

**ANALYTICAL NOTE**

# **HOW CAN LUSTRATION BECOME ONE OF THE TOOLS TO OVERCOME THE CONSEQUENCES OF RUSSIAN ARMED AGGRESSION AGAINST UKRAINE?**



**How can lustration become one of the tools to overcome the consequences of Russian armed aggression against Ukraine?** Analytical note. - Svyrydova D.; ed. Lunova O. — Kyiv, 2025. — p.32

This analytical note aims to outline the key issues and challenges faced by the state in the context of implementing lustration as an element of transitional justice, as well as to propose possible solutions to some of these issues. Lustration measures should be developed and regulated before the end of the armed conflict to ensure predictability of the law for the persons it will affect, to contribute to the restoration of trust in public authorities and professional communities, to protect democratic institutions and practices, as well as to facilitate the reintegration of the population of the liberated territories and to be preventive of possible further actions by citizens from the temporarily occupied territory.



The Human Rights Centre ZMINA is a Ukrainian human rights organisation that works in the field of protecting freedom of speech, countering discrimination, preventing torture and ill-treatment, supporting human rights defenders and civil society activists, documenting international crimes and protecting the rights of war victims.

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# INTRODUCTION

Since 2014, an international armed conflict has been ongoing, which began with the occupation of part of Ukraine by the Russian Federation. In 2022, the Russian Federation conducted a full-scale armed aggression, expanding the occupied territory of Ukraine to nearly 20%<sup>1</sup>. Following the successful measures taken by the Armed Forces of Ukraine to de-occupy part of Ukraine's territories, the issue of restoring state power in the liberated territories has become urgent, as well as assessing the actions of persons who have collaborated in various forms with the illegal "authorities" established in the temporarily occupied territory (hereinafter - TOT) of Ukraine, in particular with the occupation administrations of the aggressor state and the Russian authorities.

In March 2022, the Parliament defined liability for collaborative activities, one of which is various forms of cooperation with such occupation "authorities". As of 2025, criminal liability is in fact the only response of the state to the revealed facts of cooperation between Ukrainian citizens and the occupation authorities. However, whether justice and trust in the authorities can be restored solely through criminal justice is an open question, at least given the very broad range of acts that may fall under criminal law and the real capacity of the law enforcement and judicial systems to ensure their effective investigation. At the same time, given the duration of the occupation of certain territories of Ukraine and the need to seek security guarantees against hybrid interventions by the Russian Federation to the existing government structures in the territory controlled by the Government of Ukraine, it seems appropriate to implement a lustration mechanism as a transitional justice measure. This measure will not only help to prevent those who compromised themselves by voluntarily cooperating with the occupation authorities and supporting the Russian Federation from participating in the governance of the state, but will also help to meet the public demand that, on the one hand, the perpetrators be named, and on the other hand, to preserve the memory of those who did not have compromising cooperation with the occupier while living under occupation.

The issue of lustration (governmental cleansing) is not new to Ukraine. Back in 2014, the Law of Ukraine "On Government Cleansing"<sup>2</sup> was adopted, which provided for the restriction of the right to hold government positions to those who had contributed to the usurpation of power during the Yanukovich era. This law was criticised by the Venice Commission, and the European Court of Human Rights in its judgment "Polyakh and Others v. Ukraine"<sup>3</sup> found a violation of Article 6 (right to a fair trial) of the ECHR due to the excessive-

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1 Speech of the President of Ukraine in the Chamber of Deputies of Luxembourg. Website of the Official Mission of the President of Ukraine, 02.06.2022. Available at:

<https://www.president.gov.ua/news/promova-prezidenta-ukrayini-v-palati-deputativ-lyuksemburgu-75533>

2 The Law of Ukraine "On Government Cleansing", No. 1682-VII, as amended on 31.03.2023. Available at: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>

3 ECtHR judgment "Polyakh and Others v. Ukraine", No. 58812/15, final of 24.02.2020. Available at: [https://zakon.rada.gov.ua/laws/show/974\\_e71#Text](https://zakon.rada.gov.ua/laws/show/974_e71#Text)

ly long consideration of the applicants' cases at the national level and a violation of Article 8 of the Convention (right to respect for private life). The Court also noted that the law on cleansing the government was applied to an overly broad range of individuals without assessing the personal role of each.

Considering international and national experience, Ukraine should develop a way and approaches to the principles and procedures of lustration in the aftermath of Russian aggression and occupation of parts of its territory. Lustration measures and procedures defined and implemented by Ukraine should become part of the transitional justice policy.

In particular, it is important to:

1. Determine the grounds for classifying certain positions and/or activities of persons subject to lustration;
2. Define and approve administrative procedures for checking individuals subject to lustration, providing for guarantees of their right to defence, compliance with the standard of proof beyond a reasonable doubt, the principles of non-discrimination and individual responsibility;
3. Establish prohibitions for certain persons subject to lustration to hold certain positions (be in service) in state and local government bodies (taking into account the relevant restrictions of international standards), state and municipal enterprises, institutions, and establishments for a specified period.

The experience of the de-occupied territories of Ukraine shows that many citizens who consciously and voluntarily collaborated with the aggressor state and/or held relevant positions in the occupation administrations of the Russian Federation leave the de-occupied territories together with the aggressor's troops. However, the majority of the local population remains at home and does not always have an understanding of whether any form of cooperation with the enemy (especially forced, for humanitarian purposes, etc.) can be punishable. At the same time, there is a very high demand from the population in the liberated territories and across the country to prevent people compromised by Russia's cooperation and influence from holding government positions, which affects citizens' trust in public authorities throughout the country.

The implementation of lustration procedures can be one of the key elements in ensuring trust in the public authorities in the territories controlled by the Government of Ukraine, safe reintegration of the de-occupied territories, protection of democratic practices and institutions, and determining the legal basis for the population's further life in the latter. It can become an important factor in restoring public trust in professional communities, which are significantly negatively affected, in particular, by the consequences of their representatives' cooperation with Russia to the detriment of national security.

Lustration measures should be developed and regulated before the end of the armed conflict to ensure predictability of the law for the persons it will affect, to contribute to the restoration of trust in public authorities and professional communities, to protect democratic institutions and practices, as well as to facilitate the reintegration of the population



of the liberated territories and to be preventive of possible further actions by citizens from the temporarily occupied territory.

This analytical note was created to outline the key problematic issues faced by the state in the context of introducing lustration as one of the elements of transitional justice, as well as to propose possible solutions to some of these issues. At the same time, the authors note that there are still many other issues that need to be answered in the process of developing a state policy to overcome the negative consequences of the armed conflict and reintegrate the de-occupied territories of Ukraine.

The first edition of this analytical note was formed in 2023 based on the results of the work of the expert group, which included:



**Daria Svyrydova**, Partner of the AZONES Law Firm;



**Oleksandr Kliuzhev**, Expert on electoral law reform;



**Alena Lunova**, Advocacy Director of the Human Rights Centre ZMINA;



**Olha Kuryshko**, Deputy Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea<sup>4</sup>.

In preparing the analytical note, the Mission of the President of Ukraine in the Autonomous Republic of Crimea used the developments<sup>5</sup> related to the restoration of state authorities in the de-occupied territory of Ukraine.

