

Reflections and Recommendations for Transitional Vetting

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Preliminary

This document contains a set of reflections and recommendations on transitional vetting that are based on insights from research on the *practice* of vetting in general, and on a study of the police vetting process in Kenya more in particular. These reflections and recommendations are meant to complement existing guidance on vetting produced by the United Nations and other international actors.

Definition

By vetting, we mean a process that (i) aims to remove or otherwise disempower state agents who committed human rights violations or who engaged in other forms of serious professional misconduct, and that (ii) is carried out in order to build or restore accountable, legitimate and effective public institutions. We define *transitional* vetting as vetting that occurs after periods of large-scale human rights violations, systemic corruption and other serious abuses of office. Transitional vetting finally has a special and ad hoc nature and involves a one-off process.

Character

Transitional vetting is to a large extent a forward-looking exercise. It considers past behavior *in order to* contribute to accountable, legitimate and effective institutions in the future. Vetting importantly serves to rebuild trust in institutions by (a) dismantling criminal – corrupt – networks within public institutions and (b) reaffirming norms that were violated during episodes of large-scale human rights violations, systemic corruption and other serious abuses of office. Vetting can also enable the implementation of other transitional justice processes by removing resistance originating from those responsible for crimes within relevant institutions.

Risks

The need for reaffirming norms has several implications for transitional vetting processes. It implies that a particularly flawed vetting process may be worse than no process at all because it risks legitimizing abusive officers and reaffirming or even deepening popular *distrust* in public institutions. Before engaging in vetting, it is thus crucial to carefully consider the extent to which vetting is (a) *politically acceptable* in contexts that may be rife with deep social cleavages and characterized by a politically divided environment, and (b) *operationally feasible* in places with weak institutions, limited resources, scarce expertise and competing demands. As compared to other transitional justice processes such a truth telling or (inter)national prosecution, vetting is more prone to political manipulation. It often takes place outside of the purview of the public, offers weak procedural guarantees, and affects some degree of control of public institutions. Accordingly, vetting is susceptible for partisan politics.

Information Base

The effectiveness of vetting importantly depends on the information base. Without proper evidence, vetting is not possible, and will lead to a flawed process. In designing an actual vetting process, the availability of data on past conduct must thus be taken into account *before* the assessment and decision-making process starts. Data on human rights violations is often limited in volume and insufficiently substantiated. Data on corruption, by contrast, tends to be more easily accessible and of better quality. But that does not mean that human rights violations should not be included in vetting processes. It does however mean that documentation on those violations should start early, even during conflict. More generally, it is essential to create capacity to store, archive and analyze evidence in the context of vetting. It may even be preferable to understand documentation of violations as a separate process with distinct requirements.

Coherence

Vetting can contribute to prevention but is just one of many measures that need to be taken in post-conflict settings and in periods after massive political repression to ensure that the same human rights violations do not happen again. If applied in isolation, vetting is doomed to fail. There are at least two ways in which coherence is necessary. First, vetting should be embedded into a broader Human Resources Management (HRM) plan, which in turn needs to be integrated in a comprehensive program for institutional reform and development. HRM systems, policies and practice have to be established to sustain the gains made in a vetting process and to secure competence and integrity, training, discipline and oversight, adequate resources and equipment. When targeting security and justice institutions, vetting must be integrated into a comprehensive SSR process. A second way in which vetting needs to be coherent pertains to transitional justice. Vetting should be integrated into a comprehensive TJ process so that it can be perceived as contributing to providing *justice*. State agents found guilty of gross human rights violations should, for instance, not just be dismissed but also face criminal charges. In case of human rights violations, reparations for victims are also reinforce the state's commitment to change.

Perceptions and Communication

A big part of the success of vetting processes is informed by perceptions. When people *believe* that a vetting process is fair and effective, vetting is more likely to produce increasing public trust in institutions. Conversely, when people believe that vetting is unfair or even a sham, the process will not increase public trust or even produce further distrust. Outcomes of vetting processes are relevant to that end. But the same outcome may be perceived differently. In light of that, communication by vetting bodies is crucial. They should explain their strategies and actions. They should listen to societal concerns and secure a dialogue with civil society. Furthermore, they should prevent the perceptions that they disproportionately use – and waste – resources allocated to vetting for personal comfort and gain. Such spending can signal a lack of genuine commitment. Communication is also important for *managing expectations*. Vetting mechanisms should be clear about what it is that they try to achieve but also be frank about issues that are *not* part of the vetting process or that are unlikely to be attained with existing resources. Finally, citizens may be

more likely to engage with and provide information to vetting processes that they are aware of and that they consider legitimate.

