



## Генеральная Ассамблея

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**Совет по правам человека****Сороковая сессия**

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

**Посещение Украины**

**Доклад Независимого эксперта по вопросу о последствиях  
внешней задолженности и других соответствующих  
международных финансовых обязательств государств для полного  
осуществления всех прав человека, в частности экономических,  
социальных и культурных прав\* \*\***

*Резюме*

14–23 мая 2018 года Независимый эксперт по вопросу о последствиях внешней задолженности и других соответствующих международных финансовых обязательств государств для полного осуществления всех прав человека, в частности экономических, социальных и культурных прав, Хуан Пабло Боославски совершил официальную поездку в Украину по приглашению правительства страны. Основная цель визита заключалась в том, чтобы изучить применение в Украине соответствующих норм международного права прав человека в сфере экономики и финансов с помощью законодательства, политики и программ. В частности, Независимый эксперт рассматривает осуществление прав человека в контексте структурной перестройки, бюджетной консолидации и политики экономических реформ, а также международной помощи в целях развития и кредитования Украины со стороны международных финансовых и многосторонних учреждений. Далее он оценивает эффективность мер, принимаемых правительством для борьбы с незаконными финансовыми потоками, уклонением и уходом от налогов, коррупцией и другими видами преступной деятельности, такими как отмывание денег, а также с их последствиями для прав человека.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на языке представления.

\*\* В связи с обстоятельствами, не зависящими от представителя, было решено издать настоящий доклад после стандартной даты его опубликования.



## Annex

### **Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights on his mission to Ukraine**

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## I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, conducted an official visit to Ukraine from 14 to 23 May 2018 at the invitation of the Government. Human Rights Council resolutions 34/3 and 37/11 provide the framework for the various and complex issues that the Independent Expert is mandated to address in his work, notably during country visits.

2. The purpose of the visit was to examine the implementation of relevant international human rights law in Ukraine in the sphere of finance and the economy through legislation, policies and programmes. The visit focused in particular on issues related to the following areas: (a) structural adjustment, fiscal consolidation and economic reform policies; (b) debt sustainability, debt restructuring and odious debts; (c) international development assistance and lending to Ukraine by international financial and multilateral institutions; and (d) illicit financial flows, in particular measures taken to tackle them, such as those to combat tax evasion and avoidance by individuals and business enterprises, corruption and other criminal activities, such as money laundering.

3. During his visit, the Independent Expert had the opportunity to meet and hold discussions with a number of high-level officials<sup>1</sup> and with researchers, academics and representatives of civil society organizations. The Independent Expert is grateful to the Government and all his interlocutors for their time and for the frank and open discussions they held, as well as to members of the international community in the country, who devoted time to discuss with him the importance of a human rights dimension to economic policies.

## II. The context in recent years

4. At the outset, the Independent Expert wishes to underscore the very complex situation and multilayered challenges that Ukraine faces after over four years of armed conflict. Serious human rights violations to the rights to life, physical integrity, freedom from torture, freedom of opinion and expression, and peaceful assembly have been documented and continue to take place with impunity. Serious disruption to accessing social security schemes and pensions, or basic needs such as water, as well as attacks by extreme-right groups on individuals, notably Roma, lesbian, gay, bisexual and transgender individuals, human rights defenders and journalists, have been reported and documented.<sup>2</sup>

5. The impact and economic implications of the temporary occupation of part of Ukrainian territory, the Autonomous Republic of Crimea and the city of Sevastopol, by the Russian Federation and the continuing armed conflict in certain districts in the Donetsk and Luhansk regions of Ukraine, cannot be underestimated. Indeed, the armed conflict affects the

<sup>1</sup> During his visit, the Independent Expert held meetings with authorities from various departments, including the Ministry of Foreign Affairs, the Ministry of Economic Development and Trade, the Ministry of Finance, the Ministry of Justice, the Ministry of Temporarily Occupied Territories and internally displaced persons, and the Ministry of Social Policy, as well as with the State Migration Service, the National Commission on Securities and the Stock Market, the National Agency for the Prevention of Corruption, the National Anti-Corruption Bureau, the National Bank of Ukraine and the Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea. In Parliament, he met with representatives of the Committees focused on taxation and customs policy, on budgets and on social policy. He also met with the Ukrainian Parliament Commissioner for Human Rights, the Business Ombudsman, representatives of the International Monetary Fund, the Delegation of the European Union to Ukraine, the United States Agency for International Development and with various agencies and entities of the United Nations country team. Finally, he thanks the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Human Rights Monitoring Mission in Ukraine for their support in planning, preparing and conducting his visit.

<sup>2</sup> See OHCHR, report on the human rights situation in Ukraine, 16 February to 15 May and 16 May to 15 August 2018, available from [www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx](http://www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx).

entire social fabric of the country, well beyond the contact line, with far-reaching and intergenerational consequences in human, social and economic terms.

6. A series of events were sparked in November 2013 by the failure of the Government of Ukraine to sign an Association Agreement with the European Union, which had created a high level of expectation among the population. Large protests began on Independence Square (the Maidan) in Kyiv. Protests spread to other regions, with violent clashes between protesters and the security forces. Months later, the Parliament voted to remove President Yanukovich and on 22 February 2014, a new Government was established. Within days, armed groups opposed to those developments had seized power in the Autonomous Republic of Crimea and the city of Sevastopol with the support of the Russian Federation, leading to a “referendum” on 16 March 2014 and the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation. It must be noted that the so-called referendum was not recognized by Ukraine or by the United Nations. In that regard, on 27 March 2014, the General Assembly adopted resolution 68/262 entitled “Territorial integrity of Ukraine”, in which it explicitly rejected the idea that the so-called referendum had legal force. Subsequently, the General Assembly has adopted two other resolutions on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (resolutions 71/205 and 72/190).

7. In parallel, in eastern Ukraine, “pro-Russian” armed groups seized control of parts of the Donetsk and Luhansk regions and declared the self-proclaimed “Donetsk people’s republic” and “Luhansk people’s republic”. By April 2014, the Government of Ukraine had launched an anti-terrorist operation to regain control of those territories, sparking an armed conflict between government forces and the armed groups in the Donetsk and Luhansk regions. Despite the Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk on 5 September 2014, and the renewal of its cease-fire provisions in February 2015, the armed conflict continues in the region, albeit at a low level of intensity.

