



# Sounding the Alarm: Protecting Democracy in Ukraine

A Freedom House Report  
on the State of Democracy and  
Human Rights in Ukraine



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David J. Kramer  
Robert Nurick  
Damon Wilson  
with Evan Alterman

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## **Foreword**

One year after Ukrainian citizens elected Viktor Yanukovich as their new president, Freedom House sent an independent team of experts to Kyiv, Kharkiv, and Lviv to assess the country's democracy and human rights situation. The assessment was conducted one month after Freedom House downgraded Ukraine from Free to Partly Free in its *Freedom in the World 2011* rankings.<sup>1</sup> Until that point, Ukraine had been the only non-Baltic former Soviet state ranked in the Free category; it was one of only two countries worldwide to be downgraded to Partly Free for developments in 2010.

Freedom House, with support from the Open Society Foundations, decided to conduct this assessment for several reasons. With a population of 46 million and shared borders with the European Union (EU) and NATO member states, as well as with Russia, Ukraine is a country of vast importance. If it becomes a more established, democratic, market-oriented member of the Euro-Atlantic community, it will have a positive effect on the wider region and become a success story for its neighbors to emulate. If it moves in a more authoritarian direction, Ukraine will not only set back its own future, but also damage hope for reform in Eurasia as a whole. Finally, the debate about Ukraine both inside the country and in the West has become rather polarized, breaking down roughly into pro- and anti-Yanukovich camps.

These concerns were reinforced by what we heard and saw during our visit. In our view, there is no question that President Yanukovich has consolidated power at the expense of democratic development. The president and his defenders credibly argue that this centralization of power is necessary if the administration is to have any chance to govern Ukraine effectively and pursue long-overdue economic reforms. While the discipline of Yanukovich's government is a welcome change to some, representing a departure from the paralyzing and endless bickering of the Yushchenko-Tymoshenko period, it has also revealed authoritarian tendencies. The negative effects have included a more restrictive environment for the media, selective prosecution of opposition figures, worrisome instances of intrusiveness by the Security Service of Ukraine (SBU), widely criticized local elections in October 2010, a pliant parliament (Verkhovna Rada), and an erosion of basic freedoms of assembly and speech. Corruption remains a huge drain on the country, and there is significant room for the situation to get even worse.

Indeed, if left unchecked, the trends set by Ukraine's current leadership will move the country toward greater centralization and consolidation of power—that is, toward authoritarianism. The checks, if they come, must be both domestic and foreign in origin. But while civil society remains rather vibrant, it is also dispirited, depressed after the letdown by the Orange Revolution's leaders, and despondent over the current government's direction. The formal opposition offers little hope, as longtime political figures fail to inspire much public confidence.

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<sup>1</sup> Key findings from *Freedom in the World 2011* are available online at [http://www.freedomhouse.org/images/File/fiw/Tables%20%20Graphs%20%20etc%20%20FIW%202011\\_Revised%2011\\_11.pdf](http://www.freedomhouse.org/images/File/fiw/Tables%20%20Graphs%20%20etc%20%20FIW%202011_Revised%2011_11.pdf).

This dynamic places even more pressure and responsibility on the West to deepen its engagement, both with the Yanukovich government and with Ukrainian society, by encouraging and rewarding good performance and pushing aggressively against backsliding on democracy. Our visit reaffirmed our belief that Ukraine's leaders do care about what the West thinks; they seek support and approval for their policies. And yet both the EU and the United States seem to have disengaged from Ukraine or narrowed the bilateral agenda to a few issues of strategic importance, such as nonproliferation. This is the wrong approach.

April 2011

## **Executive Summary**

In February 2011, under the auspices of Freedom House, David J. Kramer and two independent analysts, Robert Nurick and Damon Wilson<sup>2</sup>, traveled to Ukraine to assess the state of democracy and human rights one year after the inauguration of Viktor Yanukovich as the country's fourth president since independence. The team traveled to Kyiv, Kharkiv, and Lviv to meet with a wide range of government officials, political opposition figures, civil society actors, journalists, and students.<sup>3</sup>

The assessment team reached three broad conclusions:

- 1) Ukraine under President Yanukovich has become less democratic and, if current trends are left unchecked, may head down a path toward autocracy and kleptocracy.
- 2) Yanukovich and his government value their domestic standing and international reputation, and remain responsive to outside pressure. Therefore, domestic actors as well as the West retain a capability (and have a responsibility) to check antidemocratic tendencies and support constructive initiatives both inside and outside the government.
- 3) Ukraine's political and cultural diversity is a bulwark against any one force dominating political space throughout the country.

Most disturbingly, the assessment team found a Ukrainian elite disillusioned with their democratic choices and dispirited about their country's and their own personal futures. In brief, the shortcomings of Ukraine's democratic experience to date are putting its future democratic development at risk. Indeed, the assessment team found an unhealthy political environment in Ukraine, characterized by:

- consolidation of power, with a narrow ruling group under Yanukovich intent on restoring political order and implementing policy using a more intrusive and visible SBU presence as well as an increasingly malleable judicial system;
- a ruling group that is equally interested in dividing spoils and protecting its own (though egregious corrupt behavior has also been associated with prior governments);
- lingering resentment over the failure of the Orange Revolution leaders, in power from 2005 through 2009, and the continued fragmentation of the political opposition;
- the effects of the financial crisis, the International Monetary Fund (IMF) bailout, and ensuing economic reforms; and

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<sup>2</sup> The views of Nurick and Wilson reflected in this report are their own and not those of their institutions.

