-state actors is the need in the post-war period to reverse the Ukrainian government’s steps to curtail press freedom during the conflict (Hadley et al. 2022).

A final reflection is that while considerable attention has been paid to the role of civil society actors in safeguarding reconstruction funds, much less focus has been given to ensuring that anti-corruption efforts are genuinely inclusive. So far, conversations focused on ensuring that Ukraine’s recovery is gender-inclusive have been largely disconnected from discussions about curbing corruption in reconstruction (see Cities Alliance 2022). Among the literature surveyed for this Helpdesk Answer, only Jackson and Lough (2022: 13) bridge this divide, by proposing that gender-responsive budgeting and participation are integrated into anti-corruption policies.

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Open data and digital transparency initiatives

Nearly all observers have called for dedicated transparency initiatives to be embedded in reconstruction efforts, in line with the third principle of the Lugano declaration. In this view, full transparency is a prerequisite to allow for citizens, journalists, the media, civil society and donors to perform effective oversight (Ganster et al. 2022: 5). Rudolph and Eisen (2022a), for instance, argue that “as much information as legally possible should be publicly disclosed in easily accessible formats”. Ukrainian civil society representatives echo these recommendations, with the Rise Coalition (2022b) demanding that “information on supported projects, funds spent, contractors involved, [and] results of work should be made public and accessible to all without any delays, with uniform agreed reporting standards”.

A range of transparency platforms and information management tools have been proposed, with a strong emphasis on digital tools to enable systematic monitoring of reconstruction projects. These centre on two major areas.

The first is related to improving transparency in public procurement. Primarily this involves ensuring open contracting on the Prozorro system to make sure all procurement transactions related to reconstruction adhere to a consistent set of rules. More information regarding public procurement can be found in the next section.

The second area is the proposed development of new information management systems to administer all reconstruction funds in a centralised, open manner, with a focus on providing “timely, accessible, machine-readable data” (Rise Coalition 2022b). TI Ukraine (2022) points out that beyond Prozorro, additional tools are required to ensure integrity in the award of reconstruction funds, including geo-tagging of reconstruction projects to facilitate verification, a

centralised register of damaged and destroyed property, and an analytical system to estimate losses. The German Marshall Fund has called for the creation of a centralised digital platform to consolidate “information on procurement processes, project implementation progress, and criteria related to the disbursement or potential suspension of aid” (Ganster et al 2022: 40).

The Rise Coalition (2022a: 3) likewise backs the establishment of what they term an electronic reconstruction management system, but cautions that it “must be synchronised with existing e-government systems”. Encouragingly, some observers have mentioned that Ukraine already possesses much of the necessary basic digital architecture for transparent control of reconstruction funds. In addition to Prozorro, for instance, the electronic service DIIA launched by the Ministry of Digital Transformation provides access to documents related to construction, real estate, land management and environmental licences. It appears that this mobile application is already being used to record war-inflicted damages (ESG UA NvD Platform 2022a). In addition, the Rise Coalition (2022a: 10) advocates for the use of the existing public finance portal (spending.gov.ua) to transparently list payment for all goods and services acquired.

One notable feature of such a centralised platform proposed by Ukrainian civil society is a so-called project bank (IZI 2022c: 3; Rise Coalition 2022a: 7). This would essentially be a database that lists all potential reconstruction projects that have been verified as genuine. These projects would be listed in order of priority and, according to the proposal by the Rise Coalition (2022a), funds from Ukrainian state budget would be obliged to follow this sequence, whereas other donors could pick and choose projects to finance.

The Rise Coalition (2022: 10) argues that an important way to link transparency to

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accountability is for the centralised platform to include a feedback mechanism available to civil society, businesses and donors to report identified violations. Extensive transparency and public participation are also seen as crucial in the project evaluation process to determine which projects have been successful (Rise Coalition 2022: 19).

As mentioned above, access to state-owned datasets has been restricted since February 2022, including the land register, the register of legal persons and the register of officials' declarations. Given the importance of this information to investigative journalists, civil society monitors and citizens, numerous organisations have called for these registers to be reactivated (Anti-Corruption Headquarters 2022; Ukraine Gate 2022; Hryshko 2022; Milman 2022).

Further steps to strengthen procurement safeguards

A third area of broad consensus is the need to ensure “open competition with wide market consultation” for tenders related to reconstruction (Rise Coalition 2022b). A common view is that Ukraine should build on the highly acclaimed Prozorro system in procurement, which has resulted in open access to public tenders (Murtazashvili and Shapoval 2022; Basel Institute on Governance and TI Ukraine 2022b: 3).¹⁶

The first step in the reconstruction effort is widely agreed to be a needs assessment to ascertain the extent of war related damage as well as required resources and appropriate prioritisation. Mungiu-Pippidi (2022) observes that the use of reconstruction funds can be distorted through

corrupt decision-making at the very outset, through fraudulent needs assessments or doctored terms of reference intended to favour certain entities. It is for this reason that Jackson and Lough (2022: 11) stress the need for the robust enforcement of conflict-of-interest laws in procurement processes.

