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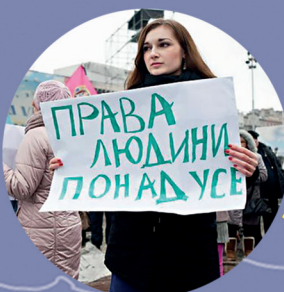


Ministry of Foreign Affairs of the
Netherlands

MONITORING UKRAINE'S SECURITY GOVERNANCE CHALLENGES

KEY ISSUES AND POLICY RECOMMENDATIONS

based on Nine Multi-stakeholder Conferences on
Security Sector Governance and Oversight
held in January 2016 - October 2017 in Kyiv, Ukraine



Geneva, November 2017



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INTRODUCTION

Since 1991, successive Ukrainian governments have launched security sector reform initiatives. While some aspects of these reforms were successful; others did not achieve the desired effect due to a number of factors, including the lack of funds needed to ensure the sustainability of reforms, shifts in government priorities, as well as a lack of commitment and strategic planning.¹

The Maidan Revolution in Ukraine revealed a significant demand by the population for a more transparent and accountable system of governance, including with respect to management of the security sector. The military aggression of the Russian Federation, and the ongoing hybrid-war in Eastern Ukraine, have demonstrated the urgent need to reform security sector institutions, with a view to delineate their mandate and competences, enhance their effectiveness and ensure proper civilian oversight.

Against this backdrop, the government of Ukraine initiated a comprehensive security sector reform, which commenced with the revision, drafting and adoption of the National Security Strategy; the Military Doctrine; the Concept for the Development of the Security and Defence Sector; and the Strategic Defence Bulletin. Subsequently, respective ministries and agencies launched reforms. During this process, the international community increased its support to ensure that the abovementioned strategic documents were formulated in line with international standards; that the executive and concerned security sector agencies had the resources and capacities to implement the reforms; and that oversight actors (including parliament, parliamentary commissioner, civil society and media) could effectively scrutinise security sector institutions.

Any attempt to reform the security sector is doomed to failure, if the parliament, civil society, media and other oversight actors are not involved in the reform process, or unable to monitor it; and if the objectives, scope and desired outcomes of the reforms are not effectively communicated to the general public. In this context, the Geneva Centre



¹ H. Maksak, M. Bugriy 'The Initial Situation Before Conducting SSR in Ukraine, in Security Sector Reform, Global Case Studies', pp. 64-79.

for the Democratic Control of Armed Forces (DCAF), and the Razumkov Centre have jointly developed and delivered the project “Monitoring Ukraine’s Security Governance Challenges”, with the overall objective of raising public awareness and facilitating discussion on democratic oversight and best practice in security sector governance and reform. In particular, the project aimed to provide relevant stakeholders with the knowledge and tools necessary to address Ukraine’s current security sector governance issues. To this end, the following activities were undertaken in the frame of the project:

- Two public opinion surveys were conducted to identify public perceptions across a broad range of security sector reform issues;
- Nine multi-stakeholder conferences were held on a variety of security sector reform issues. The aims of the Conference 1 were to discuss the status of reforms, and take stock of the challenges and needs with regards to security sector governance and reform in Ukraine. Based on the key issues identified, and after consultations with local stakeholders, subsequent conferences addressed the following thematic areas:
 - Conference 2: Security Sector Governance – The Role of Democratic Institutions & International Best Practices
 - Conference 3: Governance and Reform of State Security Services: Best Practices
 - Conference 4: Security Sector Governance – The Role of Media
 - Conference 5: The Role of Ombuds Institutions in Security Sector Governance
 - Conference 6: Defence Production, Sales and Acquisitions
 - Conference 7: Ukraine’s Civilian Security Sector: Reforms’ Progress and Challenges
 - Conference 8: Human Rights and Security Sector Governance – Ukraine’s Reform Challenges

The ninth and last conference served as a platform to assess the achievements of security sector reform in Ukraine, and how they align with the strategic objectives declared at the outset of the Project. From these, areas of outstanding concern were identified, and practical solutions put forth.

- A trilingual website (in Ukrainian, Russian and English languages) on democratic security sector governance in Ukraine was launched. The website features a ‘Best Practices Library’, which includes a collection of key publications on democratic security sector governance covering a wide range of topics related to democratic governance, relevant not only to Ukraine, but to all countries. The website also live-streamed the project’s conferences and featured related video excerpts, which enabled wider public outreach. The website can be accessed at: <https://ukrainesecuritysector.com>

The aforementioned conferences were held over two days, whereby on the first day the thematic focus of the conference was discussed in a series of panels. Panelists included representatives of the Ukrainian government and security institutions who presented the status of reforms in a particular area, as well as challenges and future priorities;

representatives of the Verkhovna Rada, Non-Governmental Organisations (NGOs) and the media, who provided the overseers' perspective; and lastly, representatives of the international community and subject matter experts, who presented related international best practices. The second day of the conferences was dedicated to working group meetings, during which participants discussed in detail key issues relating to the subject matter of conferences, and formulated preliminary policy recommendations to address those issues identified.

Through these conferences, the project provided a platform for multi-stakeholder exchange, whereby academics, journalists, civil society representatives, parliamentarians, and representatives of the executive gathered around one table, enjoyed in-depth and candid discussions concerning security sector governance, voiced their respective opinions, concerns and needs; explored areas for future collaboration; and worked on developing actionable recommendations. After each conference, the issues discussed and recommendations proposed were documented.²

It should be noted that all working group meetings were held under Chatham House Rules. Therefore, issues and recommendations presented in this report are drafted in such a manner so as to ensure that neither the identity nor the affiliation of the speaker may be revealed. Some statements among the key issues or recommendations may also contradict each other. This is due to the fact that participants came from a wide variety of backgrounds and professions, with their own perspectives on certain issues, and thus in certain cases put forth different recommendations.

This report compiles those key issues and recommendations and is intended to serve as a reference point for future needs assessments, as well as for further consultations with Ukrainian and international stakeholders. The key issues are categorised thematically, rather than by conference, since certain issues were discussed in several events. Each sub-section concludes with respective policy recommendations.



² Reports for each conference can be accessed at: <https://ukrainesecuritysector.com/publication/>.

KEY ISSUES AND POLICY RECOMMENDATIONS

I. SECURITY SECTOR GOVERNANCE IN UKRAINE – A GENERAL OUTLOOK

The aims of the first conference were to discuss the status of reforms in the security sector; identify challenges encountered with respect to their implementation, and determine needs and priorities. Before discussing specific topics relating to the defence, intelligence, and law enforcement sector; participants and speakers highlighted overarching issues concerning security sector governance as a whole; in particular the legislative and policy framework for reforms, coordination mechanisms, reform implementation and international assistance. More than a year later, and nearing the completion of the project, the same set of issues were revisited in Conferences 7 and 8, with a view to assessing progress made.

The Legislative and Policy Framework for Security Sector Governance and Reform in Ukraine

- In April 2014, a presidential decree was initiated following the Comprehensive Security and Defence Sector Review. Subsequent to the Review, a number of policy and strategic documents were revised and drafted; including the Ukraine 2020 Strategy; the National Security Strategy of Ukraine; Military Doctrine of Ukraine; the Concept for the Development of the Security and Defence Sector; and the Strategic Defence Bulletin. The 'Ukraine 2020 Strategy' lists the national security system, law-enforcement agencies and anti-corruption as among the eight priority reform areas. To this end, a number of measurable performance indicators have been established, such as 70 per cent citizen and expert community confidence in law enforcement and judiciary institutions, and Ukraine entering the top 50 least corrupt governments in accordance with the corruption perception index. The overall goal of the reforms is to reach those targets within the agreed timeframe.
- Ukraine adopted the Law on Democratic Civilian Control of the Armed Forces in 2003. However, considering the number of ongoing reforms and institution-building processes, the law has a number of outdated elements, particularly with respect to those agencies falling under its scope.
- As of November 2017, the Draft Law on National Security is in development, and it is expected to be adopted after review by the Verkhovna Rada.

Coordination Mechanisms

- There is a lack of shared vision among government agencies, the military and the Parliament concerning the strategic goals of Ukraine's security sector reforms.
- The mechanisms established to steer the reform process and ensure inter-agency coordination have overlapping functions. The National Reform Council was created as the central coordination office to ensure political consensus during the reform process. It consists of representatives from Ukraine's main stakeholders, and was designed to act as a platform for reaching consensus and facilitating decision-making. At the same time, some of those functions are duplicated by the National Security and Defence Council as a constitutionally mandated multi-stakeholder coordinating body.

- The National Reform Council has so far failed to become the main coordination centre among the presidential, legislative and executive branches of power. The Council has been active for three years and has established various sub-committees. However, these sub-committees are led by the heads of various government institutions, rendering them ineffective due to a lack of political will, internal solidarity, detrimental inter-agency competition and a lack of independent expertise from Civil Society Organisations (CSOs).
- Reform of the civilian security sector has resulted in the consolidation of several security agencies under the umbrella of the Ministry of Internal Affairs (MoIA). While such consolidation is expected to facilitate the control and coordination of such agencies, it also poses a risk of abuse of powers due to the high concentration of power under one ministry.
- There are no effective mechanisms to coordinate the reform processes of different security agencies. Agencies do not share data on reform forecasts and staff training. It is also difficult to obtain information from ministries. The Ministry of Internal Affairs, for example, rarely makes reform-related information publicly available, and when it does, the data is often distorted, and development strategies defined ambiguously.

Implementation of Security Sector Reforms

- Security Sector Reform-related policy and strategic documents foresee a number of changes to the management of the security sector. It is not clear if political commitment to go ahead with such reforms will exist, however, once their political implications are fully understood.
- The reform process is faltering. Political actors have lost interest in pursuing further reforms, primarily due to a lack of political will and competition for power and resources among different political forces.



- The management of budget and resources are among the key factors hampering the progress of reforms in Ukraine. The transparent and accountable provision of resources must be a priority. While volunteers raised millions in donations for the Ministry of Defence, it appears that these funds were not spent efficiently.
- During the reform process, new institutions have been established haphazardly, without elaborating on their mandate, competences and duties. Taking advantage of this, those in power seek to adjust the institutional system to reflect Soviet structures and mentality. By way of example, it is not yet fully clear to whom the National Bureau of Investigation (NBI) would report. In the Verkhovna Rada, an ongoing struggle continues concerning who will control the NBI. If established, however, anti-corruption courts will likely be overwhelmed due to the large amount of declarations and the lack of capacity and resources of the courts.
- Reform of the civilian security sector cannot be considered in isolation from other security developments in Ukraine, in particular the ongoing hybrid war and the threat of the country further destabilising. Therefore, the immediate task for civilian security sector reform in Ukraine is to adapt security institutions to the conflict, whereby protecting people and addressing their imminent security needs are the key priorities.
- A key challenge for implementing reforms concerns the lack of trust in security sector institutions. By way of example, in the field of witness protection, there is no trust between law enforcement agencies and NGOs, which makes cooperation and implementation extremely problematic.

International Assistance to Security Sector Reform in Ukraine

- The delineation of the competences of the various security sector agencies active in Ukraine has been one of the main objectives of international assistance providers. Overlapping functions among the agencies engender competition and mistrust. The draft Law on National Security, to which international advisors contributed, foresees the clear delineation of competences and oversight of the agencies. If adopted, it would be an important step forward.
- Another priority for international assistance providers relates to the need to improve organisational culture within security sector agencies to combat corruption. Whereas most tend to complain about low salaries and insufficient funding, salary increases are a quick fix, and not sufficient to combat corruption by themselves. The entire institutional processes, from recruitment, training, to professional development and disciplinary measures, should be reformed to ensure a sustainable integrity system.
- International technical assistance to security sector reform is not always productive, as in some instances international experts do not possess relevant practical experience, or a good understanding of Ukraine's specific context. On the other hand, in some cases, experienced international experts have to work with national counterparts who lack "absorption capacity" due to insufficient expertise and knowledge.

Policy Recommendation on Security Sector Governance in Ukraine

The Legislative and Policy Framework for Security Sector Governance and Reform in Ukraine

- The Comprehensive Security and Defence Sector Review has not fulfilled its purpose. It should be repeated, taking into consideration international best practices in conducting such a comprehensive review.
- Currently, a full list of law enforcement agencies in Ukraine's legislative framework does not exist. It is important that the Draft Law on National Security clearly lists all law enforcement agencies, and their respective competences and powers, in order to avoid duplication of roles; conflict and competition between them.
- The draft Law on National Security should also stipulate in detail the definitions of 'public order' and 'public safety', as well as the circumstances in which certain human rights, such as the right to peaceful assembly, can be lawfully restricted. Unambiguous explanations of such circumstances would assist judges when making rulings on extraordinary measures taken to maintain public order and safety.
- The Law on Democratic Civilian Control of the Armed Forces should be revised and amended. In doing so, more attention should be given to the democratic oversight and parliamentary control of Ukraine's intelligence services and the newly established anti-corruption agencies, as well as expanding the role of the Parliamentary Commissioner to include volunteer combatants and veterans; specifying the President's and the Cabinet of Minister's authority, and stressing the importance of viewing democratic control as a process rather than a series of arbitrary structures.
- Constitutional and legal amendments must be strategically planned and carried out in a more inclusive manner, and in consultation with experts and the public.

