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## WHO WANTS WHAT IN LUSTRATION?

THE ANALYSIS OF PUBLIC VIEWS OF LUSTRATION PROCESS IN  
UKRAINE

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## INTRODUCTION

In 2014, USAID's FAIR Justice project invited me to share my knowledge and experience of lustration with Ukrainian policy-makers and other stakeholders. Since then, I have travelled to Ukraine on several occasions where I held meetings with members of the Ministry of Justice, the Verkhovna Rada, the judiciary, civil society, the media, and other stakeholders. I have summarized my recommendations and assessments in two research reports and one brief.<sup>1</sup>

My work was largely socio-legal in nature. The processes of personnel reform in general and the implementation of lustration go beyond the realm of law. Lustration in particular may interplay with social factors. This may happen as a bottom-up as well as top-down process. On the one hand, social support for personnel changes and lustration may help its implementation and monitoring. On the other hand, political controversies surrounding lustration may spillover into society. Consequently, personnel changes in the state apparatus may create, or solidify, social divisions. The opinion of the general public is therefore important for both the implementation of lustration law and for understanding its effects. The understanding of lustration law requires a study in its social context. This may be achieved by a sociological analysis.

In 2015, in view of the social import of lustration, the USAID's FAIR Justice Project asked me to prepare a questionnaire that would capture the problem of lustration in its social context. I drafted the first version of the questionnaire, which was later refined, amended and embedded in the general survey. The nation-wide survey was administered by GfK Ukraine in July 2015 when 2359 responses were collected from adult citizens living on territories under the government control.

I understand that two Ukrainian researchers have already conducted an analysis of the survey data, including the assessment of the public views about the judiciary.<sup>2</sup> The objective of this report is to examine key aspects of lustration in the light of recent

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<sup>1</sup> Roman David, "Beyond Lustration: Personnel Reform in the State Apparatus in Ukraine", April 19, 2014; Roman David, "Ukrainian Lustration and European Standards: Building Democracy Capable of Defending Itself", Kyiv: USAID FAIR, February 24, 2015; Roman David, "Expert Opinion on the Recommendations made in the Final Report of the Venice Commission Concerning the Amendment to the Law of Ukraine on the Purification of Government", Kyiv: USAID FAIR, July 31, 2015.

<sup>2</sup> Marina Ogay and Oleksandr Serdyuk, "National Public Opinion Survey on Democratic, Economic and Judicial Reforms, Including Implementation of the Law on the Purification of Government", Kyiv: USAID FAIR, 2015.

conceptual advancements and to provide various stakeholders in government and civil society with feedback about the public's view of lustration and its implementation. In particular, this report seeks to examine the survey dataset in order to provide answers to the following questions:

A. Trust: Is a change in personnel needed for the establishment of trust in state institutions? Do changes in personnel lead to the establishment of trust in all institutions, e.g., law enforcement institutions and armed forces? Are personnel linked to the communist regime, Yanukovich's rule, and corruption seen equally as sources of mistrust?

B. Exclusion or Redemption: Which type of lustration law does the public prefer? Who supports particular features of lustration law?

C. Knowledge of Lustration Law: Who knows about lustration law? Which regions know the least about lustration?

D. The Views of Lustration: Who believes that lustration is necessary? Who sees lustration as a process that is essentially negative?

## **ANALYTICAL NOTE**

The purpose of this report is to disentangle significant factors that are behind a particular questionnaire item. While descriptive reports typically provide information about the percentages of supporters and opponents for a particular item of interest, the analytical report identifies who the supporters or opponents of the item are, as well as their sociodemographic characteristics, experience, and other views. The item of interest may be one question or a composite scale of similar questions, depending on whether they are conceptually consistent, operate in the same dimension and have an acceptable statistical reliability. For instance, the scale of trust in central institutions includes trust in the presidency, the cabinet and the Rada. In comparison to other trust questions, the three items operate on the same dimension; and they have a high internal reliability (alpha). Composite scales generally provide an opportunity for more robust analyses because they capture greater variation than single items.

In order to further increase the robustness of the statistical analyses, a missing data analysis and a multiple imputation of missing data was conducted for the purposes of this report. These steps were necessary because of the large proportion of unanswered

questions. This missing data problem is magnified by statistical software that by default omits a respondent who skipped or failed to answer a single question used in the model. Respondents may skip a question or more for no obvious reason, for instance, due to a large number of questions in the questionnaire. But respondents may also skip questions for reasons that may affect the results if the topic is sensitive, controversial, and/or threatening. There is a possibility that questions about lustration may be sensitive for some respondents. In such situations the number of missing cases may escalate dramatically and the analysis is likely to provide biased results. To prevent this from happening, patterns of missingness were identified; and then whenever possible, scales were reconstructed based on the responses given by the respondent to other questions in the scale and the responses given by other respondents. The scales were imputed if the respondent answered at least one question in the scale. If none of the questions was answered, the case was treated as missing.

