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CIVIL  
**UNCA** Coalition  
SOCIETY

General Assembly resolution  
of 31 October  
United Nations Convention  
against Corruption

UN CONVENTION  
AGAINST CORRUPTION  
CIVIL SOCIETY REVIEW:  
UKRAINE 2011

## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June–July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4) (c) requires the conference of the States Parties to agree on procedures and methods of work, including co-operation with relevant non-governmental organisations.

In accordance with resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the conference secretariat on their compliance with the convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process..

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2011. Nevertheless, Creative Union TOR Ukraine and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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# Introduction

Ukraine signed the United Nations Convention against Corruption (UNCAC) on 31 October 2003 and ratified it on 18 October 2006. Ukraine became a party to the UNCAC on 1 January 2010.

This report reviews Ukraine's implementation and enforcement of selected articles in Chapters III and IV of the UNCAC. The report is intended as a contribution to the UNCAC peer-review process currently underway covering those two chapters. Ukraine was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. An earlier draft of this report was provided to the government of Ukraine.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), whistleblower protection (Article 32), witness protection (Article 33) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an executive summary with condensed findings, conclusions and recommendations about the review process and the availability of information; as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Ukraine and issues of access to information. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

**Methodology.** The report produced with UNDEF funding was prepared by Creative Union TORO Ukraine. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. In order for the views contained in the reports to be conveyed to government officials as part of this dialogue, a draft of the report was made available to them.

The report was prepared using a questionnaire and report template designed by Transparency International for the use of CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b)&(c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert selected by Transparency International.

The draft report was shared with the government for comments prior to its being finalised. A final draft of the report was then sent to the government prior to publication with the aim of continuing the dialogue beyond the first-round country review process.

In preparing this report, the author also took into account the recent reviews of Ukraine by the Group of States against Corruption (GRECO) in May 2001<sup>1</sup> and by the Organization for Economic Cooperation and Development (OECD) in connection with the Istanbul Action Plan in May 2011.<sup>2</sup>

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<sup>1</sup> Decisions. 51st GRECO Plenary Meeting. - Strasbourg, 23 – 27 May 2011 // [http://www.coe.int/t/dghl/monitoring/greco/documents/2011/Greco%282011%297\\_DecisionsGR51\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2011/Greco%282011%297_DecisionsGR51_EN.pdf)

<sup>2</sup> Second Round of Monitoring of the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan // <http://www.oecd.org/dataoecd/11/55/41603641.pdf>

# I. Executive summary

This report finds that the Ukrainian legal framework is partially compliant with UNCAC and that there are a range of legal and institutional gaps in implementing the UNCAC. Based on recent studies of Ukrainian scientists such as M. Melnyk<sup>3</sup>, S.Stetsenko and O.Tkachenko<sup>4</sup> and others, a study of the Razumkov Center on political corruption<sup>5</sup>, the 2011 National Integrity System: assessment of Ukraine<sup>6</sup>, the Second Round of Monitoring of the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan<sup>7</sup>, media reports, and statistics, the study expresses the view that the judicial system, the law enforcement system, and the operations of the police might still be influenced by the wrong principles established during Soviet times and during the first years of independence.

Ukrainian law was highly deficient and non-compliant with international law until the adoption on 7 April 2011 of a new anti-corruption law, with provision 12 on financial control effective only on 1 January 2012<sup>8</sup>. The lack of the reforms in the Ukraine's judicial system, criminal justice, electoral law and enforcement system are significant obstacles to the implementation of this law<sup>9</sup>.

## Assessment of the review process

### Conduct of process

The following table summarises government choices with respect to transparency and civil society organisation (CSO) participation in the UNCAC review process.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	No
Was civil society invited to provide input to the official reviewers?	No
Has the government committed to publishing the full country report?	Yes

### Availability of information

The government did not make its self-assessment report available. The information for this review was obtained from a limited number of sources, including the websites of the Ministry of Internal Affairs and the State Statistics Committee, as well as government reports prepared for international organizations to meet Ukraine's international commitments under the OECD Anti-Corruption Network's Istanbul Anti-Corruption Action Plan<sup>10</sup> and the Group of States against Corruption (GRECO)<sup>11</sup> monitoring of Council of Europe anti-

<sup>3</sup> Мельник М. Корупція – корозія влади (соціальна сутність, тенденції, наслідки, заходи протидії). – К.: Юридична думка, 2004. – 400 с.

<sup>4</sup> Стеценко С., Ткаченко О. Корупція в органах внутрішніх справ: проблеми протидії. – К.: Алерта, КНТ, Центр учбової літератури, 2008. – 168 с.

<sup>5</sup> Політична корупція в Україні // Журнал «Національна безпека і оборона», № 7, 2009 // <http://razumkov.org.ua/ukr/journal.php?y=2009&cat=150>

<sup>6</sup> 2011 National Integrity System: assessment of Ukraine // <http://www.toro.org.ua/en/projects/35.html>

<sup>7</sup> Second Round of Monitoring of the the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan // <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

<sup>8</sup> Law of Ukraine "On Principles of Preventing and Fighting Corruption" № 3206-17 from 07.04.2011 (Ukrainian) // <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3206-17>

<sup>9</sup> Штогрін І. Що дасть Україні новий закон про протидію корупції? // <http://www.radiosvoboda.org/content/article/24252917.html>

<sup>10</sup> Експерти США: Реформи та боротьба з корупцією – шлях до успіху України // <http://www.kyivpost.ua/ukraine-abroad/news/eksperti-ssha-reformi-ta-borotba-z-korupciyeu-shlyah-do-uspihu-ukrayini-26391.html>

<sup>11</sup> The Istanbul Action Plan // <http://www.oecd.org/dataoecd/60/59/12593443.pdf>

Second Round of Monitoring of the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan // <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

corruption conventions and principles. Some reports were received from our partner NGOs which obtained them through private contacts with government representatives. and GRECO rules. It was noted that the majority of Ukrainian governmental websites contain outdated and inaccurate information, sometimes inconsistent as between agencies, and do not have efficient search systems.

### **Implementation and enforcement**

On 7 April 2011, Ukraine adopted the Anti-Corruption Law of 2011 and made the first visible progress in the field of criminalisation of corruption-related offences in line with international standards. Acts of bribery involving public officials and illicit enrichment, as per UNCAC Articles 15-21, have only recently been covered under Articles 368 (receiving a bribe), 368-2 (illicit enrichment), 368-3 (commercial bribery of an official private legal entity, regardless of legal form), 368-4 (bribing a person who provides public services), 369 (offering or giving bribes), 369-2 (trading in influence) and 370 (provocation of bribery) of the Criminal Code of Ukraine (CCU). These articles are still not fully integrated into legal practice and into the Ukrainian enforcement system.