8. These events have led to over 1.5 million persons being internally displaced<sup>3</sup> and an estimated 3.4 million people requiring humanitarian assistance in the country.<sup>4</sup> The armed conflict has killed over 3,000 persons and injured between 7,000 and 9,000 people.<sup>5</sup>

9. The life of the entire population (estimated at 45 million by the World Bank in 2016) in the country has been impacted, whether due to displacement, to the changes experienced in the host communities, or more generally to how the armed conflict has affected the whole economic, financial, fiscal and social dynamics of the country. At the end of 2017, the Government approved the “Strategy of integration of internally displaced persons and implementation of long-term solutions to internal displacement until 2020”. While the strategy is aimed at improving the overall access to various State benefits for internally displaced persons and there is reportedly some evidence of its positive impact, such persons still face enormous challenges in finding a home or a job, accessing essential services such as health care, accessing their property (including pensions) or obtaining reparations for the personal and economic damage they have suffered.

10. The armed conflict has also meant economic losses for a traditionally productive and industrial region in the country. It has significantly altered the composition and allocation of the national budget, with substantial increases in the military budget at the expense of other budgetary lines aimed at progressively realizing economic, social and cultural rights. The economic losses for Ukraine as a result of the temporary occupation and the armed conflict are very difficult to estimate and quantify, as they involve wide-ranging losses and damage, including seized assets, losses in economic and fiscal revenue, damaged public infrastructure and assets, and the loss of private assets (individual and corporate property and housing, for instance).

<sup>3</sup> See Office for the Coordination of Humanitarian Affairs, humanitarian bulletin No. 27, 1 July–31 August 2018.

<sup>4</sup> See Office for the Coordination of Humanitarian Affairs, humanitarian snapshot as of 3 October 2018 and “Humanitarian response plan”, December 2017.

<sup>5</sup> See OHCHR, “Report on the human rights situation in Ukraine, 16 May to 15 August 2018”.

11. There is no doubt that the armed conflict and the protracted economic decline (including devaluation, inflation and bank failures) has dramatically impoverished the whole population, but in particular people in the conflict-affected areas. According to an analysis carried out by the Food Security and Livelihoods Cluster, between 2013 and 2015, the percentage of the population living below the minimum subsistence level increased from 20 per cent in 2013 to 74 per cent in 2015 in the Luhansk region and from 22 per cent to 66 per cent in the Donetsk region, while the average for Ukraine (Government-controlled areas only) increased from 22 per cent to 58 per cent. Within those figures, the Cluster noted that the highest proportion of the poor were found in households with children in Luhansk, where in 2015 89 per cent of such households lived below the minimum subsistence level (up from 20 per cent in 2013). In the Donetsk region, 71 per cent of households with inhabitants aged 75 years or older in 2015 lived below the actual minimum subsistence level, up from 28 per cent in 2013, and for the Luhansk region the figure was 73 per cent, up from 30 per cent in 2013.<sup>6</sup> It should be noted that armed groups of the self-proclaimed “Donetsk people’s republic” and “Luhansk people’s republic” seized control of approximately 54 enterprises located in areas under their control and introduced a form of so-called temporary external management.<sup>7</sup>

### III. International human rights obligations and commitments

12. Ukraine has ratified most core international human rights treaties of relevance for the situations covered in the present report.<sup>8</sup> Those treaties provide for equality and non-discrimination in the enjoyment of human rights, including economic, social and cultural rights such as health, housing, food, education, work and social security.

13. Article 9 of the Constitution of Ukraine further clarifies that all international treaties that are in force, agreed to be binding by the Verkhovna Rada (parliament), are part of the national legislation.<sup>9</sup> Furthermore, the Constitution also incorporates explicit protections for a number of rights, including the rights to health, housing, education, food and social welfare.

14. At the centre of international human rights law lie the obligations of the State to respect, protect and fulfil all human rights of individuals or groups within its territory and subject to its jurisdiction. The duty to protect entails taking measures to ensure that third parties subject to the jurisdiction of a State, including financial institutions and business enterprises, do not contribute to human rights abuses and do not undermine the enjoyment of human rights at home and abroad. In other words, all States have the obligation to ensure that all enterprises operating in their territory and subject to their jurisdiction respect human rights and most importantly, that their actions or omissions do not result in negative impacts in other jurisdictions, for example, by taking part in corruption or schemes of illicit financial flows.

15. Ukraine has also committed itself to the 2030 Agenda for Sustainable Development, and presented its national baseline report in 2017. It has developed its own national targets and indicators with regard to Sustainable Development Goal 16, targets 16.4, 16.5 and 16.6 as follows: “16.4. Strengthen the system for preventing and counteracting the legalization of illegal incomes, the financing of terrorism and the proliferation of weapons of mass destruction” and “16.5. Reduce the illicit trafficking of weapons, ammunition and explosive

<sup>6</sup> See Food Security and Livelihoods Cluster, “Analysis of impact of conflict on socio-economic situation in eastern Ukraine”, September 2017, available at [https://fscluster.org/sites/default/files/documents/fslc\\_summary\\_report\\_analysis\\_of\\_impact\\_of\\_conflict\\_socio-economic\\_situation\\_15.09.2017.pdf](https://fscluster.org/sites/default/files/documents/fslc_summary_report_analysis_of_impact_of_conflict_socio-economic_situation_15.09.2017.pdf).

<sup>7</sup> See OHCHR, “Report on the human rights situation in Ukraine, 16 February–15 May 2017”, paras. 11 and 120, available from [www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx](http://www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx).

<sup>8</sup> It should be noted that Ukraine has derogated from its obligations under the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in relation to the Autonomous Republic of Crimea and the city of Sevastopol, as well as certain areas of the Donetsk and Luhansk regions. See [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND#EndDec).

<sup>9</sup> Available from [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=437942](http://www.wipo.int/wipolex/en/text.jsp?file_id=437942).

materials.” With respect to target 16.6, the provision of the national target has been simplified, so that the global target of “substantially reduce corruption and bribery in all their forms” is relegated to “16.6. Reduce the scale of corruption.”

16. In terms of the national human rights strategy and action plan, one of the major current impediments to its effective and timely implementation is the absence of a direct connection between the strategy and its action plan and the budget process. That issue could be addressed if, for instance, the agencies responsible for implementation of the national human rights strategy and action plan were instructed to plan the expenses related to the implementation of the action plan and include them in their annual budget requests.

17. Of relevance to financial obligations and the combat against illicit financial flows is that in 1997 Ukraine joined the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. In 2002, Ukraine ratified the International Convention for the Suppression of the Financing of Terrorism and since 2003, has been a party to the United Nations Convention against Corruption.

#### **IV. Economy and human rights**

18. Almost all human rights are resource-sensitive, hence the implementation of international human rights law obligations cannot be considered in isolation from economics and public finance. Shedding light on this vital link is central to the advancement of human rights.