To analyze the data, I have used several types of the multivariate analyses in SPSS. Mostly, I used the generalized linear model (linear regression); the general linear model (univariate analysis of variance) was used in Part C. I shall report results with probability of at least at 95 per cent, which is the acceptable social science threshold. Results that are at the margin of significance will be specified.

The major limitation of cross-sectional surveys – including this survey – is the limited possibility of establishing causal relations. Cross-sectional surveys permit the determination of an association between two factors but are weak in establishing which of them is the cause and which of them is the consequence. Whenever such situations appear, I consider both options. It is only possible to establish causal relations by means of experimental designs; they can be largely established by conducting a second round of the survey. The causal direction appeared most dramatically in the first part of this report, Part A. This part has also been the most complicated in terms of interpretation.

As the author of this report, I am responsible for the conduct of the statistical analyses and the reported results. Nonetheless, I am indebted to Ms. Ying Zhang who provided me with statistical support in this process, which included the overviews of descriptive statistics, data cleaning, variable transformation, factor analyses, missing data analyses, multiple imputations of missing data, and the composition of scales. Conceptual and statistical considerations were taken into account whenever a new variable had to be created.

## A. NEED FOR PERSONNEL CHANGE

Before lustration can enter our consideration, we need to ask whether any personnel reform is needed at all. Lustration as a process of personnel reform is not primarily an end in itself. It is a process that serves general goals that society aspires to achieve. These goals may encompass loyalty of state employees to state administration, its efficiency, impartiality, and law-abidance, which enable the political leadership to pursue its vital political tasks, such as the protection of territorial integrity and international integration, and which go hand-in-hand with the re-establishment of trust in the state administration and the armed forces. In the analysis of the survey, I ask questions of whether there is any relation between the social needs for the dismissal of certain categories of personnel on the one hand, and trust in the state apparatus and trust in the armed forces on the other.

*Goals of Personnel Reform:* A democratic state is based on the rule of law, which requires that the power of the state be bound by law and the constitution. Power abuses are generally considered inconsistent with democratic and economic development.<sup>3</sup> In approving the lustration law, the Ukrainian legislature assumed that certain categories of state personnel had engaged in the abuse of power. These personnel were therefore considered unsuitable to hold positions of trust in a state that pursues democratic reforms. Moreover, personnel reform not only intends to reform objective characteristics of the state but also its subjective characteristics. It is not only objective attributes, such as loyalty, efficiency, acting in accordance with law and commitment to democracy that need to emerge as an outcome of the personnel reform, but also the subjective perception of these attributes by the public. One of the most critical subjective outcome categories is that of trust. Trust in government is essential for the proper functioning of the state. Without a degree of trust, the state cannot effectively perform its daily functions, implement policies, collect tax revenues, maintain order, and fulfil other duties. The question is, are the three categories of personnel seen as an obstacle to the establishment of trust?

*The Means:* In order to achieve the objectives, the legislature approved the law on purification (lustration law). The categories of personnel that the law on purification considered as an obstacle to the proper functioning of the state and the achievement of other objectives are three groups of officials associated in various capacities with the communist regime and the KGB; five groups of officials associated with the

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<sup>3</sup> Obviously, India's democracy and China's economic development were possible in spite of rampant corruption.

Yanukovych's rule, and the corrupt.<sup>4</sup> Since the three categories operate on two-dimensions and since there is a risk of having biased estimates due to multicollinearity, my analyses included only one of the three categories of personnel at a time.

Obviously, not only dismissals but also other factors may affect trust. Trust may be affected by a range of sociodemographic factors (e.g., gender, age, education, income, marital status, and employment status). Speakers of the Ukrainian language,<sup>5</sup> those who live in the Kyiv region and those who live in the Eastern region, those who worry about the future of the country, state employees, those who interact with the state apparatus more than others, or those who were directly affected by the recent events in Ukraine may also have different perceptions of trust from the rest of population. For these reasons, I needed to control for these factors as well.

*Analyses:* In my analyses, I sought to determine whether trust in different institutions is predicted by the support for dismissal of each of the three categories of personnel. I have separately examined the support for the dismissal of Yanukovychists, communists and the corrupt. The three sets of analyses were conducted in two clusters in order to compare different institutions. In the first cluster, I considered the relations between the support for dismissing the three categories of personnel and the following two outcomes: trust in central institutions (the President, Rada, and the Cabinet) and trust in the law enforcement agencies (the judiciary, the police, the office of the prosecutor, and the ministry of justice). In the second step, I considered two other outcomes: the voluntary battalions and the regular army. In both steps, I intended to compare the institutions that employed new personnel after the Yanukovych regime (the central institutions and the voluntary battalions) with institutions which, in spite of some changes, have to a certain extent carried personnel continuity with the past (law enforcement agencies and the army). Simultaneously, I wanted to compare the state institutions in the first step and the armed forces in the second. Overall I used twelve regression models.

