# Ukraine: Post-Conflict Governance and Transition from Military to Civilian Administration

**Policy Recommendations**

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**Statement of Purpose**

The purpose of this policy paper is to address the challenges associated with post-conflict governance and transitioning from a military administration to a civilian administration in newly reclaimed areas of Ukraine.

**Introduction**

Since the beginning of Russia's aggression in Ukraine in 2014, Ukraine has adopted legislation on military and civil-military administrations in certain regions and, since 2022, regional military administrations have been established in 25 areas of Ukraine. Regional and district military administrations assume the powers of relevant councils, oversee executive apparatuses, manage communal enterprises, and handle appointments and dismissals. Military administrations adhere to the Law of Ukraine "On the Legal Regime of Martial Law".

When the war comes to an eventual end, Ukraine will need to adopt comprehensive policies to re-establish peace and stability in the country and fully reintegrate the territories Russia occupied. This will include addressing different sectors of governance: political, security, social, and economic. This policy paper provides recommendations holistically addressing these areas. It outlines general recommendations for transitioning from military administrations to civilian administrations and provides recommendations on political, security, and social infrastructures, the rule of law, transitional justice, and development.

**General Recommendations for Transitioning from Military Administration to Civilian Administration**

During the transition phase, post-conflict states face a number of challenges, which require the adoption of targeted policies aimed at strengthening the state's democratic system and restoring full respect for the rule of law and human rights. Necessary interventions can be categorized as policies aimed at addressing political, security, social, and economic factors. These areas are addressed further below, however, this section provides general recommendations focused on overarching matters that Ukraine will need to address. These include ensuring that the military administrations in Ukraine are of a temporary nature, fostering civilian oversight, developing plans for reforms, and reversing the changes implemented by the occupying authorities. These areas are addressed below.

Recommendations

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### A. Maintain a Transitional and Temporary Nature of Any Civil-Military Administration in Operation

In conflict and post-conflict regions, core functions (such as security, infrastructure, and justice) may be too fragile to survive on solely civilian direction without the support of state institutions or may otherwise have a "skill gap" at a time when human capital is in high demand. At this time, a civil-military administration is helpful to fill this gap as capacity-building programs work to restore regular functioning of the administrative institutions.[1] At the moment, Ukraine is going through such a period and civil-military administrations are performing governance functions in many regions of the country. While such systems may be necessary in certain circumstances, it is vital to ensure they are transitional. It is highly advisable to establish a civil-military administration for a clearly defined period when possible. Prohibition or delays in hosting local elections are generally not favorable. Instead, additional focus and resources should be deployed to ensure elections are safeguarded and free of corruption. At the same time, it must be acknowledged that a short delay after the lifting of the martial law might be needed in Ukraine to ensure that the legal and practical preparations are appropriately implemented, including the possibility of refugee return.[2]

While the length of the period is subject to the needs that arise in the post-war zone, lengthy periods can put strains on the legitimacy of the post-war government. For example, in South Africa, a lengthy period caused mistrust in the transition government.[3]

### B. Maintain Civilian Primacy in a Civil-Military Administration

It is best practice if the military serves as "enablers" while the "civilian authorities have primacy" in the administration. Military-only efforts tend to fail, as the military can be a "blunt instrument … insufficient to create the essential elements of a functioning democracy."[4]

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[1] Institute for State Effectiveness , *Rebuilding Post-Conflict Societies: Lessons Learned from a Decade of Global Experience* (2005).

[2] Interview with Ukrainian stakeholders.

[3] Ho-Won Jeong, *Peacebuilding In Postconflict Societies: Strategy And Process* (2005).

[4] Linwood Ham, *A Post-War Transition That Works: A Lesson for Afghanistan... from Kosovo*, United States Institute of Peace (21 October 2014), *available at:* https://www.usip.org/blog/2014/10/post-war-transition-works-lesson-afghanistan-kosovo

Additionally, civil-military administrations can be helpful in providing a link between development goals that are more regional in nature and development goals that are national — something that is critical to turning short-term regional successes into long-term reconstruction on a broader level.[5] Nonetheless, the "touchstone" for all reconstruction efforts, as learned from Kosovo, should be "civilian leadership with military support [and] a focus on sustainable actions."[6] Given the experience in the international community with other transitional administration situations and the likely need for international assistance to rebuild the country, Ukraine may wish to consult with the international community for lessons learned and welcome oversight as appropriate to ensure effective implementation.

## C. Develop or Enable the Development of Watchdogs for Ensuring Administrative Accountability

Ensuring accountability of governance institutions, even in times of conflict or transition, is paramount for upholding democratic principles and trust. For this purpose, governmental or non-governmental watchdogs can be highly important tools.

For instance, "reform watchdogs" have been established in different contexts to oversee the implementation of reforms provided for in peace agreements, including as related to holding elections.[7] Moreover, some contexts have opted for creating "audit watchdogs" to ensure accountability in the management of state resources and support sustainable economic growth and a thriving investment climate.[8]

Notwithstanding the format, military and civil-military institutions need a clear and functioning system for reviewing their actions and upholding

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[5] Linwood Ham, *A Post-War Transition That Works: A Lesson for Afghanistan... from Kosovo*, United States Institute of Peace (21 October 2014), *available at:*
https://www.usip.org/blog/2014/10/post-war-transition-works-lesson-afghanistan-kosovo
[6] Linwood Ham, *A Post-War Transition That Works: A Lesson for Afghanistan... from Kosovo*, United States Institute of Peace (21 October 2014), *available at:*
https://www.usip.org/blog/2014/10/post-war-transition-works-lesson-afghanistan-kosovo
[7] Vibeke Wang, Astri Suhrke, and Elling N. Tjønneland, *Governance Interventions in Post-War Situations: Lessons Learned,* Annex I (2005), *available at:*
https://www.cmi.no/publications/file/1955-governance-interventions-in-post-war-situations.pdf
[8] Vibeke Wang, Astri Suhrke, and Elling N. Tjønneland, *Governance Interventions in Post-War Situations: Lessons Learned,* Annex I (2005), *available at:*
https://www.cmi.no/publications/file/1955-governance-interventions-in-post-war-situations.pdf

accountability so as not to lose the trust of the local community and international donors/supporters.

### D. Implement Comprehensive Reforms During the Transition Phase in all Sectors of Governance

The post-conflict phase in Ukraine will require comprehensive reforms in all sectors of governance, especially as it relates to the de-occupied territories. Sections below delve into specific reform areas more, however, for the purposes of this section, it is important to note that such reforms will likely be needed.

The reform process will be particularly crucial for the currently occupied territories as the occupying authorities have had a substantial impact on the operations of these territories. Ukraine will need to reform the administrative, judicial, and educational systems to name a few.

Moreover, the de-occupation phase will likely see the continuation of certain restrictions that may not be applicable to other regions of Ukraine. To prevent misunderstanding and further conflict, Ukrainian authorities will need to explain these restrictions and their purpose clearly. Periodic review of any restrictions and human rights derogations will be needed for Ukraine to uphold its international legal commitments.[9]

### E. Review Legislation Adopted by Occupying Authorities and Military Administrations

During the transition phase, Ukraine will have to thoroughly review all legislation adopted during wartime. This applies to both legislation adopted by the occupying authorities to amend or annul it to ensure that Ukraine law regains force in these territories and legislation adopted by the military administrations so that the legal framework in force is applicable to times of peace[10] and for civilian administration.

### F. Develop a System for Recognizing or Annulling Documentation Issued by Occupying Forces

The Russian authorities in the occupied territories have issued a number of documentation to those residing in the territories. These documents include

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[9] PILPG Interviews with domestic and international stakeholders.
[10] PILPG Interviews with domestic and international stakeholders.

education and professional certificates, discussed in depth in the preceding sections of these policy recommendations, but also birth and marriage certificates, and passports. Ukraine will need to develop a consistent and effective system for reviewing such documentation.

Regarding birth and marriage certificates, Ukraine may wish to opt for an administrative rather than a judicial system to avoid delays due to the non-contentious nature of the documents.[11] The system for review of identification documents such as passports, however, will have to take into account a complex array of circumstances, such as whether the passport issuance took place voluntarily and according to required procedural standards.

## Political Infrastructure

One of the most important processes that needs to occur during the transition from military to civilian administration is the holding of elections. To be able to hold free and fair elections, however, the security and political conditions must be suitable. This will include ensuring safe voting, inclusive political participation, and freedom from external interference. These issues are examined below.

### *Elections*

#### Challenges

The natural response to the question of whom should the military turn over responsibility to is the local/regional/national elected officials. Until elections are held, civilians elected before the war or selected by national authorities may become responsible during the transition period. Having elections, therefore, will help ensure transparency of process and obtain local buy-in to transition efforts."

Had Russia not invaded, Ukraine planned to hold parliamentary elections in October 2023, a presidential vote in March 2024, and regular local elections in October 2025. Elections are prohibited under martial law in Ukraine and the occupation of parts of Ukrainian territories and mass-scale displacement of Ukrainians in the country and abroad complicate the process. After the war, Ukraine will have to organize and conduct elections according to European and international standards taking into account the conditions that will exist post-war.

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[11] PILPG Interviews with domestic stakeholders.

This may include reviewing and reforming certain election procedures to respond to the complex post-war environment.[12]

Specifically, some of the main challenges for holding elections in Ukraine are (1) the safety and security of polling stations; (2) the high numbers of displaced people in Ukraine and abroad; and (3) risk of Russian interference in any elections that could be held in Ukraine.

<u>Recommendations</u>

## A. Develop Objective Standards for Secure Elections

The first step in deciding whether Ukraine is able to hold elections safely is to establish a standard for what would be deemed "safe".  Under the ICCPR, each human being has an inherent right to life that shall not be arbitrarily deprived.[13] Basic security is a precondition for holding any elections, whether security is provided by peacekeepers or other means.[14]  Yet, each citizen also has a right to vote in periodic elections without unreasonable restrictions.[15]  A clear standard on what constitutes a secure election will help Ukraine properly balance these obligations.  Without such a standard, holding elections would be premature, with unsafe conditions putting lives in danger, or could result in undue delays, further denying Ukrainians their democratic rights.

Developing these standards has been recommended to Ukraine in the past. For the 2020 local elections, the Central Election Commission, on the recommendation of civil-military administrators, decided not to hold elections in 18 territorial communities in the Donetsk and Luhansk oblasts still under Ukrainian control.[16]  At the time, parts of Donetsk and Luhansk oblasts were under Russian occupation, including areas which held polling stations for the surrounding

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[12] *See* a comprehensive needs assessment conducted by the Council of Europe. Yurii Kliuchovskyi and Volodymyr Venher, *Organisation and Holding of Elections in Post-War Ukraine. Prerequisites and Challenges* (July 2022), *available at:* https://rm.coe.int/en-organisation-and-holding-of-elections-in-post-war-ukraine-net-2769-/1680a8e995
[13] G.A. Res. 2200A, Int'l Covenant on Civil & Political Rights, pt. III, art. 6 (Dec. 19 1966), *available at:* https://www.ohchr.org/sites/default/files/ccpr.pdf.
[14] Vibeke Wang, Astri Suhrke, and Elling N. Tjønneland, Governance Interventions in Post-War Situations: Lessons Learned, Annex I (2005), available at: https://www.cmi.no/publications/file/1955-governance-interventions-in-post-war-situations.pdf
[15] G.A. Res. 2200A, Int'l Covenant on Civil & Political Rights, pt. III, art. 25 (Dec. 19 1966), *available at:* https://www.ohchr.org/sites/default/files/ccpr.pdf.
[16] Council of Europe, *Organisation and Holding of Elections in Post-War Ukraine. Prerequisites and Challenges: Needs Assessment Report* 29 (July 2022), *available at:* https://rm.coe.int/en-organisation-and-holding-of-elections-in-post-war-ukraine-net-2769-/1680a8e995.

community.[17]  The Security Service of Ukraine and the National Police declared that it was impossible to ensure the security of citizens if elections were held.[18] Reports from the security services cited the constant threat of artillery and mortar shelling, plus potential sabotage or terrorist acts, as the reasons they could not guarantee the safety of Ukrainians living within "30-35 km from the demarcation line."[19]  Although the security concerns were serious, the decision by the Central Election Commission was made despite the fact that elections were held in these communities in 2019, just a year before.[20]  The security services did not specify whether the security conditions in 2020 were significantly worse than those in 2019 when elections were held.

