

UKRAINE'S POST-WAR RECONSTRUCTION AND GOVERNANCE REFORMS.

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Executive summary

Wars often act as an accelerator of history. This is also true with Russia's war of aggression against Ukraine. As much as Russia is inflicting huge destruction, death and suffering on the Ukrainian people, Ukrainian success against the Russian aggression also creates new opportunities for Ukraine's future development. Here are the main ideas we put forward.

After the war, Ukraine will have a chance to get rid of the remains of the Soviet laws and to transform into a modern and model democracy. It will have a chance to modernize not only its infrastructure, economy, education and healthcare systems but also to overhaul its political and judicial systems and become a full member of the European Union.

Ukraine needs the EU and other international support in building strong institutions, reloading of the judicial system and completion of the civil service reform. Merit-based promotion of people to higher offices and enforcement of laws without any compromises will ensure democratic development of Ukraine and prevent it from slipping into authoritarianism. With this in mind, we also do not recommend any reforms that would strengthen the powers of the president and weaken that of the parliament. We support further decentralization of decision-making powers towards communities.

Given the cost and complexity of post-war reconstruction, which should be coupled with European integration, we suggest establishing a EU-led reconstruction agency that will both lead the reconstruction and prepare Ukraine for the EU accession (the agency will sunset at the date of EU accession). This agency can also become a supplier of qualified and non-corrupt people to Ukraine's civil service.

The Agency should take the form of a multi-divisional organization where each operational division is associated with a reconstruction goal. Each division should be centralized at the national level, possibly with subdivisions in various regions. This organizational form reflects the multiple goals of reconstruction as well as the need for speed in the implementation of reconstruction goals.

It is very important that the Ukrainian government owns the reconstruction, i.e. that it sets the priorities and suggests the projects for the Agency to implement. The Agency will have the veto right over projects, while the courts will provide the final decision if the veto is challenged. It is equally important to involve Ukrainian experts into development of the projects and use the principle of matching funds, so that the Ukrainian public and private sector have a stake in those projects.

To ensure quick implementation of the reconstruction projects and at the same time efficient use of funds, we recommend: (1) ex-post audits rather than ex-ante project evaluations (especially taking into account that complicated projects may change during the implementation); (2) framework agreements and (3) open contracting. Certainly Ukraine must

rely on the existing procurement system ensuring transparency (ProZorro) and further digitize not only procurement but oversight of contract implementation.

As stressed in multiple chapters of this book, judicial reform is key to reconstruction effort. It is a necessary condition not only for the inflow of investment but also for punishing collaborators, solving issues during the reconstruction, and (together with competition laws) for ensuring that oligarchs do not regain their power after the war (or that new oligarchs do not emerge). To support deoligarchisation and ensure democracy, two more reforms will be needed: political reform that would lower barriers to entry for political parties and thus facilitate the inflow of “fresh blood” into politics and media reform that would reduce the dependence of journalists on oligarchs and ensure that they are producing public good (information) in a responsible way.

Today Ukraine is on the forefront of the fight against imperialist autocracies who try to destroy life under conditions of freedom, human rights and rule of Law. Ukraine deserves full support of democracies not only during the war, but also after the war. In this chapter we provide the ideas that will hopefully help guide the debates to reconstruct democratic and European Ukraine.

1. Introduction

Those who support Ukraine in its fight against the unprovoked Russian invasion believe that post-war Ukraine must become a model democracy that will catch up economically with the more economically successful transition countries. The 2014 Euromaidan movement that led pro-Putin president Yanukovich to flee to Russia expressed clearly the will of Ukraine’s youth and a big part of its population to become part of democratic Europe and to distance itself from Russia’s autocratic regime. The Euromaidan movement was supported by a very diverse set of people, differing by geographic location, ethnic or national origin, language as well as political orientations. The massacre of the “heavenly hundred” on February 20, 2014 by Yanukovich’s special Berkut troops reinforced the will among the Ukrainian population to be truly independent from Russia.

Since 2014, Ukraine has undergone important political changes in order to become a well-functioning European democracy so as to fulfill the fundamental aspirations of the Euromaidan movement. These changes have been difficult and have faced a strong opposition from oligarchs and from all the forces interested in blocking reforms and in maintaining Ukraine as the corrupt kleptocratic state it had become after its 1991 independence. The strongest opposition to Ukraine’s democratic reforms has come from the barbarian full-scale invasion of Ukraine by the Russian Army on February 24, 2022.

War often acts as an extraordinary accelerator of history. Russia’s ruthless destruction of whole cities like Mariupol or Severodonetsk (and many others), its baseless and cruel massacres of tens of thousands of civilians have only strengthened the will of Ukrainians to live in a modern, free and democratic country based on the rule of law and fundamental respect of human rights. Since June 2022, Ukraine, together with Moldova, became a candidate to the European Union.

What seemed unlikely or unrealistic less than a year ago is now becoming attainable. Reformers who since 2014 fought hard to fight corruption and the political influence of the oligarchs, sometimes with success, sometimes with less success, now see the prospect of a more radical transformation of Ukraine's governance to get rid of the remains of its Soviet laws and to transform it into a modern and model democracy. Just like Ukraine will have the chance after the war to modernize its infrastructure, its economy, its education and health systems in a similar way to what happened in Western Europe after WWII, it will also have a unique historical opportunity to overhaul its political and judicial system and be fully part of twenty first century Europe. Ukraine's EU candidacy was fought hard and won with the blood of thousands of innocent Ukrainians. The EU must aim to expand to welcome Ukraine as a full-fledged member state following a post-war integration process (see the chapter on Ukraine's integration into the EU in this volume).

The center of gravity of the first cold war was the Iron curtain that separated Soviet satellite countries from Western European democracies and that separated Germany between East and West, the Berlin Wall that separated East and West Berlin. Whatever the outcome of Russia's aggression in Ukraine, Ukraine will be the center of gravity of the new cold war between Russia and its allies and democratic Europe and its allies. It is therefore not only in the interest of Ukraine to build institutions that deliver freedom, welfare and prosperity, but also in the interest of democratic Europe as a whole.

The struggle between autocracy and democracy that is taking place on the battlefield in Ukraine also concerns advanced democracies in general. It is no coincidence that the UK, despite having left the European Union, is a key partner in the democratic alliance of countries supporting Ukraine against the Russian invader. In the US, despite its long distance from Ukraine, the Biden administration understands very well the strategic stakes of Russia's war in Ukraine as well as its international implications (the Russia-China alliance, the dangers China's growing power and its crusade against democracy represent to Taiwan but also to smaller Asian countries). Putin has clearly expressed his will to change the rules of the game at the international level, to abandon efforts to build a rules-based international order and to go back to 19th century international politics based on military force and threats, bullying, invasion and colonization of smaller countries. The invasion of Ukraine is only one step towards this reactionary goal. Conversely, defending Ukraine against the Russian invasion has far-reaching international stakes in the global fight between democracy and autocracy. In order for Ukraine, as the center of gravity of the new cold war between democracy and autocracy, to become a prosperous country like West Germany during the First Cold War, it must get its governance reforms right, and this strategic goal is in the interest of all democracies affected by the new cold war.

It has been repeatedly emphasized that Russia's aggression in Ukraine is a colonialist aggression. Russia itself has expanded greatly in the last two centuries by colonizing territories in all directions to become the world's biggest country.¹ After the break-up of the Soviet Union,

¹ A good overview of Russia's colonization of Ukraine is provided by Timothy Snyder: <https://bit.ly/3rWgaxN>

Russian leaders want to put all the former Soviet Republics back under the Russian yoke. The two wars against Chechnya were also colonial wars to preserve Russia's colonies within its borders.

Several principles are important to keep in mind when the time will come (hopefully sooner rather than later) for Ukraine's post-war reconstruction. First, Ukraine must become a full-blown liberal democracy, with all the institutional safeguards of democracy. This orientation must be defended both within Ukraine but also by all supporters of Ukraine among advanced democracies. Second, to sustain this orientation and given that Ukraine has become the center of gravity of the new cold war between democracy and autocracy, and therefore the forefront of the democratic world, Ukraine must become a full-blown member of the EU following a clear process of accession. Third, one must recognize Ukraine's agency within this process. Ukraine has fought Russia's invasion since 2014. Despite overwhelming expectations that the 2022 Russian invasion would result in annexing Ukraine again as a Russian colony, Ukrainians have fought hard and courageously, winning world-wide admiration. Since 2014, Ukraine has matured a lot. The Ukrainian people have not only shown steadfast determination in their aspirations and beliefs, they have also matured politically and militarily. While Ukraine's post-war reconstruction will require a lot of financial help from abroad as well as expertise to help reform its institutions, Ukraine's agency in this process must be fully recognized.