### ***1. Trust in Law-Enforcement Agencies and Trust in Central Institutions***

The level of trust in Ukrainian institutions is low. The president is trusted by 21 per cent of citizens, while 60 per cent of citizens do not trust him. The Rada is trusted by 9 per cent and not trusted by 74. The cabinet is trusted by 10 per cent and not trusted by 75 per cent. Trust in law enforcement agencies is even lower. Trust – not trust in the Police is 8 versus 77 per cent, the prosecutor's office 7 versus 80, and the judiciary 6 versus

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<sup>4</sup> See Survey Questionnaire, question 27.

<sup>5</sup> The variable "speaker of Ukrainian language" was created from two questionnaire items. Respondents who answered that they speak Ukrainian with family and at the same speak Ukrainian with friends were coded as 1, all others 0.

82. The judiciary is thus the least trusted state institution in Ukraine. I now consider whether the dismissal of personnel associated with the Yanukovich era, the communist regime, and corruption affects trust.

*a. Yanukovich-era personnel:*<sup>6</sup> The comparison between the predictors of trust in law enforcement agencies with the predictors of trust in central institutions yielded sharply contrasting results. The greater support for the dismissal of Yanukovich-era personnel is associated with a lower trust in law enforcement agencies but with a higher trust in the central institutions.

The negative association between trust in law enforcement and the support for dismissals can hardly mean that the maintenance of Yanukovich-era personnel is likely to increase trust in law enforcement institutions. It rather suggests that a reverse causality may be at play. Indeed, further analysis confirms a possible reverse causality, suggesting that trust/mistrust in all examined institutions affect the views about the support for dismissal of the three categories of personnel more than the dismissal of the three categories affect trust.<sup>7</sup>

There are at least four possible dynamics underpinning these relationships:

- Both sets of institutions (central and law enforcement) may be seen as *objects* of lustration (in need of lustration or not): the observation of law enforcement institutions as staffed with Yanukovich-era officials, signified by the lack of trust in these institutions, leads to the demands for their dismissal. Conversely, central institutions (President, Cabinet, and Rada) underwent personnel changes in elections. Hence, in this scenario, the presence of the Yanukovich's personnel in the law enforcement is the determining factor for demanding its "purification" while the absence of the Yanukovich's personnel in central institutions does not lead to their demand;
- Both sets of institutions may be seen as *actors* of lustration (they conduct lustration or make obstacles in its implementation): the central institutions may be seen as

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<sup>6</sup> This category was captured by a composite scale of five questionnaire items. It included the chairs of central bodies during the Yanukovich era, officials and officers of local authorities during the Yanukovich era, those who facilitated the usurpation of power by Yanukovich, employees of law enforcement agencies who opposed the Maidan events, and those who participated in political prosecutions of political opponents during the Yanukovich's government.

<sup>7</sup> I used the generalized linear models. This analysis was supplemented with the OLS linear regression models for the purposes of comparing adjusted R-squares in order to compare the model fit in instances of possible reverse causality.

instigators of lustration thanks to approving the lustration law; the law enforcement institutions on the other hand may be seen as inhibitors due to their reluctance to implement it;

- There may be a combination of both factors, whereby the presence of Yanukovych's official in law enforcement (that undermines trust) may lead to the demand for dismissals, whereas the willingness of the center to pursue personnel change (that increases trust) is in line with public expectations; and
- There may be another background factor present that affects both trust and support for dismissal. The factor leads to the demand for dismissal of Yanukovych's people, to mistrust in law enforcement and to trust in central institutions. A pro-reform or pro-Western ideological orientation of respondents may be such an instance. Dismissal of Yanukovych's people, mistrust in law enforcement, and trust in state institutions may be different expressions of the pro-reform or pro-EU attitudes.

*b. The Communists:* The relationship between the dismissal of former communists, including former KGB employees, from the era before 1991, and the two dimensions of trust seem to operate with the same logic as the dismissal of the Yanukovych's people. The only difference is that the relationship between the dismissal of former communists and trust in the center is only marginally significant, which suggests a larger possibility of no effect (the probability of an effect is about 92 per cent). The results suggest that the larger the support for the dismissal of former communists, the lower is trust in the law enforcement agencies and the higher trust in the center. However, a reverse causality is also at play: the lower trust in law enforcement, the higher support for dismissal of former communists; the higher trust in the center, the higher support for dismissal of former communists. The four possible explanations concerning Yanukovych's personnel may apply here as well.