The above resolution issued by the Central Election Commission laid out the conditions for calling elections in these territories but did not provide objective criteria as to when or how these conditions will be met.[21]  These conditions include: a) termination of the temporary occupation and armed aggression of the Russian Federation against Ukraine, namely the withdrawal of all illegal armed formations led, controlled and financed by the Russian Federation, the Russian occupying forces, and their military equipment from the territory of Ukraine; b) restoration of full control over the state border of Ukraine by Ukraine; c) disarmament of all illegal armed formations and mercenaries operating in the temporarily occupied territories of Ukraine; d) restoration of the constitutional system and legal order in the temporarily occupied territories of Ukraine; and e) ensuring safety of Ukrainian nationals living in the respective territories of the Autonomous Republic of Crimea, Donetsk and Luhansk regions and the city of Sevastopol following the full completion of disarmament, demilitarization and

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[17] Ministry of Foreign Affairs of Ukraine, *Temporary Occupation of Territories in Donetsk and Luhansk Regions* (Oct. 5, 2021), *available at:*  https://mfa.gov.ua/en/temporary-occupation-territories-donetsk-and-luhansk-regions.

[18] Central Election Comm'n Decree, On the Impossibility of Holding the First Elections of Deputies to Certain Village, Settlement, City Councils of Donetsk and Luhansk Oblasts and the Corresponding Village, Settlement, and City Mayors on October, 25, 2020 (Aug. 8, 2020), *available at:* https://act.cvk.gov.ua/acts/pro-nemozhlivist-provedennya-pershih-viboriv-deputativ-okremih-silskih-selishhnih-miskih-rad-donetskoi-i-luganskoi-oblastey-ta-vidpovidnih-silskih-selishhnih-miskih-goliv-25-zhovtnya-2020-roku.html.

[19] Central Election Comm'n Decree, On the Impossibility of Holding the First Elections of Deputies to Certain Village, Settlement, City Councils of Donetsk and Luhansk Oblasts and the Corresponding Village, Settlement, and City Mayors on October, 25, 2020 (Aug. 8, 2020), *available at:* https://act.cvk.gov.ua/acts/pro-nemozhlivist-provedennya-pershih-viboriv-deputativ-okremih-silskih-selishhnih-miskih-rad-donetskoi-i-luganskoi-oblastey-ta-vidpovidnih-silskih-selishhnih-miskih-goliv-25-zhovtnya-2020-roku.html.

[20] Council of Europe, OSCE/ODIHR Opinion No. ELE-UKR/433/2021, *On the Draft Law 'On Improving the Procedure for Establishing the Impossibility of Holding National and Local Elections, All-Ukrainian and Local Referendums in Certain Territories and Polling Stations'* (Dec. 13, 2021), *available at:* https://www.osce.org/files/f/documents/c/1/508244.pdf.

[21] Council of Europe, *Organisation and Holding of Elections in Post-War Ukraine. Prerequisites and Challenges: Needs Assessment Report* 29 (July 2022), *available at:* https://rm.coe.int/en-organisation-and-holding-of-elections-in-post-war-ukraine-net-2769-/1680a8e995.

reintegration procedures in the territories in accordance with the standards of the United Nations and the Organization for Security and Co-operation in Europe. Although only by-laws without the weight of legislative law, these factors can be taken as general criteria to consider when assessing whether secure elections can be held.

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), which was observing the 2020 local elections, noted that the legal framework used by the Central Election Commission to cancel the 2020 local elections lacked transparent criteria and hurt public trust in the election.[22] The reports from the civil-military administration in Donetsk and Luhansk oblast received and published by the Central Election Commission did not contain the criteria or methodology used by the civil-military administration in assessing the security concerns surrounding the 2020 elections in these regions or how the security situation changed since the 2019 election. The Central Election Commission has now identified the need for clear legislation to avoid repeating this scenario but has not yet proposed what criteria that legislation should include.[23]

Similarly, the OSCE/ODIHR and the European Commission for Democracy Through Law (Venice Commission) in 2021 commented on the Ukrainian law "On Improving the Procedure for Establishing the Impossibility of Holding National and Local Election, All-Ukrainian and Local Referendums in Certain Territories and Polling Stations", which was issued to assess the security conditions for holding elections in Donetsk and Luhansk oblasts. In its opinion, the OSCE/ODIHR and the Venice Commission provided several recommendations for improving this earlier legislation, which should be taking into account when developing new legislation and criteria for holding elections. Most notably, OSCE/ODIHR and the Venice Commission highlighted that the decision for whether to hold an election should be taken after public consultation and upholding transparency standards. Moreover, the opinion noted that the criteria for when elections cannot be held should be clearly set out in the legislation itself to increase legal certainty, which was lacking in the previous law.[24]

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[22] ODIHR, *Ukraine Local Elections 2020, ODIHR Limited Election Observation Mission Final Report* (Jan. 29, 2021), *available at:* https://www.osce.org/files/f/documents/3/e/476974_1.pdf.

[23] Central Election Commission, *Elections After the Victory: What Can Change*, Pravda (Jan. 14, 2023), *available at:* https://www.pravda.com.ua/eng/columns/2023/01/14/7384568/.

[24] European Commission for Democracy Through Law (Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Joint Opinion, On the Draft Law "On Improving the Procedure for Establishing the Impossibility of Holding National and Local Elections, All-Ukrainian and Local Referendums in Certain Territories and Polling Stations", Opinion No. 1061/2021 (Dec. 14, 2021), *available at:* https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)045-e

The government should also conduct an information campaign explaining the reasons for the postponement of elections emphasizing the temporary nature of the measure.[25]

## B. Create Mail-In Ballot Voting and Absentee Voting Systems

To address some of the safety and displacement challenges, Ukraine may wish to create an absentee or mail-in ballot voting, which would provide for an alternative voting procedure if going to the polling stations is not possible due to security or distance. Ukraine will also need to contribute significant resources to creating systems for refugee voting as there are over 6 million Ukrainian refugees around the world.

Furthermore, Ukraine would need to consider addressing the lack of an absentee voting system. Ukraine's entire voting system relies on in-person ballot casting, even for people who are hospitalized (there are polling stations inside hospitals) or who are bedridden (polling workers bring ballots and a ballot box directly to the doors of those who cannot leave home). There are currently no publicly disclosed plans to organize large-scale mail-in or drop-off balloting in Ukraine, which would require an amendment to Ukraine's strict in-person voting laws.[26]

Another issue that could become an impediment for Ukrainian internally displaced persons (IDPs) or refugees to vote is residency requirements. In Ukraine, individuals are required to vote in their applicable voting precinct, which is determined by their "electoral address," which is the address that individuals register to inform the authorities of the location where they will vote.[27] Residency requirements are common in voting laws; their goal is generally to preserve the power of residents and prevent outsiders from influencing elections. However, the UN Human Rights Committee has cautioned that "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right…. If residence requirements apply to registration, they must be reasonable and should not be imposed in such a way as to exclude the homeless from the right to vote."[28]

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[25] Interview with Ukrainian stakeholders.
[26] Ukr. Const. art. 8, "On the Elections of the President of Ukraine."
[27] Election Code of Ukraine (amended in accordance with the Laws of Ukraine No. 720-IX (June 17, 2020) and No. 805-IX (June 7, 2020).
[28] Human Rights Comm., Gen. Comment 25 (57), General Comments under art. 40, ¶ 4, of the Int'l Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

For IDPs in Ukraine, reasonable and non-exclusionary residence requirements would mean either allowing IDPs to retain their electoral address before the war or registering their new location as their electoral address. The Ukrainian Electoral Code now provides IDPs with the right to vote in local or national elections but does not provide an option for IDPs to vote by absentee ballot in their pre-war "home" voting precinct. Nevertheless, if the IDPs do not change their electoral address and their address remins in the temporarily occupied territories, they will be able to vote from that address after the liberation of these territories.

Although administratively more difficult, the benefit of allowing IDPs to choose between their prior and current addresses as their electoral address is that IDPs who anticipate being able to return home will be able to participate in their home elections. In contrast, IDPs who do not wish to or do not anticipate being able to return home will be able to participate in the electoral process where they currently reside. In both cases, local elections may influence public policy decisions such as property ownership in highly damaged areas, public assistance for unhoused persons, and other topics that will directly impact the lives of IDPs.

Beyond the rights of voters to participate in their "home" elections, the Ukrainian government should also consider that the results of any election that requires in-person voting in an area of the country that has had a high departure rate will have poor turnout and likely draw criticisms about its legitimacy. For example, in the east and south of Ukraine, in-person elections would likely receive minimal turnout, risking the efficacy of the election in representing the Ukrainians who intend to return to those areas after the war and potentially alienating them from future political processes.[29]

### C. Enhance Gender Mainstreaming in Political Processes

Equal participation of women, men, and gender minorities in elections and political processes is an essential component of well-functioning democracies.[30] As such, Ukraine should take steps, including issuing legislative acts protecting the rights of women, men, and gender minorities, and empowering their participation in electoral processes. Supporting balanced participation and representation of

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[29] Peter Erben and George Kobakhidze, *Ukraine Needs Electoral Reform Now for Resilient Postwar Elections, International Foundation for Electoral Systems* (Oct. 19, 2023), *available at:* https://www.ifes.org/news/ukraine-needs-electoral-reform-now-resilient-postwar-elections.

[30] Gender Equality Strategy (2024-2029), CM(2024)17-final, Gender Equality Commission (GEC), Council of Europe, para. 66 (Marfch 6, 2024), *available at:* https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680ae569b#_Toc155173012

women and men in elections and other political processes is also one of the recommendations of the Council of Europe in Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026.[31]

### D. Develop Methods for Effective Distribution of Information

In addition to the voting access issues that tie into domestic and international laws, the Ukrainian government will need to address related issues such as access to information. While Ukraine does have laws in place to promote access to information that "enables citizens to make informed political choices"[32], typical trusted methods of information dissemination (such as mailings to residential addresses) cannot be used for IDPs. To make sure that IDPs know how to participate in the election process and, for example, what types of identity verification or pre-registration will be required, the Ukrainian government will need to both (i) pass new voting laws that expand and clearly explain IDP voting and (ii) determine how to distribute this information effectively. While the internet can be a fast and effective way to communicate with people, Russia's systematic attacks on internet systems and dissemination of misinformation would likely jeopardize its use and miss the IDPs who do not have access to the internet.

### E. Develop Procedures for Soldiers to Become Candidates in Elections

To allow all Ukrainian citizens, including those on active duty in the military, to enjoy their right to political participation, Ukraine will need to allow active soldiers to vote and develop procedures according to which soldiers are able to give up their duties in the military to become candidates in the elections if they so choose. A similar recommendation, along with other recommendations, was also enshrined in the Roadmap for Electoral Reform in Ukraine issued by OPORA and International Foundation for Electoral Systems.[33]

### F. Ensure Funding for Cybersecurity Concerns and Establish Procedures for Audit, Services, and Training

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[31] Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026, CM(2022)187-final, 13 (Dec. 14, 2022), *available at:*
https://rm.coe.int/-1452-2-4-action-plan-ukraine-cm-2022-187-finale-1-/1680aa2d20
[32] *The Law of Ukraine, On Access to Public Information* (2007), *available at:*
https://www.article19.org/data/files/pdfs/laws/ukraine-the-law-on-access-to-public-information.pdf.
[33] OPORA and IFES, Roadmap for Electoral Reform in Ukraine - 2023 Wartime Edition (Oct. 18, 2023), *available at:* https://www.oporaua.org/en/vybory/-24960.