Experts have stated that it is vital to conduct an evidence-based needs assessment, in which information on reconstruction requirements is gathered locally, geo-located, validated by multiple stakeholders (local government, CSOs, businesses and international development agencies) and compiled in a central database (Mungiu-Pippidi 2022). Other proposals include the development of government buying standards that set out specifications including prices with which contracting authorities are expected to comply (Mungiu-Pippidi 2022).

Once a needs assessment has been completed and the money starts to flow, there is consensus that the oversight and auditing of public contracting will need to be strengthened if Ukraine is to minimise corruption during reconstruction. Mungiu-Pippidi (2022) has noted that while Prozorro dramatically increased transparency, it had not yet resulted in satisfactory accountability for integrity failings. She points out that responsibility for imposing sanctions for integrity breaches currently lies with the Ukrainian audit agency, and across the 1,500 organisations inspected in 2021, only 265 officials were subject to disciplinary sanctions.¹⁷ To address this accountability deficit, some commentators have therefore recommended that the Prozorro system should be extended to “digitise not only

¹⁶ In the immediate aftermath of the Russian invasion, the Ukrainian government changed procurement procedure to permit direct contracting that bypassed Prozorro (IZI 2022a: 12; Verkhovna Rada 2022). The obligation to publish details of public contracts was resumed in April

2022 and mandatory purchases via Prozorro were reinstated in June (Hryshko 2022).

¹⁷ Transparency International Ukraine (2019) has also pointed to shortcomings in the state audit agency and called for institutional reforms.

procurement but [also] oversight of contract implementation” (Mylovanov and Roland 2022: 40).

There is some discussion of whether the urgency of reconstruction justifies a divergence from standard procurement practices, particularly in terms of bid evaluation and audit functions. Mylovanov and Roland (2022: 40) contend that the emergency conditions imply that ex-ante procurement procedures such as project evaluations should be deprioritised in favour of ex-post audits, which they view as more appropriate so as not to unduly delay reconstruction.

Other observers are more sceptical of the claim that “special, speedy procurement procedures” are justified beyond a comparatively short “emergency phase” because the lion’s share of international funds will be directed towards “long-term reconstruction rather than emergency relief” (Becker et al. 2022a: 83).

In this view, for the majority of reconstruction related public contracting there are good reasons to insist on the “best possible standards of planning, procurement, transparency and reporting” (Becker et al. 2022a: 88). Jackson and Lough (2022: 11) likewise stress that robust procurement systems do not need to be sluggish, and that transparency and real-time monitoring can ensure value for money.

Various concrete recommendations have emerged. The Ukrainian Institute for Legislative Ideas, for instance, wants to see non-price criteria such as expected duration of works, warranty period and job creation embedded into procurement evaluations. It also calls for the establishment of a blacklist for unscrupulous contractors (IZI 2022a: 13).

Mylovanov and Roland (2022: 52) propose expanding the use of framework agreements. In their view, this would involve establishing a list of preselected suppliers and contractors who have passed an integrity vetting process and who agree

to established conditions and prices with the central purchasing agency.

Finally, Mungiu-Pippidi (2022) contends that the most important anti-corruption strategy in procurement will not be an ex-post approach that involves “case-by-case investigation followed by prosecution”. Instead, she suggests that the government should establish overarching performance targets for contracting authorities and impose administrative penalties on those who fail to meet these targets “even in the absence of evidence of fraud.” She proposes these targets could include that no bidding is permitted outside the Prozorro system, that no more than 20% of processes involve only a single bidder and that all single bids are subject to a prioritised audit proceeding.

Judicial reform

The fourth area of widespread consensus is that judicial reform is a core component of reconstruction. As a matter of priority needed to prevent spoilers in the judiciary from obstructing anti-corruption measures, Hadley et al. (2022) argue that reformers need to be appointed to prosecutors’ offices and the courts.

Ukrainian anti-corruption experts have stated that improving the judiciary is central to unlocking the huge investment needed not only from international donors but also private sector lenders and investors. The Rise Coalition (2022a: 6) argues that reforms are needed to ensure the protection of property rights and make the tax and customs regimes more “predictable, transparent and efficient”. Mylovanov and Roland (2022: 40) concur that judicial reform is “a necessary condition not only for the inflow of investment but also... together with competition laws for ensuring that oligarchs do not regain their power after the war”. The Basel Institute on Governance and TI Ukraine (2022b:3) note that overcoming the

blocked judicial reform process is a “crucial prerequisite for the recovery”, not least because reconstruction efforts will inevitably generate contractual disputes that need to be settled in court.