Coordination Mechanisms

- There is a need to promote a common understanding concerning the needs, goals and means necessary to achieve effective reform. This can only be done by ensuring continuous dialogue and coordination among security agencies. The National Security and Defence Council should assume a coordination role between different elements and aspects of security sector reform. The coordination body should ensure exchange of information among different security sector agencies, and provide a platform for streamlining the overall objectives of reform.
- It is necessary to reassess the subordination of several security agencies under the MoIA, to identify whether or not it actually enhances the efficiency of the agencies, as well as to explore relevant measures used to prevent and combat corruption in the MoIA.

Implementation of Security Sector Reforms

- Security sector reform should not be seen as an endless process. It is necessary to draw up a roadmap with deadlines and measurable targets. Robust criteria should be established to monitor the implementation of reforms.

- A key challenge for reforming the civilian security sector pertains to the fact that law enforcement agencies must continue their day-to-day operation, while also undergoing widespread and comprehensive reforms. It is therefore important to develop strategic plans in accordance with the priorities established by the government; and to adhere to the implementation of such plans so as not to hamper the daily operation of law enforcement agencies.

International Assistance to Security Sector Reform in Ukraine

- International organisations and donors have budget constraints. Donors and Ukrainian authorities should work together to streamline international assistance, improve local ownership and plan for the sustainability of reforms.
- A national platform should be established to coordinate international technical assistance provided to Ukrainian authorities. The Ministry of Foreign Affairs (MFA) could be a suitable host for such a platform. In this context, cooperation between international aid agencies and NGOs should be improved.
- Both international assistance providers and their local counterparts should acknowledge the unique circumstances of the security sector in Ukraine, and recognise that international best practices, particularly those in established and stable democracies, cannot be copied to the Ukrainian context. Technical assistance should pay close attention to the local context.

II. SECURITY SECTOR REFORM IN UKRAINE

Law Enforcement Reform

Police and border security forces are an integral part of the security sector, and – when subject to democratic control, oversight and the rule of law – can make a valuable contribution to the provision of security and the protection of human rights. In 2014, Ukraine abolished the Militsiya and established the National Police of Ukraine as a modern law enforcement agency tasked with protecting human rights and freedoms, maintaining public order and security, and preventing and combatting crimes. Since then, the agency has undergone, and continues to do so, comprehensive institution building and reform processes. The State Border Guards Service of Ukraine is also undergoing reform, in part because its role, status and powers have been at the centre of debates after the Russian aggression.

Against this backdrop, Conferences 2, 7 and 8 addressed the reform of the National Police (NP) and the State Border Guards Services of Ukraine (SBGS). Discussions revolved around the scope of police reforms, internal processes such as complaint handling, investigations and staff training; as well as the dual status and the de-militarisation of the SBGS.

The Ministry of Internal Affairs and the National Police of Ukraine

- **Legal and institutional framework:** Currently, no unified definition of law enforcement agencies exists in Ukrainian legislation. In terms of hierarchical structures, various law enforcement agencies are subordinated to different ministries and authorities.³ However, no platform exists to coordinate the activities of these

³ Whereas the National Police and the SBGS report to the MoIA, the SSU, which has law enforcement powers, is accountable to the office of the President, while the NABU is an independent agency whose investigations are supervised by the Special Anti-Corruption Prosecutor (SAP).

law enforcement agencies. The absence of a clear legal definition of the agencies and their respective mandates, as well as the diffuse hierarchical structure, results in the overlap of certain functions of the agencies, as well as gaps in the effective provision of security services. The new Law on State Investigative Bureau fails to set clear divisions between the responsibilities of the National Police, Security Service of Ukraine (SSU) and other institutions with law enforcement powers.

- **Discrepancy in reforms:** A discrepancy exists between the attention paid to the reform of the patrol police, as compared to that of other law-enforcement agencies. The Patrol Police was one of the first units of the National Police to be reformed. Significant amount of resources were allocated for the reform of patrol units, given that they are one of the most publically visible complements of the police services. In the framework of reforms, rapid response units were introduced to reinforce the patrol police. The creation of these new units resulted in a significant increase in the number of calls to the police – an indication of growing public trust in law enforcement. However, currently, the reform of the patrol police seems to be the only success case. Other reform efforts in the area of policing, including criminal investigations and combatting violent crimes, have largely failed.

- **Arrest/Detention procedures and conditions:**

- Considerable problems persist with respect to the detention practices of the police. In several instances persons were arrested without court orders; some in non-emergency situations. Police officers do not record arrests systematically, nor register apprehensions properly.
- Improving conditions in detention facilities and protecting the rights of detainees are among the priority issues of law enforcement reform. The newly established Human Rights Department of the National Police has the mandate to monitor detention facilities belonging to the Police and migration services. Furthermore, as part of the police reform, the number of temporary detention facilities of the National Police will be reduced. The practice of each district police station having its own detention facility will be abolished and comprehensive custody records (similar to the system in the United Kingdom) will be introduced. These changes are expected to ensure that the monitoring of detention facilities is more effective.

- **Rights of police officers:** Recently, police officials have filed complaints concerning mistreatment by their superiors, and poor working conditions, including long and irregular working hours without any compensation. These instances have led to intensified efforts to establish a new labour union for police officers. Another key issue regarding the rights of police officers is the dismissal of former militia employees. Large-scale staff cuts resulting from the dissolution of former militias significantly hampered the protection of their members' social rights, considering that the provisions of the new Law do not provide the National Police with any legal responsibility. The Union of Certified Internal Affairs Employees has taken action in this regard, and opened lawsuits against the qualification boards of the National Police concerning the *en masse* dismissal of former militia officers.

➤ **Accountability of police officers:**

- The adoption of the Law on the National Police of Ukraine can be considered as an achievement of the reform process, since the law clearly stipulates the powers and duties of the police. The law regulates special measures to be employed by the police, types of databanks that can be maintained, along with related safeguarding mechanisms; as well as conditions under which firearms and other types of force and equipment can be used. In the past, these issues were not clearly spelled out in law, and therefore victims had little opportunity to refer to legal provisions during legal proceedings.
- However, there are several challenges with regard to police reform in general, and with respect to human rights compliance in particular. The Verkhovna Rada is still yet to approve the disciplinary statute, a supplement to the law on the National Police. Moreover, the existing disciplinary procedures of the National Police are not in line with the new law.
- The National Bureau of Investigation (NBI) was supposed to be in charge of investigating criminal offences committed by police officers – such as police killings, violence and ill-treatment. However, the Bureau is not yet operational. The appointment of its director has stalled for more than a year. Prosecutors who are in charge of investigating such offences in the interim are not competent, which results in an environment of impunity.
- Historically, the investigation of internal disciplinary offenses has fallen under the mandate of the Internal Security Department of the MoIA. However, given that the MoIA's mandate has now been expanded to cover five state agencies;⁴ it is questionable as to whether the Internal Security Department can effectively investigate such a number of complaints.

➤ **Police Training:** The training curriculum of the National Police is heavily militarised and has several unnecessary elements. By way of example:

- During police training, the same amount of time is allocated for physical as is for firearms training, whereas when on duty, police officers will use their physical strength to facilitate intervention much more often than lethal weapons. Firearm trainings are not yet fully in line with international standards for civilian policing. For instance, officers are trained to hit the heart or the head of the target, not other areas such as the torso or legs. Such a shoot-to-kill approach is unacceptable in modern policing.
- Physical training programmes include inutile elements such as the requirement for police officers to complete five kilometres of cross-country skiing, even though no cross-country ski route of such a length exists in Ukraine, nor do police departments have skis or other necessary equipment. Such unnecessary requirements waste much-needed resources.

➤ **Criminal Justice:** The police cannot operate effectively and be considered successful in fulfilling their duties, if other essential parts of the criminal justice system do not properly function. More often than not, police officials arrest suspects, but courts release them.

⁴ The National Police, the State Border Guard Service, the State Emergency Service, the National Guard and the State Migration Service of Ukraine.

The State Border Guard Service (SBGS)

- **Reform:** Reform of the SBGS is considered as a successful case of civilian security sector reform. Prior to the Maidan Revolution, the SBGS was widely viewed as the most advanced agency in terms of its harmonisation with EU standards. Its reformation began in 2006, with the goal of becoming a fully civilian law enforcement agency by 2015.
- **Strategic Planning:** After the Revolution, the SBGS accelerated reforms and adopted a full cycle of strategic planning. Currently, the main strategic reform priorities of the SBGS are to:
 - (i) Implement Integrated Border Management policies;
 - (ii) Improve combat capabilities;
 - (iii) Achieve readiness to take control of the areas of the land border in Eastern Ukraine and Crimea, which are temporarily outside of Ukraine's control; and
 - (iv) Increase the level of public confidence in the SBGS.
- **International support:** The SBGS has enjoyed considerable international support, including the provision of equipment and material. Several ongoing projects on export controls and joint patrols are being implemented with counterparts from neighbouring EU countries.
- **Operational capacities:** As with other security sector agencies in Ukraine, the SBGS lacks technical resources, despite extensive international support.
- **Demilitarisation:** Prior to 2014, due to international pressure on adopting Euro-Atlantic principles, Ukraine carried out hasty reforms to substantially demilitarise the SBGS. The main challenge encountered during the subsequent Russian aggression was that, having been effectively demilitarised, the SBGS was not in a position to defend the borders of Ukraine against sudden Russian military aggression. This represents an example of what can go wrong when international standards and best practices are applied without fully considering the unique circumstances of the country in question.
- **Dual military/law enforcement status:** A main challenge with respect to Border Reform is its dual military/law enforcement status. The partly civilian status of the service allows for the continuation of reform cooperation, in particular technical assistance from border police services of EU member states. While the long-term goal of a fully civilianised SBGS still remains viable, for the time being, the complete removal of military capabilities would likely create problems with respect to reserve formation.
- **Training and development:** The dual status of the SBGS poses further challenges to the development of training and professional development programs. For instance, concerns persist that the SBGS's training curriculum is becoming increasingly militarised, leaving little room for training on other law-enforcement related subjects. Such a curriculum is not in line with the long-term civilianisation goal of the SBGS.

- **Rotation:** Another challenge with dual status is the rotation of SBGS officers and the respective imbalance between levels of staff expertise. Whereas officers with functions considered as 'civilian', such as those deployed at border control points, normally remain in one place for an extended period of time and as such develop expertise, officers with military roles are rotated more frequently, meaning they are unable to develop certain skills.

Policy Recommendations on Law Enforcement Reform

The Ministry of Internal Affairs and the National Police of Ukraine

- **Legal framework:** As of November 2017, the draft Law on National Security remains under review. It is imperative, however, that the law includes a clear definition of 'law enforcement', and stipulates the mandate and functions of law enforcement agencies. The definition of "law enforcement" should emphasise the demarcation of external and internal security; and thus military and law-enforcement tasks. The description of law enforcement agencies' function should include a clear reference to the observance and protection of fundamental human rights.
- **Discrepancy in reforms:** While reform of the patrol police has been successful, it is important to acknowledge that it is only a first step. Law enforcement reform should be comprehensive; and move beyond the patrol police into other areas of law enforcement. While the patrol police are visible and may help in preventing petty crime, violent crimes remain on the rise in Ukraine. Therefore, it is important that the relevant units of the National Police receive training and other forms of assistance in order to effectively combat these.
- **Arrest/detention procedures and conditions:** The National Police should develop comprehensive guidelines for making arrest records. There should be stricter control of apprehension and arrest records made by police officers. Complaints concerning the lack of such records should be thoroughly investigated.
- **Rights of police officers:** Violations of the rights of police officers should be investigated in a timely, thorough and effective manner. The protection and promotion of the rights of police officers should be a high priority of reforms. Dismissed police officers should be provided with the necessary time and resources for their gradual integration into civilian life.
- **Accountability of police officers:** There should be a separate law regulating the investigation of administrative/disciplinary misconduct committed by law enforcement officials. Investigations of such misconduct place a heavy burden on the investigators. Around fifty per cent their case records were estimated to be misdemeanours rather than felonies. A separate regulation on investigating disciplinary misconduct would allow for more efficient time and resource allocation when investigating serious offences committed by law enforcement officials.
- **MoIA Investigations:** The MoIA should review the mechanisms and processes for investigating internal disciplinary offenses. Either each of the five executive agencies reporting to the MoIA should establish their own internal units for internal investigations, or the size and capacity of the MoIA's Internal Security Department should be significantly increased.

- **Police training:** The National Police should revise its training programme to bring it in line with international and European standards on democratic and human-rights-based policing. In particular, firearms training should focus on avoiding the unnecessary use of lethal force. The curriculum for physical training should be revised to match the conditions in Ukraine and the equipment available to police departments.
- **Criminal justice:** Police reform cannot be successful without effective judicial reforms which address corruption issues. As a first step, the jurisdictional powers of investigators and prosecutors should be clarified in legislation. Reform of the prosecutor's office is essential in this regard. There is also a need to amend the criminal procedure code to clarify investigation processes and the legislative basis of law enforcement agencies.