Subsequently, during 2024, dozens of consultations and discussions were held on the key theses and options for building the system set out in the document developed by the working group. In particular, meetings and consultations were held with members of the Ukrainian parliament, representatives of local governments and military administrations of certain regions, the judiciary, the Ministry of Reintegration of the Temporarily Occupied Territories, the Ministry of Education, the Ministry of Justice, the Central Election Commission, the National Security and Defence Council, the Ukrainian Institute of National Memory, the National Agency of Ukraine on Civil Service, representatives of the expert and human rights community, and others. The document was finalised based on the proposals submitted.

In this analytical note, the term “lustration measures” is used to refer to measures to restore and protect the democratic and constitutional order, public trust in public authorities and certain professional communities in the aftermath of Russian aggression. However, the use of this terminology will likely require further consideration and elaboration due to possible communication challenges in the perception of the term “lustration” by current public authorities and the population of Ukraine, due to previous experience of implementing lustration procedures. In the future, lustration policy makers will also face the task of

<sup>4</sup> As of 2025, Olha Kuryshko has been appointed Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea

<sup>5</sup> Priority steps of the Ukrainian state after the de-occupation of Crimea. Mission of the President of Ukraine in the Autonomous Republic of Crimea, 20.06.2023. Available at: <https://ppu.gov.ua/press-center/priorytetni-kroky-ukrayinskoyi-derzhavy-pislya-deokupatsiyi-krymu/?fbclid=IwAR1IYtBox55ti-fqlolXkMeae2p4teVOHpgQZf68eKYP2RfoSnU3Ki67pnQ>

developing a communication strategy on the need for legislative regulation of lustration issues and on the further work of the bodies authorised to conduct lustration measures. At the same time, public opinion surveys conducted in early 2025<sup>6</sup>, show a generally favourable attitude to the use of lustration as a tool for restoring trust in the authorities after the war.

This analytical note is only the beginning of a discussion on the feasibility and potential format of lustration measures to overcome the negative consequences of the armed aggression against Ukraine. The application of this approach will also require systemic changes to the criminal legislation of Ukraine, first of all, amendments to Article 111-1 of the Criminal Code of Ukraine (“collaborative activity”). As long as virtually any form of cooperation with the occupation authorities is criminalised, the effective implementation of lustration measures appears unfeasible. This is due to the fact that criminal liability and the application of lustration procedures are essentially different processes that pursue different goals: bringing to justice and restoring trust in state institutions. However, the legislation should respond to the challenges faced by society and contribute, in particular, to ensuring sustainable peace, the reintegration of the de-occupied territories of Ukraine and the restoration of justice. Based on these considerations, the types of activities or categories of so-called “positions” that should be subject to either criminal punishment or lustration measures during the occupation, and the distinction between these approaches, remain controversial. The list of such criteria should be determined based on the results of the research of international experience and standards, including public, parliamentary and expert dialogue, which should be started now.

The question of implementing lustration measures in the country certainly requires further public discussion and broad dialogue, and the proposals outlined here can serve as a basis for such a discussion and the development of detailed solutions and policies of the state and professional communities.

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6 The research “Justice and Memory of the War: Opinions of Ukrainians”, conducted by the Sociological group Rating. Available at: [https://ratinggroup.ua/research/ukraine/justice\\_jan2025.html](https://ratinggroup.ua/research/ukraine/justice_jan2025.html)

# LIST OF ABBREVIATIONS

AR Crimea — Autonomous Republic of Crimea

CC of Ukraine — Criminal Code of Ukraine

CEA — Central executive authority

ECHR — European Convention on Human Rights

ECtHR — European Court of Human Rights

FSB — Federal Security Service of the Russian Federation

HQCJ — Highest Qualification Commission of Judges of Ukraine

IDP — Internally displaced person

HCJ — High Council of Justice

IHL — International humanitarian law

IHRL — International human rights law

NABU — National Anti-Corruption Bureau of Ukraine

NAUCS — National Agency of Ukraine for Civil Service

NBU — National Bank of Ukraine

OHCHR — Office of the High Commissioner for Human Rights

RF — Russian Federation

SJA — State Judicial Administration (ДКА)

SOE — State-owned enterprise

TOT — Temporarily occupied territories

UN — United Nations

URPTI — Unified register of pre-trial investigations (ЄРДП)



# 1. GENERAL CONTEXT

Since the beginning of Russia's aggression against Ukraine in 2014, and in particular after the full-scale invasion since February 2022, there has been a growing demand in society for justice and accountability for individuals who collaborated with the aggressor. Ukrainian law enforcement agencies are investigating tens of thousands of cases of high treason, encroachment on the territorial integrity, participation in terrorist organisations, etc. Despite the prolonged occupation of parts of Ukraine's territory until 2022, the Criminal Code of Ukraine did not contain a punishment or article specifically for collaboration with the occupying authorities. However, in March 2022, the Criminal Code of Ukraine was supplemented with Article 111-1 ("Collaborative Activities") and in April of the same year with Article 111-2 ("Aiding the Aggressor State"). The decision of the Parliament received many complaints from human rights defenders<sup>7</sup> about the quality of such changes to the legislation and the ambiguous practice<sup>8</sup> of their implementation. The lack of legal clarity in the list of forms of cooperation with the aggressor state is accompanied by risks of insufficient consideration of IHL standards and unequal imposition of sanctions on offenders, difficulties in distinguishing between other crimes against the foundations of national security, and, most importantly, disproportionate danger of the violation and punishment for it. Thus, the OHCHR is concerned that the law on collaborative activities does not comply with IHRL and IHL<sup>9</sup>. The report highlights the use of vague and subjective terminology in Article 111-1 of the CC of Ukraine, which is not sufficiently consistent with international human rights law and the principle of legality, as well as the apparent absence of proportionality between offences and the sanctions imposed.

The analysis of the existing investigative and judicial practice also indicates problems of efficiency and imbalance in the allocation of resources of these bodies between investigations of this category of offences and serious international crimes. These issues are especially acute in the context of investigations into tens of thousands of crimes related to the armed aggression against Ukraine and the processes of restoration and reintegration of the de-occupied territories since the beginning of the full-scale invasion.