19. The economic and financial outlook, policies and planning are often indicative of government priorities. All economic measures, particularly economic reform programmes and policies, affect the well-being of the population and often carry long-term consequences. The impact is often felt most deeply by the most disenfranchised segments of society, such as people living in poverty, children, women and older persons. In the case of Ukraine, the people who have been most severely affected by economic and social policies in recent years include thousands of internally displaced persons, who fled the conflict leaving behind their property, housing, jobs and community life; people isolated in villages along the contact line; and residents in territories controlled by the Donetsk and Luhansk “people’s republics”.

20. The human rights obligation to take steps to make use of the maximum of available resources recognizes that human rights cannot be effectively protected or realized without a clear allocation of financial resources for the common good (see A/HRC/37/54). Sustainable public finances must be assured, not exclusively for access to international financing or servicing of debt, but crucially to guarantee social justice for all and to comply with human rights obligations (see A/70/275). The role of the economy and of the economic decisions of the State should be guided by the well-being of the most vulnerable and marginalized members of society. Equally important, the State should regulate economic and financial activities and actors, and take concrete steps to ensure that the burden of economic crisis does not fall on the most disenfranchised, and does not exacerbate pre-existing inequalities.

21. The year of 2014 could be considered the most challenging year in economic terms for Ukraine since its independence in 1991. As a result of the temporary occupation and the start of the armed conflict in 2014, real gross domestic product (GDP) dropped by 6.6 per cent in 2015 and by 9.8 per cent in 2015, owing to a decline in domestic and external demand. Ukraine has had to severely realign its budget to accommodate higher defence expenditures to strengthen its military capabilities and to address the fiscal deficit.

22. Consideration must be also given to the conditions for economic growth in eastern Ukraine before the armed conflict, especially in the Donetsk and Luhansk regions. The Food Security and Livelihoods Cluster indicates that the majority of the coal-mining, metallurgical, chemical and machine-building industries were concentrated in those two regions and a significant number of highly skilled workers were employed by those enterprises. The two regions between them represented 25 per cent of industry and 8 per cent of agriculture in Ukraine, accounting for 23–27 per cent of its total exports. Their geographic position was also favourable, making them one of the most developed economic regions of the country. However, decline had already set in prior to the armed conflict and the economy was highly

concentrated on extractives, controlled by a small elite and based on inequality and political protection.

23. At the time of preparation of the present report, there were several other factors fuelling further economic uncertainty in Ukraine, notably the political climate in the run-up to the 2019 elections (presidential and parliamentary); delays in the disbursement of loans from the International Monetary Fund (IMF); the problematic social and economic implications of some of the pro-liberal economic reform proposals being discussed; and the continuing problem of corruption and its effects on the business climate. In response to the reduction in revenues and the need to address the needs of over 1.5 million internally displaced persons, expenditure, especially in the area of security and the military, but also on social investment, has also had a severe impact on the national economy and the allocation of resources.

24. In the following sections, the Independent Expert will address the issue of how people in Ukraine are, at the same time, grappling with economic constraints, increasing wealth inequalities and armed conflict, and with a number of reforms carried out by the Government in many spheres of life.

## **A. International Monetary Fund packages, assistance and conditionalities**

25. In the past 10 years, Ukraine has faced recession and devaluation of its currency, as well as economic difficulties, in two periods, from 2008 to 2010 and from 2014 to the present. In fact, for some sectors of the population, the crisis of 2014 hit when they had barely started to recover from the downturn of 2008–2010.

26. In November 2008, IMF provided a \$16.4 billion loan for Ukraine. Months before, the country had been benefiting from strong demand for steel, which alone constituted approximately 40 per cent of its exports, or close to \$17 billion in revenues. Rising capital inflows, an unprecedented consumption boom and a rising current account deficit had marked the preceding years. By 2008, the economy had overheated, with inflation running at 25–30 per cent, wages rising by 30–40 per cent and the import bill growing by 50–60 per cent.

27. The 2008 IMF-backed programme was aimed at restoring economic and financial stability, including a flexible exchange rate, measures to recapitalize the banking system and fiscal consolidation policies. The Government had also noted that the package of reforms required additional social spending to address the impact of the recession on the population. To counter the immediate effects of the crisis, the IMF-backed programme envisaged an increase in targeted social spending amounting to 0.8 per cent of GDP to shield vulnerable groups.

28. After a short period of recovery, the country fell back into high inflation, the hryvnia depreciated and real GDP dropped in 2014 and 2015 (see para. 21 above), which compounded an already dire situation for the majority of the population.

29. IMF approved a four-year loan plan for the period 2015–2019 of \$17.5 billion under the extended fund facility. As of April 2017, according to the Economist Intelligence Unit, only about 50 per cent of the expected sum, or about \$9 billion, had been disbursed. In September 2018, IMF further delayed the provision of its fifth loan tranche (originally expected in July 2017) and at the time of preparation of the present report, the loan had encountered further delays. Prior to providing the loan tranches, IMF insisted on the application of a series of conditionalities, viewed as a way of ensuring macroeconomic stability and fiscal consolidation, as prerequisites for providing further funds. The conditionalities included raising gas tariffs to market-level prices, pursuing further fiscal consolidation and accelerating the process of privatization of large and small State-owned enterprises, as well as wide-ranging land reform. IMF also requested information on the approval of the Law on the State Budget 2019 and its composition prior to disbursement. Efforts to combat corruption have also figured prominently in the negotiations with IMF.

30. IMF appears to reflect certain frustrations at the slow pace of reform, in clear contrast to the rather optimistic outlook it offered in its 2016 Article IV consultation and documents.<sup>10</sup> At that time, the economic outlook was judged more positive, with a sharp reduction on the account deficit from 9 per cent of GDP in 2013 to 3.6 per cent in 2016, and an overall fiscal deficit decline to 2.3 per cent. Ukraine seemed to be on the path to rapid deregulation and fiscal consolidation. In the Independent Expert's view, there was a lack of deeper and more targeted analysis of the potential high risks to the population if some of the measures that had been recommended were taken, and of the political difficulties in carrying out a full-fledged economic reform.

## **B. Fiscal consolidation for the period from 2014 to the present**

31. Multilateral and bilateral lenders have aided Ukraine to cover some of its financial needs and to embark on economic reform. As a result, since 2014 extensive fiscal consolidation measures have been applied and dependency on international lenders has increased. Those lenders impose stringent conditionalities in order to ensure that enabling conditions for sustainable growth are created and that loans will be repaid.

32. The Government has faced fiscal unsustainability risks in the background of a shrinking fiscal space, while it has been necessary to increase financing for defence and security owing to the armed conflict in certain districts of the Donetsk and Luhansk regions. The Government therefore introduced extensive fiscal consolidation measures in 2014 and 2015 (with continued efforts in 2016), with a simultaneous increase in financing for defence.