*c. The Corrupt:* The third category of the dismissed was that of corrupt personnel. The results suggest the same negative relations between support for the dismissal of the corrupt and both dimensions of trust. The larger the support for dismissal of the corrupt, the lower trust in the law enforcement agencies and the lower support in the center (the probability of 94.7 per cent is at the borderline of significance); again the reverse causality may be at play: the lower trust in the law enforcement agencies and the center, the larger demand for dismissal of the corrupt.

The results are thus in contrast with the above results concerning the communists and the Yanukovych's people. However, the four possible social dynamics apply to these relations as well. First, it may mean that the lack of trust in law enforcement agencies and the center may be motivated by perceived corruption in both types of institutions.

Second, the lack of trust may be caused by a lack of will to tackle corruption by both types of institutions. Third, the lack of trust may be caused by the perceived corruption in law enforcement and unwillingness to tackle it by the center; or vice versa.

*d. Control Variables:* Among the control variables, age, education, economic situation, residency in Kyiv, holding a position in the state apparatus, and engagement with the state were the positive predictors of trust in the center in all three models (models with the three different categories of personnel), while the residency in the Eastern region was a negative predictor of trust in the center. The common predictors of trust in the law enforcement agencies in the corresponding three models were female sex, better economic situation, Kyiv residency, holding a state position, and engagement with the state apparatus; being married was a negative predictor.

In common to all models is the feature that those who engage with the apparatus have a higher trust in it. This may be caused by the fact that those who do not engage with the state are influenced by popular beliefs of the country as largely corrupt, which are magnified by the media. Alternatively, those who engage may have positive individual experiences with the state apparatus. I can only speculate about the reasons for their positive experience: those who engage with the state apparatus may discover that the state administration is not as corrupt as they had expected; their experience of the state administration may be a “personal matter” that enables them to influence the administration to work in their favor; or it may include those who engaged in the corrupt behavior. On the other hand, those who are employed by the state apparatus have a higher trust in it, which may be caused by personal and/or professional factors.

Another common feature to all models is the insignificance of language. There was no difference in trust in law enforcement or in central institutions between speakers of the Ukrainian and speakers of other languages.

## **2. Trust in the Army and Trust in the Voluntary Battalions**

The Army and the voluntary battalions are the most trusted institutions in Ukraine. The Army is trusted by 49 per cent of respondents and not trusted by 30 per cent, while the battalions are trusted 54 per cent and not trusted by 26 per cent of respondents.

*a-c. Yanukovich-era personnel, communist-era personnel, and the corrupt:* The results here are less complicated than in the case of state institutions. The support for dismissal of any of the three categories is positively associated with trust in the Army as well as with trust in the voluntary battalions. All of these links are strong and highly significant. It is surprising that the association is positive for all categories of personnel.

The results suggest that the dismissal of any of the three categories may increase trust in the armed forces; or that those who trust these institutions also support dismissals. Contrary to my expectations, the Army is seen more or less in the same light as the battalions. This is puzzling because the Army carries the baggage of the past, while the battalions have been newly established.

Two possible explanations for this phenomenon can be identified here. First, the participation in military operations demonstrates a high degree of loyalty to the country. Even if the Army contains personnel tainted by the past, service for the country is seen as more important and/or overrides the taint of the past. A demonstrable degree of loyalty and professionalism trumps a hypothetical degree of disloyalty and corruption.

Second, the relationship may be caused by another factor, e.g., ideological influence, a pro-reform or pro-Western orientation, anti-Russian stance, and/or a contest between the past and the future. For instance, because of their commitment to the country and concerns about its future the same people who trust the Army and the battalions also support the dismissal of Yanukovich's people, the corrupt, and the communists as people of the past. The support for these dismissals may be a response to the presence of tainted individuals in the civil parts of the state apparatus; and the trust in the Army and the battalions arises from their military role in defending the country. Hence, there may be no direct link between the two, although the indirect link may be very strong.

*d. Other variables:* Among the control variables, both the army and the battalions are more trusted by people who are in a better economic situation, by speakers of the Ukrainian language and by those who worry about the future of the country. Both institutions are less trusted by women and by the residents of the Eastern region. The Army is also trusted by those who hold a state position and those who were affected by the events in East Ukraine. Contrary to expectations, the battalions are less trusted by the unemployed. Thus, cultural-geographic divisions continue to influence trust in the armed forces. In addition to this, the influence of economic factors suggests a trust-gap between the rich and the poor.<sup>8</sup>

*Summary:* The social dynamics between the trust in state institutions and dismissals are complex. Since the results of the multivariate analysis are in accordance with simple binary correlations, I summarize the results in the correlation table. *What is obvious is*

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<sup>8</sup> An analysis of a recent wave of global surveys has identified “the trust gulf” between high-income and low-income respondents. Andrew Hill and Chris Giles, “‘Informed’ Global Elite Places Greater Faith in Institutions”, *Financial Times*, January 18, 2016, p. 2.

