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November 2017

## Failure to Reform

### A Critique of Police Vetting in Kenya

For decades, Kenyans have yearned for a police service that is accountable to the people and adheres to national laws and international human rights standards. The police stand accused of regularly meting out violence on the public, extra-judicial killings, and other human rights violations which are very rarely investigated or the perpetrators brought to account. The police further stand accused of abetting corruption, resulting in a debilitating impact on public trust. After the deadly crisis that followed the 2007 elections, where hundreds of Kenyans were killed as a result of excessive use of force by law enforcement, reforming the police became a national priority.<sup>1</sup>

Police reform was among the long-term measures and solutions identified as needed to promote peace and reconciliation in the country, in Agenda No. 4 of the National Dialogue and Reconciliation Agreement, which helped to resolve the 2007-08 post-election violence.

Several laws were passed to enable institutional reform of the National Police Service (NPS), including the 2011 National Police Service Act.<sup>2</sup> The Act provides for police vetting as a measure to reform the NPS, hold police officers accountable for abuses, and support professionalism among its rank and file. It is also essential for modifying the culture within those institutions.

A vetting process, if done well, can contribute to the alignment of the NPS to the new Constitution and creating a police force that merits the trust and admiration of the population. Indeed, one of the key challenges in the aftermath of massive violations is precisely guaranteeing nonrepetition of violations and reforming institutions that were involved in the commission of massive violations or that failed to fulfil their roles of guarantors of safety and law.

However, the National Police Service Commission (NPSC), which was tasked with overseeing the vetting process,<sup>3</sup> has been unable to carry out a credible process. Serious shortcomings and failures have hampered the removal of corrupt and aberrant officers since the process began four years ago. These failures include the lack of competitively

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<sup>1</sup> Commission of Inquiry into the Post-Election Violence, established by Kenya Gazette Notice No. 4473, vol. cx-no.4, May 23, 2007, 322.

<sup>2</sup> National Police Service Act, Section 7 (1) and (2).

<sup>3</sup> The National Police Service (Vetting) Regulations of 2013 state that the process is to vet all police officers and civilians who were employed in the Kenya Police Force and Administration Police Force since the commencement of the 2011 National Police Service Act. The NPSC started the vetting process two years later, on December 17, 2013. See the National Police Service Website, "Vetting Panel," [www.npsc.go.ke/index.php/2014-03-25-12-07-38/2014-04-04-04-13-10/vetting-panel](http://www.npsc.go.ke/index.php/2014-03-25-12-07-38/2014-04-04-04-13-10/vetting-panel)

## Failure to Reform: A Critique of Police Vetting in Kenya

### About the Author

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recruited staff, a seeming inability to vet senior police officers implicated in graft and other violations, allegations of corruption within the NPSC, and the exclusion of media from covering the vetting process.

Troublingly, amid reform efforts, Kenya has witnessed an increased number of human rights violations committed by police officers. Extra-judicial executions and enforced disappearances have markedly increased, possibly indicative of police officers' lack of fear of repercussions from the vetting process or any other accountability measures.<sup>4</sup> The fact that the police vetting process will only affect a small percentage of the police population has essentially neutered its sting. There is now a sense that the police are insulated from accountability demands for which the vetting process was supposed to achieve.

In addition, key actions by State officials have actively undermined the process. For example, the late Minister for Interior, Joseph Nkaissery, on a number of occasions openly dismissed and criticized the basis and purpose of the vetting process.<sup>5</sup> These pronouncements underscored the NPSC's dwindling political and financial support from the Executive.

This has contributed to apathy and loss of confidence in the process. Countrywide consultations with human rights defenders and civil society suggest that these weaknesses are so severe that the NPSC will not achieve its objectives by the end of its mandate on October 2018.<sup>6</sup>

This paper details ways that the police vetting process has fallen short and makes recommendations to the Kenyan government and the NPSC on how to salvage the process. In particular, it calls on the NPSC to halt the process and issue a comprehensive interim report. It also calls for a major overhaul of the process to enable proper targeting, efficiency through delegation, and injection of professionalism by hiring experts, which would infuse much-needed integrity into the NPSC.

