

ictj policy brief

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June 2020

Reflections and Recommendations for Transitional Vetting

Preliminary

This document contains a set of reflections on and recommendations for transitional vetting that are based on insights from research on the practice of vetting. These ideas are meant to complement existing guidelines on vetting produced by the United Nations (UN) and other international organizations.

Definition

Transitional vetting refers to a process that (a) is designed to remove, prevent the recruitment or integration into public service of, or otherwise disempower state agents or former combatants who committed human rights violations or who engaged in other forms of serious professional misconduct; (b) occurs after periods of large-scale human rights violations, systemic corruption, and other serious abuses of office; and (c) is mainly carried out in order to build or restore accountable, legitimate, and effective public institutions. Transitional vetting is a one-off process with a unique, ad hoc nature.

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Character

Transitional vetting is to a large extent a forward-looking exercise. It considers past behavior in order to contribute to building accountable, legitimate, and effective institutions in the future. Vetting serves to rebuild trust in institutions by (a) dismantling criminal and 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 measures by removing the resistance that originates from those who are responsible within institutions.

Risks

The need for reaffirming norms, dismantling criminal networks, and enabling other transitional justice measures has several implications for transitional vetting processes. It suggests that a particularly flawed vetting process may be worse than no process at all because it risks legitimizing abusive officers and confirming or even deepening popular distrust in public institutions. Before engaging in vetting, it is thus crucial to carefully consider the

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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, given that it may affect power relations, disempowering some powerful individuals and empowering others; and (b) *operationally feasible* in places with weak institutions, limited resources, scarce expertise, and competing demands. Compared to other transitional justice measures such as truth-telling initiatives or national or international prosecution, vetting is often more prone to political manipulation. It often offers weak procedural guarantees and affects some degree of control of public institutions. Consequently, vetting is susceptible to partisan politics.

Vetting Strategy

Transitional vetting requires a strategy, in particular in relation to the institutions and number of individuals targeted by the process. For lack of capacity or political will, it may not be possible to vet all members of large institutions. In this situation, various choices can 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. Numbers must be taken into account when choosing a strategy. When vetting a large number of state agents, it is likely that the process will take a long time and thus leave an institution in limbo for a protracted period, create uncertainty among its members, undermine its efficiency, and hurt its legitimacy. Institutional variation must also be considered in developing vetting strategies. Different challenges arise in vetting security institutions compared, for example, to vetting the judiciary, where issues relating to judicial independence must be taken into account, or vetting candidates for election or elected officials, where issues relating to the right to vote and to be elected must be addressed.

Political resistance may also be mitigated by adjusting the type of vetting. Rather than aiming to remove all abusive officials from an institution, a vetting process may, for instance, be limited to screening officials proposed for promotion or transfer. “Soft vetting” sanctions only officials who made untruthful statements about their involvement in past human rights violations. “Indirect vetting” creates incentives for abusive officials to vacate their positions and can take on various forms, including monetary incentives to take early retirement, a public hearing requirement for senior promotions that creates a retirement incentive because officials fear public exposure of their involvement in past violations, a reduction in the mandatory retirement age, and incentives to transfer to non-executive or honorary positions in an institution.

Information Base

The effectiveness of vetting depends, *inter alia*, on the information base that is available to the process. Without proper evidence, vetting is not possible; the process will be flawed. Thus, in designing a vetting process, the availability of data on past conduct must be taken into account *before* the assessment and decision-making stages begin. Data on human rights violations is often limited in volume and insufficiently substantiated. Data on corruption, in contrast, tends to be more easily accessible and of better quality. That does not mean that human rights violations should not be considered in vetting processes. It does mean that documentation of those violations should start early, even during conflict. More generally, it is essential to create the capacity to store, archive, and analyze evidence (all of the above-mentioned data) in the context of vetting. It may even be preferable to approach the documentation of violations as a separate process with distinct requirements.

Coherence

Vetting can contribute to the prevention of the recurrence of violations or corruption, but it 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 it is applied in isolation, vetting is unlikely to ensure prevention. Strategic coherence should be pursued in at least two ways. First, vetting should be embedded into the development of an effective human resources management (HRM) system, which in turn needs to be integrated into a comprehensive institutional reform and development effort. HRM systems, policies, and practices have to be established to sustain the gains made in a vetting process and to secure both competence and integrity of personnel, as well as discipline in case of misconduct. When targeting security and justice institutions, vetting must be integrated into a broader security sector reform process. Second, vetting should be incorporated into a comprehensive transitional justice process so that it can actually be perceived as contributing to providing *justice*. For instance, while vetting itself can reduce impunity, state agents who are found to have been involved in gross human rights violations should not just be dismissed but should also be recommended for criminal prosecution.

