

War and Corruption in Ukraine

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ABSTRACT

The situation concerning corruption in Ukraine before the Russian invasion was not particularly encouraging: there were no significant improvements on the ground; independent, newly established, specialised anti-corruption bodies were being hindered from doing their job in every possible way. As in almost all countries participating in armed conflicts, it is entirely understandable that fighting corruption is no longer a priority now that the country is under attack. When the war is over, the Ukrainian anti-corruption framework will be weaker than it was before the war, yet it will face a series of new challenges, especially those resulting from the vast influx of material and financial support for humanitarian purposes and for the reconstruction of the country. In order to avoid a scenario in which the country, having survived the war, could become a victim of corruption, the Ukrainian government, supported by the international community, will have the important task of renewing and enhancing the activities of national anti-corruption agencies in addition to that of assisting civil society in re-engaging in its monitoring functions. In doing so, utmost attention will need to be devoted to the development of effective, transparent, and accountable mechanisms for the fair distribution of humanitarian aid and to the development of a well-planned, efficient, and rational reconstruction of the country – with little room for diverting available resources into private pockets.

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I. Introduction

The war raging in Ukraine will significantly influence many important features of life in the country, in Europe, and in the world. Due to the conflict, Europe and the rest of the world are sliding into a new Cold War era, with a new Iron Curtain, which – though less tangible than its predecessor in the last century – is dividing many more nations: the USA and Europe in the West and the Russian Federation, China, India, and numerous other countries in the South and the East. In addition to this geopolitical shift of cataclysmic proportions, many things will also change in Ukraine itself. Since the magnitude of corruption in all countries affects their levels of democracy, the extent of social injustice, and their adherence to the rule of law, any worsening in the area of corruption is of particular importance for a country also fighting for its very existence, like Ukraine.

In general terms, no circumstances are more conducive to the existence and development of corruption than those of an armed conflict: the state systems of social control – law enforcement and the judiciary – are unable to perform their core functions; in the absence of basic goods, such as food, medicine, etc., the levels of predatory behaviour and disregard for legal norms and ethical principles increase; and there is never enough attention paid to fighting corruption during a conflict and the ensuing post-conflict chaos. Add to that the potentially significant influx of foreign assistance, and the result is a mix of objective and subjective circumstances and conditions, which may well lead to an explosion of corruption at all levels. Is this also to be the fate of Ukraine?

This article first presents the situation in the area of corruption in Ukraine before and during the war. It subsequently includes a forecast of potential developments after the war, accompanied by a proposal on some crucial steps needed to decrease the risks of corruption emanating from a significant volume of incoming financial assistance to Ukraine from abroad.

II. Pre-War Corruption in Ukraine

At the perceived level of corruption, Ukraine had been slowly improving its rating in the Transparency International Corruption Perception Index from a rating of 1.5¹ out of a possible 10 points in 2000 to a rating of 33 out of a possible 100 points in 2020.² Clearly, the people of Ukraine believe the situation is improving but also that it is improving very slowly, as the 2020 index rating of 33 is lower than that of Albania at 36, Bosnia and Herzegovina at 35, Armenia at 49, Georgia at 56, and Kazakhstan at 38.³

When it comes to hard data, i.e. the question as to what percentage of the population resorted to bribery in the past year to secure a necessary service, the Transparency International Global Corruption Barometer indicates: in Ukraine, this percentage was 37% of the population in 2011⁴ and 38% in 2017,⁵ meaning that low-level corruption was slightly on the rise. A comparison with other countries again shows a worrying situation. According to the 2017 survey, the percentage of people from the aforementioned countries who paid bribes was as follows: Albania – 34%, Bosnia and Herzegovina – 24%, Armenia – 27%, Georgia – 7%, and Kazakhstan – 29%.⁶

Under pressure from the international community, Ukraine established several specialised anti-corruption institutions to investigate, prosecute, and adjudicate high-level corruption cases, including the National Anti-Corruption Bureau of Ukraine (NABU), the Specialised Anti-Corruption Prosecution Office (SAPO), and the High Anti-Corruption Court (HACC). Contrary to the expectations of many decision-makers in the country, these institutions started to function effectively and, as a countermeasure, immediate efforts were made by almost the entire political establishment to slow down if not completely disable their functioning. Measures against these institutions ranged from incomprehensible decisions by the Constitutional Court, to the

engagement of other state bodies (mostly SBU, the State Intelligence Agency) against the anti-corruption entities, and even to smear campaigns against these entities and their leaders.