*that personnel changes are linked with trust in state institutions. What is not obvious is how and why they matter. Without experimental and qualitative evidence, it is impossible to draw definite conclusions and make a strong recommendation for a particular scope of lustration.*

Table 1  
**Binary Correlations**

SUPPORT FOR DISMISSAL OF	TRUST			
	Law enforcement	Center (President, Rada & Cabinet)	Army	Voluntary Battalions
<b>Yanukovychists</b>	-.098***	.090***	.282***	.374***
<b>Communists &amp; KGB employees</b>	-.083***	.065***	.208***	.293***
<b>Corrupt</b>	-.237***	-.096***	.079***	.138***

\*\*\* p < 0.001

**Note:** The binary correlations run in the same direction as the results of the multivariate analyses reported above. P-value < 0.001 suggests a probability of the association is larger than 99.9 per cent.

## B. FEATURES OF LUSTRATION

Lustration laws come in various models. They may come as an exclusive lustration with punitive features. They may come as a mixed model of lustration, balancing exclusion with inclusion by granting an exception from dismissals. The exclusive measures may directly incorporate the judicial review for the appeals against dismissals or may not provide for such appeals. There may be other models and features of lustration, which were not implemented in Ukraine because they were not suitable to the Ukrainian situation or were not salient. In these analyses, I have considered factors that explain public support for, and opposition to, the three features of lustration laws that I consider critical in the Ukrainian situation: a. life prohibition, b. granting exceptions, and c. granting the appeal against dismissals. All three aspects are linked to the issue of desires for retribution and a second chance, which manifest the essence of exclusive and reconciliatory models of lustration.<sup>9</sup>

### **1. Life Prohibition**

A prohibition of holding public office for life in cases of tainted officials has been demanded by some sections of the public. It is also conceptually an attractive theme because it captures desires for retribution, which are a natural response to the power abuses committed in the past. Every kind of punishment portrays the tainted official in a particular way. In this perspective, life ban portrays an official involved in a prescribed activity (e.g., “informed about fellow citizens in the Soviet era”) or held a specified position in the past as unreformable and incapable of personal change.

Unlike other prohibitions (i.e., a five-year ban and a ten-year ban) that essentially capture the same desires for retribution, the life-ban also unequivocally encompasses an absence of a second chance. Although retributive in their nature, time-limited bans may be interpreted as a belief that the official who served his or her time out of public sector is capable of holding office in the state apparatus again. In addition to conceptual reasons, there are technical reasons for discarding five-year and ten-year prohibitions. Respondents who oppose a ten-year ban may be those who find it insufficient as well as those who find it excessive. The results would thus be distorted by capturing responses by opposite camps.

In my analysis, I have regressed the responses to the life prohibition on a similar set of independent variables as in the previous section concerning trust. I have left out the

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<sup>9</sup> Roman David, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland* (Philadelphia: University of Pennsylvania Press, 2011).

variable concerning dismissals of a particular kind of a tainted official (which is not studied here) but added variables encompassing religious beliefs or their absence, which may affect the desire for retribution.<sup>10</sup> Since the religious affiliation comes from a single question, I have selected two of the most frequent categories: non-believers and those affiliated with the Ukrainian Orthodox Church (Kyiv Patriarchate).

The results show that those who support the prohibition of holding public office for life are more educated, residents of Kyiv, speakers of the Ukrainian language, atheists, those believers who belong to the Ukrainian Orthodox Church (Kyiv patriarchate), and those who worry about the future of the country. On the other hand, women, residents of the Eastern region, and those who engage with the state administration are more likely to disprove the support for life-ban.

The results suggest a possibility that an eventual implementation of lustration with a strong punitive component could polarize society along linguistic and geographical lines. Rather than life bans, the legislature could consider other types of sanctions. Temporary bans, which are currently implemented, could be attached to particular positions of trust within the state apparatus rather than to past behavior.<sup>11</sup> Temporary bans are certainly less punitive, but other options, such as demotion or a possibility of reintegration, could also be considered. Whether the latter is a possibility, I shall examine in the next section.

## **2. The Granting of Exemptions**

The Ukrainian lustration law is not an indiscriminate measure but provides for exemptions from dismissals, most notably giving an opportunity to tainted officials to redeem themselves by taking part in military operations. Such exemptions not only allow the reintegration of tainted officials back into the system but also send an important signal to society that opportunities are not defined by the past but by present behavior. From a purely theoretical perspective, the integrative feature may play an important role in the restoration of Ukraine. However, it is not the purpose of this section

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<sup>10</sup> Roman David and Susanne Y. P. Choi, "Getting Even, or Getting Equal? Retributive Desires and Transitional Justice", *Political Psychology* 30(2): 161-192 (2009).