State Border Guard Service (SBGS)

- **Demilitarisation:** While it is important to adopt Euro-Atlantic principles in the field of defence and security, the unique context and circumstances of the country should be carefully considered when international best practices are used to guide reforms. Although, in the long-term, the civilianisation of the SBGS should be the ultimate aim, for the time being, it is neither feasible nor plausible to fully demilitarise all borders areas.
- **Operational capacities:** In securing the maritime border of Ukraine, the SBGS requires additional surveillance infrastructure. Furthermore, in order to construct the “wall”, i.e. the border security technical system along the land border with Russia, the SBGS needs expensive infrastructure. In order that these technical demands are met, the budget of the SBGS should be increased accordingly, and the senior management of the service should effectively communicate the additional technical and logistical needs to the relevant parliamentary committees, which are in charge of reviewing and appropriating service budgets.
- **Rotation:** In order to resolve problems resulting from the rotation of certain officers, extraterritoriality in service may be considered.

Intelligence Reform

Reform of the intelligence services is one of the most challenging aspects of Security Sector Reform, due to the sensitivity of the issues under their jurisdiction, as well as the culture of secrecy surrounding their work. The international community has provided substantive support to the reform of the Security Service of Ukraine (SSU) since 2005. Reform efforts gained pace after 2014, however, when the government launched a comprehensive security sector review. Given the salience of the topic, intelligence governance and reform were addressed in several conferences of the project, while Conference 3 was exclusively dedicated to reform of the SSU. Participants discussed a variety of related issues, including the SSU's institutional structure, human resources management system, and compliance with human rights. However, its mandate and special investigative powers were the most discussed topics.

Security Service of Ukraine (SSU)

Reform Process and Main Challenges

- The SSU has developed a Concept for the Reform of the SSU (hereinafter 'Reform Concept')⁵, with assistance from the International Advisory Group. The objectives of the reform are to:
 - Increase the level of public trust in the SSU;
 - Achieve a gradual demilitarisation of the service;
 - Demarcate tasks between the SSU and other law enforcement agencies, in particular through limiting SSU investigatory powers;
 - Enhance democratic and civilian oversight over the SSU; and
 - Improve cooperation with foreign partners and intelligence agencies.
- The Reform Concept is planned to be implemented in two phases: Phase I (2016-2017), during which a new law on the SSU will be drafted and adopted, clearly outlining its tasks, objectives and status. With the new legislative framework in place, during Phase II (2018-2020) the aforementioned reforms will be implemented. By 2020, the reform process will be completed and an evaluation will be conducted. There has been certain challenges regarding the reform process itself:
 - **Reform amidst reform:** Ukraine has undergone reforms for some years, and all security sector institutions are going through significant transformations. This process may at times affect the operational effectiveness of agencies, in turn making them vulnerable.
 - **Lack of trust:** International technical assistance to intelligence reform can be more challenging than other reform areas, due to the highly sensitive nature of intelligence work. Such assistance and cooperation requires trust between all parties involved. This means that the international intelligence community will be extremely reluctant to involve themselves unless the Ukrainian services demonstrate real resolve, i.e. true efforts at reform, which show a genuine desire to join with the Western security and intelligence family.

Mandate and powers of the SSU

(Note: The delineation of competences and the transfer of the SSU's law enforcement powers to other agencies were amongst some of the most controversial issue discussed during the conferences. Participants had opposing opinions on the matter. This section presents the arguments and opinions of both sides; therefore the statements in the subsequent bullet points may in certain cases contradict each other.)

- Currently, the SSU has a broad mandate which includes 'identifying and suppressing crimes against peace and security of mankind, terrorism, corruption and organised crime in the sphere of management and economy, and other unlawful acts that pose a threat to the vital interests of Ukraine'.⁵ The way in which national security threats are defined in Ukrainian legislation is extremely broad; which, by including 17 different categories, allows for an even wider interpretation of what falls under the SSU's mandate.

⁵ The Law of Ukraine "On the Security Service of Ukraine", art 2 para 2. See: http://www.sbu.gov.ua/sbu/control/en/publish/article?art_id=82380&cat_id=42924

- Besides its information gathering and counterintelligence capabilities, the SSU is also entrusted with broad law enforcement powers and functions, including carrying out operational and search activities and pre-trial investigations. This allows the SSU to arrest suspects, detain them in temporary holding facilities and conduct interrogations. In this respect, the SSU can be considered a law enforcement agency.
- Granting intelligence agencies policing powers is not in line with international and European standards on intelligence governance (see PACE Recommendation 1402). In this regard, the draft Reform Concept foresees the partial transfer of law enforcement tasks to other security sector institutions. The SSU will continue combatting transnational organised crime and corruption, which has implications for national security. All remaining crime-fighting functions will be gradually transferred to other security sector agencies.
- An additional reason why pre-trial investigative powers cannot be immediately transferred is that the National Police is going through unprecedented institutional reforms, which will impact upon its effectiveness during this transition period. Furthermore, the National Anti-Corruption Bureau (NABU) has been recently established and as such is not yet fully operational. Indeed, as of now, the SSU remains the only state body fighting corruption at all levels. Relinquishing the law enforcement powers of the SSU would create a power vacuum in the security sector. The transfer of law enforcement powers will take place only after other law enforcement agencies are fully operational (in particular the National Bureau of Investigations and NABU).
- While PACE recommendation 1402 calls for the separation of intelligence and law enforcement powers, it is not legally binding. Furthermore, the Treaty of the European Union states that: “The Union shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State”. In this respect, there are different practices among the EU states. The SSU is not the only intelligence agency in Europe with a mandate and the necessary law enforcement powers to combat organised crime and corruption. The security services of Poland and Bulgaria, for instance, have similar mandates.
- While noting the variety of practices present in the EU, it should be emphasised that some national practices are more advanced than others in terms of adopting international standards.

Institutional Structure and Reporting

- **Quasi-Military Status:** A further issue regarding the SSU concerns its quasi-military status, particularly the military profile of its personnel. Such a militarised structure does not conform to internationally accepted standards, and complicates internal control and oversight processes.
- **Hierarchical structure:** In terms of hierarchical structure, the SSU is directly subordinated to and controlled by the Presidential Administration, an agency which is neither independent nor publicly controlled. Such direct subordination

could lead to unquestioned loyalty to the President and to the politicisation of the service. In this respect, the Reform Concept foresees that the appointment of the SSU's chief will not take place during presidential elections, so as the SSU may operate without fear of dismissal after any changes in government.

- **Transparency:** A major achievement of SSU reform is the development of the first publically accessible report on its activities; a significant step towards transparency, and one which will positively contribute towards public trust in the SSU.

Human Resources Management

- **Recruitment:** The military status of SSU personnel remains one of the key issues to be addressed during the reformation of the SSU. Currently, the law does not allow for the recruitment of civilian personnel. This results in cases in which the SSU hires a highly specialised civilian (such as an interpreter for a strategically important language), enrolls him or her as a military personnel, and provides the according military rank. This occurs, not only because the law forbids otherwise, but also because the government does not offer sufficient social and legal protection to civilian personnel.⁶
- **High-level appointments:** Incidents persist in which police chiefs and other external officials are appointed to high-level positions within the SSU. In just one year, however, they are often reappointed to their former positions in law enforcement bodies, after obtaining access to the operational database of the SSU, containing material related to ongoing investigations, including those concerning law enforcement bodies.

Human Rights Observance

- Serious issues, with respect to the SSU's accountability and compliance with human rights, still persist. According to the Parliamentary Commissioner's annual report, half of the complaints received on torture relate to the SSU.
- CSOs continue to receive complaints concerning the detention practices of the SSU. Most relate to *incommunicado* detention, physical violence and other forms of ill-treatment in detention facilities, as well as blocking access to independent detention monitors and defence lawyers. According to the current legal framework, the SSU must use the designated detention facilities also used by law enforcement agencies. However, a new draft law, which foresees the establishment of separate detention facilities for the SSU, has been recently proposed. The draft law stipulates that the detention facilities would be under the control of the SSU.
- Reports suggest that the SSU exerts pressure over migration authorities to deny asylum applications from certain groups, including persons who fought for Ukraine at Maidan.

⁶ Participants had differing views concerning the demilitarisation of the SSU. While most agreed with the recommendation of demilitarisation, one participant stated that Ukraine had been too hasty demilitarising the intelligence services, and that the current Ukrainian context precludes further reforms of the SSU, not only because of the ongoing conflict in the East, but also due to the insufficient financial resources of the SSU, meaning it is unable to offer competitive salaries to civilian professionals.

- The SSU is also reported to engage in extrajudicial extraditions to Russia, including extraditions of Muslim residents without any due process.
- The draft law on the National Security of Ukraine foresees the establishment of an independent mechanism to oversee the security sector. Such a mechanism, if it functions effectively, would significantly contribute to democratic and civilian oversight of the SSU. The mandate and functions of the mechanism will be regulated by separate secondary legislation.

Policy Recommendations on Intelligence Reform

Reform Process

- **A strong and clear mandate for reforms:** The reform itself has to be part of an overarching and comprehensive plan involving all law enforcement and security structures in the country.
- **Reform concept:** The SSU Reform Concept should be adopted so that the corresponding draft Action Plan can be finalised. Real progress with the implementation of reforms is only possible after the adoption of strategic documents.
- **Action plan:** The main objectives and priorities of SSU reform have been on the agenda and debated since 2005. Unfortunately, little has changed so far. If the government wishes for the Reform Concept to succeed, a formal implementation plan should be established, setting out clear goals with prioritised actions, phases, responsible leaders (to be held accountable for its implementation) and deadlines.
- **Monitoring and evaluation of implementation:** Regular monitoring of the Action Plan is a critical tool to ensure the commitment and accountability of those who are responsible for it. An independent body composed of former SSU officials; external experts and MPs should be established to monitor the implementation of the reform plan. In this context, the body should have access to relevant SSU documents.
- **Inclusiveness:** The reform process should be designed to foster further inclusivity. CSOs should be invited to provide input with respect to strategic communications. Without effective cooperation with civil society, the goal of enhancing public trust in the SSU cannot be achieved.
- **Holistic approach:** Agencies and elements of the security sector are very much interconnected; therefore any attempts to reform the SSU should be carefully assessed within the wider context of the security and defence sector in Ukraine. While reforming its law enforcement system according to EU requirements, Ukraine should avoid institutional isomorphism and find an optimal balance between European integration and ensuring the efficient operation of all its law enforcement agencies.

Mandate and Powers of the SSU

- **Mandate:** The definition and categorisation of national security threats in Ukrainian legislation should be revised and narrowed. In particular, economic crime and organised crime should not be included as national security threats. For narrowing the definition of national security threats, the 1996 study of the Johannesburg Principles would be a useful reference guide.

- **Law Enforcement Powers:** International advice on SSU reform is based on best practices. The examples of Polish and Bulgarian security services having partial law enforcement powers, however, do not represent best practices. International and European standards in this regard (including the Venice Commission and PACE recommendation) clearly recommend the separation of intelligence and law enforcement powers. The majority of European intelligence services do not have pre-trial investigation powers. In this respect, the draft Reform Concept, which foresees the transfer of pre-trial investigation powers to law enforcement agencies, is in line with best practice.
- **Transfer of law enforcement powers:** Currently, among the law enforcement and security services of Ukraine, the SSU is the most effective. Thus, before removing certain functions from the SSU, it is advisable to create other specialised law enforcement agencies which can effectively take over these responsibilities. Until these new agencies are fully functional, law enforcement powers must remain with the SSU.

Human Resources Management

- **Demilitarisation of personnel:**
 - Once the situation in the East is stabilised, Ukraine should strongly consider the demilitarisation of the SSU, in order to bring the agency in line with European standards. Although some countries in Europe continue to have mixed ranks (civilian and military) in their intelligence agencies; Ukraine should aim for achieving the highest standards; namely, those applied by the most advanced EU countries.
 - In particular, the personnel structure of the SSU should be demilitarised. Military status should be strictly reserved for Armed Forces personnel and military intelligence officers. A secret service agent working in the field should not possess the rank of a colonel. In order to demilitarise its personnel, legislative amendments should be made to allow the SSU to hire civilian personnel.
- **Salary and social packages:** The government should provide appropriate salary and social packages to civilian personnel on equal terms with military personnel.
- **Staff reduction:** While the current draft of the Reform Concept refers to the 'optimization' of staff, it would be advisable to amend to the 'critical reduction' of staff.
- **Recruitment:** Currently, the SSU recruits high-school graduates, and provides general education in its Academy. However, it would be more effective if the SSU recruits university graduates from various specialisations, and then provides specialised training to them thereafter.
- **Internal promotion:** Policies should be developed to recruit senior managers within the service and ensure their retention. In order to strengthen anti-corruption efforts and prevent unlawful use and disclosure of classified information, it is necessary to reconsider the practice of appointing former employees from internal affairs, customs or tax authorities to senior positions within the SSU without assessing their ties to those agencies.

- **Training and professional development:** The reform concept should prioritise the training and professional development of staff. In this regard, it is essential to strengthen the capacity of the SSU Academy; develop principles and guidelines for career development and professional performance evaluations.

Human Rights Observance

- Human rights violations continue to present a major challenge to good governance of the SSU. The reform concept should address this, and elaborate on mechanisms to identify, report, and effectively investigate human rights violations by the SSU, as well as introduce deterrence measures to prevent future occurrences.
- The draft law on establishing detention facilities under the SSU's control should not be passed. Establishing such facilities would pose a serious threat to human rights protection, since access to defence lawyers and independent monitors would be extremely limited as compared to regular pre-trial detention facilities. Detention and penitentiary facilities should operate under the authority of the Ministry of Justice, not the SSU.