The main ideas of this chapter are as follows:

- 1) Ukraine must become a full-blown democracy from day 1 after the war.
- 2) Nationalist ideology should not be repressed in any way, but the objective should be a liberal democracy.
- 3) Right after the war Ukraine must adopt the right institutions (prepared during the war) that will lead it to access to the European Union.
- 4) The special conditions of immediate postwar reconstruction will not only need external funds, but also a EU-led reconstruction agency that will simultaneously help Ukraine prepare for EU accession,
- 5) Judicial reform should be the absolute priority in governance reforms and should be done with the help of the reconstruction agency.
- 6) Ukraine should continue its efforts to establish an efficient civil service and to decentralize its organization of government,
- 7) Ukraine does not need major constitutional change in the immediate post-war period, but the powers of the president should not be increased nor should the power of the parliament be decreased.
- 8) Special care will be required to prevent both current oligarchs from recovering part of the influence they had before the war as well as emergence of "new" oligarchs, and we propose a whole series of measures in that direction.

Obviously, in this chapter we cannot cover in full detail all important governance changes that need to happen in post-war Ukraine. Moreover, there is not necessarily a unique blueprint for reforms to transform Ukraine into a modern European democracy, and some of the ideas expressed in this chapter may clearly be improved upon. What we feel is important is to clearly outline the strategic objectives for Ukraine's post-war governance reforms and some key points

that are necessary for the success of these reforms. We also feel it is equally important to indicate policy mistakes that need to be avoided in order to ensure reform success.

2. Post-war Ukraine must aim to be a full-blown liberal democracy without any compromise

Today Ukraine is fighting for its freedom and the right to exist as a democratic state. This “big goal” should be kept in mind during the reconstruction stage. It will be tempting to justify the concentration of power by the “need for speed” in reconstruction (discussed at length below). A large part of Ukrainian society may even support concentration of power (e.g. the “Social monitoring” surveys of the Institute of Sociology show that up to 2020 about 55-60% of Ukrainians believed that a few strongmen could do more for Ukraine than laws and discussions). At the same time, the full-scale war may have changed many popular beliefs (thus, we see a huge increase in the support of EU and NATO integration² and Ukrainian language³), and a recent NDI poll shows that 94% of Ukrainians believe that it is important that Ukraine becomes a fully functional democracy.⁴

Recommendations that we provide in this chapter intend to ensure that the Ukrainian state fulfills the aspiration of Ukrainian people for democracy.

The first threat could be a slip into autocracy repeating the paths of Hungary or Poland. Viktor Orbán, a Hungarian politician who in the nineties embraced liberal democratic ideas, got elected on a nationalist platform in 2010 and has remained in power ever since. Orbán’s populism constructed an autocratic state from what has been a democracy less than 15 years ago. Orbán even coined the term “illiberal democracy” to characterize his increasingly authoritarian regime. In Poland, nationalist forces led by the PiS (Law and Justice) Party of Jarosław Kaczyński came to power in 2015 on a nationalist illiberal program and have taken important steps to reduce the independence of the judiciary and to stifle liberties. Interestingly, Orbán’s authoritarian government is sympathetic towards Putin’s autocratic regime, while the PiS is strongly opposed and sees Russia’s threat as existential, an understandable position when one knows Poland’s history.⁵

Another threat is a populist dictatorship. Populist leaders have been elected in many countries, including the oldest and most stable democracies like the US and the UK. Populist politicians

² https://ratinggroup.ua/en/research/ukraine/dinam_ka_zovn_shno-pol_tichnih_nastro_v_naselennya_1-2_zhovtnya_2022.html

³

https://ratinggroup.ua/en/research/ukraine/desyatyy_obschenacionalnyy_opros_ideologicheskie_markery_voyny_27_aprelya_2022.html

⁴ <https://www.ndi.org/sites/default/files/NDI%20Survey%20ENG.pdf>

⁵ Poland disappeared as an independent country at the end of the 18th century when it was partitioned and occupied by Russia, Prussia and the Austro-Hungarian empire. It regained independence for a short period after WWI until it was partitioned again by the Molotov-von Ribbentrop pact. Poland was a satellite country of the Soviet Union until 1989.

could establish a non-democratic regime that blames internal or external enemies for economic difficulties of a country (e.g., Donald Trump blamed the “deep state” and immigrants, Hugo Chávez blamed “imperialistic powers”). Nevertheless, populist leaders appeal mostly to the public as “saviors” who are the only ones able to run the country and who demand loyalty and tolerate no dissent. This is to a great extent what happened in Russia under Putin. Building on the bonanza of worldwide economic growth in early 2000s, he worked incessantly to transform Russia into a populist dictatorship based on loyalty to his persona. He used the ideology of Russian nationalism and imperialism to rally support for his regime.

There is currently no sense speculating who in Ukraine might be a likely candidate for a populist or nationalistic dictatorship, but such an evolution would clearly jeopardize EU accession of Ukraine and betray the aspirations of the Euromaidan.

Therefore, as we argue further, Ukraine needs strong institutions to ensure its democratic development. For example, a key institution is merit-based promotion of people to higher offices. Reliance on loyalty rather than merit has been prominent in many areas, including politics. However, this system creates preconditions for enormous concentration of power. As a part of Ukraine’s movement to the EU, the country should replace this patronage system with transparent and rules-based selection procedures that have been already legislated in many spheres but not always enforced. Furthermore, because Ukrainian laws explicitly prohibit discrimination of any kind, transparency will ensure inclusivity, thus further reinforcing democratic tendencies.

Only an inclusive democracy can provide a durable foundation to the success of the country (which includes aligning Ukraine with the EU standards) and serve as a safeguard against “strong hand” leaders⁶ and other autocratic tendencies that can emerge after wars.

3. Ukraine must adopt the right institutions directly after the end of the war (and prepare already during the war).

Right after the end of the war, Ukraine must choose the correct institutions for its future. This must be very clear from day one. During the war, the country is necessarily run in a way demanded by the military situation, with all efforts and resources dedicated to the single goal of military victory. Military talent is what is mostly needed in terms of leadership quality.

As soon as the war ends, the goals will shift towards reconstruction and building the seeds for a prosperous and peaceful Ukraine. Whereas both wartime and post-war management skills will

⁶ Given the great success of Ukraine’s military defense operations, parts of the Ukraine military may be tempted to seize power after a successful war to expel the Russian invaders, gambling on their popularity and claiming that the military would be much more successful than a democratically elected government at running the country. As we will see below, this is a fallacious proposition. War heroes and skilled military leaders may not necessarily have the talent to run a country in peaceful times.

be needed, the goals will not be the same. Reconstruction will mobilize resources towards not a single goal but multiple goals adapted to the various reconstruction needs, both across geographic areas and across economic and societal sectors. This will also require important leadership skills, but they will not necessarily be the same as during the war. Some military leaders may be good peacetime leaders because of their overall management skills, but it will not necessarily be the case for everyone. Some, possibly many, military leaders who will have proved heroes in the military field will not necessarily have the right skills to be peacetime leaders.⁷ Post-war political transitions are often unpredictable. For example, Churchill heroically led the English people when threatened by the Nazis during the Blitzkrieg when England was the only country to defend itself against the Nazis. Churchill was, however, defeated electorally by Clement Attlee's Labor party in the 1945 elections, leading among others to reforms like the introduction of the still popular National Health Service. In Portugal, the Salazar dictatorship was brought down by young officers from the Portuguese Army, under the leadership of popular Colonel Otelo de Carvalho. Even though he later ran for president in Portugal, he was not elected and later failed to have a productive political career. Many other examples can be found of heroic military leaders who the people did not trust electorally, once the war was over.

The reason Ukraine must adapt the right institutions directly after the war is not only because the conditions of reconstruction will be different than those of the war. Since the war will have been a critical juncture in Ukraine's history, the institutions that are established right after the war will likely have a great inertia. This is true for many critical junctures in history. The French revolution, the US war of independence have obviously strongly influenced the next centuries of these countries' histories and one can cite many other examples. There is thus every reason to believe that the institutions that will be established in post-war Ukraine will influence its future for at least decades to come.