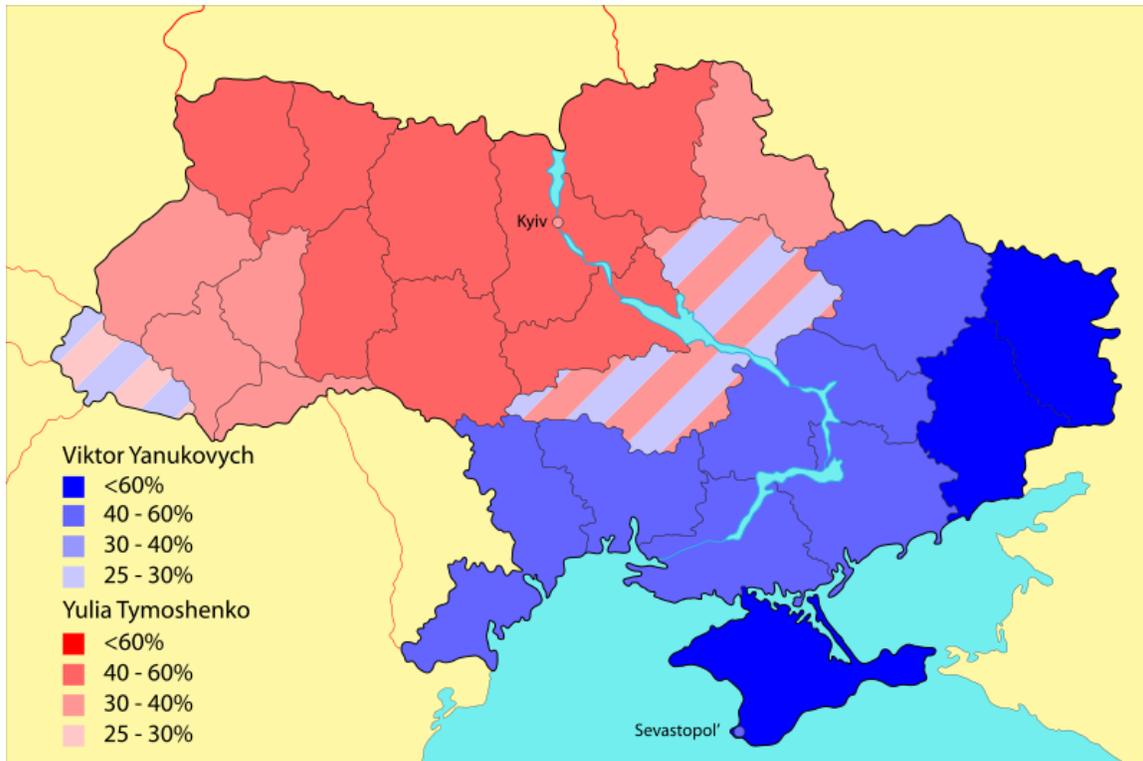
<sup>3</sup> See Appendix I for a full listing of the interlocutors with whom the team met in Ukraine. All conversations were conducted under Chatham House rules, meaning none of the comments reflected in this report are attributed.

- enervated civil society groups and independent media that are increasingly under pressure from government authorities, including the security services, with particularly difficult conditions in the regions.

Having come to power through a democratic process, Yanukovich's Party of Regions inherited a polity suffering from infighting, a lack of effective governance, and widespread corruption. The party's officials are systematically centralizing authority with the stated goals of bringing order to this chaotic situation, implementing difficult reforms, and advancing national aspirations to join the EU. Given Ukraine's recent tumultuous political history, this narrative is credible and compelling. However, there is no clear sense of limits to the push for centralization. In fact, the effort has led to policies that have degraded the capacity of civil society and the political opposition to enforce such limits. The result is a weakening of checks and balances in Kyiv and the signaling of a permissive environment for the pursuit of local political agendas in the regions. Moreover, history shows that undermining institutional checks and balances inexorably leads to less transparency, more corruption, and a greater risk of authoritarianism, a trend seen in most of the former Soviet Union.

Regardless of the government's motivations, the process under way in Ukraine today is eroding its democracy. Such deterioration runs counter to Western interests as well. Accordingly, Europe and the United States must deepen their level of engagement with the Yanukovich government and with Ukrainian society, tap into their presently underutilized influence and leverage, and do what they can to stanch the current trends.

In the conclusion below, we offer recommendations on how all relevant parties can play a more positive role in meeting Ukraine's various challenges.



Poll Results from First Round of Presidential Elections, 2010 Author: Ivan Gricenko

## **Background**

Twenty years ago, Ukraine did not exist as an independent country. Before its independence in 1991, it was dominated by communist apparatchiks and subservient to Moscow. The people of Ukraine enjoyed neither democratic nor economic freedoms; they had endured decades of Sovietization, Russification, and suppression—brutal at times—of Ukrainian culture and identity.

Today, it is difficult for most observers to recall the reality of that recent history. When Ukraine arrived on the world stage as a sovereign nation in 1991, it was one of the most promising states to emerge from the ashes of the Soviet Union. It possessed an educated workforce, strong industry and agriculture, and proximity to Europe. Overnight, it became the largest nation by area within Europe, excluding Russia and Turkey, and had the sixth largest population.

The vision for the country championed by many Ukrainians, and their Western supporters, was of an independent, sovereign Ukraine with strong democratic institutions and a free market, embedded in Europe and a partner of the United States and Russia.

Ukraine today is at an inflection point. The decisions taken by President Yanukovich and his government—and the response of Ukrainian civil society and the West—will determine whether the country gradually evolves into a European democracy or slips back into a corrupt post-Soviet authoritarian state.

Both futures are possible. Yet only one is preferable.

Yanukovych has repeatedly articulated the goal of a democratic Ukraine within Europe. But the country today is not on a path that will achieve this vision. Its young democracy and weak institutions face political manipulation, and its fragile economy is subject to massive distortions resulting from widespread, top-down corruption. Ukraine is becoming less democratic, and if no corrective action is taken, it may head down a path toward autocracy and kleptocracy.

There is no shortage of justifications for the current government's approach. Yanukovych and his team correctly argue that they inherited a country in economic free-fall as a result of financial crises. They accurately point out that under President Viktor Yushchenko and Prime Minister Yuliya Tymoshenko, public policy was incoherent and reforms were often stalled; those leaders' personal animosity toward each other left governance of the country in an abject state.

Therefore, Yanukovych's advisers argue that Ukraine desperately needs a strong central authority to stabilize the country and provide steady, predictable political and economic leadership. The ruling Party of Regions has not just centralizing instincts (as evidenced historically by its management of regions such as Donetsk), but a strategy to centralize authority. And it has produced some of the promised results, as Ukraine has advanced its agenda with the IMF, Washington, and Brussels on a range of issues that had languished under the previous government.

However, a corollary to this governing philosophy is that officials tend to seek the removal of whatever they perceive to be obstacles to their agenda or challenges to their power and interests. In practice, this means weakening fundamental checks on the government's authority, including the media, the judiciary, and the electoral process. The result is a government seeking systematic control over the levers of power, and the protection of that control against all future contestation. In the long run, such an approach would drive Ukraine away from Brussels and Washington and damage hopes for a democratic, prosperous Ukraine.

The gravest threat to Ukraine today is not external. It is internal. This means that restoring the vision of Ukraine as a democratic, market-oriented country fully integrated into Europe remains within the control of the people of Ukraine.

### **A Weak Foundation**

Although President Yanukovych was elected democratically, our visit underscored the extent to which the democratic environment has eroded since his election, validating Freedom House's downgrading of Ukraine from Free to Partly Free in January 2011. This is not to say that Ukrainian democracy under Yushchenko was perfect. But the environment that emerged following the Orange Revolution was more democratic, with journalists benefiting from the removal of government pressure and civil society enjoying

the fruits of public activism. In fact, Yanukovych's defeat of the incumbent president in 2010 was the fourth in a series of free and fair national elections in Ukraine, following the two parliamentary votes in 2006 and 2007 and the presidential rerun in December 2004.