Defence Reform

Reform of the national security and defence system is among the key priorities of Ukraine. With the overarching objective to achieve a transition to NATO standards by 2020, the government of Ukraine has established key areas of defence reform, which include, amongst others, enhancing defence planning in line with Euro-Atlantic principles and approaches; establishing an integrated procurement system in the MoD; and exercising democratic civilian control over defence forces.⁷

Several conferences⁸ of the project addressed defence sector governance and reform. Whilst two conferences covered general aspects related to defence reform, such as the reform process and key challenges with the MoD and the Armed Forces, the sixth conference focused exclusively on the governance of the industrial defence complex. In this framework, participants discussed the regulation of the industrial defence complex, as well as the roles and responsibilities of state owned and private actors.

Legislative and Policy Framework for Defence Sector Reform

- In 2014, with the survival of Ukraine's security and defence sector the primary concern, ad-hoc initiatives and familiar 'soviet' style 'fixes' were applied in order to ensure a functioning Armed Forces, with intelligence and counterintelligence competencies. The challenge during this period did not concern effectiveness, but rather survival.
- The MoD was not willing to launch systemic, comprehensive reforms until key documents, such as the National Security Strategy and the Military Doctrine, were adopted in 2016.

⁷ See: <https://defense-reforms.in.ua/en/planning-and-resource-management>.

⁸ Conferences: 1,2,6,8 & 9. For more details, see <https://ukrainesecuritysector.com>.

- The adoption of strategic documents in 2016 increased the pace of reforms to an unprecedented scale. The strategic defence reform documents lay out five major goals, with twenty-eight sub goals and 379 corresponding activities. Based on these strategic documents, the main objectives of the reform of the MoD and the Armed Forces are to:
 - Optimise the structure and strength of the Armed Forces;
 - Restore the availability of arms, military and special equipment, and modernise its stocks;
 - Improve the training of troops;
 - Reorganise the system of operational combat support, logistics and maintenance;
 - Ensure compatibility with other components of the security and defence sector, in cases of joint action under the specified scenarios; and
 - Gradually harmonise training, technical equipment and all-round support with NATO standards.
- Ukrainian legislation on the defence sector is not consistent. The National Security Strategy was adopted far later than planned, whilst the policies developed in the meanwhile do not fully align with the National Security Strategy.

Ministry of Defence

- There is a general fear of and resistance to reform within the bureaucracy of the defence sector.
- The Ministry of Defence has a heavily militarised staff profile. There is no strong candidate for a civilian minister, who, supported by a team of civilian staff, is able to maintain effective communication with the other branches of the executive and legislative. While the MoD often states that reforming this civil-military imbalance is a priority, in reality it is not considered as such. Rather, the MoD privileges technical reforms (i.e. those targeting combat capacities) over institutional ones.
- Overlaps between the roles and responsibilities of the Ministry of Defence and the General Staff persist. This results in a lack of clarity in terms of division of labour and duties, and thus leads to the inefficient use of resources.

Armed Forces

- In order to counter the unexpected aggression against Ukraine and support its defence capacities in the ongoing hybrid war, the Ukrainian Armed Forces contracted civilians and volunteers who wished to join the Armed Forces for a 'special period of time'. While relevant laws on defence and military service define the beginning of this 'special period', there is no specification of how long it should last nor when it is supposed to end. When other means of mobilisation for the

Armed Forces faltered, the Ministry of Defence refused to release soldiers whose contract terms had ended, while the General Staff unilaterally extended some contracts against the will of soldiers. This constitutes a grave violation of soldiers' rights, and has led to problematic practices such as soldiers leaving service without authorisation or resorting to other unlawful means. The office of the Ombudsman has taken up this issue, and correspondence with the MoD remains ongoing.

- When volunteers were initially recruited, requirements in terms of skills and qualifications were minimal. Although volunteers continue to undertake a range of tasks in the Armed Forces, they cannot be expected to replace positions that require strategic management, guidance and command and control skills. On the other hand, the Armed Force's bureaucratic system has resisted change, meaning many volunteers have not been integrated into management structures. The Armed Forces now number around 270,000 personnel; while around 650 persons are employed at the Ministry of Defence, and around the same number at the offices of the General Staff. The volunteer movement was not warmly welcomed in these high offices.
- In the framework of defence reform, 30 per cent of the General Staff structure has undergone reform. Currently, priority issues concern improving territorial defence, rebuilding and expanding the Navy, investing in military reserves, personnel development, and increasing the morale of servicemen.
- Professionalisation of the army continues to be high on the agenda. In 2017, 30,000 servicemen were contracted.
- NATO's assistance is geared towards long-term planning and a comprehensive approach to defence reform, while, in light of the ongoing conflict, the Armed Forces have urgent needs such as secure communications equipment. This creates tension between immediate combat needs and long-term, strategic priorities.
- The professional training for deployment and combat remains inadequate. The training period for new recruits is too short, modern methods are not used, and there are no periodic refresher courses.
- The personnel of the Armed Forces continue to face considerable challenges with respect to working conditions. Due to a lack of financial resources, the Army is not able to fulfil its commitments to servicemen, their families and veterans.
- As part of the ongoing defence reform, the Armed Forces are developing Network Centric Capabilities (NCC). NCC is essentially about ensuring that all battlefield units can access data transmissions, and develop shared situational awareness. Furthermore, NCC envisages the delegation of competences and the coordination of the use of force via a variety of means. In this regard, the Armed Forces has, and continues to adopt a number of technologies, including autonomous aviation, which provides real-time information recorded by aerial drones, as well as communication and signal devices for servicemen. An NCC approach is also essential for countering hybrid terrorism and aggression, both of which have no territorial boundaries. In the future of warfare, one could foresee the emergence of "environmental terrorism" supported by aggressor states, for instance through the contamination of rivers or the destruction of dams.

Industrial Defence Complex

Legislative Framework of the Defence Industry

- Gaps in legislation on the defence sector hinder domestic innovation and production. Currently, no law on the production of weapons, a concept of royalty or offset policies exist. Therefore, Ukraine has less domestic production and thus relies heavily on imports.
- The existing legislative framework on the defence sector is inherited from the Soviet Union, which had a government – centric view of Research and Development (R&D) and production in this sector. Thus, existing laws do not sufficiently cover the role of private companies and the rules that should apply to them. This leaves private companies in an environment of uncertainty, which discourages the potential for investment and R&D.

State Policy on Defence Industry: Planning, Budgeting and Procurement

- There is a need to develop state policy on the defence industry, and it should not be left to Ukroboronprom. The lack state policy on defence procurement leads to inconsistent import practices, as seen in the case in which certain armoured personnel carriers and micro Unmanned Aerial Vehicles (UAVs) were procured.
- A state defence order is adopted every year, but an assessment of the planning behind the defence order reveals that there is little coherence between the planning processes of the Armed Forces and the National Guard.
- The Ministry of Defence has its own units which can and do provide expert advice, but decision-making processes are often protracted and subject to the influence of lobbyists.
- A major achievement resulting from defence reform is the move from one to 3-year defence planning, a significant step for more effective use of resources. In this context, the Armed Forces have adopted the ‘capability based planning’ approach, which scrutinises capabilities in nine different categories: force support, preparation, projection, engagement, sustainability, consult and control, protection, information, and corporate management.

The Armed Forces has invested significantly in defence planning through developing guidelines and training officers. Defence management-related topics will be further incorporated into the curriculum of the Academy. In addition, selected officers are being sent abroad (primarily to the United States and the United Kingdom), for short courses on defence planning.

Regulation of the Defence Industry and Market

- The roles and responsibilities of actors in the defence sector are not clear. In March 2016, the President signed the Defence and Security Sector Development Concept, but a central executive authority is yet to be created.

- Currently, regulation of the defence industry is left to the Ministry of Economic Development. However, it is not able to effectively regulate the market since conditions in the defence industry are unique and require technical expertise and resources. For example, the Ministry is responsible for registering suppliers in the defence industry, but it does not have the human resources to verify whether or not the company in question is indeed functioning as claimed. Thus the supplier registry is rather declarative, and as such does not serve its stated purpose.
- One reason why Western companies are hesitant to engage with Ukraine's defence industry is that they often struggle to find a reliable body or Point of Contact to establish initial dialogue.

The Role of Ukroboronprom in Defence Industry Governance⁹

- The Ukroboronprom is a monopoly and suppresses competition against itself. It enjoys strict control over enterprises – even small-scale procurements require its approval, resulting in a highly centralised decision-making process. The Ukroboronprom's enterprises cannot produce high-quality equipment, while the lack of competition curbs innovation and damages the industry as a whole.
- The Ukroboronprom is both a policy maker and a policy subject. Most recently it has prepared thirty-one draft bills, and lobbies parliamentary commissions of the Verkhovna Rada and the Ministry of Economic Development. From an ethical viewpoint, this is not an acceptable practice.
- Western companies do not favour trading with or investing in the Ukrainian defence industry, partly because of the non-transparent structure of the Ukroboronprom.

Private Defence Companies: Production and Investment

- In the current legislative and regulatory environment, investment in Ukrainian defence companies is complicated. Investors are not legally protected. There is no public policy on investment attraction. However, recently, some positive developments have emerged: the Government made a number of decisions, while the MoD drafted a law on privatisation, making some defence companies eligible for privatisation. When the draft law is passed, Ukraine will be able to attract more foreign investment.
- Uncertainty about the future, in terms of the government's procurement needs and prices, leads to hesitation on the part of private companies. Companies do not have a good understanding of the long-term demand for their products, and are unsure as to whether or not the government will buy them at a certain price. As a result, they are unable to identify foreign partners.

⁹ Note: Representatives of the Ukroboronprom and other participants at the conference had strongly contradictory views about its role and shortcomings. Ukroboronprom representatives stated that it raised 3 billion EUR in a year, whereas if it was privatised it was claimed that it would only raise a maximum of 400 million. Further, they stated that the Ukroboronprom has a productive dialogue with the Parliament, and cooperated with parliamentary commissions on legal amendments, as well as with Transparency International, to enhance its accountability.

- In public-private partnerships, government representatives interfere into matters that do not concern them. Such extensive control of customers (i.e. private defence companies) may violate the principles of commercial confidentiality.
- The government places certain restrictions on the profitability of private companies. The current pricing model – cost plus fixed profit – makes it impossible to develop new products, or improve existing ones, because profitability lowers as companies produce more high-tech products, which are more costly.

Military Technical Cooperation (MTC) with Foreign Partners

- The compatibility of weapons with and the swift transition to NATO standards are priority areas for Ukraine. Over the past years, Ukraine has deepened its cooperation with NATO. In 2015, an agreement was reached concerning NATO's comprehensive assistance package, which includes the development of NATO-compatible systems, capabilities and logistical systems, as well as support for codification processes. The priorities for 2017 include the development of quality control guarantees, mainstreaming the smart defence concept.
- Practical cooperation between NATO and Ukraine is and continues to be enhanced through the implementation of trust funds. The Trust Fund on Cyber Defence, for example, has increased the effectiveness of Ukraine's cyber defence system by allowing for the procurement of additional equipment. Further, trust funds have been mobilised for the purchase of medical equipment facilities and the delivery of psychological rehabilitation programmes for wounded soldiers. If psychological rehabilitation programmes are not, however, of a sufficient quality and/or provided to all who require them, negative consequences will likely be felt for many generations.
- The Government is also cooperating with European countries. Military Technical Cooperation (MTC) agreements have been signed with Poland and Austria on military boats and communication equipment.
- MTC is one way to re-arm and supply the Armed Forces. There is, however, a lack of professional knowledge and expertise in the sector regarding it. While MTC is the president's prerogative, the defence industry is the government's responsibility.

Secrecy vs. Transparency in the Defence Sector

- The majority of MoD procurement is confidential. This creates a risk of stagnation in the defence industry, since private defence companies cannot properly assess demand for their products, and are thus less willing to invest in new production lines and facilities. Companies are also unable to properly assess their potential participation in bids.

Policy Recommendations on Defence Reform

Ministry of Defence

- It is imperative that the roles and responsibilities of the Ministry of Defence and the General Staff are delineated, and that a proper balance between civilian and military staff within the Ministry is established.

- In order to achieve reform progress, the Government should increase the numbers of qualified personnel, project managers and capable leaders; and encourage the participant of civil society and young professionals in the reform process.

Armed Forces

- While the recruitment of volunteer troops may have been necessary to counter the aggression Ukraine faced in 2014, in the long-term, the Armed Forces should aim at a full transition from volunteerism to a professional army. This would entail strategic management, effective command and control; and operating under democratic and civilian oversight.
- Defence sector reform should address the social reintegration of veterans, and ensure that they have proper access to psychological support, are provided with benefits and have equal access to all areas of social life.
- As they currently stand, Ukrainian Army units will be unable to effectively respond to all future challenges resulting from hybrid warfare. Ukraine should consider its defence sector organisation in the next fifty years, and fully adopt new approaches, such as Network-Centric Capabilities (NCC).
- Whereas defence sector reform is commonly based on NATO standards, Ukraine is far from achieving them. It would be advisable to break down the goals of the reforms into smaller, clearly defined sub-priorities.

Industrial Defence Complex

Legislative Framework on the Defence Industry

- A new law on strategic planning should be drafted, introducing project management principles for the Ministry of Defence, as well as other Ministries.
- The current legislative framework should be adapted to address the complexities of modern defence industry; and cover public-private partnerships; as well as the role, rights and obligations of private companies.
- The legislative framework on the production of armaments and military technical cooperation should be improved.

