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BLUEPRINT

# How to Promote Ukraine's Democracy

BLUEPRINT FOR U.S. GOVERNMENT POLICY

OCTOBER 2014



**American ideals. Universal values.**

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

*Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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*“We strongly urge Ukrainians to continue the process of reforming their democracy ... because this is a troubling time where everyone is looking for those reforms to be implemented, and they can make a huge difference in rebuilding confidence and also in providing a sense in Russia that the concerns expressed by the separatists are, in fact, being listened to and being incorporated into the political process of Ukraine.*

*The United States stands ready to support our Ukrainian partners in this effort, because we know that ultimately, a strong democratic government and a strong economy are the keys to providing the Ukrainian people with the stability and the prosperity that they want and that they deserve.”*

Secretary of State John Kerry  
July 29, 2014

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## Introduction

This blueprint is based on research conducted in Ukraine by Human Rights First staff, and on discussions with Ukrainian government and civil society representatives, with United States government officials, with independent experts, analysts and others. It draws on the experience too of previous Human Rights First work in the region, including a 2008 analysis of hate crime in Ukraine.

Ukraine faces a series of major challenges, including conflict in the east, economic fragility, deep-rooted corruption, the takeover of Crimea, and ensuring energy supplies as winter fast approaches. A truce deal struck in early September has not ended hostilities in Ukraine's east. The Ukraine government must also prove to its own people and internationally that it is quickly and effectively establishing a culture of human rights and democracy in the country. A common analysis heard from government officials, human rights activists, and academics in Ukraine, as well as from foreign diplomats, is that the current political transition offers the country's best (and maybe last) chance to get things right, especially in the fight for good governance and against corruption. Parliamentary elections, set for October 26, offer a chance to break with the past. The United States government cannot determine the outcome of what happens in Ukraine or how the new government tackles its many problems, but it can encourage and support a new politics that confronts corruption, stabilizes the economy, and establishes effective human rights protections.

The crisis in Ukraine presents the greatest threat to European stability since the end of the Cold War, and ranks as a major foreign policy priority for the United States. The country sits at the new fault line between the political east and west, and represents a key and stark test in the struggle between democracy and authoritarianism, between human rights and repression.

As the Putin government cracks down on human rights and the rule of law at home, the United States is confronted with fundamental challenges to its national interests. These include: regional stability; the protection of its allies in NATO, the European Union and beyond; and defense against Russian military and political aggression. The threats to Ukraine from the Putin government are many—outright invasion or the pursuit of a proxy war, acts of terrorism in Ukraine's major financial and political

centers by Kremlin-inspired terrorists, attacks on Ukraine's economy and the undermining of Ukraine's political and democratic progress. A highly effective propaganda campaign on Russian state media has damaged Ukraine's messaging at home and abroad.

A new Ukrainian political landscape will be a strong defense against the Kremlin's political attacks. The values encouraged by the Kremlin within Russia and by extension in Ukraine represent the ways of oligarchs, corruption, a lack of transparency, ethnic chauvinism, attacks on minorities, and the suffocation of civil society. The new Ukrainian politics must offer the opposite—a Ukraine whose stability is built on openness, a powerful civil society, and the rule of law.

After false starts in 1989 after the collapse of the Soviet Union, and with the 2004 Orange Revolution, the new momentum generated by the Maidan protests can be steered towards a fresh start for Ukraine, despite efforts from the Kremlin to disrupt and sabotage political progress. Unless Ukraine can show it is a vibrant, strong democracy, it will be inviting political unrest and instability which could, in turn, result in an escalation and expansion of warfare in its east.

The shooting down of the Malaysian airliner on July 17 in eastern Ukraine, killing all 298 people on board, and the subsequent struggle over an adequate investigation, helped expose the international dimension of the Ukraine war, but ending the unrest and establishing the rule of law were already key interests of the European Union and the U.S. A failure to adequately address the democracy-building dimension of the Ukrainian conflict is likely to result in the near future in a deeper political and possible military crisis for the U.S. The European Union and the U.S. should avoid making Ukraine a "Cold War battlefield" but rather help Ukraine become a strong vibrant economy and democracy.

Those hoping to promote human rights in Ukraine are likely to face a series of challenges, including persuading policymakers in Ukraine, the U.S., and elsewhere to focus on democracy and the rule of law while there remain the not-insignificant competing priorities of war, a shaky economy, and an energy dependence on a hostile Russia—these challenges must be faced simultaneously.