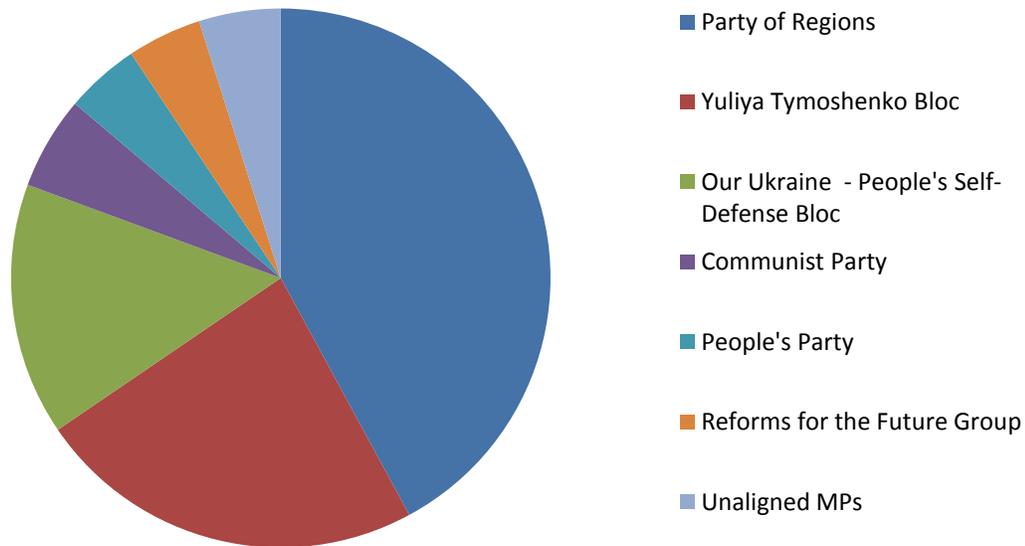
After Yanukovych's election as president, the Party of Regions worked to form a majority within the Rada, and hence the right to form the government, by encouraging (allegedly with bribes) individual lawmakers from other parties to defect to its ranks. These tactics arguably went beyond the bounds of the constitution, notwithstanding the Constitutional Court's approval. The government then proceeded to postpone local elections scheduled for May 2010, and when they were finally conducted in October, they were widely criticized for failing to meet international standards.

The government's decision to delay the polls, change the electoral rules shortly before the new date, and manipulate the process on election day represented a major democratic failure early in Yanukovych's tenure. The irregularities in the local elections were significant. For example, there is strong evidence that returns were manipulated to change the outcome of the vote in Kharkiv. The Tymoshenko Bloc's disqualification from competing in Lviv also raised red flags. In a district where it likely would have won an overwhelming majority, the Tymoshenko Bloc now has no representation, and the Lviv city council is dominated by the nationalist Freedom party.

The Rada has not served as an effective check or brake on the government's authority, as illustrated by its ratification of the Kharkiv agreement with Russia. Yanukovych and Russian President Dmitry Medvedev signed the historic deal on April 21, 2010, with Ukraine granting a 25-year extension of Russia's lease on the naval base in Crimea in exchange for lower gas prices. This controversial pact was signed on a Thursday and rammed through the Rada the following Tuesday. There was no national discussion, much less a substantive parliamentary debate, on an issue with major national security implications. Civil society voices have complained that under the chairmanship of Volodymyr Lytvyn, the Rada has delegated numerous powers to the cabinet of ministers and deteriorated into a rubber stamp for the government.

This early track record set the scene for our visit to Ukraine.

## Composition of Verkhovna Rada by Faction, April 25, 2011



Party of Regions: 190 deputies (approx. 42%)
Yuliya Tymoshenko Bloc: 105 deputies (approx. 23%)
Our Ukraine – People’s Self-Defense Bloc: 68 deputies (approx. 15%)
Communist Party: 25 deputies (approx. 6%)
People’s Party: 20 deputies (approx. 4.5%)
Reforms for the Future: 20 deputies (approx. 4.5%)
Unaligned: 22 deputies (approx. 5%)

### **Electoral Environment**

There is little dispute over the fact that President Yanukovich took office as the result of a free and fair election. But credible observers in Ukraine are now concerned that his administration is acting to alter the electoral environment in ways that will prejudice the political prospects of independent and opposition forces and help to concentrate power in the hands of the ruling party, both in Kyiv and in the regions. These concerns center on three interrelated issues: a new electoral code, currently in preparation; the conduct of the 2010 local elections; and constitutional reform.

Administration officials and supporters argue that a new electoral code is necessary to rationalize and stabilize the political environment. The goal, they say, is an electoral procedure that meets Western standards and does not need to be repeatedly changed. Preliminary deliberations on a new code are being conducted by a Working Group chaired by Justice Minister Oleksandr Lavrynovych. The Working Group is focusing first on a draft law governing parliamentary elections, and will then turn to legislation concerning the conduct of local elections. Officials note that the Working Group draws

on advice from Western experts—including representatives from the International Republican Institute and the National Democratic Institute—and maintain that its discussions have not been politically constrained.

However, both Ukrainian civil society observers and Western participants are highly skeptical that the Working Group will amount to much more than a public relations exercise. They point out that the original members all came from the Party of Regions; others who were invited only later, after deliberations were well under way, do not believe that their recommendations and concerns are being taken seriously. In their view, the work appears to be winding down without having produced any serious results, much less recommendations designed to protect democratic electoral procedures. Nor is it at all clear that any output by the Working Group would have a significant impact, as the legislative environment for enacting a new electoral code is opaque to outside observers. Both the International Republican Institute and the National Democratic Institute, concerned about the direction the Working Group was taking, suspended its participation in March.<sup>4</sup>

These concerns are exacerbated by developments at the local and regional levels. The government's decision to postpone the 2010 local elections from May to October, and then to change the electoral rules not long before the balloting, raised fears that "administrative resources" were being marshaled in support of the Party of Regions. In Lviv and elsewhere, for example, some parties, including Yuliya Tymoshenko's, were unable to register their candidates. There is also credible evidence of serious irregularities in Kharkiv that would have been sufficient to change the outcome of the mayoral race.<sup>5</sup> These and similar problems with the October balloting have led even some government officials to acknowledge that the postponement of the elections had been a bad idea and that the new law on local elections is, as one put it, "a step back" with respect to democratic practice.<sup>6</sup> Outside critics also note that procedural matters at both the center and in the regions are dominated by the Party of Regions; the Central Election Commission consists primarily of representatives from that party, and they in turn appoint the local electoral commissions.