State Policy on Defence Industry: Planning, Budgeting, Procurement

- Overall, state defence policy should shift from reactive to proactive. Faced with sudden aggression, Ukrainian defence policy has so far remained reactive in order to adapt to the situation.
- Defence planning should be based on clear and formalised policies and procedures. It should begin with a threat assessment, followed by an evaluation of defence capabilities. This would allow for an identification of requirements in terms of forces and structures, as well as procurement needs for equipment and armaments.

- In order to carry out long-term budgeting, the State needs to provide certain guarantees for long-term loans (for instance state-guaranteed three year loans).
- The Ministry of Defence should not only have the authority to procure weapons, but also other supporting services and equipment.

Regulation of the Defence Industry and Market

- A state body should be established to regulate the market in order to assess whether or not the price regulation and incentives for the defence industry are correct. Private defence companies cannot be expected to regulate themselves. Such a regulatory body does not have to be established from scratch – a specialised unit can be created under the Ministry of Economic Development.
- While the new regulatory body should allow for competition and the coordination of various interests, strong safeguards should be introduced to ensure that it does not become vulnerable to corruption. The body should also adopt strategic planning and management, and strict procedures to ferment institutional memory.

Private Defence Companies: Production and Investment

- Legislative, regulatory and other obstacles to investment should be identified. Thereafter, specific indicators should be developed to assess progress with respect to overcoming the identified obstacles. The Ukrainian defence industry should focus not only on attracting investment, but also technology.
- The government should create favourable conditions so that private companies can locate their own investors. Such an approach would be useful for the development of defence equipment.
- The defence sector should be reformed by creating clusters and merging certain enterprises. The cluster formed in the Ukrainian aviation industry represents a good example, whereby enterprises within the cluster form joint ventures with foreign companies.
- The government should remove restrictions on the profitability of domestic producers. The production of aerial drones is a good example: drones that are similar to those produced in Ukraine cost substantially more on the international market. Economically, it thus makes sense to support domestic producers.

Military Technical Cooperation (MTC) with Foreign Partners

- MTC should be invigorated to meet the procurement needs of the Armed Forces. The private sector should be involved in MTC, since private companies are skilled in pricing. In particular, the export and import of armaments should be liberalised, and private companies allowed to trade.
- In order to have sustainable MTC with Western countries, it is important to demonstrate the competitiveness of the Ukrainian defence industry (i.e. low prices), and to establish trust with foreign partners. Western partners place heavy emphasis on their counterparts having a good track record. The violation of corruption laws therefore reduces the likelihood of Western partners engaging in MTC with Ukrainian bodies, whether public or private.

Secrecy vs. Transparency in the Defence Sector

- The system of secrecy and classification in Ukraine should be revised. The Ministry of Defence should review its regulations and reassess what information can be disseminated.
- Bidding processes should be made more transparent. Anyone should be able to access tenders, and, if necessary, challenge the outcomes.
- Defence equipment should be directly procured from producers, without the involvement of any intermediaries. This principle is foreseen in the Strategic Defence Bulletin (article 2.5.1.), which is yet to be implemented.

III. OVERSIGHT OF THE SECURITY SECTOR

Parliamentary Oversight

All nine conferences of the project touched upon the issue of parliamentary oversight of the security sector. While during conferences 1, 2 and 9, participants discussed the issue in more general terms; sector-specific conferences, such as those focused on the SSU or the Industrial Defence Complex, explored the particular challenges encountered by the parliament in overseeing these areas.

Overarching Issues

- **Legislative framework:**
 - The Law on the Democratic and Civilian Control of the Armed Forces has a number of outdated elements, and thus does not provide a rigorous basis for overseeing or cooperating with the newly established security and oversight institutions in Ukraine.
 - The law does not include the notion of sensitive information or classified information. While, by law, every MP has access to all information, in reality, agencies rarely provide sensitive information to parliament.
 - Ukraine adopted the National Human Rights strategy in 2015, together with its Action Plan. However, since then, the majority of laws adopted by the Verkhovna Rada do not align with the Strategy or Action Plan.
- **Expertise:** Members of parliament often lack knowledge and expertise in issues concerning security sector governance and oversight. They struggle to keep abreast of the reforms, and some vote without a good understanding of the subject matter. This results in an overwhelming reliance on parliamentary staff.
- **Professionalism:** A primary challenge to parliamentary oversight in Ukraine is the lack of professionalism among some MPs (who are often influenced by private companies), and a reluctance to cooperate with CSOs which have an expertise in the field.

- **Procedures:** Parliamentary procedures are often consciously neglected or manipulated in the context of committee work and plenary sessions, which in turn undermines the legitimacy and authority of the Verkhovna Rada.
- **Resources:** Parliamentary Committees suffer from a lack of resources and services, especially with regards to recruiting qualified parliamentary staffers.
- **Effectiveness:**
 - Overall, parliamentary oversight of the security sector in Ukraine remains extremely weak. Only a few years ago, if the National Security and Defence Committee had invited a Defence Minister, it would have been difficult for that Minister to ignore the invitation. Now, however, this is not the case. While the Constitution, laws and parliamentary procedures have remained the same, the attitude of MPs, combined with a general lack of professionalism, have contributed to the weakening of parliamentary oversight.
 - There have been strong political statements supporting the reform agenda by a group of progressive, reform-minded MPs. However, these statements are often not matched with concrete actions. MPs that are content with the status quo, and who are essentially anti-reform, remain in the majority.
 - Parliamentary committees focus too heavily on legislation, and neglect to monitor their implementation, as well as the activities of the institutions they are tasked to oversee.
 - Parliamentary committees are not provided with sufficient information to scrutinise the budgets of security sector agencies, rendering their oversight function weak.
- **Handling confidential information:** The occurrence of members of parliament leaking confidential information obtained in committee meetings continues to pose a serious challenge to parliamentary oversight of the security sector. Several MPs have not respected the obligation to preserve state secrets. Moreover, some of them are yet to sign the confidentiality agreement. This undermines the legitimacy of the Committee's oversight function and creates mistrust between security sector institutions and the parliament. As a result, security institutions share less, rendering parliamentary oversight inane.
- **International support:** A positive development for parliamentary oversight is the establishment of the International Expert Group on Defence Sector Reform under the Verkhovna Rada. The group's primary task will be to conduct an independent assessment of security sector legislation in Ukraine in terms of its conformance with international standards and best practices, as well as effectiveness of implementation in the Ukrainian context. An agreement has already been made to establish a permanent secretariat to coordinate the activities of the International Expert Group.

Parliamentary Oversight of Law Enforcement and Intelligence Services

- Dialogue between the SBGS and the Verkhovna Rada remains very weak. The need to enhance the technical capacities of the SBGS, and appropriate funds for its budget does not seem a high priority for legislators.
- There is no effective parliamentary oversight of the SSU. Prior to 2010, the Chairman of the SSU was required to report to the Verkhovna Rada. After several legislative amendments, however, there is now no such provision in the law *obliging* the Chairman of the SSU to report to the relevant parliamentary committees.
- Presently, authority to oversee the SSU is dispersed amongst several institutions, including the Committee on National Security and Defence, the Ombuds Institution (Parliamentary Commissioner) and the Accounting Chamber. The Committee on National Security and Defence is not effective in scrutinising the SSU as no expertise on special services is available to the committee. Furthermore, there is no cooperation and coordination among those committees in overseeing the SSU.
- There is no rapport and culture of dialogue between the Parliament and the SSU. The Chairman even failed to attend Committee meetings to defend the SSU's budget. In the end, the budget was reduced as there was no one to lobby for it.

Parliamentary Oversight of the Defence Sector

- Security sector actors and institutions perceive parliamentary oversight as external interference into a specialised professional activity; and thus do not cooperate with parliamentary committees. Despite numerous invitations to attend closed hearings at the Committee on National Security and Defence, neither the Minister of Defence, nor the Chief of General Staff, is yet to attend. This reduces the oversight role of the Verkhovna Rada to a mere approval function, where annual reports of the agencies are rubber-stamped without effective oversight.
- The Ministry of Defence and the industrial defence complex as a whole are not keen on parliamentary control. They claim that parliamentarians do not have the technical expertise required, and thus are unable to effectively oversee the defence sector.

Policy Recommendations on Parliamentary Oversight

Overarching Issues

➤ **Legislative framework:**

- The Law on Democratic and Civilian Control of the Armed Forces should be revised and redrafted to cover all agencies within the security sector.
- When the draft Law on National Security is submitted, the Parliament should ensure that the functions of SSU and other law enforcement agencies are clearly delineated.

➤ **Expertise:**

- The capacities of the members and staff of the Committee on National Security and Defence should be enhanced. International donors and assistance providers may consider customised capacity building activities on parliamentary oversight, including training on international best practices and expert advice on the draft laws to be reviewed by the Committee. Assistance providers should also ensure that training activities are followed-up effectively.
- A research department should be established within the Verkhovna Rada to provide Committees with in-depth information on a thematic subject upon request.
- The Rada should also consider establishing an 'Expert council' at the parliament, whereby external experts provide advice and assistance to parliamentarians on monitoring the implementation of security sector legislation, and the reform process as a whole.
- Capacity building assistance should include civil society. Such activities can serve as a platform to foster dialogue between parliamentarians and NGOs.
- Training and other capacity development efforts should bear in mind the tremendous experience built up since 1992. There is a need to strengthen the parliament's institutional memory and ensure continuity.

➤ **Procedures:** Parliamentary discipline and procedures need to improve, especially with regards to the attendance of MPs to parliamentary sessions. The rules and procedures regarding the creation of parliamentary committees should ensure that conflicts of interest are avoided. If an MP has a business interest in a certain area, he or she should not be permitted to sit in a committee legislating on that area.

➤ **Effectiveness:** Ministerial questioning should not be limited to a single 'Government hour' every Friday at the plenary; more opportunities for questioning Ministers should be provided. This would enhance oversight.

➤ **Handling confidential information:**

- Legal safeguards should be introduced to prevent information leaks by MPs. Ukrainian authorities may consider limiting parliamentary immunity and enforcing criminal responsibility for infringements in this area.
- In order to address unlawful disclosures of sensitive information, regulations should be devised which clearly stipulate the responsibilities of the overseers (in this case MPs), and the consequences in cases where they are breached. MPs should also receive briefings and trainings on the professional conduct of intelligence oversight, as well as how to handle, analyse and protect classified information obtained in the frame of oversight activities.
- In order to avoid future unlawful disclosures of classified information by MPs, the selection criteria for the Security and Defence Committee should be improved.

Parliamentary Oversight of Law Enforcement and Intelligence Services

- Parliamentary oversight is crucial for preventing political interference by the President and politicisation of the security services. In this regard, strong legal safeguards should be introduced. Ukraine should explore possibilities to strengthen the role of the Verkhovna Rada in the process of selecting and appointing the directors of security sector institutions. Currently, the Rada only provide consent for the appointment of the SSU head, while appointments of Foreign Intelligence Service (FIS) and MoD Military Intelligence heads are not approved in Parliament.
- The Verkhovna Rada should better engage with the budgetary oversight of the SBGS. For instance, while the SBGS has its own intelligence unit, it does not have a separate budget line. This poses a serious accountability and transparency risk and should be addressed by the parliament.
- The National Anti-Corruption Bureau (NABU) is obliged to submit an annual report to the Parliament. Reviewing reports once a year, however, is not a sufficient form of oversight. The Verkhovna Rada should be given more oversight powers over the NABU, such as summoning NABU officials to parliamentary hearings.
- Parliamentary oversight of the SSU should adopt an approach that effectively assesses the resources, capacities and respective outcomes of the SSU's work. The SSU has 35,000 personnel and several functions, some of which overlap with other agencies. It is imperative that the Rada Committee on the Budget thoroughly scrutinises how the SSU's budget is drawn up, and how efficiently resources are allocated and spent.
- The establishment of a new parliamentary committee focusing exclusively on SSU oversight should be considered. European best practice in this respect is to have at least one parliamentary committee with a specific mandate to oversee intelligence agencies. In some countries such as Romania, Slovakia and Montenegro, multiple parliamentary committees exist, each overseeing a particular aspect of intelligence work, such as the interception of telecommunications.
- If Ukraine ultimately decides to establish a new parliamentary committee to oversee the SSU, the committee's mandate, functions and powers should be thoroughly considered and clearly stipulated by law. Currently, no single European best practice in terms of the mandates of such committees exists. However, generic mandates involve overseeing the policies, finances, administration and completed operations of intelligence services; whereas in France and Germany, the committees have a wider mandate, including oversight of the activities and methods of the agencies.
- An alternative to establishing a new parliamentary committee, or a complement to it, could involve the creation of an independent expert body, which reports to the parliament. This is the case in Belgium, the Netherlands and Norway. Such expert bodies usually have a mixed composition, including former MPs and officials from the executive and judiciary, as well as renowned experts in the field. Such a constellation would be useful in the Ukrainian context, whereby the expert body could also brief newly elected MPs on the mandate and functions of the SSU. Civil society representatives could also be invited to committee meetings when no confidential information is to be discussed.

