



POLICY BRIEF

Building institutional oversight capacity of the security sector in Ukraine

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Introduction

The first six months of the Zelenskyy government and the Servant of the People-dominated parliament show a mixed picture. The fact that the government and parliament function is a positive development in itself, given that their members are largely new to politics. Both bodies have sought to show action to their electorate through numerous draft laws. However, most of these were either hastily drafted or did not significantly change the way of doing politics in Ukraine, and the country's oligarchs continue to have the door open to influence politics. Regarding the security sector, not much has been done, mostly due to the new guard's inexperience on security, defence, and intelligence matters. In addition, mistakes in the security sphere could be costly, especially as the country continues at war and the President cannot be seen as giving in to Ukraine's adversaries.

This policy brief aims at providing a snapshot of parliamentary and institutional oversight of Ukraine's security sector, and offer suggestions on how to strengthen the role of the parliamentary Committee on National Security, Defence and Intelligence, the Accounting Chamber, and the Ombudsman Office. It is beyond the scope of this paper to address other multiple oversight institutions, such as for example those established

Key points:

The Zelenskyy government and the Servant of the People-dominated legislature can still offer a window of opportunity for renewed democratic reform if window-dressing measures are substituted by structural change.

The Ukrainian Parliament is in need of institutional reform and continued capacity-building to effectively scrutinise national security, defence, and intelligence, but donors need to assess carefully in who and what to invest.

The Ombudsman and Accounting Chamber have not received the attention they need from the international donor community and their impact on security sector oversight continues to be limited.

to fight corruption. While the paper mainly discusses the broader security sector, it does occasionally address specific areas – defence, police, and intelligence.

This policy brief argues for a series of capacity-building measures to boost the institutional impact of democratic watchdogs in the security sector. It believes that parliament should count on civil society experts to develop in-house knowledge. MPs who are genuinely interested in oversight and representation need training and guidance on oversight procedures (and possibilities), as well as on the basics of national security, defence, and intelligence policies and practices. At the same time, while political assistants would benefit from training on the former, administrative parliamentary staff would welcome training on the latter. The Parliamentary Commissioner on Human Rights (the Ombudsman) and the Accounting Chamber need help in engaging with parliament and other oversight actors, especially with civil society. They also need increased attention from international donors through twinning and training projects.

This policy brief is part of the 'Bolstering Oversight of the Security Sector in Ukraine: Developing Relations and Capacity of Independent Oversight Actors – The BOS project 2019-20', implemented by the Centre for European Security Studies (CESS) and the Centre for Army, Conversion and Disarmament Studies (CACDS). The project brings together oversight actors – civil society, parliament, Ombudsman Office and Accounting Chamber – for training and research with a view to fostering independent oversight of the security sector in Ukraine. This policy brief focuses on the role of parliament, the Ombudsman and the Accounting Chamber in security sector oversight. An earlier policy brief addressed the role of civil society.

The paper is based on desk research by CESS staff and a series of semi-structured interviews with several stakeholders from civil society and oversight institutions that were held by CESS staff during an assessment mission to Kyiv in May 2019. Follow-up information was obtained through an evaluation of three training workshops with oversight actors held between June and November 2019. Some of the civil society experts who attended the training filled out an in-depth survey that was also used for this paper. Substantial input was provided by Leonid Polyakov of CACDS, who also reviewed an initial draft of this paper. The author also wishes to thank CESS Board member Peter Vanhoutte and CESS Director Merijn Hartog for commenting on an earlier draft of this policy brief.

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New parliament, new opportunity?

At the end of August 2019, a new legislature was sworn in following a landslide victory of the newly-established Servant of the People party. The party won 254 seats of 450 in the *Verkhovna Rada*; only 83 of these new MPs had prior parliamentary experience. During its first months, parliament has focused more on new law-making than on government oversight. Inexperienced MPs have sought to show a pro-active instance by proposing new laws and amending old ones (in the first one hundred days, 784 bills were registered by MPs, while the government and president registered 101 – see Opora, 5 December 2019 at www.oporaua.org). This, however, has led to weak draft bills and overloaded administrative

staff; all draft laws – even if incomplete or inconsistent – need to be taken up without prior discussion or checks.

The new Servant of the People members have also sought to quickly push through new laws, hoping to lean on their parliamentary majority. However, President Zelenskyy has experienced problems in maintaining party discipline, with new, young politicians often voting against the fraction as personal views often deviate from the party's line. Many MPs are also seeking to develop their own political careers – in Ukraine, this often implies developing links with oligarchs and business interests.