Finally, there is also considerable concern about the parliamentary elections now scheduled for November 2012. One factor governing these elections will be the process of constitutional reform that is currently under way—a process initiated by the Yanukovich administration and being carried out by a Constituent Assembly under the auspices of the president. Here too, members of the political opposition and our civil society interlocutors saw good reason to be doubtful about the purposes and impact of the exercise. One key issue in this regard is whether the parliament will be chosen based on proportional representation, or whether 50 percent of the members will be selected

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<sup>4</sup> National Democratic Institute, "NDI Pulls Out of Election Drafting Group, Calls for More Inclusive and Transparent Election Reform," news release, March 17, 2011, <http://www.ndi.org/files/Withdrawal-from-WG-PR-031711.pdf>.

<sup>5</sup> This evidence was dismissed by the incumbent mayor, who maintained that "exit polls can be bought."

<sup>6</sup> According to this new law, parties are forbidden from running in blocs, only local parties with representation in the parliament can elect members of Territorial Election Committees, mayoral candidates must be elected by political parties, and the campaign period is shortened from 90 to 50 days.

through a majoritarian system. Many are afraid that, in Ukrainian circumstances, the latter arrangement would be more susceptible to falsification, and by making it more difficult for smaller parties to compete, would in any case favor the incumbent Party of Regions.

What links these various concerns—about the electoral code, local elections, and constitutional reform and the 2012 parliamentary balloting—is an underlying distrust in the ultimate political intentions of the Yanukovich government. In light of the trends they see, as well as the declining support for the administration indicated by opinion polling, members of civil society and the political opposition fear that the aim of these measures is to marginalize if not completely exclude alternative political forces. Members of the administration express deep resentment of such allegations, and point to the personal initiative and involvement of the president as evidence of their commitment to a fair and democratic outcome. The truth of the matter will only be fully clear when the new electoral legislation is promulgated and new elections are conducted. However, it is evident that the trends to date are disquieting, that the situation in some regions has already deteriorated to a significant degree, and that the procedures the administration has put in place lack broad credibility with the engaged Ukrainian public. The West needs to put Ukrainian officials on notice that much is riding on next year's Rada elections, especially given the widely criticized local elections last year.

### **Corruption**

Corruption may be the greatest threat to Ukraine's democracy and sovereignty. This plague is by no means an exclusive product of the current government. Corruption was an enormous problem in the Soviet period, worsened in post-Soviet Ukraine, and remained endemic under the Orange leaders. In many respects, corruption allegations surrounding President Yushchenko and his close associates sapped the moral authority he earned during the Orange Revolution.

Corruption in Ukraine is not simply a nuisance. It should be viewed as a national security threat, since massive official corruption allows unscrupulous domestic and foreign interests to manipulate Ukrainian officials and policy. The nexus of various interests in Ukraine's energy relationship with Russia, with the gas-trading firm RosUkrEnergo at the center, is a case in point. Personal enrichment through Ukraine's gas markets has trumped efforts to reduce Ukraine's energy consumption and diversify its sources, reinforcing the nation's dependence on the Russian state-owned energy giant Gazprom.

Furthermore, the scale of corruption undermines Ukraine's democracy, as it provides an incentive for political groupings to improperly perpetuate their rule. Government figures who engage in corruption risk prosecution in the event of a rotation of power, encouraging them to prevent free and fair elections and block the rise of viable opposition forces. Moreover, lack of transparency provides the cover and to some extent the temptation for officials to engage in corruption. Having done so, these officials become vulnerable and therefore seek the preservation of an opaque system to protect themselves.

The most significant anticorruption measure taken since Yanukovich became president was the Rada's passage of a law on access to public information, which was championed by Ukrainian civil society. If implemented, this law could become the most effective tool in combating corruption, as it would empower nongovernmental forces to hold officials accountable.

Nonetheless, the government's anticorruption campaign lacks credibility. Authorities point to the prosecution of former prime minister Tymoshenko and former interior minister Yuriy Lutsenko as a signal that corruption will not be tolerated and that politicians are not above the law. However, these cases are not focused on charges of personal enrichment, but rather on administrative abuses. The government is correct that the prosecutions send a strong signal, but that signal is actually a warning to other would-be opposition figures not to challenge the authorities.

The prosecutor general and others stress that more than 350 current officials are under investigation for corruption or abuse of office, with 10 cases against central government authorities. The highest-ranking official from the Yanukovich government to have faced scrutiny to date is a former deputy minister for environmental protection. The government notes that there are now over 3,000 open corruption cases, of which 2,000 were initiated in 2010. In addition, there are 22 criminal cases against 24 government officials, though none is from the top ranks of the central government. Furthermore, while mid-level officials and opposition figures are investigated on relatively minor charges, massive abuses rarely come under investigation.

Although the Rada recently approved an anticorruption law, it cannot be effective unless it is implemented with clear support from top officials, and with zero tolerance for violations. No Ukrainian leader has been willing to act with such probity. As the country continues to struggle following a multiyear fall on Transparency International's Corruption Perceptions Index, further graft will only be more corrosive to the weakened political system, undermining Yanukovich's reform agenda and EU aspirations.<sup>7</sup>

### **Role of the SBU**

One of the most disturbing trends to develop since Yanukovich became president is the more intrusive presence of the Security Service of Ukraine (SBU) in the domestic political environment. Following the Orange Revolution, the SBU receded into the background for the most part, especially compared with its level of activity under former president Leonid Kuchma. In the past year, however, it has stepped up its operations and played a more meddlesome role in society. The visit of an SBU official to Ukrainian Catholic University rector Borys Gudziak in May 2010 is the most noteworthy example, but there have been other cases that drew less media attention. While the eight-hour detention of Nico Lange, head of the Konrad Adenauer Foundation office in Ukraine, at

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<sup>7</sup> According to Transparency International's Corruption Perceptions Index, Ukraine was ranked 118 out of 180 countries in 2007, 134 out of 180 in 2008, and 146 out of 180 in 2009. It recovered slightly in 2010, ranking 134 out of 178. The full index results are available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi).

Kyiv's airport last June may not have been the work of the SBU, it did set off a highly critical reaction in Germany, reportedly including remarks by Chancellor Angela Merkel, and only added to the perception that security services in Ukraine are increasingly interfering in political and civic affairs.

By no means did all people with whom we met claim to have been harassed or visited by SBU officials. Moreover, since our return from Ukraine, several interlocutors have stated that the SBU has ceased targeted, systematic campaigns against civil society. But a number of interlocutors detailed intrusive SBU involvement in domestic political activities and a more active presence in society. For example, some individuals alleged that SBU agents visited regional offices of nongovernmental organizations (NGOs) to gather information about their activities and funding.

Top SBU officials acknowledged that the service did in fact become more active at the beginning of the Yanukovich presidency and paid a number of visits to civil society actors, which, while not illegal, were nonetheless inappropriate. They claimed that this was not a new development, that it was a legacy of behavior dating back to the Soviet period, and that it had not disappeared during the Yushchenko presidency. They also claimed that after several months, the SBU's activities had been reined in. We heard a different story from a number of credible activists, who claimed that SBU agents had visited a workshop in Kyiv and then sought out activists at their homes in the regions as recently as February 2011. According to one well-informed source, this was the first time in five years that the source's NGO had experienced such SBU behavior.