To mitigate cybersecurity risks, the government should step in to provide support in the form of funding for cybersecurity audits, digital protection services, and cybersecurity training for campaigns and their staff. Protecting the digital security of the campaign process will be a key factor in preserving the legitimacy of any wartime elections, but it will also require significant resources during a time when Ukraine has many other priorities.

External assistance, both in the form of funding and expertise, will be critical to Ukraine's cybersecurity efforts. In 2018, the United States State Department pledged $10 million in cybersecurity aid to Ukraine and, in 2019, helped Ukraine stop a Russian distributed denial-of-service (DDoS) attack.[34] The same year, a former United States Director of National Intelligence said the United States had tested a range of DDoS attacks against Ukraine, including social-media manipulation and power-grid compromise,[35] which served to help Ukraine further prepare for more sophisticated future DDoS attacks. If Ukraine chooses to proceed with wartime elections, it will need more of this type of support from its allies.

## G. Scale up Countering Disinformation

Aside from cyber threats, interference during the election campaign process can also come in the form of disinformation. Experts expect that, as in the past, opposition parties, covert agents, biased media outlets, pro-Russian religious groups, and social media bots will continue to be used to spread rumors, and conspiracy theories and undermine trust in Ukrainian institutions.[36] In 2019, task force monitors noted that most disinformation aims to convince the public that elections are rigged, illegitimate, and should not be trusted no matter the result.[37] To combat such disinformation campaigns, Ukrainian organizations and international partners should remain dedicated to exposing disinformation and providing context to counter Russian propaganda.

Another tool to fight disinformation is the expansion of independent programs of civic and voter education, which could be executed by local officials.

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[34] Ukraine Election Task Force, *Foreign Interference in Ukraine's Election*, Atlantic Council (May 15, 2019), *available at:*
https://www.atlanticcouncil.org/in-depth-research-reports/report/foreign-interference-in-ukraine-s-election/.
[35] Ukraine Election Task Force, *Foreign Interference in Ukraine's Election*, Atlantic Council (May 15, 2019), *available at:*
https://www.atlanticcouncil.org/in-depth-research-reports/report/foreign-interference-in-ukraine-s-election/.
[36] U.S. Instit. of Peace, Special Report, No. 441 (Feb. 2019).
[37] Ukraine Election Task Force, *Foreign Interference in Ukraine's Election*, Atlantic Council (May 15, 2019), *available at:*
https://www.atlanticcouncil.org/in-depth-research-reports/report/foreign-interference-in-ukraine-s-election/.

These programs, in combination with efforts by Ukrainian government bodies like the Central Election Commission, would help voters identify and stop the spread of disinformation.[38]

The Venice Commission also places responsibility on political candidates to combat and avoid disinformation campaigns. The Commission's Report on Electoral Law and Electoral Administration in Europe states that "[r]esponsible digital political advertising, thus, requires action from political contestants (to uphold ethical standards), social media platforms (to improve transparency of political advertising on their platforms) and public authorities (to adopt laws and regulations for political advertising to the online environment)."[39] Ukraine should encourage candidates to adhere to the standards set forth by the Venice Commission and, as was done by political parties and candidates in France, the UK, and Germany, political groups should work together to prevent social media disinformation, regardless of their political affiliations, with the goal of upholding the integrity of elections.

As previously noted, Ukraine will continue to face difficult decisions around the allocation of resources and it will be difficult to allocate funds to an election process. However, if an election does take place, Ukraine and its allies should strongly consider allocating some of those funds towards the fight against disinformation campaigns, given the potential harm that propaganda may cause to a fair and open election.

Ukraine can also draw best practices for countering disinformation from the International Foundation for Electoral Systems "Building Resilience Against Election Influence Operations" report, which provides recommendations from comparative state practice.[40]

**Security Infrastructure**

During the transition phase, Ukraine will have to undergo reforms in its security infrastructure. These will include implementing security sector reforms that were already launched prior to the Russian full-scale invasion in 2022 as well as weapons management, disarmament after the war, and rehabilitation and

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[38] U.S. Instit. of Peace, Special Report, No. 441 (Feb. 2019).
[39] Council of Europe, Venice Comm'n, Report on Electoral Law and Electoral Administration in Europe ¶ 80, Study No. 965/2019 (Oct. 8, 2020), *available at:*
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)023-e.
[40] International Foundation for Electoral Systems, Building Resilience Against Election Influence Operations (April 23, 2024), *available at:* https://www.ifes.org/publications/building-resilience-against-election-influence-operations.

reintegration of former combatants.  This section of the policy recommendations with address these in turn.

*Security Sector Reform*

<u>Challenges</u>

Many will argue the time for transition from military to civilian administration will be when there is sufficient security to enable civilians to operate efficiently and effectively.  Even when the civilians are in charge of administration, they will rely upon the security forces to maintain peace.  Reform of the security sector, therefore, remains an integral part of the transition period.

Over the past decades, Ukraine has developed several initiatives to reform its security sector.  Nonetheless, the reform of the security sector continues to be a pressing necessity for several reasons.  First, considering the ongoing Russia's invasion, improving the efficiency and stability of Ukraine's security sector is a top priority.  Second, Ukraine's plans to integrate into the EU and NATO require it to formally comply with the organizations' standards for the security sector.  This, in particular, pertains to compliance with international human rights obligation in activities in the security sphere and providing redress to victims of violations.[41] Third, Ukraine continues to heavily rely on international assistance.  In order to maintain, encourage, and protect the flow of foreign assistance, Ukraine would benefit from addressing some of the concerns that have been repeatedly raised by international organizations pertaining to Ukraine's security sector.  Fourth, it is important to proactively address and prevent the likely "post-war security vacuum" in the de-occupied territories, particularly the ones that have been occupied since 2014.[42]

The main identified issues of the security sector in Ukraine are lack of transparency, limited external oversight, lack of cohesiveness between different actors, and lack of accountability for human rights violations.  Other issues include personnel retention issues in the military, governance issues in the security sector, such as uncertain battlefield rotation times and budgetary cuts.[43]

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[41] Interview with international and Ukrainian stakeholders.

[42] Polina Belyakova and Sarah Detzner, *Security Sector Governance in Ukraine: The Key Considerations for Policy Makers in 2023*, *available at:* https://peacerep.org/wp-content/uploads/2023/04/PeaceRep-Ukraine-2023-SSG.pdf

[43] Polina Belyakova and Sarah Detzner, *Security Sector Governance in Ukraine: The Key Considerations for Policy Makers in 2023*, *available at:* https://peacerep.org/wp-content/uploads/2023/04/PeaceRep-Ukraine-2023-SSG.pdf

<u>Recommendations</u>

**A. Follow Through With the New Minister of Defense's Intention of Creating a Dedicated Ombudsman Office for the Military and Security Services**

It is recommended that Ukraine follow through with its intention of creating a dedicated Ombudsman office for the military and security services.[44]

A Military Ombudsman Office serves as an independent body tasked with investigating and resolving complaints or grievances raised by military personnel about their rights, entitlements, and treatment within the armed forces. A Military Ombudsman Office acts as a neutral intermediary, providing a confidential and impartial avenue for service members to address concerns related to their service conditions, welfare, and legal rights. The office works to ensure fairness, accountability, and transparency within the military establishment while upholding the rights and well-being of military personnel.[45] As described by President Zelensky, the new Ukrainian Ombudsman office would "introduce a "powerful system of the warrior's rights protection in the defense sector itself."[46]

**B. Create a Dedicated Office of the Auditor General for Military and Security Services that Reports Directly to the Verkhovna Rada**

An auditor general, also known in some countries as a comptroller general or comptroller and auditor general, is a senior civil servant charged with improving government accountability by auditing and reporting on the government's operations. Introducing a dedicated Office of the Auditor General for Military and Security Services beyond the Accounting Chamber of the Verkhovna Rada that reports directly to the Parliament will help the Ukrainian government to ensure government accountability, promote transparency, identify fraud and mismanagement, support good governance, and strengthening public trust in government.

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[44] Kateryna Tyshchenko, *New Ukraine's Defence Minister plans to bring in new position of military ombudsman,* Pravda (Sept. 9, 2023), *available at*: https://www.pravda.com.ua/eng/news/2023/09/9/7419145/.

[45] *Military Ombudsman*, Geneva Centre for the Democratic Control of Armed Forces, *available at:* https://www.files.ethz.ch/isn/14061/backgrounder_01_ombusdman.pdf;

[46] President of Ukraie, *We need a powerful system of the warriors' rights protection in the defense sector itself - address by the President of Ukraine* (Sept. 14, 2023), *available at:* https://www.president.gov.ua/en/news/potribna-potuzhna-sistema-pravozahistu-voyiniv-u-samomu-sekt-85621

## C. Create a Security-Cleared Committee of the Verkhovna Rada That Has Full Classified Access to Oversee the Operations of National Security Institutions

To enhance accountability, transparency, and public confidence in national security and intelligence activities, creating a security-cleared committee of the Verkhovna Rada that has full classified access to oversee the operations of national security institutions is recommended. This committee, which could be modeled after Canada's National Security and Intelligence Committee of Parliamentarians, would provide parliamentary oversight, comprising members with relevant expertise and security clearances, tasked with reviewing legislative frameworks, conducting independent assessments of operational activities, and identifying areas for improvement.

## D. Consider Requiring Verkhovna Rada Approval of Senior Promotions and Appointments To Strengthen Civilian Control of the Uniformed Security Services

Civilian control of the military is a doctrine in military and political science that emphasizes the subordination of military power to civilian authority. This principle is fundamental to democratic governance and ensures that the military serves the interests and objectives of the civilian government elected by the people.[47] Key aspects of civilian control over the military are: (i) subordination of the military to civilian authorities, (ii) separation of powers, (iii) democratic accountability, (iv) professionalism of the military, and (v) the avoidance of military coups.

Strengthening civilian control of the military in Ukraine can play a crucial component in democratic governance, ensuring that military power is employed in the service of the nation's interests and under the authority of elected civilian leaders. This will also contribute to the preservation of democratic institutions, the protection of individual liberties, and the prevention of military interference in political processes. Strong democratic control of the military is also a prerequisite for membership in NATO.[48]

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[47] Richard H. Kohn, *Civilian Control of the Military, American Diplomacy* (March 1997), *available at:* https://americandiplomacy.web.unc.edu/1997/03/an-essay-on-civilian-control-of-the-military/

[48] Terri Moon Cronk, *Nations Undergo Rigorous Process to Join NATO*, U.S. Department of Defense (June 3, 2022), *available at:* https://www.defense.gov/News/News-Stories/Article/Article/3052427/nations-undergo-rigorous-process-to-join-nat o/. *See also* Andriy Zagorodnyuk, *Why wartime Ukraine's defense minister must be a civilian*, Atlantic Council

To strengthen civilian control of the uniformed security services, the Ukrainian Government should consider requiring parliamentary approval of senior promotions and appointments, in line with the US's requirements for Senate approval of General and Flag officers.

## E. Address Unit Deployment for Inconsistent or Prolonged Periods

There are significant concerns about Ukraine's troops concerns about units deployed for inconsistent or prolonged periods.[49] Ukraine's new army chief Syrskyi has stated that his immediate goal is to improve the rotation of troops.[50] When Zelenskyy introduced Syrskyi as new army chief, he also pointed out the rotation as a priority "maintaining a balance between the performance of combat missions and the restoration of units, and units with enhanced trainings."[51] However, he didn't go into detail about prior problems of the rotation system.