It would be a grave mistake to think that one should wait until after the early reconstruction phase before establishing the right institutions for Ukraine's future. Let us discuss some of the arguments on that issue.

One argument is that reconstruction will require speedy decision-making and that normal democratic consensual decision-making is too slow so that one should wait until the end of the early reconstruction phase before establishing normal democratic institutions. It is true that the early post-war reconstruction of Ukraine will require speedy decisions in many areas. We discuss this question in the next section. Nevertheless, as we also discuss below, there are solutions to the need for speedy decision-making that are completely compatible with the establishment of democratic institutions from the very beginning. Arguing that democratic institution-building should be delayed because of the specificities of post-war reconstruction risks creating flawed institutions that will likely persist for a long period of time.

⁷ In reverse, before becoming a heroic wartime President, Zelensky's performance as Ukraine's president was very mixed.

Another argument is that as long as Russia is not permanently defeated and rendered unable to wage war again, Ukraine should remain on a warpath and cannot afford to establish the democratic institutions it would like. A similar argument has been sometimes formulated after the Russian invasion of Crimea and parts of the Donbas, claiming that Ukraine did not have the luxury to focus on institutional reform because of the Russian aggression. This argument is flawed for two reasons. First of all, military preparedness is not at all incompatible with democracy. In other words, it is quite possible to establish democratic governance while being prepared for an aggression. For example, this is the situation Taiwan has been facing for many decades. Second, a permanent militarization of the whole country risks creating inertia and giving power to would-be autocrats' intent on building a non-democratic state.

4. The early phase of reconstruction will require speedy decision-making and coordination

The early phases of reconstruction will require a rapid response in many areas. These include: emergency food and medical supplies; temporary shelter for those whose dwellings were destroyed by the Russian Army; restoring basic infrastructure like power and communication lines, sources of clean water, railroads, roads, etc. Most of the emergency aid will require speedy delivery.

The imperative of speed in the early reconstruction phase has implications for the organization of government and methods for the allocation of resources, i.e. the relative role of government and markets. It is useful to remember the lessons from organization theory.

Lessons from organization theory (Weitzman, 1974, Bolton and Farrell, 1990) indicate that to the extent that speed and target effectiveness are important, which will both be the case in the early post-war reconstruction period, there are clear advantages to use direct commands to allocate resources (relative to the standard market mechanism relying on prices) and to rely a lot on centralized decision-making. The need for more centralization and less use of the market mechanism compared to "normal" peace time implies that Ukraine's institutions during the early reconstruction period must take into account these special provisional transitory requirements. One must however make sure that these provisional institutions do not persist and will credibly be modified to become institutions for "normal" peace time. How to do this?

In trying to answer this question, there are several potential pitfalls to avoid. One pitfall would be to ignore the need for speed in the early reconstruction period and to insist on having "normal" democratic institutions without taking into account the special conditions of the immediate post-war reconstruction. This risks creating frustration and unnecessary tensions if there is a lack of adequate decision-making, which can open the door to all sorts of abuse and institutional drift, including the possible danger of a military junta or a populist dictatorship.

Another pitfall would be, as stated above, to treat the governance of the reconstruction period as identical to that during the war. Indeed, while both share a need for speedy decision-making, the goals of the reconstruction period are more numerous, diversified and less interconnected compared to war-time management. This calls for less centralization than that of military

mobilization, which is concentrated on the unique goal of winning the war. Excess centralization in the reconstruction period risks creating decision-making bottlenecks and excess prioritization of the more important sectors, a defect shared with traditional central planning.⁸

In any case, given the imperative of speed in the early reconstruction phase and the predictable weakness of markets in the early reconstruction period, it will be important to have a sufficiently strong and competent Ukrainian government administration that will inevitably have to intervene fast and competently in the allocation of resources, producing a form of “coordinated capitalism”. Building strong state capacity early on will not only be legitimate but also very necessary for the success of the reconstruction.

5. **How to reconcile the need for speed and correct institutions? A European-led Ukraine reconstruction agency**

The solution to the joint need for establishing correct institutions right after the war together with the need for speed in decision-making lies in the creation of a temporary European-led Ukraine reconstruction agency, that will act in cooperation with the Ukrainian government, one of the main ideas of the Becker et al. (2022) report on the *Blueprint for the Reconstruction of Ukraine* and also present in this book. We first discuss some principles for such an agency and then discuss more at length the relationship between that agency and the Ukrainian government and Ukrainian civil society.

Just like the management of the Marshall Plan was done by a specialized agency (Economic Cooperation Administration - the ECA), Ukraine’s reconstruction plan and management of aid funds from multilateral donors should be coordinated by a self-standing EU-affiliated agency in coordination with the Ukrainian government. Let us call this the **Ukraine Reconstruction and European Integration Agency (UREIA)**. This agency should also help prepare Ukraine to reform its institutions to be aligned with the European regulatory and legal framework. Being a transitory agency, the UREIA should be shut down at the time Ukraine enters the European Union. The chapter on program design in this volume discusses more at length various options for such a reconstruction agency. In our view, there is an obvious need for such an agency to help Ukraine’s reconstruction. It should be led by the European Union, because it should not only help Ukraine in its physical reconstruction after the war, but simultaneously help reform its institutions to prepare entry into the European Union. For equally obvious reasons, that agency should be located in Kyiv and work in very close collaboration with the Ukrainian government.

The UREIA should be accountable for the use of its funds to the donors (European Union, US, international organizations, etc.) and its operations need to be transparent. At the same time it needs to enjoy operational autonomy to allow it to operate as speedily and efficiently as possible

⁸ Note that during the war already, many regional leaders and leaders of *hromadas* have taken themselves initiatives without relying on the central government.

and also to avoid being captured by particular political interest groups.⁹ Having well-defined goals and the objective of speedy and efficient operation, it can and should operate efficiently without constant day to day political intervention, from whatever side. The leadership of the agency should reflect the key stakeholders, i.e. multilateral international organizations and the main donors, the European Union and the Ukrainian government. While reflecting key stakeholders, leaders of the agency should preferably be independent experts or competent and well-known political figures who are not dependent on particular interest groups (such as senior politicians who have most of their career behind them). The UREIA should be able to give budget support to the Ukrainian government and to coordinate with other multilateral organizations also providing budgetary support, such as the IMF. To ensure credibility of aid conditionality, the agency should have authority to delay or withdraw aid.¹⁰

A very important point to mention is that within the leadership of the UREIA, there should be a more than proportional number of experts from transition countries (Baltic countries, Central European countries) or Nordic countries with many interactions with transition countries (Finland or Sweden), while there should still be a presence of experts from other countries. The reason is simple to understand but nevertheless important to emphasize: people from transition countries and countries with close interactions to them understand better both the threat from Russia as well as the specific requirements of post-communist reforms. This understanding is much less present in Western European countries, and then, only among experts on Eastern Europe in those countries.¹¹ Moreover, part of the elite in many Western European countries has been captured (consciously or not) by Russian interests. There is no point introducing (albeit unconsciously) a “fifth column” of Russian imperialism in Ukraine’s reconstruction and path towards the EU. This does not mean that Western Europeans should be excluded from the governance of the UREIA, only that one must build on existing competences, which are mostly present among Eastern and Northern members of the EU. Also, even though the Agency should be EU-led by nature, its technocratic nature should not prevent non-European experts from being hired and involved, in particular from the US.

UREIA’s organizational structure needs to reflect its multiple goals. It should take the form of a multi-divisional organization where each operational division is associated with a reconstruction goal, be it road infrastructure, energy, telecommunications, or institutional reforms to prepare Ukraine for entry into the EU. Each division should be centralized at the national level, possibly

⁹ The Economic Cooperation Administration (a implementer of the Marshall Plan) was established as a self-standing agency of the US government rather than embedded within the State or Treasury Departments precisely in order to streamline hiring and operations. The ECA was given a special status and exempted from government regulations which could impede flexibility or speed.

¹⁰ The ECA was able to suspend aid to Greece after aid was channeled to purposes that were inconsistent with agreed goals. In contrast, note that while US officials tried to impose conditionality on aid in Afghanistan, the Afghan authorities could ignore conditions.

¹¹ Comments from Western European politicians about the “decades” it would take for Ukraine to enter the European Union typically reflect this limited knowledge about the realities in Ukraine since 2014. Moreover, the distance of the war to most of Western Europe helps to maintain the ignorance among West European elites about the issues Ukraine has been grappling with since 2014.

with subdivisions in various regions. This organizational form reflects the multiple goals of reconstruction as well as the need for speed in the implementation of reconstruction goals.