Due to formal drafting defects in the earlier Abolition Law N 2808-VI from 21 December 2010 (hereafter – Abolition 2010), there were no effective anti-corruption laws in Ukraine until recently, except for anti-corruption clauses in the country's criminal and administrative codes. The Abolition Law of 2010 dissolved existing anti-corruption bodies, including the Government Commissioner for Anti-Corruption Policy and the Bureau on Anti-Corruption Policy that were in charge of anti-corruption policy in Ukraine up to 2010. After their dissolution the Ministry of Justice and the Security Service of Ukraine took over their functions.<sup>12</sup>

As a result, on 24 May 2011, GRECO's report noted Ukraine's failure to fight corruption and to meet European standards in 13 areas.<sup>13</sup> Furthermore, on 31 May 2011, the Organization for Economic Cooperation and Development (OECD) presented its results of the Second Round of Monitoring on Ukraine's achievements in connection with the Istanbul Action Plan to combat corruption.<sup>14</sup> According to the Report, Ukraine has fully met only one of the previous 24 OECD recommendations by passing the Law on Liability of Legal Entities for Corruption Related Offences (repealed by the Abolition Law of 2010).

Political statements by the President of Ukraine and a special chapter in the Anti-Corruption Law of 2011 (Articles 30-33) indicate a change of direction in Ukrainian anti-corruption policy, with senior policy-makers and officials paying special attention to international collaboration in the field of prevention and criminal law enforcement against corruption. Passive bribery involving large sums and Illicit enrichment on a large scale have only recently become punishable by imprisonment from 3 to 12 years; in the past, such crimes were punished with administrative penalties.

The weakness and lack of independence of judicial and law enforcement systems, as well as immunity from prosecution for members of parliament in Ukraine, appear to be the main obstacles to charging high-ranking officials with corruption.<sup>15</sup> The reform of both systems-- ensuring independent selection of judges and mechanisms for the prosecution of MPs -- could close these gaps.

One of the biggest benefits of the new anti-corruption legislation is that it delineates the functions of the President of Ukraine, the Cabinet of Ministers, and the Prosecutor General in prevention, counteraction, and coordination of anti-corruption policy, while at the same time establishing a specially authorized body on anti-corruption policy. However, a law on the responsibilities and rights of the anti-corruption body and a number of regulations must still be adopted. The biggest deficiency is that this law does not solve the problem of the dependence of different branches of government on one another, which affects anti-corruption policy-making in Ukraine.

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<sup>11</sup> Resolution on the Twenty Guiding Principles for The Fight Against Corruption (97) 24 // [http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924_EN.pdf)  
Addendum to the Compliance Joint First and Second Evaluation Round Report on Ukraine // 51st GRECO Plenary Meeting (Strasbourg, 23-27 May 2011) //

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2%282009%291\\_Add\\_Ukraine\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2%282009%291_Add_Ukraine_EN.pdf)

<sup>12</sup> But it still lacks by-laws on financial monitoring of candidates for state office and income of state officials, a special body on anti-corruption policy, conflict of interest prevention, etc.

<sup>13</sup> Decisions. 51st GRECO Plenary Meeting. - Strasbourg, 23 – 27 May 2011 //

[http://www.coe.int/t/dghl/monitoring/greco/documents/2011/Greco%282011%297\\_DecisionsGR51\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2011/Greco%282011%297_DecisionsGR51_EN.pdf)

<sup>14</sup> Second Round of Monitoring of the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan // <http://www.oecd.org/dataoecd/11/55/41603641.pdf>

<sup>15</sup> 2011 National Integrity System: assessment of Ukraine, P. 98 // <http://www.toro.org.ua/en/projects/35.html>

Since the adoption of the Anti-Corruption Law of 2011, despite some noteworthy cases against opposition leaders such as Yuliya Tymoshenko, Yuriy Lutsenko and some other ex-officials, investigation of corruption offences has still mainly focused on low-level offenders and administrative misconduct. There is little political will and system capacity to prosecute high-profile corruption (corruption of high-ranking politicians, executives and officials of the President's Administration), due to the dependence of law enforcement agencies on their patrons through appointment and parliamentary immunity.<sup>16</sup> This is an obstacle to embarking on serious anti-corruption investigations. The small number of investigative journalists who write on anti-corruption issues also significantly influences the situation.

### **Recommendations for priority actions**

In order of importance, the needed priority actions include:

1. Establish liability of legal entities through adoption of a Law on Amendments to Certain Legal Acts of Ukraine on Liability for Corruption.
2. Establish a new special body on anti-corruption policy.
3. Cancel parliamentary immunity
4. Reform judicial and enforcement systems in order to implement principles of transparency, democracy and independence.
5. Provide comprehensive training to investigation and prosecution staff and to state officials in the state bodies specialized on corruption issues, as well additional publications on this topic and feedback on its efficiency.
6. Implement the Anti-Corruption Law of 2011 and Public Information Law of 2011
7. Raise awareness within civil society of mechanisms for monitoring the authorities.

## **II. Assessment of the review process for Ukraine**

### **A. Conduct of process**

Mr. Oleksandr Pysarenko, the official respondent, told us in February 2011 that the data used for preparing the report was obtained from governmental institutions through individual requests made by the BACP, that the information was intended only for internal circulation and report purposes, and that the gathered data and the self-assessment could not be shared with other parties. No specific reason was provided for the restriction on access to the information, and the government does not intend to make its self-assessment public in the future. It should be noted that the Bureau was dissolved according to the Cabinet of Ministers' Decree № 1151 of 20 December 2010 in the framework of an administrative reform decreasing the number of civil servants.

There was no request from the government for civil society organisation (CSO) input into the self-assessment. Transparency International Ukraine (TIU) became involved in the UNCAC implementation review process only after submission of the self-assessment report by Ukrainian officials. To the best of TIU's knowledge, the only experts who provided input on the self-assessment report were those from the BACP.

Ukraine confirmed its willingness to receive a country visit by a review team, but as of the time of writing the date of the visit has not been finalised.

The position of the Ukrainian government is that CSO experts will be involved if official reviewers request that they be brought on board. We shared an earlier draft of this report with a representative from the Ministry of Justice and an expert from the now-dissolved BACP. State officials in the anti-corruption field have not been able to assess the ways in which CSOs may contribute to the work of

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<sup>16</sup> 2011 National Integrity System: assessment of Ukraine, P. 91 // <http://www.toro.org.ua/en/projects/35.html>

official reviewers, and therefore have not planned to involve local NGOs in the review process.