33. To improve its fiscal stance, the Government increased a number of taxes, including excise duty rates and rent payment rates. Among other revenue measures, the Government increased personal income tax (and introduced an additional military fee as a personal income tax surcharge), increased the taxation of investment income to rates of 15 to 25 per cent and introduced taxation on deposit interest.

34. On the expenditure side, the Government made several budget sequesters in 2014. It reduced the financing of most programmes, including social spending and capital outlays. In the same year, a planned increase in the subsistence minimum was cancelled, while some social benefits were reduced.

35. The Government appears to acknowledge that effectively addressing poverty, inflation and the dire social situation of a majority of its population is needed, if some of the severe economic reforms are to be partially successful. In that regard, the Government has taken three measures:

(a) An increase in the housing and utilities subsidy for households, to cover approximately 6.5 million households or approximately 40 per cent of the all households;

(b) An increase in the nominal minimum wage in hryvnia, which more than doubled in 2017 (even though the legal minimum wage remains low and continues to serve as a basis for calculations of social benefits and especially pensions, below the actual subsistence minimum);

(c) A pension reform in 2017, aimed at increasing the purchasing power of pensioners, and reducing inequality. Previously, pensioners with the same insurance record could receive very different pensions depending on the year in which they retired.

36. Nevertheless, the IMF conditionalities are stringent and require a number of policy reforms. Firstly, IMF has advised that a market for agricultural land be developed (i.e., a cancellation of the moratorium on land sales). The extent of the agricultural land in Ukraine is vast and it has been protected from sale for decades. The average plot of 3.7 hectares has been mainly available for lease at very low rates. The inability to purchase land is considered a deterrent to investment and hence a limitation on productivity. A vigorous debate is needed

<sup>10</sup> See IMF, *Ukraine: 2016 Article IV Consultation and Third Review under the Extended Arrangement, Requests for a Waiver of Non-Observance of a Performance Criterion, Waiver of Applicability, Rephasing of Access and Financing Assurances Review*, April 2017.



on the consequences of a large-scale sale of land for a number of human rights: notably the right to food and food security for small-scale farmers and rural inhabitants and the right to a healthy environment in relation to large-scale agrobusinesses and their practices. The debate should also encompass employment opportunities in a country that has a 9.5 per cent unemployment rate with a high percentage of the population working in the informal sector. Some of the individuals the Independent Expert spoke with showed a lack of consideration for the well-documented negative impacts of large processes of sale and/or concentration of land in other countries. The necessary reforms should be designed with an ex ante human rights assessment and with strong regulation put in place.

37. Secondly, the 2014 cooperation agreement with IMF requires a series of reforms, including bringing the price of residential gas up to market prices. Residential gas has been subsidized in the past for a large group of people without any specific targeting of those most in need. There have also been instances of distributors, who were not subject to strict accountability and oversight, selling subsidized residential gas to enterprises and companies, allowing for corruption in the sector. However, it is essential to note that a rapid increase in residential gas prices disproportionately impacts on persons living in poverty who, according to some estimates, represent approximately 50 per cent of the population in general income terms. It is especially burdensome on women, older persons, rural households, single mothers, internally displaced persons and people living close to the contact line. For illustration, pensions generally fall below the actual minimum subsistence level, which generates a substantial need for fuel subsidies. In 2016, the share of households who received such subsidies on average was 36 per cent but only 19 per cent in the Donetsk region and 15 per cent in the Luhansk region.<sup>11</sup>

38. While the Government has refrained from a total equalization of the gas tariff to market prices, it has also decided to address concerns expressed by IMF about the cost of the subsidies. In order to do so, it has decided to target some beneficiaries, using criteria such as the size of their house (200 m<sup>2</sup> or more) or apartment (120 m<sup>2</sup>) to limit entitlements. It should be noted that the increase in the cost of gas has rendered Naftogas, a State-owned enterprise, more efficient and profitable. It remains to be seen how Naftogas will balance its commercial and social obligations.

39. The decrease in the relative importance of fuel subsidies has led to higher prices for gas, heating, electricity, transportation and other goods and services related to fuel use. In 2017, bills for heating were several times higher than in previous years. The massive increase has not been matched by a corresponding increase in real wages and has affected not only marginalized groups but also the so-called middle class. As a result, competing demands on funds may at times lead to an impossible dilemma of choosing between fuel or food or medicines. The impact of the cancellation of fuel shortages on residents in rural areas, where one third of the total population is located and who rely more on gas boilers, coal and firewood than on the central heating found in urban areas, is highly disproportionate.<sup>12</sup>

### C. Litigious or odious debt

40. In 2013, a few months before the Maidan events took place, the Government of former President Yanukovich, sold \$3 billion of two-year debt. The Russian Federation bought the bond. While it was in practice a bilateral loan to Ukraine, it was structured like a conventional Eurobond and issued under the legislation of the United Kingdom of Great Britain and Northern Ireland. After the Maidan events that ousted the Yanukovich Government, Ukraine defaulted on the bond in late 2015.

41. As the Russian Federation did not take part in the 2015 debt restructuring, a case is currently under way against Ukraine before the Court of Appeal in the United Kingdom and the Russian Federation is claiming full repayment of the debt. Ukraine argues that non-payment was justified because the Russian Federation had pressed it into accepting financial

<sup>11</sup> See Food Security and Livelihoods Cluster, "Analysis of impact of conflict on socio-economic situation in eastern Ukraine" p. 6.

<sup>12</sup> Ibid.

support and had subsequently occupied the country, which worsened the nation's economic woes and led to a debt restructuring.

42. In September 2018, the Court of Appeal ruled that the dispute over the non-payment of the bonds should go to full trial. Few, if any, cases in the past have offered the opportunity for the concept of "odious debt" to be adjudicated by a court. This case would have implications not only for Ukraine and the Russian Federation but for a wider spectrum of sovereign bond issuers.

43. The Independent Expert would like to call the attention of all parties involved to the Basic Principles on Sovereign Debt Restructuring Processes, adopted by the General Assembly in its resolution 69/319 with both the Russian Federation and Ukraine voting in favour. Among the principles, there are two that are particularly relevant for the present case: good faith by both the sovereign debtor and all its creditors and debt sustainability as a goal of any debt work-out mechanism.

## **D. State Budget Law**

44. In recent years, despite not having received all the IMF loan tranches, international financial assistance has served to implement some reforms aimed at improving the fiscal situation, providing macroeconomic stability and reducing corruption. However, repaying that external debt and the cost of bailing out some private banks, especially the largest lender, Privatbank, in December 2016, have exposed the country to additional fiscal restrictions and debt risk. It is not therefore surprising that further fiscal consolidation measures are planned for the near future. Medium-term budget expenditure planning would be essential to advance in that direction and the Independent Expert was informed during his visit that the Ministry of Finance was considering that type of budget planning for 2019.