These and other issues, among other things, have raised the need for the state to determine approaches to the so-called "lustration measures" that would help restore and protect the democratic and constitutional order in the liberated territories, restore public confidence in public authorities and certain professional communities in the aftermath of Russian aggression. Equally important in this context is the demand of the population and,

7 Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement. Analytical report. - Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA. - Kyiv, 2023. Available at:

<https://zmina.ua/publication/kolaboraczijna-diialnist-i-posobnyctvo-derzhavi-agresoru-praktyka-zastosuvannya-zakonodavstva-ta-perspektyvy-jogo-udoskonalennya/>

8 "Poor power supply. How the courts first imprisoned and then released an electrician from Donetsk region who was restoring the power grid in the occupied Lyman. The publication Graty, 28.09.2023. Available at: <https://graty.me/pogana-energetika-yak-sudi-spochatku-posadili-a-potim-vidpustili-elektrika-z-doneczko%d1%97-oblasti-yakij-vidnovlyuvav-elektromerezhi-v-okupovanomu-limani/>

9 Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine for the period 01.08.2022 - 31.01.2023, 24.03.2023 (see paras. 119-122). Available at: <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-UA.pdf>

accordingly, the task of eliminating the long-term negative influence of the RF on Ukrainian public authorities, individual officials and representatives of professional communities. This influence has been going on since the beginning of Ukraine's independence, and the public demand for its elimination is extremely high. This is demonstrated, in particular, by numerous public investigations into the alleged direct or indirect ties of certain officials, judges, and law enforcement officers to the RF<sup>10</sup>. It is also important that Ukraine's efforts to counter Russia's negative influence on the social, governance and political process are harmonised with pan-European approaches that continue to be formed as a response to current global challenges and Russian aggression.

Ukraine's efforts to counter Russia's negative influence on the social, governance and political process are harmonised with pan-European approaches that continue to be formed as a response to current global challenges and Russian aggression. In a more general sense, the results of the public discussion on the need to introduce lustration measures against those who collaborated with the occupation authorities and officials who were influenced by the RF are still absent. The development of such approaches will also require legislative changes to improve criminal law in terms of liability and bring certain provisions of criminal law on crimes against the foundations of national security into compliance with international law. In other words, it is necessary to distinguish between the crime of "collaborationism" and cases of cooperation that may be subject to lustration measures.

Ukraine is not the first country to face the need to overcome the consequences of totalitarian and undemocratic regimes and the facts of collaborationism on its territory, including through the use of lustration tools. Countries such as Germany, Lithuania, Latvia, Poland, Serbia, Georgia, Libya and others have implemented lustration checks and restrictions on citizens' access to certain positions in the state in various formats<sup>11</sup>. For example, most countries in Central and Eastern Europe aimed at eliminating the monopoly on power held by communist or socialist parties, ensuring the change of government and respect for human rights. Therefore, lustration there was primarily focused on identifying citizens who collaborated with the special services, were involved in the leadership of the respective political forces and human rights violations (in some countries, lustration also affected representatives of the state media and teachers of communist ideology). Additionally, lustration aimed at further banning such citizens from holding certain public offices, positions in the judiciary and law enforcement agencies, the army, etc. For example, from 1991 to 1997, 1.42 million people were subjected to lustration in Germany (covering all positions of civil servants), of which about 54,000 had a negative result, and more than 200 people appealed their dismissal. In the Czech Republic, from 1991 to 2014, more than 493,000 people were subjected to lustration under the Great Lustration Act (also applicable to Slovakia) and the Small Lustration Act, of which just over 2 % were lustrated.

10 "The deputy head of the National Police is "is living" at the partner of a Russian criminal authority and has a wife with a Russian passport", bihus.info, 26.10.2023. Available at: <https://bihus.info/zamgolovy-naczpolu-pidzhvaye-u-partnera-rosijskogo-kryminalnogo-avtoryteta-i-maye-druzhynu-z-rosijskym-pasportom/?fbclid=IwAR3zUL8xqte6JuL8sLcG5u40UIRvyaGW6VxktFfVm-tQ0rqclU3riWdjW9w>

Christo Grozev: Ukrainian judge Lvov has Russian citizenship, it cannot be refuted. Radio Liberty, 30.09.2022. Available at: <https://www.radiosvoboda.org/a/news-skhem-y-grozev-lvov/32059287.html>

11 Amnesty and lustration: mechanisms of transitional justice for Ukraine's future. Review of international practice and national legislation: scientific and practical publication. Available at: <http://www.ucipr.org.ua/publicdocs/amnesty2020.pdf>

Many of these lustration processes have balanced the need to protect democracy and eliminate the influence of representatives of old undemocratic regimes with the need to comply with their international obligations, including human rights standards. Therefore, lustration processes have often been the subject of review by the ECtHR, the Venice Commission, etc., including the first experience of lustration in Ukraine since 2014 after the events and consequences of the Revolution of Dignity and the removal of the Yanukovich regime. Undoubtedly, studying the experience of other countries in conducting lustration is extremely important for us, in particular to take into account the experience and standards developed, to find ways to strike a balance between the protection of democracy and human rights. However, the development of approaches to lustration requires us to clearly define its goals and objectives, and thus the political, cultural and historical context in which lustration will take place (or has taken place in other countries).

The criteria and procedures for conducting lustration checks determined by the state should be consistent with the process of creating a talent pool to restore the functioning of the system of state bodies, particularly in the de-occupied territories. Thus, lustration measures should maintain a balance between security and reintegration measures and the effective restoration of the Ukrainian legal framework. That is, on the one hand, to ensure the removal of compromised persons from office for reasons of national security and to avoid conflicts based on public condemnation of the presence of certain individuals compromised by ties to Russia in government positions. On the other hand, it is necessary to take into account that vital public services and structures must continue to function, and it is physically impossible to replace all employees immediately after de-occupation; to preserve the right to profession/employment for many Ukrainian citizens from the TOT of Ukraine, while ensuring that democratic institutions are protected from Russian influence; to promote loyalty to Ukraine among a large number of people who lived under occupation and who must understand that they will not be criminally liable only for the fact of living under occupation and working in the occupiers' structures.

## 2. PURPOSE AND GUIDING PRINCIPLES OF LUSTRATION

*The purpose of lustration* is to restore and protect the democratic and constitutional foundations of public authorities and professional communities critical to the development of society, including in the de-occupied territories, by eliminating and preventing negative influence and threats from citizens who have been compromised by participation in occupation structures or other forms of cooperation with the occupying power.

The state uses lustration to prevent threats to the functioning of democratic institutions, including in the de-occupied territories, preventing the use of such restrictions as a tool of political revenge and bringing to collective responsibility.

Lustration measures should be regulated **by law**, strike **a balance between the interests of society and the protection of human rights**, promote trust in public institutions, including new (restored) ones in the de-occupied territories, and keep justice for victims in focus.

**Lustration should be based on the Constitution of Ukraine and international standards, with restrictions being individual rather than collective.** If these guarantees are violated, Ukraine risks losing the trust of both its citizens and international partners, and has already had experience of numerous ECtHR complaints and judgments with subsequent payment of compensation<sup>12</sup>. Lustration measures should be based on the assessment of threats to the credibility of public authorities and the restoration of democracy in the de-occupied territories on the part of each individual.

**Lustration measures should contribute to the reintegration of residents of the de-occupied territories**, who are not involved in socially dangerous acts during the ongoing international armed conflict and occupation, and who do not pose a threat to democratic institutions and practices in Ukraine. In particular, such measures should create conditions for the full participation of residents of the de-occupied territories who are loyal to the Ukrainian state and the constitutional order in the governance system. At the same time, the mere fact that a citizen works under occupation, which has not led to violations of the rights and freedoms of other citizens, cannot be a ground for further restrictions on rights.