It was the Ukrainian government's understanding that the UN would publish the country report itself. Only later did the government become aware that the UN had only taken responsibility for publishing the executive summary of the country report. The drafting of the final country report was suspended indefinitely because of the uncertain situation in Ukraine and the elimination of the office of the Government Commissioner for Anti-Corruption Policy and his BACP. Ukrainian politics is currently experiencing a period of uncertainty, and this uncertainty extends to defining who is responsible for drafting the Ukraine country report.

## **B. Availability of information**

As mentioned above, the BACP, while helpful, declined to make available the information used to compile the self-assessment of Ukraine, nor did it provide statistical or other detailed information. A Ministry of Justice representative unofficially reviewed our report and contributed comments, although the Ministry does not have all the corruption statistics.

Statistical data on corruption offences is compiled by different state institutions and is not always accurate. For instance, different pages of the same statistics file on the website of the Ministry of Internal Affairs contained different figures for bribery offences.<sup>17</sup> It is difficult to find information on the website of the State Statistics Committee, as it does not have a search function.<sup>18</sup>

Recent changes to the legal framework introduced by the Public Information Law and the ACL provide a mechanism for submitting public information requests to authorities; these requests must be responded to as long as the information is for public use. Article 16 of the ACL thus guarantees information availability, because it requires officials to provide to physical persons or legal entities the information they are legally entitled to access, and to provide the information in a timely fashion. ACL also prohibits officials from providing untrue or incomplete information in response to such requests.<sup>19</sup> Because of the time it is taking to implement the new public request mechanism, however, we could not use this tool for the drafting of this report.

One of the significant innovations of the Amendments Law (Article 21) is that within three days of the date of the [i] relevant court decision, [ii] finding of civil liability, and [iii] application of disciplinary penalties, information about individuals found liable for corruption offences shall be included in the Unified State Registry of Individuals who have Committed Corruption Offenses. This registry is to be created and maintained by the Ministry of Justice. In June 2011, as part of the Canadian–Ukrainian project “Combating Corruption”, an agreement was reached that the Canadian Ministry of Justice will advise Ukraine on organising a national registry of persons who have committed corruption-related acts.

# **III. Implementation and enforcement of the UNCAC**

## **A. Key issues related to the legal framework**

The Ukrainian criminal and administrative codes have implemented Chapters III and IV of the UNCAC to a great extent. On 11 June 2009, in an effort to ensure compliance with Ukraine's UNCAC obligations, the parliament abolished the 1995 Law on Fighting Corruption (the “Anti-Corruption Law of 1995”) and adopted an anti-corruption legislative package, including the Law on Corruption Prevention and Counteraction, the Law on Amendments to Certain Legal Acts of Ukraine on Liability for Corruption Offences, and the Law on Liability of Legal Entities for Corruption Related Offences (jointly referred to as the Anti-Corruption Law of 2009), drafted by the Ministry of Justice of Ukraine together with the Council of Europe's international anti-corruption review body, the Group of

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<sup>17</sup> Стан та структура злочинності в Україні (2009 - 2010 р. п.), <http://mvs.gov.ua/mvs/control/main/uk/publish/article/374130>

<sup>18</sup> Соціально-економічне становище України за січень–вересень 2010 року, [http://www.ukrexport.gov.ua/ukr/makro\\_pokazniki/ukr/4537.html](http://www.ukrexport.gov.ua/ukr/makro_pokazniki/ukr/4537.html)

<sup>19</sup> Law of Ukraine “On Principles of Preventing and Fighting Corruption” № 3206-17 from 07.04.2011, Part I, Availability of Information (Ukrainian) \ \ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3206-17fa>

States against Corruption (GRECO).

The Anti-Corruption Law of 2009 came into force on 1 January 2011 and was effective only until 5 January 2011, when it was repealed by Parliament through the Abolition Law 2808-VI of 21 December 2010 (the "Abolition Law of 2010"). On 6 October 2010, the Constitutional Court of Ukraine delivered Decision 21-пн/2010, which declared the implementation mechanism and some of the provisions in the Anti-Corruption Law of 2009 to be unconstitutional. This decision laid the foundation for the Abolition Law of 2010, but did not revive the Anti-Corruption Law of 1995. Because of the formal drafting defects in the Abolition Law of 2010, however, there were no effective anti-corruption laws in Ukraine until recently, except for the anti-corruption clauses in the criminal and administrative codes.

The process of the adoption of a new anti-corruption law for 2011 began in March of this year and finished in June. On 15 March 2011, the president sent his own anti-corruption bill to Parliament. The Parliament adopted a new Law on Prevention and Counteraction of Corruption 3206-VI (the Anti-Corruption Law of 2011) and an Amendment to the Law on Corruption Prevention and Counteraction 3207-VI (on the declaration of property, income, expenses and financial obligations) on 7 April 2011, and the president signed these on 7 June 2011. The ACL entered into force on 1 July 2011, but provisions for special investigations of the assets of candidates for state office will not go into effect until 1 January 2012. Moreover, to improve the efficacy of the law, the Cabinet of Ministers should develop in addition an anti-corruption strategy, regulations on financial monitoring of candidates for state office and the incomes of state officials, on conflict of interest prevention, and for a special body on anti-corruption policy, amongst others.

The Amendments Law with Respect to Some Laws of Ukraine to Improve the Institutional and Legal Framework to Combat Crime and Corruption 3334-VI (the "Anti-Corruption Amendments Law of 2011") was enacted by Parliament on 12 May 2011 and signed by the president on 2 June 2011. It introduced some revisions to the ACL, and it is worth mentioning that this law was enacted before the ACL went into effect, which might be an indication of the intention of lobby groups to weaken the ACL.

UNCAC Chapters III & IV are also covered in the criminal and administrative codes of Ukraine.

## 1. Areas Showing Good Practice

Article 4 of the ACL partially covers UNCAC Articles 15-21 and extends the list of subjects liable to be charged for corruption offences, including persons authorised to perform state and local self-government functions, persons considered equivalent to those authorised to perform functions of state and local self-government (officials of legal entities, non-state agents, officials of local government, officials of foreign states, international organizations, etc.). In addition, Article 5 of the ACL broadens the list of those who carry out measures to prevent and combat corruption.<sup>20</sup>

The CCU also covers the offences under UNCAC Articles 15-17 and 23. CCU Articles 368-369 clarify the notions of active and passive bribery and increase penalties for these types of crimes.