45. At the time of the Independent Expert's visit, the draft law on the State budget was under consideration. As noted by the Acting Minister of Finance, the biggest challenge for the Government in 2019 would be servicing the public debt of Hrv 417.4 billion, although its debt sustainability analysis indicates that the level of risk within its current debt structure is relatively low. It should be emphasized, however, that such an analysis should take into account economic, social and environmental sustainability, so that debt sustainability is achieved only when debt service does not result in violations of human rights and human dignity, or prevent the attainment of international development goals.

46. The draft law was subsequently adopted by the Verkhovna Rada on 23 November 2018. The key changes introduced by the Law include an increase in the minimum salary to Hrv 4,173 per month.

47. The allocation of resources for some key social sectors seems also to imply some increases. As an illustration, even though the monthly financial assistance to internally displaced persons has decreased slightly, the total allocation still amounts to Hrv 30 billion. The allocation for the Pension Fund is an increase of nearly 20 per cent to Hrv 167 billion. The allocations for the Ministries of Health and Education present relevant increases.

48. However, the allocation to the Ministry of Regional Development, Construction and Housing and Communal Services shows a decrease. The allocation for affordable housing programmes, for instance, remains the same at Hrv 8.7 million and hence insufficient. The allocation for the Ministry of Temporarily Occupied Territories and Internally Displaced Person has slightly increased to Hrv 195 billion, with approximately 64 per cent of that budget allocated to the protection of persons deprived of liberty and their families in areas outside government control. None of the budgetary discussions has been accompanied by human rights impact assessments.

49. The budget for the Ministry of Defence has been increased by 18 per cent to Hrv 102 billion. Other areas, such as the State emergency services, the State migration service and the State border guard service have also been allocated larger amounts.

50. The Independent Expert emphasized that allocations are only part of the budget cycles and should be compared to effective figures of implementation at the end of the cycle, as well

as changes that might have occurred or delays in implementation. It is often the case with a high level of debt servicing that allocations to the social sector are not implemented.

## **E. Right to social security**

51. The right to social security plays an important role in the realization of a number of rights, such as food, health or housing, and is especially relevant for persons in situations of heightened vulnerability, such as persons with disabilities, children and older persons. Article 9 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security. The Committee on Economic, Social and Cultural Rights in its general comment No. 19 (2008) on the right to social security has clarified that accessibility includes physical access to pensions, in particular for persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict (para. 27).

52. Article 46 of the Constitution guarantees all Ukrainian citizens the right to receive their pensions regardless of their place of residence. Article 49 (1) of the Law of Ukraine on compulsory State pension insurance sets out an exhaustive list of reasons for which a pension can be suspended, none of which refers to the lack of registration as an internally displaced person or residence in the temporarily occupied territories or areas not controlled by the Government.

53. Against that backdrop, the Independent Expert underlines the important plight of pensioners around the country, notably 1.278 million pensioners registered in the area not controlled by the Government (figures from August 2014), of whom, according to the Pension Fund, approximately one third (477,000) were reported to still be receiving their pensions in July 2018.<sup>13</sup>

54. According to the Law on the State Budget for 2018, adopted in December 2017, there were limited funds for the payment of pensions to individuals residing in the territories controlled by armed groups and of specific-recipient assistance to internally displaced persons, a situation that remains in the law on the State budget for 2019. The Government should take into account that elderly people are disproportionately impacted by the crisis in eastern Ukraine and that administrative requirements force them to travel through five checkpoints every 60–90 days to avoid suspension of their pensions. Often they do so with great difficulty and facing a number of risks to their lives or spending as much as 50 to 80 per cent of their monthly pension on the travel necessary to gain access to their pensions. It is of concern to the Independent Expert that, in this context, over 600,000 older persons have been cut off from their pensions and have not yet been reinstated for the majority.

55. Since 2014, all pensioners from areas not controlled by the Government have been obliged to travel to Government-controlled areas and register as internally displaced persons to continue receiving their pension (resolutions of the Cabinet of Ministers Nos. 595, 637 and 365). In addition, an increase in verification procedures since 2016 has caused people to lose access to their pensions.<sup>14</sup> In 2017 the Pension Fund halted pension payments to internally displaced pensioners who had acquired residence registration in the Government-controlled areas and consequently relinquished their certificates of internal displacement. A draft law that introduces amendments that will delink the right to pensions from registration as an internally displaced person and improve statistical data on internally displaced persons was drawn up in July 2017. Pensions are an acquired right of everyone in Ukraine and should not be linked to the status of internal displacement.

56. In that regard, the Grand Chamber of the Supreme Court delivered a judgment on 4 September 2018 that would restore access to pensions for thousands of people. The Court found unlawful the termination of pension payments to an internally displaced person based

<sup>13</sup> United Nations Ukraine, briefing note “Pensions for IDPS and persons living in the areas not controlled by the government in the east of Ukraine”, July 2018.

<sup>14</sup> Ibid.

on verification results, and found a violation of the right to property.<sup>15</sup> According to the decision, verification requirements stipulated by the Cabinet of Ministers do not constitute lawful grounds for termination of pension payments.

57. However, there are doubts as to whether this decision will change government policy on suspension of the pension and verification processes. In fact, the enforcement of the judgment on pensions for areas not controlled by the Government is recognized as one of its main challenges, since there has been widespread failure of the State to enforce judgments concerning pension arrears, which has affected the welfare of internally displaced persons.

58. In 2017, a pension reform programme, agreed as part of the policy reforms incorporated into the IMF package, introduced a requirement for a minimum of 25 years of national insurance payments to qualify for the State pension in 2018, with a gradual increase to 35 years. The purpose of this measure was to eliminate the Pension Fund deficit. The reform, together with the increase in the age of retirement for women, adopted in 2012, does not address the pension pay gap and only gradually reduces the number of pension claimants.

## **F. Women, austerity and discrimination**

59. The Independent Expert is deeply concerned about the situation of women and the overall inequality between men and women, which has increased in recent years. In 2016, the wage gap was the highest in a decade, allegedly at 25.3 per cent and while it has slightly decreased since then, the gap continues to be very large. In addition, several policy measures will have a direct or indirect impact on the economic situation of women. For instance, the amounts and duration of subsidies for childbearing used to depend on the number of children, and they have now been unified. Only limited public care facilities for children under three years old are available, thereby de facto squeezing women of reproductive age into poverty.