Parliamentary Oversight of the Defence Sector

- The mandate and procedures of the Committee on National Security and Defence should be strengthened, to oblige senior officials of the Ministry of Defence and other relevant institutions to attend committee meetings.
- Parliamentary oversight of the defence industry should be enhanced. Best practice in Western democracies can provide a useful reference for Ukraine. Oversight of the defence industry in France is a good example, since France also has state-owned defence companies. In the US, defence budgets are programme-based so that parliamentarians can explore them in detail and better understand what they approve. Norway uses a scaled system for the approval of defence spending. If a project costs less than 8 million EUR, it is a managerial decision. Expenditure from between 8-60 million EUR is approved by the Ministry of Defence, while those above 60 million require parliamentary approval.

Public Oversight

Promoting an inclusive and informed public debate on security sector reform in Ukraine, and bringing CSOs together with representatives of the Rada and the executive to discuss challenges and priorities for reforms, have been among the main objectives of this project. To that end, a number of sessions and working group discussions in several conferences¹⁰ were dedicated to the role of civil society in contributing to and monitoring security sector governance and reforms in Ukraine.

➤ Public councils:

- As part of the reform efforts, Ministries established public councils which are comprised of representatives of civil society organisations. These councils are intended to exercise public oversight over the executive. However, public councils are failing to function effectively as currently, there are no criteria for the selection of NGOs to the councils. Some senior bureaucrats, who are resistant to reforms, have driven out young, active and informed NGO representatives from the council's membership, and instead brought in NGOs, such as religious communities, which are not active in or knowledge of the security sector.
- The public council operating under the Ministry of Defence is not balanced in its representation. 120 organisations were not allowed to be represented on the board. The Ministry remains opposed to being overseen by such a civilian board.
- The current composition of the civic board at the SSU raises certain questions regarding its transparency and effectiveness. The SSU does not provide any information on the members of the board except their names, while five members are already known for their close ties to the SSU. It is thus questionable to what extent the board members can exercise effective civilian oversight over the SSU.

¹⁰ Conferences 1,2,6,7,8, & 9. For more information see: <https://ukrainesecuritysector.com>.

➤ **Cooperation with the executive on reforms:**

- In order for public oversight to be effective, CSOs should be able to exert pressure on the government. However, adequate legal provisions framing public protest and public consultation are absent. There are no laws that require the Government to consult with the public. Thus, the involvement of CSOs in the reform process remains at the discretion of the executive, and as such is often sporadic.
- Historically, the involvement of civil society in monitoring the SSU has been problematic. Although oversight mechanisms are established, and recommendations developed, they are often not taken on board. By way of example, some years ago the SSU's public council submitted recommendations concerning the demilitarisation of the service. While welcomed by Ukraine's European partners, the recommendations were not taken into consideration by the then President, Yushchenko. Nevertheless, the SSU's public council has achieved some progress on overseeing professional training institutes (the Academy), as well as advocating for social support to servicemen and their families.
- The MoIA has created an Expert Committee for Reforming the MoIA, which was tasked to develop a Reform Concept by November 2014. CSOs were invited to attend the Committee and contribute to the development of the Concept. However, they faced strong resistance from the old MoIA apparatus, and their proposals were largely rejected.
- Civil society was also invited to assist in the process of drafting the law on the National Police. The senior administration of the National Police involved civil society in the earlier phases of law drafting, whereby the CSOs made hundreds of proposed amendments. However, none of these amendments were adopted by the Parliament. Thus, while the government and Parliament seek engagement with CSOs, in reality, any substantive contributions are not welcomed.
- CSOs have also been active in defence sector oversight. Some have even formulated model draft laws on increasing transparency in defence sector budgeting and procurement. Although these have been passed to the National Security and Defence Committee, the Office of the President as well as the relevant Ministries, they have not been considered.
- In 2017, representatives of CSOs took part in a commission to select the chief of the NABU. Civil society representatives significantly contributed to the establishment of the selection procedures, eligibility criteria, and reviewed applications. This represents best practice of civil society involvement in overseeing the security sector.
- The Government does not pay sufficient attention to its strategic communication with respect to cooperation with civil society. While official websites on the democratic control of armed forces in Ukraine and the National Reforms Council have been launched, neither of them acknowledges cooperation with or the involvement of civil society in the reform process.

➤ **Access to information:**

- CSOs' access to information is often and arbitrarily blocked by the government under the pretext of Russian aggression and the state of ongoing reforms.
- While a certain degree of secrecy in the defence sector is necessary to protect vital national security interests, the problem of over-classification and unnecessary confidentiality persists. The State Defence Order is confidential, which makes it impossible for the public to access basic information regarding defence planning. Without such information, CSOs cannot be expected to effectively carry out their monitoring duties.
- Currently, if a document contains any amount of classified information, it cannot be released. This practice seriously impedes the work of public oversight actors who oversee the human rights compliance of the SSU.

➤ **NGOs with questionable ties:** While the volunteer movement has contributed considerably to the defence sector and gained widespread respect; 'fake' NGOs have begun to appear, claiming to represent the interests of volunteers and other groups. This has had a damaging effect on both the volunteer movement and the credibility of CSOs as a whole.

➤ **Smear campaigns:** Instances have occurred in which certain CSOs have collaborated with Moscow to further Russian interests in Ukraine. Ukrainian authorities, however, have used these few examples as a pretext to conduct smear campaigns against NGOs which oversee the security sector.

➤ **Institutional capacity/professionalism:** Most NGOs working in the field of human rights and security suffer from institutional weakness. Only a small number of watchdogs have effective institutional capacity, meaning it is difficult for the sector as a whole to exert impact on government agencies.

➤ **Participation in NGOs:**

- The level of public participation, in particular youth participation, in CSOs is very weak. The primary reasons for this include poverty and disillusionment with reforms.
- There is no real middle class in Ukraine. According to a UN report, 60 per cent of Ukrainians live below the poverty line, meaning the majority cannot satisfy their most basic needs. They also have little trust in the banking sector, and with good reason: many have lost funds and life savings. Additionally, the state does not currently allow for the development of small businesses. These are important explanative factors for understanding the weakness of civil society in Ukraine.
- Ukrainians continue to be disillusioned with the pace of reforms, as many promises from the state have yet to materialise. This also threatens the involvement of volunteers from civil society in the reform process, as the results needed to maintain their morale are absent. To compound this, once these volunteers come into contact with the system, they often witness endemic corruption, further eroding their motivation.

Policy Recommendations on Public Oversight

➤ Public councils:

- Comprehensive criteria should be developed for the election of NGO representatives to public councils at ministries. The Government should ensure that the senior management of the ministries adheres to these criteria.
- While the public council operating under the MoIA has the potential to exercise effective civilian oversight, it should be ensured that the board does not interfere with the operational work of the National Police, since such interference may undermine ongoing investigations.

➤ Cooperation with the executive on reforms:

- Ministries should display genuine political will and commitment to engage with civil society on security sector oversight issues. Attempts should go beyond inviting NGO representatives to meetings; and it is essential to establish a meaningful and constructive dialogue with civil society.
- The Government needs to improve its strategic communication on reforms, and in doing so, should cooperate with NGOs and the media. There should be more awareness-raising campaigns, TV clips explaining the basics of the reforms; namely, what they concern, and what change the newly established institutions could cause. While reforms continue, a lack of trust in the state still persists.

➤ Access to information: Laws and internal regulations regarding the disclosure of documents should be amended to allow access to non-classified parts of a document which also includes classified sections.

➤ Smear campaigns: While the cooperation of some Ukrainian NGOs with the Kremlin is a matter of deep concern, and as such should be effectively investigated, such an allegation should not be used as a pretext to persecute CSOs and human rights defenders. Investigations of such allegations should be based on evidence and/or the reasonable suspicion that a crime has been committed.

➤ Institutional capacity/professionalism:

- Public oversight actors should conduct their activities in a professional and ethical manner. Regrettably, many external oversight actors lack professionalism, which results in frustration among the SSU's leadership, and a reluctance to work with such actors.
- The community of experts in Ukraine is of a high calibre, and by any standard, some of its members are persons of high distinction. However, as a *corpus* of experts, this community's potential is underdeveloped. Its insights and perspectives are often poorly communicated to actors whose actions and policies have an impact on Ukraine's interests. A standing group of experts, with a core of permanent members and a range of outside contributors, could articulate a number of issues with clarity and authority.

- Most universities in Europe and the US have research centres that work under the guidance of professors, and which only require modest budgets. Some of these centres also engage in research on security sector governance. Ukraine requires such centres to conduct legal research and research on international standards and best practices on security sector governance. The Ministry of Education should support this ambition.

- **Participation with NGOs:** The government and civil society should increase their efforts to involve young people, especially young women, in implementing and monitoring reforms; including capacity building events. International assistance providers should invest in the young, particularly in those who express a desire to work for the government or parliament.

Independent Oversight (Parliamentary Commissioner)

In democratic societies, ombuds institutions play an important role in overseeing the security sector. While their exact mandates and powers vary across countries, ombuds institutions are usually tasked with monitoring defence, law enforcement and intelligence agencies, handling complaints against them, and initiating own-motion thematic investigations. In this regard, effective ombuds institutions are essential for identifying systemic and individual human rights violations in the security sector; holding security institutions and the executive to account, and contributing to informed public debate on human rights issues in the security sector.

While conferences 1, 2 and 8 touched upon independent oversight in more general terms, Conference 5 was exclusively dedicated to the issue, in particular to the role of the Parliamentary Commissioner in overseeing the Armed Forces, the National Police and the SSU. Discussions centred on major human rights issues in each of those agencies; challenges encountered by the Parliamentary Commissioner; and relevant institutional and capacity building needs.

Overarching Issues

- **Appointment of the Commissioner:** The appointment process for the Parliamentary Commissioner is heavily politicised, which constitutes a risk for its perceived independence.
- **Reactive oversight:** The Office of the Parliamentary Commissioner primarily exercises reactive oversight through the investigation of individual cases, and rarely conducts proactive and systemic monitoring activities.
- **Representative function in court:** In the framework of prosecutorial reform, the Parliamentary Commissioner is entitled to represent individuals in certain legal proceedings. However, the Commissioner does not perform this function effectively.
- **Lack of public awareness:** There is insufficient public awareness among the general public as to when and how one can appeal to the Parliamentary Commissioner to seek remedy for violations of their rights.

- **Outreach through regional offices:** The Parliamentary Commissioner is considering expanding its regional offices and establishing representations in districts and oblasts in order to gain better feedback from communities, and ensure that complaints are responded to in a timely manner.
- **Reporting to the parliament:** The Parliamentary Commissioner submits reports to the Verkhovna Rada. However, the findings and recommendations of the reports are very rarely discussed in parliament.

Oversight of the National Police

- **Human rights knowledge of police officers:** Many police officers do not fully understand the challenges and human rights violations faced by certain groups, including minorities, persons with drug addictions, and sex workers. In some cases, such a lack of understanding leads to mistreatment by the police against these groups.
- **Complaint handling by the National Police:** Complaints by members of the public are not always followed up within the National Police, and some 'disappear' in the system.
- **Commissioner's recommendations:** Recommendations by the Parliamentary Commissioner are often not implemented by the Police. Although the recommendations are not legally binding, no mechanism exists to monitor which are implemented, which are pending, and which are rejected.
- **Role of the Human Rights Department:** The Human Rights Department of the National Police is directly subordinated to the head of the National Police. Thus, it has no independence in overseeing human rights compliance within the police. Furthermore, the department has no investigatory powers; rather, it appears to serve a supervisory role, for instance examining whether or not the National Polices' investigation department is responding the citizens' complaints within 30 days, the agreed legal timeframe.
- **Monitoring police detention facilities:** The office of the Commissioner cooperates with prosecution authorities in monitoring detention facilities. The Office of the Public Prosecutor is undergoing reform. It will, however, maintain its supervisory function regarding human rights protection in detention facilities until new mechanisms are created. Currently, the greatest challenges in police detention facilities include deaths resulting from poor living conditions, infectious diseases and a lack of proper medical services.¹¹

Oversight of the Security Service of Ukraine (SSU)

- **Access to information:** Access to information is particularly problematic with respect to overseeing the security services. The Law on the Parliamentary Commissioner is interpreted in such a way that the Commissioner may access all facilities, but not his or her staff. This seriously hinders the ability of the Commissioner to effectively oversee the service. There is no effective independent oversight of detention facilities of the SSU.

¹¹ In 2016, 430 people died in penitentiary facilities, one third of them had HIV/ Tuberculosis.

- **Complaints by the SSU employees:** No complaints from SSU officers have been submitted to the Parliamentary Commissioner. Internal complaints mechanisms in the SSU do not always respect principle of confidentiality. The complaints procedure is particularly problematic for undercover agents operating under a different identity. In general, submitting complaints to external third parties such as the Prosecutor's Office or the Parliamentary Commissioner is not encouraged within the SSU, and officers fear for their career prospects if they complain about their superiors.