**UNCAC Article 15: Bribery of national public officials.** Articles 368-370 of the CCU incorporate the provisions called for in Article 15 of the UNCAC.<sup>21</sup> In particular, the CCU Article concerning bribery includes both active bribery (offering and actually giving bribes)<sup>22</sup> and passive bribery (accepting or soliciting bribes).<sup>23</sup> The term "bribe" is defined narrowly in the CCU, however, and does not include intangible items (e.g. a promise of undue advantage). A person offering an intangible item as a bribe for a corrupt act would likely avoid criminal prosecution.<sup>24</sup>

<sup>20</sup> Law of Ukraine "On Principles of Preventing and Fighting Corruption" № 3206-17 from 07.04.2011 (Ukrainian) <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3206-17>

<sup>21</sup> Criminal Code of Ukraine 2341-III, dated April 5, 2001, as amended. <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14>

<sup>22</sup> See Article 369 of the CCU, <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14>.

<sup>23</sup> See Articles 368 and 370 of the CCU, <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14>.

<sup>24</sup> Some measures were taken in order to prevent corruption of persons authorised to perform functions of the state.

**UNCAC Article 16: Bribery of foreign public officials and officials of public international organisations.** Ukrainian law largely complies with UNCAC Article 16. The CCU extends the definition of “official” in a way that **bribery of foreign public officials** is covered in Articles 368-369 of the CCU. The definition includes officials of foreign countries (those who hold legislative, executive or judicial offices of a foreign state, including jurors and other persons exercising public functions for a foreign state, including for a public agency or public enterprise) as well as foreign arbitration judges, people authorised to arbitrate civil, commercial or labour disputes in foreign countries as a court alternative, and officials of international organizations (employees of international organisations or any other person authorised by such organisations to act on their behalf), and also members of international parliamentary assemblies, judges and officials of international courts, in line with UNCAC Article 16.

In addition, the ACL does not limit to bribery the scope of offences that can be committed by foreign public officials. The appropriate revisions were made to CCU Article 18, on “crime subjects”, as well as to Articles 364, 365, 368, and 368(2) of the CCU, referring to crimes committed in the course of performing public and professional duties relating to the provision of public services.

Article 364, moreover, on the abuse of power or position leading to severe consequences, stipulates a prison sentence of three to six years, deprivation of the right to hold certain positions or engage in certain activities for up to three years, and a fine of five hundred to one thousand “minimum incomes”.

**UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official.** Article 191 of the CCU, on misappropriation, embezzlement or conversion of property through misconduct in office, is a partial implementation of UNCAC Article 17. It stipulates that the misappropriation or embezzlement of a third party’s property by a person to whom it was entrusted shall be punishable by a fine of up to 50 tax-free minimum incomes, or correctional labour for a term of up to two years, or the restraint of liberty for a term of up to four years, or imprisonment for a term of up to four years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years. Until recently, however, only lenient penalties were applied in practice, and convictions only occurred rarely.

In addition, Ukrainian legislation provides measures for the repatriation of funds and other property obtained as a result of corruption and money laundering. The restitution of these funds and other property could occur under the ACL and the international treaties approved by Parliament.<sup>25</sup>

**UNCAC Article 23: Laundering of proceeds of crime.** Ukraine has made positive progress on implementing UNCAC Article 23 on money laundering. Article 209 of the CCU criminalises the laundering of any criminal proceeds with a minimum of one year in prison. This legislation has been developed in order to meet the 40 anti-money laundering recommendations of the Financial Action Task Force (FATF).<sup>26</sup> On 18 May 2010, the Ukrainian Parliament amended the Law on Prevention and Counteraction of Legalisation (Laundering) of Crime Proceeds<sup>27</sup> and introduced changes into the national system of money-laundering prevention and counteraction. The scope of the law now includes citizens of Ukraine, foreigners and stateless persons as possible offenders.

The standard in Article 209 meets the FATF requirements and will substantially increase the number of money-laundering crimes deriving from corruption-related offences. However, this legislative change will be of limited effect if not coupled with appropriate extradition treaties; which is why UNCAC Article 23 may not be regarded as having been fully implemented in Ukrainian legal practice.

Several regulations were adopted in 2011 in order to improve the implementation of money-laundering legislation. These include the Order of the State Commission for Regulation of Financial

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<sup>25</sup> Moreover, new legislation includes Articles 6 -10 on measures to prevent and combat corruption, such as restrictions on the use of official position (Art. 6), restrictions on compatibility and incompatibility with other activities (Art. 7), restrictions on the receipt of gifts (donations) (Art.8), restrictions on working family people (Art. 9), and restrictions on persons who have resigned from office or ceased activities related to implementation of state functions, local government (Art.10). The gravity of offence affects the punishment that will be imposed.

<sup>26</sup> The 40 FATF Recommendations // [http://www.fatf-gafi.org/document/28/0,3746,en\\_32250379\\_32236920\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3746,en_32250379_32236920_33658140_1_1_1_1,00.html)

<sup>27</sup> The Law "On Prevention and Counteraction of Legalization (Laundering) of Crime Proceeds" No. 249-IV dated 28 November 2002.

Services Markets of Ukraine 185 regarding changes to the check on legalisation (laundering) of proceeds from crime on 11 May 2011 and the Parliamentary Decree 3226-VI of 7 April 2011 on the adoption of the Bill on Amendments to Certain Legislative Acts of Ukraine on the prevention of legalization (laundering) of proceeds from crime. The first act extends the list of legislative provisions that must be checked during examination and formalises procedures for examination preparations, examination itself, and the confiscation of documents. The second act is part of the development of the Draft Law on Amendments to Certain Legislative Acts of Ukraine on prevention of legalisation (laundering) of proceeds from crime.<sup>28</sup>

Articles 10-12, 16, 17 and 30-33 of the ACL enhance the efforts to combat money laundering and provide measures to repatriate the funds and other property obtained as a result of corruption.

**UNCAC Articles 32 and 33: Protection of witnesses, experts and victims, and protection of reporting persons.** These UNCAC articles are guaranteed and prescribed by Article 59 of the Constitution of Ukraine of 1996 (CPCU), Article 5 of the Law of Ukraine on Protection of Persons Participating in Criminal Proceedings,<sup>29</sup> and the Law on Operational and Searching Activity.<sup>30</sup> Despite some shortcomings, this legislation does comply with the requirements of the UNCAC.

The existing legislation has been effectively enhanced by Article 20 of the ACL. In accordance with this article, the state guarantees protection to persons who assist in preventing and combating corruption. The state ensures the implementation of police, legal, organisational, technical and other measures to protect persons who assist in preventing and combating corruption from illegal attacks on their and their families' lives, health, and housing and other property.

The CPCU (particularly Articles 49, 52, 52-1, 267, 348, and 384) guarantees the rights of crime victims, including their right to access the case file after the pre-trial investigation is finalised and their right to participate in court hearings on the case. However, the acknowledgment of the status of a crime victim requires a special decision by an investigator or a judge. A crime victim has no right to access materials in a case that has been closed by an investigator.