Decision-Making

The outcome of a vetting process ultimately depends on decisions made by vetting bodies. These decisions are always subject to a certain degree of discretion. Vetting rules and regulations can never cater to every situation – with certain issues being unforeseen – and are usually new. That means that the rules and regulations demand interpretation. This space for interpretation is sometimes also deliberate, e.g., rules dealing with evidence. Under those circumstances, it is crucial to train decision-makers, especially when they are not familiar with legal processes. Training in legal ethics is asked for to maximize impartiality. It is important for decision-makers and people engaged in hearings not to try to establish their authority, to look for sensation, or to get emotional about the lack of openness of state agents subject to vetting.

Cleavages

Transitional vetting usually takes place in contexts in which there are cleavages, ethnic, religious, political or other. These cleavages may affect vetting processes. They may contribute to conscious or unconscious biases on the side of decision-makers. And even if they do not, citizens and state agents undergoing vetting may *believe* that cleavages had an impact. To minimize the effects of cleavages, these cleavages need to be considered in the selection of decision-makers and the assignment of them to certain categories of cases. For else, a vetting exercise may get the character of a purge or be perceived as such.

Expertise

Inside countries that undergo vetting, expertise on vetting is usually limited. Transitional vetting is not a matter that occurs repeatedly within one generation. Therefore, experiences from countries that have undergone vetting processes in the past may help in designing and implementing present and future vetting processes. The UN and other multi- and bilateral actors can also make valuable contributions, not just by helping states design rules and regulations but also by assisting them to manage the processes of communication and decision-making themselves. Quite importantly, seconded experts providing support should not just focus on the design and practice of vetting, but also on social relations and interactions within vetting bodies. The pressures, dilemmas, and challenges that the bodies experience can be severe and lead to tensions and cleavages inside these bodies. Having an expert, not just on vetting but on group processes, help them manage the vetting process under such circumstances may be vital to the success of a vetting exercise.

Political and Material Support

In transitional societies that are particularly polarized, lack of political and material support can undermine the legitimacy and effectiveness of a vetting process. For state institutions, donors, and other external actors, one of the most critical steps that should be taken when a vetting

process has the backing of civil society and the public, is to provide consistent political and material support throughout every stage of the process. Technical assistance in areas such as information gathering and communication, for example, is limited in its value if the overall process is not sufficiently supported by key political actors.

Managing Uncertainty

Following violent conflict, state institutions are frequently malfunctioning or collapse entirely; rules and procedures are not followed; and group identities overrule institutional requirements. As a result, institutional boundaries are often porous, and membership in state institutions can be obtained and withdrawn informally. Under such conditions of uncertainty and fluidity, transitional vetting cannot be implemented effectively because vetted state agents may be removed and unvetted state agents may be informally added without undergoing vetting. Before engaging in transitional vetting after conflict, membership criteria need to be defined, the members need to be identified, and rules for joining and departing from state institutions must not only be clarified but also be enforced.

Vetting Strategy

Transitional vetting requires a strategy, including criteria, sanctions, scope and quite importantly targets. For large institutions, it may not be possible to vet all members of the institutions. Various choices can then be made. Vetting can be function-based or complaints-based. When it is function-based, it may concentrate on certain units or ranks. It can be centralized or decentralized. In choosing a strategy, numbers must be taken into account. When vetting a large number of state agents, chances are that the process will take too long, and thus leave an institution in limbo for a protracted period of time, create uncertainty among its members, undermine its efficiency, and hurt its legitimacy. Furthermore, institutional variation is to consider important in developing vetting strategies. Vetting security institutions raises different challenges than vetting the judiciary, where issues relating to judicial independence need to be considered, or vetting candidates for election or even elected officials (where issues relating to the right to vote and to be elected need to be considered).

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