Given the imperative of speed in the early phases of reconstruction, the UREIA should spend more resources on *ex post* compared to *ex ante* evaluation. Too tight evaluation at the proposal stage is costly in terms of time, while *ex post* audits are more appropriate, while also probably more efficient. Indeed, one problem with *ex ante* project evaluation, apart from the cost of delay of project implementation, is that the implementation may in practice deviate from the project. Strict audits at the implementation stage create a strong incentive for those who submit the projects to behave correctly and not engage in corrupt behavior (the chapter on anti-corruption elaborates on this).

The most important issue for the successful operation of UREIA is its relationship with the Ukrainian government and Ukrainian civil society. This should be based on both mutual trust and an overall goal of efficiency.

A fundamental principle is that Ukraine must 'own' the reconstruction: Aid programs should be aligned with the ultimate objectives of Ukraine (e.g. close the per capita GDP gap vis-a-vis successful EU accession economies, become a member of the EU, and build a carbon-free economy). Aid should reinforce national success via national institutions.

There are several principles to make this work. The first principle is to have the Ukrainian government formulate the requests and priorities for project funding by the UREIA. More precisely, the Ukrainian government should have the sole responsibility for the formulation of projects and priorities within the budget of UREIA as defined by its governing body representing the various international donor agencies. These requests should be reviewed and approved by the Agency who should monitor the implementation and check whether disbursement of funds corresponds to the planned projects. In order to avoid bureaucratic delays, one should avoid a systematic stamp of approval for all projects, but the Agency should have the right to veto particular projects that it deems either inappropriate or inefficient. It should also have the right to freeze implementation of a project if there is suspicion of corruption or malpractice. The Ukrainian government in its turn should have the right to contest vetoes by the UREIA and to bring the case to the newly built Ukrainian judicial apparatus.¹² The Agency should also have the right to ask for judicial review of particular projects or of their implementation. In order not to overburden the judicial apparatus, one should think of innovative conflict resolution mechanisms. The use of some competition mechanism can go a long way towards efficiency (but also integrity). For example, in case the UREIA contests a particular project proposed by the Ukrainian government, it should have the right to auction off particular reconstruction projects to the best bidder. This would go a long way towards efficient conflict resolution.

¹² As we will argue below, rebuilding Ukraine's judicial institutions will be a top priority of reforms from day 1. As we will explain more in detail, the newly built judiciary apparatus should be closely involved in many aspects of the activity of UREIA.

The principle we just outlined is not just a technical detail, but seems fundamental for a well-functioning collaboration between the UREIA and the Ukrainian government. As it has both more at stake and has better information, it is natural that concrete proposals for reconstruction should be initiated by the Ukrainian government and not by UREIA. Otherwise, this would create frustration on the Ukrainian side and not make efficient use of relevant information on projects. On the other hand, UREIA, being responsible for the efficient use of donor funds, should have sufficient veto rights in how the money is spent.

A second principle is to involve as much as possible Ukrainian experts at all levels of decision-making in the UREIA and to establish close links with different levels of Ukrainian government. Hiring criteria for the UREIA should meet high standards and provide reasonable salaries (not too high so as not to attract those who prefer money above everything else, but not too low so as to chase away high-level experts).

A third principle is the use of matching funds. The Ukrainian government or Ukrainian businesses should cover a fraction of the reconstruction cost to ensure that they have incentives to use the money well.¹³ One must be flexible in the use of this principle. Relying on matching funds for every single project may lead to biases favoring proposals from administrations within Ukraine that would have more easy access to liquidity. In order to avoid such biases, it is probably better 1) to require matching funds for the overall budget of UREIA, 2) to come up with creative ways of accepting matching funds from the Ukrainian side. On the latter, instead of requiring rigid matching fund formulas, the Ukrainian side may come up with different ways of applying the “matching fund” principle, for example, a commitment to give back future returns from a project over time in a flexible way or non-monetary forms of matching such as commitment to provide particular materials or labor resources.

The operation of the UREIA and its collaboration with the Ukrainian government will obviously need to be designed so as to prevent corruption from seeping in its operations. For example, strong anti-corruption protocols should be designed and implemented to ensure effectiveness of reconstruction efforts and continued support of donors, with special focus on the design of audits and ex post evaluation. The UREIA can help provide technical assistance to strengthen public procurement. It can also partner with the European Public Prosecutor’s Office to bolster its credibility on corruption and get technical assistance (including auditing of Ukrainian anti-corruption efforts). In other words, the best EU practices should set the standards.

One can also learn from Ukraine’s positive experiences in the fight against corruption.¹⁴ Ukraine’s digital Prozorro system for public procurement has been praised for its innovative character: by digitalizing all aspects of public procurement and making the process transparent, Prozorro

¹³ This was done under the Marshall Plan by allowing recipient governments to sell merchandise and commodities delivered as aid to the private sector. Receipts were then deposited into ‘counterparty fund’ accounts, whose release was controlled by the US government.

¹⁴ More detailed discussion is provided in the chapter on anti-corruption of this book.

eliminates opportunities for corrupt and non-transparent practices. Note that ProZorro was established with the support of Transparency International, the well-known anti-corruption NGO.

As the example of digital public procurement shows, a major principle in the fight against corruption is to maximize transparency by minimizing opportunities for human intervention to organize collusive corruption in various government allocation procedures. This can be done without creating unnecessary delays and inefficiencies that one will want to “bypass” through corruption. Digitalization is one way forward, but there are others, for example, automatic and secured recording of meetings between officials and the private sector.

Combining speed with anti-corruption can also be done via framework agreements. Framework agreements (FA) allow direct ‘off the shelf’ purchasing with no time-consuming procedures from preselected suppliers that already have passed a competitive screening/vetting stage – typically arranged by a central purchasing agency – and have committed to sell the relevant goods or services at pre-established conditions for a given period of time. FAs allow for a rapid second-stage procurement, offer more transparency, were used successfully during Covid-19 by numerous countries, and have been suggested as useful for emergencies in general.

Another important method is related to open contracting. Open contracting limits corruption while maintaining efficiency in the procurement process. Open Contracting Data Standards (OCDS) are a set of guidelines describing how to publish data and documents at the different stages of public procurement contracting to increase transparency. Ukraine had already made significant advancements in this area prior to the full-scale war. For example, during the pandemic, while Covid-related emergency procurement contracts could be signed outside of the ProZorro system, within 24 hours of conclusion, the contracting entity was required to upload the contract and all related documents together with a structured report. An additional report had to be submitted after the contract was fulfilled.

Contract design should emphasize (wherever possible) fixed price contracts with clear deadlines and specifications, measurable outcomes, and verification protocols. Uniform contracting, management, and report systems should be established. Disputes should be resolved via special judicial procedures (more on that below).

A key ingredient, though not a sufficient one, to maintaining the integrity of both UREIA and Ukrainian government officials is to fire any official who in the past has been indicted of corruption or to suspend anyone seriously accused of corruption. Since judicial proceedings take a long time, it is only normal that those who are seriously accused of corruption should be suspended from official responsibilities.¹⁵ Those who have been accused unjustly should be able to recover their responsibilities without prejudice and with possible compensation for income loss.

¹⁵ It is important to emphasize that these accusations should be serious enough. One must indeed avoid frivolous lawsuits where people can be unjustly accused by their political enemies.

Protecting whistle-blowers is also an important mechanism to discover corruption. Ukraine adopted in 2019 both legal protection to whistleblowers as well as financial incentives (10% of the sum involved).

Why is the establishment of a temporary reconstruction institution like the UREIA proposal outlined here a good solution to the twin requirements of speedy operation during the early reconstruction phase and of the need to establish the right institutions from the start? As explained above, the design of the Agency should satisfy the need for speed. At the same time, also by design, the UREIA proposal satisfies the requirement of transparency, best practice, anti-corruption objectives. Moreover, as stated above, since the Agency should also be in charge of Ukraine's process of integration into the European Union, it will help Ukraine from the beginning to adapt its institutions to the requirements of being a well-functioning EU member.

We have mentioned the need for a multidivisional organizational form (with partition of the organization along sectoral and project lines) for the UREIA as well as the need for close interaction between the UREIA and the Ukrainian government. A few remarks are in order when finishing this discussion.