There is a danger that human rights issues will be designated as merely "Urgent" rather than as "Emergency." Although the overthrow of the old regime by

the Maidan protests offers opportunities for many fresh starts, there is a “deep state” mentality in Ukrainian government bureaucracies, with strong traditions of petty and larger-scale corruption. There is also little indication that there will be a fundamentally different political landscape in the near future, with few signs that a new politics is about to emerge, leaving the old political forces in power after this year’s parliamentary elections. The old anti-democratic mindset is so ingrained that new opportunities for political engagement by citizens need to be created, and existing institutions need to be reformed or even rebuilt. Hard steps also need to be taken to hold corrupt officials and rights abusers accountable under the current as well as previous governments.

The pain of lifting fuel subsidies and other austerity measures will cost the Ukrainian government popularity, hampering its ability to harness public support for change. The economy shrank 4.7 percent in the second quarter of 2014 compared to 2013. The Ukrainian government predicts a decline in GDP of around 6 percent or 7 percent this year, and the unemployment rate has risen from 7.7 percent last year to 9.3 percent in the first quarter of 2014.

Charges of fascism and antisemitism enthusiastically pushed by the Russian media are largely unfounded distractions from the main problems—incidents of antisemitism are mostly the work of provocateurs, say local Jewish groups, but the incidents are used as weapons in the propaganda war. There is also a danger that some of the more challenging human rights issues, notably homophobia, hate crime, and threats of the re-emergence of the extreme right in politics, will not be addressed or put off “until the time is right.”

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## Recommendations

As part of its bilateral and multilateral diplomatic engagement on Ukraine, the State Department and USAID should implement the following recommendations. Congress should support their implementation through its funding and oversight functions.

- Support the fight against corruption in Ukraine by vigorously implementing Presidential Proclamation 7750, which would deny entry to the United States to

corrupt Ukrainian officials who solicit or accept bribes, as well as their family members and dependents who benefit from the corruption, thus refusing to enable foreign corrupt officials to benefit from U.S. resources or find a safe haven in the United States.

- Encourage the government of Ukraine to fully utilize asset recovery proceedings in the United States through the U.S. Department of Justice Kleptocracy Asset Recovery Initiative to recover assets earned through corruption that have previously been hidden in U.S. financial institutions and to deter future hiding of corrupt assets in the United States.
- Support—financially and politically—efforts to tackle local corruption. The education and health sectors should be prime targets. Efforts could include the establishment of parent or citizen groups to act as watchdogs on local and school budgets, or fund community organizing projects based on patients’ rights issues to counter corruption in the health sector. Citizenship watchdog projects on local government—such as public hearings or online forums—should also be encouraged.
- Offer technical support to law enforcement agencies in investigating the Maidan and other protest-related killings to ensure a competent, thorough investigation which has the confidence of the public and that results in credible prosecutions or other means of holding accountable those responsible.
- Offer technical support to law enforcement agencies, prosecutors and education officials on monitoring, preventing, investigating and prosecuting violent hate crime and combating hate speech.
- Encourage Ukraine to re-establish its governmental interagency body to fight hate crime, and to utilize fully avenues of technical cooperation with the OSCE, the Council of Europe and other intergovernmental bodies.
- Offer financial support to NGOs working to monitor hate crime incidents and assist victims.
- Publicly urge campaign finance reform and transparency in the electoral process.
- Offer support in the demobilizing of far-right elements in militias when they are no longer needed for the war effort.

- Push for access of international monitors to Crimea to document human rights violations, and for those who are responsible for human rights violations in Crimea to be brought to account.
- Explore ways to advance international support for civil society in Crimea, and for the protection of Tatars in Crimea.
- Publicly criticize the refusal to protect the 2014 Kiev Pride march in the 2014 State Department Human Rights Report and remind the new Ukrainian government that LGBT rights are human rights.
- Urge senior Ukrainian officials to make public statements endorsing the rights and protection of LGBT and other minorities in Ukraine.
- Support civil society initiatives to ensure that new legislation is human rights-compliant, and help ensure that the inclusive nature of the Maidan movement is reflected in new political and civil society activity.
- Publish on the U.S. Embassy website, translated into Ukrainian, Russian and other languages as appropriate, the 2013 U.S. Guidelines for Supporting Human Rights Defenders. This will help bring clarity to civil society's expectations of what assistance it can and cannot expect from the U.S. embassy and government.

