

## **FACT SHEET ON VETTING.**

### **Introduction.**

Vetting is a process of ensuring that post conflict or post authoritarian states have institutions which adhere to minimum standards of integrity. Confidence in public institutions of such countries usually erodes during conflict and/or authoritarian rule and it is only important that public confidence is restored as quickly as possible. Vetting processes assist to prevent the recurrence of human rights abuses. It is an unpopular process but it is an obligation under international law. Vetting strategies need to address the unique historical and political challenges of a society emerging from conflict and to respond to particular requirements of institutions.

Kenya is a transiting society. In any transiting society, it is important that vetting is done. Under the auspices of African Union, Kenya was saved from eminent collapse courtesy of mediation talks spearheaded by the former UN secretary general His Excellency Dr Kofi Annan. The mediation panel alias Kenya National Dialogue and Reconciliation (KNDR) agreed on four sets of agenda: ceasefire of violence, humanitarian crisis, political settlement and addressing long term issues including constitutional, legal and institutional reform.

The eruption of violence was seen as a result of continued impunity against the perpetrators of human rights abuse and economic crimes. Kenya has a history of impunity. There has been violation of human rights, ethnic violence and economic crimes even, yet the perpetrators of these crimes are not only free but hold powerful government and political offices. During this transition period, Kenya has an opportunity to vet such people and ensure that they are no longer allowed to hold these offices.

The proposed constitution provides for vetting of public officials. This is contained in chapter six and the fact that all presidential appointees are approved by parliament. However, vetting is an important process in any transiting society and there is need to ensure that whether we get a new constitution or not there is need to have a comprehensive vetting mechanism in place.

This fact sheet is an awareness tool as well as an advocacy tool. It contains information on what is vetting and is designed to inform on answers to questions that would usually be asked about vetting.

### **What is vetting?**

This is the process of assessing integrity to determine the suitability for public employment. Integrity in this area refers to a person's adherence to standards of human rights, ethics and professional conducts.

### **What are the objectives of vetting?**

The most important objectives of any vetting process include:-

- To transform public bodies involved in serious abuse of human rights during conflict and/or authoritarian rule and make them enjoy public trust and legitimacy again.
- To ensure that those individuals occupying public service jobs are qualified and those not qualified are removed from office.
- To have those who have been involved in abuse of human rights and corruption removed from public bodies and institutions.
- To ensure that institutions especially in judicial and security sector provide criminal accountability on past abuses.
- To bring an end to impunity by ensuring that those involved in abuse of power and human rights do not continue to enjoy the privileges of public office.

### **What is the relationship between vetting and transitional justice?**

Vetting is done in countries on transition as a way of dealing with impunity and establishing confidence in public bodies and institutions that were involved in human rights abuses and integrity deficits. For any transitional justice mechanism to be effective it is important to not only establish confidence in public institutions but to also ensure accountability of these institutions.

### **Why do we need a vetting process in Kenya?**

Kenya is a country that has been riddled with impunity. People who have been involved in human rights abuses and economic crimes have continued to enjoy

political power and protection. State agencies have committed crimes of extra judicial killings and torture yet they have not been held accountable for those crimes. After the 2007/8 post election violence, Kenya is in transition. This is seen as a great opportunity for Kenya to deal with its past. One important way of doing this is to establish a vetting mechanism.

The proposed constitution provides for vetting of all judicial officers within a year after its passage. The provisions of chapter six state very clearly that no person with a record of abuse of human rights and corruption will be allowed to occupy a state office. The chapter further provides for measures to be taken if a public official is guilty of such an offence. Another provision of a vetting mechanism in the proposed constitution is that of the national assembly approving all presidential appointments, recommending the president to remove from office a public official for violations of the constitution and impeaching the president for gross violation of the constitution.

It is important however, for the country to establish a mechanism of uprooting impunity by ensuring that those who abuse their offices or are involved in human rights violations are not allowed to hold state office. Such a mechanism include passing of a vetting and lustration law that is applicable to all who wish to hold public office and work in public institutions.

### **Who should be targeted in a vetting process?**

This depends on which mechanism the country that wishes to carry out vetting will adopt. In Kenya, it is very clear that most senior government officials, judicial officers and members of parliaments are culprits to malpractices and abuse of human rights. An example of targets could be as follows:-

- President, Vice president, Prime Minister, Ministers and members of the government.
- Ambassadors and consuls.
- Head of government departments and administrative units.
- Members of parliament.
- Employees selected by or nominated by the parliament and the government.
- University professors.
- Judges, magistrates and state prosecutors.

- Members of state corporations.
- Officers of the army and security officers.
- Members of the electoral commissions and other commissions to be established.
- Lawyers, editors, journalists and those that may be included in vetting laws.