One more important right that guarantees transparency is the right of a crime victim to continue a prosecution or request the prosecution of crimes even after the public prosecutor decides to drop the prosecution.

However, the established procedure for providing legal assistance to a witness during the investigation contains a number of unreasonable restrictions. In particular, Article 48 of the CPCU stipulates that a legal advisor for the defendant is able to provide legal aid during the investigation only in two cases, namely: (i) if factual circumstances may be used to prosecute the same witness or (ii) if any circumstances can be used to prosecute members of the witness's family or close relatives<sup>31</sup>. The main question is who will determine which factual circumstances amount to the threat of prosecution. Currently, prosecutors will determine the existence of such a threat on a case-by-case basis, which does not always correspond to the interests of witnesses. Moreover, there is an unreasonable burden on the legal team for the defence, in that they must obtain prior permission from the prosecutor to ask the witness clarifying questions during the investigation.

**UNCAC Article 46(9)b and 46(9)c: Mutual legal assistance.** Ukrainian legislation contains provisions on mutual legal assistance (MLA) on a case-by-case basis where governed by bilateral or multilateral treaties. Ukrainian legislation is based on the principle of dual criminality, regardless of the type of criminal offence. Mutual legal assistance may not be provided if the requirement of dual criminality is not fulfilled<sup>32</sup>.

Ukraine determines reciprocity in mutual legal assistance (MLA) on a case-by-case basis, and there is no set of rules for its application. Mutual legal assistance in the course of investigations of grave

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<sup>28</sup> See note 6 above

<sup>29</sup> The Law on Protection of Persons Participation in Criminal Proceedings No. 3782-XII dated 23 December 1993 as amended.

<sup>30</sup> The Law on Operational and Searching Activity No. 2135-XII dated February 18, 1992.

<sup>31</sup> Article 48 of the CPCU // <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=3&nreg=1001-05>

<sup>32</sup> Second Round of Monitoring of the OECD Anti Corruption Network's Istanbul Anti-Corruption Action Plan // <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Horizontal review of MONEYVAL's third round of mutual evaluation reports, P. 37 // [http://www.coe.int/t/dghl/monitoring/moneyval/publications/3rdHorizontalreview\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/publications/3rdHorizontalreview_en.pdf)

crimes (e.g. crimes against life) may not be denied based on the political offence exception. Ad hoc co-operation, which is based on reciprocity principle, is also possible without treaty basis under Ukrainian law. Such co-operation is handled exclusively by the International Unit of the Prosecutor General's Office.

Article 30 of the new anti-corruption legislation touches in general on the issue of mutual legal assistance. It stresses that international legal assistance and other types of international co-operation in judicial cases of corruption offences shall be carried out by competent bodies under law and international treaties when Parliament gave its consent to mandatory cooperation.

As for the exchange of information on preventing and combating corruption, as envisaged in Article 32, the competent Ukrainian authorities can provide information to the relevant authorities of foreign countries and receive information from them, including undisclosed information on corruption prevention and combat in compliance with legislation and international agreements approved by Parliament. Providing information to agencies of foreign states on issues related to preventing and combating corruption is possible only in cases where these bodies and the competent body in Ukraine may establish a regime of access to information that prevents the disclosure of information for any other purpose, in any other manner, including through unauthorised access.

## 2. Areas with deficiencies

**UNCAC Article 26: Liability of legal persons.** Ukraine is currently not in compliance with UNCAC Article 26 on liability of legal persons for corruption-related offences, due to the absence of a special law regulating this issue and appropriate provisions in the Administrative and Criminal Codes of Ukraine. It should be noted however that the revoked Law on Liability of Legal Persons for corruption-related offences of 2009 included a criminal liability for legal persons.

There is currently little in Ukrainian legislation on the liability of legal persons for corruption-related offences. Such liability was first introduced in Ukraine by the now-revoked Anti-Corruption Law of 2009. Pursuant to applicable provisions of the former law, a legal entity would be liable for corruption-related crimes in cases where its executive officer, shareholder or any other authorised representative had been convicted of committing a corruption-related crime. The sanctions applied to legal entities for such crimes included fines, a ban on carrying out certain business activities, the confiscation of property, and the liquidation of such a legal entity.

Improvements can be found in current legislation on entities owned or financed by the state. Article 4 of the new ACL holds liable for corruption officials of public entities who receive a salary paid out of the state or local budget; persons permanently or temporarily holding positions related to the implementation of organisational-administrative or administrative-economic duties; or persons specifically authorised to perform such duties in private entities, regardless of legal form; officials of legal persons; individuals who receive or assist in receiving an undue advantage from public officials; and other persons appointed to perform public functions.

**UNCAC Article 46: Mutual legal assistance.** In 2009, the Ukrainian Parliament failed to adopt a proposed new version of the CPCU that included a separate chapter on mutual assistance, which would have to set out the main principles for providing such assistance. Existing legislative gaps mean that Ukraine cannot make full use of all special MLA measures such as joint investigation groups or video conferencing, since these are not provided for in the law.

There is no consolidated statistical data in Ukraine about MLA requests related to corruption or to the general number of MLA requests satisfied, as the responsibility for collecting such data is split between the Ministry of Internal Affairs and the Prosecutor General's office. However, Ukrainian authorities confirmed that they receive very few corruption-related requests for MLA and that they had not received any confiscation-related requests for MLA in the past three years.

## B. Key issues related to enforcement

In 2010, the main enforcement body was the Government Commissioner for Anti-Corruption Policy, whose office supervised the BACP. The last commissioner, Andriy Bogdan, was appointed to the position by Cabinet of Ministers Decree 410/2010 on 24 April 2009 and dismissed from his post by Cabinet of Ministers Decree 212/2011 on 14 February 2011. In order to decrease the number of state officials the Commissioner's office and the BACP were abolished during an administrative reform.

The new ACL provides for a new enforcement system: Section 6 stipulates that a balanced system of control and supervision in preventing and combating corruption will be established. The system is to be based on three types of supervision: (i) parliamentary and executive control; (ii) public supervision and (iii) prosecutorial supervision.