An important issue that is being debated in the *Verkhovna Rada* is a new electoral code. In the current system, half of the members are elected through national closed party lists and the other half by 'first past the post' regional lists. The main problem lies in the closed party lists, where individuals who are unknown to the public can buy their way into a party list. This has resulted in weak parties, and a large number of legislators with no interest in representing the people but serving as instruments of personal and oligarchic interests. The new system would still be a mix between national and regional lists, but open, making it possible for candidates to become MPs by moving up the list by winning more votes. While complicated, the new system would be fairer. Most importantly, it would promote transparency in party politics. Hopefully, it would also help to bring genuine new political talent to the *Verkhovna Rada* who is serious about representing the people and holding the government to account.

Parliamentary scrutiny of security

The new parliament's inexperience also impacts parliamentary oversight of the security sector, a sector in which the President and the National Security and Defence Council have always played a rather dominant role. The new Committee on National Security, Defence and Intelligence has some old but mostly new faces, including its chairman. According to an expert consulted for this paper, the committee has no vision in terms of building a law-making and oversight agenda, and lacks transparency (its website is not working, for instance).

The new committee is now also responsible for the oversight of the intelligence and security services. This is somewhat disappointing, as the 2018 Law on National Security stipulated that a separate oversight committee should be established. Moreover, it is unclear what will be the division of competences between the Committee on National Security, Defence and Intelligence and the Committee on Law Enforcement, which, in principle, could also work on intelligence oversight. The latter committee, so far, has focused mostly on the reform of the Prosecutors Office and anti-corruption.

The new Committee on National Security, Defence and Intelligence has five sub-committees in charge of: 1) international and NATO issues; 2) state security and defence; 3) the defence industry; 4) intelligence; and 5) social affairs. In addition, several working groups have been created to deal with more specific matters. All this creates a rather heavy structure and

bureaucratic hurdles, which risk diverting attention and resources from urgent matters. The committee's priorities are reform of Ukraine's security services, defence procurement, border management and social protection of service men and war veterans. Given the committee's lack of experience, it has not been demanding much explanation from the power ministries on policy and spending. Instead, the Ministry of Defence, for example, itself seems to have been informing parliament about its activities. This is the world upside down in terms of parliamentary control, even though it is a good sign of executive accountability.

There has been little interaction with civil society so far. This is unfortunate, as new MPs could benefit from the expertise of think tanks and NGOs. This would be particularly important for political staff, most of whom have little to no experience in politics, parliamentary procedures, or security-sector issues. So far, MPs have sought to build ties with media and journalists, and it could take some time before civil society-parliament interaction begins to flourish. One positive sign is that the Committee on National Security, Defence and Intelligence has begun to organise a few roundtables with representatives of civil society, ministries and institutions such as the Ombudsman.

There have not been many new capacity-building projects either. As far as we are aware, currently there are no projects directly addressing parliamentary oversight of the security sector (besides some attention through the BOS project of CESS). There are, however, several large, long-term projects that aim at capacity-building and reform of the *Verkhovna Rada*. These are mostly implemented by large institutions and donors such as UNDP (EU-UNDP Parliamentary Reform Project); USAID with NDI, IRI and EFES (Ukraine Responsive and Accountable Politics Program Consortium for Elections and Political Process Strengthening); or the East Europe Foundation (Responsible, Accountable and Democratic Assembly). If not extended or renewed, these projects will conclude in 2020-21.

The Ombudsman

The Office of the Parliamentary Commissioner for Human Rights (here the Ombudsman) fulfils a parliamentary oversight function in Ukraine. He or she is also elected by parliament. The representative of the Ombudsman that deals with the military has a team of 12 officials who regularly visit the troops along the frontline in Donbas and military bases throughout the country. In the military sphere, the Ombudsman focuses on military personnel; veteran matters; treatment of prisoners of war; and gender equality in the Armed Forces. The Ombudsman also plays a role with regard to the police (personnel issues), but it has had no effective bearing on Ukraine's intelligence and security services. The Ombudsman makes recommendations to parliament and drafts reports on specific matters of concern. However, such recommendations have tended to go unnoticed by parliament.

Constitutional changes are currently being considered to provide for the establishment of several ombudsman offices for different spheres of society; a military ombudsman office is likely in the making. This would be a good development even if only due to the quantity and severity of military personnel-related matters, as the conflict with Russian-backed rebels

lingers on in Donbas. It would be crucial that such an institution had sufficient human and financial resources to perform all of its tasks.

It is surprising that Ukraine's Ombudsman Office has not had substantial international assistance. Besides a Danish-funded, UNDP-implemented capacity-building project that concluded in 2018, and twinning with the Lithuanian Ombudsman Office, there has been little donor attention toward the Ukrainian Ombudsman's oversight work. The office's underfunding and lack of capacity has prevented it from having an impact on security oversight, particularly with regards to defending the rights of Armed Forces' personnel. The Ombudsman does try to actively reach out to its stakeholders (the public in general and military personnel for the purpose of this paper) through modest information campaigns. It is also open to cooperation with civil society organisations. With increased capacities, it could improve both its outreach and impact in addressing human rights abuses.

