



The Legacy of Four Vetting Programs: An Empirical Review

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About ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

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I. Introduction

This document is a review of vetting programs that took place in two post-conflict (Bosnia and Herzegovina, and Liberia) and two post-authoritarian (Hungary and the Czech Republic) countries during the 1990s and early 2000s. This review will assess the legacies of vetting and lustration processes in the contexts of post-conflict reconstruction and post-authoritarian transition respectively, and will offer recommendations on how to improve the quality of legacies and the subsequent formation of integrity-enhancing mechanisms in future, comparable situations. It is hoped that these recommendations will assist those policy makers and field practitioners facing the challenging task of building the key institutions vital to functioning democratic states.

If vetting in both post-conflict and post-authoritarian scenarios is conducted properly, efforts to reform institutions are significantly reinforced. More specifically, the study will show that effective program design, implementation and legacy management are factors that can override political obstacles. The success of the vetting of judicial and prosecutorial staff in Bosnia and Herzegovina compared to that of the police in that country is a case in point. In Liberia, on the other hand, poor programming of the vetting of police and the judiciary has given rise to socio-political tensions during transition and reconstruction. The study will also show that consultation and the sharing of data between international and national partners is key to a successful vetting program. In Bosnia and Herzegovina, international organizations simply imposed the vetting of police personnel and appear not to have considered some degree of involvement by the relevant national authorities to be a necessary part of the ad hoc vetting process. Compounding this was the reluctance of some external actors to make available to government agencies the necessary vetting data for the long-term enforcement of vetting judgments. In the case of lustration policies—broadly defined as the systematic vetting of public sector officials with significant links to the communist era security services—the definitions of target groups, criteria, scope, timing and duration must be concrete and stable. The Czech and Hungarian cases will demonstrate that lustration programs should not be conducted as purely domestic exercises but preferably with some international support.

Method and Structure

The review is based on open-source material related to the selected vetting programs and on interviews conducted by the author with individuals closely linked to the vetting programs. Interviews were guided by a questionnaire with closed and open questions. The interviewees were offered anonymity. The interviews were held between October 2007 and February 2008.

The paper is structured in three parts. First, there will be an examination of the design and implementation of the post-conflict vetting of judicial and prosecutorial staff, as well as police personnel in Bosnia and Herzegovina and Liberia. Part two will include a review of the lustration of public servants in post-Communist Hungary and the Czech Republic. The crystallization of lessons arising from the country studies will be thematically presented forming the basis for fifteen key recommendations contained in part three.

Defining “Vetting” and “Legacy”

The author defines ad hoc vetting as a process for assessing an individual’s integrity in order to determine his or her suitability for public employment in the transition from conflict to peace or authoritarian rule to democratic rule.¹ The quality of a legacy is dependent on the degree to which knowledge and capacities gained from the ad hoc process (such as trained staff, funds, policy documents, and materials) are transferred to the appropriate regular and permanent governmental institutions to serve as a foundation for the effective functioning of long-term, durable, integrity-enhancing mechanisms. These integrity-enhancing mechanisms are designed to ensure that individuals adhere to relevant standards of human rights and professional conduct, including the individuals’ financial propriety.

II. The Legacy of Post-Conflict Vetting

Judicial and Prosecutorial Personnel in Bosnia and Herzegovina

Background

In the context of the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (commonly known as the Dayton Peace Accords), the task of establishing a fair and effective judicial and prosecutorial system appeared enormous. Indeed, the Judicial System Assessment Program (JSAP) of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) identified

¹ See “Vetting Public Employees in Post-Conflict Settings: Operational Guidelines,” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 548.

inappropriate political influence on the judiciary that continued into the late 1990s. This interference often served pre-Dayton ethnic and political interests. In particular, the unreformed judicial and prosecutorial systems offered little protection or justice to those citizens who most needed it during the return and resettlement programs.

It was not until 1998 that judicial and prosecutorial reform began to gain importance on the international agenda, particularly in the face of slow progress and high-profile instances of judicial miscarriage. In response, the international community established the Independent Judicial Commission (IJC) in 2001 as the lead international agency charged with judicial reform. The IJC recommended the radical strategy of replacing the ongoing JSAP review process with a program of reapplication and reappointment of all judicial and prosecutorial positions that would go in hand with a restructuring of the court system.² An initial IJC rapid assessment program had shown that the overall number of courts and judges was excessive compared to mature European democracies. Furthermore, the court system was extremely costly and ethnic representation was poor in both the Federation of Bosnia and Herzegovina and the Republika Srpska.

To support the process of reappointment, the High Representative established three councils, one at state level and two at entity level: the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (the State Council); the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina (the Federation Council); and the High Judicial and Prosecutorial Council of the Republika Srpska (the RS Council). The councils became operational in September 2002 and were to serve as independent bodies regulating important functions of the judiciary, especially the management of appointments, reappointments, selection and training, as well as budgetary oversight for courts and prosecutors' offices. The councils were composed of national and international judicial and prosecutorial experts from all levels of the legal hierarchy who were appointed by the High Representative. The three councils together held a total of 17 national members (6 from the Federation, 6 from the RS and 6 from the state level) and 8 international members. They were supported by 125 members of the IJC who provided administrative and technical assistance. An independent Office of the Disciplinary Prosecutor was also established as a professional standards body to investigate and adjudicate on cases of complaints against judges and prosecutors.

A comprehensive assessment was undertaken of the court network based on three criteria: the caseloads of the judges, the size of the population served by the court, and the distance from the next larger court. On the basis of this survey, 30 per cent of first instance courts were subsequently closed. Furthermore, the inflow of cases was used to determine the necessary number of judges and prosecutors. The councils found that the existing number of posts was excessively high and reduced it by 30 per cent. Once a proposed structure for the fabric of the judicial system had been designed,

² See Alexander Mayer-Rieckh, "Vetting to Prevent Further Abuses: Reforming the Police, Courts and Prosecutors Offices in Bosnia and Herzegovina," in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 180-220.

the councils could commence with the appointment, reappointment and dismissal process in September 2002.³

Vetting Process

It was then announced nationally that all judicial and prosecutorial positions were vacant, and suitably qualified individuals were invited to apply for the posts. This included sitting judges and prosecutors who wished to reapply for their own positions and any other posts for which they believed they were eligible. In the course of this open competition, 2,000 individuals applied for 953 posts. Because most individuals applied for more than one post, the councils received around 5,000 separate applications. The public was invited to make complaints against, or commendations for, individual judges and these were sent to the councils through the Office of the Disciplinary Prosecutor (ODP).