Specific recommendations include ensuring the High Qualification Commission of Judges promptly begins to assess judicial candidates, replacing the Kyiv district administrative court, and finalising revision of the constitutional court’s recruitment processes¹⁸ (Basel Institute on Governance and TI Ukraine 2022a; Fenton and Lohsen 2022).

Build on the success of decentralisation

The final area of clear agreement is the need to involve local government in reconstruction. The devolution of decision-making and decentralisation of budget processes that has taken place since 2014 is generally viewed as a “marked success” in Ukraine (Jackson and Lough 2022: 4). Observers attribute several benefits to decentralisation, including increased revenue generation, more accountable local councils, greater spending on infrastructure and more participation by citizens and civil society groups in allocating and monitoring the use of resources (Brik and Murtazashvili 2022; Jackson and Lough 2022; Murtazashvili and Shapoval 2022).¹⁹

The immediate priority in post-war reconstruction is likely to centre on core infrastructure that is best managed at national level, such as energy, transport, utilities and communications (Mylovanov and Roland 2022: 67).

While acknowledging that centralised approaches to recovery would possibly allow for greater coordination and speed, international observers and local civil society groups have come out in favour of further decentralisation in the reconstruction process (Mylovanov and Roland 2022: 39; Rise Coalition 2022a: 5).

At the lower end of the spectrum, Mylovanov and Roland (2022: 67) suggest that local governments and communities should be shown how to and be encouraged to make requests for reconstruction funding to central reconstruction bodies for them to evaluate and prioritise applications for funds.

Murtazashvili and Shapoval (2022) champion more substantive involvement by local governments, arguing that they should be considered the primary beneficiaries and implementers of reconstruction projects, and systematically favoured over “expensive foreign contractors” in the allocation of recovery funds.

There is nevertheless a widespread view that local government will need to adhere to the same high standards of “transparent registration, selection, prioritisation and evaluation” of reconstruction projects as the central government (Rise Coalition 2022a: 5). Given that in regions that have been devastated by the conflict or subject to Russian occupation, local government capacity to manage large reconstruction projects will be limited, so capacity assessments of local authorities are therefore advisable before allocating them significant resources.²⁰

¹⁸ The law intended to reform the constitutional court has been progressing through parliament (Basel Institute on Governance and TI Ukraine 2022a). However, Ukrainian civil society groups complain that they have been excluded from participating in the Advisory Group of Experts, which is tasked with selecting judges (AntAC 2022).

¹⁹ Comments from anti-corruption expert #1 on anti-corruption newsletter, November 2022.

²⁰ Discussion with Ukrainian anti-corruption expert #5 on 15 December 2022.

Differences in emphasis or technical details

Bulking up punitive, law enforcement responses to corruption

Less unanimous is the notion that root and branch reform of law enforcement is required. Here there are differences of opinion regarding whether to strengthen the existing agencies or to form new anti-corruption units. There is also a debate about whether to focus on prioritising criminal prosecution of those culpable of war related corruption or instead to concentrate on preventive efforts to reduce the opportunities for corruption, such as strengthening competition and anti-trust policies.

On one hand, there are numerous commentators who argue that the country's specialist anti-corruption agencies, notably NABU, ARMA and SAPO, will need to be reinforced after the war (Fenton and Lohsen 2022; Kos 2022). A first step here is to finalise ongoing selection processes for leadership positions in these institutions (Basel Institute on Governance and TI Ukraine 2022b).²¹ Even once leaders have been put in place, observers have called for these bodies to be allocated more staff and resources, as well as permitted to operate without political interference or obstructionism (Basel Institute on Governance and TI Ukraine 2022a; Fenton and Lohsen 2022).

Other analysts have called for more radical reforms, pointing to the dismissals in July 2022 of the head of the SBU and the prosecutor general as evidence of a deeper malaise in the country's law enforcement bodies (GIS 2022). One proposal to curb corruption during the war and post-conflict

period is for the president to bypass the existing institutional framework altogether. In this view, the government should use its "enormous wartime powers to establish an elite unit of police, prosecutors and judges that investigates and adjudicates the most serious cases of corruption" (GIS 2022).

However, most analysts would prefer to augment rather than dispense with existing institutions. Kos (2022) calls for the establishment *within* NABU and SAPO of dedicated special units to investigate and prosecute corruption in the distribution of humanitarian aid and reconstruction projects. Similarly, the Basel Institute on Governance and TI Ukraine (2022b: 3) recommend that NABU establishes a "specialised forensic investigations unit". In addition, Kos (2022) proposes setting up new anti-corruption structures inside organisations tasked with distributing aid and managing reconstruction efforts. This would take the form of "embedded anti-corruption experts" who report directly to anti-corruption agencies rather than to the leadership of the organisation to which they are attached.