During lustration measures, everyone **should be guaranteed the right to defence**, including the right to appeal to the courts, and to be subject to the standard of proof beyond a reasonable doubt.

**Lustration measures are not and should not become a form of criminal punishment or persecution.** Criminal acts, including international crimes, committed by individ-

<sup>12</sup> See, e.g., the ECtHR judgment *Polyakh and Others v. Ukraine*, No. 58812/15, final of 24.02.2020. Available at: [https://zakon.rada.gov.ua/laws/show/974\\_e71#Text](https://zakon.rada.gov.ua/laws/show/974_e71#Text)

uals during the occupation and Russian aggression against Ukraine must be prosecuted under criminal law.

The timing of the lustration restrictions is determined by the need to ensure the establishment of democratic institutions and practices in the de-occupied territories, to ensure trust in public authorities and critical professional communities, and the restrictions themselves should be withdrawn after the end of the war and the full restoration of the democratic system.

When regulating lustration measures, the relevant provisions of such documents should be analysed and taken into account:

- Constitution and legislation of Ukraine;
- ECHR and relevant case law of the European Court of Human Rights<sup>13</sup>;
- PACE Resolution 1096 (1996) on Measures to dismantle the heritage of former communist totalitarian systems (and its report);
- Interim Opinion on the Law of Ukraine “On Government Cleansing” approved by the Venice Commission (12-13.12.2014) and Final Opinion on the Law of Ukraine “On Government Cleansing” approved by the Venice Commission (19-20.06.2015), etc.

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<sup>13</sup> Some examples of relevant ECtHR judgements: Polyakh and Others v. Ukraine, No. 58812/15, 17.10.2019; Naidin v. Romania, No. 38162/07, 21.10.2014; Matyjek v. Poland, No. 38184/03, 30.05.2006; Luboch v. Poland, No. 37469/05, 15.01.2008; Schultz v. Poland, No. 43932/08, 13.11.2012; Žičkus v. Lithuania, No. 26652/02, 07.04.2009; Adamsons v. Latvia, application No. 3669/03, 24.06.2008 and others.

### 3.

## OBJECTIVES OF LUSTRATION MEASURES

The objectives of lustration measures are as follows:

- To dismiss from office those compromised by cooperation with Russia to protect national security and democratic institutions and to avoid conflicts based on public condemnation of such persons in public authorities and certain professional communities;
- To minimise the threat of individuals compromised by cooperation with Russia entering public authorities and certain professional communities, to the detriment of individuals, society, and the state;
- To restore justice to the victims of the actions of the occupation administration and their “officials”;
- To establish one of the most effective tools for implementing the policy of memory, in particular in the context of the memory of the integrity or compromising cooperation of individual Ukrainian citizens with the occupying state;
- To establish additional tools for the state’s response to cases of cooperation of citizens with the occupation authorities, to help eliminate excessive criminalisation of such cooperation per IHL;
- To document and store information, documents, data on the events and consequences of the occupation, as well as administrations, structures, organisations, professional communities and persons who worked in them, etc., created under the occupation, in particular, to disclose and publish the truth about these events, facts and persons;
- To ensure transparent and fair conditions of access to the profession and employment in public authorities for citizens from the local population who lived under the occupation, and in particular, worked in illegally created structures there;
- To remove the grounds for civilian fears about the possible conditions and consequences of the restoration of Ukrainian authority in the liberated territories;
- To support the loyalty of citizens who lived under occupation to public authorities and professional communities established or restored in the liberated territories;
- To reduce the threats and grounds for escalation, social conflicts, etc., among the population, in particular in the liberated territories.



## 4.

## ORGANISATION OF LUSTRATION MEASURES

It is proposed to conduct lustration measures to temporarily remove from the highest positions in the state and important leadership positions in the liberated territories certain citizens who compromised themselves by voluntary ties and collaboration with Russia after the start of armed aggression against Ukraine in 2014 and before the end of martial law, as well as held relevant “positions” and performed administrative functions in the occupied territories.

Lustration measures are conducted in the format of submission of “acts of integrity”<sup>14</sup> in the form of declarations and lustration checks of the information contained in such documents for certain categories of persons. The “act of integrity” should contain, in addition to the individual’s personal data, information on whether the person held positions in the occupation authorities, exercised power functions in the occupied territories of Ukraine or the territory of the RF, whether there are relevant facts of voluntary cooperation or compromising relations with the RF after the start of armed aggression in February 2014, etc.<sup>15</sup>.

The submission of “acts of integrity” is mandatory for all citizens who, at the time the law on lustration measures comes into force, hold relevant positions defined by law or are candidates for such positions in state authorities. At the same time, the information contained in the acts is verified only concerning candidates for the relevant positions or officials about whom reasonable information about possible compromising facts of cooperation with the RF will be received within the relevant period.

The organisation and conduct of checking is entrusted to:

1. A specially created independent Commission (collegial body) – in respect of senior officials and certain positions in the authorities in the liberated territories;
2. The relevant other bodies and officials authorised by the Law to conduct lustration measures and acting under the control of the specially created independent Commission in respect of all other categories of positions subject to lustration.

To organise the collection of information that may be used for lustration checks, an appropriate information system may be established and maintained to store information on persons subject to lustration checks and information provided for such checks.

<sup>14</sup> Hereinafter, the provisional title of the document is used, but another variant may be proposed in the future.

<sup>15</sup> For more details, see paragraph 4.2 (Criteria for lustration measures).

## 4.1. Categories of persons and positions subject to lustration measures

Proposals regarding the categories of positions (candidates for such positions) to which lustration measures should be applied are based on the following factors:

- Restrictions on access to positions for which there are grounds to believe that the subject may pose a significant risk to human rights or democracy (e.g. law enforcement agencies, security and intelligence services, judiciary), as well as public positions that involve significant responsibility for the development or implementation of public policies and practices related to security, democracy and human rights;
- Applying lustration measures to the highest state-level positions, as well as several other positions in public authorities and professional communities critical to the development of society, including in the liberated territories.

At a minimum, lustration measures should be taken against persons holding such **positions (or candidates for them)**:

- Senior positions in the Armed Forces of Ukraine;
- Employees of intelligence services;
- Senior positions in law enforcement agencies and prosecutors' offices;
- Judges and heads of court administrations;
- Members of the HCJ and HQCJ, the head and deputies of the SJA;
- Political positions in the state authorities (Prime Minister, ministers, their deputies);
- Head of the Office of the President of Ukraine, his deputies;
- NSDC Secretary and his deputies;
- Government commissioners, the Ukrainian Parliament Commissioner for Human Rights, and the Commissioners of the President of Ukraine;
- Senior positions of military-civilian administrations, the Representative of the President in the AR of Crimea and his deputies;
- Executive positions of the CEA, collegial state bodies, state bodies with special status, civil service positions of categories A and B;
- Head and deputies of the NBU;
- Heads of certain state-owned enterprises, companies, in particular, enterprises of the defence industry.