It is difficult to assess the scale of these types of activities. Nonetheless, the SBU's reengagement in any capacity with the domestic political and civil society community is a major step backward for the protection of democratic freedoms in Ukraine.

Yanukovich needs to make clear both to the SBU and to civil society and the opposition that the service will not be used to carry out selective prosecutions or political vendettas. He should also state explicitly that top officials of the SBU must avoid conflicts of interest—or even the appearance of such—by either divesting stakes in major companies and media holdings or stepping down from their positions. Such conflicts add to the sense that security and law enforcement agencies are being abused to advance personal agendas and enrichment.

### **Judiciary**

The Yanukovich government has made judicial reform one of its top priorities. Much is at stake, as one of the most serious accusations leveled against the administration is that it is using the justice system—and specifically the prosecutor general's office and the SBU—to punish political opponents. Arguably no other issue has generated as much attention and criticism from inside Ukraine and from the international community than this perception of selective prosecutions, especially against former prime minister Tymoshenko and her associates. The level of concern has led the U.S. and other Western embassies, as well as officials in Brussels, to issue public statements highlighting this

issue. Tymoshenko's is the most prominent case, but charges have been brought against nearly a dozen other top officials from her government, including former interior minister Yuriy Lutsenko and Ihor Didenko, the former deputy chief executive of the national energy company, Naftogaz Ukrainy.

The charges brought against them, while not inconsequential, are nonetheless seen by many observers as a misuse of the judicial process. This is not to imply that the government and prosecutor general's office should not vigorously pursue all cases of corruption, or that former senior officials should be immune from fair prosecution. But the authorities have an extra burden to pursue such cases in a credible fashion, something they have failed so far to do. The government and prosecutor's office, anticipating such criticism, note that more than 350 current officials are being investigated for or charged with corrupt activities. None of these individuals, however, hold enough power or influence to suggest that justice is being pursued fairly and blindly. The highest-ranking official currently under investigation in Kyiv is Bohdan Presner, former deputy minister for environmental protection in Yanukovich's administration.

Even if it disputes the claims of selective prosecution, the government understands that, at a minimum, it has a perception problem. As one official acknowledged, the judicial powers "should not behave the way they have behaved of late." The same official unfavorably compared the situation today to that before the Orange Revolution, and expressed concern that the judicial system "agrees to whatever law enforcement agencies request." Indeed, the strong perception among many observers is that the judicial system does not serve as a check or balance against the executive branch. Such concerns are not allayed by comments from the head of the Constitutional Court, who is reported to have said that Yanukovich can "always rely on the loyalty of the court," or by a top law enforcement official who said that Yanukovich "can count on us."

The Constitutional Court's September 2010 decision to invalidate the 2004 constitutional amendments associated with the Orange Revolution raised both substantive and procedural red flags. Substantively, the ruling shifted power from the parliament back to the presidency, granting Yanukovich the same level of authority wielded by former president Kuchma. Moreover, in the run-up to the decision, four judges who opposed the nullification of the amendments resigned and were replaced with judges who backed it. The subsequent formation of a Constituent Assembly under the auspices of the president has hardly inspired confidence in future constitutional checks and balances. There were also concerns that the arrest of the son-in-law of the Constitutional Court's chairman, combined with a criminal case against his daughter, represented a not-so-subtle form of pressure on the court.

In addition, there are worrying signs that judicial and law enforcement bodies are being used to constrict freedom of assembly. The prosecutor general's office has launched investigations against a number of leaders of peaceful assemblies, including activists involved in tax protests last November in Kyiv, while local authorities in the regions often ban such gatherings outright.

The filing of charges against Kuchma in connection with the 2000 murder of journalist Heorhiy Gongadze occurred after our visit, but the move has spurred considerable debate. There is no denying that the indictment of a former head of state on such charges sends the message that nobody is immune from the law. At the same time, skeptics question whether the case is mostly for show, to offset criticism of selective prosecution. The test will be in how seriously the authorities pursue the charges. A transparent, fair process would play a critical role in enhancing the credibility of the judicial system.

## **Media**

When it comes to freedom of the press, the situation in Ukraine over the past year was not black or white, but the trends are not favorable. For Ukraine, as for other countries, the key is to have a diverse media landscape that is not controlled by the state or one group of politically connected business magnates. Most major media outlets in Ukraine—especially newspapers, but also several national television channels—are in fact controlled by such oligarchs. The majority of Ukrainians get their news and information from television, and dominance of the medium by the state and government-friendly oligarchs gives viewers a distorted picture. This in itself is hardly new, nor is the widely held view that editorial decisions are often driven by calculations of potential effects on the business and political interests of the owners. The work of many journalists is also thought to be frequently motivated by financial considerations—again, not in itself a new phenomenon. But the relationship between media ownership and political power is clearly more intimate than before: Ukraine’s largest media holding company, Inter, is owned by the head of the SBU; the major state television channel is run by a close Yanukovych political ally; and numerous key regional outlets are controlled by groups loyal to the ruling Party of Regions. The result, many of our interlocutors observed, is not explicit direction from the center—there are no written instructions, as there were during the Kuchma presidency—but rather the fostering of a culture of self-censorship. When we asked about the conflicts of interest entailed in serving as both a senior government official and the head of a major media company, we would often get blank looks, as if we were asking about some unknown concept.

Administration officials maintain that, appearances aside, relationships like these do not represent conflicts of interest, nor have they led to increased government oversight of the media or to skewed coverage. They acknowledge that some abuses—such as visits by security personnel to selected journalists—did occur in the early days of the Yanukovych administration, but argue that these were largely legacies of past practice going back to the Soviet era, which have now been corrected. They stress that venues for the presentation of alternative, independent, and opposition views are still available, including several live television shows on which opposition politicians such as Yuliya Tymoshenko appear and freely express their opinions. And they point out that, with the personal support of President Yanukovych, the administration has pursued new legislation to guarantee access to public information and thus to enhance the transparency of government operations.

There is merit to these arguments, and the positive characteristics of the media environment they describe are worthy of notice and support. But they are not the whole story. While media outlets for alternative, critical, and independent views do still exist, including on national television, and while at least one major newspaper regularly criticizes the Yanukovych administration, access is narrower than it used to be. Media watchdog groups report, for example, that there were notably fewer television appearances by opposition politicians in the early months of this year, and that serious commentary on current events is becoming increasingly rare, especially by nongovernmental spokesmen.