Under the current legislation, the control and supervision systems over the compliance with laws in the sphere of preventing and counteracting corruption can be described as follows:

- The Verkhovna Rada of the Ukraine shall carry out parliamentary supervision within the limits established by the Constitution of Ukraine. Other state authorities shall carry out supervision within their competence and in the manner stipulated by the Constitution and Laws of Ukraine.
- Public supervision should be carried out on grounds of and according to the procedures established by law.
- Prosecutorial supervision should be carried out by the Prosecutor-General of Ukraine and public prosecutors subordinated to him/her.
- The public authorities take steps to prevent and combat corruption or participate in the implementation of such policies within the authority granted by the anti-corruption laws and other regulations.
- The Cabinet of Ministers directs and coordinates the work of authorities to prevent and combat corruption in accordance with the constitution and laws of Ukraine and legal acts by the president. Co-ordination and control over the implementation of the Anti-Corruption Strategy within the executive bodies is overseen by the specially authorised body on anti-corruption policy, which should be formed by the president and act in accordance with the requirements established by special law. This body does not exist in practice at the moment, but CSO experts have pointed out that the BACP model will probably will be taken as an example. The character of the special body—whether it will belong to the anti-corruption enforcement system or will just be a co-ordinating and advising body—has yet to be determined.
- Corruption prevention functions continue to be performed by prosecutors, as well as specialised units in the Ministry of Internal Affairs that combat organised crime, tax police, units to combat corruption and organised crime in the Security Service of Ukraine, and the military order service in the Armed Forces of Ukraine unless otherwise provided by law. The Prosecutor General and subordinate prosecutors are responsible for co-ordination of the law-enforcement activities on combating corruption within the powers granted by law.
- One of the biggest benefits of this law is that that it delineates the division of functions between the president, the Cabinet of Ministers and the Prosecutor General, while at the same time introducing a specially authorised body on anti-corruption policy. A law on the responsibilities and rights of such a body has yet to be adopted.

## 1. Statistics

Table 2 below shows statistics on cases for the last three years and demonstrates the limited data available. Some general tendencies can be observed, such as a decrease in the number of significant passive corruption cases for 2010 in comparison to 2009. In the same time period, however, the number of prosecuted active corruption cases increased. It should be mentioned that the ratio of prosecuted passive bribery cases to prosecuted active bribery cases is approximately 1/6.

According to available statistics, Ukrainian courts deal with corruption offences in three ways: prosecution, dismissal or conviction. If we look at the conviction column, data was available only for 2006, 2007 and 2008 and indicates a decrease, mainly in cases of passive and active bribery of national officials. Dismissal information for active bribery of national officials indicates a higher frequency of dismissals for corruption offences. In addition, there has been a tendency to prosecute public officials for embezzlement, misappropriation and other diversions. The number of such cases doubled from 2006 to 2010.

Table 2: Statistics on cases for the last three years<sup>33</sup>

	Prosecutions (under way and concluded)	Convictions	Dismissals
<b>Bribery of national public officials (passive)</b> (Article 15(b))	For both active and passive bribery: 2006 – 799 2007- 771 2008- 658 2009 - 1700 <sup>34</sup>  Passive bribery: 2009 - 1554 2010 - 1390	2006-2335 2007-2146 2008-1910	N/A
<b>Bribery of national public officials (active)</b> (Article 15(a))	Active bribery: 2009 - 192 2010- 220	2006- 678. 2007-628. 2008- 386	2007 -1 2009 - 183
<b>Embezzlement, misappropriation or other diversion by a public official</b> (Article 17)	2006-2147 2007-2059 2008-2064 2009-5188 2010- 5458	2006-7371 2007-7193 2008-7171	N/A
<b>Money laundering, corruption related</b> (Article 23)	2009 – 252 2010 - 204	N/A	N/A

**Note:** No information was provided on settlements, acquittals and pending cases and on bribery of foreign public officials and on illicit enrichment.

<sup>33</sup> Стан та структура злочинності в Україні (2008 - 2010 р. р.) // <http://mvs.gov.ua/mvs/control/main/uk/publish/article/374130>  
<http://mvs.gov.ua/mvs/control/main/uk/publish/article/233004>

<sup>34</sup> Хмара О. Корупція сьогодні, або чому ми її не побороємо // Журнал "Громадянське суспільство", № 1 (15), 2011 // <http://www.toro.org.ua/news/538.html>

Additionally, according to the results of the 2011 Ukraine National Integrity System Assessment, some progress was achieved in increasing the number of state officials trained in anti-corruption issues. In 2010, in the units dealing with the counteraction and prevention of corruption in executive bodies, 11,800 public servants were trained on anti-corruption issues and state service ethics.

## 2. Areas showing good practice

The existence of several agencies authorised to detect corruption offences within the law-enforcement system in Ukraine fosters mutual supervision among various bodies. Until recently, the special human rights assistants to the Minister of Internal Affairs provided an effective mechanism for internal monitoring and control in the Ministry of Internal Affairs. These assistants comprised a department of human rights within the Ministry. Together with civil society representatives, they operated mobile human-rights monitoring groups in the regions. This mechanism was abolished by the new Minister of Internal Affairs, Anatoly Mohyliov, for undisclosed reasons in April 2010.

All law-enforcement agencies have units that conduct internal investigations. For example, in 2009, a personnel investigation in the Ministry of Internal Affairs conducted more than 12,000 internal enquiries (including some 7,000 in response to citizens' complaints and 1,000 through submission by prosecution bodies and courts), and 4,200 militiamen were given disciplinary sanction (of whom 732 were dismissed).<sup>35</sup>

Law-enforcement agencies in Ukraine actively investigate corruption offences; especially common are investigations of bribery in courts, abuse of state office, and fraud. Officials are also prosecuted for corruption-related offences, but none of them has yet been convicted by a court because of the weak judicial and enforcement systems. The law-enforcement agencies in Ukraine focus primarily on administrative corruption and offences committed by low- and mid-level public officials.

## 3. Significant inadequacies in the enforcement system for UNCAC-related offences

**Weak law enforcement agencies.** Law-enforcement agencies in Ukraine are ineffective and weak institutions in practice. Their effectiveness, accountability and integrity are undermined by insufficient state financing and corruption. According to the results of the 2011 Ukraine National Integrity System Assessment, annual allocations from the state budget cover only about 40% of their necessary expenses.<sup>36</sup> But the practice of receiving property and services from outside the budget has been forbidden by Article 17 of the new anti-corruption law, which bans state authorities and local government bodies from receiving free services or property from physical persons and legal entities, apart from cases stipulated by laws or valid international treaties of Ukraine. It is the opinion of TIU that when the scope of enforcement-agency funding is not reviewed, it is easier to hide illegal funding and the institutional and operational capacity may decrease as a result.