This list of such positions is preliminary. It should be clarified and detailed, in particular, with the involvement of such structures as NAUCS, etc.. Lustration measures for certain categories of positions and candidates for them (such as judges, members of the

HCJ, HQCJ, Head of the NABU, etc.) will require separate procedures and/or regulation of the relevant grounds during competitive procedures for positions, etc.

The relevant law on lustration measures should, among other things, determine the priority of lustration measures, taking into account the priority needs of establishing and restoring state and local authorities, filling vacancies in the relevant structures in the liberated territories. Candidates for positions in the territories controlled by the Government of Ukraine are subject to lustration from the moment the relevant law on lustration measures comes into force (simultaneously with the submission of relevant documents and a special check).

When drafting a law on lustration measures, it is important to consider the possibility of specifying both the relevant positions and a description of the relevant functions and powers of the person. This will reduce the risk of individuals evading lustration measures by renaming positions over time.

In addition, based on the above-mentioned purpose and objectives of lustration, it is also advisable to comprehensively study the acceptability of lustration measures in respect of certain categories of elected officials and representatives of professional communities critical for the development of society, taking into account the requirements of the Constitution of Ukraine, Ukraine's international obligations and standards in the relevant areas.

***Elected positions*** (candidates for the post of President of Ukraine, candidates for people's deputies of Ukraine, candidates for deputies of local councils, candidates for mayors of cities, villages, and towns).

Lustration measures against such persons should be accompanied by full information to voters about the candidate's possible collaboration with Russia, holding so-called "positions" in the temporarily occupied territories of Ukraine and other similar facts. For this purpose, the candidate must submit a special declaration with open data.

Simultaneously, only the concealment of true information or the submission of false information about such cooperation should be grounds for refusal to register or cancellation of a candidate's registration.

It is advisable to envisage a set of amendments to party and electoral legislation that would ensure voter awareness of potential candidates' alleged involvement in the occupation administrations or collaboration with them or with the RF, as well as sanctions during registration and cancellation of candidate registration in case of misleading voters. Such amendments would, in particular, encourage political parties to limit the participation of compromised persons in the electoral process through internal procedures. In addition, the introduction of lustration for this category of citizens may be based on their status in case of criminal proceedings against them on suspicion of committing international crimes defined by the Rome Statute of the International Criminal Court. That is, an approach may be considered whereby, pending a final court decision, lustration is applied to persons (candidates for elected office) who are suspected of committing international crimes. The introduction of such restrictions will require an effective and timely

role of the Constitutional Court of Ukraine in deciding on their compliance with the Constitution.

The proposed approach combines the protection of the electoral process from persons involved in cooperation with the occupying state or in committing international crimes with the requirements of the Constitution of Ukraine, the presumption of innocence, the rule of law and democratic standards of the electoral process.

**Professional communities** (banking management, notaries, lawyers, journalists, etc.).

Taking into account that lustration does not apply to positions in private organisations (there are few, if any, positions in such organisations that could undermine or threaten the enjoyment of human rights and the democratic process), there are certain limitations to state interference in such regulation concerning these professional communities. However, the challenges and consequences of Russia's aggression point to the need for measures to restore confidence in certain critical professional communities. Taking into account that lustration does not apply to positions in private organisations (there are few, if any, positions in such organisations that could undermine or threaten the enjoyment of human rights and the democratic process), there are certain limitations to state interference in such regulation regarding these professional communities. However, the challenges and consequences of Russia's aggression point to the need for measures to restore confidence in certain critical professional communities<sup>16</sup>.

It is also important to implement lustration measures through relevant legislation, self-regulatory practices, relevant internal regulations, codes of ethics, etc.

## 4.2. Criteria for lustration measures

The criteria for lustration measures should be clearly defined in the law and applied universally in all government-controlled territories.

The following approach is proposed regarding the grounds for issuing a negative conclusion based on the results of a lustration check of a citizen who is a candidate for office or holds a relevant position at the time of the check. Thus, the existence of one or both of the following criteria, duly established through checking results, should likely lead to a negative conclusion on the results of the lustration check.

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<sup>16</sup> The concept is available at: <https://uba.ua/ukr/news/zatverdzheno-koncepcju-vdnovlennja-ukrainskoi-advokaturi-v-deokupovanomu-krimu>

Criterion	Definition
<b>Criterion I</b>	<p>The fact of holding “positions” and/or performing activities<sup>17</sup> in the occupied territory of Ukraine or the RF, regardless of the term of office<sup>18</sup>:</p> <ul style="list-style-type: none"> <li>• law enforcement and intelligence agencies;</li> <li>• positions in the prosecutor’s office;</li> <li>• Judges and court staff;</li> <li>• Armed Forces of the RF (except for the established facts of forced conscription<sup>19</sup>);</li> <li>• as well as holding such positions for more than 6 months;</li> <li>• Senior positions in the occupation authorities;</li> <li>• Heads of settlements, secretaries of republican and local councils;</li> <li>• Members of political parties of the aggressor country;</li> <li>• Pedagogical, academic-pedagogical and employees of cultural and mass media institutions with organisational and administrative functions;</li> <li>• Teachers and lecturers of law and history of the RF and other social disciplines, whose programmes included war propaganda and incitement to hatred against Ukraine and/or Ukrainians, representatives of indigenous peoples;</li> <li>• Heads of enterprises and organisations established by the occupier in the occupied territory as “state” and/or “municipal”, in particular in the media sphere;</li> <li>• Management of banking structures, notaries and the bar (with the involvement of relevant professional communities, self-governing organisations and associations in decision-making).</li> <li>• Founders and leaders of pro-Russian gongo groups<sup>20</sup>.</li> </ul>

<sup>17</sup> Legislation on lustration measures should provide for a universal description of the list of possible “positions” and activities performed for all TOT in Ukraine and in the territory of the RF.

<sup>18</sup> It is proposed to apply lustration measures to citizens who held the following categories of “positions” indefinitely, only if there are relevant criminal proceedings against them due to their stay and activities in such “positions”, but in the absence of a court verdict at the time when the person applies for the relevant position in Ukrainian state structures, etc. The proposal needs to be discussed, in particular in the context of the presumption of innocence and the risks of “double punishment” for the same crime.

<sup>19</sup> In accordance with the provisions of Article 8 of the Rome Statute of the ICC, forcing a prisoner of war or other protected person to serve in the armed forces of an enemy state is a war crime, and accordingly, such a person is a victim of this international crime.

<sup>20</sup> Gongo (Government-Organized Non-Governmental Organization) — non-governmental organisations created and funded by governments and are in fact agents of governments. Their activities within repressive regimes can focus on lobbying the UN and other international institutions on behalf of the government and the regime, while their actors pose as representatives of groups of citizens with certain values.