By May 31, 2004, the ODP had reviewed around 4,500 cases of complaints, of which 750 were found to be legitimate. These were added to the existing application packages that were verified and assessed by the IJC prior to presentation to the councils. Each package contained a large amount of information on the relevant applicant, resulting in a heavy workload for the IJC. Moreover, while much of the background focus was on political affiliation, housing status and assets, the IJC and the ODP were unable to conduct accurate investigations into the activities of judicial staff during the war. Nevertheless, while both organizations lacked the resources for this kind of work, complaints from the public concerning the conduct of individuals during the conflict were rare.

The next stage for applications was the nomination committee, which assessed the quality and suitability of applicants and then made recommendations to the councils for specific appointments. The entity councils and the State Council made decisions on whether or not to appoint individuals to specific posts. Those who failed or were appointed to a lower court than that to which they had applied were given 15 days to appeal for reconsideration. Notification was through the Official Gazette and because all the applicants were lawyers in one capacity or another they were expected to be fully aware of their rights to appeal. The grounds for reconsideration were extremely limited and of those that did appeal, (around 10 per cent) none were successful. Sitting judges and prosecutors who failed to win reappointment lost their mandate and continued to receive pay for six months while they looked for alternative employment.

The councils met at least once a week during the course of the process and decisions were taken by majority vote. Decisions and accompanying documentation were logged into the personnel management system of the institution. The one-third international staff and two-thirds national staff involved in the process received regular training in information technology, database management and staff management. The budget for the exercise was about 3 million Euros spread over three years, and funding was provided by the state of Bosnia and Herzegovina, the European Union, the

³ Ibid.

United States and eight other bilateral donors. Both funding and materials were sufficient for the task. At the close of the procedure in 2005, much of the materials and equipment used during the vetting process were left in the possession of the relevant bodies.

Legacy

The vetting procedure as conceived and implemented by the High Judicial and Prosecutorial Council (HJPC) was broadly a success and can be considered a bold initiative that built on the limitations of the JSAP and the IJC. As a new institution—an achievement in itself—the HJPC was able to prevent the reappointment of about 150 corrupt or incompetent judges, and establish a far more representative ethnic distribution of judicial and prosecutorial staff. However, the weighting of ethnic requirements by the HJPC may have compromised the emphasis on legal scholarship and expertise in some cases.

Overall, the work of the HJPC, which was representative of the high quality of its members, made a positive impact on public perceptions of the judiciary and prosecutorial office, respect for which had been greatly diminished by blatant political interference.

The HJPC continues to operate as the permanent judicial services commission that carries out an ongoing vetting function now that the ad hoc vetting process has been completed. Although the vetting procedures have been amended—not least in the original requirement for reapplication—the original rules and regulations for the selection of staff for vacant positions on the basis of merit have been retained. Moreover, more than 50 per cent of the original staff that assisted with the vetting process also has been kept in employment in regular units of the relevant institutions. While many of these are translators, their retention was assured by adequate budgetary provision. This example serves to reinforce the point that a ‘one-off’ vetting can become part of an ongoing effort to reform institutions and erect sound policy and procedures for the longer term. Vetting becomes the basis for creating a personnel and disciplinary capacity that enhances integrity and professionalism.

Judicial and Prosecutorial Personnel in Liberia

Background

During the negotiations leading to the Comprehensive Peace Agreement (CPA) in Accra in August 2003, it was agreed that as part of a judicial review and restructuring process the justices of the Supreme Court appointed under Charles Taylor would resign prior to the commencement of the executive function of the National Transitional Government of Liberia (NTGL). Whilst Article XXVIII of the CPA clearly called for all Supreme Court justices to resign, the final text was silent on the issue of other existing judicial office holders, merely empowering the NTGL to make new judicial appointments without specifying whether existing judicial officials would be required to step down. However, to maintain some judicial continuity during the interim period, and under pressure

from the International Contact Group for Liberia, it was further decided that the judges of the lower courts (i.e., the Circuit Court judges and the Associate and Stipendiary Magistrates) would also resign their positions, but not until early 2005.

While the original group of Supreme Court justices was retired permanently, other existing judges throughout the judicial hierarchy, along with new candidates, were invited to gain nomination in order to apply for the positions of 5 Supreme Court Justices, 21 Circuit Court Judges, 6 specialized court judges⁴, 146 Stipendiary Magistrates and 150 Associate Magistrates within the civil, criminal and juvenile fields. The legal and constitutional mandates for these positions were derived from Articles 68-70 of the 1986 Constitution and from Sections 2.4, 3.7 and 7.6 of the 1972 Judiciary Law. Vetting for the Supreme Court was to be undertaken by the Judiciary Committee of the National Transitional Legislative Assembly, while vetting for the lower courts was to be handled by the Liberian National Bar Association.

Vetting Process

The criteria for appointment are laid down in the 1972 Judiciary Law⁵. For the 328 positions, there were 634 nominations, although some individuals reapplied for their own positions while others applied for more than one position. Moreover, applicants were expected to have a proven track record of upholding the highest standards of probity and professionalism; hold a good reputation and standing in society; display a respect for the dignity of the office; prove no adverse disciplinary records; and demonstrate an ability to uphold internationally approved human rights standards. An assets declaration was also suggested but scrapped on the basis that no other members of government were expected to do the same. Applicants' names were also checked against UNMIL integrity records compiled by the UNMIL Human Rights Office. These records largely comprised old reports collected by human rights non-governmental organizations (NGOs).

Applications for judicial appointment at the Supreme Court level were handled by the National Transitional Legislative Assembly (NTLA) Judiciary Committee, which consisted of three members of the NTLA and headed by a former minister of justice. The Liberian National Bar Association vetting committee, which handled Circuit Court, specialized and Magistracy applications, comprised five national staff and one UNMIL Judicial and Legal Department advisor. Their main task was checking qualifications and criminal records; only one former member of the magistracy was found to have a law degree. The process took seven months, with Liberian National Bar Association staff meeting three times per week to discuss findings and streamline the shortlist of candidates. There

⁴ The six specialised courts are: the Debt Court, the Monthly and Probate Court, the Tax Court, the Traffic Court, Juvenile Court and the Labour Court.

⁵ A candidate for judicial appointment must be a citizen of the Republic of Liberia and for tenure as Supreme Court justice, Circuit or specialised court judge and Stipendiary magistrate, a candidate must be a licensed practising lawyer with at least seven, five and two years legal experience respectively. The law is silent on qualifications for associate magistrates. All candidates should be of good moral character. Furthermore, candidates for the Circuit Courts required five years practice experience, while those for the magistracy required three years.

was no process of appeal since all former magistrates had resigned their positions. Nor did failed candidates receive a severance package. There is also evidence that suggests that there was external interference within the selection procedure.