First, if there is a failure of international organizations to agree on the need and the structure for UREIA, we advise the Ukrainian government to directly propose the establishment of this structure to the European Union. The use of the reconstruction agency as a simultaneous outlet to help prepare Ukraine for accession to the European Union would be unusual compared to previous instances of EU accession, but the conditions facing Ukraine are also highly unusual given that it will be emerging from a deadly war of invasion by Russia.

Second, while it makes sense for UREIA to be structured as a multi-divisional organization, there is no need for Ukraine to adopt the same structure in its organization of government. The UREIA will only be a transitory organization. The Ukrainian government may put in place a similar structure for the need of reconstruction, but there is no need for it to adjust its organization of government to that of the UREIA.

6. The priority of judicial reform.

A fundamental principle is that Ukraine cannot become a full-fledged advanced democracy if it does not prioritize the establishment of the rule of law. In other words, judicial reform should take absolute priority. In the absence of a non-corrupt and well-oiled judicial system, Ukraine will be unable to successfully reform its institutions. Lack of sufficient progress in judicial reform has been one of the main flaws of the post-Maidan process.

One of the big problems in judicial reform, on top of the opposition from corrupt forces inside the Ukrainian state apparatus, has been the difficulty of replacing all the corrupt judges inherited from the Soviet era and the pre-Maidan period of intense corruption. First of all, it takes time to select and train competent judges. Moreover, the training of judges needs to be done by non-

corrupt judicial experts. Training new judges by corrupt and cynical lawyers is obviously counterproductive.

Fortunately, the war has created conditions that could facilitate radical judicial reform. First of all, reform support during the reconstruction will be much more comprehensive than any foreign institutional aid so far. Ukrainian judges will be trained and seconded by international legal experts helping them to make their decisions in a competent way. Second, the conditions of the war have created so much destruction that rebuilding institutional infrastructure from scratch does not seem like an outlandish proposition any more given the enormous needs of rebuilding physical infrastructure. Third, the war has reinforced the need for well-functioning institutions. There is no point undergoing so much destruction, death and suffering to simply go back to the status quo ante. A too high price has been paid by the Ukrainian people in order not to accept any compromise with the objective of having the rule of law.

There are several reasons why judicial reform should take priority. Many important judicial decisions need to take place right at the start of reconstruction.

First of all, there will be the process of punishing all those who collaborated one way or another with the Russian invaders. Instead of letting mob rule lawlessly punish collaborators on the basis of hearsay, true facts or emotions, there will be the need for special tribunals to punish the collaborators. This will be the opportunity for young but also well-trained incorruptible Ukrainian judges to acquire experience in the provision of justice. This will be a highly transparent process that will be watched and scrutinized by all Ukrainian society as well as by the international community. After WWII, in Western European countries, the punishment of Nazis, pro-Nazis and their collaborators was a highly visible process that drew attention from the whole public. Even though these special tribunals will need to make decisions faster than tribunals under normal times, they will be subject to the basic principles of fair justice: the need to bring forward verifiable evidence, arguments based on principles of law, rights of the accused to a fair defense, possibility of appeals, etc.¹⁶

Second, the operations of UREIA will need involvement of the Ukrainian judiciary in many aspects. Simply the enforcement of decisions and contracts as well as adjudicating disputes arising from these decisions and operations should already be an important activity for a newly rebuilt Ukrainian judiciary.

Third, a well-functioning and independent judiciary is the key condition for the rule of law, and the rule of law is critical to a well-functioning democracy. Any departure from that stance will

¹⁶ The need for trials of collaborators in Russia's war of aggression is quite different from the situation facing transition countries after the collapse of communism. In some countries and in East Germany, one tried to avoid show trials of communist leaders in order to encourage some form of healing process. Most of the elite had collaborated in one way or the other with communist regimes and one could not afford alienating the whole former elite. Many countries nevertheless established some form of lustration, i.e. prohibition for former communist leaders to take up important civil service positions. The case of Ukraine is different and is closer to the need for trials of collaborators of nazis during WWII.

risk Ukraine drifting towards a non-liberal democracy. Rule of law affects expectations of economic and political agents about legal behavior. If these expectations are the wrong ones, i.e. expectations that corrupt behavior will go unpunished or that the law does not apply in equal measure to all, it will be very difficult to stabilize the rule of law.

The priority of judicial reform may appear less “glamorous” than other reforms, but it really is the backbone of a reformed governance system under the rule of law.

While the need for priority of judicial reform is in general well understood, it may fail if one does not take into account who has the most interest in successful judicial reform and who has interest in blocking it. Those who have interest in blocking it are the oligarchs that have been using their influence in the state apparatus to enrich themselves. Their influence, like in other post-communist countries, has been extremely deleterious. Despite being a small group, their wealth has made it possible for them to essentially control large parts of the economy and of the government sector. Successful judicial reform and fight against corruption will require breaking the influence of the oligarchs. We discuss this issue below.

On the other hand, successful judicial reform will require mobilizing the support of those who have a stake in its success. These are mostly three categories: 1) the Ukrainian middle class, including entrepreneurs and small businesspeople, 2) international donors, 3) the general public. Ukrainian entrepreneurs have suffered from the influence of oligarchs and been de facto excluded from competing for government contracts and other business opportunities. Given the corruption in the judicial apparatus and the government administration, they had no way to defend their interests. This group will have a strong interest in the establishment of the rule of law and will push for it, provided that measures are taken at the same time to reduce the influence of oligarchs. International donors obviously have an interest in making sure that their money is well spent and not diverted for corruption purposes. Moreover, they will have both the funds and the technical resources to help Ukraine achieve a successful judicial reform. As for the general public, it of course has an interest in the rule of law, but its interest for judicial reform will be especially important after the war with the trials of those who collaborated with the Russian aggressor. Overall, from a political economy perspective, the post-war period will feature many more stakeholders in judicial reform than before the war. This is the ground for optimism about the success of judicial reform very early after the end of the war.

How to organize the overhaul of the Ukrainian judicial system? Multiple paths should be pursued in doing this. A first principle is to follow the post-war needs. As indicated above, immediate post-war needs will be tribunals to judge the important collaborators of the Russian government. The selection of judges for these tribunals will need to be relatively rapid, but it will need to be done with the help of the UREIA. Second, one will need judges to enforce contracts in relation to the work of UREIA and the post-war reconstruction. This selection can be done less fast and will need to involve a lot of training. A second principle is to start from the top of the judicial hierarchy. This is the only way to ensure integrity of the future judicial system. Moreover, it is at that level that the necessary help of foreign independent experts in the selection and training will be the most effective. Indeed, the help of foreign experts in the process of judicial reform will also be

crucial in preparing for accession to the European Union.¹⁷ Third, there should be a separate process of training new and incumbent judges. Incumbent judges will continue their current operations during the transition period while being trained, but they will need to be evaluated by an evaluation commission examining the past career path of those judges. A realistic timeline should be set for achieving the overhaul of the whole system in order to avoid unnecessary delays. Judges who have not passed the evaluation or who have not followed the new training requirements should be suspended. Obviously, some flexibility will be needed in the implementation of the whole process to ensure transparency and quality of evaluation and training.

7. Separation of powers between the executive and the legislative branches of government

Ukraine has since 2014 a semi-presidential system, sometimes also called premier-presidential system. The President is directly elected and has broad powers. Prior to 2014, the President had a central role in forming the government. This is no longer the case as the government is now accountable to the parliament, a feature of parliamentary systems. The president, however, has direct power over foreign policy and defense. He can select the foreign minister and the defense minister and they are accountable to him. The President also has the right to make legislative initiatives, has veto rights over legislative decisions of parliament. He also has the right to appoint the Prosecutor General as well as governors of oblasts, though the latter need to be proposed by the Cabinet of Ministers.

Compared with other democracies, including in Central Europe, the powers of the President are stronger. Nevertheless, they are not as strong as in Latin American presidential systems. The biggest danger, in our view, would be a drift towards a stronger presidential system, like the one that existed under Yanukovich or Kuchma. Given that Ukraine has since 2020 a proportional electoral system for the Parliament, a strong president could, like in Latin America, use divide-and-rule tactics and contribute to the fragmentation of political parties in a way that would strengthen his de facto role. Indeed, proportional electoral systems tend to produce a larger number of parties being represented in parliament compared to majoritarian electoral systems. Fortunately, Ukraine has, like Germany, a 5% rule, which filters out smaller parties.

We do not recommend important changes to the Constitution in the immediate postwar period. Even after the war, the Russian threat will likely not have disappeared and the current system has allowed Ukrainian institutions to defend the country against the invader. We warn against attempts to further increase the power of the president. Approval of the Parliament is key for appointment of the Prosecutor General, as well as the power to demand his/her resignation.