As a case in point, the recent attempts to appoint a new Head of SAPO are a typical example. The recruitment process started in autumn 2020 and when the best candidate was finally selected in December 2021, the members of the selection commission nominated by the *Verkhovna Rada*, the Ukrainian parliament, simply refused to formally endorse the selection, ignoring the fact that President Zelensky had promised other world leaders, including the US President,⁷ that the selection process would be completed as soon as possible. This has been used by the President of the Russian Federation to publicly criticise Ukraine for allowing what might be called “interference of the West into its internal affairs.”⁸ One way or another, much to the frustration of the international community, the civil society in Ukraine, and Ukrainian citizens, Ukraine still does not have a Head of SAPO, which may become a significant impediment to fighting corruption in these times and those to come.

Generally, it can be concluded that there have been no notable improvements in recent decades when it comes to fighting corruption, either at the perceived level of corruption or in the lives of the Ukrainian people. Even when some positive developments occurred, the corrupt actors in all three branches of power and at all levels began a concerted campaign to keep the situation as it was before: non-transparent and corrupt, thus ensuring impunity for the perpetrators.

Since the level of corruption in a particular area may be quite different from the overall situation, it is worth exploring whether anti-corruption efforts in the area of defence, which is by far the most important sector in Ukraine today, developed and made some headway or whether it suffered the same bleak fate as anti-corruption efforts in general.

In 2016, the Independent Defence Anti-Corruption Committee (NAKO), composed of three national and three international members, was established, with the aim of fighting corruption in the defence sector. After exhaustive research, NAKO published several reports covering the delivery of security assistance to Ukraine; corruption risks in the Ministry of Defence system governing their medical supply chain; illegal trade with occupied Donbas; the balance between secrecy and transparency in the defence sector; the most frequently encountered corruption risks in Ukraine’s defence procurement processes; reform of the State Defence Order as the basic document for procuring military assistance in the country; and corruption in the real estate sector of the Ministry of Defence, etc.

The most important findings of these reports did not come as too much of a surprise:

- Security assistance to Ukraine was not always provided in accordance with the needs of the Ukrainian defence forces, and in some cases, the equipment provided was missing components that were vital for it to work efficiently and to its full capacity. Equipment was also sometimes distributed to troops who lacked the training to operate it effectively, and a lack of spare parts and maintenance capability rendered some equipment useless;⁹
- The Ministry of Defence system governing its medical supply chain had a number of gaps and obscure mechanisms, leading to corrupt practices in the procurement of medicines/medical products, e.g. the purchase of low-quality products for the frontline and for the military hospitals;¹⁰
- The illegal trade between government-controlled Ukraine and the occupied Donbas was conducted systematically and facilitated by Ukrainian defence and security institutions, which undermined Ukraine’s defence capacity and damaged its economy and reputation;¹¹

- The following were identified as the most significant risks in Ukraine's defence procurement:¹²
 - The deliberate restriction of competition;
 - Biased intervention in the procurement process by defence ministry officials to unfairly favour a particular company;
 - The winning bidders having a shareholder or other business relationship with a politically exposed person/persons in the country;
 - The Ministry of Defence allowing unqualified or hostile state suppliers to win and/or deliver a contract;
 - Contractual terms and conditions that deviated markedly from industry and/or market norms;
 - Companies with a history of anti-competitive behaviour being awarded contracts;
- The State Defence Order as a “means of state regulation of the economy to meet the needs for national security and defence” was not formulated according to the needs of the Ukrainian armed forces but according to the financial resources available, thereby relying on non-competitive procedures – some even rooted in the Soviet and pre-war eras.¹³

In light of the above findings, the conclusion can be drawn that, just before the war, the Ukrainian defence sector, while having many positive elements was also characterised by a certain level of inefficiency and disorganisation, and it definitely possessed the potential for corruption. This is surprising, since one would expect that the defence sector would have engaged heavily in eliminating risks posed by corruption following the occupation of Crimea and Donbas in 2014, after which further military clashes simply had to be expected – not just for the sake of reducing corruption but, more importantly, to preserve and enhance the combat readiness and capability of the Ukrainian armed forces, which were directly at risk of being undermined by corruption in the defence sector.