Kos (2022) further recommends that as a matter of priority Ukraine's international allies provide resourcing and capacity building support, including secondment of investigators specialised in war related corruption offences. Together, these measures are intended to facilitate the "swift investigation and prosecution" of corruption. Kos is not alone in the view that Ukrainian authorities should prioritise punitive measures. Messick (2022) calls for personal liability for any irregularities found by external auditors to be established for directors of private sector entities that receive reconstruction funds. Mylovanov and Roland (2022: 53) suggest that the Ukrainian

²¹ While the head of SAPO is now in place, as of January 2023 ARMA and NABU remained without permanent

leadership (Basel Institute on Governance and TI Ukraine 2022a).

government should “fire any official who has in the past been indicted of corruption”. Moreover, given that court proceedings take time to secure convictions, they suggest that “anyone seriously accused of corruption” should be immediately suspended from official duties even in the absence of proof of guilt (Mylovanov and Roland 2022: 53).

Issues of due process and the presumption of innocence aside, according to local experts, as yet anti-corruption institutions and law enforcement bodies are not actively involved in discussions about or preparations for tackling corruption in reconstruction efforts.²²

Preventive measures including competition policy, anti-trust and civil service reform

More fundamentally, there are also those who dispute that a punitive approach based on beefed up law enforcement should be the priority. Both Ukrainian and international experts have argued that the emphasis should be on preventing people from engaging in corruption rather than catching them afterwards (AntAC 2023b; Messick 2022).

Pointing out that convictions in Ukrainian courts often take years to achieve, Mungiu-Pippidi (2022), suggests that punitive measures should not be the focus of anti-corruption efforts during reconstruction, noting that “Ukraine has already invested too much in the top [anti-corruption] architecture”. She contends that a “post-factum” approach to anti-corruption that focuses on punishing past transgressions will not be effective but could bring additional and destabilising political risks.

Local experts interviewed for this Helpdesk Answer tended to side with Mungiu-Pippidi on this point,

noting that an excessive focus on punitive measures would absorb resources better spent on prevention.

Mungiu-Pippidi (2022) therefore pleads for anti-corruption efforts to prioritise tackling the material drivers of corruption through comprehensive reforms to competition policies. The core objective, in this view, is “to eliminate the sources of economic privileges, the monopolies and oligopolies of every sector rather than spend years putting in jail those who profited in earlier times from such political opportunities” (Mungiu-Pippidi 2022).

Specific recommendations include strengthening Ukraine’s supreme audit institution and its anti-monopoly committee to enable these bodies to “break up Ukraine’s state-adjacent monopolies and cartels” (Fenton and Lohsen 2022; The Basel Institute on Governance and TI Ukraine 2022a: 2; Mylovanov and Roland 2022: 62).

Virtually all analysts concur that in the context of reconstruction, stimulating competition is important to ensure value for money and prevent new monopolies emerging in post-war Ukraine. This emphasis on promoting competition extends to the world of politics and the media. Mylovanov and Roland (2022: 63) propose reforming political and campaign finance regulations to lower barriers to entry for candidates not beholden to oligarchic interests; they suggest adopting a model of public financing for political parties. Media reform is also argued to be important to reduce the reliance of journalists on oligarchs and promote public interest journalism (see Mylovanov and Roland 2022: 64-66).

²² Discussion with Ukrainian anti-corruption expert #1 on 15 December 2022.

Another preventive measure suggested is strengthening the capacity of public managers and administrators. Mylovanov and Roland (2022: 39) note that civil service reforms should continue to ensure merit based promotion in public administration. Mungiu-Pippidi (2022) recommends earmarking a portion of reconstruction funds to train a “new generation” of public managers, procurement experts, auditors and compliance officers, whose performance evaluations would be linked to the fulfilment of reconstruction related objectives.

Whatever specific approach is taken, whether punitive or preventive, Jackson and Lough (2022) insist that anti-corruption interventions must be viewed as much as a political as a technocratic exercise. According to them, measures to curb corruption in reconstruction need to be “highly sensitive to the political economy of reforms”, including political opportunities, constraints and unintended consequences (Jackson and Lough 2022: 9). In this view, political economy analysis is a pivotal first step for any reform package in a given sector, be this establishing anti-corruption safeguards in a road building programme or tackling graft in the supply of medical products.

Legislative reform

Specific revisions to legislation are not often mentioned by international commentators, who tend to stick to the “bigger picture”. Ukrainian experts, on the other hand, have made several specific recommendations to reduce corruption in reconstruction efforts. The Ukrainian Institute of Legislative Ideas (IZI) has proposed reforms to the access to public information law that would make all data related to the recovery of Ukraine subject to mandatory disclosure, oblige local governments to publish information online and tighten administrative procedures and penalties to improve compliance with freedom of information requests (IZI 2022a: 15).