<b>Criterion II</b>	<p>Information, facts about the activities of a citizen of Ukraine to the detriment of the Ukrainian state, territorial communities, other citizens, professional communities under the occupation of part of the territory of Ukraine or during the armed aggression of the RF, which may take the form of:</p> <ul style="list-style-type: none"> <li>• Active voluntary public support of the actions of the RF to occupy part of the territory of Ukraine and establish occupation administrations (own posts on social media, public speeches, including in the media, etc;)</li> <li>• Voluntary cooperation with the FSB of the RF;</li> <li>• Existence of criminal proceedings (notification of suspicion) on the facts of committing international crimes as a result of the occupation and Russian aggression<sup>21</sup>.</li> </ul>
<b>Criterion III<sup>22</sup></b>	<p>Information on the facts of voluntary cooperation and compromising ties with the RF after the beginning of the armed aggression in February 2014<sup>23</sup>, in particular, in the form of:</p> <ul style="list-style-type: none"> <li>• Payment of taxes by business entities (including those with which the relevant person has a duly established connection) in the territory of the RF;</li> <li>• Running a business or owning it/earning income in the territory of the RF;</li> <li>• Obtaining a passport of a Russian citizen on the territory of the RF (except in cases of issuance of a passport by the authorised bodies of a foreign state determined by the Cabinet of Ministers of Ukraine<sup>24</sup>, as well as obtaining a passport for the first time by a child (within the meaning of Article 6 of the Family Code of Ukraine), as well as when this document is forced to be obtained as a result of deportation from the TOT of Ukraine).</li> </ul>

At the same time, the fact of holding a “position” (Criterion I) does not constitute an absolute ground for a negative conclusion. The state may establish exceptions, such as

21 It needs to be discussed in the context of the presumption of innocence.

22 The possibility of applying this criterion to a limited number of persons is being considered. For example, to the highest state positions, judges (not applicable to elected positions, professional communities).

23 The time from which such cooperation may be considered compromising and sufficient for the application of lustration restrictions requires a separate discussion. This raises questions about the possibility of retrospective determination of such criteria, possible conflict with certain legal provisions after the start of Russian aggression in 2014, and assessment of the public consensus on the consequences of such cooperation before the start of the Russian full-scale invasion.

24 Order of the Cabinet of Ministers of Ukraine of 8 May 2019 No. 362-p “On Ukraine’s non-recognition of passport documents issued by authorised bodies of a foreign state”. Available at: <https://zakon.rada.gov.ua/laws/show/362-2019-%D1%80#Text>

Furthermore, in accordance with the provisions of Part 6 of Article 5 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine”, the forced automatic acquisition of Russian citizenship by Ukrainian citizens residing in the temporarily occupied territories of Ukraine is not recognised and is not a ground for losing Ukrainian citizenship. Source: <https://zakon.rada.gov.ua/laws/show/1207-18#n19>



proven facts of cooperation with Ukraine while working in such a “position” or evidence of the person’s actions to minimise the negative impact and prevent violations of citizens’ rights under occupation, etc.

The norms and approaches of international humanitarian law should be an important guideline in determining the list of relevant “positions” and activities in the TOT of Ukraine. Namely, **lustration measures should be applied to those who held “positions” that embodied the occupation regime or who supported the maintenance of the occupation authorities. This should not apply to activities related to sustaining life, communal services, medical services, etc., in occupied territories, as understood under international humanitarian law.**

Such an approach requires coordination and simultaneous amendments to the criminal legislation of Ukraine in terms of prosecuting crimes against the foundations of national security (in particular, collaborative activities).

#### 4.3. Timeframes for lustration measures

The timeframes for conducting lustration measures, as well as the restrictions on holding certain positions following lustration checks, must be specified by law.

Currently, the following approaches are proposed:

- The duration of restrictions on holding relevant positions — up to 7 years;
- The period for submitting “acts of integrity” — up to 5 years after the end of martial law;
- The mandate period of the Commission (collegial body), bodies and officials entrusted with the functions of conducting lustration measures — up to 10 years after the end of the martial law;
- The period of operation of the relevant information system to ensure lustration measures — up to 15 years after the end of the martial law;
- The start of lustration checks — six months after the establishment of the Commission (body), ensuring the operation of the relevant information system.

#### 4.4. Procedures for lustration measures

Lustration measures include **two stages** that can be applied simultaneously, depending on the category of positions and the territory of its implementation.

**Stage 1** – submission of an “act of integrity” in the prescribed form.

Category of persons	Form of application	Time of application
All categories of positions subject to lustration measures (see Section 4.1. Categories of persons and positions)	Submission of an “act of integrity” to the Commission (body) or to an official authorised to conduct lustration measures	Within two months from the date of entry into force of the relevant provisions of the law on lustration measures
All candidates for positions subject to lustration measures	Submission of the “act of integrity” to the Commission (body) or to the official authorised to conduct lustration measures in the structure/ body to which the person is applying for the position, or in another body defined by legislation	Simultaneously with the submission of the relevant documents for the position, which are taken into account during the relevant procedure / special check

**Stage 2** – Conducting lustration checks<sup>25</sup>.

Category of persons	Form of application	Time of application
All candidates for positions subject to lustration measures (see section 4.1. Categories of persons and positions...)	Conducting / organising checks on the accuracy of the data set out in the “act of integrity” by the Commission (body) or an official authorised to conduct lustration measures	During the special check and before the decision to appoint a candidate to the office, or before the election commission decides to register or refuse to register a candidate
All categories of positions subject to lustration measures (see section 4.1. Categories of persons and positions...)	Conducting / organising a check of the accuracy of the data set out in the “act of integrity”	Within two years after the submission of the “act of integrity”, if the Commission (body) / official receives a relevant application with reasonable information that may indicate the grounds for a lustration check with a negative conclusion. Within a year after the person submits the “act of integrity”, if it indicates the existence of facts that may be the basis for a lustration check with a negative conclusion

<sup>25</sup> The approach to checks should be justified by efficiency and cannot automatically apply to all “acts of integrity” submitted by officials. For example, over 8 years, 24 prosecutors of the Polish Lustration Bureau checked 45,000 out of 300,000 declarations submitted. 600 declarations out of 45,000 were submitted to the court, of which 300 declarations were found to be unreliable – 300 people were banned from performing public functions.

Persons who held positions at the time the law on lustration measures came into force and then move to the de-occupied territories to continue performing their duties in the same body/structure or another one, but through transfer to fill vacancies in the liberated territories, are not subject to lustration checks, but are limited to submitting an “act of integrity” (if it was not submitted before the transfer under the law).

**Form of conducting a check** on the accuracy of the data contained in the “act of integrity”

Who conducts the check	How the check is conducted	Decisions based on results
Commission (body)	Receiving information from members of the Commission (body); Sending inquiries to the relevant authorities and structures; information from the members of the Commission (body); testimony / information / documents from the person undergoing the check; testimony / information / documents from other persons; data from the relevant information system, etc.	Adoption and submission to the decision-making authority (on appointment or dismissal of a person / registration or refusal to register a candidate) of information on passing a lustration check with a positive conclusion (compliance with the information set out in the “act of integrity”).  Adoption and submission to the decision-making authority (on appointment or dismissal of a person / registration or refusal to register a candidate) of information on the lustration check with a negative conclusion (inconsistency of the information set out in the “act of integrity” with the actual circumstances and facts) – the basis for refusal to appoint, register as a candidate, or the basis for dismissal or termination of powers.
Authority / official authorised to conduct lustration measures	Obtaining information as part of a special check, which includes, among other things, a request for information from the relevant information system.	Deciding on the appointment or dismissal of a person based on the results of a lustration check with a positive or negative conclusion.