III. The War and Fighting Corruption

As seen above, despite the efforts of the Ukrainian government and its international partners, the Ukrainian armed forces may not have been in the best possible shape when the Russian invasion began on 24 February 2022. Every war brings chaos and, apart from causing the loss of human lives and endless suffering, it also influences other areas of life, including corruption. During armed conflicts, especially when nations are fighting for their survival, combating corruption is never a priority. Understandably, all human and material resources are engaged in defending the country, and the only things that matter are the military's achievements in fending off the enemy and protecting the nation's cities, towns, and villages from attack. Nobody expects countries under invasion to be particularly engaged in the prevention and suppression of corruption, if at all, although it does not need to be completely overlooked if parts of the country and/or the government are still functioning normally. This is the case in Ukraine today, and the situation is further characterised by a significant volume of incoming military, humanitarian, and financial assistance from abroad. While the country's primary focus must be on its military efforts, the government in Kyiv must also focus some of its attention on setting up a robust structure to effectively deal with the influx of foreign assistance in order to ensure that it is distributed and delivered to those sections of the population and military forces that most need it – an undertaking that would be a significant challenge even in peacetime. It is beyond doubt, as in any other country during an armed conflict, that some individuals will exploit this situation for their personal

gain. Unfortunately, being preoccupied with defending the country, the government can only expect to be marginally successful in fighting the activities of war profiteers.

The supposition surrounding Ukraine's de-prioritisation of its anti-corruption efforts was confirmed by the only survey concerning anti-corruption activities in the country during the current war. It was conducted during the first half of April 2022¹⁴ and although only 169 replies were received¹⁵ from anti-corruption experts in the country, the results of the survey are very telling:

- Since the invasion, 93% of anti-corruption experts have stayed in the country and only 7% have left,
- 47% of the anti-corruption experts feel personally endangered by continuing to fight corruption during the conflict,
- 84 % of the anti-corruption experts abandoned their anti-corruption activities due to the war,
- 5% of the anti-corruption experts have lost their job due to the war.

Fortunately, the state anti-corruption agencies, mainly NABU, SAPO, and the National Anti-Corruption Prevention Commission (NACP), have remained institutionally intact. Due to the engagement of their staff in the armed forces, however, they have been forced to scale down their activities. In order to quickly reach the pre-war levels of engagement of the anti-corruption bodies and experts after the war, a determined and immediate effort will be needed in Ukraine as soon as the war ends – if not earlier.

IV. Corruption in a Post-War State

1. Corruption risks after the war

Every war ends eventually, and we can only hope that the current war in Ukraine will be completely over soon. As a consequence of the lack of attention apportioned to corruption during an armed conflict, the level of corruption in an affected country invariably increases, and that does not end with the conclusion of hostilities. On the contrary, a vast array of additional corruption risks is usually present in post-war states, of which Ukraine can expect to face the following:¹⁶

- *Capacity challenges:* Post-conflict countries are often confronted with the loss of their anti-corruption infrastructure and trained staff, which is an important deficit in circumstances during which a massive inflow of international assistance is aimed at the accelerating reconstruction of the country. Pressure to disburse large amounts of aid quickly and the questionable level of the state's capacity to effectively absorb and use the massive influx of foreign aid in a transparent and accountable manner always creates incentives for corruption and profit seeking;
- *Lack of political will:* The question always arises as to when the government of a post-conflict nation realises that, in addition to all other reconstruction efforts, fighting corruption also has to be re-instigated. Intentional or unintentional delays in doing so can lead to irreparable consequences for the country and for its anti-corruption setup;
- *Legacy of pre-war and wartime corruption:* Post-war countries regularly inherit the patterns of corruption that existed before the war as well as those that developed during the armed conflict;
- *Weak rule of law:* Where there is a very low level of engagement on the part of law enforcement in a specific area as a consequence of war or for any other reason, corruption and abuse of power

become activities characterised by a low risk for perpetrators to get caught and with a high probability to acquire significant profits.