<sup>11</sup> Technically speaking, five-year and ten-year bans create an impression of a quasi-penal code at the level of public employment law. However, the coexistence of different lengths of prohibition does not necessarily suggest backward-looking (retributive) motives in the passing of the lustration law. The critical distinction between retributive and prospective lustration is whether the ban is retrospective (attached to particular actions and affiliations held in the past) or prospective (disabling access to a position for a period of time after which a political system becomes stable).

to speculate about the political utility of such exemptions but empirically assess their eventual social acceptance.

I used the same model as before but replaced the outcome variable. Instead of “the life ban” I used a composite scale of four types of exemptions: participated in the military operations in the East of Ukraine as part of the Armed Forces of Ukraine or Ukrainian voluntary groups (supported by 43 per cent, opposed by 38 per cent); sincerely repented and returned the proceeds from unlawful activities (34/48); provided an important information (35/45); and is a unique specialist (37/44).

The results of the multivariate analyses show that exemptions are more likely to be supported by people with a better economic situation and inhabitants of the Eastern region. On the other hand, speakers of the Ukrainian language, members of the Orthodox Church (Kyiv Patriarchate), and the unemployed are more likely to oppose it. The results thus show that even the exemptions are divisive. Granting them is an important signal for the Eastern region but it is disproved in the rest of the country. The exemptions are also divisive based on economic, religious and linguistic differences. Nonetheless, a number of categories who manifested desires for retribution in supporting life prohibition are not significant in the support for exemption, most notably those who worry about the future of the country and those who engage with the state apparatus.

### **3. Appeal against the lustration decision**

Support for an appeal against a decision about dismissal can be conceived as an expression of tolerance and procedural justice. Typically defined as putting up with actions one disapproves,<sup>12</sup> tolerance is usually connected to the exercise of a right by members of “the disliked groups”. In this case, tolerance encompasses the rights of the tainted officials to have their cases heard by an impartial tribunal. Procedural justice stresses the import of fair procedures for accepting the outcomes of decision-making.<sup>13</sup>

On the one hand, opposing appeals against lustration decisions cannot simply be considered as an expression of intolerance in the Ukrainian context. There are two major practical concerns related to the right to appeal. First, the judiciary is staffed by

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<sup>12</sup> John L. Sullivan and John E. Transue, “The Psychological Underpinnings of Democracy: A Selective Review of Research on Political Tolerance, Interpersonal Trust, and Social Capital”, *Annual Review of Psychology* 50:625-650 (1999).

<sup>13</sup> Tom R. Tyler and Steven L. Blader, “The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior,” *Personality and Social Psychology Review* 7 (4): 349-61 (2003).

judges appointed during different eras of the Ukrainian state, which manifested different degrees of commitment to the rule of law. This may not guarantee a fair trial. Indeed, the judiciary receives the lowest trust score among all institutions. Second, the appeals may not be seen as reasonable since they would slow down the process of reforming the personnel situation in the state apparatus at the time when the country faces an imminent threat. Indeed, even the legislature has had to balance the need to adhere to the rule of law and the need to reform the state apparatus expeditiously. On the other hand, the neglect of procedural justice may affect the assessment of the process.

Where does the Ukrainian public stand on this issue? Some 70 per cent support the right to appeal while 15 per cent oppose it. Those who support it are more likely to be the inhabitants of the Eastern region (just reaching the level of statistical significance of 95 per cent) and those who worry about the future of the country. Those who oppose it are more likely to be the adherents of the Orthodox Church Kyiv Patriarchate (the effect is at the margin of statistical significance; probability at 93 per cent) and those who engage with the state apparatus. Again, the geographic-religious divisions play out in this dimension as well but are less pronounced. The right of the dismissed to appeal is considerably less divisive than the life-ban for the dismissed and the granting of exemptions.

## C. KNOWLEDGE OF LUSTRATION

Awareness about lustration law is critical for its implementation. The informed public can monitor the implementation of lustration law, its absence and abuses. Most importantly, understanding of lustration law as a prospective law that seeks to reform the state apparatus can prevent political factions from exploiting it for their own political purposes when interpreting it as a measure that targets a particular class of citizens. The lack of knowledge about lustration may be an impulse for strengthening outreach by civil society organizations, which can focus on a particular group of citizens. I therefore try to determine who knows and does not know about lustration.