To address concerns about units deployed for inconsistent or prolonged periods, examine structuring the Ukrainian military around the concept of Force Generation and Force Employment, where units go through a cycle of rest and refit, training and deployment, with a consistent cycle. The training period is the opportunity for national Standards Officers to enforce benchmarks of performance that units must achieve in order to be certified for deployment. An example could be Canada's Managed Readiness Plan.[52]

## F. Create Tiered Reserve Units

(Nov. 18, 2021), *available at:*
https://www.atlanticcouncil.org/blogs/ukrainealert/why-wartime-ukraines-defense-minister-must-be-a-civilian/.
[49] *See e.g.* Isabelle Khurshudyan and Anastacia Galouchka, *Front-line Ukrainian infantry units report acute shortage of soldiers,* The Washington Post (Feb. 8, 2024), *available at:*
https://www.washingtonpost.com/world/2024/02/08/ukraine-soldiers-shortage-infantry-russia/; Charlotte Bruneau, *Ukraine's citizen army struggles with a hidden enemy: combat stress*, Reuters (Dec. 20, 2023), *available at:*
https://www.reuters.com/world/europe/ukraines-citizen-army-struggles-with-hidden-enemy-combat-stress-2023-12-20/; Ukrainian Armed Forces will not be able to defend large cities without rotation, - Azov Chief of Staff, Front News Ukraine (Feb. 23, 2024), available at: https://frontnews.eu/en/news/details/75122.
[50] *Ukraine's new army chief Syrskyi wants better troop rotation in front lines and high-tech weapons*, PBS News Hour (Feb. 9, 2024), *available at:*
https://www.pbs.org/newshour/world/ukraines-new-army-chief-syrskyi-wants-better-troop-rotation-in-front-lines-and-high-tech-weapons
[51] *Zelenskyy overhauls Ukraine's National Security and Defense Council, reshuffles top military leadership*, The New Voice of Ukraine (Feb. 10, 2024), *available at:*
https://english.nv.ua/nation/zelenskyy-shakes-up-ukraine-s-military-leadership-removes-general-zaluzhnyi-from-nsdc-post-50391617.html
[52] Ready Forces, Government of Canada, *available at:*
https://www.canada.ca/en/department-national-defence/corporate/reports-publications/departmental-plans/departmental-plan-2022-23/planned-results/ready-forces.html

To harness the experience of veterans and to provide a low-cost basis for mobilization, Ukraine should examine creating tiered reserve units. Finland and Israel offer examples where veterans and conscripts who have completed their term of service are automatically enrolled in reserve units with annual refresher training, up to varied ages who remain available for mobilization. In addition, a secondary level of reservist mobilization can be created for military veterans who do not maintain current training but could be recalled for active duty in a crisis, or even civilians with special needed skills, as is done with the Canadian Armed Forces Supplementary Reserve.

## G. Adopt NATO Procurement Standards and Reduce Corruption Risks in Procurement

As much as possible, adopt the standards of NATO Standard Agreements (STANAG) for procurement. This will attract Western producers and maximize the number of vendors, allowing for open competition, greater transparency, production base, and price leverage for the Ukrainian government.

Furthermore, implement and enforce requirements to move to open tenders for defense contracts above a specified threshold, based on the NATO standards to minimize sole-sourcing risks of corruption. Where there is a preferred vendor, examine the process of awarding an Advanced Contract Award Notice as in Canada, allowing public notification of the intent to sole-source the deal and inviting competitor vendors to challenge the need for a sole-source.

Examine the adoption of an automatic spending breach review, such as the Nunn-McCurdy Act in the United States which triggers a review of programs that breach certain spending thresholds (25% of the current baseline, 50% of the original baseline).

*Disarmament, Demobilization and Reintegration (DDR) and Transitioning Military Officials to Civilian Life*

Challenges

Russia's invasion has prompted a massive expansion of Ukraine's military capabilities and a nationwide militarization effort in Ukraine. Prior to Russia's 2022 invasion, Ukraine's army totaled around 300,000; today, this is closer to 1

million.[53]  A highly militarized wartime Ukraine will require a carefully organized process to transition its expanded military forces into civilian life.  There will be a number of key challenges that Ukraine will need to consider in order to effectively implement this transition.

Recommendations

## A. Navigate the Armed Actor Landscape

Ukraine will need to navigate a complex armed actor landscape developed over eight years of conflict since 2014 that includes fully integrated volunteer and territorial defense force battalions, reservists, and civilian volunteers, as well as an increased number of regular military units.  This multifaceted landscape means that Ukraine's armed forces encompass actors with a range of priorities, objectives, and interests.  Ukraine will need to be mindful of these varied and possibly conflicting priorities when re-integrating these forces into civilian life.

Once Ukraine has a clear idea of the armed actor landscape, it will need to identify those military forces and officials that will transfer into the civilian security sector or civilian economy roles.  Ukraine may wish to establish objective criteria for drawing down surplus personnel, in a process similar to the system devised by the United States following World War II (the Adjusted Service Rating Score system).

## B. Facilitate Disarmament and Manage Weapons Availability

Ukraine has received billions of dollars worth of military assistance, including weapons and military equipment, from NATO and EU powers since the beginning of Russia's war in Ukraine.[54]  As select armed forces transition from military to civilian roles, widespread weapons and ammunition availability risk destabilizing Ukrainian security and threaten the long-term viability of a DDR process.  Ukraine will need to establish a system for disarmament that effectively tracks and regulates any remaining weapons and their use.  The UN Integrated Disarmament, Demobilization and Reintegration Standards provide a possible structure for guiding this process in Ukraine.

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[53] Yasmeen Serhan, *Inside the West's Mammoth Effort to Turn Ordinary Ukrainians Into Soldiers*, TIME, (Sep. 20, 2023), *available at:* https://time.com/6315601/west-mammoth-ukrainians-soldiers/
[54] Jake Horton and Tural Ahmedzade, *Ukraine weapons: What tanks and other equipment are countries giving?* (Dec. 28, 2023), *available at:* https://www.bbc.co.uk/news/world-europe-62002218

A disarmament process in light of the availability of weapons in Ukraine could include a robust and broad catalog and management program for the existing weapons in the country; built-in mechanisms to safeguard against the possible impact of corruption; a plan for the safe storage and effective maintenance of remaining, collected weapons for Ukraine's potential future use, amongst other components.

## C. Reintegrate Retired Military Members into a Post-War Economy

Ukraine will need to engage in enormous reconstruction efforts when the war ends. The extensive economic disruption brought about by the Russian invasion creates a difficult environment for Ukrainian military members, including prisoners of war, to re-enter civilian life. Ukraine will need to find ways to reconstruct its post-war economy by providing attractive economic opportunities, including employment, to Ukrainians who are reintegrating. Ukraine will need to consider how it may implement targeted growth initiatives, particularly in the regions most affected by the war, in tandem with a DDR process in order to create economic conditions that can support the reintegration of military members into civilian employment. Success in these efforts will allow for the necessary reform, growth, and creation of robust economic foundations.

Such reintegration processes should take into account gendered considerations and be tailored to different genders, as well as be trauma-informed and trauma-sensitive, engaging psychological experts in the design of reintegration plans.[55]

## D. Provide Healthcare and Psychosocial Support

A significant number of veterans, including prisoners of war, will suffer from mental and emotional trauma, disease, and physical injuries as a result of their participation in the war.[56] When transitioning parts of a country's armed forces into civilian security forces or the civilian economy more broadly, it will be important that those individuals who have been involved in or affected by the war are properly assisted in their transition into civilian life. Ukrainian veterans, especially prisoners of war, may require extended and costly counseling, medical

[55] Interview with Ukrainian stakeholders.

[56] Andriy Haydabrus , Mikel Santana-Santana, Yuriy Lazarenko, and Lydia Giménez-Llort, *Current War in Ukraine: Lessons from the Impact of War on Combatants' Mental Health during the Last Decade,* INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH, (Aug. 24, 2022), 19, 10536, *available at* https://doi.org/10.3390/ijerph191710536.

treatment, and physical therapy in order to live productive lives.  Veterans may also require assistance in reconciliation with families, in overcoming addictions, and in approaching the challenges of civilian life.

Work on such rehabilitation of demobilized former combatants in Ukraine could be led by the Ukrainian Ministry of Veterans Affairs.  Under a program approved by the Cabinet of Ministers in June 2020, the newly created Ministry was authorized to provide assistance to Ukrainian veterans who fought in the Donbas and participants in the Maidan Revolution.  This included financial assistance, medical care, housing, education and training, and employment.  It also included assistance to families of deceased service members and programs to honor veterans.[57]

### E.  Establish a Military Reserve Force

Ukraine will want to preserve the extensive military training that has been developed across Ukraine's forces to remain well-prepared to defend against possible future aggression.  Ukraine may consider the creation of a military reserve force, comprising transferred active military units.  Preserving the developed military skills among Ukrainians would allow for the safeguarding and maintenance of extensive military investment.  It would also serve as a deterrence opportunity, equipping Ukraine with the capability to expand its military presence significantly and at pace, if ever needed.  Furthermore, establishing reserve forces can provide financial support to transitioning forces through the continued payment of a military stipend.

### F.  Transition Elements of Military Forces to Civilian Security Forces

Ukraine may also consider transitioning select elements of its military forces into civilian security forces.  Throughout the war, civilian police have been important in supporting military efforts through the likes of establishing checkpoints, documenting evidence of possible war crimes, and identifying unexploded ordnance.  These efforts will need to continue and expand following the conclusion of cross-border armed conflict with Russian forces, in order to maintain security and manage borders in the previously occupied territories and border regions where domestic conflict and criminal activity are at risk to continue. Ukraine may consider a transition program between military and civilian security forces.

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[57] Ukraine Government Portal Official Website, *Veteran Support Reform*, *available at* https://www.kmu.gov.ua/en/reformi/bezpeka-ta-oborona/veteran-support-reform.

**Social Infrastructure**

Societal needs occasioned by the war will not await the transition from military to civilian administration. These are issues which will be faced by both administrations in turn. Nevertheless, this section addresses these questions in this policy recommendations paper as they are integral components of post-conflict policymaking.

*Return of Refugees*

Challenges

Russia's full-scale invasion of Ukraine has led to increased violence and unprecedented destruction.[58] As a result, there are reportedly over 6.2 million Ukrainian refugees and 5.1 million Ukrainian IDPs.[59] Organizing the return of these refugees and IDPs will require targeted procedures to ensure their rights are fully upheld during the process.

Recommendations

A. **Seek International Support for Bolstering Police and Judicial Capabilities to Uphold Security**

The Bosnian case study demonstrates that gaps in the capabilities of security institutions in a state can be a significant barrier to those seeking to return to their place of origin. To combat this and in addition to the recommendations in the previous security sector reform subsection, Ukraine can seek to bolster police and judicial capabilities, especially among communities in the eastern region of Ukraine and ethnically diverse communities. Enhancing security without increasing discrimination will be vital to this process. To do this, and ensure enforcement, Ukraine may benefit from partnering with non-governmental organizations (NGOs) or international organizations, such as the UNHCR. To address the security concerns faced by those seeking to return, Ukraine can utilize an international body such as the UNHCR to facilitate the monitoring of security concerns. Efforts could be further enhanced through direct monitoring with

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[58] U.N. Refugee Agency, *Ukraine Emergency*, UNHCR, (July 2023), *available at:* https://www.unrefugees.org/emergencies/ukraine/.
[59] U.N. Refugee Agency, *Ukraine Emergency*, UNHCR, (July 2023), *available at:* https://www.unrefugees.org/emergencies/ukraine/.

physical field offices located in neighboring states with high refugee populations or through partnerships with local NGOs.

### B. Ensure the Repatriation Process is Voluntary

One of the largest factors in the repatriation process is ensuring the voluntariness of those returning.  To ensure the best possible outcome for those looking to return, Ukraine may consider utilizing the UNHCR to implement a similar process to that of Kenya, which would involve counseling and the signing of a form ensuring that individuals seeking to return are doing so of their own volition and are properly informed of the situation.  During this process, individuals can decide if they would prefer an urban or rural-based package that would provide a larger repatriation grant like in Kenya, or a smaller grant with a land package like in Guatemala.

This can be done by creating "Return Offices" in border states utilizing regional NGOs working under a UNHCR implementation agreement.  These offices can assist individuals to ensure they fully understand the hardships faced upon return to Ukraine.