**Lack of independence.** Legislative gaps make law-enforcement agencies and their officers highly dependent on their superiors and the political authorities. More specifically, the public prosecution office was established by the Law on the Prosecutors' Office № 53 of 1991 as a sole and centralised system, with prosecutors at different levels hierarchically subordinated to the Prosecutor General.<sup>37</sup> The entire system is "based on the principle of subordination of junior public prosecutors to higher ones." According to the 1996 Constitution of Ukraine (reinstated by Constitutional Court decision on 30 September 2010) the Prosecutor General is appointed and dismissed by the President with the consent of Parliament. Parliament can, by simple majority, dismiss the Prosecutor General through a no-confidence vote. The term of office for the Prosecutor General and subordinate public prosecutors is five years. The nature of public prosecutors' tenure (short term of office combined with the possibility of reappointment) does not guarantee their independence. The appointment (and re-appointment) of the Prosecutor General undermines officials' independence and does not insulate them from interference by politicians and executives. The law does not establish rules on merit-based appointment and promotion of prosecutors. Such rules, as well as rules on the dismissal of

<sup>35</sup> 2011 National Integrity System: assessment of Ukraine, P. 99 // <http://www.toro.org.ua/en/projects/35.html>

<sup>36</sup> 2011 National Integrity System: assessment of Ukraine, P. 99 // <http://www.toro.org.ua/en/projects/35.html>

<sup>37</sup> Law on the Prosecutors' Office № 1789-XII from 05.11.1991 // <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1789-12>

prosecutors, are set by the Prosecutor General and are not based on transparent and objective criteria. Similar concerns exist regarding appointment, promotion and dismissal of staff in the the Ministry of Internal Affairs and the Security Service of Ukraine. Similar concerns exist with regard to the appointment, promotion and dismissal of staff in the interior bodies and the Security Service of Ukraine.

**Immunity from prosecution.** Immunity from prosecution is granted to MPs, the President, and judges.<sup>38</sup>

**Lack of capacity.** Accountability and efficiency is rather low because of a lack of anti-corruption specialisation and a performance-evaluation system in law-enforcement bodies that is based on statistics regarding detected/uncovered cases. The Prosecutor General's office, in accordance with the 1996 Constitution, is an independent state body, although the newly appointed Prosecutor General affirmed in Parliament that he will completely support the policies of President Viktor Yanukovich. For instance, in 2010 after appointment of the new Ministry of Interior, 90% of heads of departments, most heads of units and divisions in the central office of the Ministry, as well 24 out of 27 heads of regional offices were replaced<sup>39</sup>.

**Duplication.** Law enforcement activities in the area are carried out by a large number of agencies, which often duplicate each other's work and have no general approach to the issue. We hope that new changes to anti-corruption legislation will resolve the problem of duplicate functions.

#### 4. Case examples

Many cases of corruption reported in the media have not been investigated appropriately, even though there is an official in the Prosecutor General's office authorised to investigate offences reported in the media.

An example of a failed prosecution involved the former Minister of Transport in the Yanukovich government, who was prosecuted for allegedly using a chartered plane to travel to Paris with his mistress on personal matters instead of going to Brussels on business (his travel cost Ukraine US \$80,000). On 27 November 2007, the investigation department of the SSU reportedly initiated a criminal case against the former minister under Article 191 Part 5 of the CCU.<sup>40</sup> He faced a possible imprisonment of 7 to 12 years. After the inauguration of President Yanukovich, the former minister's case was dismissed. Several prosecutors were replaced during the process. On 7 April 2010, the prosecutor refused to continue the prosecution. The prosecutor's explanation was that the evidence did not support the charges and that the former minister's actions did not contain all elements of the crime.<sup>41</sup>

We note that under the laws of Ukraine the accused does not have the burden of proving that the funds in question were spent for legitimate purposes. In addition, there are many regulatory gaps allowing an accused to escape sanctions. For example, according to the results of a journalist's investigation, the former Transport Minister did not show up at several court hearings due to health problems, and the hearings were postponed. However, it was later alleged that he had actually been at a ski resort in France.<sup>42</sup>

A vivid illustration of the inefficiency of Ukrainian legislation in repatriating illegally obtained funds is the case of Pavlo Lazarenko, the ex-prime minister of Ukraine. In 2000, Mr. Lazarenko was charged with extortion, money laundering and fraud in the US. The funds transferred by Mr. Lazarenko to the US were estimated at US \$114 million, 0.4% of Ukraine's GDP at the time.<sup>43</sup> Under US federal law, Mr. Lazarenko's alleged crime of money laundering was qualified as having been committed in the US.<sup>44</sup> The confiscated funds therefore went directly to the benefit of the US budget.<sup>45</sup> Ukraine had

<sup>38</sup> Constitution of Ukraine (Art. 80, 105, 126) // <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0&fpage=2&text=%EF%F0%E5%E7%E8%E4%E5%ED%F2&x=0&y=0>

<sup>39</sup> <http://www.khpg.org/index.php?id=1276762812> [accessed 29 December 2010].

<sup>40</sup> Каплюк К., Лещенко С. Справа Рудьковського: подвійні стандарти в дії, <http://www.pravda.com.ua/articles/2010/10/4/5436288/>

<sup>41</sup> Каплюк К., Лещенко С. Справа Рудьковського: подвійні стандарти в дії, <http://www.pravda.com.ua/articles/2010/10/4/5436288/>

<sup>42</sup> Каплюк К., Лещенко С. Справа Рудьковського: подвійні стандарти в дії, <http://www.pravda.com.ua/articles/2010/10/4/5436288/>

<sup>43</sup> World's Ten Most Corrupt Leaders, <http://www.infoplease.com/ipa/A0921295.htm>

<sup>44</sup> Former Ukrainian prime minister's conviction upheld, <http://articles.latimes.com/2009/apr/11/world/fg-ukraine-lazarenko11>.

<sup>45</sup> "Let's Return Lazarenko's Money to Ukraine," public movement created in Ukraine,

the possibility twice of having them returned, but failed because of legal difficulties and the absence of necessary procedures. The return of these funds is also on the political agenda of the current government.<sup>46</sup>

## IV. Recent developments

After the president eliminated the Anti-Corruption Law of 2009, no systematic and specialised anti-corruption legislation existed in Ukraine during the period from 1 January 2010 to 7 April 2011. This created legal obstacles to compliance with the UNCAC, the OECD's Istanbul Plan and with the GRECO rules. The main players in policy-making, law enforcement and supervisory bodies used the ineffective Anti-Corruption Law of 1995.