The knowledge about lustration was measured by a composite scale of eight questions. They included general knowledge about lustration (54 per cent yes, 32 per cent no), its legal basis (29/57), knowledge of who is subject to lustration (34/50), information about who conducts lustration of public officials (22/62) and judges (20/66), knowledge of how lustration of officials (20/65) and judges (18/67) is implemented, and knowledge of how one can contribute to lustration (18/69).

The predictor variables included a similar set of variables as in the previous sections: region, sex, age, education, marital status (married), employment status (unemployed), language (Ukrainian), and holding a state position. However, instead of including only two regions (two dummy variables had been created for Kyiv and the Eastern), I have included all regions in this analysis. My motivation was to detect any other regional differences in order to provide information to USAID's Fair grantees who conduct outreach in the area of lustration. Since "the region" is a nominal variable, the General Linear Model was used for this analysis.

The results show that the knowledge about lustration is similarly distributed around regions with similar patterns as other attitudes towards lustration: Each region has a significantly higher awareness of lustration than the Eastern region. Even the Southern region, which has the second lowest awareness of lustration, scores significantly higher than the Eastern region. Among other significant predictors, respondents who are men, older, educated, married (probability of 94 per cent), those with a better economic situation and those who hold a state position are more likely to know about lustration. Thus, the young people in Eastern Ukraine would be the most suitable target group to spread information about lustration.

## D. VIEWS OF LUSTRATION

Perceptions of any new policy, a policy change or policy reforms may affect the prospect for delivery of the policy. The support of the public is an important aspect in implementing government policies, whether it is tax, healthcare, or immigration. Likewise, the public perception about lustration is critical for its implementation. If lustration were not supported and criticized, its implementation could be negatively affected. Hence the views about lustration may be influenced by a combination of the views expressed by the parties and actors on the side of government and on the side of the opposition, and by the individual experiences of the respondents. For this reason, we have asked our respondents about their views about (a) the need for lustration; (b) its problems; and (c) its assessment. Cluster analyses showed that these categories operate on different dimensions.

### **1. The Need for Lustration**

First, I seek to identify the determinants of the need for lustration among the public. Part A of this report has already tried to determine the need for personnel reform in general. That part dissociated lustration and personnel reform because lustration laws are not the only tools to handle personnel reform.<sup>14</sup> Moreover, lustration laws are typically controversial measures; they create noises that may silence the original purpose of the law. In this section I turn to lustration as the principal method of personnel change.

The need for lustration was measured by the composite scale of four questions. They included a general question about the need for lustration (90 per cent agree, 3 per cent disagree), belief that it would facilitate democratic reforms (81/9), would be essential for economic reforms (80/9), and would be essential for wealthy and prosperous state (79/10). The question is who are the respondents who believe that lustration is needed?

To answer the question I turn to the multivariate analysis. I have regressed the need for lustration against almost the same set of variables as in part A; I have only replaced a support for dismissal for a particular category of personnel with a support for former President Yanukovich.

The results show that more educated, married, residents of Kyiv region, speakers of Ukrainian language, and those who worry about the future of the country are more likely to view lustration as needed. Women, those with a better economic situation, unemployed, holders of a state position and the supporters of Yanukovich are more

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<sup>14</sup> See David, "Beyond Lustration," *supra* note 1.

likely to disagree that lustration is needed. Importantly, being a resident of the Eastern province does not seem to affect the view about the need for lustration. This result is in contrast to earlier analyses that showed divergence between the East and the rest of the country; this may be explained by the fact that people may lack knowledge about lustration.

## **2. Negative Views of Lustration**

Lustration is a controversial measure. Political formations may be tempted to seek to retain, exercise, or regain control over the state apparatus. They may be accusing each other of power abuses in this battle. Civil society groups may demand or oppose lustration on human rights grounds; the former may see lustration as a measure that deals with human rights violators, while the latter may protest an eventual infringement of human rights by lustration law. The public is caught in the midst of this cross-fire. Citizens' views may thus be affected by the political battles as well as by their own personal experiences.

The negative views of lustration were captured on a composite scale of four questions: lustration is nothing more than revenge (37 per cent agree, 40 per cent disagree); lustration will harm society by losing valuable experts (18/59); untainted employees will suffer (26/51); and lustration is used for personal benefits (56/23). This analysis used the same set of predictors as in the previous section.

The results show that a negative view of lustration is more likely to be held by the unemployed, those who hold state positions and the supporters of the former president Yanukovich. On the other hand, speakers of the Ukrainian language, those who engage with the state administration, and those who worry about the future of the country are more likely to disagree with the negative view of lustration. Being a resident of Kyiv or the Eastern region does not significantly affect the negative view of lustration.

## **3. Views about the implementation of lustration**

The process of the implementation of lustration may affect the prospect for its success. If the process were seen as flawed, it is likely that it would negatively affect the result of lustration, trust in state institutions, and confidence in the process of reforms. Respondents were therefore asked whether they agree or disagree that lustration in Ukraine is honest (14 per cent agree, 65 per cent disagree), it is conducted transparently (14/66), and the lustration department is free of corruption (17/60). The three questions were put together into a composite scale.