### C. Develop Programs for Reintegration

Ukraine should develop and implement social programming that addresses key areas such as healthcare, mental health, education, and housing accompanied by information campaigns and free legal aid consultations.  These components play a central role in ensuring the well-being and stability of individuals as they rebuild their lives and communities.  By prioritizing access to resources and aid, and implementing targeted programs in these domains, Ukraine can foster a supportive environment that empowers individuals to thrive and contribute to society.

*Process of Return of Illegally Deported Children and Other Civilians*

Challenges

Thousands of Ukrainian children and other civilians have been deported to Russia and Belarus.  Over 19,500 cases of children being forcibly displaced to Russia have been verified by the National Police of Ukraine, but the total estimate ranges from 180,000 to 744,000 children, with children in Ukrainian orphanages

and other government institutions most at risk.[60]  A priority for Ukraine and the rest of the world is finding these children, returning them to Ukraine, and reintegrating them into Ukrainian society.  This process requires streamlined and effective approaches for negotiating their return and providing them with the required social support.

Recommendations

### A. Develop a Comprehensive and Systematic Plan for Returning and Reintegrating Deported Children and other Civilians

The return of forcibly displaced children and other civilians to Ukraine requires a multistep approach to address the complex and multifaceted challenges that forcibly displaced children and civilians have faced and will continue to face. Although instinct demands immediate action, Ukraine can implement a thorough plan, not just to retrieve the children and other civilians from Russia, but also to ensure their successful reintegration into Ukrainian society, which may include: addressing the immediate and long-term health consequences, providing sustainable and accessible public education, and seeking justice through international tribunals.

### B. Establish a State Institution for Repatriation

One of the items of the abovementioned plan should be the establishment of a single, centralized state institution dedicated to the repatriation of Ukrainian children and civilians.  The primary goal for this institution should be to alleviate organizational obstacles to repatriation by operating as a central hub for all information, coordination, and negotiation related to repatriation.  This institution should lead the efforts of those within Ukraine as well as liaise with other international institutions assisting in the effort, such as the International Coalition

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[60] Ukrainian Ministry of Reintegration and the National Information Bureau, Children of War, *available at* https://childrenofwar.gov.ua/en; Micaela Del Monte and Nefeli Barlaour, *Russia's war on Ukraine: Forcibly displaced Ukrainian children,* European Parliament Briefing (Apr. 2023), *available at:* https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747093/EPRS_BRI(2023)747093_EN.pdf. A. Raymond and Caitlin N. Howarth et al., *Russia's Systematic Program for the Re-Education & Adoption of Ukraine's Children,* Yale School of Public Health, Humanitarian Research Lab, (February 14, 2023), *available at: data (conflictobservatory.org)*; Oleksandra Matviichuk, Natalie Arno and Jasmine D. Cameron, *Russia's Forcible Transfers of Ukrainian Civilians: How Civil Society Aids Accountability and Justice,* (March 3, 2023), *available at:* https://www.justsecurity.org/85324/russias-forcible-transfers-of-ukrainian-civilians-how-civil-society-aids-accountability-and-justice/

for the Return of Ukrainian Children.[61]  The institution or another entity is also encouraged to develop an information campaign to amplify the call for all civilians and children to be released and repatriated to Ukraine.

This institution would be responsible for providing financial resources and support to repatriation efforts, both at the front end with regard to location, identification, tracing, and repatriation, but also provide with regard to long-term assistance for families following successful repatriation.

### C. Maintain a Registry of Deported Children

Among the first tasks of the abovementioned state institution for repatriation should be the building out and maintenance of a comprehensive registry of children known or suspected of having been forcibly deported to Russia.

Drawing from the Serbian example, this registry should, where appropriate, make use of DNA collection and analysis to aid in the identification of children known or suspected of having been forcibly deported.[62]  Such collection and analysis, which should be conducted with the written consent of those involved and in the best interests of the child, would likely be most valuable in situations where a family member knows or suspects that a child in their family has been forcibly deported, and that child, unknown to the family member, is residing elsewhere in Ukraine.

### D. Establish an Independent Fact-Finding Commission

Drawing on the Serbian example, Ukraine should establish an independent commission tasked with the collection of all facts on the status of children known or suspected of having been deported and which is empowered to collect and process data from relevant Ukrainian authorities and institutions.[63]

The commission should likewise be granted investigatory powers necessary to learn more about those children who have been reported as deported to the

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[61] *See* President of Ukraine, *The International Coalition for the Return of Ukrainian Children under the leadership of Andriy Yermak and Mélanie Joly has been launched*, 2 February 2024, *available at:* https://www.president.gov.ua/en/news/pid-kerivnictvom-andriya-yermaka-ta-melani-zholi-zapusheno-r-88709.

[62] *See* Article 19, The law on establishing the facts about the status of newborn children who are suspected of having disappeared from maternity hospitals in the Republic of Serbia, *available in original Serbian at:* https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6.

[63] *See* Article 29, The law on establishing the facts about the status of newborn children who are suspected of having disappeared from maternity hospitals in the Republic of Serbia, Gazette No. 18, March 3, 2020, *available in original Serbian at:* https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/6.

abovementioned registry.  In this way, the commission will work in coordination with Ukraine's Ministry of Reintegration and National Information Bureau to improve the Children of War registry.  To this end, the commission should work to collect and digitize the children's files so that all necessary information may be synchronized in the Children of War registry.

Finally, the commission should be empowered to collect, with their consent, information directly from victims and victims' family members, not only for the purpose of aiding the repatriation of deported children but also to ensure that those impacted can share their stories and in so doing create a record of Russia's conduct.

## E. Ensure the Safety, Rights, and Basic Needs of Children and other Civilians

To ensure that the repatriation of Ukrainian children and other civilians is successful and durable in the long term as well as in the best interests of the children and other victims concerned, Ukraine must ensure the safety, rights, and basic needs of all deportees.  This should include providing appropriate medical and psychosocial support, ensuring they have relevant identification documents, and reuniting children with their families or legal guardians.

Forcibly transferred children may also require support with reintegration in Ukrainian society as many go through extensive russification procedures when deported.  Ukrainian authorities should develop plans for the development of special education programs for the returned children to reintegrate into Ukrainian society.[64]

*Employment and Education Reintegration*

<u>Challenges</u>

During the Russian occupation of Ukraine's Eastern and Southern regions and the Crimean peninsula, Russian occupying forces have introduced a number of laws and policies amending the earlier Ukrainian education and employment sectors.  The main problems Ukraine will encounter will regard providing pensions and social benefits to those who have been working and paying taxes to the

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[64] Interview with Ukrainian stakeholders.

occupying authorities, as well as recognizing the diplomas and professional qualifications issued during the occupation.

<u>Recommendations</u>

**A. Ensure Any Reintegration Policies are not Discriminatory**

When developing policies for the reintegration of employment and education sectors in currently occupied territories, Ukraine will need to ensure that such policies do not inadvertently violate anti-discrimination norms under international law. This will include considering whether policies adopted are exclusionary as earlier case studies indicate that they are not only contrary to international law but also do not achieve meaningful progress in terms of social cohesion and development of a post-conflict state.

Specifically, the Convention on the Elimination of Racial Discrimination (CERD) provides that state parties must guarantee

> "the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of [. . . ]: the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration; [and] [t]he right to education and training."[65]

Thus, to comply with its international law obligations under the CERD, Ukraine will need to adopt non-discriminatory policies for the transfer of accreditations in the education and employment sectors. Non-discriminatory practices may also be beneficial for a smoother integration of ethnic Russians back into the Ukrainian state, helping to tone down resentment and ethnic divide.

**B. Establish a Bureau to Assess Diplomas and Licenses and Create a Transition Period for Assessment**

Subject to feasibility, Ukraine may wish to put in place an assessment bureau to approve transfer of diplomas and licenses to Ukrainian standards. Where the accreditation system is similar in Russia and Ukraine, Ukraine may wish to create a

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[65] Convention on the Elimination of Racial Discrimination, adopted December 21, 1965, 660 U.N.T.S. 195, 1249 U.N.T.S. 13, art. 5, *available at:* https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx.

system for automatic recognition of licenses and diplomas, to avoid unnecessary costs and delays.

Furthermore, it would be advisable for Ukraine to create a transition period during which social payments, pensions, and education and professional diplomas and certificates are reviewed.  The review is helpful and necessary, as it can let Ukrainian authorities take steps to (i) prevent corruption; (ii) verify identities; (iii) assess current need; and (iv) try to limit the proliferation of an informal economy. The need to assess current needs is particularly important for social benefits, as it can allow the state to have a more accurate picture of the population's demographics (e.g., worsening of disability cases, deaths in the family) after occupation.

The resubmission efforts should be done carefully, so as not to result in unfair denials or delayed decisions.  For example, after the Balkan wars, Croatian compensation mechanisms for victims of sexual assault were unjustly used to deny women of Serb ethnicity from receiving compensation.[66]

## C. Develop a Program for Introducing Ukrainian-Focused Specialization for Those Whose Education and Professional Diplomas Do Not Comply with Ukrainian Standards

To avoid a shortage of professionals in certain fields in the de-occupied territories, Ukraine may want to create targeted re-education programs to prepare professionals in fields, such as pedagogy and law, to practice in Ukrainian systems. For instance, Latvia implemented a Master's program in Pedagogy that allowed teachers to improve their knowledge of pedagogy and adjust their teaching methodology and substance to the revised education system and curriculum.[67] Allowing the existing professionals in the currently occupied territories to adapt their work to Ukrainian-approved specializations as opposed to replacing them will prevent potential personnel shortages.  Widespread and rapid dismissals of professionals were seen as a shortfall in post-Nazi Germany and produced severe shortages of trained personnel.[68]

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[66] Anja Vladisavljevic, Mladen Lakic and Blerta Begisholli, *Compensation Comes Late for Rape Surivors of Balkan Wars,* (June 19, 2019), *available at:*
https://balkaninsight.com/2019/06/19/compensation-comes-late-for-rape-survivors-of-balkan-wars/.
[67] *Pedagogy and Educational Sciences in the Post-Soviet Baltic States: 1990 - 2004, Changes and Challenges,* Latvian University, 20 (2020), a*vailable at:*
https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/BAHP-2020/bahp-pes.1990-2004_Book.pdf.
[68] Charles E. McClelland, "American Reform Efforts: German Professional Education after World War II." Jürgen Heideking, Mark Depaepe and Jurgen Herbst (eds.)*, Mutual Influence on Education: Germany and the United States*

### D. Develop Exchange Opportunities Between De-occupied Territories and the Rest of Ukraine

Exchange and traineeship opportunities for different fields of work, including teachers, students, medical, and legal professionals, may help Ukraine foster cohesion and re-train those currently residing in the occupied territories according to Ukrainian standards.

### E. Provide Funding for the Reform of the Educational Sector

Transition periods are often an opportunity for post-conflict states to implement reforms and modernize different sectors, including the education sector. For instance, Ukraine may also wish to use the opportunity to design the teaching and learning approaches to the European Green Deal and Digital Strategy by increasing training on sustainable development and a green transition, switching to more environmentally friendly[69] and digital teaching methods.[70]

Moreover, an important component will be setting aside resources to consolidate the Ukrainian national spirit through education and culture, especially in territories with large Russian ethnic populations. To gather resources for these reforms, Ukraine can seek agreements with international partners and organizations. For instance, Algeria signed five loan agreements with the World Bank between 1973 and 1980 to facilitate the process of education expansion.[71]

## Rule of Law

To ensure democratic legitimacy, Ukraine will need to pay special attention to upholding the rule of law. Policymakers will have review Ukraine's adherence to human rights protections and the restrictions that were imposed during active hostilities. This section of the policy recommendations will focus on minority protections, property issues, and corruption.

*in the Twentieth Century,* Paedagogica Historica, New Series, 33 (1997), 265-75.] (1997), *available at:* https://core.ac.uk/download/pdf/270100245.pdf.