In addition, IZI is advocating for revisions to the law on public-private partnerships that would ensure a greater protection of investors’ rights in an attempt to encourage greater private investment in reconstruction financing (IZI 2022a: 17). At the local level, they have called for amendments to the law governing public participation in budget processes and urban planning to make citizen consultation mandatory (IZI 2022a: 21). Finally, IZI (2022a) is pushing for mandatory public participation in decision-making by whichever body is charged with coordinating and distributing recovery funds, as well as CSO representation in this entity’s supervisory body.

The Basel Institute on Governance and TI Ukraine (2022a) have also called for several legal obligations suspended by the imposition of martial law to be reinstated. These include the requirement that public officials submit asset declarations and that political parties provide financial reports. They also call for greater legal protection to be afforded to whistleblowers, who they argue will be important in detecting and preventing corruption in the reconstruction process.

Asset recovery and tackling dirty money

The Basel Institute on Governance and TI Ukraine (2022b) have proposed that, as a matter of priority, Ukraine’s asset recovery systems should be improved so that money lost in the past to corruption can be used to finance reconstruction. Specific recommendations include completing domestic investigations into stolen assets so that confiscation orders can be issued by foreign authorities as well as improving Ukraine’s non-conviction based confiscation framework. In addition to resources plundered in the past by Ukrainian kleptocrats, attention is being paid to the potential of using Russian assets seized under sanctions introduced since February 2022 to fund part of the cost of reconstruction (Basel Institute on Governance and TI Ukraine 2022b: 4).

However, most other comment pieces related to reducing corruption in reconstruction tend to focus on the issues discussed above, such as judicial reform, transparency initiatives and procurement safeguards rather than asset recovery. This omission implies that many analysts believe that domestic reforms are more important to ensure integrity during reconstruction than asset recovery. As Mungiu-Pippidi (2022) observes, “recovering assets is highly expensive and takes years”.

A related issue is the insistence by various commentators that Ukraine’s western backers address their own complicity in facilitating cross-border corruption and illicit financial flows (Papp 2022). Both the Coalition for Integrity (2022) and the World Economic Forum (2022), for example, have called for regulatory reform to clamp down on “the role that Western markets, tax havens and international financial networks play in facilitating illicit finance”. The overarching concern is that transnational corruption could lead to the misappropriation and laundering of recovery funds, hollowing out the effectiveness of reconstruction efforts (Jackson and Lough 2022: 12-13; Rupert 2022).

One specific measure being discussed is a stipulation that all international companies awarded reconstruction contracts must have anti-corruption compliance systems in place as a prerequisite to access funds (Messick 2022). Similarly, Fenton and Lohsen (2022) argue that western donors and international finance institutions should insist that private companies seeking financial support for their investments in post-war Ukraine establish codes of conduct with strict anti-corruption standards.

The use of conditionalities

A further area of some discord is the necessity of making the delivery of reconstruction funding

contingent on Ukrainian compliance with conditions imposed by donors. Conditionalities related to progress in curbing corruption and advancing the rule of law are not new in Ukraine as the IMF has imposed them since 2014 in the case of its loans to the country (Becker et al 2022a: 71).

Many western observers have called for international financial support for reconstruction to come “with strings attached”, suggesting that these are “to the benefit of a country with a history of corruption” (Ganster et al. 2022: 5). Kos (2022), Rudolph and Eisen (2022a), Becker et al. (2022: 87) Mylovanov and Roland (2022: 62) also back the “totally justified” idea that donors should impose strict conditionality provisions, whereby the Ukrainian government’s progress in strengthening the anti-corruption framework is a precondition for the release of reconstruction funds from abroad.

In terms of what these conditions should consist of, commentators point to the seven reforms set out in the European Commission opinion on Ukraine’s application for membership of the EU, which include reforms to the judiciary, law enforcement, anti-money laundering framework, media landscape and minority rights (Ganster et al. 2022: 5; Hadley et al. 2022; European Commission 2022b). Rudolph and Eisen (2022) suggest that the immediate priority is for Kyiv to equip its anti-corruption institutions with sufficient leadership, resourcing and mandates, finalise the process of vetting and selecting judicial candidates, and join the European Public Prosecutor’s Office. In the longer term, they argue that “true deoligarchisation” should be a condition for continued support. Others have also called for international funding for reconstruction to be tied to further reforms in Ukraine’s public financial management system (Bergmann and Romanyshyn 2022: 8).

Conditionalities are also viewed as a useful instrument not only for the Ukrainian state but for private sector entities too. Fenton and Lohsen

(2022) suggest that businesses who seek to access reconstruction finance could be required to comply with certain anti-corruption standards. Messick (2022) likewise proposes that all contractors competing for reconstruction tenders should be obliged to have an independently certified anti-bribery management system compliant with ISO 37001.