Legacy

Despite the vetting process, the vast majority of candidates appointed to the lower courts are not legally qualified as required by the 1972 Judiciary Law. While all candidates appointed to the Supreme Court, the Circuit Courts and the specialized courts met the requirements to be a practicing lawyer, only three of the appointed Stipendiary Magistrates held law degrees. Since then the number of qualified Stipendiary Magistrates has risen to ten. Moreover, national staff were given no additional training in substantive or procedural law, data, and information technology or personnel management skills. Furthermore, there was no budget provided to the staff from the Liberian National Bar Association to undertake the vetting process. The vetting process was undertaken on a pro bono basis, and while this commitment is laudable, the program lacked support for its work in both material and technical terms. For example, there were no vehicles for visiting the interior. Data management was poor and there has been no attempt to integrate the program into any post-vetting, integrity-enhancing mechanism. At the moment, there is no mechanism in place to ensure that the original vetting decisions are respected in the long term. Indeed, following the election of President Ellen Johnson Sirleaf in 2005, the members of the Supreme Court resigned and new members were appointed amidst some controversy, not least because these new members were not fully endorsed by the Liberian National Bar Association and the nomination of one Associate Justice was the subject of a failed legal challenge.

Nevertheless, while the circumstances of the vetting procedure were poorly managed and inadequately supported by the international community, the process did yield some limited and relatively positive results. Most importantly, all practicing judges had their qualifications checked by the Liberian National Bar Association, and for the first time in decades all Supreme Court, Circuit Court and specialized court judges hold law degrees. Additionally, the ongoing process of appointment now involves the agency of the Liberian National Bar Association, which is independent from the public service and is able to vet lists of suitable candidates prior to their appointment by the Executive Branch. In the past, the appointment process was handled entirely by the President and confirmed by the Senate (usually automatically); positions were awarded based on patronage rather than merit. In the context of this change, there has arguably been some institutional reform.

While this is perhaps the sole positive legacy of the process, the involvement of the Liberian National Bar Association in appointments continues and appears to be an evolving tradition. However, there is no clear legislative basis for its involvement in the vetting of judicial appointments. Furthermore, the violation of human rights continues to be a major issue in Liberia, particularly regarding rights concerning liberty, due process and equality before the law. Corruption within the justice sector also remains endemic. Abuse of office and other violations by justice sector officials continue unabated.

The biggest problem in this area is not only the absence of legislation that guarantees the independence of the Liberian National Bar Association from the judiciary but also the complete lack of budgetary and technical resources to support the development of an office of professional standards that could handle complaints against legal practitioners and manage international training for judges and prosecutors. Nonetheless, the Liberian National Bar Association has recently begun a dialogue with the American Bar Association and Norwegian Bar Association with a view to enhancing integrity within the legal profession.

Police Personnel in Bosnia and Herzegovina

Background

By the end of the conflict in Bosnia and Herzegovina in 1995, the number of police personnel had grown to around 44,750—three times that of the pre-war period. Many officers served in a paramilitary capacity. Of this number, 32,750 were serving in the Federation entity and around 12,000 in the Republika Srpska entity. In the immediate post-Dayton period, the police continued to act with some degree of impunity—there was little respect for the rule of law and human rights—and many officers continued to pursue ethno-political and separatist agendas in support of a number of nationalist politicians. Moreover, the police ranks still contained individuals who had committed war crimes. There was almost no inter-entity cooperation; displaced returnees were afforded little protection and their complaints of discrimination and abuse were met with indifference.⁶

Compounding these problems were active attempts by domestic political actors to undermine proactive attempts at police reform, while the international community remained reluctant to take on the actual task of implementing police reform. However, in the face of this obstructionism, the United Nations Mission in Bosnia and Herzegovina (UNMIBH) began to develop a police reform policy that was agreed for the Federation in April 1996 and strengthened by Security Council Resolution 1088 in December 1996. The resolution mandated UNMIBH to independently assess and investigate abuses of authority or dereliction of duty by local police forces. In 1997, the High Representative was given the authority to make legally binding decisions and judgments on a wide range of issues, not least the removal of officials—police, civil service or otherwise—who abused their positions.

In December 1998, a police restructuring agreement was also agreed for the Republika Srpska and UNMIBH was mandated to begin a vetting process. UNMIBH laid out a strategy that would determine the maximum necessary strength of the police and its ethnic composition. The supporting vetting procedure would be comprised of the three phases of registration, provisional authorization and finally certification to enable an individual to serve as a police officer.

⁶ See Mayer-Rieckh, “Vetting to Prevent Further Abuses: Reforming the Police, Courts and Prosecutors Offices in Bosnia and Herzegovina.”

Vetting Process

UNMIBH conducted the initial process of registration between November 1999 and December 2000. During this period, 23,751 police and Ministry of Interior personnel were registered. Registration forms for each individual applicant contained information on qualifications, service records, present position and rank, ethnicity and background. Once the registration process was closed, registered individuals were then at liberty to make a formal application to the police academy. Those who remained unregistered were now excluded from the next stages of selection.

Registered individuals then went through a further process of initial screening in order to remove those who were clearly unsuitable for service. The criteria at this stage included: former training, age, citizenship and experience. Individuals who satisfied the criteria were then provisionally authorized by UNMIBH to exercise police powers during the period of transition and were given identification cards. Successful applicants at this stage were then subjected to more rigorous vetting procedures that included background investigations into criminal records, past performance of duty, property and asset status, and violations of international human rights law. Individuals who met these rigorous criteria were certified.

In terms of human rights violations, personnel were vetted against evidence held by the Prosecutor's Office of the International Criminal Tribunal for the former Yugoslavia (ICTY), police records and evidence provided by victims, witnesses and NGOs at the behest of UNMIBH. Unfortunately, police officers were not given any opportunity to defend themselves in person and the evidentiary considerations were conducted in camera by the UNMIBH. The low threshold of a grounded suspicion that an individual had either been complicit, ordered or commissioned a crime contrary to international human rights law was sufficient to ensure that certification would be denied by the UNMIBH Police Commissioner and provisional authorization revoked. This evidentiary standard of 'grounded suspicion' was far weaker than 'weight of evidence'. While there was an independent process for appeal to review such a decision, its mechanics were opaque and reports were ultimately returned to the UNMIBH Police Commissioner for a final decision. The standards of evidence, lack of personal defense and the flawed judgment process violated basic international human rights standards. The UNMIBH mandate ended in 2002. By the close of the certification process, of the original 23,751 registered, 15,786 police officers were certified.⁷

The UNMIBH certification program suffered from a number of flaws, both in design and implementation. The process was designed by the UNMIBH Police Commissioner and then regulated and implemented by UNMIBH staff. Policies were communicated along a 'one-way' channel to the Ministry of Interior—there was little in the way of consultation or collaboration. Vetting processes were confidential and conducted in camera and the certification stage lacked a

⁷ Ibid.

credible, independent appeals body. Ultimately, the UNMIBH Police Commissioner was the final arbiter of all decisions.