The Accounting Chamber

Alike the Ombudsman, the Accounting Chamber works at the behest of parliament. It performs audits upon parliament's request (even though it can also initiate its own audits), and presents an annual report on the state budget at the end of the year. Audit staff regularly attend committee meetings in parliament. The chairman and eight members are appointed by the *Verkhovna Rada*. The Accounting Chamber has a specific department on defence, with two members: one focuses on the Armed Forces and the other on the police, border guards, intelligence and anti-corruption. In 2015, a new Law on the Accounting Chamber was adopted to increase its independence from other state institutions and harmonise its procedures with international standards.

The Accounting Chamber also faces a few major challenges. First and foremost, the level of follow-up on recommendations is low. One of our commentators argued that only roughly one third of recommendations are implemented, while the rest are only partially implemented or not at all. Second, most reports dealing with spending on security and defence are confidential. This is especially worrisome, as tax payers are entitled to know how their funds are being spent, including on security and defence matters. Third, it is unclear whether the Accounting Chamber has to audit state-owned enterprises, especially those dealing with defence, leaving room for corruption.

While the Accounting Chamber is a lynch-pin institution in the fight against corruption, it does not receive the same attention as other anti-corruption entities such as the National Anti-Corruption Bureau or the National Agency for the Prevention of Corruption. As the general public, but also many NGOs and even some MPs, do not know what the Accounting Office does exactly or what it should do, there is a risk that the results of its budget and spending scrutiny remain unheard and thus not acted upon. The lack of interaction with Ukraine's vast civil society is especially problematic – a matter that civil society could help to remedy through projects that also look at financial accountability instead of only less-technical policy accountability.

At the international level, the Accounting Chamber is member of both the International and the European Organisation of Supreme Audit Institutions. The German development agency GIZ works with Ukraine's Accounting Chamber through the 'good financial governance project' that also addresses other institutions (Ministry of Finance, parliament) and the inclusion of civil society organisations. Besides some smaller European- and US-funded projects, the amount of international assistance to Ukraine's audit institution remains modest.

Building institutional capacity and cooperation

Ukraine's oversight institutions have a long way to go before they are able to provide effective democratic oversight of defence. Current shortcomings range from an abundance of bureaucratic procedures to a shortage of democratic culture, and from a lack of professionalism among staff to clientelism. Despite such a seemingly bleak picture, it is important that international donors continue to invest in Ukraine's democracy. While Ukraine itself needs to take steps to implement parliamentary and electoral reform and put provisions in place to increase the effectiveness of the Ombudsman and Accounting Chamber, international donors should help by building the capacities of elected representatives, parliamentary staff and employees of the Ombudsman and Accounting Chamber.

The recommendations made on 'Building civil society oversight capacity of the security sector of Ukraine' by CESS in December 2019 also apply, to some extent, to these institutions. In short, we argued for 'gaining knowledge' through education and training; 'sharing experience' through networking, deepening engagements with other oversight actors and exchanges with counterparts in other countries; and 'enabling oversight' through introducing new mechanisms (a joint civil society-parliament monitoring tool) and reviving existing ones (the Public Councils, for instance).

We believe that international donors (foremost the European Union and its member states) should help Ukraine by investing in its human potential for democratic oversight of the security sector. Here are seven points that could help with this objective:

1. Expanding in-house knowledge of parliament

Parliament has very little in-house knowledge on national security, defence and intelligence matters (as on most topics); approximately four of five parliamentarians and political staff are new. Current MPs and their assistants often do not know what their duties are (hence the heavy focus on law-making, at the expense of scrutiny of government policy). There are several ways for the *Verkhovna Rada* to increase in-house knowledge. One way could be short-term secondments of Ukrainian civil society experts hired by parliament. These experts should not be stand-alone experts serving a particular committee or legislator, but be brought together with other experts that inform parliament in one bureau (and linked to the practice of organising regular roundtable discussions among committee members,

other institutional representatives, and civil society actors). It would be important that this bureau be in parliament but not be part of its sluggish bureaucracy. It should also ensure that different civil society views are included and avoid attracting only the 'usual suspects'. These rotating experts should, however, work closely with the *Verkhovna Rada's* committees and administrative staff.