¹⁷ This is already happening. Already now the Ethical Commission which includes international experts selects the members of the Higher Council of Justice. Next they will select the Higher Qualification Commission of Judges which then will re-evaluate and select judges. As the judicial apparatus is being rebuilt top-down, it will be important to vet all candidate judges for their integrity and incorruptibility.

A successful functioning of the legislative branch of government requires a strong enough party system. This can be achieved via incentives related to institutional rules and through political culture. The institutional rules relate to the functioning of party discipline in legislative votes within parliament. This is usually enforced via 1) roll call vote, i.e. transparent voting behavior of individual legislators, 2) the party's role in placing candidates on electoral lists. Ukraine has electronically recorded roll call votes, which thus enables party whips to enforce discipline. Moreover, it has an open lists system for parliamentary elections. Closed list systems are often more conducive to enforcing party discipline, but they have the disadvantage of not letting the public have any say in either punishing or rewarding individual members of the parliament. We do not recommend changing Ukraine's party list system. Since parties set up the order on the list and since most voters vote for a party instead of for a candidate, parties have sufficient disciplining power over individual representatives. Nevertheless, there are still other rules that can help further strengthen the party system in Ukraine. In our view, the main one should be a strong and transparent public system for the funding of political parties. We discuss this topic below, as public funding of electoral campaigns can also undercut the political influence of potential oligarchs.

Since the rules leading to party discipline are generally strong enough, the main obstacle to a stronger party system in Ukraine seems to be the political culture. This should not be surprising. Advanced democracies have seen, at least since the 2008 crisis, major changes in the relative power of parties. Old parties have weakened and new parties have emerged, sometimes to disappear after a few elections. Ukraine needs time before stable parties emerge. The war will certainly not have helped, and one can expect important political shifts in the first few post-war electoral cycles. Nevertheless, one should be clear that it is a good thing to see strong political parties emerge and develop.

8. Continue Civil Service Reform.

Ukraine's civil service administration has functioned quite well since the February 24 invasion in non-occupied territories, continuing to provide basic services. The war will have boosted values of integrity and public service. Before the full-scale war, a lot of efforts were put into digitizing many aspects of civil service. Ukraine has put in place professional training of civil servants and candidates for civil service. Efforts have also been made to increase the quality and professionalism of civil servants. It will be important to have a transparent selection and promotion process for them. A key obstacle before the war had been the level of remunerations. This will still be important in the future. Nevertheless, it will be clear in the direct post-war period that the whole population will have to make sacrifices in the reconstruction process and adjustment of civil service remunerations to a more competitive level will certainly not be a high priority.

One particular way to help boost the civil service in the immediate post-war period is to facilitate the recruitment of demobilized veterans as auxiliary aid or as civil servants to government administration.

9. How to prevent the reappearance of oligarchs?

Breaking the power of oligarchs has been a constant theme in post-Maidan Ukraine. Ukraine, like most transition countries, has experienced the rise of oligarchs, i.e. people who have benefited from the transition process to become immensely rich in a short amount of time. This happened not through wealth creation, as is usually the case for entrepreneurs, but mainly through rent-seeking and corrupt political influence. Ukraine, like all former Soviet Union Republics, is no exception to the rule. Oligarchs close to Kravchuk and then Kuchma were able to benefit from privatization deals that were completely rigged to be allocated to them. Unlike in Russia, where Putin has been able to crush all oligarchs who were not willing to submit to his will and to that of the *siloviki* group¹⁸ around him.

Presidential elections in Ukraine have seen a shift in the balance of power between various oligarch groups and networks. Poroshenko, the previous Ukrainian president, was himself an oligarch. When Zelensky was elected, he was said to be beholden to Kolomoisky. Politics in Ukraine has been under the influence of oligarchs since Ukraine's independence and transition to the market economy. While the power of oligarchs was initially seen as inevitable by a large part of the Ukrainian population, young people who fought in the Euromaidan have become increasingly impatient with the corruption and undue influence of the oligarchs. The situation has changed dramatically since the full-scale Russian invasion. The mobilization of the whole Ukrainian society to support the war effort to chase the Russian invaders has short-circuited the influence of the oligarchs. There is nevertheless no guarantee that the influence of oligarchs, old and new, will not rise again once the war is over and Ukraine gets back to a more normal economic situation. A reformed post-war governance must thus make sure the power of the oligarchs is broken so that Ukraine can function like a normal democracy. How can this be done?

The chapter on anti-corruption efforts in this book deals in detail with Ukraine's fight against corruption before and after the war. The general public in transition countries, especially the youth born after the end of communism, has shown less and less tolerance towards corruption. There have been numerous demonstrations against corruption in many countries (Romania, Slovakia, Russia among others) demanding major reforms. In Ukraine, corruption has been an important motivation in the Euromaidan movement, leading then president Yanukovich to flee to Russia. Despite this enormous political will, changes have been slower to happen in Ukraine like in other countries. The reason is that oligarchs have managed to control parts of the state apparatus that they use as an ATM for personal enrichment (see e.g. Roland, 2018) and also to block or sabotage reforms either inside Parliament or inside the state apparatus.

A first lesson we can draw from the experience of anti-corruption reforms throughout the world is the need for an independent anti-corruption bureau composed of incorruptible investigative judges and with the power to bring corruption cases to court. Ukraine has since 2014 made the

¹⁸ This is the network of former KGB officers that Putin has been using over the years to build his power base and eliminate that of his rivals, like Berezovsky or Khodorkovsky.

right steps in this direction, with the establishment of the National Anti-Corruption Bureau of Ukraine (NABU) and with the Higher Anti-Corruption Court (HACC) whose judges are selected with the help of international experts. This is in line with one of our main points in this chapter: the priority of judicial reform.

An anti-oligarch law pushed by President Zelensky was passed in November 2021 and entered into force in July 2022. The law was seen as controversial and was criticized as being populist and too vague, mainly consolidating the power of the president. The bill defined an oligarch as meeting three of four criteria: ownership or control over media outlets, control over a business monopoly, influence activities in politics and having a net worth above 2.4 billion hryvnia (roughly 70 million euros). The law also creates a mandatory registration of tycoons and of those with links to oligarchs. According to the Law, oligarchs would be banned from holding public office, funding political parties and taking part in privatization of state assets. These steps would have to be taken by a National Security and Defense Council (NSDC) set up by the president himself. Critics mentioned that the implementation of the law should not be in the hands of the president, but rather in the hands of an independent judiciary.

Western donors have helped post-maidan Ukraine by making loans and grants conditional on anti-corruption governance reforms.¹⁹ Nevertheless, Russia's invasion of Ukraine has completely changed the conditions to fight the power of the oligarchs. First, one of the main reasons for Russia's invasion has been Ukraine's determination to introduce democracy and the rule of law and to refuse living under a kleptocratic state. The fight for the rule of law has now a patriotic anti-Russian motivation, and thus benefits from a much wider and greater support. Second, people realize that after the horrible sacrifices made to defend Ukraine's independence against Russia's imperialist regime, the costs of fighting to improve governance without any compromise towards oligarchs and corruption will seem small relative to the horrendous costs of war.

The first priority is to implement and strengthen existing laws against the influence of oligarchs and their corruption within the state apparatus. This means installing, with foreign help, a truly non corrupt judicial branch of government and giving more powers to NABU and the HACC. Renewal of the judicial branch of government is a costly endeavor, given that one needs to select and train properly honest and competent judges. To do it relatively fast requires a lot of financial

¹⁹ When Joe Biden was vice-president of the US, he was very active in this area. In contrast, one of the most shameful episodes from recent US history was when Donald Trump as US president sent Rudy Giuliani to Ukraine to seek dirt on Biden and his son Hunter Biden. Giuliani and Trump then gave their support to Viktor Shokin, the former Prosecutor General who was generally recognized as one of the most corrupt actors in the Ukrainian state apparatus (under his watch there were zero (!) indictments for corruption) and had been finally ousted in 2016. Giuliani and Trump falsely pretended that the firing of Shokin was a personal vendetta of Biden to protect his son. The fact that the then US president presented Shokin as a victim rather than as one of the main actors of corruption was truly stomach-churning for all the Ukrainian reformers who had been fighting against corruption since 2014 and before that. Trump himself behaved in a corrupt way towards the Ukrainian government by refusing to deliver promised weapons to Ukraine until president Zelensky would agree to deliver dirt on Hunter Biden.

resources as well as expertise, but as stated above, the cost will appear completely worthwhile after the costs of the war.