Moreover, there was no attempt by the United Nations to encourage the domestic authorities to adopt aspects of the vetting process by amending existing legislation as part of its long-term recruitment strategy. Indeed, the records collected during the certification process were not presented to the relevant domestic authorities in order to assist them with either enforcing the original vetting decisions or providing a data bank to ensure the long-term durability and sustainability of the project. All information related to registration, provisional authorization and certification was shipped out of the country and deposited in a UN document storage facility in New York State.

Legacy

The few UN personnel associated with the vetting process left during the drawdown phase of the UNMIBH mission and vehicles and equipment were shipped on to new DPKO missions or UN storage depots. In its wake, the process left bitter feelings of injustice among many of those who failed certification on the basis of UNMIBH's evidentiary standards and the perceived secrecy of the vetting process. Arguably, the UNMIBH mandate ended before the police vetting process was brought to a complete and satisfactory conclusion and there was little attempt by UNMIBH to address outstanding grievances against the vetting process. Furthermore, the transition to the EU Police Mission was not sufficiently managed and the EU was not willing to complete the process.

The overall consequence of this has been a steady growth in the number of non-certified police officers challenging the legality of UNMIBH's decisions in local courts and in the Human Rights Chamber in Sarajevo. A significant number claim that they were not informed of their right to appeal, nor were their requests for review answered. Others submitted evidence to review that was subsequently ignored. This has caused some confusion in the courts, some of which believe they have no jurisdiction over UNMIBH's decisions, while others have judged that some UNMIBH decisions were unlawful and have given leave to non-certified police officers to return to duty. While the UN has attempted to bring closure to the program through Security Council statements calling for UNMIBH vetting decisions to be respected and for non-certified personnel to be denied the right to serve as police officers, local demands continue for a new review of certification rejections to bring the process to a conclusion acceptable to all parties. As such, the legacy is profoundly negative and undermines efforts to instill objective, impartial procedures to strengthen integrity and professionalism.

Police Personnel in Liberia

Background

The August 18, 2003 Accra Comprehensive Peace Agreement (CPA) that brought conflict in Liberia to an end made provision in Article VIII for the restructuring of the Liberian National Police (LNP) and other security services. Much of the original police structure had collapsed during the course of the war, many police officers had been killed, and among those that remained on the register, absenteeism was common. UN records show that many had not reported for duty for years. Compounding these problems was a lack of financial resources for the payment of the meager salaries for personnel.

Although no actual demand for a vetting process was made, paragraph 1 of Article VIII called for “an immediate restructuring of the National Police Force, the Immigration Force, Special Security Service (SSS), custom security guards and such other statutory security units. These restructured security forces shall adopt a professional orientation that emphasizes democratic values and respect for human rights, a non-partisan approach to duty and the avoidance of corrupt practices.”

Moreover, Article VIII added that “[u]ntil the deployment of newly trained national police, maintenance of law and order throughout Liberia shall be the responsibility of an interim police force. The Parties call on the United Nations Civil Police components (UNCIVPOL) within the ISF [International Stabilization Force] to monitor the activities of the interim police force and assist in the maintenance of law and order throughout Liberia. The Parties also call on UNCIVPOL and other relevant International Agencies to assist in the development and implementation of training programs for the LNP.”

One month later, on September 19, 2003, this proposal was further reinforced by Security Council Resolution 1509, which called upon the international community to “assist the transitional government of Liberia in monitoring and restructuring the police force of Liberia, consistent with democratic policing, to develop a civilian police training program, and to otherwise assist in the training of civilian police, in cooperation with ECOWAS, international organizations and interested States.”

Under the mandates of both the Accra CPA and SC Resolution 1509, overall management responsibility for the restructuring of the LNP was handed to the UN police component of UNMIL. While the old structures of the LNP continued policing as an ‘interim force’, an UNMIL dedicated task force of around 15 international staff was created to begin vetting, retraining and restructuring. The challenge was enormous.

Vetting Process

Of the initial intake, 10–15 LNP personnel were initially selected to assist the international team. The task of the LNP personnel was to assist international staff with the assessment of vettees, in particular guiding international staff around the neighborhoods of Monrovia and provincial towns to validate individual records and collect complaints against, or endorsements for, those applying to join the new police force. Around 3,000 personnel were vetted. Of these, around 2,200 failed on the basis that they lacked the required educational qualifications, were too old, were physically unfit, were dead, had committed human rights violations during the 14 years of conflict that beset Liberia, possessed criminal records, or simply did not exist. Retraining began for the remaining 800, a core that would be boosted by a major recruitment drive to raise the number of LNP personnel to 3,500, 20 per cent of whom, it was hoped, would be women.

The vetting process was funded entirely out of the main UNMIL dedicated budget. National staff team members received only basic police training; they received no computer, database or management training. The necessary vehicles and office equipment remained part of the overall UNMIL inventory and were not handed over to LNP Headquarters at the end of the vetting process.

Nevertheless, the public was directly engaged in the vetting process through the media, through ongoing public debates and through the publication of candidates' photographs on large posters displayed in public places. The public was also encouraged to make complaints against individuals deemed to be unsuitable for police service.

Those applicants who failed the vetting process were notified in regular UNMIL bulletins. Around 5 per cent of them were notified of the opportunity to appeal either against the ruling, or to reapply. Most of these individuals had failed on grounds of insufficient proof of educational qualifications. Typically, if they were able to find the relevant school certificates, or got them reissued by the respective institution, they were accepted. However, in a country where much of the official documentation of the institutions of State had been destroyed, this often proved for many to be a difficult task. To boost the numbers of female recruitment, educational requirements for female recruits were unofficially lowered from the holding of a high school diploma to an individual reaching ninth grade.

While appeals were processed by UNMIL, final decisions on individual cases were taken by the Rule of Law Implementation Committee that was comprised of Ministry of Justice officials, UNMIL representatives and other key figures within the security sector. The vetting process took two years, and 90 per cent of failed applicants received 2,500 Liberian dollars (approximately US\$ 50) in compensation. While the payment was initially well received, there have been recent calls for honorable discharges and full pensions for failed vettees. However, given political sensitivities and budgetary constraints, this is unlikely to happen.

Legacy

There is some concern that now that the vetting and recruitment process has come to an end, the original vetting functions will be abandoned. Achieving durability of systems in Liberia has proved a difficult task in all sectors. Nevertheless, it is hoped that the vetting functions will be replaced by a professional standards, integrity-enhancing mechanism as part of the regular administrative structure of the police force. However, observers note the existence of major problems within the LNP, particularly concerning endemic institutional corruption, scant institutional knowledge of the way that human rights requirements and Liberian law should underpin and shape operational standards and procedures, and poor leadership from the higher echelons of the force.