Oversight of the Armed Forces

- **Resistance to oversight:** There is a misguided perception that independent oversight interferes with operational decisions of the Armed Forces, which engenders a certain degree of resistance against oversight actors.
- **Legal framework:** Gaps in the legal framework make it difficult for independent oversight actors to protect and promote the civil and social rights of members of the Armed Forces.
- **Rights of army members:** The lack of legal safeguards for their civil and social rights often places soldiers in a vulnerable position, which contributes to a decline in their morale. Members of the armed forces encounter a variety of difficulties in relation to their salaries and other financial benefits, medical services, accommodation and housing, recreation, living standards, as well as the provision of equipment for their self-defence during active duty. In its monitoring activities, the Parliamentary Commissioner scrutinises the working conditions of personnel within the Armed Forces, and often raises concerns regarding the lack of combat equipment and training, both of which are essential for the effective discharge of their duties.
- **Rights of veterans:** Retired military officers face particular challenges. While promised certain benefits during their active duty, after their retirement, these often did not materialise. The majority of complaints submitted to the Parliamentary Commissioner are lodged by retired officials.
- **Low-reporting:** The strong *esprit de corps* in the Armed Forces contributes to a culture in which issues are dealt with internally, and often informally. Soldiers are often reluctant to file written complaints to the office of the Parliamentary Commissioner.
- **New department:** In view of the abovementioned challenges, the office of the Parliamentary Commissioner established a Department exclusively mandated to deal with human rights issues in the Armed Forces. The department communicates with the Ministry of Defence and the Prosecutor's Office, including the Chief Military Prosecutor and garrison prosecutors, concerning key human rights violations and measures to restore the protection of fundamental rights.

Policy Recommendations on Independent Oversight

Overarching Issues

- **Appointment of the Commissioner:** Existing procedures for the appointment of the Parliamentary Commissioner should be revised to ensure that the process is not politicised.
- **Proactive oversight:**
 - The office of the Parliamentary Commissioner should make greater efforts in relation to proposing and reviewing legislation, in the frame of its proactive oversight activities. Such proactive oversight, will, however, require additional human and financial resources.
 - The Parliamentary Commissioner should fulfil its additional functions more effectively. Through its representatives in high commissions at the judiciary and the police, the office of the Parliamentary Commissioner could advocate for stricter codes of conduct and disciplinary rules to ensure the human rights compliance of criminal justice personnel.
- **Public outreach:** The Parliamentary Commissioner should organise awareness-raising and outreach activities for the general public and military servicemen, in order to inform them of their rights, and how to seek recourse to if they are violated. In doing so, the office of the Commissioner should also utilise a variety of communication means.
- **Separate ombuds institutions:** Instead of creating new institutions, such as a separate military ombudsman, the focus should be on strengthening the capacity of the Parliamentary Commissioner, in order to avoid duplication of tasks and potential issues of horizontal coordination.
- **International cooperation:**
 - The ability of the Parliamentary Commissioner to interact with international mechanisms is important, and should be further encouraged. Segmentation of oversight powers by establishing separate ombuds institutions for security agencies would undermine well-established cooperation with international partners.
 - Cooperation with international monitoring missions should be a separate area of activity. It should also include applications to international courts. Currently, the office of the Parliamentary Commissioner has limited capacity in this regard.

Oversight of the National Police

- The mandate and powers of the Human Rights Department of the National Police should be clearly outlined in law, rather than in internal regulations.
- The roles of the Parliamentary Commissioner and the Human Rights Department of the National Police should not overlap.
- The Human Rights Department should play a more active role in following up on complaints filed by members of the public, as well as on the implementation of recommendations by the Parliamentary Commissioner.

- Currently, the Human Rights Department is directly subordinate to the head of the National Police. A 'double subordination' to both the head of the National Police and the Parliamentary Commissioner could provide a certain degree of independence for the Human Rights Department. However, such a 'double subordination' bears the risk of creating more bureaucracy and confusion in terms of reporting lines.

Oversight of the Security Service of Ukraine (SSU)

- **Complaints by undercover agents:** Legislative and regulatory changes should be made to ensure the confidentiality of undercover agents when they file a complaint.
- **Special division on the SSU:** Independent oversight of the SSU should be enhanced. In the short term, cooperation between the SSU, the Prosecutor's office and the Parliamentary Commissioner should be improved. The powers of the Parliamentary Commissioner should be expanded to cover all aspects of intelligence governance. In this regard, a special division in charge of overseeing the SSU within the office of the Parliamentary Commissioner could be established.
- **Specialised oversight body:** In the medium term, Ukraine should consider establishing a separate expert oversight body, focusing exclusively on intelligence oversight.¹² However, similar to a separate military ombudsman, a specialised oversight body on intelligence would require a significant amount of financial resources and expertise. Thus, such a body should only be established when sufficient financial and human resources are available; also taking into account their sustainability.

Oversight of the Armed Forces

- **Legal framework:** Legislation concerning the rights of soldiers should be simplified. Legal provisions on salaries, bonuses, other entitlements and rights should be stipulated clearly, rather than leaving their provision to the discretion of the commander in question.
- **Human rights awareness:** Members of the armed forces should have a better understanding of their rights, as well as judicial and non-judicial avenues through which they can complain and seek remediation for any violations of their rights. In this regard, the office of the Parliamentary Commissioner should conduct more awareness-raising activities on fundamental rights and complaints mechanisms.
- **Rights of veterans:** Recommendations of the Parliamentary Commissioner should take into consideration the specific challenges faced by retired members of the Armed Forces.

¹² The National Institute for Strategic Studies is devising recommendations to improve independent oversight of the SSU. They have proposed the establishment of a body similar to the Norwegian EOS Committee. Their proposal is expected to be reviewed by Parliament.

- **Separate military ombudsman:** While a separate military ombudsman (similar to the German model), with the necessary legal mandate and powers, would be more effective in monitoring human rights in the defence sector, such an institution would require substantial financial and human resources. Without securing adequate resources and ensuring their sustainability, establishing a separate ombudsman for the military would only serve to duplicate mandates. In the short term, the focus should be on developing the capacities of the Parliamentary Commissioner.

Media Oversight

The media has an important role in facilitating governance of security institutions through investigative journalism and the provision of platforms for information sharing and discussion on security issues that all stakeholders can access.¹³ The role of the media and challenges to effective, fact-based, investigative reporting was thoroughly addressed in several conferences, in particular Conference 4, which was exclusively focused on the role of the Media. Discussions highlighted the complexities of conflict reporting, the threat of fake news and the spread of propaganda, as well as the capacity building needs of journalists.

- **Media outlet ownership:** Most Ukrainian media outlets are owned by oligarchs, and the public is unaware of which media outlet is owned by whom. Such undisclosed ownership affects editorial policies, and sometimes results in self-censorship.
- **Legislative framework on transparency in the media:** In order to promote the transparency of media ownership in Ukraine, a new legislative framework was adopted in September 2015, when President Petro Poroshenko signed the law 'On Amendments to Several Laws of Ukraine on Ensuring the Transparency of Media Ownership and Implementing the Principles of State Policy in the Sphere of Television and Radio Broadcasting.' The amendments oblige broadcast companies and programme service providers to disclose detailed information about their ownership structure and final beneficiaries. The law also bans business entities and individuals registered in offshore economic zones from establishing or owning broadcasting companies and programme service providers.
- **Relations with security sector agencies:** Currently, the relationship between the media and security institutions in Ukraine is one of tension, due to differing institutional cultures and goals. While independent reporting is necessary to ensure the military is held to account, the media are largely dependent on the Armed Forces for information. While, during the ongoing conflict, the media remain essential for informing the public about military operations, they still face restrictions from the government and Armed Forces.
- **Journalism in times of conflict:** Journalism in Ukraine is a challenging task. On the one hand, there have been numerous cases where journalists publically disclosed potentially sensitive material on TV. On the other hand, the work of journalists is often obstructed; and it is difficult to assess to what extent these obstructions are justifiable on national security grounds.

¹³ Eden Cole, Philipp Fluri, Simon Lunn (eds.), *Oversight and Guidance: Parliaments and Security Sector Governance*, (Geneva: 2015) available at: <http://www.dcaf.ch/Publications/Oversight-and-Guidance-Parliaments-and-Security-Sector-Governance>.

- **Politicised reporting:** Reporting and the public debate on defence issues are overtly politicised in Ukraine. Public opinion on defence issues is generally divided between one of 'victory' or 'failure'; leaving no room in the media for constructive dialogue on or criticism of defence governance.
- **Distortion of critical journalism:** Reports that expose weaknesses in the Armed Forces, or which are critical of the government's defence policies, are immediately picked up by the Russian media, and distorted to serve Russian interests. This situation compounds the culture of secrecy and confidentiality present in Ukraine.
- **Public/private information sources:**
 - Representatives of ministries and security institutions do not provide reliable data and information on defence related issues. In an already non-transparent environment, receiving conflicting information and figures on the defence industry frustrates the ability of journalists to both understand and effectively oversee the defence sector.
 - A lack of transparency within government structures complicates the development of coherent strategic communication, particularly within the security sector.
 - The press services of private defence companies are no more effective than their government counterparts. The majority sit idle; and it is commonplace for their supervisors to prevent them from sharing information.
- **Competition:** Media outlets fiercely compete to provide the most detailed information on the conflict in the fastest possible time. However, in doing so, they pay little attention to national security interests and the potential repercussions of their coverage.
- **Capacity building needs:**
 - Another key challenge in the media sector is the low capacity of journalists. Reporters are often not systematically aware of the particular issues to be considered when covering a specific security-related event. In addition, they are often unaware of the impact social media can have on security sector coverage. Thus, the quality of reports is often dubious; information not double-checked, and in some cases, reports from foreign media outlets (including Russia) which contain false information or propaganda, are copy-pasted.
 - Some reporters are not familiar with the technical terminology used in the defence sector; which results in low quality reporting.
- **Unfounded news spreading panic:** The public is neither informed nor knowledgeable enough to distinguish between fact-based reporting and unfounded news. Several incidents have occurred in which information used out-of-context has instigated widespread public panic. Indeed, in certain cases, threats resulting from these episodes of public hysteria were deemed so serious that the MoD and General Staff intervened, diverting much-needed resources from the conflict zone in Eastern Ukraine.

- **Countering fake news:** A number of outstanding initiatives to counter propaganda and false news have recently emerged. A case in point is the platform 'Stop Fake'. Although this line of work has great potential, the Ministry of Information does not actively encourage such initiatives.
- **Communication on international support:** Representations of international and regional organisations do valuable work in Ukraine, however they are virtually absent in the national media. As a result, Ukrainian society is not adequately informed of their important contribution to the reform process.
- **Technical infrastructure for communication:**
 - Ukraine has difficulties protecting its communication space in terms of access to networks and technical issues such as radio frequencies and radio towers. Access to frequencies is hampered by technical issues and excessive bureaucracy.
 - The provision of and access to information by citizens in or near the conflict zone remains limited. Much of the responsibility for this lies with the National Radio Frequency Council. For example, in the strategic territory of Mariupol, no radio frequency is available for the MoD FM radio (for unclear reasons). Although ten further cities applied for Army radio, they were formally denied on the grounds of limited frequency space.

Policy Recommendations on Media Oversight

- A multi-level approach is needed to address strategic communications between the security sector and mass media on both the national and international level, in particular between:
 - Citizens living in both Government Controlled and Non-Government Controlled Areas (GCA & NGCA respectively);
 - The public and the authorities; and
 - Local and foreign journalists, foreign media outlets and the government.
- **Journalism in times of conflict:**
 - Concerning government-media relations in times of conflict, a memorandum of understanding should be developed with the involvement of all relevant stakeholders, including government representatives, media, journalist associations and CSOs specialised in the field of media and information communications.
 - There remains a need to develop a clearer understanding on the role of the media in democracies which have, or currently do, suffer from violent conflict.
 - Operating in a non-transparent environment with weak rule of law creates a lacuna of trust and cooperation, particularly for professional journalists working in (or with a desire to work in) Ukraine's Non-Government Controlled Areas. Information sharing and cooperation can be partially improved by providing journalists in the NGCA with improved access to information.

- Systematic analysis and monitoring of events in the conflict-affected areas of Ukraine is urgently needed; as is information on what is being done to prevent the conflict, as well as the creation of effective messages for both domestic and external audiences. There remains a lack of clarity, cooperation and understanding, resulting in further mistrust between the security sector press services, the mass media and general public. Security sector agencies and the Armed Forces need to generate their own credible content, and share videos and photos for public information purposes.
- It is necessary to develop a framework and/or code of conduct for media operating in a democratic state with ongoing armed conflict within its territorial borders. Codes of conduct and frameworks of analysis must be developed based upon existing national and international conventions and best practice, including the Declaration of Human Rights and Freedoms, the European Convention, the Sofia Convention, and Munich Charter.
- Professional journalists should have the right to access and cover GCA and NGCA's without being embedded or converted into 'agents of the state'.

➤ **Countering fake news:**

- A framework for propaganda analysis should be developed, with a particular focus on propaganda which targets national security. In this regard, a methodological system for analysis is needed to demonstrate how the state's national security is systematically targeted. This would in turn provide justification for acts of censorship which may otherwise be perceived as limiting democratic rights and freedoms.
- Terminology, particularly in relation to information warfare, must be clearly defined so as to prevent misunderstanding.
- Information warfare and disinformation should be methodologically analysed. This would facilitate defence of the state's communication space within the limits of democratic values and principles. i.e., the inherent right of a state to defend itself against threats to its national security stemming from informational warfare on the one hand, and the freedoms of expression, mass media and the right to information on the other.

➤ **Public/private information sources:**

- The press and public relations departments of security agencies should recognise the importance of strategic communications and foster cooperation with the media. To this end, they should provide journalists with access to reliable information, and collaborate with media outlets to facilitate public outreach through info spots and clips.
- Press officers within ministries should receive professional training on communication so as to improve cooperation with the media and better inform the public.