Overall, there is a widely held view in the west that conditionalities based on “measurable, verifiable outcomes” are necessary and effective to secure domestic momentum for reform and compel Ukraine to establish the framework conditions needed to safeguard international funds (Becker et al. 2022b: 7). It is notable that transparency here is viewed as both an ends and a means; it is both desirable in its own right while also enabling analysts to monitor the use of funds.

Ukrainian observers tend not to explicitly take a position on this issue. There are some concerns, however, that a paternalistic, tick-box approach by the west will lead only to the appearance of compliance without generating meaningful, locally owned reform.²³ Other concerns have also been raised that excessively strict conditions could lead to urgently needed economic assistance being delayed, which could in turn undermine the viability and warfighting capability of the Ukrainian state (Hadley et al. 2022). Messick (2022) also raises the possibility that overly stringent conditionality might mean that the west’s strategic rivals such as China step in to provide reconstruction funds while turning a blind eye to corruption.

Nonetheless, given that aid conditionality is so commonly endorsed by commentators based in donor countries, it seems probable that conditionality will remain at “the centre of

conversations about international support for Ukraine’s economic stability, recovery, and political integration with Western institutions” (Fenton and Lohsen 2022).

Areas of disagreement

Structure, ownership and mandate of bodies to coordinate, disburse and oversee the use of reconstruction funds

One of the most heated disagreements in discussions around Ukrainian reconstruction is the appropriate architecture to deliver and monitor recovery funds. Within this debate, there are areas of consensus. Observers agree that the provision of assistance should:

- be based on a robust assessment of needs and capacity (Jackson and Lough 2022: 10)
- be channelled through a central platform and possibly managed by some form of new coordination body to encourage a “unified transparent approach” (IZI 2022a: 11)
- have clearly assigned roles and responsibilities in every phase for each organisation and agency involved, from acceptance of reconstruction money to allocation and spending (Kos 2022)
- include robust tracking mechanisms built into digital information management systems that impose as little administrative burden as possible (Hadley et al. 2022; Kos 2022; Rise Coalition 2022a)
- incorporate clear, open procedures and criteria for the distribution of funds, as well as appeal mechanisms, internal

²³ Discussion with Ukrainian anti-corruption expert #1 on 15 December 2022.

controls and audit processes (IZI 2022a: 11)

- involve Ukrainians in decision-making processes (International IDEA 2022: 1)

However, there are also major differences of opinion with regard to the structure and ownership of bodies tasked with coordination and/or oversight.

The Centre for Economic Policy Research (CEPR) has advocated for an EU led model, whereby a new international aid organisation they call the Ukraine Reconstruction and European Integration Agency would be established as a temporary and autonomous body staffed by international experts (Mylovanov and Roland 2022: 48-49). They insist that the agency should:

1. be affiliated with the EU to overcome hurdles in existing financial institutions²⁴ and help prepare the way for EU accession (Becker et al. 2022b: 9)
2. collect funds from donors and only release these in response to requests by the Ukrainian authorities on the condition that certain criteria are met
3. have the authority to conduct site visits to verify project implementation and completion (Becker et al. 2022b: 11-13)

A core feature of this model is the aid conditionality it imposes, typified in the right of the agency to veto projects proposed by the Ukrainians and freeze ongoing projects suspected of corruption (Mylovanov and Roland 2022: 50).

Unlike CEPR, the German Marshall Fund (GMF) does not consider it practical or advisable to launch a new aid agency or centralised trust fund

specifically for Ukraine (Ganster et al. 2022: 15). Instead, the GMF is in favour of donor countries working through existing channels for multi-donor funds hosted by the World Bank, the IMF and the EBRD. They do believe, however, that the existing IFI architecture should be “augmented” through the establishment of a new US led RecoverUkraine platform intended to enhance coordination between donors by “align[ing] conditionality principles and oversight requirements” (Ganster et al. 2022: 4). In addition, the GMF calls for the creation of an independent inspector general with a mandate to oversee reconstruction funding and investigate reports of corruption (Ganster et al. 2022: 41).

Broadly in line with the GMF’s proposal, in December 2022, the G7 countries announced the establishment of a multi-agency donor coordination platform to align the support provided by various bilateral agencies, international organisations and financial institutions, with the European Commission providing a secretariat (European Council 2022). The platform officially launched in late January 2023 (European Commission 2023). However, this platform appears to restrict itself to harmonising efforts between international partners, and the Rise Coalition (2022a: 15) suggests it will do little to ensure coordinated implementation of reconstruction measures within Ukraine.