Perceptions and Communication

The success of vetting and other transitional justice processes significantly depends on perceptions. When people *believe* that a vetting process is fair and effective, it 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 improve public trust and may even generate further distrust. The outcomes of vetting processes are relevant to that end. However, the same outcome may be perceived differently by different groups. In light of that potential variation, communication by vetting bodies is crucial. They should explain their strategies and actions. They should listen to societal concerns and dialogue with civil society. Furthermore, they should prevent the perception that they disproportionately use—and waste—resources allocated to vetting for their own personal comfort and gain. Such spending can signal a lack of genuine commitment. Communication is also important for managing expectations. Vetting bodies should be clear about what the vetting mechanisms are designed to achieve, and they should also be frank about which issues are *not* part of the vetting process or are unlikely to be addressed with existing resources. Finally, citizens may be more likely to engage with and provide information to vetting processes that they have reliable information about and consider legitimate.

Decision Making

The outcomes of a vetting process ultimately depend on the decisions made by the vetting body. These decisions are always subject to a certain degree of discretion. Vetting rules and regulations can never cater to every situation—unforeseen issues will inevitably arise—and they are usually new and specific to each context. That means that the rules and regulations demand interpretation. This space for interpretation is sometimes deliberate, for example, in rules dealing with evidence. It is, therefore, crucial to train decision makers, especially when they are not familiar with legal processes. Training in legal ethics and the application of relevant codes of conduct will maximize impartiality. Internal review mechanisms and efforts to ensure transparency, monitoring, coordination, and participation by civil society can help to ensure that decisions are made in accordance with regulations and are more likely to be perceived as fair.

Cleavages

Transitional vetting usually takes place in contexts in which there are cleavages—ethnic, religious, political, or other. These schisms may affect vetting processes by contributing to conscious or unconscious biases on the part of decision makers. And, even if the divisions do not have such impacts, citizens and state agents undergoing vetting may *believe* that they did. To minimize their effects, cleavages need to be considered in the selection of decision makers and their assignment to certain categories of cases. Otherwise, a vetting exercise may take on the character of a purge or be perceived as such.

Expertise

Inside countries that undergo vetting, expertise on the process is usually limited. Transitional vetting is not an intervention that occurs repeatedly within one generation. Therefore, drawing on the experiences of 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 organizations can also make valuable contributions, by helping states not just to design rules and regulations but also to support the processes of communication and decision making. Seconded experts should pay attention to the social relations and interactions within vetting bodies in addition to the details of the design and practice of vetting. The pressures, dilemmas, and challenges that the bodies experience can be severe and lead to internal tensions and fractures. Having experts, not just on vetting but also on communication and interaction, during a vetting process may be vital to the success of a vetting exercise.

Political and Material Support

In transitional societies that are particularly polarized, a lack of political and material support can undermine the legitimacy and effectiveness of a vetting process. It is crucial for domestic state institutions, donors, and other external actors 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, has limited 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. Before engaging in transitional vetting after conflict, membership criteria need to be defined, the members need to be identified, and the rules for joining and departing from state institutions must be not only clarified but also enforced.



Acknowledgements

This policy brief significantly draws on insights gained from a research project on police vetting in Kenya, the main findings of which are presented in two publications: Daniel Blocq, Mary Mwikali, and Agatha Ndonga, “From Optimism to Disillusionment: Examining Civil Society Perceptions of Police Vetting in Kenya” (2020); and Daniel Blocq and Roger Duthie, “Hearings and Decision Making During Transitional Vetting Processes: Insights from Kenya” (2020). For references to relevant UN and other vetting documents and literature, please see these other two publications. We are especially grateful to the dozens of interviewees who shared their thoughts and sometimes painful experiences as part of this project. We would also like to express our gratitude to colleagues at the Van Vollenhoven Institute (Leiden Law School) and the International Center for Transitional Justice. Their feedback and support were crucial for the project. Special thanks go to Mary Mwikali, Agatha Ndonga, Chris Gitari, Roseline Odede, Mohammed Murshid, Anna Myriam Roccatello, and Janine Ubink. This project was commissioned and financed by the Ministry of Foreign Affairs of The Netherlands through WOTRO Science for Global Development of the Netherlands Organisation for Scientific Research (NWO-WOTRO). It was developed in collaboration with the Knowledge Platform Security & Rule of Law (KPSRL) as part of the Ministry’s agenda to invest in knowledge and to contribute to more evidence-based policymaking. Views expressed and information contained in this document are the responsibility of the authors.



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