2. Investing in the right legislators

It is good news that Ukraine will likely change its electoral code and switch from a mixed system of closed national party lists and regional lists to an open ballot system. The current electoral system has enabled corrupt individuals who are only interested in protecting their own interests instead of those of the people to enter parliament. MPs who are active in their political party and are genuine in their legislative and oversight objectives deserve attention and support. Those who are not are just a loss of funds and a potential blockade to reform. While it may be difficult at times to distinguish between the two types of MPs, it will be important for assistance projects that address individual parliamentarians to try to include only those that are eager to learn and improve their skills. Careful assessment of MPs' track-records in both the current legislature and earlier activities is thus advised. The new legislature offers a wealth of eager, young people who should have an opportunity to improve their democratic oversight skills and their knowledge on national security, defence, and intelligence.

3. Training parliamentary staff

Parliament's political staff are also almost completely new and inexperienced. Those who are serious about their work and aspire toward a career in parliament, politics or civil service would benefit from on-the-job training. Institutional staff are regarded mostly as secretarial assistants (preparing rooms, typing out notes, etc.), while in most democracies such staff is responsible for ensuring a smooth running of daily affairs, including content (preparing meeting agendas, organisational planning, etc.). The Ukrainian Parliament should make more use of administrative staff's experience on content, while also offer training on national security, defence, and intelligence matters. Just as in other national parliaments, Ukraine's parliamentary staff includes civil servants who have seen many legislators come and go, and are the organisation's institutional memory.

4. Following-through on building the Ombudsman Office

The Ombudsman Office has been an active but weakly resourced player. It will be important for donors to exploit the institution's enthusiasm in participating in international capacity-building projects (of which there are currently too few). The Ombudsman should become more involved in the security sector, *inter alia*, by working in and with security institutions (ministries, departments, etc.) and further reaching out to the many NGOs, human rights defenders, journalists, and so on. Increased interaction with these counterparts and partners could be nurtured through joint trainings on security and defence matters, as well as on good governance. Additional attention to the Ombudsman's work on military affairs is also important as Ukraine lacks a specific ombudsman or inspector-general for the Armed Forces (a position that might be in the making).

5. Opening-up the Accounting Chamber

The Accounting Chamber does its work behind the scenes. On the one hand, it does wield some power as it has some degree of freedom to choose what audits to pursue and thus could potentially incriminate corrupt institutions and practices. However, on the other hand, its reports receive little parliamentary attention. The Accounting Chamber is rarely in contact with civil society and does not actively interact with parliament or other oversight institutions. In this sense, it lacks transparency on how it works and most of its reports on security matters remain secret. Whereas the Accounting Chamber has good in-house knowledge and practices, as well as sound financial experts in its staff, it does need help to be better heard by its peers in parliament. Donors would do well to increase attention to the Accounting Chamber through twinning and democratisation and capacity-building projects together with civil society, ministries and, most importantly, parliament.

6. Exploiting civil society expertise more structurally

The new legislature has not shown much inclination to engage with civil society. Some new legislators have sought media attention but have not tried to include civil society expertise in their work. For a large part, this is the result of a lack of understanding by inexperienced MPs and political staff of the potential positive input from think tanks and NGOs to law-making and oversight. Meanwhile, civil society itself should also step up: many organisations felt left out during the second half of the former legislature and are still in limbo, uncertain about being supportive or resistant to the new government and parliament. Donor attention through networking projects would be helpful, but a more structural approach such as monitoring tools where the Committee on National Security, Defence and Intelligence closely works with a small group of think tanks on a particular subject would be even more valuable.

7. Providing for an international dimension of capacity-building

To understand what a culture of democratic oversight is, it will be important for all actors to learn from each other and to compare Ukraine's state of affairs with those of mature democracies. Such exchanges should, however, go beyond short visits and lectures and include more thorough peer-to-peer contacts and training for parliamentarians, their staff and officials of the ombudsman and audit institutions. This would mean learning by doing instead of learning by listening; policy debates that result in tangible policy prescriptions instead of open-ended discussions; and longer term personal contact among stakeholders instead of short, one-time visits. This begs donor investment, and also from European institutions (that of course have a full plate of obligations of their own). In making such an investment, it will be important to closely assess which Ukrainian oversight actors are keen to participate and likely to use the experience and knowledge to advance on reform and oversight.

Conclusion

It will be important for Ukraine to look at the institutional set-up of its oversight actors: a less bureaucratic parliament elected through open lists; an Ombudsman with more possibilities to impact the security sector, and an Accounting Chamber capable of being heard by parliament and understood by society. In the short term, the *Verkhovna Rada*, the Ombudsman and the Accounting Chamber are all in need of gaining knowledge on oversight and the particularities of the security sector. They also need to devote more attention to building stronger ties with civil society, while they themselves need attention from international donors to learn from the experience and best practises of their counterparts in other countries. Ukraine has a long list of challenges, but also a substantial window of opportunity to address them under the country's new leadership.

Further CESS reading on Ukraine: Jos Boonstra, 'Building civil society oversight capacity of the security sector in Ukraine', CESS Policy Brief, No. 1, December 2019.



CESS

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