60. Austerity measures implemented as part of the fiscal consolidation required by IMF have included specific measures that disproportionately impact on the human rights of women. Those measures have included public sector and welfare cuts, tax increases for individuals and the elimination, or substantial reduction, of fuel subsidies. In addition, cutting, capping or freezing wages or recruitment in the public sector is one of the most clear-cut ways in which macroeconomic policy can undermine gender equality.<sup>16</sup>

61. In times of economic crisis, women globally, as is the case in Ukraine, have less access to resources and become the main providers of unpaid care work (see A/73/179). When austerity hits, the reduction in State services and subsidies directly affect women the most, whether because they assume the domestic (and unpaid) caring for children and older persons, among others, because they depend more on certain State services and social programmes, or because they are paid less or lose their jobs.

62. In addition, in Ukraine, the situation is compounded by displacement and armed conflict, especially for rural women, adding a new set of demands on and requirements of women's time, quality of life, physical and mental health, and access to work.<sup>17</sup>

## **V. Corruption, illicit financial flows and human rights**

63. Illicit financial flows are a serious human rights concern precisely because they drain a sizable part of the public budget away from its social function. Studies highlight the strong

<sup>15</sup> See European Court of Human Rights, case of *Pichkur v. Ukraine* (application no. 10441/06), judgment of 7 November 2013.

<sup>16</sup> See Women's International League for Peace and Freedom, submission to the Independent Expert on the impact of economic reforms on women, April 2018, available at [www.ohchr.org/Documents/Issues/Development/IEDebt/WomenAusterity/WILPFIE.pdf](http://www.ohchr.org/Documents/Issues/Development/IEDebt/WomenAusterity/WILPFIE.pdf) and "Obstacles to women's meaningful participation in peace efforts in Ukraine. Impact of austerity measures and stigmatisation of organisations working for dialogue", joint submission with others to the Working Group on the Universal Periodic Review, March 2017.

<sup>17</sup> See Women's International League for Peace and Freedom, submission to the Independent Expert on the impact of economic reforms on women.

correlation between illicit financial flows and lower levels of economic development (see A/HRC/28/60 and A/HRC/31/61). Illicit financial outflows affect the balance of payments of countries, inhibiting their growth, discouraging investment and leading to or exacerbating financial crises that, in turn, badly hit the most vulnerable members of society.

64. State capture matters also in human rights terms because it erodes the public trust in institutions and weakens the sense of long-term responsibility and accountability essential to achieving sustainable human development and peace and strengthening democracy. Illicit financial flows (including those originating in corrupt acts) hamper the promotion of human rights because they deepen already existing inequalities in wealth, often leading to worsening living conditions for the poor and marginalized and the diminishing of their already weak participation in public life. The Government has committed to achieving the Sustainable Development Goals in general and should specifically aim to address target 16.4, in which States are called upon to significantly reduce illicit financial flows by 2030, and target 16.6 aimed at reducing corruption.

65. In addition, journalists, activists, academics and, more generally, human rights defenders researching, investigating and/or making public information about illicit financial flows, including corruption and the abuse of authority, are often exposed to threats, intimidation and other worrying practices, such as hate speech, criminalization and curtailment of their exercise of the right to freedom of expression, association and reunion. The Independent Expert is seriously concerned at allegations he has received that this type of conduct has been increasing in Ukraine, putting those who work on transparency and combating corruption at heightened risk. This pattern of abuse is exemplified by the attack on and subsequent death of Kateryna Handziuk, an anti-corruption activist. The Independent Expert encourages the authorities to continue and carry out independent investigations of ongoing cases, including recent reports.

## **A. Anti-corruption institutions and organizations**

66. In the realm of preventing and combating corruption, the Independent Expert commends various efforts made in recent years, in particular the creation of an institutional architecture that takes into consideration some critical areas.<sup>18</sup> That includes the Law on Prevention of Corruption and the creation of the National Agency for the Prevention of Corruption, the National Anti-Corruption Bureau, the Specialized Anti-Corruption Prosecutors' Office, the Asset Recovery and Management Agency and the High Anti-Corruption Court.

67. While each of these institutions have predetermined mandates, functions and requirements, the Independent Expert has been made aware of existing tensions with regard to activities, goals, outcomes, transparency and the resources available to them.

## **B. National Anti-Corruption Bureau**

68. The Independent Expert was positively impressed by the extensive activities the National Anti-Corruption Bureau has carried out in only three years. As of December 2017, the Bureau has managed to seize funds and assets totalling Hrv 26.9 billion in cash and property, including real estate and shares in companies.<sup>19</sup> The Independent Expert has been informed that the law establishes a clear procedure for appointing auditors to monitor the activities of the Bureau. The main concern, however, seems to be about the politicization of their appointment. The Independent Expert encourages the various parts of the State involved to preserve the independence and competence of the auditors and to ensure that a transparent audit is conducted according to the spirit of the law.

69. In June 2018, the parliament and the President of Ukraine appointed the full complement of auditors allocated to the Bureau. The appointment of auditors by the President

<sup>18</sup> See Institute for Economic Research and Policy Consulting, "Ukraine's fight against corruption: the economic front", July 2018.

<sup>19</sup> National Anti-Corruption Bureau of Ukraine, report July–December 2017, p. 19.

was reportedly not considered to meet the standards for the selection procedure that were expected and some civil society organizations appealed the appointment citing, among other things, potential conflicts of interest, but their claim has not been admitted. At the time of preparation of the present report, it was unclear whether the Supreme Court would consider a similar issue in a different case. As of the end of September 2018, the audit of the Bureau had not started.

70. The Bureau has reportedly had to prevent illegal interference in several criminal proceedings, causing tensions between it and the Specialized Anti-Corruption Prosecutors' Office. It is alleged that specialized anti-corruption prosecutors have closed or blocked several criminal proceedings or investigations, including the investigation of relatives of a minister, top officials and oligarchs. If proven, this type of interference may continue, deepening tensions between the two institutions, and could potentially lead to less successful investigation of serious corruption and economic crimes.

### C. National Agency for the Prevention of Corruption

71. There is room to enhance the institutional design and administrative practices of the National Agency for the Prevention of Corruption in order to ensure full independence from political interference.<sup>20</sup>

72. The Independent Expert wishes to highlight the creation of the public depository and electronic database, containing declarations of assets, and the verification of income declarations by public servants at all levels, in the context of the work of the Agency. The use and effectiveness of the database should be enhanced. An automatic verification mechanism for asset declarations would be needed for a proper use of the database, as monitoring and accountability can only derive from this. The institutional data processing centre, currently under construction and due to be completed in December 2018, should enhance the functioning of the database in line with the other recommendations contained in the present paragraph.

73. The Agency should also endeavour to provide to the public aggregated information on asset declarations, duly and effectively follow up on its reports to the National Anti-Corruption Bureau and the police, in particular using criteria that would highlight the most egregious cases. The Agency's communication strategy for the period 2018–2020 is an important but insufficient step in that direction.

