

Ukraine: Civil Society Report by the Institute of Legislative Ideas

An input to the UNCAC Implementation Review Mechanism:
Fourth year of review of UNCAC Chapters II and V

24 November 2023

This is the executive summary of part of a civil society parallel report reviewing Ukraine’s implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters II (Preventive Measures). The report is being supported by the UNCAC Coalition and is intended as a contribution to the UNCAC peer review process of Ukraine covering Chapters II and V (Asset Recovery). The full report will be available on the UNCAC Coalition's website.¹

Since the previous review cycle, Ukraine has adopted new laws², improved existing mechanisms, and built an anti-corruption infrastructure with an appropriate preventive body (NACP), an investigative body (NABU), a prosecutorial body (SACPO), and a court (HACC). Enforcement of legislation remains a challenge with loopholes to avoid liability for violations, a lack of proactive government action on anti-corruption policies and systemic attempts by the authorities to exert undue influence on anti-corruption institutions. The full-scale invasion of Ukraine has made anti-corruption efforts even more challenging.

Assessment of the Review Process

Did the government disclose information about the country focal point?	No	NACP did not publish information about the focal point. However, the Government provided data on government experts, published on the UNODC page in 2018 ³ , updated in August 2021.
Was the review schedule known?	No	–
Was civil society consulted in the preparation of the self-assessment?	No	–

¹ The report, which will also cover Chapter V (asset recovery) of the UNCAC will be published on the UNCAC Coalition website in 2024: <https://uncaccoalition.org/uncac-review/cso-review-reports/>.

² The Law on Prevention of Corruption, the Public Procurement Law, the Law on Prevention and Counteraction to Money Laundering were adopted, and the Civil Service Law was updated.

³ UNODC, Ukraine Country Profile, <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fukr.html>.

Was the self-assessment published online or provided to civil society?	Yes	The government uploaded a self-assessment report to the OMNIBUS platform in July 2019. It has not been published, but was made available upon our request.
Did the government agree to a country visit?	Yes	–
Was a country visit undertaken?	No	The country visit was planned for 2020, but due to the COVID-19 pandemic, it did not take place and visit was postponed indefinitely.
Was civil society invited to provide input to the official reviewers?	No	At present, the peer review process is underway. So far, neither the public nor the private sector has been invited to present their positions to the international experts. The NACP has assured that it will provide official reviewers with this report.
Was the private sector invited to provide input to the official reviewers?	No	
Has the government committed to publishing the full country report?	Yes	–

Main Findings and Recommendations (R)

Preventive Anti-Corruption Policies and Practices

Anti-corruption legislation complies with the UNCAC; however, enforcement depends on decision makers' political will. Given the poor anti-corruption culture, some anti-corruption practices are perceived formally by the executors, and a strategic anti-corruption document is missing.

R: Implement the State Anti-Corruption Programme provisions in the relevant regulatory legal acts of Ukraine.

Preventive anti-corruption body or bodies

The preventive anti-corruption body (NACP) was "re-launched" in 2019, with an updated organizational structure and management allowing for sufficient independence. Information on the activities of the body is open to the public, but the NACP faces a lack of staff and independence, receiving threats from the Parliament and courts, and needs to establish territorial offices.

R: Enhance the role of anti-corruption programmes in the activities of state authorities; provide necessary conditions for the establishment of territorial offices of the NACP.

Public sector

Whilst national legislation is sufficient, law enforcement remains low. The absence of competitions during the COVID-19 pandemic and the full-scale invasion negatively impacted the civil service. Separate competitions for higher positions were held in violation of the law, with poor mechanisms for the professional development of civil servants.

R: Restore the procedure of full-fledged competitions for civil service positions; adopt the law on the introduction of an administrative procedure for appealing the procedure or results of competitions for civil service positions.

Political Financing

The law imposes limitations on financing political parties and election campaigns, and state funding of political parties. However, compliance is lacking. The party reports are transparent, open, and accessible. However, political parties currently have the right not to submit their reports because of the full-scale invasion. Funding requirements for political parties and election campaigns can be circumvented, and there is low efficiency of criminal and administrative liability for violation of political financing law requirements.