Since the restructured and retrained LNP has become operational, there have been serious incidents concerning the police force regarding liberty rights and excessive force. Instances of detention without charge, beatings and serious violence between LNP officers and members of the autonomous Liberia Sea Port Police have been widely reported in the local press and radio.⁸

Moreover, there continues to be insufficient police presence in rural areas and a lack of basic equipment for police forces located outside the capital. There are also concerns that the vetting process was not conducted as thoroughly as might have been hoped. Indeed, there are concerns that the process may have been conducted too hastily. While there continue to be allegations that a number of police officers within the retrained force of 800 are implicated in human rights violations, there are fears that no allegations surfaced during the vetting process because members of the public were afraid of possible retaliation as a consequence of weak measures for the protection of the identity of informants.

UNMIL has handled vetting data throughout the vetting process and is now beginning to pass this material on to LNP Headquarters, although facilities for its storage are very poor. Buildings lack furniture and windows, and are vulnerable to the effects of the harsh tropical climate. The United Nations is currently engaged in re-equipping LNP Headquarters but the process is proving to be slow and ad hoc funding appears to be short.

Most of these matters are currently under review by panels comprised of UNMIL and security sector and civil society representatives. UNMIL has also created a Non-compliance Unit and a Professional Standards Unit to undertake internal oversight, but as ‘normalization’ in Liberia becomes more entrenched, State institutions are becoming less willing to accept external guidance—twelve out of 38 recent recommendations by UNMIL on matters pertaining to the improvement of policing standards and integrity enhancement have been rejected by the LNP leadership. With the rejection of over 30 per cent of recommendations, the communication of ideas and policy between UNMIL and LNP is clearly proving problematic.

⁸ See runningafrica.com/news-02062008Ordered-Arrested.html.

III. Legacy of Vetting in Post-Authoritarian Contexts

Lustration of Public Personnel in Hungary

Background

The round table talks of 1989 which saw Hungary's transition from communist regime to democracy were followed by parliamentary elections in 1990. Throughout the first year of transition a national debate developed that discussed the best ways of curbing, in particular, the power of the communist secret police. The issue had become contentious in the wake of the 1989 'Danubegate' scandal that saw secret police officers destroying huge amounts of records collected on individuals during the post-war communist period. Moreover, it was rumored that while many of the records had been destroyed, new lists of secret police collaborators and informers had also been created. It was feared that these lists could be used to either blackmail or coerce new members of parliament.

It was therefore seen as a matter of urgency that some form of post-transition 'reckoning' of the past take place to avoid blackmail within the contemporary political arena. This argument was projected further to suggest that a 'moral cleansing' of society was necessary to guarantee the democratic foundations of the new state. The more forthright elements of the new parliament, namely the Hungarian Democratic Forum (MDF), argued strongly that this process, instead of being a straightforward lustration, should entail a full accounting of the serious crimes that were committed during the communist period. They suggested that this should involve full criminal proceedings against those most responsible and include a harsh curbing of the former elite's ability 'to convert political power into economic capital'.

MDF hard-liners pushed for a statute of limitations to start anew on 2 May 1990 for crimes of treason, voluntary manslaughter and infliction of bodily harm causing death in those cases where the state failed to prosecute individuals for political reasons. There was much opposition but after considerable negotiation, an act was passed where "the statute of limitations was extended only for previously defined crimes where prosecutions had been blocked by the communist regime" (see Barrett, Hack and Munkácsi 2007).⁹ However, the act was finally declared invalid by the Constitutional Court because "in the post-transition constitutional rule of law state, it violated legal security since there should be no punishment without a valid law in effect at the time".¹⁰

Following the 1990 parliamentary elections, the opposition led by the Alliance of Free Democrats tabled new draft legislation with the objective of closing the issue of the status of communist security

⁹ See Elizabeth Barrett, Péter Hack, and Ágnes Munkácsi, "Lustration as Political Competition: Vetting in Hungary," in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 260-307.

¹⁰ Ibid.

service officers, their agents and the files collected by the security services during the communist period. This draft, numbered 482, advanced the principles of a lustration process.¹¹

It was proposed within the draft that a list of these individuals would then be presented to the president, another to the prime minister and a third to the Parliamentary National Security Committee. Following this, the president would then make public a second list of former security service officers and agents who were named on the main list and who were still in public office. However, prior to this publication, individuals on this new list would be notified of their inclusion and then given the opportunity to either resign from office and avoid public shame, or appeal to the courts and dispute the accuracy and authenticity of the evidence. In fact, the new Hungarian state had no legal means of dismissing individuals with security service connections from public office – its power to encourage resignation lay only in the threat and fear of public opprobrium.

The draft act was voted down in parliament, but generated a widespread demand for some sort of lustration process. In consequence, in 1991, the government tabled its own draft bill for a lustration process, which, after a further three years of debate and amendment, was eventually adopted as Act XXIII in April 1994. As it happened, preserved within the act were most of the core principles laid out by the Alliance of Free Democrats in draft 482. Furthermore, Act XXIII identified which positions should be vetted: politicians, ministry officials, senior staff of national companies, academics, and journalists working for major newspapers.

The vetting process was to be carried out by lustration commissions—each comprised of three judges—that were empowered to hand down one of four judgments on particular cases: either the individual had engaged in activities identified in Act XXIII; the individual was believed to have engaged in such activities but there was insufficient evidence to prove it, in which case a ‘dispensational’ decision was made; a termination of lustration procedure in the case of an individual voluntarily resigning from office, or losing a parliamentary seat during an election; or, finally, the individual was cleared of any activity identified in Act XXIII.

Those who passed the vetting were sent a letter confirming that they were in the clear. Those who failed were given the opportunity to resign without publication of any information that might be deemed detrimental to their reputation or, if they disagreed with a specific judgment, they were given the opportunity to question the data and appeal to the courts prior to publication of their status as a former security service member or agent.

¹¹ Three key objectives were identified: the preservation of the purity of post-transition democratic society; the imposition of restrictions on participation in public and political life by those with connections to the former communist Ministry of the Interior Security Service (known as the III/III); the prevention of the abuse of information contained with III/III files – in other words, the minimisation of the possibility that secret information could be used to either blackmail or coerce politicians or senior figures within the civil service. Individuals targeted by the lustration process would be those who had served as security officers within the III/III and their network agents.

Nevertheless, six months after the enactment of the law, the Constitutional Court declared Act XXIII unconstitutional on the grounds that it was too vague in its definitions of who should undergo lustration and that there were human rights concerns in terms of the secrecy and freedom of information held on individuals. When the centre-left took power following the 1994 parliamentary elections, it introduced a new Act LXVII to make provision for informational self-determination by creating a Historical Office (HO) that was essentially a data bank of communist security service files. All individuals had the right to examine data held on themselves therein. It was intended that the creation of the HO would support the ongoing lustration program.