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## Corruption

Corruption is widely recognized as a major obstacle to Ukraine's progress, and has ruined previous attempts at political reform. Petty and grand corruption is rife, and the Maidan protests were in part motivated by anger at national and local corruption. The Orange Revolution a decade ago is also seen to have failed partly because it ultimately benefited corrupt oligarchs at the expense of the public—no senior figure under the previous government was prosecuted for corruption, and in the years after the Orange Revolution, income inequality remained about the same as it had been before. The International Monetary Fund (IMF) insists on new anti-corruption laws as a priority for continued lending to Ukraine, and Ukraine's parliament

addressed the issue with a series of measures passed on October 14.

Reforms passed include scrutiny of civil servant' salaries, protection for whistleblowers who expose corruption and greater transparency in the selection of judges. Under the new laws, judiciary and law enforcement officials will have to declare their assets, financial transactions, and those of their families. The legislation partly responds to widespread criticism of the lack of reform on corruption since the ousting of former President Yanukovich in February 2014. Mustafa Nayyem is a prominent investigative journalist in Ukraine who is credited with having started the November 2013 Maidan protests when he suggested on Facebook that people gather in the square on November 21, 2013. He is recognized as a leading figure in the Maidan protest, and in Ukrainian civil society. He suggests that corruption is still preventing the emergence of a new Ukrainian politics. "People are now using war as a pretext for excusing oligarchs and corruption," he said. "It's hard to criticize corrupt ministries when they're fighting a war." He and other activists urge the U.S. government to freeze the assets of officials who have stolen money through corruption in previous governments, and in the current one.

The U.S. can play its part in these efforts with a vigorous implementation of the 2004 Presidential Proclamation 7750 and the Kleptocracy Asset Recovery Initiative. 7750 bars entry into the United States of foreign corrupt officials who have solicited or accepted bribes, if the bribe has "serious adverse effects on the national interests of the United States," which includes serious adverse effects on the international economic activity of U.S. businesses, U.S. foreign assistance goals, the security of the U.S. against transnational crime and terrorism, or the stability of democratic institutions and nations.

The Secretary of State (via Under Secretary for Political Affairs) can designate individuals and implement the entry ban on them, their spouses, children, and dependents if they have benefitted from the corruption.

In his December 2004 testimony before the House International Relations Committee, Ambassador John Tefft, Deputy Assistant Secretary for European and Eurasian Affairs told Congress, that "[...if Ukraine] again fails to meet democratic standards, there will be consequences for our relationship, for Ukraine's hopes for Euro-Atlantic integration, and for individuals responsible for perpetrating fraud, including our consideration of further

use of Presidential Proclamation 7750 to deny visas to individuals engaged in corrupt and anti-democratic activities". A decade later the U.S. should be pursuing the possibilities offered by 7750 to fight corruption.

While the State Department does not disclose the names of those denied entry under the Proclamation, reports have indicated that the Proclamation has been used to deny a visa to the United States to Kenya's Attorney General Amos Wako in 2009 for acting "obstructive in the fight against corruption," and appears to have been used to deny a visa to a former Tanzanian official who was being investigated under corruption charges.

Anti-corruption legislation passed in 2007 also enables the Secretary of State to prohibit entry to officials if there is "credible evidence" they have been "involved in corruption." Although the 2007 law applies only to corruption relating to the extraction of natural resources, there is no explicit requirement for there to have been harm or serious adverse effects on U.S. national interests.

The Kleptocracy Asset Recovery Initiative, set up in 2010, is administered by the Department of Justice to recover corrupt assets that have been hidden in U.S. financial institutions by foreign corrupt entities or officials. Foreign governments can initiate proceedings against corrupt entities or officials and request the help of the United States in investigating and ultimately recovering the assets stolen as a result of the corrupt or illegal acts. The U.S. can provide investigative assistance to the foreign government and once found, confiscate the assets, either through enforcing an existing foreign confiscation order or initiating criminal or civil confiscation proceedings against the corrupt individual and their assets. U.S. courts can also issue temporary orders to freeze the assets, pending the filing of a civil confiscation proceeding against the assets. The U.S. can return the assets directly to the affected foreign government or to individual or organizational victims, if victims file petitions with the Department of Justice Asset Forfeiture and Money Laundering Section.

These measures could deter large-scale corruption and recover assets desperately needed for Ukraine's economy. On a more local level, the public needs to see that corruption can be fought and beaten in their everyday lives—in contacts with the police and other government institutions.