Establishment of the facts of intentional submission of false information in the “act of integrity” may, among other things, provide the basis for bringing a person to liability under the law.

The absence of a decision on the results of the lustration check is not a ground for suspension or refusal to appoint a person to a position or register as a candidate. A decision with a negative conclusion after a person has been appointed to a position or registered as a candidate is further grounds for dismissal or termination of powers.

The sense of justice among the population resulting from the checks should be ensured by the quality of the procedures for conducting them. At the same time, it is highly likely that no matter how the format of such an authority is defined at the legislative level, it may be empowered with broad discretionary powers, taking into account the purpose of lustration measures. Following international standards, this may be an administrative procedure in the format of **an independent collegial mechanism with appropriate public control**.

Under certain conditions, the architecture of lustration measures may include the establishment of various types of commissions and the possibility of additionally assigning the task of conducting checks to individual officials of the relevant authority. Below is an example of possible approaches to the development of a lustration measures<sup>26</sup>.

Mechanism (commission, authority, person authorised to conduct lustration measures)	Subjects (the circle of persons subject to lustration measures)
<p><b>Lustration Commission (body)</b></p> <p><b>Option 1:</b></p> <ul style="list-style-type: none"><li>• Can be established as a central executive authority with a special status that ensures the formation and implementation of state policy on lustration measures (National Agency, etc.);</li><li>• Transparency and independence of the head and deputies of the authority should be ensured, in particular through proper procedures for election and appointment, parliamentary control, etc., and an advisory body on checks should be established to provide public control.</li></ul>	<p>Accepting declarations and conducting checks on candidates for civil service positions of category A, the Prime Minister, ministers and their deputies, heads of the Military Administration, heads of the Military and Civil Administration, top-level managers in the Armed Forces of Ukraine, law enforcement agencies, the Prosecutor’s Office, the Head of the Office of the President of Ukraine and his deputies, etc., certain categories of positions in the bodies established in the liberated territories (category B civil servants, etc.)<sup>27</sup>.</p>

26 The list is not exhaustive, but demonstrates some examples of possible approaches.

27 After agreeing on the list of positions and categories of persons subject to lustration measures (see Section 4.1), the division of responsibility for organising and conducting lustration measures between the Commission and other authorised bodies/persons can be finally assessed and formed. This will allow, in particular, to analyse the scope, further assess the feasibility and format of involvement of various mechanisms in lustration activities.

<p><b>Option 2:</b></p> <ul style="list-style-type: none"> <li>• Can be established and operate under the NSDC in the format of a collegial body/Commission to establish and verify narratives and standards important to memory;</li> <li>• Representatives of other authorities, law enforcement and security agencies, public associations, academics, and independent experts (including foreign ones) should be included.</li> </ul> <p><b>Option 3:</b></p> <ul style="list-style-type: none"> <li>• Can be established as an independent Commission for the establishment and verification of narratives and standards important for memory under the Ukrainian Institute of National Memory</li> <li>• Representatives of other authorities, law enforcement and security agencies, public associations, and independent experts (including foreign ones) should be included.</li> </ul> <p><b>Option 4:</b></p> <ul style="list-style-type: none"> <li>• May be established and operate under the CEA (e.g., the Ministry of Justice of Ukraine);</li> <li>• Representatives of other authorities, law enforcement and security agencies, public associations, and independent experts (including foreign ones) should be included.</li> </ul>	
<p>Regional (specialised) checks:</p> <ul style="list-style-type: none"> <li>• Functions may be assigned to the head of the relevant body, etc.;</li> <li>• Control over their activities should be ensured by the lustration commission (body).</li> </ul>	<p>Accepting declarations and ensuring checks on other categories of positions subject to lustration measures, in particular through interaction and requests to the relevant Commission (body) and the relevant information system.</p>
<p>Central Election Commission, District Election Commissions, Territorial Election Commissions (subject to restrictions on lustration of elected positions, the need to check the constitutionality of potential restrictions mentioned above)</p>	<p>Acceptance of declarations and consideration of relevant information when considering registration, refusal of registration, cancellation of registration of candidates for the post of President of Ukraine, candidates for deputies, city, village, settlement heads, if there are criminal proceedings against these persons on suspicion of committing international crimes.</p>

The work of the Commission (authority) and/or officials authorised to conduct lustration measures should include compliance with the following principles and approaches:

- Freedom from political influence, power and institutional capacity to ensure cross-sectoral cooperation with the authorities, law enforcement agencies, etc.;
- To be a platform for discussing topics that are difficult for society, in particular through the inclusion of people with high public trust, experience in overcoming the consequences of war and social capital, as well as the possibility of engaging external experts to help formulate a position and find ways to solve problematic questions;
- Non-discrimination and individual consideration of each case (person), compliance with the standard of proof beyond a reasonable doubt;
- Adequate access of the person to the protection procedure and appeal against the results of the check<sup>28</sup>;
- Transparency, publicity of the procedure in compliance with the requirements for the protection of personal data and personal security of the person and their family members;
- Possibility of making decisions on the check with a negative or positive conclusion (confirmation or refutation of the information contained in the person's "act of integrity");
- Ability to work flexibly with both state budget funds and international technical assistance programmes;
- Information about alleged crimes that became known to the Commission/official during the check should be reported to the relevant law enforcement agencies for further entry into the URPTI, etc..

When deciding on the establishment and regulation of the Commission's (authority's)<sup>29</sup> work procedure, the following should be taken into account:

- The members of the Commission should exercise their powers on a rotational basis (at least if the lustration process lasts more than 4-5 years), their work should be paid with the obligation to submit declarations under the law<sup>30</sup>, and security measures should be guaranteed by the state;
- The structure of the Commission's staff may include both general departments subordinate to all members of the body and the format of separate "teams" of a member of the body;

28 The possibility of the state ensuring the right of individuals to free legal aid in court proceedings to challenge the results of lustration checks needs to be discussed.

29 In particular, in the case of options when the Commission is established as a collegial body.

30 The Law of Ukraine "On Prevention of Corruption". Available at: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>



- The possibility of developing and issuing summaries of lustration practice, analysing judicial practice of appealing against decisions based on the results of lustration checks, as well as recommendations for its further implementation for consideration by the subjects of lustration measures;
- Availability of a department/employees to process appeals and requests to the Commission (body); the question of the specifics of regulating possible conditions for processing appeals should also be resolved (e.g., an appeal to the authority with a notification/request for the check is regulated by the law on lustration, is included in the lustration check, a response is provided in case of a decision on sufficient grounds for such a check, etc.)<sup>31</sup>;
- Establish effective deadlines for responding to the Commission's request (e.g., up to 10 days and disciplinary liability for failure to comply);
- Powers to defend the authority's decisions in courts;
- Ensuring that the Commission (body), in cases established by law, through its representative, can apply to court, at any stage of consideration, to enter into a case, proceedings in which are initiated by claims (applications) of other persons, etc., in particular in cases of lustration of certain categories of positions, in case of appealing against decisions of other subjects of such lustration measures throughout the country;
- Coordinate the issues of administration and access to the relevant information system.