Following the 1998 parliamentary elections, further amendments were made to the lustration law in Act XCIII that widened the lustration target to include significant areas of the media and the activities of media professionals under the Communist regime. In 2001, the legal status of the Historical Office was also changed to establish the office as an official state archive that would house not only communist era documents, but also those of the contemporary security services.¹²

Lustration

Since the procedure began with the first appointment of lustration judges in 1994, around 30,000 records have been examined. The judges have been supported by around 25 national staff, both professional researchers and administrators, and the budget for the commission has been supported under the 'parliamentary offices' part of the budget law.¹³

By the end of 2004, nearly 9,600 office holders under the terms of Acts XXIII and XCIII had been lustrated. The procedure was straightforward and was comprised of: the identification of persons who should be vetted under the law; the collection of data from the register of the communist secret services (this was done prior to 1997 by the Ministry of the Interior and after 1997 by the staff of the Historical Office); a hearing at which the lustration commission members and the individuals being lustrated were present; the evaluation of evidence; the decision of the commission; and finally, if necessary, an appeal to the court. Of the 9,600 officials, 126 were deemed to be suspicious. During further investigation, 24 left office, 14 had their investigations terminated and another 42 were granted dispensations under the terms of the lustration law. Of the remainder, 15 had their decisions published, two appealed to the courts and 29 remained under investigation. Those that failed were notified in writing and were advised of their right to appeal. All did, although none of the original Lustration Commission decisions were ultimately overturned.

The 24 national staff that assisted the lustration commission received some training in research and administration, but most were qualified lawyers and administrators. There was no involvement of international personnel. The budgetary terms for the ten-year process were largely deemed adequate,

¹² Ibid.

¹³ The judges also receive support from the Ministry of the Interior and the Historical Office. It is unclear what the total expenditure on the commissions has been – the 1994 act provides that the central budget cover the expenses of those agencies related to providing data for the commissions and reviewing the archives.

as were the facilities and equipment, most of which was provided out of the Ministry of Interior inventory.

The legislative mandate for the lustration process expired in 2004, at which point the lustration mechanism was abandoned and staff returned to their regular places of work – typically the legal profession in the case of assistants or the judiciary in the case of the Lustration Committee members. No aspects of the process were subsumed by the regular functions of government as integrity-enhancing mechanisms in either the line ministries or the security sector. Standard selection processes for employment within the civil service and the media have replaced the formal lustration.

For standard employment and disciplinary disputes, an Office of the Ombudsman has been created to serve as an integrity-enhancing mechanism. On issues related to human rights, much of the monitoring has been left to local and international NGOs.

Legacy

The key legacy issues remain the files and data that were lodged within the Historical Office. There is still only limited public access to this material, which has undermined public trust in the efficacy of the lustration process itself, as well as in the probity of political and public life. In essence, the public remains unconvinced that lustration was a thorough and complete process, a belief that has been strengthened by the confidential workings of the Lustration Commission and, of course, the destruction of large amounts of data in 1989 by the remnants of the communist security services. Furthermore, there is widespread concern that figures within Hungarian public life remain vulnerable to continued accusations of involvement with the former communist security services and rumors alone have damaged political careers. The spread of these rumors has become an unfortunate fact of Hungarian political life and part of the armory of political competition. As such, the vetting process is not considered to have been a full accounting of Hungary's political past. Additionally, many in Hungarian society believe that the process was weakened by a covert security service lobby that proved far more influential within the original lustration debate than expected.

There is a growing consensus that the historical timing of the lustration process was problematic and that momentum for a forthright accounting of the past was lost as legislation became bogged down in Parliament and the Constitutional Court. It seems that the more hesitant these processes are, the less hope there is of success. Moreover, transparency should have been coupled with a broader process of public education about what the security service actually did during the communist era and why lustration was absolutely necessary for a 'cleansing' of Hungarian political life.

In the wake of the lustration process, two schools of thought on how best to bring lustration to a more positive and final conclusion have emerged. The first argues that the records within the Historical Office should be subjected to full, unlimited public disclosure. In this circumstance, the past would be given full transparency while those in public life at present would enjoy an opportunity to completely dispel unfounded rumors that cloud their careers.

The second school argues that the documents should all be destroyed, drawing a firm line under the lustration process and bringing a forward-looking closure to the past. Alternatively, there have been suggestions that the documents be presented to those whom they concern to do with as they see fit: either to publish as an act of personal exoneration or to destroy.

Until a decision is made, the legacy of the Hungarian lustration process will remain compromised. It has provided nothing in the way of vetting structures that may usefully serve state institutions as an instrument of integrity enhancement. And while it has served to remove a relatively small number of individuals with questionable credentials from public office, it has also created an air of opacity and suspicion that continues to penetrate Hungarian public life.

Lustration of Public Officials in the Czech Republic

Background

In the aftermath of the 1989 Velvet Revolution, a Czechoslovakian lustration law was formulated in Act No. 451/1991 of the Collection of the Laws “determining some further conditions for holding specific offices in state bodies and corporations of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic (commonly referred to as the “large lustration law” and Act No. 279/1992 of the Collection of the Laws “on certain other prerequisites for the exercise of certain offices filled by designation or appointment of members of the Police of the Czech Republic and members of the Correction Corps of the Czech Republic (usually referred to as the “small lustration law”).

The objective of the process was the decommunisation of Czech and Slovak society and the focus of lustration would include all ranks of the judiciary and the prosecution office; senior positions within the civil service; the rank of colonel and higher in the military and the police; intelligence personnel; state media employees; state bank employees; state and parastatal corporations; and senior members of universities in both academic and administrative positions.

Disqualification criteria for any of these positions included senior officials within the communist regime; association with the communist security services; and collaboration with either of these organs either as agent or informer. Exceptions were made for those who held office during the attempted period of democratization known as the Prague Spring between 1 January to 1 May 1968 and prior to the Warsaw Pact invasion of Czechoslovakia in August of that year. Political positions determined by democratic mandate were exempt from the lustration process.

Lustration

The Czech lustration process was handled by the executive branch of the constitutional power—specifically, the Ministry of the Interior, which created a dedicated sub-organ to manage data collection, conduct inquiries and issue individuals with either positive or negative lustration certificates. The possession of a negative lustration certificate enabled an individual to make an application for any job protected by the lustration process. Issues of legal contention arose primarily from the category of secret police collaborators. This category was subdivided into three further categories that included: Type A, or individuals that actively collaborated with the state security organ of the communist regime; Type B, other ‘conscious’ collaborators; and Type C, those whose collaboration was unwilling and coerced under duress.