The second priority is to establish a rigorous and effective competition policy. Oligarchs were able to thrive because they managed to protect their businesses from competition via their influence activities within the state apparatus. Moreover, they were able to obtain the wealth via rigged privatizations and government corruption to purchase other businesses and build conglomerates.

It is well known how oligarchs in Ukraine (like in other post-communist countries) became rich. The most important was through rigged privatizations. In the Kuchma era, each big privatization of large State-Owned Enterprises (SOEs) was designed so that only one candidate would emerge as the “best” candidate to receive the assets. This is one of the main origins of the wealth and power of oligarchs. Another one was through the creation of banks that were set up by oligarchs to “lend” themselves money that would later become a non-performing loan. Oligarchs used their economic power to engage in influence activities to consolidate monopoly positions and acquire new ones, and they also started building large media companies loyal to them. Oligarchs also used their economic and political power to build conglomerates to diversify their assets. For example, Akhmetov not only has large control over coal mines and steel factories, but he owns companies in telecom, real estate, transportation, energy and retail. Poroshenko not only owns an empire in chocolates but also has a big stake in the media sector. Kolomoisky, the previous owner of Privatbank, has positions in airlines, oil, gas, metallurgy and real estate.

While a rigorous competition policy is not in itself sufficient to break the power of oligarchs, it can go a long way to reduce their influence. Encouraging entry in oligarch-controlled sectors should significantly reduce monopoly profits and benefit consumers. Also, a long strand of research has shown that conglomerates are not economically very useful, i.e. do not add value for society (see e.g. Rumelt, 1974, 1982; Bhagat et al. 1990 and many more). The only reason conglomerates often appear is when financial markets are deficient. Becoming part of a conglomerate then appears as a substitute to give firms access to finance. Coming back to Ukraine, breaking up conglomerates owned by oligarchs would go a long way in reducing their influence in a more permanent way after the war.

Economists advocating a strong competition policy to prevent oligarchization often sounds like a broken record. We should, however, remember the lessons from the end of the gilded age in the US. This was a period when the US also had its oligarchs, the so-called robber barons (Rockefeller, Morgan, Vanderbilt, Carnegie, Stanford being only some of the most well known names) holding monopoly positions in sectors like oil, rail, shipping, steel or finance. The reaction to the robber barons in the US by people like Henry George and others led to the establishment of the Sherman Antitrust Act of 1890, which outlawed monopolies, trusts and cartels. This was

the first of many anti-trust laws in the US, which in effect contributed strongly to the end of the gilded age.²⁰

There are reasons to strengthen existing competition laws in Ukraine. For example, the Anti-Monopoly Committee (AMC) should be able to directly enforce fines to companies breaching antitrust laws, and the nomination of state commissioners to the AMC should follow a transparent process, similar to that governing the selection of members of the HACC. Obviously, the strengthening of pro-competition and anti-conglomerate laws in Ukraine will be fought tooth and nail by oligarchs who will use all their political influence to prevent such laws from passing or, more viciously, introducing amendments that would make these laws toothless. The best way to prevent this from happening is to use donor conditionality. As was the case with IMF loans since 2014, it would be totally justified for donors funding the reconstruction effort of Ukraine on insisting that such laws pass. Those within Ukraine who are fully committed to the fight to reduce the influence of oligarchs would certainly welcome this outside help in the form of donor conditionality. In any case, now that Ukraine is a candidate to enter the European Union, it will have no other option than implementing existing EU competition laws, which have worked quite well in recent years.

Apart from strengthening the rule of law and competition policy in Ukraine, it would also be important to avoid mistakes of the past, whereby economic reforms are used to give economic power to oligarchs and would-be oligarchs. A first possible mistake would be to repeat the flawed privatization policies of the past where control over productive assets was given to oligarchs without using really competitive auctions and in a totally non-transparent way. An important potential pitfall to avoid is giving oligarchs control over government in the process of government bond issuance. Reconstruction bonds will play a fundamental economic role in post-war Ukraine. Those who have funds or who have access to international financial markets may purchase large amounts of bonds, making the government dependent on oligarchs for financing the post-war reconstruction debt. There are many possible ways of preventing oligarchs gaining influence via the post-war bond purchasing process and this should be discussed carefully.

Last but not least, political finance reform will be crucial. Oligarchs have used their funds to support various political parties thus ensuring protection of their interests. A key way to cut the political influence of oligarchs is campaign finance reform. Here, the US is not a good example as private corporations and Wall Street have had a similar albeit legal influence on political parties. Ukraine should instead look at the experience of European countries which have rules for the allocation of public funds to political parties during electoral campaigns (see e.g. Reed et al. 2021). There are also rules for how much time each political party is allowed to have on the main TV networks. This would go a long way towards reducing the political influence of oligarchs. While none of the European campaign finance laws are perfect, they represent an immense

²⁰ One should not hide the fact that competition policy in recent years has become more lax towards monopolization compared to the EU (see e.g. Philippon, 2019) and that the US is in need of a new “progressive age” like the one at the turn of the 20th century that decreased the power of the robber barons.

improvement over the US, which allows nearly unfettered private financing of political campaigns.

The German case is quite representative of public funding of political parties. Parties represented in the German Parliament Bundestag (i.e. parties receiving more than 5% of the vote share) receive public funds for their activities for a total of roughly 2 billion Euros over an electoral cycle. The distribution of funds takes into account the size of the parties (larger parties receive more funds than smaller ones), without necessarily following a particular rule of proportionality. Parties have of course other legal sources of funding: membership dues and corporate donations. Interestingly, corporate donations have decreased substantially over the years. One reason is the absence of tax exemption for such donations, but generally corporate donations are not popular in the country since they are seen as corporations trying to “buy” access and influence. Parties have the obligation to report on the use of their funds, and the name of any donor giving more than 10 000 Euros has to be reported in a party annual report on the use of funds.²¹ Parties are also allocated airtime on public TV and radio channels as well as space on billboards. Moreover, there are limits to private donations. If the sum of private donations exceeds the legal limit, public funding is correspondingly decreased by the amount of the excess private donations.

Obviously, even when there are systems of public financing of party political campaigns, there will always be incentives to cheat, both on the side of oligarchs and on the side of political parties. Hidden transfers to political parties may give them a competitive edge, and such practices have been observed in Europe.²² Nevertheless, there is also strong judicial scrutiny of corruption in campaign financing, which limits the opportunities for corruption in Europe. Strong scrutiny will also be necessary in Ukraine, once more showing the critical role of judicial reform to reduce the influence of oligarchs.

10. Media reform.

When discussing governance reform in a post-war Ukraine, media reform will be a topic almost as important, if not equally important, to judicial reform. It is well known that particular oligarchs were able to spread their influence among the general public via the media they control. In 2016, Ukraine’s 10 largest TV channels were all owned by oligarchs. For example, Kolomoisky has used the 1+1 channel to defend his economic interests.

Some progress has been made by the anti-oligarch law of 2021 since Akhmetov decided in 2022 to transfer the licenses of his media group to the Ukrainian state. Also, all media under Russian

²¹ Ukraine has already adopted a similar law on party financing. One area that needs closer attention is the part on transparency and strict implementation of the Law. This must be done through strengthening the Corruption Prevention Agency.

²² Helmut Kohl, the architect of German unification, had to resign as Chancellor when it was revealed that his party had received hidden transfers to finance its electoral campaign. Kohl always refused to give the name of the donor(s).

control were closed down, which is a good thing given Russia's constant policy since 2014 to destabilize Ukraine with the goal of destroying its independence.

The problem of media control by oligarchs is not unique to Ukraine. For instance, Rupert Murdoch has used his influence to fund conservative media like Fox News in the US or various news outlets in the UK to further an ultra-conservative agenda and to spread fake news and biased reports over what is going on in the world. Orban has used his political power to kill media that were critical of him and to gain quasi-total control over media in Hungary, transforming it into a de facto autocratic nation-state regime. Putin did the same in Russia when he came to power, killing media freedom by 2003. Berlusconi has used his control over TV channels and media in Italy to gain control over the government for a good part of the nineties and beyond, doing great damage to Italy's economy and political system. Similar remarks can be made about the Springer group in Germany, Bolloré and Bouygues in France.