The body authorised to organise and conduct lustration measures shall, within the time limits specified by the Law and following the requirements of the Law<sup>32</sup>:

- Ensure **the establishment** of the Lustration Commission (collegial body) with the participation of representatives of state bodies, public associations and recognised national and international experts, as well as the procedure for its work;
- In cooperation with the Commission (body), approve the form of the **“act of integrity”**;
- Establish and regulate the operation of **the relevant information system**, in compliance with the procedures for the protection of personal data, etc., which is subsequently administered by the relevant CEA;
- With the assistance of other authorised bodies, **provide professional training** for persons authorised to implement lustration measures (the specialised NAUCS training course, etc).

<sup>31</sup> For example, according to the experience of the team that has been implementing lustration measures since 2014, they had about 5,500 requests for 230 working days, which actually turned into a tool for blocking their work. At the same time, according to their analysis, only about 5% of the requests were really substantive.

<sup>32</sup> In particular, in the case of options when the Commission is established as a collegial body under the CEA, another advisory body, etc.

Consideration may also be given to the feasibility of establishing **an advisory civic body** on lustration to ensure public control over the lustration process<sup>33</sup>.

In addition, an appropriate **information system** should be created and put into operation within the structure of the CEA (e.g., the Ministry responsible for reintegration of the temporarily occupied territories of Ukraine) or an archival institution (e.g., The State Archive Branch of the Security Services of Ukraine), which, among other things, should perform the tasks of preserving and accessing the memory of events. Namely, there should be systematic documentation of the so-called court decisions, administrative and regulatory acts issued in the occupied territory of Ukraine, “official” web resources and registers of the occupation structures and the RF, media materials and others, in particular through the collection of digital evidence, etc. Such information-gathering activities should be conducted in sustainable cooperation with law enforcement agencies, the judiciary, civil society organisations and individual victims, witnesses and IDPs.

This work should not duplicate the actions of law enforcement agencies, and the recording of international crimes or crimes against national security. It is **solely aimed at documenting and preserving information**, administering access to information, records and other data that, in particular, can be used for further lustration checks, preserving the memory of the events of the occupation and Russian aggression, etc..

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<sup>33</sup> In particular, in the case of the option when a central executive authority with a special status is created to conduct lustration measures.

5.

## RECOMMENDATIONS AND ADDITIONAL ISSUES REQUIRING RESOLUTION

Considering the above proposals, to overcome the negative consequences of the armed aggression against Ukraine and, in a broader sense, the negative impact of the RF on the system of governance and certain socially important professional communities in Ukraine, the authorities should take the following actions:

1. *Foster discussion*, including among professional communities, with international partners on the feasibility and prospects of introducing measures to restore and protect the democratic and constitutional order, public trust in public authorities and individual professional communities as a result of Russian aggression and the temporary occupation of part of Ukraine (lustration measures) as an element of transitional justice. Promote research on public opinion on the development of such lustration measures.
2. *Define approaches to the development and implementation of the architecture of lustration measures*, including the development of the form and approaches to lustration, the development of the relevant draft law(s) and the identification of the subject responsible for its submission to the Verkhovna Rada of Ukraine.
3. *Ensure that the Ministry of Justice of Ukraine takes into account the need to implement measures to restore and protect the democratic and constitutional order, public trust in public authorities and certain professional communities in the aftermath of Russian aggression and the temporary occupation of part of Ukraine's territories (lustration measures) within the processes of Ukraine's alignment with the European Union.*
4. *Consider the principles and approaches*, in particular those set out in this document, when implementing lustration measures in the context of preparing and holding post-war national and local elections.
5. *Conduct an assessment of the challenges and obstacles* and, accordingly, develop balanced and encouraging conditions for the involvement of the population of these territories in the restored bodies in the de-occupied territories (for example, the possibility of postponing the obligation to provide proper documents on education and proficiency in the state language for candidates for not the highest civil service positions from among citizens who resided under occupation, as well as organising appropriate incentives for learning the state language, obtaining education, etc.)
6. *To analyse the quality of legislation, existing investigative and judicial practice and, accordingly, to formulate proposals for amendments to criminal legislation (in terms of crimes against the foundations of national security, including collaboration) to*

bring this legislation in line with the principles of legal certainty, international humanitarian law, as well as the requirements for the reintegration of the population of the liberated territories, criminalisation of only severe crimes in this area, and, the distinction between criminal punishment and non-judicial mechanisms (lustration). This approach cannot be seen as a form of avoiding criminal liability. It is justified and should contribute not only to the elimination of excessive criminalisation of offences that are not criminal in nature, but also to the safe reintegration of citizens from the de-occupied territories, meeting the need to attract personnel to restore public authorities, critically important professional communities, etc.

**7.** *Develop a communication strategy for the state lustration policy and the implementation of lustration measures as an element of transitional justice.*

Questions that **were not included in the proposals in the document, but will need to be addressed** by the state and society in the event of the implementation of a policy of lustration measures in the aftermath of Russian aggression:

- Conducting lustration measures in the field of **education** (pedagogical, academic-pedagogical, including those with organisational and administrative functions). In particular, the following issues must be addressed: who may be subject to lustration measures, what format for implementing these measures can be justified and applied, and who may be entrusted with these responsibilities, etc..
- Format and procedures for lustration measures against judges and heads of court staff, as well as candidates for these positions (e.g., amendments to the list of grounds for bringing a judge to disciplinary responsibility under the Law<sup>34</sup>, etc.).
- Format and procedures for conducting lustration measures against **members of election commissions** at all levels.

The list of questions may be supplemented based on the elaboration and detail of the document's proposals.

As a result, any path chosen by the state to protect the democratic and constitutional foundations of public authorities and professional communities critical to the development of society in the liberated territories should include **not only lustration, but also a set of other measures and reforms** in the areas of education, culture, politics, economy and property rights, justice, decentralisation, freedom of speech and development of independent media, support for the development of civil society in these territories, etc. Similarly, the lustration process should be conducted simultaneously with rehabilitation measures for victims of violations by individuals and institutions subject to such lustration. At the same time, lustration should not turn into vengeance: it should become one of the effective tools of the policy of memory, a guarantee of protection of democratic institutions in Ukraine and prevention of threats to national security, and contribute to the restoration of peaceful coexistence of all citizens and an effective, safe way to overcome the consequences of the war by achieving balance in society.

34 Law of Ukraine "On the Judiciary and the Status of Judges", Available at: <https://zakon.rada.gov.ua/laws/show/1402-19/conv#n1136>

