

Research Assessment Exercise 2020
Impact Case Study

University: Lingnan University

Unit of Assessment (UoA): 27 - Sociology & Anthropology

Title of case study: Restoration of Trust in the Administration and the Judiciary in Ukraine

(1) Summary of the impact

Spanning 2014 and 2016, research conducted at the Lingnan University provided crucial assistance to Ukraine's national legislators, Supreme Court judges, Ministry of Justice, Bar Association, OSCE, journalists, and civil society groups in crafting legal options to restore trust in the state of Ukraine. The impact draws on (i) Professor Roman David's award-winning research in Central Europe, South Africa, and the Middle East; (ii) his survey research into attitudes of the Ukraine population and judiciary towards institutional trust building. Research encompassed three field trips, five research reports in English and their translation into the Ukrainian, dozens of meetings, two public talks, two video conferences, two live TV interviews and one newspaper interview.

(2) Underpinning research

The research draws on a unique synergy of original conceptual development, socio-legal studies and innovative survey experiments conducted by Professor Roman David in Central and Eastern Europe, the Middle East, and South Africa. Professor David's research was supported by a number of organizations including the United States' Institute of Peace, Yale University, Newcastle University, Lingnan University and the USAID's Fair Justice Project.

Historically, the chief responses to trust building in states undergoing regime transition are personnel change, institutional restructuring, and the dissolution of entities [R1]. However, these often prove destabilizing. For example, the de-Baathification of Iraq and the Political Isolation Law in Libya emptied the state of qualified personnel and fueled ethnic conflict [R3]. On the other hand, a "business as usual" attitude also has negative consequences. It often reduces trust in the new state, and provokes ethnic conflict and separatist tendencies (evidenced in South Africa during the 1990s). Previous research in this field overlooked alternatives that provide incentives for "tainted" personnel to switch loyalties and win the trust of the public without compromising the effectiveness of the state or national security [R2; R4; R5].

Based on socio-legal study of the aforementioned processes in a variety of countries, Professor David introduced the concept of **personnel system** as a new way to tackle transitional public employment laws and similar measures [R1]. 'Personnel system' evokes the linkage between the state and its employment practices. While electoral systems represent methods of constituting the legislature, the personnel systems represent methods of reforming the state apparatus after regime change. 'Personnel system' enables researchers to direct the attention of policy makers and the public to a range of fundamental choices in order to create trust, judicial independence, political stability, and social reconciliation.

The most salient problem confronting regimes transitioning to stable pluralism is the presence of officials associated with the previous state. Professor David observed that the problem of tainted personnel in Central Europe was not only addressed by dismissals, which are controversial and divisive; exposure and confession emerged as viable inclusive alternatives to dismissals, which carry profound symbolic meanings for the rest of society [R2]. On this basis, Professor David classifies systems based on dismissal as **exclusive**, systems based on exposure as **inclusive**, systems based on confession as **reconciliatory**, and systems based on combinations of dismissals and

inclusions as **mixed** [R1]. In order to empirically examine the validity of this classification, Professor David devised a set of experiments that were embedded in nation-wide surveys in the Czech Republic, Hungary and Poland. The results of these survey experiments showed a dual effect of personnel reform: a direct effect on state administration, and an indirect effect on divisions within society, conforming the propensity of personnel reform to affect interpersonal relations and conflict. While the exclusive system was three times more efficient in generating trust in government than reconciliatory system, only the reconciliatory system was able to establish trust in government and at the same time transform divisions within society, thereby contributing to social reconciliation [R1].

Professor David's expertise assumed new relevance following the ouster of Ukraine's President Yanukovich and the annexation of Crimea by the Russian Federation [R6]. (See Section 4)

(3) References to the research

- [R1] Roman David, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press, 2011. Winner of the tri-annual Concept Analysis Award by the Research Committee 01 on Concepts and Methods of the International Political Science Association in 2012.
- [R2] Susanne Y.P. Choi, Roman David, "Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland." *American Journal of Sociology*, 2012, 117(4), 1172-1201.
- [R3] Roman David, "From Prague to Baghdad: Lustration Systems and Their Political Effects." *Government and Opposition*, 2006, 41(3), 347-372.
- [R4] Roman David, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)." *Law and Social Inquiry*, 2003, 28(2), 387-439.
- [R5] Roman David, "In Exchange for Truth: The Polish Lustrations & the South African Amnesty Process." *Politikon: South African Journal of Political Studies*, 2006, 33(1), 81-99.
- [R6] Roman David, "Lustration in Ukraine and Democracy Capable of Defending Itself." In Lavinia Stan and Cynthia Horne eds., *Transitional Justice in the Former Soviet Union*. Cambridge: Cambridge University Press, 2018, pp.135-154.