So far, an estimated 500,000 individuals in the Czech Republic have undergone the lustration process. Of these, around 3 per cent to 4 per cent have failed and received positive lustration certificates by way of formal notification and status. These individuals also received written notification of their right to appeal to the Independent (Appeal) Commission created in February 1992 in order to review positive lustration certificates in the context of available facts and secret police records. It is difficult to tell from available data how many of the failed cases resulted in appeal, but the figure probably lies between 30 and 50 per cent.

Of these failed cases, hundreds were successfully overturned, particularly those which fell between the types B and Type C of informers. Indeed, the issue of ‘willingness to collaborate’ became so contentious that the chairman of the Independent (Appeals) Commission successfully recommended to the Constitutional Court that this category be removed from the process. As a result, there became little necessity for the existence of the Independent (Appeals) Commission and the body was subsequently dissolved (see Priban, 2007).

The lustration process is not over. It is now entirely managed by the Ministry of the Interior and the issuance of lustration certificates has become an administrative procedure against which an individual has the right to file an administrative complaint or a civil suit in the pursuit of ‘personal integrity’. The lustration law of 1992 was originally enacted for a period of five years, but despite some opposition has continued to be prolonged by successive acts of parliament. The Ministry of the Interior currently receives between 6,000 and 8,000 applications for lustration certificates each year.

The lustration process is handled by several hundred staff at the Ministry of the Interior. These staff have all received standard civil service training in database management, computing and general office administration. Furthermore, because they have access to secret police files, they themselves have undergone lustration, even though most of them were not senior enough within the civil service to necessitate lustration under the original terms of the act.

The budget amounting to US\$ 500,000 per year has been covered by an ongoing proportion of the standard Ministry of Interior budget, the staff have all been nationals and there has been no international input of either personnel or finance. Staff involved with the lustration process are reallocated and revolved within the Ministry of Interior as part of the standard process of job review. Materials and equipment for the task are part of the common Ministry of Interior inventory and are likely to remain in place until the lustration process reaches its conclusion.

With the prolongation of the lustration act, lustration continues as part of civil service law and therefore vetting continues within the regular functions of government. Moreover, since 1996, much of the data collected and collated during the lustration process has been generally available to the public. Indeed, any Czech citizen may make a formal application to view files collated by the security services between 1948 and 1990. The constraint on this freedom of information is upon access to information not directly connected to a specific individual's links to the security services and upon information that may violate the privacy rights of an individual under the terms of European human rights legislation—especially information pertaining to health or family and relationships.

Legacy

Broadly speaking, there is significant concern that the lustration process has continued for too long and has, to a certain extent, begun to create divisions within Czech society that it was originally designed to eradicate. While it is accepted that lustration in communist societies is necessary to protect fledgling democracies and forms part of the termination of the twentieth century communist period, many feel that the initial five-year period was sufficient time to weed out leading communist figures from key positions within public life. The real concern is that as lustration drags on, the target groups of the process begin to expand unnecessarily to include minor actors within the communist regime.

In addition, the definition of 'collaborator' was obfuscated from the outset and there have certainly been victims who have suffered as alleged 'oppressor' as a consequence of coercion at the hands of the communist state. Security service filing on specific individuals was also often incomplete, circumstantial or consequential—the evidentiary standards were extremely poor. In particular, many individuals signed forms of consent to act as agents of the security services but either provided no information or actively provided erroneous information in personal attempts to undermine the communist state. However, these consent forms have placed them in the same category as communist agents. Furthermore, exemptions from lustration and failures of lustration within certain sectors of professional society have generated a sense that the process failed to function with equality before the law.

President Vaclav Havel recognized these shortcomings and feared that a kind of 'democratic fanaticism' might begin to drive the process (Priban, 2007). However, despite repeated attempts to limit the duration of lustration to five years, he was consistently overruled by political coalitions within parliament. Nonetheless, recent legislation has ensured that those born after 1971 are now

immune from the lustration process and with time the process is likely to run its course and expire naturally within the next few years. The core elements of the lustration process will not be integrated into regular national institutions.

IV. Lessons Learned

The legacy of vetting cannot be studied in isolation from institutional and contextual realities, and this lies at the heart of the limitations in a comparative study of countries such as is attempted here. However, certain common characteristics allow us to consider thematic groupings. On a broad level, the transition from authoritarian to democratic rule can be distinguished from that of a transition from conflict to peace. While a post-authoritarian transition can lead to a major shake-up of the state, the socio-political trauma of armed conflict often result in complete, normative collapse of the state, as was the case in Liberia. It is in these most challenging post-conflict circumstances that peace must be negotiated, established and strengthened through the complete reconstruction of the state.

Furthermore, within each of the two groupings, there are differences. In the context of lustration, Hungary's process since 1995 was 'softened' by that country's more liberal state socialism compared to the much more authoritarian communist regime in Czechoslovakia. Hungary's lustration program—although imperfect and leaving an unsatisfactory legacy of uncertainty, suspicion and a public perception that the process was incomplete—has more or less concluded and the country has moved on. In contrast, set against the severity of the Czechoslovak communist regime, the lustration process of the Czech Republic since 1992 continues to rumble on, placing under scrutiny ever greater numbers of the country's citizens whose role in the communist state apparatus was minimal. For all practical purposes, the Czech process has become radicalized and resembles a purge. Instead of engendering a definitive and identifiable break with the past, it continues to bind an unwilling Czech society to the communist era.

In the post-conflict contexts of Bosnia and Herzegovina and Liberia, relatively rapid programs of vetting have been employed on the personnel of the judiciary and the police. Although Bosnia and Herzegovina was racked by a protracted and brutal conflict, structured judicial and prosecutorial systems survived to some degree. Together with a comparatively high standard of education and professional expertise, the rebuilding of the judiciary and the prosecutorial service on the primary basis of competence and secondary considerations of ethnic balance and financial probity, proved to be a task that was well within the capacity of the international community and national authorities to achieve successfully. While not only has a functioning judicial system been established, knowledge and capacities gained from the ad hoc vetting process have also been successfully transferred to the appropriate, regular, permanent governmental institutions and now underpin key integrity-enhancing mechanisms ensuring that the original rules and regulations for selection for vacant positions are undertaken based on merit.

The same, however, cannot be said of the process of judicial and prosecutorial reform in Liberia carried out since 2005. While it too suffered from protracted civil conflict, its judicial and prosecutorial structures have proved far less durable. Moreover, inadequately supported by the international community from the outset, in both financial and technical terms, the vetting process was also subjected to political interference. Although members of the senior judiciary are now largely academically qualified to perform the tasks required of them by the state, knowledge and capacities from the vetting process have not been successfully transferred to government institutions to form the basis of integrity-enhancing mechanisms, particularly in terms of professional standards of conduct and in the enforcement of the original vetting decisions. In view of this, the legacy of the vetting process will prove to be weak and without the necessary support a further deterioration in the quality of the judicial process is likely. The poor quality of a recent treason trial may prompt additional support from the international community but quick action is critical if the reputation of the judiciary is to be improved.