In the world of social media and abundance of media, a return to the post-WWII period where governments controlled the few media that existed (the BBC in the UK, the big networks in the US) is obviously not recommendable. Moreover, government monopoly over media has dangers of its own. In the French Fifth Republic, media control by Gaullist governments meant that some information would be hidden from the general public. Government control over the media carries with it dangers of lack of media freedom, especially in young democracies.

Here also, one must find various ways of guaranteeing media freedom from the government while avoiding too strong private sector interests to monopolize the main media. Competition policy to guarantee free entry into the media sector will not be enough. Other policies will be necessary, and policy experimentation with media reform in Ukraine may help necessary media reform in more advanced democracies. This is especially important given that information is a public good and that guarantees of journalistic independence are crucial in order to prevent information from being blocked or falsified.

Of particular interest for Ukrainian media reform may be the ideas of Julia Cagé and co-authors (Cagé, 2016; Cagé et al., 2019; Cagé and Huet, 2021) proposing to guarantee simultaneously independence of journalists and adequate funding.

The issue of funding media and journalistic work is a crucial one. Throughout advanced Western democracies, most forms of media have lost sources of funding. In recent decades, private newspapers, radios and TV channels have relied much on advertising as their most important source of revenue. Unfortunately, with the advent of social media and big platforms like Google, Facebook, etc. the price of advertising in traditional media has gone down drastically, forcing many newspapers to shut down. Since information is a public good, it has become possible in many ways to get access for free to articles that cost the precious time of journalists. The reduction in revenue sources for media has led to potentially dangerous concentration of media ownership in the hands of wealthy ideologues. Reduction in revenue sources has thus coincided with reduced independence of journalists.

The ideas of Cagé and co-authors are particularly interesting in that context. How to protect journalistic independence? Several principles are proposed with that goal in mind. The idea is that respect of those principles should be a condition for receiving state subsidies for media. First of all, in enterprises with more than say 10 journalists, the company boards should have at least 50% of votes represented by journalists and media staff (with two thirds of those at least being salaried journalists). This would give journalists a veto right on the choice of the managing director. This would also give journalists a veto right on the sale of a majority of shares to some outside shareholder. In case of such a veto, journalists should have the obligation to find within a year an alternative source of funding. Besides these democratic governance principles, media should have the obligation to be completely transparent as to their private sources of funding. One possible way of doing this is the obligation to disclose the real identity of any shareholder having more than 5% of the shares of a media company. Two other measures proposed are: 1) at least 35% of the sales revenue of media enterprises should go to personnel expenditures (half of that sum being reserved for wages of journalists), 2) the obligation to keep a minimum percentage of profits within the firm as reserve funds. The first principle is meant to subsidize only media firms that have a sufficient number of journalists, and the second is to ensure long run stability in funding. Coming to the issue of funding, there should not necessarily be any one model for media firms, as flexibility helps funding. In order to guarantee perennity of state funding, Cagé and co-authors propose that the state give each citizen a voucher worth 10 Euro that they could allocate to the media of their choice. This would give citizens some leverage over the allocation of state funds. Many of these ideas are worth exploring in the context of Ukraine's postwar institutional reforms, but also in the context of advanced democracies.

Julia Cagé's ideas on transparency can be especially useful in the context of Ukraine as the obligation of transparency on the real owners of media may help prevent oligarchs as well as hidden pro-Russian interests from coming back through the backdoor. Note also that her ideas are a good blueprint to ensure that the media landscape remains competitive. Indeed, there could be danger of excessive mergers in the future, forcing out smaller independent media companies. State rules for media subsidies respecting the four principles outlined above are key to maintaining a healthy competition in the media landscape.

11. Maintain the Drive towards Decentralization

Ukraine's governance before 2014 suffered from excess centralization and was close to French-style centralization. This has several disadvantages. First of all, it tends to make the political process too polarized as too much political power is concentrated at the center, which tends to create "winner take all" situations. This polarization can be a source of instability, especially in young democracies as certain political forces may be tempted to use non democratic means to seize power. Decentralization dilutes the overall distribution of power, thereby mitigating possible polarizing effects within the electorate. Second, excessive centralization is often associated with distortions in the allocation of resources: excessive uniformity, mismatch between the supply of public goods and the specific needs of local communities. Decentralization helps to improve the allocation of resources as local governments are better informed of local needs than central government. Third, decentralization helps local politicians build expertise and

competence. It is not a coincidence that many of the best politicians have acquired political and management expertise as mayors of large towns or chief executives of regions (states, provinces, districts). This helps to ensure a high quality of politicians, something which is crucial not only in young democracies, but also in older democracies. Fourth, decentralization helps improve accountability to voters. This happens not only because there is less distance between voters and local politicians when the latter have power, but also because voters can compare the performance of their local politicians to that of other localities. Decentralization thus helps to create healthy competition by making voters aware of best practices.

Despite strong initial centralization, Ukraine has made important steps towards decentralization, especially under the government of Prime Minister Groysman (2016-2019) with the help of international organizations. Key elements have been the transfer of power to municipalities and the introduction of “amalgamated hromadas (local communities)” allowing small municipalities to voluntarily create larger units. These units received rights in tax collection and public policy. It is an original “bottom-up” form of decentralization. Another smart element of the decentralization reform was to start directly with municipalities. This level of government is the closest to citizens. Decentralization first towards the oblasts would probably have been a mistake as it might have weakened the central government without providing many of the advantages of decentralization.

The need for speed in post-war reconstruction may not allow all the advantages of decentralization to be used. The UREIA reconstruction agency will have to work in a more centralized way given the need for speed in reconstruction. Priority should be given to national reconstruction goals such as rail and road infrastructure, electricity, water and telecommunications provision. Nevertheless, at the reconstruction stage, local governments and communities (hromadas) should be encouraged to make reconstruction requests for their unit, which will then be evaluated and prioritized by the UREIA. Moreover, local governments should also engage in their own reconstruction efforts by being given the power to raise local taxes to fund reconstruction projects. They should also be allowed, as they already are now, to raise funds from donors to fund projects. This may involve some competition with centralized fundraising efforts, but this should not be a reason to deny local authorities the power to raise funds. Donors are usually able to prioritize their donations. It is desirable for local governments to raise funds by matching them with their own funds, in order to prevent reckless demands towards donors. To summarize, while the reconstruction priorities will most certainly be at the central level and the imperative of speed will also require centralization, local authorities should be given broad powers right away, preparing them for a more decentralized governance in the future.

12. How to deal with territories recovered from the Russians?

Assuming that Ukraine will recover all or part of its territories that were invaded by Russia in 2014, should these territories and its citizens have a special status? Obviously, the immediate aftermath of the occupation should involve territorial consolidation by the Army. As long as there is a danger of Russia trying to recover some of territories it used to occupy, there is a need for a

strong military presence to defend the territorial integrity and also to ensure minimum economic functioning. Nevertheless, several remarks are in order. First of all, citizens in areas occupied since 2014 should receive immediate confirmation of their Ukrainian citizenship. There is no reason to discriminate in any way against citizens of Crimea, Donetsk and Luhansk, All or most pro-Russian forces will have fled to Russia, leaving mostly pro-Ukrainian citizens behind. Second, there should be trials of collaborators like in areas occupied since 2022. As soon as a Russian military danger disappears and emergency aid has been provided, local elections should be organized and municipalities should have the same right as in the rest of Ukraine. They should also participate in the next cycle of national elections. Any form of discrimination against citizens living in areas occupied by the Russians since 2014 would only backfire and be divisive.

13. Concluding remarks.

This chapter, like this book, will hopefully be useful under post-war conditions in Ukraine. Since the Revolution of Dignity of 2014, Ukrainian civil society has energized in a remarkable way, showing its commitment to transform the country from a post-soviet kleptocratic state with strong ties to Russia to a modern democracy based on the Rule of Law. Millions of Ukrainians have since 2014 thought about how to do this transformation. Many important changes have been made since then to transform Ukraine's governance in that direction. These changes have been rightly perceived by Putin as an existential threat to his autocratic regime and his tsarist-style imperial ambitions. While the war has inflicted massive destruction and killings, it also leads to an acceleration of history. Ukraine is now definitely in the camp of democracy and the rule of law. More than that, it is on the forefront of the fight against imperialist autocracies who try to destroy life under conditions of freedom, human rights and rule of Law. Ukraine deserves full support of democracies not only during the war, but also after the war. The ideas on the governance of Ukraine under immediate post-war conditions expressed in this chapter will hopefully help guide the debates to reconstruct democratic and European Ukraine.

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