(4) Details of the impact

Pursuant to an initiative by USAID's Fair, Accountable, Independent and Responsible Judiciary Program (FAIR) in Ukraine, Professor Roman David was invited to Kyiv as an independent consultant to provide best practice expertise on a number of lustration initiatives that arose in the aftermath of the political changes known as "Maidan Revolution" – the deposition in 2014 of the Russian-backed President Viktor Yanukovych. Professor David's specific brief was to furnish options for the Ukraine parliament and judiciary to craft lustration laws consistent with Council of Europe norms. The field trips to Kyiv, Ukraine, took place in April 2014; and in February 2015 and August 2015. Mr David Vaughn, Chief of Party of USAID's FAIR Justice Project, stated that "[Professor David's] work has not only helped to improve the legal framework for the lustration and vetting of public officials and judges, but also implementation of significant aspects of related laws and regulations. [Professor David] provided effective policy guidance to national stakeholders from the Ministry of Justice to Members of Parliament. [Professor David] also successfully engaged civil society in a discussion on their crucial role in monitoring and raising public awareness about lustration and vetting processes." [S1]

The impact of the research is divided into four categories, each entailing specific points of consultation to policy-makers and other parties in the form of tailored research reports.

(i) ***Advantages and Perils of Lustration and the Architecture of Lustration Systems:*** The initial stage pivoted on Professor David's research experience over a decade and a half of comparative study on the design, advantages and disadvantages of exclusive, inclusive and reconciliatory models of resolution of personnel issue. This, in turn, was the groundwork that enabled Professor David to offer detailed feedback on the Bill on the restoration of trust in the Ukrainian judiciary as well as feedback on several other Bills of lustration laws. Such feedback was presented during Professor David's first field visit to Kyiv in 7–12 April 2014. During that period Professor David met with Egor Sobolev (who at the time was designated chair of the lustration committee) and his colleagues. He also took part in a conference call with the OSCE Office in Poland to brief them about the advantages and perils of lustration. He also met with a variety of key figures in the field including journalists in a public forum in the Ukrainian Academy of Sciences, NGO experts (I. Koliushko, R. Kuibida, S. Holovaty, O. Syroid, M. Kozyubra, Y. Kliuchovskyi), judges of the Supreme Court of Ukraine (about 20 judges present) and the Open Dialogue Foundation. In addition, Professor David contributed to a roundtable on Constitutional and Legal Reform hosted by the Center for Political and Legal Reforms and the Academy of Sciences. He also collaborated with the chair of the Judiciary Committee of Verkhovna Rada (the Ukrainian parliament). As a direct result of his consultation work, the Verkhovna Rada rectified *some* deficiencies of the proposed bills and approved the Law of Ukraine on the Restoration of Trust in the Judiciary in April 2014 [S2] and the Law of Ukraine on the Purification of Government, September 16, 2014 [S3]. However, the legislators did not accept all recommendations, in particular the need for an individual approach in lustration cases.

Moreover, Professor David's impact reached a broader, non-official public through the translation academic and policy-oriented research into the vernacular. These efforts led to an appearance on a national private TV and an interview for the Radio Free Europe [S6].