In both Bosnia and Herzegovina and Liberia, police vetting was undertaken relatively rapidly to improve rule of law as a key pillar of post-conflict reconstruction. However, contextually, the circumstances in which the vetting processes were conducted were different. The experience in Bosnia and Herzegovina required a forthright vetting by registration, provisional authorization and certification of an entire, standing police service that also exceeded the policing requirements of the country. The process increased control over the police service's personnel, improved the national balance, and removed several hundred unsuitable individuals from the police service, but in doing so, the lack of a credible system of appeals and poor evidentiary standards arguably violated the rights of those prohibited from returning to duty. The speed of the process and the large volume of vettees coupled with insufficient numbers of vetting personnel went some way to determine this outcome. Furthermore, the United Nations, which handled the vetting process, proved reluctant to ensure that knowledge and capacities gained from the ad hoc process were transferred to the appropriate governmental institutions. In particular, data collected during the vetting process was not passed on. This data could have played a major role in helping to conclude the many appeals launched in local courts by former police personnel who failed the ad hoc vetting process. As such, local courts lack the data resources to arbitrate in such cases and many individuals who initially failed have now been given leave to return to duty, negating the original vetting decisions.

In Liberia, vetting has been conducted since 2004 in circumstances of almost complete structural collapse. But rather than acknowledge the momentous task of reconstruction and deploy the necessary resources, the international community failed to create the technical and financial foundations for a rigorous ad hoc vetting process and has struggled to ensure that knowledge and capacities are transferred to the appropriate, regular government institution. Not only does it appear that some of those responsible for human rights abuses during the conflict slipped through and were even legitimized by the vetting process but also that little provision has been made for the establishment of post-vetting integrity-enhancement mechanisms, particularly in the area of conduct and professional standards. By extension, mechanisms to ensure the enforcement of the original vetting decisions appear weak and the police continue to commit human rights abuses.

V. Recommendations

Post-Conflict Vetting of Judicial, Prosecutorial and Police Personnel

Planning for the vetting program should take into account the structure of the vetting procedure and make adequate provision to ensure a long-term legacy that enhances integrity within the judicial, prosecutorial and/or police system, protects the original vetting decisions, and provides a solid framework for the maintenance of professional standards. Planning should involve a thorough consultative process that includes all relevant national and, if applicable, international partners.

Vetting programs must leave a legacy of ongoing integrity enhancement if they are to be considered a success. The long-term durability of an integrity-enhancing mechanism requires an established, functioning structure to ensure the maintenance of professional standards. Such a structure requires the retention of sufficient numbers of staff, as well as adequate training and equipment for them to continue to perform their necessary functions.

The integrity-enhancing mechanism must also obtain the personnel records collected during the initial vetting process in order to preserve the original vetting decisions. Good quality data management is crucial for this objective.

To improve public confidence, a public opinion survey held five years after the termination of the vetting program would help determine how much the public believes the judiciary, prosecutorial or police personnel to have improved. Data from such an exercise would be invaluable for the formulation of strategies to contribute to the probity and competence of staff in the long-term.

It is vital that adequate consultation with national and international entities, as well as adequate planning are undertaken during the design phase. The plan must have a long-term perspective with the durability of integrity-enhancing mechanisms as a high priority.

Secret vetting programs for police personnel, particularly those in which the decision-making process is held in camera, are highly problematic and are liable to negatively affect public perceptions of the credibility of the vetting program and should be avoided.

Police vetting programs must contain a credible and independent process of appeal capable of accurately assimilating and assessing evidence that should be judged by 'weight of evidence' rather than 'grounded suspicion'. A 'beyond reasonable doubt' standard that is generally applied in criminal proceedings is, however, not necessary in vetting processes.

In order to encourage members of the public to play a full part in police-vetting programs, such programs must also incorporate proper mechanisms for the protection of informers to safeguard them against the risk of retaliation. The absence of proper informant-protection measures

discourages informers from coming forward and ultimately weakens public confidence in the vetting process. In addition, following the initial vetting of police cadets, their appointment as police officers following training should be made provisional for up to one year to allow the public sufficient time to make their concerns known to the vetting authorities. Such measures will help minimize the risk of police recruits who may have been implicated in human rights violations from slipping through the vetting the process.

Domestic authorities should be encouraged to adopt aspects of the vetting process by amending existing legislation as part of a long-term recruitment strategy. Further, records collected during the vetting process must be made available to the relevant domestic authorities in order to assist them with either enforcing the original vetting decisions or supporting post-vetting integrity-enhancing mechanisms. Suitable facilities for the storage and management of this data must also be established.

Supporting partners must commit to sufficient funding for the operational training and equipping of personnel. Once personnel has been trained and equipped, a professional standards body must continually monitor operational conduct and quality.

External support can contribute to establishing fair and effective vetting programs for the justice and security sectors in transitional societies. Such external support should be coordinated with national and other stakeholders, consist of political will and technical assistance, and be underpinned by public and civil society oversight. In this way, external support can significantly contribute to the development of robust, durable and impartial vetting programs.

Vetting of Public Officials in Post-Authoritarian Contexts

During the design phase of a lustration program, the international community should provide technical assistance that can enable the rapid enactment of lustration legislation. The legislation should establish clear definitions, parameters and procedures regarding the target groups and the timeframe of the lustration program.

The power of vested interests from the authoritarian period to influence the parameters of a lustration program should not be underestimated. Strategies to avoid this undue influence are crucial to the successful outcome of any lustration program.

The public must be fully sensitized to the nature of the crimes and injustices that were committed during the period of authoritarian rule and the reasons for undertaking a lustration process. Exemptions from lustration and failures of lustration within certain sectors of public life will lead to a public perception that the process failed to function with equality before the law.

In the context of adequate funding and staffing, the lustration program should be given sufficient momentum to ensure that target individuals are fully lustrated within the specified time period.

What is clear from both Hungary and the Czech Republic is that as lustration programs drag on, their target catchments begin to expand to include individuals with only peripheral or minor roles in the authoritarian apparatus. Checks on lustration targets and allotted time are vital to prevent a lustration becoming a broader purge by overzealous individuals within a vulnerable, transitional society.

Confidential proceedings do little to bolster public confidence in the credibility of a lustration process and should be avoided as far as possible. As such, the public must be given as much access as reasonably possible to data to avoid divisive suspicion and rumor that is likely to undermine public life during the early phases of democratic transition. This can only be achieved by good quality data management and storage that must be considered to be a key objective during the design phase in order to ensure that knowledge and capacities gained from the lustration process are available to the regular, permanent government institutions.

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