R: Eliminate legislative shortcomings that allow bypassing the requirements for financing political parties, and increase the effectiveness of administrative and criminal liability for such violations.

Conflict of interest and declarations of assets and interests

The legislation sets forth sufficient safeguards to prevent conflicts of interest and envisages a variety of measures to eliminate them. However, due to insufficient resources and problems with certain tools, the verification of declarations is not fully effective. The authority responsible for verifying declarations (NACP) conducts verification of declarations only for high-level officials' declarations. The abolition of the obligation to file electronic declarations following the onset of the full-scale invasion has negatively impacted state and public control over declaring. The NACP's efforts in identifying and resolving conflicts of interest are commendable.

R: Increase the NACP's capacity to conduct asset declarations verification. Apply the provisions of the legislation on the monitoring of lifestyle in practice.

Reporting Mechanisms and Whistleblower Protection

There is a lack of legal regulation regarding specifications for reporting channels and certain guarantees for the protection of whistleblowers. Legislation in place is not always enforced. Whilst there are a sufficient number of channels for reporting corruption, there are insufficient guarantees of anonymity. Despite the lack of human resources, the work of the body designed to protect whistleblowers (NACP) has been positive.

R: Expand the capacities of the whistleblower portal and involve all government agencies in its work.

Public Procurement

Public procurement processes are open and transparent with the active application of the Prozorro system, continuous improvement of public procurement procedures, and the effective appeals system with a specialized body (AMCU). However, there are permanent attempts to withdraw certain goods/works/services from the public procurement procedures to reduce the transparency of the use of budgetary funds. Another challenge was the non-use of Prozorro procurement at the beginning of the full-scale invasion of Ukraine and the gradual return to pre-war procurement procedures.

R: End the practice of excluding certain goods/works/services from the scope of the Law of Ukraine "On Public Procurement"; enhance the capacity of regulatory authorities to monitor procurement.

Access to information and participation of society

Necessary legal instruments and mechanisms for the access to public information are in place, including appeals bodies. Despite the solid legal framework and advanced information technology tools, there are cases of unjustified non-disclosure or restriction of access to information, especially at the regional level. Since the beginning of the full-scale invasion, government agencies have restricted access to information and state registries. The information published by the state in the form of open data is meager for the scale of the public sector. Despite attacks, threats, and restrictions on activists and journalists, civic activism is high. There is a need to strengthen the institutional capacity of the Ombudsman.

R: Enhance the protection of the rights of journalists and civil society activists.

Judiciary

Certain legislative provisions that grant excessive discretion to the judiciary need improvement. Compliance with law requirements is very low due to dishonesty of individual judges and representatives of the judiciary. The independence of judges is often violated. The body ensuring the independence of the judiciary (HCJ) is publicly perceived as biased and corrupt. However, some notable positive aspects in this context are the beginning of the HCJ reform and the creation of a specialized court for handling cases of high-level corruption (HACC).

R: Perform a qualification assessment of judges and fill vacant judicial positions in the judicial system; address the practice of informal influence on judges.

Prosecution services

The organizational structure of the prosecutor's office does not ensure independence of prosecutors. Many dismissed prosecutors have resumed their positions. There remains a definite hierarchy in the prosecution services, and the position of Prosecutor General is overly politicized and controlled with insufficient safeguards in selection and dismissal.

R: Ensure the political independence of the Prosecutor General through open competition; enhance the independence of the General Inspectorate of the Prosecutor General's Office.

Private Sector Transparency

The work of the Business Ombudsman Council as a preventive measure against the improper influence of the state on business is positive. However, despite the introduction of an open Unified State Register containing information about all legal entities in Ukraine, the information contained therein is not always relevant and reliable.

R: Implement provisions on verification of information on the ultimate beneficial owner (“UBO”). Ensure liability for failure to update or enter data on UBOs into the Unified State Register.

Measures to Prevent Money-Laundering

The financial intelligence unit (SFMS) possesses the necessary tools for prompt response to violations of money laundering, and was positively assessed by MONEYVAL. However, law enforcement agencies’ inadequacy to investigate violations identified by SFMS is not conducive to systematic investigation and prosecution.

R: Adopt a law abolishing the three-year term for monitoring politically exposed persons (“PEP”) in Ukraine.