In addition to the corruption-prone areas that existed prior to the war, Ukraine may face risks in a number of new areas after the conflict ends:

- *Reconstruction programmes*: The rehabilitation of destroyed or damaged infrastructure involves massive construction projects, and there is often a lack of transparency in contracts, money expenditure, etc. In many countries, the public budgetary and financial management systems are not able to cope with the new challenges, exacerbating the corruption risks associated with procurement for large-scale infrastructure projects;
- *Domestic public institutions*: In addition to the state capture of many public institutions prior to the hostilities, the centralised chain of command essential during the war may also result in the state capture of many other institutions;
- *Distribution of humanitarian aid*: Aid allocation to victims can also be susceptible to corruption, as it involves the exercise of different levels of discretion in decision-making processes concerning the distribution of the aid.

2. Theoretical solutions to fighting corruption in post-war countries

After the war, the combative spirit of the population slowly fades, and people return to their normal day-to-day activities. Although they understand that the government is preoccupied with reconstruction efforts and cannot engage immediately and fully in other areas, they are extremely sensitive to the emergence of corrupt individuals who manage to profit from the war and its atrocities. This eventually forces governments to re-engage in the anti-corruption area; otherwise their recent military achievements may be overshadowed by their post-war ignorance of growing corruption.

In theory, the following circumstances can favourably impact the efficiency of the anti-corruption measures of the post-war government:

- Starting early: Corruption is often relegated after what are considered more pressing and readily solvable issues, which can contribute to the “institutionalisation” of corruption and can seriously undermine the start of a successful reconstruction effort;
- Recognising the real magnitude of the problem;¹⁷
- Adjusting anti-corruption activities to the existing forms of corruption,
- Going after “the low-hanging fruit”: Both the general population and governments badly need quick wins in fighting corruption – to improve morale and to show that the rule of law is functioning again;
- Supporting anti-corruption champions and islands of integrity to prove that the government is serious and capable of fighting corruption;
- Strengthening government structures.

As for actions needed to reignite the fight against corruption, academics usually mention¹⁸ fighting impunity, strengthening financial management systems, strengthening public administration and government accountability, and addressing corruption in the reconstruction area/in the delivery of aid.

V. The Basic Elements of a Practical Fight against Corruption in a Post-War Ukraine

Ukraine will exit the war into a situation in which its anti-corruption institutional framework will be weaker than it was before the war. There will also be fewer anti-corruption experts in the country, and it will – if countries keep their promises concerning the reconstruction of Ukraine – literally be flooded with foreign material and financial assistance. There is another important element that will also influence the corruption landscape of the country after the war: the acceptability of corruption as a possible means of solving problems will be at least as great as it was prior to the war, especially as regards high-level corruption. In summary, it can be said that, after the war, Ukraine will face significantly increased corruption risks with a weakened anti-corruption framework. This is nothing new; it has happened in every country that has ever been engaged in an armed conflict. That is why the answer to the following question is exceedingly important: What should Ukraine and its international partners do in order to prevent the country from falling victim to corruption after having survived the war?

As a precondition for successfully fighting corruption, specialised Ukrainian anti-corruption agencies will need to begin functioning at full capacity as soon as possible: by bringing back their staff from the battlefields, by recruiting the requisite new staff, and by switching from “war mode” to business mode.

Since civil society in Ukraine is an extremely important and powerful actor in the fight against corruption, its participation in these activities as well as its return to “normality” will be essential. However, non-governmental organisations will simply not be in a position to achieve their pre-war levels of operation without considerable financial input from domestic and international donors, many of whom discontinued their financing during the war. Even if the necessary funds are made available, a way needs to be found to attract back the non-governmental anti-corruption experts who were forced to abandon their anti-corruption pursuits because of the war.

1. Prevention

In addition to the pre-existing corruption risks, the reconstruction of the country and the incoming humanitarian aid are bound to increase the appetites of a few individuals both in Ukraine and abroad who wish take advantage of the situation and to benefit from it. Therefore, how both activities – the distribution of humanitarian aid and the reconstruction of the country – are organised will be of crucial importance.