74. There has been progress regarding the establishment of a system of automated verification of asset and income declarations of public officials (e-declarations). The United Nations Development Programme (UNDP) in Ukraine assisted in the development of two modules of automated verification for the register. The modules were transferred to the Agency in September 2018. The establishment of automated verification of e-declarations is a condition for receiving the next tranche of macro-financial assistance from the European Union, which could be allocated to Ukraine after the next tranche from IMF has been received.

75. Nevertheless, while the Agency has recently made efforts to enhance the information and telecommunications system for logical and arithmetical assessment of declarations, further work remains to be done regarding the use of the verification modules, in order, inter alia, to establish or clarify rules for logical, arithmetical control, automated verification of declarations, certification of the register, appropriate data protection and security, and the establishment of appropriate access to the necessary databases and State registers.

<sup>20</sup> International Anti-Corruption Advisory Board, "E-declarations enable identification of illegal wealth," April 2018, available from <https://euaci.eu/what-we-do/resources/e-declarations-enable-identification-of-illegal-wealth>.

## **D. High Anti-Corruption Court**

76. On 21 June 2018, the parliament adopted a law establishing the High Anti-Corruption Court as a new specialized court in the Ukrainian judicial system and a much-anticipated instance in the fight against corruption. It represents the first step in the establishment of a truly independent court to address high-level corruption cases in line with the recommendations of the Venice Commission.<sup>21</sup> On 12 July 2018, a further amendment to the national legislation addressed the controversial clause concerning appellate jurisdiction over the cases currently being investigated by the National Anti-Corruption Bureau. As requested by IMF and advocates from civil society, all Bureau cases that have already been submitted to the courts, including those at the appellate stage, will be transferred to the High Anti-Corruption Court as soon as it starts operating.

77. The Independent Expert welcomes the fact that an agreement has been reached regarding the choice of independent and competent judges for the newly established court, by creating a Public Council of International Experts. Composed of six experts nominated by international organizations and approved by the High Qualification Commission of Judges, it will have the right to block a candidate who does not meet the criteria of professional integrity by a majority vote of four members. Disqualification of a candidate requires at least three votes of the Council and nine votes of the High Qualification Commission of Judges. Equally, a candidate can be endorsed as a judge only with the support of at least three members of the Council and nine members of the Qualification Commission. The High Qualification Commission of Judges ranks candidates and sends its recommendations to the High Council of Justice.

78. In cooperation with the Ministry of Foreign Affairs, the High Qualification Commission of Judges has already submitted invitations to 14 international organizations to nominate candidates for selection as international experts. A joint list was submitted to the High Qualification Commission of Judges in September and six international experts have been selected.

79. Nonetheless, the legal provisions regarding the role of the international experts have also raised concerns. Independent experts only intervene in assessing professional integrity and are not involved in the evaluation or interviews of candidates. Given that framework, the Council of International Experts can only veto the first round of candidates and cannot intervene and address the possibility of arbitrary decisions at more advanced stages of the process. Other concerns relate to the time frame that has been established: the law gives the Council of International Experts 30 days to vet the candidates, or they will automatically pass the test of integrity. There is a need to ensure a comprehensive and realistic time frame, taking into account the workload of the experts concerned, in order to ensure the effectiveness of the process. The Independent Expert also regards it as important to mention the need to ensure full transparency and clarity of criteria and assessment during the selection of judges for the High Anti-Corruption Court, as well as the fact that the High Qualification Commission of Judges has no authority to interfere in the procedures of the Council of Independent Experts.

## **E. Procurement reform and e-procurement**

80. The Independent Expert has also learned about ongoing structural reforms in relation to public procurement in a number of areas, with the creation of the electronic public procurement system known as “Prozorro”, as well as specific procurement activities undertaken by international organizations for the public health system nationwide. The right to health under international human rights law includes access to goods, such as medicines and medical equipment. In that area, a number of measures deserve mentioning, notably the

<sup>21</sup> European Commission for Democracy through Law (Venice Commission), “Ukraine. Opinion on compliance with the Council of Europe standards of the draft law on anti-corruption courts and of the draft law on amendments to the Law on the judicial system and the status of judges”, October 2017.

passing of legislation that allows for payment based on patient count (primary care) directly to hospitals and not to the regional authorities.<sup>22</sup>

81. One specific intervention to address a high level of corruption in the procurement for the health sector has been the establishment of an international group of partners, consisting of UNDP, the United Nations Children's Fund (UNICEF) and the Crown Agents, temporarily tasked with certain parts of the procurement process (bidding and purchase) for certain health products and medicines on behalf of the Ministry of Health since 2015. This is an exceptional and transitional measure to ensure that access to medicines, vaccines and essential medical goods is guaranteed. The intervention has meant a saving of approximately 40 per cent of public funds and ensured a more effective system of direct provision of medicines by national and international manufacturers.

## **F. Asset recovery**

82. In relation to the recovery of assets stolen during the presidency of Viktor Yanukovich, it is as important to ensure a fast, high-quality and impartial investigation as it is to make all the information available to the public. On the one hand, accountability and access to information are at stake. Who looted what, when, how and what happened to the assets that were recovered are fundamental questions that require complete and transparent responses. On the other hand, the national and international networks that facilitated the misappropriation of public funds for years need to be publicly exposed (and held accountable) in order to be fully dismantled.

## **G. State-owned enterprises and privatization**

83. State-owned enterprises have been identified by the Government and international partners as an area particularly exposed to the risk of corruption. The number of State-owned enterprises in Ukraine is high: in 2017, the sector comprised 3,300 enterprises, or approximately 10 times as many as the number in other countries with post-transition economies, such as Hungary (370), or 30 times more than Poland (126). The number in Ukraine is impressively high even if compared to large emerging market economies such as India (270) and Brazil (134). However only approximately 50 per cent of them are estimated to be functioning.

84. While privatization of State-owned enterprises has been on the Government agenda in the last decade, it was put on hold first in order to audit their operations and again in 2015 in order to catalogue over 200 of them for potential privatization.

85. The privatization of major assets was expected to start by the end of 2015, but has been repeatedly postponed, prompting investors to question the commitment of the authorities to selling valuable but cash-strapped State assets and underlining the need to focus on better preparing State companies for sale. The list of large State property objects for privatization approved by the Cabinet of Ministers of Ukraine on 10 May 2018 includes 23 enterprises intended to be privatized in 2018.

86. In 2018, new legislation on privatization was adopted that to some degree simplified the procedures. New legislation also provided for most privatization to be done through a competitive bidding process. Anti-corruption measures would be urgently needed in order to avoid conflict of interest issues, ensure full integrity and avoid the capture of State assets by a few, without due regard for the needs of the population at large.