The parliamentary election process itself is a major test on corruption. Next week 20 parties will contest a total of 450

seats. Among candidates are some fresh voices, including investigative journalists Mustafa Nayem and Sergey Leschenko. Although President Poroshenko says he expects a "new, transparent, pro-European, parliament filled with new faces in which is a real, pro-Ukrainian, anti-corruption majority can carry out reforms," allegations of corruption persist in the electoral process itself. At an October 2 meeting foreign business leaders complained to President Poroshenko that places on party election lists for parliamentary seats were being sold for \$3m-\$4m, including on the list supporting Poroshenko.

A major public opinion survey in September of attitudes in Ukraine (funded by USAID) found that 65 percent of respondents said that since President Poroshenko took office in June 2014, efforts to combat corruption had either slightly or greatly declined. And while around 66 percent of responders expressed a great deal or a fair amount of confidence in Poroshenko as a political leader, there was far less confidence in some of Ukraine's political institutions, including 55 percent indicating not very much, or no confidence at all, in Ukraine's police.

One major bureaucracy in need of anti-corruption and other reform measures is the Ministry of Education, one of the largest state employers in the country. Parents complain of being forced to pay a series of bribes for students to access their right to education. The appointment of Serhiy Kvit as the new minister offers an opportunity for radical reform. He was formerly President of the prestigious Kyiv-Mohyla University and was prominent in the Maidan protests. But for anti-corruption efforts to work they need support at a local level. Community watchdogs monitoring local education and school budgets, perhaps via establishing Parent Teacher Associations or other similar organizations, would be helpful. The U.S. government could support such initiatives financially and encourage them through exchange programs, thereby building support for civil society at a local level across Ukraine and demonstrating progress in the fight against everyday corruption.

There is also a low level of confidence in the police and criminal justice system, also regarded as being rife with corruption. A credible, expert, and transparent investigation into the killings at Maidan and Odessa would be a step to establish confidence, and the U.S. should offer technical investigative assistance to the Ukrainian authorities in helping to determine and communicating the truth. There should also be support offered to bring to

account those who have violated the rule of law during the conduct of the war in the east.

Some promising local initiatives should be expanded. The central Ukrainian city of Vinnytsia has about 400,000 people, and under previous mayor Volodymyr Groysman, it introduced a transparent one-stop system into local government, where automatic machines process a variety of everyday municipal transactions, making it harder for officials to take bribes for minor business. The local authority also has an open-plan, glass-walled central administrative building designed to prevent secret bribery.

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## Hate Crime

While local groups monitoring hate crime note a fall in the number of antisemitic attacks, and an apparent electoral decline for the extreme right, homophobia is still strong across the political spectrum and ethnic minorities are still vulnerable to attacks.

The few antisemitic attacks which have taken place in the last year are generally ascribed to Russian-backed provocateurs, out to discredit the new government and claim it has a Nazi problem. Local Jewish groups say "Putin needs these cases as a pretext" to fight Ukraine but that antisemitic attacks are far rarer than in many western European countries.

Other minority groups assess there is much more of a problem. Between 2006 and 2008, 12 racially-motivated murders took place. In more recent years assaults have continued but without the same level of violence. One activist working with the African diaspora in Ukraine said Africans won't report attacks against them "because the first question at the police station is 'why are you in our country at all?' or they will be asked to pay a bribe."

LGBT activists also report a similar reluctance among the LGBT community to report attacks to the police, due to fear of being publicly exposed as being gay or risk being attacked by the police. In July 2014 Kiev's second Pride march was cancelled after the city's mayor refused to guarantee adequate police protection to guarantee people's right to freedom of assembly.

Ukraine's post-Maidan politics has taken some steps to address the problem of hate crime, setting up an interagency committee to co-ordinate responses to hate crime and discrimination under the co-ordination of the State Security Bureau. An official from the bureau identified weak statistical data as a problem, as well as the need for more comprehensive reporting and monitoring systems. This is clearly an area where the United States could make a valuable contribution to one area of criminal justice reform.