Simple, clear, and absolutely transparent mechanisms in both areas will have to be developed in cooperation between the international donors and the Ukrainian government. Without exception, it will need to be clear right from the beginning which parts of the government and which other organisations are responsible for which part of the operation, from acceptance of aid or reconstruction money, to making decisions concerning where, when, and for which purposes the aid or reconstruction money will be spent, right through to the allocation and ultimate spending of money. It will be absolutely essential for each of the organisations dealing with the distribution of humanitarian aid and reconstruction of the country to have embedded anti-corruption experts who will participate in daily activities and who will not answer to the heads of these aid organisations but instead to the heads of their own, anti-corruption organisations. In the most important organisations (those dealing with the largest portions of aid or money), experts will need to be either specialised representatives of civil society or of foreign donors or both. The National Anti-Corruption Prevention Commission can play an important role in these activities, ensuring the consistency of the approach and implementation of the agreed principles.

In addition to reports on the use of aid or reconstruction money, regular reports on issues such as good governance, transparency, and integrity will also need to be prepared, brought to the attention of the government/international community, and published. To ensure compliance with these obligations, international donors will need to introduce and apply strict conditionality. If not, the corruption temptation will simply be too strong.

2. Law enforcement

After the war, specialised anti-corruption agencies, i.e. NABU and SAPO, will have an extremely important role to play. In order to do so, however, they will need to see their top managers appointed first. In the case of SAPO, the candidate who won the selection process back in 2021 will have to be appointed without delay. If this does not happen, it may unnecessarily trigger the question of the Ukrainian President's credibility in light of his promises to the world to make this appointment possible. For NABU, the recruitment of a new director will need to resume immediately, since the current director's term of office expired on 16 April 2022. It is not only the start of the process that is important but also its duration: under no circumstances should such an appointment procedure last as long as the selection of the SAPO Head (18 months before the war).

Given the understandable sensitivity of the public and the utter abhorrence of acts of corruption committed during or in relation to the war, NABU and SAPO will have to heavily engage in the swift investigation and prosecution of well-founded suspicions of war-related corruption offences. This would include those offences committed during the distribution of humanitarian aid and/or the reconstruction of the country, both tasks that may take quite some time. Therefore, NABU and SAPO will need to either establish special units for these areas or have their investigators and prosecutors specialise in dealing with these topics. All international assistance in any form, from financial support, to training, through to embedding foreign subject matter experts, investigators, and prosecutors, will be of extreme importance for any effective investigations and prosecutions conducted by NABU and SAPO. The government can also be of considerable assistance, if by nothing else, by ensuring the commitment and full support of other state bodies, especially those dealing with the distribution of humanitarian aid and the reconstruction of the country.

The level of support provided to the activities of NABU and SAPO by the Ukrainian government will be the best possible test of its genuine and sincere will to tackle corruption offences committed before, during, and after the war. Without providing the necessary level of support to NABU and SAPO or even by tasking other less autonomous state authorities to deal with these offences will simply mean that the government does not want independent, objective, and impartial investigation and prosecution of corruption offences.

VI. Conclusion

Today, Ukraine is in a very difficult situation and the country, its people, and the government deserve all the assistance they can get. Objectively, however, the influx of foreign aid is also increasing the risk of corruption. Although Ukraine can neither be blamed for the war nor for the increased corruption risk, it is exclusively the responsibility of its government to tackle corruption in the country. The government must make the country ready to fight corruption immediately after the war or even earlier and ready to target the old as well as the new corruption risks. The country will need international assistance in this area, too. In light of the devastation currently facing Ukraine, it must be extremely difficult to keep a cool head and plan anything, including its current and future anti-corruption efforts; however, there is no other way to ensure the maximum effectiveness of any future anti-corruption activities. Any mistakes made in this area, for whatever reason, sentimental or otherwise, will be exploited by corrupt individuals and other unscrupulous enemies of Ukraine. This should be avoided at all cost and, therefore, international donors, the Ukrainian government,

and the Ukrainian people should get ready to fight the next set of battles, this time against corruption. They should be ready to do so in accordance with the best international standards and best practices – professionally, impartially, and rigorously. Any deviation from such an approach will have very harmful and costly consequences for Ukraine and for the international community.

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