The results show that a positive view of the implementation is more likely to increase with age, economic situation, and the residency in Kyiv. On the other hand, speakers of the Ukrainian language are more likely to hold a negative view about the implementation of lustration. This would be a particularly worrying trend, if the implementation of the lustration process cannot demonstrate honesty, transparency and the absence of corruption even in the eyes of its supporters.

## DISCUSSION

The results of the analyses show that lustration may become an increasingly controversial issue that in *some of its aspects* has a potential to resonate with existing linguistic, religious, and geographic divisions in Ukraine. The results presented here are nevertheless tentative. A second round of the survey, experimental design, and qualitative analyses would need to be conducted to strengthen the following conclusions.

A. Trust: The results about trust in political institutions are open to interpretation. It seems that trust in law enforcement institutions is undermined by the presence of Yanukovich-era officials and/or by the obstacles they create in pursuing dismissals. Trust in the center is strengthened by the departure of these officials and by determination to make changes in other sectors. Trust in the center and in law enforcement is undermined by the presence of the corrupt individuals; and/or by the inaction of these institutions to tackle corruption.

The same (positive) association between the support for changes of the three categories of personnel and the trust in the Army and the battalions suggests that it is possible that established institutions may regain confidence of the public if its actions demonstrate loyalty to the country. Alternatively, the support for dismissals and trust in the military institutions may arise from the historical-political context of a country that is in a process of transition from the influences of its Soviet/Russian past towards an EU future. Indeed, running three additional models with the support for the EU as a dependent variable suggests that the support for dismissals of the three categories of personnel goes hand-in-hand with the support for the EU. The continuance of the old bureaucracy is seen as an obstacle to reform. The hopes for the future of the country are disconnected from the personnel of the past.

B. Exclusion and Redemption: The dilemma of exclusion versus redemption revealed deep social divisions. The speakers of the Ukrainian language, believers of the Ukrainian Orthodox Church (Kyiv Patriarchate), and citizens of Kyiv are more likely to

support exclusions and oppose exemptions, suggesting a belief that the tainted cannot be redeemed. The citizens of the Eastern region on the other hand oppose exclusion and support exemption. This trend may be of concern; it suggests that lustration could be divisive and needs to be carefully implemented in accordance with the existing law that provides for both exclusions and exemptions.

In order to further the analysis of the social divisions, I have also tried to add the individual's past voting record in earlier presidential elections to all three models (life prohibition, exemption, and appeal). Namely, I added the support for former President Yanukovych.<sup>15</sup> These additional analyses yielded one expected and one unexpected finding. First, the former voters for President Yanukovych are more likely to oppose the life ban, support exemptions, and support the right to appeal. It is logical since many of the lustration law provisions target the abuse of power during Yanukovych's era. What is unexpected is that all other variables that were significant in the original models (reported above in section B) remain significant even after controlling for Yanukovych's support. It means that most of the social divisions faced by the Ukraine, as manifested in the support for different features of the lustration law, are not caused by the Yanukovych's regime per se. Rather the Yanukovych's regime was an expression of historical divisions that manifest in the geographic and cultural landscape. The reform of the state apparatus therefore needs to take into account not only the problem of Yanukovych's supporters but the underlying cultural differences that are attached to region, religion, and language. Currently, by targeting Yanukovych-era officials, the lustration law focuses merely on dealing with symptoms rather than syndromes of the problem.

C. Knowledge of lustration: In order to increase public awareness about lustration, young people in Eastern Ukraine but also in Southern Ukraine, especially female, need to be reached as the most suitable target group for increasing awareness about lustration.

D. Views of lustration: It is surprising that the-East-versus-the-Rest difference does not significantly affect the views of lustration. On the other hand, linguistic differences play a role but in a rather unexpected way. Speakers of the Ukrainian language consider lustration as needed, disprove its negative views but look at the process with deep suspicion.

There is an interesting interplay between the knowledge of lustration (part C) and views of lustration (part D): Knowledge about lustration impacts its assessment. To take

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<sup>15</sup> "Voted for Yanukovych and does not regret it" coded as 2, "voted for Yanukovych and regrets it now" as 1, and did not vote for Yanukovych as 0.

another look at this issue, I have added knowledge of lustration as a control variable to models concerning the views of lustration. The results of the controlled models show more or less the same results; but a knowledge of lustration positively affects people's views of its need and reduces people's view of lustration as a negative process. Those who know about lustration are more likely to see the implementation of lustration in a positive way. This is an encouraging finding that highlights the need for outreach and public education about lustration.