## **VI. Conclusions and recommendations**

87. **The Independent Expert acknowledges the serious situation that Ukraine faces and the need to address security concerns and the armed conflict in eastern Ukraine. as**

<sup>22</sup> See Law No. 6327 of 2017 on State Financial Guarantees of Public Health Care.



well as the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.

88. One of the greatest challenges seems to be the need to find a right balance between fostering economic development, despite the difficult circumstances and serious constraints, ensuring the realization of all human rights and implementing effective measures to combat deep-seated corruption. It needs to be recalled that sustainable development, respect for all human rights and peace go hand in hand. The need to ensure an adequate response to all pensioners from areas not controlled by the Government is a good example of those interconnections.

89. In that regard, Ukraine seems to be moving from an overregulated economic system to a deregulated one, with the aim of fostering economic development and preventing corruption, but without adequate safeguards. In the view of the Independent Expert, it is one thing to create a business climate that would encourage investment, while reducing the incentives for corruption, addressing pervasive practices still in place and closing loopholes by minimizing the space for arbitrariness and impunity. It is quite another thing to do so without effective institutional safeguards and consideration for the human rights of people in the face of corporate and private actors' interests. Comparative experiences show that private actors also require effective regulation, in particular to ensure human rights compliance. However, that is achievable only with robust legislation and public institutions that prevent abuses by both public officials and the market, ensure the rule of law and tackle economic and social inequality, including gender inequality, in order to promote sustainable growth.

90. Experience shows that there are high risks when the fundamentals of an economy and the development of a society are captured by a small elite whose sole interest is in its own profit to the detriment of the well-being of the population as a whole. That is true of a small group of oligarchs benefiting from high-end corruption and state capture and can be equally true of a small group of private enterprises functioning without any regulation. In the end, both systems benefit a very small group of individuals at the expense of the majority of the population, effectively ignoring human rights obligations. In the long run, both systems cannot be combated without robust mechanisms to ensure a balanced combination of safeguards, regulation and independent oversight. Other countries that have succeeded in overcoming such challenges should share these experiences and make sure their recommendations to Ukraine reflect those lessons.

91. Regardless of the macroeconomic choices to be made, human rights should be at the centre of public policy. Economic inequality and the reduction in income of the poorer segments of the population hamper sustainable development and growth in addition to impacting domestic demand. A model that cumulatively imposes economic sacrifices on the most vulnerable groups in society is as unacceptable as one in which State agencies are captured by the private interests of a small elite or the population being plainly subject to abuse by corporations, without restriction.

92. The Independent Expert strongly advises the Government of Ukraine to consider a balanced approach that guarantees the centrality of the protection of human rights from abuse and that build on the progress made without further damaging existing advances. Such a balanced approach would entail many reforms needed for sustainable growth, while ensuring a social protection floor and the regulation of national and international actors, guaranteeing the obligation of the State to respect, protect and fulfil human rights.

93. Rooting out endemic corruption cannot be achieved without a holistic approach that includes (a) investigation, prosecution and effective sanctions, as well as a judicial reform that ensures the independence and competence of the judiciary; and (b) more emphasis on prevention in order to minimize the incentives for corruption. The robustness and effectiveness of economic regulation are crucial and need to be advanced in a coordinated manner between the agencies fighting against corruption and with those in charge of law enforcement.

94. Ukraine has put in place a series of initiatives to increase transparency, including electronic asset disclosure, e-procurement, opening up public registries and making a

number of datasets publicly available. However, the institutions set up to implement those initiatives are still relatively new and much better coordination between them is needed. There are gaps in their functioning and they urgently require effective regulation in a number of areas. They are: (a) conflict of interest, ensuring that legislation is shaped by all relevant principles applicable in the field, such as separation of powers, legality, publicity of administrative acts, fairness and efficiency, (b) lobbying of various sectors and (c) more robust protection of whistle-blowers in line with international human rights standards.

95. In that context, the Independent Expert recommends that the Government of Ukraine, international financial institutions, supranational institutions and States that support the economic policies of Ukraine:

(a) Carry out a human rights impact assessment of current and planned economic reform policies in line with the guiding principles on the subject that will be presented to the Human Rights Council at its fortieth session;

(b) Consider lessons learned by other States which have rapidly deregulated key sectors of the economy without putting in place effective safeguards and guarantees to protect national policy space and the human rights of those most at risk of bearing the brunt of the impact of reform, including in relation to income and gender gaps;

(c) Carefully assess the process of privatization of State-owned enterprises from a human rights perspective and put in place effective mechanisms to ensure that the economic results of those processes benefit the population that is most disenfranchised or at risk of falling into poverty, rather than exclusively addressing fiscal consolidation;

(d) Undertake a debt sustainability analysis based on a comprehensive understanding of debt sustainability, incorporating human rights and social and environmental dimensions (see A/71/305). Based on that evaluation, if debt restructuring is needed it should follow the standards set by the Basic Principles on Sovereign Debt Restructuring Processes.

96. The Independent Expert recommends that the Government of Ukraine:

(a) Ensure that the process of monitoring the national human rights strategy and action plan integrates the action plan activities into its budgetary processes;

(b) Take steps to ensure that social security payments cover the minimum costs of living, including by increasing the legal minimum wage and the legal subsistence minimum;

(c) Create a system of guaranteed paid parental leave, in order to address the imbalances in paid care work and family responsibilities affecting mostly women;

(d) Take effective steps to carry out a national census without delay, in order to collect the data necessary to ensure that effective and updated mechanisms are put in place to monitor and report on the country's commitment to the 2030 Agenda for Sustainable Development;

(e) Ensure the enforcement and effective application of the decision of the Supreme Court on 4 September 2018 on pensions for areas not controlled by the Government and further ensure that judgments concerning pension arrears that have affected the welfare of internally displaced persons be effectively and speedily implemented;

(f) Take further effective and structural steps to prevent illicit financial flows and ensure that the various mechanisms in place to combat corruption act with independence and integrity and in a coordinated manner;

(g) Put in place robust regulations in the areas of conflict of interest, the lobbying of various sectors and protection of whistle-blowers;

(h) Ensure that the stolen assets derived from corruption, misappropriation of public funds and other criminal conduct can be seized by the authorities through

**fast, high-quality and impartial investigations, while making all information available to the public;**

**(i) Enhance protection for the human rights and anti-corruption civil society activists that are under ongoing pressure in Ukraine;**

**(j) Increase the efficiency of military spending by enhancing transparency through a narrower interpretation of a “classified contract” and more systematic civil oversight, and put in place mechanisms to ensure that those companies that participate in the supply chain for military expenditure add value to the goods and services provided.**

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