Ukrainian civil society is divided on the need for a new institution and what it should look like. The Rise Coalition (2022a: 8) believes that most coordination, management and audit functions needed for reconstruction “can be partially carried out by existing authorities”. Where any of these functions are assigned to a new body, the Rise Coalition’s view is that this institution should be

²⁴ These hurdles include the fact that Russia is a shareholder in the World Bank, the IMF and the EBRD.

established by the Cabinet of Ministers and nationally owned. Further, most civil society organisations agree that there is a need to separate financial functions (procurement, disbursement of funds) from the policy functions (setting priorities and standards for recovery projects) to avoid conflicts of interest (Risa Coalition 2022a: 8; IZI 2022b).

To further reassure donors, both the Rise Coalition (2022a: 4) and IZI (2022a: 8) propose that a supervisory board should be set up to oversee the work of any new reconstruction agency, which would include a large proportion of representatives from international donors with the right to veto decisions.

Other organisations have been more forthright in endorsing the idea of a new institution charged with coordinating and monitoring reconstruction.

TI Ukraine (2022), for instance, argues that an independent body should be established to produce standards for reconstruction projects, administer and monitor project implementation and act as a liaison between international partners, the state, project executors and citizens.

The IZI (2022a: 7) believes that an “extra-budgetary non-governmental institution” should be established with an even broader mandate. In addition to a fundraising and coordination function, the body proposed by the IZI would also organise procurement tenders, distribute funds, monitor contract implementation and conduct audits and inspections. According to this model,

the owner of a damaged object or the local administrative unit would apply to the independent body, which would consider requests on a first-come, first-serve basis and log all requests in a public register (IZI 2022a: 8).

Another division between Ukrainian civil society runs between those like the Rise Coalition who advocate for government ownership of reconstruction efforts on one hand, and those that call for reconstruction funds to bypass the state entirely.

AntAC (2023b), for instance, has argued that international funds for post-war reconstruction “should not go directly into the general budget or any government-controlled fund” but instead be routed through the World Bank, IMF or other specially created donor instruments.²⁵

Nonetheless, this position appears to be a bit of an outlier as most Ukrainian commentators insist on Ukrainian ownership of structures tasked with coordinating, disbursing or overseeing reconstruction funds (Rise Coalition 2022b).

Meanwhile, in 2022, the Ukrainian government established the National Council for the Restoration of Ukraine from the Effects of the War to produce an action plan for post-war reconstruction and reform (IZI 2022a: 5). In addition, the government set up multiple different

²⁵ An even more radical position is taken by the UA NvD Platform, which promotes the establishment of a non-governmental oversight body called the Rebuilding Watch Dog (RWD), composed of local construction companies and property developers. The authors of this model argue that “direct funding without the mediation of state or local budget, without ministerial and department approval will save significant money and time” (ESG UA NvD Platform 2022b: 2).

The proponents of the RWD model propose donors would provide funding directly to contractors, and the use of those funds would be monitored for a fee by the association of private sector companies involved in the RWD initiative. The proposal does not provide much detail on how control mechanisms would work in practice beyond noting that RWD would conduct site inspections, and all obligations are based on “voluntary expressions of will, embodied as contracts” (ESG UA NvD Platform. 2022b: 4).

recovery funds²⁶ and launched the United24 platform to collect donations for defence, humanitarian assistance and reconstruction.

United24 is intended to serve as a mechanism to pool finance provided by different donors into official accounts of the National Bank of Ukraine (United24 2022). This mechanism incorporates donations into the state budget and is thus controlled by the cabinet, allowing line ministries to draw down funds to cover spending needs as they see fit (IZI 2022c). However, local experts have criticised the platform, stating that in some ministries the decision-making process to allocate funds to specific objectives is unclear (IZI 2022d). Given these concerns about transparency and the quality of controls in place, the United24 model may prove unsuitable to managing the large influx of post-war reconstruction funds.

The Ukrainian government followed up in late 2022 with a draft law proposing the establishment of the Recovery Fund of Ukraine, which in essence is intended to provide an institutional basis for the Ukrainian government's fundraising efforts. The proposal has received some praise from international observers for the intended inclusion of a strong internal audit department that would report directly to a board of directors (Messick 2022).

However, as is the case with United24 platform, the draft law does not foresee the recovery fund as a decision-making body in its own right but rather a "temporary custodian of funds transferred by donors, which the fund will later transfer to the focus areas specified by the Cabinet of Ministers" (IZI 2022c: 4). The IZI (2022c: 4) has fiercely criticised the proposed structure for its lack of

coordinating mandate and operational independence, its failure to stipulate competitive procedures for the selection of projects and contractors, absence of meaningful mechanisms for publication participation and for side-lining local government (IZI 2022c: 20). In this context, experts interviewed for this Helpdesk Answer noted that it is not clear that international and institutional donors are willing to use systems fully controlled by the Ukrainian government and some seem to be intending to rely on their own delivery systems.²⁷

In January 2023, the Ukrainian government announced the establishment of the State Agency for Restoration and Infrastructure Development of Ukraine and launched the Recovery of Ukraine programme in the framework of the United24 platform (Government Portal 2023). As yet, the new agency's role and mandate are not fully clear.