[69] Council of the European Union, *Proposal for a Council Recommendation on learning for environmental sustainability* (25 May 2022), *available at:* https://data.consilium.europa.eu/doc/document/ST-9242-2022-INIT/en/pdf

[70] *Digital Education Action Plan (2021-2027)*, European Commission, *available at:* https://education.ec.europa.eu/focus-topics/digital-education/action-plan

[71] Caroline Abadeer and Yuree Noh, *Politics and education in post-war Algeria*, POMEPS Studies 31, Social Policy in the Middle East and North Africa, p. 81, *available at:* (http://pomeps.org/wp-content/uploads/2018/10/POMEPS_Studies_31_SocialPolicy_Web-rev2.pdf.

*Human Rights: National Minorities Protections*

<u>Challenges</u>

In a post-conflict setting, where Ukraine's national identity has been severely threatened by Russia's goal to destroy the Ukrainian nation, it is of utmost importance to take action to strengthen and support the Ukrainian national identity. Yet, Ukraine's national policies aimed at strengthening its national identity should be strategically conceptualized and implemented so that Ukraine does not inadvertently fail to observe its democratic standards. In particular, it is important to strategize its approach so that it does not inadvertently violate human rights, specifically the rights of national minorities, as this would have implications on the status of democracy and rule of law in Ukraine and in its relations with the international community, such as its chances to become an EU Member State.

In this regard, international experts and Ukrainian civil society have identified a number of risks and challenges that Ukraine should take into account as it elaborates its next steps to strengthen and further protect its identity. Such challenges and risks include the potential marginalization of groups that do not fit into the national narrative and the lack of policies aimed at full inclusion of the rights of national minority groups, which could instigate violence and opposition from minority groups. According to experts, to mitigate this risk and preserve its democratic order, Ukraine should elaborate a policy for inclusive (re)integration of all national minority groups in a more strategic context of eliminating violence, and future wars, including civil ones. Such a policy should prioritize transparent and inclusive policies, engage in a dialogue with minorities and civil society, and ensure that its policies are aligned with international standards at all times, by involving international human rights observers and institutions. Experts and Ukrainian civil society organizations have also expressed concern for excessively complicated administrative procedures that may significantly impact the rights of people in occupied territories. According to experts, the procedure of issuing ID documents for people and children from the occupied territories should be simple and should be largely based on administrative laws rather than judicial procedures.

<u>Recommendations</u>

**A. Strengthen the Right to Freedom of Expression**

In a post-conflict setting, it is recommended that Ukraine revises its legislation to ensure the maximum protection of the right to freedom of expression, which, in the past years, has been curtailed due to the threats posed by Russia's war against Ukraine. In particular, the OHCHR has expressed concern about Ukraine's Law "On Media" adopted in 2022, which aims to update the legal framework governing media and ensure its compliance with international standards. According to the OHCHR, there is reason to believe that such law is likely to have the effect of disproportionally restricting the use of national minority languages in media by increasing the state language quota requirements for broadcasters.

## B. Guarantee the Right to Language in Election Campaigns

Based on the ECtHR's jurisprudence, it is recommended that Ukraine carefully assesses the application of limitations on the use of language in election campaigns, for example, by prohibiting the use of languages other than Ukrainian in elections, as such policy is likely to violate the right to freedom of language enshrined in Article 10 of the European Convention on Human Rights (ECHR). In fact, Article 10 includes the freedom to receive and communicate information in *any* language to allow large participation in public cultural, political, and social exchanges of information. That includes election campaigns. Guaranteeing the freedom of language in election campaigns is particularly important when candidates belong to minority groups; Ukraine has the human rights obligation to allow the use of national minorities' mother tongue in electoral campaigns as this is a necessary condition to ensure equal access to elections of national minority groups as other citizens. Ukraine has already improved its compliance with this recommendation through legislative amendments passed in December 2023 concerning the use of minority languages.[72]

## C. Observe the Right to Freedom of Religion

In 2022, three draft laws that were registered in Parliament have been identified as potentially violating the right to freedom of religion. Draft law no. 8371 is particularly concerning as it bans the Russian Orthodox Church and other religious organizations that are organizationally or canonically linked to it and prohibits them from renting state or private property in Ukraine, which is likely to limit the freedom of religion of certain national minorities and be practically

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[72] Interview with international and Ukrainian stakeholders. See also Marcin Jędrysiak and Krzysztof Nieczypor, *Ukraine: another amendment to the law on national minorities*, Centre for Eastern Studies (OSW) (Dec. 13, 2023), *available at:*
https://www.osw.waw.pl/en/publikacje/analyses/2023-12-13/ukraine-another-amendment-to-law-national-minorities

difficult to implement.[73]  Ukraine shall ensure that controversial laws, which have the potential of inflicting upon human rights protection, contain specific legal terminology and sufficient justification.

## D. Ensure Equal Rights of Members of the LGBT+ Community

Russia's aggression against Ukraine has increased the vulnerability of the LGBT+ community in Ukraine, including as it relates to the Armed Forces of Ukraine.[74]  Same-sex partners are not able to receive social benefits if their partners are killed or otherwise pass away nor are they able to exercise other rights enjoyed by different-sex couples.

In March 2023, a draft bill on the legalization of same-sex partnerships was introduced before the Ukrainian Parliament.[75]  The ECtHR has also emphasized that Ukraine is under an obligation to ensure the equal treatment of same-sex couples in Ukraine.[76]  In its ruling, the Court reiterated that the broadly worded aim of the protection of the traditional family cannot in itself be accepted as valid public-interest grounds justifying the denial of any legal recognition and protection for same-sex couples.

Ukraine should, therefore, adopt a law on registered partnerships (civil union) that give members of the LGBT+ community access to the same rights as different-sex couples.

## E. Strengthen the Protection of the Right to Peaceful Assembly and Association

As Ukraine transitions away from martial law and fully restores its democratic order in peacetime, it is essential to revise the existing legislation to further protect the right to peaceful assembly and association in Ukraine.  As of today, Ukraine still lacks a law that governs the process of organizing and conducting events to make full use of the freedom of peaceful assembly and association.  The current legislation gives courts considerable discretion to restrict these rights in the interests of national security and public order, as it is largely

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[73] Interviews with Ukrainian stakeholders indicated that there are 10,000 priests and the Russian Orthodox Church owns properties work millions of dollars.
[74] Interview with Ukrainian stakeholders.
[75] European Commission, Commission Staff Working Document, Ukraine 2023 Report (Nov. 8, 2023), *available at* https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf
[76] *Maymulakhin and Markiv v. Ukraine*, App no. 75135/14, ECtHR (June 1, 2023), *available at* https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224984%22]}

based on the Ukrainian Constitution which provides for the restriction of the freedom of peaceful assembly and association by judicial procedures for reasons of national security. It is recommended that Ukraine strengthen its national legislation to safeguard the rights of minorities to exercise their peaceful assembly. Relatedly, such law should, among other things, ensure that (i) national minorities have the right to set up and run a political party to be able to influence political decisions by participating in elections or referenda; (2) the right to peaceful assembly and association of political groups that criticize the country's constitutional and legal order and seek a public debate in the political arena is not hindered, provided that it complies with fundamental democratic principles; and (3) associations that promote the preservation and development of the traditions and culture of certain national minorities and that advocate for the autonomy and independence of their territories are not hindered or punished, provided that such right is exercised in compliance with fundamental democratic principles. The requirement that the political groups in question complies with fundamental democratic principles is fundamental to safeguarding Ukraine's national security and democratic order and ensures that such actions do not threaten Ukraine's national identity. In such a case, where the association engages in activities incompatible with Ukraine's constitutional order, the legislation should grant the authorities the power to dissolve it. The conditions for dissolution should be clearly outlined in the legislation to avoid abuse of discretion and violations of human rights.

*Property Issues*

<u>Challenges</u>

In response to Russia's large-scale expropriation of Ukrainian state and private property in the occupied territories, Ukraine has adopted several laws and policies to protect property rights acquired under the laws of Ukraine and forbid any other deeds in breach of Ukrainian legislation in the occupied territories. While protecting Ukraine's interests, such laws and policies should not violate applicable regional and international law principles.

<u>Recommendations</u>

**A. Ensure that Property Laws Fully Adhere to the Principle of Legal Certainty**

Ukraine's laws and policies aimed to protect Ukraine from Russia's attack on properties and investments in Ukraine should be fully compliant with applicable principles of international law and best practices based on historical precedent. In particular, any adopted legal framework must be clear, consistent, and, where necessary, consolidated. The framework should clearly delineate every person or affected group and ensure the repeal of unjust or discriminatory laws affecting property rights. Moreover, the prompt establishment of a comprehensive legal framework is necessary to preserve facts and documentation of legal instruments.

To conform with international law, Ukrainian laws and policies must follow the principle of legal certainty. In ECtHR jurisprudence, the principle of legal certainty manifests itself in different forms and contexts. It requires "the law to be clearly defined and foreseeable in its application and to respect the principle of res judicata (the principle of the finality of judgments that ensures the stability of the judicial system and contributes to public confidence in the courts). "[77]

*Corruption*

<u>Challenges</u>

While Ukraine has been fighting corruption since its independence in 1991, corruption remains widespread in Ukrainian society representing a significant challenge to the proper functioning of a democratic and transparent governance system and to joining the EU.[78] Ukrainian governments have taken initiative to combat corruption in the past twenty years including 2004 failed 'war on corruption' led by former President Viktor Yushchenko, Ukraine's membership in the Group of States Against Corruption in 2006,[79] and current President Volodymyr Zelenskyy's strengthening of anti-corruption infrastructure during the invasion of

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[77] *Guðmundur Andri Ástráðsson v. Iceland,* App. No. 26374/18, ECHR, para. 238 (2020), *available at:* https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206582%22]}.

[78] Julian Hayda, Ukraine's fight against corruption isn't new. It's still trying, NPR (Jan. 27, 2023), *available at:* https://www.npr.org/2023/01/27/1151326940/ukraine-anti-corruption-efforts; Farah Stockman, *Corruption Is an Existential Threat to Ukraine, and Ukrainians Know It*, The New York Times (Sept. 10, 2023), *available at:* https://www.nytimes.com/2023/09/10/opinion/ukraine-war-corruption.html; Tara Law, *What to Know About the Corruption Scandals Sweeping Ukraine's Government*, Time (Feb. 1, 2023), *available at:* https://time.com/6249941/ukraine-corruption-resignation-zelensky-russia/

[79] *GRECO publishes report on fight against corruption in Ukraine*, Kyiv Post (Nov. 18, 2011), *available at*: https://archive.kyivpost.com/article/content/ukraine-politics/greco-publishes-report-on-fight-against-corruption-117219.html

Ukraine.[80]  Despite such efforts, corruption remains an important challenge for Ukraine.

Recommendations

### A. Emphasize the Importance of Political Will to Act Against Corruption

Political will has been defined as "the extent of committed support among key decision makers for a particular policy solution to a particular problem."[81] Where the political will to fight corruption is lacking, the effectiveness of any recovery and transitional justice mechanisms remains limited.  Corruption typically stands in the way of transparent transitional justice mechanisms and processes taking advantage of the absence of effective anti-corruption policies and the stream of funding that typically flows in-country in the aftermath of armed conflicts.  It is recommended that the Ukrainian government, together with civil society, builds strong political will in favor of anti-corruption efforts at the outset of the transitional period because the political will for reform is the strongest immediately following a transition when a moment of "civic consciousness" exists.  The Ukrainian government should be vocal about its anti-corruption strategy, for example by organizing country-wide public awareness campaigns, and should work together with civil society to identify actors who have been engaged in corrupt practices before and during conflict, preventing them from engaging in such practices in the aftermath of war.