### **What are the basic conditions of vetting?**

- **Political conditions: is there political will?** Any particular transition government has its own characteristics that make it either more or less open to vetting. In countries where there is an overhaul in transition government, vetting is easily accommodated but where those of the previous regime or those involved in past abuses are part of the ruling class (like the case in Kenya), then there may not exist any political commitment. But since vetting is essential in any transitional society, the citizens, civil society and the international community should put pressure on the government to establish a mechanism. The level of political commitment greatly influences the design of vetting.
- **Institutional conditions: positions subject to vetting...** It is important to have a clear definition of the positions subject to vetting. This is to ensure that the process is clear and there is a succession plan in the bodies that will be affected. In most cases, it is important to have an organizational change prior to establishing a vetting process so as to establish the positions that will be available and need to be filled up and those that will be removed. Another reason is to ensure that the public sector is changed to meet the needs of a country governed by the rule of law; this means either reducing a bloated public service or streamlining it to make it more efficient. The type of institution being vetted also has to be taken to consideration because of among other things-the independence and impartiality of the said institutions. An example is in the judiciary where the other arms of government are not supposed to interfere with its operations. Conducting vetting in such an institution therefore requires clear laid out procedures that will not interfere with the vetting systems.
- **Individual conditions: who are to be vetted?** The importance of establishing a target group before establishing a vetting process is to avoid circumventing which might render the entire process obsolete. In establishing a target group it is important to take personal census and

reliable background information data on the “would be” targets to serve as evidence and create a concrete case on them.

- **Legal condition: what is the vetting mandate?** Any vetting process will be contested and will have political resistance. A firm’s legal basis will ensure its credibility and sustainability. It is important for peace negotiators to ensure vetting processes have provisions in peace agreements.

Other conditions include:-

- Adequate resources - any vetting process is expensive. Ensuring there are adequate resources means that the vetting procedure will be carried out to the end without problems.
- Appropriate timing – timing is everything. This will affect the gains in any transitional society.
- The rights and livelihood of those targeted to prevent them from becoming resentful and frustrating peace and progress efforts.

### **What are the different types of vetting?**

- **Vet all or vet certain positions.** A vetting process can target all or few positions. All positions are desirable because it ensures that all employees in the said public institution will meet minimum standards of integrity. However, it may pose a challenge because of the large personnel involved and succession issues in the said institutions that may result in an institutional gap. Vetting certain positions is mainly targeted at improving the quality of senior managers. Then once vetting of the managers has occurred, the institutions are required to implement internal vetting procedures.
- **Review or reappoint serving employees.** A special mechanism is established to screen serving public employees with the aim of removing those who are unfit to hold office. In this process there is general competition of all posts with the aim to select the most suitable candidates. All existing employees and external employees have to apply for jobs if they want to work in the said institutions. In reapplying the employees are supposed to establish that they are qualified and they are clean.
- **Vet external candidates.** This is where vetting is done for only the new appointments or when there is need for promotions or transfers. It is

ineffective in many a situations but very popular politically as the status quo of existing officials remain.

- **A special or regular mechanism.** This is where an independent commission is set up to implement the vetting process. In certain instances regular mechanisms like the existing laws can also be used to remove employees with serious integrity deficits.

### **How is a vetting process designed?**

- It is important to inform and consult widely with the public, civil society and international community to ensure that the vetting process accommodates the needs of victims of abuse and encourages public ownership of the process.
- Establishment of a vetting process that meets the needs of the country is essential.
- Ensuring that the process has definite vetting criteria and the outcomes expected.

Priority of the vetting process should be given to the security sector and the judiciary because they have the primary responsibility of maintaining stability and the rule of law.

### **What are the challenges of Vetting?**

Any vetting process is an unpopular process. It will face political resistance or even public resistance which is to be expected.

### **Has a vetting process been practiced anywhere?**

Kenya will not be the first country to vet its public officials. Vetting has occurred in many countries in post conflict and post authoritarian rule situations. They include the Balkans, former communist countries in East Europe and Central Asia. The experiences in these countries show that vetting as a process can be very successful. It is important for countries trying to establish vetting mechanisms to borrow experiences from such regions.

## **How can we establish a vetting mechanism?**

Vetting mechanisms should be established as a priority in post conflict situations to give legitimacy to state institutions.

- It is important to establish a vetting and lustration law to guide the entire process and to give the process legal legitimacy.
- For any vetting process to be successful there is need to do a lot of consultations with the public, victims of abuse, civil society, government officials and the international community. This way ensures that the process will have the required support.
- There is need to select the most appropriate and effective vetting method that suits Kenya. It could be forming a vetting commission, empowering the parliament to do vetting of public appointees and/or establishing certain requirements that an individual should have before holding a certain office.
- In Kenya, those likely to face vetting hold high political and government positions. This means they are likely to frustrate the vetting process. There is need for the civil society to play a very big role in pressurizing the government to establish a vetting mechanism. There is also need for the civil society to lobby the international community to pressurize the government to form such a mechanism.

## **Conclusion.**

Vetting is not a popular process, and in Kenya where many people are used to getting away with impunity, it will not be any easier. It will be fought, sabotaged and very frustrating at times. It is however important to remember why we need vetting in Kenya and what vetting will do for us as a transiting society.

## **About International centre for Policy and Conflict (ICPC)**

The International centre for policy and conflict (ICPC) is a non profit and non partisan organization founded in 2005 to create a platform to foster democratic, peaceful, secure and just societies in Africa and globally. The great lakes and the horn of Africa region which have experienced widespread political instability for decades is the ICPC's major focus. The centre is registered in Kenya under the trustees (perpetual succession) Act.

### **Institutional Objective**

The International Centre for Policy and Conflict proactively reflects and engages in public policy and legal dialogues, research and analysis as well as advocacy and capacity building on broad realms of transitional justice, human security, conflict

resolution and gender justice. Furthermore, this is done to prevent conflict recurrence; promote accountability and equality and deepen culture of justice and respect for human rights and democracy. The centre is designed to establish, promote and build sustainable human development and build sustainable human development and democratic adhering states.

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This initiative is supported by the generous support of HIVOS (Netherlands)  
For ICPC transitional justice programme.

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