Since then, there is some progress in rooting out corruption to be noted:

The biggest development in the field of counteraction and prevention of corruption in Ukraine is the adoption of the new legislation in the form of the Anti-Corruption Law of 2011. The law makes various noteworthy advances, including:

- The provision of legal mechanisms for prevention, detection, suppression and investigation of corruption in the public and private sectors.
- An increase in the number of persons subject to liability for corruption offenses, including the president, prime minister, parliamentary speaker, Prosecutor General, and heads of other central executive bodies.
- Measures to detect corruption in public services, particularly in the work of auditors, evaluators, notaries and others.
- The introduction of an obligation on the part of public officials to declare not only their incomes but the incomes of their close relatives.
- A mechanism for compensating losses caused by corruption by reinstating the violated rights, freedoms and interests of citizens, legal entities and state's interests.
- A legal duty to inform the responsible authorities immediately in writing about detected corruption.

Ukrainian civil society organisations have highlighted some of the shortcomings in the ACL. The responsibilities of the special anti-corruption agency prior to its formation are handled by the Ukrainian Ministry of Justice and Security Service.<sup>47</sup> There is no legally established time limit for creating the anti-corruption body and no specific procedures for transferring the responsibilities formerly held by the justice ministry and security service. Moreover, the Ministry of Justice and the Security Service must enact a number of regulations to implement the law (conflict of interest, financial monitoring of public officials' finances, etc.).

The implementation of the ACL is a special point for discussion and depends on the effectiveness of the Cabinet of Ministers in developing the procedure for examining candidates for state positions (the deadline set by the president is October 2011). The President pointed out at the National Anti-Corruption Committee (NAC) meeting on 8 June 2011 that the public does not view the corruption problem as having been solved in the Ukraine; and there have also been negative assessments by GRECO and the OECD. President Viktor Yanukovich acknowledged the existence of corruption in procurement processes (costing Ukraine up to 20 billion UAH per year) corruption risks, and new schemes being used for illegal enrichment. The process of drafting the new Law 7532 on amendments to procurement legislation was a battlefield for many lobby groups. The president eventually vetoed Law № 7532 on 17 June 2011 introducing amendments that had the potential to increase corruption in public procurements. CSO efforts made this outcome possible.<sup>48</sup>

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<http://www.kyivpost.com/news/nation/detail/85863/>

<sup>46</sup> Азаров наказав Мін'юсту повернути гроші Лазаренка, <http://ukranews.com/uk/news/economics/2011/01/18/35246>

<sup>47</sup> Шуклинов П. Хмара: Коррупціонерам придется напрячься, рисуя новые схемы // [news.liga.net/interview/NI110057.html](http://news.liga.net/interview/NI110057.html)

<sup>48</sup> Янукович ветоував закон про держзакупівлі, <http://www.epravda.com.ua/news/2011/06/17/289385/>

During a meeting of the National Anti-Corruption Committee chaired by the President on 20 October 2010, Viktor Yanukovich announced the adoption of a National Anti-Corruption Strategy. The Law on Preventing and Combating Corruption stipulates the adoption of such a strategy. The president intends for this strategy to become a major document in anti-corruption policy and a tool for the enforcement of the ACL.<sup>49</sup> CSOs that were members of the NAC attempted to incorporate its suggestions into the text of the strategy.

President Viktor Yanukovich has stressed that the Public Access Information Law is a major anti-corruption pillar that will assist authorities in becoming more transparent, but the necessary regulations to enforce it have not yet been adopted by the Cabinet of Ministers. Recent initiatives by the president include the creation of a National Registry of High Profile Corruption Cases with data on current and past officials.<sup>50</sup> However, CSOs have expressed doubts that high-ranking, powerful officials will be included in this registry. Additionally, as part of a public campaign against corruption, Prosecutor General Viktor Pshonka has offered to create a public registry of companies that have violated tender legislation in the procurement process and received undue advantage from it.<sup>51</sup> Civil society sees its role in helping to compile the list of corrupt companies.

Recent developments in legislation allow CSOs to participate actively in public supervision and monitoring, in providing anti-corruption expertise, in making public information requests, and in participating in public discussions on state policy on different issues through the mechanism of civic councils under executive bodies.

## V. Recommendations for priority actions

The majority of reviewed UNCAC provisions are implemented in Ukrainian legislation in full or in part, even if the letter of the law in some cases still needs to be clarified in regulations and statutory instruments. The enforcement of these provisions is problematic, which is complicated because slow transformation of political promises into actual practice.

### *Recommendations:*

1. Implement mechanisms that allow for members of Parliament to be prosecuted for corruption-related offenses despite parliamentary immunity and reform judicial and enforcement systems in order to increase their independence and integrity.
2. Develop and adopt an Anti-Corruption Strategy together with a number of laws on a special anti-corruption body, conflict of interests, mutual legal assistance, accompanying regulations, etc.
3. Adopt the Law on Amendments to Certain Legal Acts of Ukraine on Liability for Corruption Offences that will form a system that (i) makes legal entities liable for corruption-related offences, which will establish adequate general procedures for liability trials with respect to legal entities, including the presence of a three-person adjudicative panel and a representative of the legal entity; and (ii) creates a list of rights available to the legal entity during such trials.
4. Draft and implement legislation to provide whistleblower protection through a special anti-corruption body.
5. Establish a special body on anti-corruption policy that would create a system of “checks and balances” in the field of counteraction and prevention of corruption and relieve pressure on the Ministry of Justice and Security Service of Ukraine, while at the same time limiting their broad authority in the anti-corruption field. This would help to establish a key institution responsible for central and local implementation of the Anti-Corruption Strategy and to meet

<sup>49</sup> Президент: Пропозиції до антикорупційної стратегії мають бути подані у двотижневий термін, <http://www.president.gov.ua/news/20319.html>

<sup>50</sup> Віктор Янукович: Необхідно зробити перелік резонансних корупційних справ для інформування суспільства про їх розкриття // <http://www.president.gov.ua/news/20322.html>

<sup>51</sup> ГПУ будет инициировать создание единого реестра госслужащих, уволенных по негативным основаниям, - Пшонка // <http://www.rbc.ua/rus/newsline/show/gpu-budet-initsiirovat-sozdanie-edinogo-reestra-gossluzhashchih--19102011133400>

Ukraine's international commitments. The system of "checks and balances" in the field of corruption counteraction would also make it possible to share competence and responsibilities among different law-enforcement bodies and to co-ordinate them appropriately.

6. Conduct training for investigation and prosecution staff and state officials in executive and self-government bodies on corruption issues and provide additional publications on this topic and feedback evaluation on its efficiency, in order to improve the system of corruption-fighting from the inside. Conduct training for prosecutors and militiamen on international cooperation in the field of anti-corruption counteraction and prevention, especially in light of new anti-corruption law innovations.
7. Enter into additional MLA treaties in order to increase the efficiency of judicial cooperation.
8. Raise civil society awareness of the new Anti-Corruption Law, Public Access Law and activity of civic councils under executive bodies.

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