Although the far-right vote appeared to collapse during the presidential elections, the parliamentary elections will offer greater clarity of its electoral appeal. One issue of concern for many activists is extreme-right militias who are fighting in the Ukrainian army in the east, particularly in the Donbas, Dnipro, and Azov battalions. The overall number of far-rightists in these battalions—whose soldiers are officially under the control of the Ukrainian government—is said to be low, although it's reported they have also attracted neo-fascist fighters from Italy, Greece, Sweden, and elsewhere keen to battle pro-Russian forces. The Azov fighters use the neo-Nazi Wolfsangel symbol on their flags and some are openly antisemitic.

When asked about the battalions' neo-Nazi links, Ukrainian Interior Ministry advisor Anton Gerashchenko is quoted as responding, "The most important thing is their spirit and desire to make Ukraine free and independent. A person who takes a weapon in his hands and goes to defend his motherland is a hero. And his political views are his own affair."

How, come the end of the conflict, those with white supremacist and other objectionable views will be demilitarized remains to be seen, but those who have volunteered—including those with far-right ideologies—are currently regarded as heroes in many parts of Ukraine. It is vital that this popularity not be converted into a platform to divide Ukrainian society and promote discrimination or violence targeting minorities, and the U.S. should offer support in planning for a demobilization program. "The far-right fighting in the east is a time bomb," said one activist, "A plan for what happens next should be made."

Attacks on Crimean Tatars following Russian annexation of Crimea should also be investigated and those responsible brought to justice. The U.S. and other governments should push for international human rights monitors to be allowed to investigate these and other



violations, and to push for sanctions against the perpetrators.

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## Civil Society Space

Indicators over the last few months that a new politics is taking hold in Ukraine are mixed. The passing of anti-corruption legislation on October 14 by the Ukrainian parliament is of huge potential significance, if these reforms are seen to be transformative at a local level. There is discussion too of legislation to be considered by the new parliament aimed at cleaning up the judicial system, including video recording of trials. Prime Minister Arseniy Yatsenyuk met with Supreme Court justices in mid-October to discuss government plans, including restoring the right of appeal.

In late July too, the Central District Court in Mykolaiv found a person not guilty of supplying cannabis. The ruling was seen as something of a landmark because it was based on investigation infringements made by both the police and the prosecutor. In its judgment, the court cited the European Convention on Human Rights and European Court of Human Rights case law. Although the defendant had confessed to the charges, the court ruled that the police had obtained evidence against him in violation of his rights, and appears to be a hopeful sign in the fight against judicial corruption.

But a month earlier, LGBT activist Blogdan Globa was refused membership of the centrist Democratic Alliance Party, one of the newer political parties which won support for its part in the Maidan protests. The party began as a youth movement before registering as a political party in 2011, when it ran on an anti-corruption platform. Two of its members were among those shot dead during the Maidan protests, and it won two seats on the Kyiv council in May's elections. Democratic Alliance leader Vasyl Gatsko said that Globa's views differed from the party's on family values, saying, "Our position is that family is made up of a man and a woman."

Senior Ukrainian political figures do not make public statements supporting the rights of LGBT people in Ukraine. The United States should urge them to, and lead

by example. Senior U.S. government officials visiting Ukraine should offer support in their public statements in the country and offer to meet LGBT activist in their offices or elsewhere. Principles issued by the U.S. State Department on how human rights defenders can expect to engage with U.S. officials was published in March 2013, but have yet to appear on the U.S. Kiev embassy website or be translated into Ukrainian or Russian.

Although there is much talk of a new spirit of volunteerism and expression of civic duty during and since the Maidan protests, there are few opportunities or structures for people to organize. There are fundraising efforts aimed at supplying the Ukrainian military with equipment, and local efforts in supporting, feeding, and housing internally displaced persons from the eastern conflict. But there is little culture of local civil activism, or of monitoring government performance or accountability. These initiatives are every bit as important as national level projects if they are to instill public confidence in a new politics.

There is a danger that these relatively unfashionable, but vital, programs will be neglected by national and international governments. The U.S. government should look to support and if necessary help create such initiatives through community organizing projects to help foster a culture of local accountability.

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## Conclusion

A failure by the U.S. government and Ukraine's other friends to hold the new government to its full international human rights obligations is ultimately self-defeating, as a strong, stable, democratic Ukraine promoting human rights and the rule of law is in the best interests of the E.U., the United States, and the region. A Ukraine which does not make space for the new politics to breathe is more likely to be unstable, volatile, and at risk of further political convulsions in the form of mass protests.

Promoting initiatives to fight corruption at a national and local level and supporting civil society to establish the rule of law is in the U.S. national interests of protection against authoritarianism and a hostile Russian government.



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