News coverage in general is thought to have worsened. As several interlocutors observed, television is increasingly a platform for entertainment rather than news, making the internet a more important source of reliable information. Yet only about 17 percent of the population are internet users, according to a 2009 survey from the International Telecommunication Union.<sup>8</sup> Moreover, the Yanukovych administration recently introduced a draft law that many civil society representatives fear could be used to regulate and constrain internet-based media. And while the administration's legislation on public information is widely viewed as a positive step, there is serious doubt as to whether and to what extent it will be implemented.

Finally, however one might characterize the state of the media at the national level, it seems clear that the situation is considerably worse in the regions. Close relationships between media control and political power are evident, as are cases of harassment of journalists by political authorities and the security services. A number of journalists have also faced physical threats and/or attacks. These conditions often escape notice outside of the areas in question. Kharkiv is again an unfortunate case in point: soon after the mayor's office changed hands in late 2010, the main opposition television channel in the region lost its license. Several other local or regional broadcast outlets have lost their licenses as well.

Even more than in other areas, assessing the state of media freedom and access in Ukraine is not a simple matter. The overall situation is mixed, and many of the problems in this sphere did not originate with the advent of the Yanukovych presidency. But the Ukrainian government is missing an opportunity to foster an environment conducive to independent media. Here, as elsewhere, the general trends are undoubtedly worrisome. What is not clear is how far they will go.

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<sup>8</sup> International Telecommunication Union (ITU), "ICT Statistics 2009—Internet," [http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&ReportFormat=HTML4.0&RP\\_intYear=2009&RP\\_intLanguageID=1&RP\\_bitLiveData=False](http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&ReportFormat=HTML4.0&RP_intYear=2009&RP_intLanguageID=1&RP_bitLiveData=False).



Map of distribution of native languages in Ukraine, 2001 Author: Dmytro Sergiyenko

### **Education, Culture, and Religion**

The divergent historical experiences and outlooks of Ukrainians in the eastern part of the country and those in the west have produced a series of cultural tensions centered on national identity, language, and religion. Cultural issues are salient and political in Ukraine, as many argue that strengthening Ukrainian identity is essential to the country's long-term independence. Government policies on education, language, and religion have taken on strategic importance, as they help shape the views of the population, particularly the younger generation.

Many within the Party of Regions saw former president Yushchenko's strong push to promote Ukrainian identity and language as alienating to Russian-speakers in the east, to say nothing of Russia. Today, many in central and western Ukraine fear that the new government, and Education Minister Dmytro Tabachnyk in particular, are advancing a reactionary agenda against Ukrainian language, identity, and religion (vis-à-vis the Ukrainian Catholic Church).

Yanukovych's critics give the government credit for backing off attempts to pass new legislation designating Russian as a coequal official language, and for abandoning a

controversial draft education law. Nonetheless, they believe that the government is failing to advance policies that would help unite the country, and that the Ministry of Education's positions are explicitly undermining a sense of national solidarity.

Some in civil society contend that the government's draft education law attempted to introduce the Russian model of education in Ukraine, more firmly linking the Russian and Ukrainian education establishments while at the same time "building a Berlin Wall between Ukrainian and Western education systems." Even now, these critics argue that failure to recognize foreign professional degrees in Ukraine keeps foreign-educated Ukrainians out of key professions and discourages studying abroad. While the government's draft legislation failed to garner majority support, Tabachnyk (whom we did not meet) has been accused of not advancing Ukraine's interests in this debate.

Furthermore, the minister has reversed several Yushchenko-era education reforms related to university entry standards, which critics fear could reopen the door to corruption in that area. Similarly, Tabachnyk's effort to close underenrolled schools as a cost-saving measure has disproportionately and systematically affected Ukrainian-language schools, especially in Luhansk, Donetsk, and Odessa, producing local backlash. The minister's critics also point to the politicization of university personnel decisions.

We heard university students, both Ukrainian and foreign, complain about having to pay for good grades and about corruption while registering for classes and student visas. To be clear, this is not a new phenomenon that has arisen since Yanukovich became president, but the sense of resignation among the students to the problem—"this is how it's been and will be"—is disappointing. If students were to unite and refuse to comply, they could effectively end this long-standing practice and, in a small but important way, root out a source of corruption at the university level.

In western Ukraine, another often-heard concern is that government policy institutionalizes the promotion of one church, the Ukrainian Orthodox Church of the Moscow Patriarchate. Critics point to official favoritism toward Russian Orthodox chaplains within the military and the penitentiary system. Religious leaders also contrast Yanukovich's frequent meetings with the Moscow Patriarchate with his decisions not to meet the All-Ukrainian Council of Churches and Religious Organizations, comprising 16 religious community leaders.

### **In the Regions**

Our visits to Kharkiv and Lviv underscored both the protections for and vulnerabilities of Ukraine's democracy. While there may not be an obvious centralized strategy to dominate politics in the regions, patterns of behavior in Kyiv provide implicit signals to regional authorities of a permissive environment in which they can pursue local political agendas.

Party of Regions leaders realize that their political brand will never perform well, much less dominate, in western regions like Lviv, which have a population that is much more

exposed to Ukraine's EU neighbors, cultural traditions linked to Poland, and a strong sense of Ukrainian as opposed to Russian national identity. In effect, Ukraine's diversity serves as a natural check on the centralization of power in Kyiv. Political leaders in Lviv welcome Yanukovich's stated commitment to delegate greater powers to the regions.

At the same time, the record in Lviv's local elections underscores how even the politics of cities hostile to the Party of Regions' political message can be manipulated. In advance of the October 2010 local elections, Yanukovich-allied political forces encouraged Tymoshenko-allied deputies throughout Ukraine to split with her and declare their rump factions as the authentic Tymoshenko Bloc. In Lviv, the ensuing court battles led to the disqualification of her party from competing in the local balloting. According to opinion polls, the Tymoshenko Bloc would have dominated the elections in Lviv. Instead, it now has no seats in the city council, while the big winner was the nationalist Freedom (Svoboda) party, led by Oleh Tyahnybok.

Many of the observers we heard from expressed fear that this strategy—disqualifying the opposition party best able to challenge the Party of Regions while facilitating the growth of a more extreme nationalist party—may be replicated on a national level. These observers point out that in the presidential election, which came after Tymoshenko had presided over a massive economic collapse and extraordinary divisions with the incumbent president, she lost to Yanukovich by just 3.48 percentage points. To ensure Yanukovich's reelection, they argue, the Party of Regions is intent on having him face off against a fringe Ukrainian nationalist candidate, knowing that this will depress opposition turnout in the center and energize Yanukovich's base in the east and south.

Kharkiv also demonstrated the best and worst of democracy on the local level today. The 2010 local elections were heartening in that they were extraordinarily competitive in Kharkiv; the Party of Regions was not able to take a win for granted in the largest city in the east. However, Kharkiv also represented the most egregious case during the October voting, in that there is strong evidence of election-day manipulation that likely reversed the outcome.