(ii) ***Lustration and Human Rights Standards:*** One of the major challenges of lustration laws is designing them to conform to both domestic and international human rights standards. Specifically, the question of how a state should conduct lustration to secure the human rights of its citizens without compromising human rights of the affected personnel. In the second field trip in 10-14 February 2015, Professor David addressed this challenge in meetings with members of Kyiv Bar Association, High Qualifications Commission of Judges of Ukraine, the Public Council on Lustration at the Ministry of Justice and drafters of lustration at the Verkhovna Rada. He also participated in a Roundtable Talk on Lustration in Ukraine and was interviewed by Hromadske TV [S7]. He further provided expert opinion on the process to a team of experts of the Venice Commission of the Council of Europe (an international body that oversees the implementation of the European Convention on Human Rights) that was formed to review the provisions of the lustration law and the law on restoration of trust. Two outcomes ensued: the Ministry of Justice used Professor David's report to clarify its lustration law position and the expert group of the Venice Commission cited Professor David's publication in a report that gave Ukraine permission from the Council of Europe to start implementing the lustration laws.

Ms Tetyana Kozachenko, Head of the Department on Lustration of the Ministry of Justice of Ukraine “*appreciated Professor David's multiple visits to explain the essence and challenges of the lustration process as well as the application of the concept of the ‘democracy capable of defending itself’*”. The Lustration Department “*used this concept and the Ministry of Justice provided relevant recommendations to the Government and Parliament of Ukraine*”, and “*actively used it in the course of Ukraine's communication with international partners, specifically, when providing explanations to the Venice Commission during its consideration whether and to what extent the Law on Purification of Government provisions complies with Council of Europe standards in rule of law area.*” [S4].

(iii) **Advice on Best Practices in Implementation and Monitoring of Lustration:** We saw above the thorny problem faced by transitioning states compelled to handle the implementation of the lustration process without violating the human rights of their own personnel. Fair and impartial implementation of the law is essential for its effectiveness. A problem of similar gravity concerns how to ensure civil society is actively involved in supervision of the lustration process rather than becoming mere spectators to it. Accordingly, in the third field trip to Ukraine in 2-8 August 2015, Professor David combined meetings with both official and civil society bodies. Examples of official meetings include consultations with Ms Tetyana Kozachenko (Head of the Department on Lustration of the Ministry of Justice of Ukraine), Markiian Halabala (Deputy Head, Interim Special Commission on Vetting Judges of General Jurisdiction Courts) and members of the judiciary committee of the Verkhovna Rada. Professor David further participated in a civil society organized workshop on Project Planning and Implementation in 4 – 5 August 2015 in Kyiv, President Hotel.

Mr Volodymyr Moisyk, Chairman of the Interim Special Commission (ISC) for Verification of Judges of Courts of General Jurisdiction (July 2014- January 2016) appreciated Professor David’s expert support and assistance of the USAID Program, and thanked Professor David for the relevant lustration materials which they actively used during the ISC work [S5].

(iv) **New Research Informing Policy-Makers:** Professor David has designed and analyzed a nation-wide survey on the subjective dimension of trust in state institutions; and a survey on the objective dimension of trust among judges of Ukraine. The results were captured in two additional research reports, both of which were translated, disseminated among Ukrainian officials and distributed to civil society members and other stakeholders. Two consultations were conducted via video-conferencing from Hong Kong to Kyiv in 2015 and 2016.

(5) Sources to corroborate the impact

[S1] Testimonial Letter from Mr. David M. Vaughn, Chief of Party, USAID Fair Justice Project. Dated 20 August 2015.

[S2] The Law on the Restoration of Trust in the Judiciary of Ukraine (11 April 2014).

[S3] The Law of Ukraine on the Purification of Government (16 September 2014).

[S4] Testimonial letter from Ms Tetyana Kozachenko, Head, Department of Lustrations, Ministry of Justice of Ukraine (2014-16). Dated 4 March 2019.

[S5] Testimonial letter from Mr Volodymyr Moisyk, Chairman of the Interim Special Commission for verification judges of courts of general jurisdiction (July 2014 - January 2016). Dated 20 March 2019.

[S6] Robert Coalson, “Ukraine’s Lustration Process Unlikely To Be Smooth Sailing,” *Radio Free Europe – Radio Liberty*, 12 April 2014.

[S7] Hromadske TV, Roman David about the Perspectives for Lustration: An International Expert on the Issue of Lustration in the Hromadske Studio [Роман Давід про перспективи люстрації в Україні: Міжнародний експерт з питань люстрації Роман Давід в студії Громадського], Kyiv, 12 February 2015.