### B. Ensure that Corruption is Duly Addressed by Transitional Justice Mechanisms Including Judicial and Non-Judicial Mechanisms, such as Truth Commissions

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[80] Veronika Melkozerova, *Zelenskyy's corruption crackdown plan raises cover-up fears*, Politico (Aug. 28, 2023), *available at:*
https://www.politico.eu/article/volodymyr-zelenskyy-corruption-scandal-crackdown-treason-ukraine-war-democracy-antac-anti-corruption-action-center/#:~:text=%E2%80%9Cconspiracy%20theories.%E2%80%9D-,Zelenskyy%20acted%20to%20begin%20the%20process%20of%20changing%20the%20law,the%20procurement%20of%20humanitarian%20aid. ; Петро Бурковський, Що думають українці про проблеми в секторі оборони та війську, Фонд «Демократичні ініціативи» (Sept. 4, 2023), *available in original Ukranian at*:
https://dif.org.ua/article/shcho-dumayut-ukraintsi-pro-problemi-v-sektori-oboroni-ta-viysku; Shaun Walker, *'Ukrainians understand corruption can kill': Kyiv takes on an old enemy*, The Guardian (Sept. 19, 2023) *available at:* https://www.theguardian.com/world/2023/sep/19/corruption-kyiv-takes-on-an-old-foe-wartime. See also Venice Commission, "On the Law "On The Prevention Of Threats To National Security Related To The Excessive Influence Of Persons With Significant Economic And Political Weight In Public Life (Oligarchs)" 12 June 2023, *available at:* https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)018-e.
[81] David Roberts, *What is "political will," anyway? Scholars take a whack at defining it*, Vox, https://www.vox.com/2016/2/17/11030876/political-will-d.

Transitional justice has more chances to succeed if accompanied by concrete and impactful anti-corruption policies. The fight against corruption should be adequately integrated into all judicial and non-judicial mechanisms and processes aimed at accountability, truth-seeking, and reconciliation. Including corruption in the scope of work and mission of transitional justice mechanisms and processes is also an important sign that the government is taking serious steps to fight against corruption. In setting up transitional justice mechanisms and processes, transitional justice actors, including investigators, prosecutors, judges, and truth commissions workers should be specifically and adequately trained on how to promptly identify and elicit testimony on corruption issues. In the case of truth commissions, at least one commissioner should be selected on the basis of their experience investigating corruption. Additionally, civil society should be empowered to monitor and report allegations of corrupt practices.

### C.    Train Governmental and Transitional Justice Workers on Anti-Corruption Issues

Building upon the previous recommendation, overall, training government and transitional justice workers to recognize and combat corruption is essential for anti-corruption efforts. Such training could include what constitutes corruption, how to recognize signs of corruption, and what to do when one is approached for a bribe or believes bribery is taking place. For example, truth commission staff may be trained on corruption issues that surface during statement-taking, investigations, public hearings, victim support, and the final analysis and report-writing phases.

Training that includes the ways that corruption affect the average individual may increase political will for transitional justice programs. Training can also be based on a "code of conduct" that positively enforces values that the organization wants its staff to follow and creates a mindset where complying with ethical standards is rewarded.

### D.    Pursue Effective Measures Against High-Level Actors Who Were Engaged in Large-Scale Corruption

Prosecutions against high-level officials for corruption typically sends a powerful message against impunity and contribute to democratic transitions by delegitimizing the previous regime. High-level cases could also serve as a lightning rod to summon political will without overwhelming a potentially under-resourced judicial system. Amnesty should be an option only for the lowest

level of corrupt actors and, even then, should be combined with some form of accountability, such as a fine on top of disgorging ill-gotten gains.

For instance, according to Ukrainian civil society, the State Migration Service of Ukraine remains one of the most corrupt institutions in Ukraine.[82] Therefore, in the post-conflict space, sufficient attention should be paid to the implementation of anti-corruption measures that increase the protection of migrants and that scrutinize the work of this office.

### E.    Support Laws that Protect Journalists and Civil Society

Transitional justice campaigns should support the critical role that independent media and other civil society actors have in investigating corruption and publicizing the efforts of anti-corruption actors.  This may be done by advocating for freedom of information laws, lobbying to decriminalize defamation laws that affect corruption, and training investigative journalists.  To build political will and to maximize the effects of its anti-corruption policies, it is recommended that the Ukrainian government develops a strategy to promote the protection of journalists and civil society actors, especially during the transitional justice process.

### F.    Vet New Government Officials and those involved in Transitional Justice Efforts

Vetting provides three benefits to transitional justice mechanisms.  First, vetting can signal to citizens that a corrupt regime is in fact out of power, including those in the security services.  Second, it can support transitional justice programs by removing individuals from power who may impede transition.  Third, vetting can foster partnerships in the institutions carrying out transitional justice. However, it is very important to set proper vetting criteria.  Barring any and all low-level corrupt actors may breed resentment and backlash, especially where corruption was the only means to gain or maintain state employment or contracts.

### G.    Leverage International Institutions to Bolster Under-Resourced Transitional Justice Efforts

Where international development banks provide funding for transitional governments, transitional justice practitioners should advocate for the banks'

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[82] Interview with Ukrainian stakeholders.

insistence on anti-corruption reforms and for greater funding for these efforts from the banks.  Transitional justice programs may also seek to leverage international institutions in asset recovery or vetting matters.  It is important that Ukrainian civil society organizations push for such policies and that the Ukrainian government sets strict requirements for financial operations to prevent corrupt practices.

**Transitional justice**

Transitional justice processes are an important component of post-conflict governance.  To ensure that Ukraine is able to move past the wartime atrocities, policymakers will have to address various questions, including how to approach those who collaborated with occupying authorities.

*Collaborators*

Challenges

The current Ukrainian criminal legislation in force[83] addressing the issue of collaborators has been widely criticized by international organizations and civil society.[84]  Its wording is broad and could apply to many people residing in occupied territories even if they did not voluntarily collaborate with the occupying authorities or when they were compelled to collaborate by the occupying power.  This could infringe upon various Ukrainian human rights obligations.

Recommendations

**A. Amend Article 111.1 of Ukraine's Criminal Code on Collaborators to Comply with Human Rights and Humanitarian Law Standards**

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[83] Criminal Code of Ukraine, Article 111.1, *available in original Ukrainian at:* https://protocol.ua/ua/kriminalniy_kodeks_ukraini_stattya_111_1/; Ukraine: New Laws Criminalize Collaboration with an Aggressor State, *available at:* https://www.loc.gov/item/global-legal-monitor/2022-04-04/ukraine-new-laws-criminalize-collaboration-with-an-aggressor-state/

[84] NGO "Human Rights Centre ZMINA", NGO "Civil Holding "GROUP OF INFLUENCE", NGO "Donbas SOS", NGO "Crimea SOS", Charity Foundation "VostokSOS", Charity Foundation "Stabilization Support Services", NGO "Crimean Human Rights Group", *Criminal Liability for Collaborationism: analysis of current legislation, practice of its application, and proposals for amendments*, Analytical note, *available at:* https://zmina.ua/wp-content/uploads/sites/2/2022/12/zvit_zmina_eng-1.pdf;  Office for Democratic Institutions and Human Rights, *Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, Organization for Security and Cooperation in Europe, (14 December 2022), *available at:* https://www.osce.org/files/f/documents/0/5/534933.pdf.

Organizations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), have criticized the law on collaboration activities. OHCHR, in particular, in its report, declared that the law and certain instances of its implementation have not complied with international human rights and humanitarian law.[85] As such, to comply with international law standards, Ukraine should amend this legislation and narrow the scope of its application.

Specifically, currently, approximately 400 cases are being opened in Ukraine under Article 111.1 of Ukraine's Criminal Code on Collaborators. The Ukrainian authorities should rethink this legislation and accompanying policy to focus on those most responsible for atrocities in the occupied territories.[86] The law should not be used as a tool for political persecution and clearly distinguish between people who served in higher official positions and had a material contribution to the Russian war effort and those who had to continue their professional functions in the occupied territories to earn a living, to satisfy the needs of the population, or otherwise had to involuntarily collaborate with the occupying forces.

The prosecution of any individual should be based on credible evidence of their collaboration and involvement in war crimes, crimes against humanity, genocide, the crime of aggression, or other serious human rights abuses. Such prosecution should not be based on acts that are performed during the occupation that relate to the continuation of public services, such as the provision of education,[87] "feeding, sheltering, clothing, transportation or health"[88] as the occupying power is allowed to compel persons to engage in these activities under the Geneva Convention IV. Likewise, certain law enforcement and justice positions can be compelled to continue working under the Geneva Conventions as they are necessary for the maintenance of legal order in occupied territories.[89] The Fourth Geneva Convention further establishes protections for individuals who cooperate with the occupying forces, and envisage cooperation between the occupying power and the administrative personnel of the occupied territory to

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[85] United Nations Human Rights Office of the High Commissioner, *Report on the Human Rights Situation in Ukraine, 1 August 2022 - 31 January 2023* (March 24, 2023), *available at:* https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf

[86] Interviews with Ukrainian stakeholders.

[87] Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, art. 50, *available at:* https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949

[88] Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, art. 51, *available at:* https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949

[89] Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, art. 54, Commentary of 1958, *available at:* https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-54/commentary/1958

ensure the continuation of the basic services and operations of a territory.[90]  For instance, prosecuting certain members of educational institutions who continued to work in the occupied territories as collaborators may be inconsistent with international principles.  Such prosecution would also aggravate the shortage of skilled teaching personnel in these territories.[91]

## B. If Ukraine Decides Not to Amend the Law, Issue Guidelines Clarifying the Scope of the Law

Interviews with several prominent Ukrainian civil society organizations indicated that passing an amendment to the existing legislation might be a lengthy and complicated process.  They rather recommended issuing prosecutorial guidelines to clarify the application of the law to ensure it is used according to international legal standards.  In lieu of passing a formal amendment to the law, Ukraine can therefore opt for issuing specific guidelines for prosecutors and judges across Ukraine to uniformly apply the law in prosecutions.

## C. Specify the Application of Article 436-2 of the Criminal Code of Ukraine

Article 436-2 of Ukraine's Criminal Code criminalizes the glorification of Russian acts of aggression.[92]  The current language of the law prohibits any justification, recognition as legitimate, or denial of the existence of aggression of the Russian Federation, among other acts.  Ukrainian experts have pointed out the law's broad language and the possibility of different interpretations, which might negatively affect the work of Ukrainian civil society, journalists, and activists and contradict Ukraine's obligations under human rights treaties related to the freedom of expression thereby threatening democratic functions in Ukraine.[93]

## D. Prosecute Collaborators According to Fair Trial Rights and Due Process Standards

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[90] Article 24, relating to child welfare; Article 40, relating to employment and compulsory work; Article 50, regarding occupying powers' treatment of children; Article 51, regarding enlisted labour; Article 54, relating to the treatment of judges and officials by an occupying power; and Article 56 relating to hygiene and public health all appear to reflect the expectation that local authorities should generally continue to work with the occupying forces in the provision of civil services and that, in some circumstances, they may be compelled to do so.  *See* Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, arts. 24, 40, 50, 51, 54, and 56, *available at:* https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949.
[91] PILPG Interviews with international and domestic stakeholders.
[92] Criminal Code of Ukraine, Article 436-2, *available in original Ukrainian at:* https://protocol.ua/ua/kriminalniy_kodeks_ukraini_stattya_436_2/
[93] Interview with Ukrainian stakeholders.