The landscape is thus fragmented, characterised by various multiple initiatives and rival proposals, which clearly "require better coordination and interaction" (Rise Coalition 2022: 15). The disjointed institutional architecture and variety of funding mechanisms on offer – each with different administrators and procedures – hampers oversight. In the view of the IZI (2022a: 6-10), this increases risks of double funding, mismanagement, overpricing corruption and undue influence. As yet, there is no solution to the impasse between donors' anxieties about fiduciary risk in the use of their funds and respect for Ukrainian sovereignty in the appropriate use and control of those funds.

²⁶ These include the Fund for Recovery and Transformation of the Economy, separate sectoral funds such as Fund for Recovery of War-Destroyed Ukrainian Energy Infrastructure, initiatives on recovery of specific cities such as Bucha, and even initiatives to establish separate funds to

rebuild specific objects like certain museums. See IZI (2022b: 4).

²⁷ Discussion with Ukrainian anti-corruption expert #2 on 15 December 2022.

International audit and inspection agencies

One of the most controversial proposals has been the suggestion to establish international oversight of Ukraine's use of reconstruction funds in the form of an inspectorate general. Proponents of this model, who are predominantly American, point to the perceived success of the Special Inspector General for Afghanistan Reconstruction (SIGAR) in revealing how international donors had actually fuelled corruption in Afghanistan. Murtazashvili and Shapoval (2022) argue that such an independent body is needed primarily to "hold donors accountable for fraud and corruption" but "must hold Ukrainians accountable as well".²⁸ A similar position is taken by Ganster et al. (2022: 41), who advocate for an inspector general with the remit to "investigate accusations of wrongdoing during project implementation" and provide regular public reports. Commentators have argued that real-time independent external oversight is required from the outset of reconstruction to overcome the shortcomings of ex-post audits that only identify wrongdoing after the fact.²⁹

Pryer (2022) agrees, claiming that the US government has not equipped the inspector generals from the Department of Defence, the Department of State and USAID with sufficient mandates or resources to oversee assistance that has been provided to Ukraine, and that a new "well-funded SIGAR-like agency inside Ukraine" is urgently needed. Rudolph and Eisen (2022b) even suggest, that in addition to the establishment of an independent inspector general with a mandate to investigate funds operated by international financial institutions, every G7 country should also mandate their own national inspector generals to monitor the use of funds provided by each

government, as well as involving the European Public Prosecutor's Office and the European Court of Auditors. In their view, cooperation and information sharing between these multiple inspectorates would need to be organised via a donor coordination platform.

There has nonetheless been some scepticism of the claim that direct international oversight of reconstruction efforts is a win-win for Ukrainians and donor countries. Some argue that "creating a new institution to investigate offenses related to reconstruction is impractical" (Rise Coalition 2022: 16), or contend that, rather than developing new agencies, energies should instead be dedicated to supporting national efforts and joint approaches with the Ukrainian government. In this view, existing inspectors general, such as the one from the US Department of Defense, should focus on working with Ukrainian law enforcement, civil society and journalists to identify potential corruption and then take appropriate steps.³⁰

Direct budget support

Finally, there are also disagreements regarding whether international donors should offer direct budget support. Rudolph and Eisen (2022a) contend that reconstruction funds should be directly paid to "well-vetted and highly transparent contractors, rather than first being intermingled with Ukrainian government budgetary accounts or allocated at the discretion of Ukrainian ministries". AntAC (2023b) also argues that international donations should not be integrated into the "general budget or any government-controlled fund" but rather managed directly by western donors.

²⁸ Comments from anti-corruption experts #2, #4, #5, #6, #8 and #9 on anti-corruption newsletter, November 2022.

²⁹ Comments from anti-corruption expert #4 on anti-corruption newsletter, November 2022.

³⁰ Comments from anti-corruption expert #7 on anti-corruption newsletter, November 2022.

However, most institutional actors seem to agree that Ukraine needs direct budget support to avoid a balance-of-payments crisis given the macroeconomic situation. Murtazashvili and Shapoval (2022), for instance, argue that post-2014 reforms to Ukraine's central bank have established accountability mechanisms that render it capable of managing funds from international donors. Messick (2022) also proposes providing structural funds instead of project money to ensure that the results of reconstruction are sustained in the long run.

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The U4 anti-corruption helpdesk is a free research service exclusively for staff from U4 partner agencies. This service is a collaboration between U4 and Transparency International (TI) in Berlin, Germany. Researchers at TI run the helpdesk.

The U4 Anti-Corruption Resource Centre shares research and evidence to help international development actors get sustainable results. The centre is part of Chr. Michelsen Institute (CMI) in Bergen, Norway – a research institute on global development and human rights.

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