While the assessment mission noted that Ukraine's diversity serves as a natural bulwark against central control, the reality is that the democratic situation is worse in the regions than at the center. Regional leaders seem to understand that they have relatively free rein to advance the Party of Regions' continued authority and likely know that they will not be penalized for bending the rules. In addition, outside Kyiv, there are fewer checks and balances from other sources, as civil society and independent media are significantly weaker than at the national level.

### **Conclusions and Recommendations**

For many, the Orange Revolution represented a high point for Ukraine's democratic development and respect for human rights, and a marked change from the Kuchma era. Civil society activists felt emboldened, journalists felt liberated from government pressure, and the country appeared to be on track to join the Western community of

nations. It did not take long, however, for the Orange Revolution to lose its luster, as its leaders descended into bickering with one another while falling sadly short of the high expectations many people had for them.

For Viktor Yanukovich, his “election victory” in 2004 was stolen from him. His victory in the 2010 poll, which was deemed free and fair by international observers, marked a remarkable political reversal. Yanukovich defeated not only Viktor Yushchenko, to whom he had lost in 2004, but also the archrival to both men, Yuliya Tymoshenko. It was his turn to run the country, and according to some observers, to deny his opponents the possibility of a similar political revival.

President Yanukovich talks about deepening Ukraine’s democratic development and integration with Europe, and his supporters, posing a contrast with the Yushchenko era, argue that there is now a more cohesive, effective government capable of actually governing the country. Yanukovich seeks to bring order to the chaos he inherited from his predecessor. His administration has successfully reduced the number of government agencies from 116 to 66, taken up 21 different reform initiatives, drafted more than 100 pieces of legislation, and launched a series of anticorruption investigations. In short, his government has developed and is pursuing a serious reform agenda. Furthermore, during Yanukovich’s first year as president, Ukraine has made more progress in negotiations with the EU and resolved more long-standing bilateral issues with the United States than it did during several years under the Orange leaders.

But a number of actions and developments since Yanukovich became president suggest that the country is heading away from a democratic consolidation. Concentration of power, selective prosecutions of political opponents, a more intrusive SBU, the absence of checks and balances, and politicization of the judicial process are the main concerns observers cite. Our visit did little to dispel these concerns. At the same time, it would be premature to write off Ukraine as a hopeless cause.

Ukrainians, of course, will determine their own future. The West nonetheless has an important role to play. After all, it is in the interest of the EU and the United States to support an independent, sovereign, democratic Ukraine that is increasingly integrated into Europe and the global economy. But there is a glaring absence of Western attention on Ukraine these days. Between the focus on improving relations with Russia and frustration with endless headaches in Ukraine, the West, according to many Ukrainians with whom we met, has lost interest. That is a perception, whether fair or not, that needs to be addressed head on. Because Ukraine’s leaders care about what the West thinks, it has an opportunity to influence their behavior. It is up to the EU and the United States to take advantage of that opportunity now.

In that spirit, to prevent further democratic backsliding in Ukraine, and to support constructive initiatives both inside and outside the government, the assessment team recommends the following:

- For President Yanukovich and his government:

- Rein in official harassment and monitoring of civil society and political opposition figures, and curtail the role of the SBU to ensure that it is consistent with democratic practice and protective of civil liberties.
  - Halt politically motivated prosecutions carried out by the prosecutor general's office against former leading political figures, while maintaining a credible campaign to root out corruption and foster accountability.
  - Prosecute corrupt senior officials and party loyalists without regard to political affiliation to demonstrate the sincerity of government anticorruption efforts.
  - Ensure that next year's parliamentary elections meet Organization for Security and Cooperation in Europe (OSCE) standards and work with the Venice Commission on amendments to the electoral code.
  - Reject proposed legislation to regulate electronic media and adopt conflict-of-interest policies to separate government officials from media holdings.
  - Dismiss Education Minister Dmytro Tabachnyk, arguably the most polarizing official in the cabinet, for sowing unnecessary and dangerous divisions within Ukraine over issues of identity, language, and education.
- For Ukrainian civil society and media:
    - Focus on what can be accomplished at both the local and the national level—every stand taken in the name of democracy and human rights is important.
    - Seek a diverse media landscape that avoids control by the state or one group of oligarchs.
    - Report responsibly and separate opinion from news coverage.
    - Insist on immediate and transparent steps to investigate attacks, harassment, and pressure aimed at journalists, and hold those responsible to account in the legal system.
- For the United States:
    - Signal U.S. alarm at the highest levels regarding Ukraine's democratic backsliding; be clear that cooperation on strategic (for example, the removal of highly enriched uranium) and economic issues will not win Ukraine a "free pass" on democracy issues.
    - Stay systematically engaged with the Yanukovich government and support constructive domestic policy initiatives on its part.
    - Stress the importance of next year's parliamentary elections and the need for these elections to pass muster with the OSCE.
    - Sustain U.S. assistance to independent civil society in Ukraine while also supporting and encouraging efforts by American and international NGOs to make Ukraine a higher priority in their work.
    - Expand the number of visas available for Ukrainians to study in the United States and increase other exchanges and interaction between Ukrainians and Americans.
    - Press the EU to deepen its level of engagement with all sectors of Ukrainian society.
- For the European Union:

- Underscore that progress on Ukraine's agenda with the EU is directly linked to Ukraine's progress on meeting European democratic standards.
- Finalize agreements on free trade and association as quickly as possible and then ensure the adherence of Ukraine and its government to the values enshrined in those agreements.
- Join the United States in stressing the importance of next year's parliamentary elections.
- Expand opportunities (for example, scholarship funding, lowering or abolishing visa fees) for Ukrainian travel and study in Europe to foster the Ukrainian population's European orientation.
- Understand that Ukraine's integration into the Euro-Atlantic community means keeping open the possibility of EU membership.

Despite the challenges facing Ukraine today, specific actions by all elements of the Ukrainian polity and civil society, as well as by the West, can put the country back on the path toward a stronger democracy and more rapid integration with Europe.