Additionally, any prosecution of collaborators should be based on fair trial rights and due process. Ukraine ratified the International Covenant on Civil and Political Rights (ICCPR) in 1973 and has been a party to the ECHR since 1995. Both treaties contain directly relevant protections, specifically related to fair trial rights and due process. The right to freedom of expression in Article 10 of ECHR, may conflict with the provisions of Article 111- 1, Article 110, and Article 436-2 that criminalize expression of support for the occupying power. Prosecutions based on things that collaborators have said or posted online will likely breach Article 10 in many, if not most cases. The criminalization of implementing the academic agenda of the occupying power and spreading its propaganda could also constitute a breach of Article 10 if prosecuted in many circumstances. Article 10(2) acknowledges that restrictions and penalties may be necessary in a democratic society in the interests of national security, territorial integrity, and public safety and Article 15 further permits derogations in wartime, although not from Article 7's principle of retroactivity. Derogations may be justifiable in the prosecutions of individuals unequivocally engaged in spreading the propaganda of the occupying forces or actively participating in the elements of Russian education in the temporarily occupied territories that seek to eradicate Ukrainian national identity. However, in all cases, the ECtHR will apply a proportionality test to any derogations from Article 10[94] and considers that the "least restrictive" means should be used to be considered proportionate and necessary in a democratic society.[95] To the extent that Article 111(1) and Article 436-2 derogate from the right to freedom of expression in Article 10, Ukraine should be aware that the ECtHR is likely to scrutinize the proportionality of derogations from the ECHR and be prepared to justify any derogation on the basis of the Court's existing jurisprudence.

*Lustration*

<u>Challenges</u>

The process of lustration in Ukraine has thus far been governed by the law of Ukraine No. 1682-VII 16 of September 2014 "On the cleansing of power" (Lustration Law).[96] Nevertheless, this law does not address the current

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[94] *Handyside v The United Kingdom*, Application no. 5493/72, ECHR, Judgment (7 December 1976), *available at:* https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]}

[95] *Glor v Switzerland*, Application no. 13444/04, Judgment (30 April 2009), *available at:* https://hudoc.echr.coe.int/eng#{%22appno%22:[%2213444/04%22],%22itemid%22:[%22001-92525%22]}

[96] Law of Ukraine № 1682-VII 16 of September, 2014. "On the cleansing of power".

circumstances in Ukraine and has encountered several challenges and criticisms from European institutions.[97]

## A. Amend or Annul the Lustration Law

The earlier Lustration Law passed in 2014 is not suitable for the current circumstances in Ukraine and needs to be either amended significantly or annulled. If annulled, a new law should be put in place to ensure those who have collaborated with occupying forces or served in official administrative positions in the occupied territories do not face a threat to Ukraine's democracy and rule of law in the future.

Lustration serves an important role in screening and excluding individuals associated with past crimes and human rights abuses so that states in transition can prevent a recurrence of human rights violations and ensure that public institutions are reliable and legitimate. Lustration precludes a certain group of individuals from serving in the government based on their affiliations with the previous regime. Alternatively, vetting processes evaluate individuals on a case-by-case basis to determine their fitness for government service. Vetting and lustration processes seek to increase public trust in government institutions, promote the legitimacy and efficacy of institutions, and mark a break with the abuses and problems of a past regime.[98]

## B. Define the Goal of Lustration

The most successful lustration processes incorporate feedback from the public into both the conception and implementation phases of the program. Before defining the parameters of lustration, it is important to determine the goal(s) of the lustration process. For instance, it is important to determine whether the priority of a lustration process is to ensure that public sector employees are individuals of integrity or if it is more important to rebuild the public's trust in the government. Other relevant considerations include whether the state's citizenry believes that most employees deserve a chance at redemption; whether there is a concern that an

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[97] European Commission for Democracy through Law (Venice Commission), *Final Opinion on the Law on Government Cleansing (Lustration law) of Ukraine*, Opinion No. 788/2014 (19 June 2015), *available at:* https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2015)012-e

[98] *Transitional Justice: Information Handbook*, UNITED STATES INSTITUTE OF PEACE 3 (Sept. 2008), *Available at* http://www.usip.org/files/TRANSITIONAL%20JUSTICE%20formatted.pdf.

unvetted state will undermine a transition to democracy; and whether there are stakeholders most concerned with creating an institutional vacuum during this period of uncertainty and instability. The scope of the lustration should be highly dependent upon what goals have been set for the vetting process.

## C. Include Clear Vetting Criteria in any Law Issued for Lustration

Vetting criteria is typically established by legislation or the vetting commission at the outset. Best practice indicates that Ukraine should focus their vetting efforts on individuals who have committed the most egregious human rights violations during, and before, the conflict.

Given Ukraine's limited resources, removing these individuals from government is of highest priority from both an accountability and institutional integrity perspective. Beyond that, vetting commissions can also consider criteria such as corruption, involvement in other criminal activity, and ties with political or armed groups. Sometimes, vetting also includes criteria for evaluating an individual's qualifications and skills. While post-conflict states are sometimes known to "purge" or sweepingly bar entire groups of individuals from government service, usually based on their affiliation with the prior ruling government, this practice is increasingly frowned upon as undermining procedural due process, reconciliation, and government stability. State practice confirms that vetting an individual based on his or her own actions is more equitable and democratic.

## Development

The war has significantly impacted Ukraine's economy and it will require a large amount of resources to reconstruct. This section will address the process of re-establishing and reforming the economy in the post-conflict phase.

*Re-establishing and reforming the economy*

<u>Challenges</u>

Russia's war in Ukraine has had a profound impact on Ukraine's economy and growth. As of early 2024, Ukraine's economic losses due to the war range from $543 billion to $600 billion USD.[99] Moreover, Ukraine's economy currently

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[99] *Direct damage caused to Ukraine's infrastructure during the war has already reached almost $63 billion. Global economic losses are about $543–600 billion*, Kyiv School of Economics, *available at:*

spends approximately 22% of GDP on defense and homeland security[100] thereby diverting large portions of resources that could otherwise go to the state's development and social support, which will need to be reallocated following the war. Reforming and rebuilding the economy is commonly a grave challenge for post-conflict states.

      <u>Recommendations</u>

### A. Seek International Financial Aid

      Financial aid plays a key role in the post-war phase. If people don't have economic opportunities, they are more prone to engage in criminal activities, refugees are less willing to return and contribute to post-war reconstruction, and more instances of violence may erupt, prolonging the conflict.[101] Post-conflict countries inherit a severe economic and social decline, causing them to have a higher risk of further conflict than other countries. Concessional development assistance (excluding humanitarian assistance and military aid) directly affects economic growth, which has the single biggest impact on the global incidence of conflict.[102] When economic activity is disrupted, normal business becomes more uncertain, and economic behavior tends to become more opportunistic as people have fewer incentives to build a reputation for honest dealing. For example, when property rights are confused in post-war situations, and there is no available economic relief, people without good title can seize or occupy the property of people who have fled, contributing to criminality.[103]

      Economic instability also discourages the return of refugees, perpetuating poverty within the country because much-needed wealth is being held abroad. High indebtedness, poor economic policies, and political instability contribute to the problem. Refugees who have fled the region should be encouraged to return and contribute to post-war reconstruction. One way to encourage repatriation includes keeping the exchange rate competitive because a wide gap between the

https://kse.ua/about-the-school/news/zbitki-naneseni-infrastrukturi-ukrayini-v-hodi-viyni-skladayut-mayzhe-63-mlrd/

[100] Daniil Monin, *Ukraine's Budget for 2024*, Wilson Center (Dec. 12, 2023), *available at:* https://www.wilsoncenter.org/blog-post/ukraines-budget-2024#:~:text=Military%20Spending&text=Twenty%2Dtwo%20percent%20of%20GDP,for%20defense%20and%20homeland%20security.

[101] Collier, Paul; Elliott, V. L.; Hegre, Håvard; Hoeffler, Anke; Reynal-Querol, Marta; Sambanis, Nicholas; Breaking the Conflict Trap : Civil War and Development Policy (2003).

[102] Collier, Paul; Elliott, V. L.; Hegre, Håvard; Hoeffler, Anke; Reynal-Querol, Marta; Sambanis, Nicholas; Breaking the Conflict Trap : Civil War and Development Policy, 150 - 155 (2003).

[103] Collier, Paul; Elliott, V. L.; Hegre, Håvard; Hoeffler, Anke; Reynal-Querol, Marta; Sambanis, Nicholas; Breaking the Conflict Trap : Civil War and Development Policy, 135 - 137 (2003).

official exchange rate and that of the parallel market is a powerful driver of capital flight.[104]

Finally, economic instability can cause more instances of violence to erupt because citizens do not have the ability to participate in a thriving economy. A solution to this problem is the process of disarmament, demobilization, and reintegration (DDR). This strategy allows ex-combatants to find new and productive roles in civilian life. Conflict is reduced through decreased military expenditure and poverty reduction, allowing for stability to take hold. As stated above, financial aid is necessary to avoid increased criminality, a fleeing populace, and new conflict in the post-war region.

## B. Reform and Develop Social Programs

In the post-war phase, Ukraine will require reforms of social programs to provide a foundation for future Ukrainian prosperity. These efforts will predominantly relate to economic modalities and will need to accommodate both existing and returning populations. They may also need to incorporate existing social infrastructure or be established in their entirety within de-occupied areas.

A successful post-conflict transition will require a thorough understanding of issues, challenges, and priority areas. The reintegration of warfighting citizens and those involved in the war effort will hinge on Ukraine's ability to generate employment and income opportunities in both occupied and de-occupied areas. Ukraine should also weigh the value of implementing sub-optimal economic policies to maximize civil participation in national productivity.[105] This means that areas transitioning from Ukrainian military control will need to reincorporate citizens whose livelihood may have primarily been a derivative of a wartime economy. Many capable and qualified individuals were required to leave their positions and join the war effort. These industries may be altered and degraded and can often lead to unemployment among former military members once combat forces are drawn down. Ukraine should seek to leverage any influx of financial and intellectual capital towards supporting the redevelopment of those industries most impacted by the war. Additionally, the Ukrainian war effort necessarily diverted many resources towards the military in support of its contemporary

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[104] Collier, Paul; Elliott, V. L.; Hegre, Håvard; Hoeffler, Anke; Reynal-Querol, Marta; Sambanis, Nicholas; Breaking the Conflict Trap : Civil War and Development Policy, 157 (2003).

[105] Nikolaos Tzifakis, *Post-Conflict Economic Reconstruction* (Jan. 2013), *available at:* https://www.researchgate.net/publication/247769868_Post-Conflict_Economic_Reconstruction

defense needs.  These resources must be reallocated through an organization of both financial and human capital.

The creation of employment opportunities will be especially necessary in areas of former Russian occupation because of acute differences in the conditions in these areas and to increase social cohesion and decrease pro-Russian tendencies among the population.

## C. Develop Oversight Auditing of Social Support Programs

It is also important to implement robust oversight mechanisms.  Libya provides an example of the necessity for oversight where financial resources are distributed among a population in the aftermath of conflict.  DDR initiatives by the Libyan government in the 2010s resulted in the expansion of militia-based conflict due to a lack of oversight by its Commission for Warrior Affairs.  This organization had sought to register former militia members and incentivize their disarmament by providing employment and reintegration opportunities.  However, the nature of the Libyan civil war was such that the number of individuals registered with militias exceeded that of those individuals who partook in hostilities.  When these individuals registered with the Commission to receive a salary for government employment, they were given no incentive to withdraw from their militia.  Thus, the Commission's disarmament program had the effect of providing indirect financial support to militias which had grown in number since the conflict began.

It is important to remember that any reintegration programs must consider incentives as well as implications of any funding provided through such programs to ensure all armed actors comply with the DDR policies.[106]  Oversight must be capable of tracing funding from its source to implementation.  It will also need to extend beyond financial checks and balances to include the equitable distribution of employment opportunities among the population.  This is to avoid the imbalance and civil unrest which could result from newly elected or appointed individuals awarding positions based on pre-war or conflict-derived loyalties.  As mentioned previously, this will likely require both domestic and international auditing as it

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[106] PILPG & Milbank, Policy Planning Case Study Disarmament, Demobilization, and Reintegration Reflections: Lessons Learned from Afghanistan, Libya, Angola, Liberia, and Bosnia (Dec. 2022), *available at:* https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/6419b0f71eacf968818f3444/1679405304144/FINAL+Case+Study+-+Afghanistan%2C+Libya%2C+Angola%2C+Liberia%2C+and+Bosnia+-+Bob+Perito.docx.pdf.

relates to the implementation of international financial resources and programs targeted at the reconstruction of Ukraine.