- Strategic communication should be included in the curriculum of academies within power ministries, as well as civilian universities. Strategic communication must be professionalised through access to education and by providing concrete examples of how mass media can and does perform democratic oversight; what transparency is, and how oversight institutions function in a democracy.
 - A code of conduct is needed between the security sector and mass media that balances the fundamental principles of transparency and accountability with operational secrecy.
- **Quality reporting:** Considerable challenges to and restrictions on the coverage of developments on the frontline persist. TV channels should be selective as to who they invite as a commentator so as to avoid the dissemination of sensitive or false information. Qualified military reporters are most suitable for providing an accurate picture without disclosing sensitive information.
- **Capacity building needs:**
- Reporters should have access to capacity building on defence oversight; in particular on the proper technical terminology used in reporting.
 - The need for training not only pertains to the development of professionals but also extends to training on information sharing. Meetings (albeit closed) between representatives of the security sector and mass media can help create a shared vision and understanding of the policies and goals of the security sector.
- **Communication on International Support:** Offices and representatives of international and regional organisations should be more active in the media in order to better communicate to the public how they contribute to democratisation and reform processes in Ukraine.
- **Cooperation with the private sector:** The media can play an important role in attracting foreign investment into the defence sector. Media outlets could cooperate with private defence companies to develop a database for foreign investors, listing the weapons and equipment produced by Ukrainian companies. The list could be published in the mass media, including in the English-language media, to attract foreign investors.



IV. CROSS-CUTTING ISSUES IN SECURITY SECTOR REFORM

Gender and Security Sector Reform

The integration of gender issues in security sector reform is recognised as key to strengthening the effective provision of justice and security, as well as to ensure effective oversight of the security sector. For example, increasing the recruitment, promotion and retention of female personnel, and protecting and promoting the rights of officials, regardless of gender, contributes to creating an efficient, accountable and participatory security sector, which responds to the specific needs of men, women, girls and boys.¹⁴ In this respect, Conference 2 and 8 covered gender-related issues in the Ukrainian security sector. The discussions focused primarily on the challenges encountered by women officers in the National Police and the Armed Forces.

Women in the National Police

- **Policy framework:** The reform agenda of the National Police does not include gender-equality. In 2010, an Internal Affairs Agencies Gender Development Concept was created. However, it has since been neglected, and no successive governments have tried to implement it.
- **Gender stereotypes:** The rhetoric of the newly established National Police demonstrates a lack of understanding of gender-related issues. This is also reflected in media reports. Gender stereotyping of female patrol officers is particularly concerning. Female officers are described as 'beautiful dolls'; instead of law enforcement officials working alongside their male colleagues; with the same duties and responsibilities.
- **Maternity leave:** Women police officers on maternity leave face discrimination and unlawful treatment. While Ukrainian legislation allows for up to three years of maternity leave, there have been several cases in which women on maternity leave were recalled to work. Those who refused were dismissed from service. The Ombudsman received numerous related complaints from women officers, all of which remain under review.

Women in the Armed Forces

- Ukraine adopted the National Plan on the implementation of Resolution 1325. According to this plan, Ukraine will seek to achieve 20 per cent women representation in the Armed Forces. Though doubts exist as to whether or not this is feasible, the National Plan will allow and encourage the Rada to pass legislation and adopt policies on this issue area.
- Equal rights for women and men in the security sector is an objective set by the Verkhovna Rada. To this end, laws are amended to make combat positions available to women. However, there is still more to be done to ensure the achievement of a non-discriminatory legal framework for women's participation in the Armed Forces. In particular, military education establishments require urgent reform as they do not always accept female candidates. Other issues requiring resolution include the conditions of women serving under contract or in reserve, as well as their future career paths.

¹⁴ See: <http://www.dcaf.ch/gender-and-security/cat2>.

- **Occupational segregation of women:** The rate of women in the Armed Forces is significant, approximately ten per cent of all military personnel. However, women are mostly involved in support/administrative posts such as medical doctors, accountants, logisticians, and communication officers.
- **Legal barriers:** Women in the Armed Forces face a number of significant challenges. Those fighting on the frontline are excluded from the legal framework. There is a list of established positions – which are called ‘military occupational specialities’ in the law – to which women cannot be appointed. This leads to situations whereby female snipers are registered as army cooks or cleaners. This is not only a discriminatory practice but it also has serious negative implications for career development and payments.
- **Harassment:** Apart from legal barriers, women face verbal harassment and discriminatory treatment from their superiors or colleagues, who often propound that ‘they do not belong in the army’, or refuse to provide them with equal opportunities for promotion and professional development.
- **Career progression:** In the armed forces, women face additional challenges with respect to recruitment, enlistment, professional development and training. For instance, there is a lower age limit for the enlistment of women into the army than for men.

Policy Recommendations on Gender and Security Sector Reform

- **Gender equality in recruitment:**
 - While an equal representation of men and women may not be possible, recruitment policies should aim to increase the representation of women in all positions and ranks; not only those in administrative or supporting positions. To this end, agencies should adopt comprehensive policies enforcing quotas and setting targets for the short-term; while addressing the root causes of inequality in the long-term. The latter would entail targeted recruitment campaigns for women, coaching and mentoring for those who are considering joining the police or army; and offering gender-inclusive working conditions and workplaces.
 - Recruitment to the Armed Forces should be based on professionalism and competence; and should not discriminate based on gender and other legally protected characteristics. In order that the resources of the nation are used to the fullest extent possible, women should be actively encouraged to join the Armed Forces. There is a common misunderstanding that special quotas for women constitute discrimination and jeopardise the combat capabilities of the Armed Forces. It should be emphasised that quotas are exceptional and temporary measures to correct a grave inequality; and will not result in the recruitment of that professionally incompetent women.
- **Gender awareness training:** Both the National Police and the Armed Forces should implement awareness raising and training activities to:
 - Ensure a gender responsive working environment;
 - Adopt gender sensitive communication skills; and
 - Combat gender-based bias and stereotypes in their respective agencies.

Anti-Corruption

Combatting corruption in the security sector forms an indispensable element of the reform process. Ukraine has established a number of specialised criminal justice institutions, namely the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau (NABU), the office of the Special Anti-Corruption Prosecutor (SAP); and the establishment of a specialised Anti-Corruption Court is underway. While there has been progress in terms of establishing institutions, tangible results in prosecuting and convicting corrupt high-level officials and recovering proceeds have yet to be achieved.¹⁵ Against this backdrop, a section of Conference 7 was dedicated to discussing integrity building in the security sector, with a particular focus on the role of criminal justice institutions.

Combatting Corruption in the Security Sector

- **State Border Guards Service:** As part of its efforts to combat corruption, the SBGS has increased the salaries of its military officers, dismissed officers who were found to be involved in corruption, and imposed dozens of disciplinary measures.
- **Security Service of Ukraine:**
 - Integrity building constitutes a main priority for the SSU. In order to comply with the National Anti-Corruption Strategy, the SSU has developed a draft anti-corruption programme, and submitted it to the National Agency on Corruption Prevention (NACP) for review.
 - In April 2017, the SSU conducted an internal assessment whereby corruption risks were identified and respective preventive measures developed. The SSU also intends to draft a professional Code of Conduct for its officers as well as the senior management.
- **Consolidation of power:** As part of the reform of the civilian security sector, several security agencies were consolidated under the umbrella of the Minister of Internal Affairs. While such consolidation is expected to facilitate control and coordination of the agencies, it also poses a risk of corruption due to the high concentration of power in one government agency.
- **Anti-corruption requirements for NGOs:** The government recently proposed amendments to the Law on Prevention of Corruption, which would make it mandatory for leaders of anti-corruption NGOs, as well as organisations working with them, to submit e-declarations of their assets, similar to those that are now mandatory for civil servants, judges, and members of parliament. Such amendments run the risk of intimidating civil society, and hampering public oversight in the field of integrity building in the security sector.¹⁶

¹⁵ For more details, see: <http://www.atlanticcouncil.org/blogs/ukrainealert/ukraine-is-sliding-back-sergii-leshchenko-warns>.

¹⁶ See: <http://ti-ukraine.org/en/news/ti-ukraine-will-collaborate-with-authorities-concerning-e-declarations-only-after-the-abolishment-of-discriminatory-amendments/>.

Combating Corruption in the Security Sector – The Role of Criminal Justice Institutions

- **Specialised anti-corruption agencies:** Corruption is widespread where executive authorities have broad discretionary powers, with limited control and oversight. While in many countries with a strong tradition of the rule of law, existing law enforcement agencies are sufficiently able to combat corruption, Ukraine chose to establish special purpose criminal justice agencies such as the National Bureau of Investigation (NBI), National Anti-Corruption Bureau (NABU), Special Anti-Corruption Prosecutor (SAP) and higher Anti-Corruption Courts.
- **Public perception on anti-corruption efforts:** The main challenge in the field of anti-corruption is that some institutions, such as the NBI, are not functional, while others are slow to investigate and prosecute cases of corruption for a number of reasons, including inherent problems with the judicial system in Ukraine. As a result, the public remains dissatisfied with the performance of these specialised anti-corruption agencies, in which a substantial amount of taxpayers' money is invested, albeit with little results.

The below presents opinions on the newly established, or soon to-be established criminal justice institutions.

Office of the Special Anti-Corruption Prosecutor (SAP)

- The SAP was primarily established to direct and supervise anti-corruption related investigations. The SAP is independent in that it can order search and seizures, and initiate other pre-trial investigative measures. It also reports annually to the Verkhovna Rada on its work.
- While the SAP is responsible for supervising NABU investigations, it does not have a role in overseeing the NABU's senior management. In particular, it is not involved in the selection process for the NABU's director.
- Criticisms of the SAP also include that its functions are not in line with the Constitution, and that confusion exists with respect to its representation and international cooperation functions. Currently, the SAP does not have a department which deals exclusively with international cooperation.

National Anti-Corruption Bureau of Ukraine (NABU)

- The NABU was established by presidential decree. It does not have a legal basis, however, which raises question about its legitimacy. Such an executive basis may render the Bureau weak: if the NABU investigates high-level political corruption, then its mandate and powers can be easily restricted without legislative amendments.
- In the process of establishing the NABU, civil society organisations were invited to review the decree and provide input, after which last-minute changes to the text were made.

- The main challenge for the NABU is the slow pace of its investigations. It should, however, be communicated to the public that investigating high-level corruption is not an easy task, and that, for example, some cases require international cooperation, which extends the duration of respective investigations. In 2018, certain criminal procedures will be sent to the courts.
- NABU officials encounter problems with accessing court rulings and other judicial decisions and documentation, which makes the work of investigators extremely difficult. Even though the NABU proposed a draft law on access to judicial decisions, the Verkhovna Rada has not prioritised its review.

Courts

- Currently, the primary challenge to anti-corruption efforts in the criminal justice system concerns the lack of judges available to hear corruption cases. According to the new law, a panel of three judges with at least five years of experience should hear cases prosecuted by the SAP based on criminal investigations by the NABU. However, in many courts, there are not enough judges to form such panels. This is particularly the case for regional courts. In the absence of three-judge panels, regional courts send anti-corruption cases to higher courts for a decision on which court should hear the case. This procedural decision-making process significantly slows down the process.
- The three-judge courts are only the courts of first instance. If the accused decides to appeal against the judgement, the appeal court should be composed of a panel of five judges with seven year of experience. It is even more difficult to find an appeal court that meets these criteria.
- However, the aforementioned problem – concerning the lack of judges – is not limited to corruption cases. In general, there are several other courts with no judges; with thousands of cases pending trial. Even when judges hear cases, decisions are not properly enforced. Compensation based on court decisions are often not paid.
- Another major problem with corruption cases is that the law does not define deadlines for concluding trials.
- The new law on the judiciary emphasises integrity building among judges, and foresees the establishment of a special advisory body, the Public Integrity Council, which is tasked with verifying the professional integrity of the candidates for judges, and issues opinions about candidates who do not fulfil certain integrity criteria. However, the opinion of the Public Integrity Council can be overruled by the Higher Qualification Commission of Judges by a qualified majority vote of its members. Such a rule, which allows for the Integrity Council's opinion to be overturned, seriously hampers anti-corruption efforts in the judiciary.

Policy Recommendations on Anti-Corruption

- It is necessary to re-assess the subordination of several security agencies under the MoIA to identify whether or not it actually enhances the efficiency of these agencies, as well as to explore relevant measures to prevent and combat corruption in the MoIA.
- While the NABU is responsible for investigating high-profile corruption cases, other forms of corruption should not be neglected. In this regard, the State Bureau of Investigation should be made operational as soon as possible.
- The NABU's legal status should be clarified; and based on laws, not executive decrees, the latter of which can be easily repealed.
- The new Framework Law on the Judiciary and the Status of Judges should be carefully reviewed. Currently, the Anti-Corruption Courts envisaged in the law seem to be of an extraordinary nature. Instead of establishing a separate anti-corruption court, authorities should consider setting up an 'anti-corruption' chamber within the court of cassation.
- There are gaps in the Criminal Procedures Law, which allow for the recusal of judges who order pre-trial detention measures. When a judge orders a pre-trial detention measure, the lawyer of the accused can demand recusal of the judge, which essentially allows the accused to gain extra time during the trial. In order to effectively combat corruption, such legislative gaps should be closed.