## Appendix I

### List of Delegation Interlocutors

Zurab Alasania, independent journalist, Kharkiv  
 Arsen Avakov, former governor of Kharkiv region, defeated mayoral candidate in  
 disputed election (Our Ukraine)  
 Alessandro Bartolini, Advisor to the Ambassador, Danish Embassy  
 Ambassador Michael Borg-Hansen, Danish Embassy  
 Yevhen Bystrytsky, International Renaissance Foundation (IRF)  
 Valeriy Chalyi, Razumnov Center  
 Viktor Chumak, Ukrainian Institute for Public Policy  
 Colin Cleary, Counselor for Political Affairs, U.S. Embassy  
 Ilya Demchenko, Fund for Regional Initiatives  
 Michael Druckman, Resident Program Officer (Ukraine), International Republican  
 Institute (IRI)  
 Mykhailo Gonchar, NOMOS Centre  
 Anna Herman, Deputy Head of Presidential Administration, Deputy Chair of Party of  
 Regions  
 Ambassador Andriy Honcharuk, Deputy Chief of Staff of the President of Ukraine for  
 International Relations  
 Chris Holzen, Country Director (Ukraine), IRI  
 Balázs Jarábik, Country Representative (Ukraine), PACT  
 Nina Karpachova, Human Rights Ombudsman  
 Vyacheslav Kartavykh, founder of National Agency for Journalistic Research  
 Gennadiy Kernes, Mayor of Kharkiv (Party of Regions)  
 Valeriy Khoroshkovsky, head of Security Service of Ukraine (SBU)  
 Lyudmila Klochko, Kharkiv Human Rights Group  
 Ihor Koliushko, Center for Political and Legal Reforms  
 Roland Kovats, Chief of Party (Ukraine), PACT  
 Serhiy Kvit, Rector of Kyiv Mohyla Academy  
 Oleksandr Lavrynovych, Minister of Justice  
 Kateryna Levchenko, International Women’s Rights Center “La Strada–Ukraine”  
 Serhiy Lyovochkin, Head of Presidential Administration  
 Volodymyr Lytvyn, Chairman of Verkhovna Rada  
 Myroslav Marynovych, Vice Rector, Ukrainian Catholic University  
 Yuliya Mostovaya, journalist, *Dzerkalo Tyzhnya (Mirror of the Week)* newspaper  
 Michael Murphy, Director of Belarus Programs, National Democratic Institute (NDI)  
 Valentyn Nalyvaychenko, former head of SBU, head of political council of the Our  
 Ukraine party  
 Hrihoriy Nemyria, former Deputy Prime Minister, deputy head of Fatherland Party  
 Volodymyr Ohryzko, former Minister of Foreign Affairs  
 Olga Prokhorova, Program Officer for Ukraine, NDI  
 Viktor Pshonka, Prosecutor General  
 Martin Raiser, Country Director (Ukraine/Belarus/Moldova), World Bank  
 Oleh Rybachuk, head of New Citizen campaign  
 Andriy Sadoviy, Mayor of Lviv

Alaks Salajka, NDI (Belarus)  
Volodymyr Shapoval, Chairman of Central Election Commission  
Viktoriya Syumar, Institute of Mass Information  
Iryna Solonenko, IRF  
Students and faculty of Ukrainian Catholic University  
Oleksandr Sushko, Institute for Euro-Atlantic Cooperation  
Mykhaylo Svystovych, Civil Assembly of Ukraine  
Ambassador John Tefft, U.S. Embassy  
Yuliya Tymoshenko, former Prime Minister, head of the Fatherland Party and Yuliya Tymoshenko Bloc  
Arseniy Yatsenyuk, former Foreign Minister, former Chairman of Verkhovna Rada, former Minister of the Economy  
Volodymyr Yavorskiy, Ukrainian Helsinki Human Rights Union  
Viktor Yushchenko, former President of Ukraine  
Svitlana Zalishchuk, coordinator for New Citizen campaign

Before departing for Kyiv, the team also met with Ukrainian foreign minister Kostyantyn Hryshchenko and Ukrainian ambassador to the United States Oleksandr Motsyk.

## **Appendix II**

### Assessment Team

**David J. Kramer** became the Executive Director of Freedom House in October 2010. Prior to joining Freedom House, he was a Senior Transatlantic Fellow at the German Marshall Fund of the United States. Kramer served as Assistant Secretary of State for Democracy, Human Rights, and Labor from March 2008 to January 2009. He also was a Deputy Assistant Secretary of State for European and Eurasian Affairs, responsible for Russia, Ukraine, Moldova, and Belarus as well as regional nonproliferation issues. Previously, he served as a Professional Staff Member in the Secretary of State's Office of Policy Planning and as Senior Advisor to the Under Secretary of State for Global Affairs.

**Robert Nurick** is a Senior Fellow at the Atlantic Council and a consultant in Washington, DC. From 2003 to 2009 he was Senior Fellow at the Center for Nonproliferation Studies of the Monterey Institute of International Studies, and prior to that served as Director of the Carnegie Moscow Center. His previous positions have included Senior Political Scientist at RAND and Director of Studies at the International Institute for Strategic Studies in London. He has also worked in the Office of the Secretary of Defense and at the Arms Control and Disarmament Agency.

**Damon Wilson** is Executive Vice President and Director of the International Security Program at the Atlantic Council of the United States. Previously, he served as Special Assistant to the President and Senior Director for European Affairs at the National Security Council, and prior to that as Director for Central, Eastern, and Northern European Affairs, a post in which he managed interagency policy toward Ukraine. Wilson has held various positions at the Department of State dealing with European security, and served as Deputy Director of the Private Office of NATO Secretary General Lord Robertson.

**Evan Alterman** is a Washington, DC-based Program Assistant for Freedom House's programs in the former Soviet Union. He concentrated in Slavic Studies at Brown University and has spent time in Russia, Turkey, and France.

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## ABOUT FREEDOM HOUSE

**Freedom House is an independent private organization supporting the expansion of freedom throughout the world.**

Freedom is possible only in democratic political systems in which governments are accountable to their own people; the rule of law prevails; and freedoms of expression, association, and belief are guaranteed. Working directly with courageous men and women around the world to support nonviolent civic initiatives in societies where freedom is threatened, Freedom House functions as a catalyst for change through its unique mix of analysis, advocacy, and action.

- **Analysis:** Freedom House's rigorous research methodology has earned the organization a reputation as the leading source of information on the state of freedom around the globe. Since 1972, Freedom House has published *Freedom in the World*, an annual survey of political rights and civil liberties experienced in every country of the world. The survey is complemented by an annual review of press freedom, an analysis of transitions in the post-communist world, and other publications.
- **Advocacy:** Freedom House seeks to encourage American policymakers, as well as other government and international institutions, to adopt policies that advance human rights and democracy around the world. Freedom House has been instrumental in the founding of the worldwide Community of Democracies, has actively campaigned for a reformed Human Rights Council at the United Nations, and presses the Millennium Challenge Corporation to adhere to high standards of eligibility for recipient countries.
- **Action:** Through exchanges, grants, and technical assistance, Freedom House provides training and support to human rights defenders, civil society organizations, and members of the media in order to strengthen indigenous reform efforts in countries around the globe.

Founded in 1941 by Eleanor Roosevelt, Wendell Willkie, and other Americans concerned with mounting threats to peace and democracy, Freedom House has long been a vigorous proponent of democratic values and a steadfast opponent of dictatorships of the far left and the far right. The organization's diverse Board of Trustees is composed of a bipartisan mix of business and labor leaders, former senior government officials, scholars, and journalists who agree that the promotion of democracy and human rights abroad is vital to America's interests.