## 1. Background

Vetting refers to processes by which the integrity and competence of members of the security sector or civil service are assessed in order to decide whether individuals are suitable for that specific public employment.<sup>7</sup> Vetting processes are designed to screen current public employees to determine "if their prior conduct - including, most importantly from a transitional justice perspective, their respect for human rights standards - warrants their exclusion from public institutions."<sup>8</sup> Suitability for public service depends on, among other measures, personnel's commitment to constitutional and international standards of human rights and professional conduct, including their financial propriety.

4 For the number of deaths, see the Independent Medical Legal Unit Deaths From Police Bullets Reports (2014-2017): Jan to Dec 2014, 34 summary executions; Jan to Dec 2015, 27 summary executions; Jan to Dec 2016, 122 summary executions; Jan to Mar 2017, 33 summary executions. [www.imlu.org/2011-06-30-23-44-4/2011-08-04-18-06-26/news/item/122-report-on-deaths-from-police-bullets-from-january-to-december-2015.html](http://www.imlu.org/2011-06-30-23-44-4/2011-08-04-18-06-26/news/item/122-report-on-deaths-from-police-bullets-from-january-to-december-2015.html); [www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/summary/2-reports/472-extra-judicial-executions-2016-full-report.html](http://www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/summary/2-reports/472-extra-judicial-executions-2016-full-report.html); [www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/summary/2-reports/473-extra-judicial-executions-2017-january-to-march.html](http://www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/summary/2-reports/473-extra-judicial-executions-2017-january-to-march.html)

5 Mary Lole, "CS Nkaissery Dismisses Police Vetting as Pointless," Kenya Monitor, April 3, 2015, <http://www.monitor.co.ke/2015/04/03/cs-nkaissery-dismisses-police-vetting-pointless/>; and KTN News Kenya, "CS Joseph Nkaissery; Police Vetting Exercise is a Waste of Time," March 28, 2015, [www.youtube.com/watch?v=LLFPCW3rtww](http://www.youtube.com/watch?v=LLFPCW3rtww)

6 Per the NPSC Act, section 9(2).

7 UN Office of the High Commissioner for Human Rights, "Rule of Law Tools for Post Conflict Countries, Vetting: An Operational Framework," 2006, 4, [www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf](http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf)

8 See Alexander Mayer-Rieckh and Pablo de Greiff, eds., International Center for Transitional Justice, "Justice as Prevention: Vetting Public Employees in Transitional Societies," 2007, 17.

A vetting process must also comply with procedural fairness drawn from international human rights standards,<sup>9</sup> including that those subject to a complaint or investigation are notified of the allegations against them and given an opportunity to respond.<sup>10</sup>

The NPSC's vetting process is part of efforts to reform Kenya's National Police Service, including by removing human rights violators from its rank and file and increasing the trustworthiness and accountability of the police service. The number of police officers to be vetted is approximately 77,500.<sup>11</sup> As of December 2016, the NPSC had vetted approximately 2,470;<sup>12</sup> the current number remains unclear.<sup>13</sup>



*Police on the streets during election violence, January 2008 (DAUDI WERE/Flickr)*

Although the NPSC intends to vet all police officers stationed in the Directorate on Criminal Investigations and officers holding the position of Officer-in-Charge of a Police Station (Kenya Police), Office-in-Charge of a Police Post (Administration Police) and their deputies, it is unclear whether this is achievable given the time remaining for the NPSC to complete its mandate.

9 Wachira Maina, "Policy Brief: Vetting Judges and Magistrates In Kenya: Policy Options, Challenges And Lingering Questions" ICJ Kenya, 2011.

10 Police officers should receive reasonable notice of the case against them, have the right to contest the case, and the right to appeal an adverse decision to a court or other independent body. See the Report of the Secretary-General of the United Nations, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," UNSC S/2004/616, August 23, 2004, 18, [www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/616](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616)

11 This includes approximately 5,150 gazetted officers in the ranks of Senior Deputy Commissioner (I and II), Deputy Commissioner, Senior Assistant Commissioner, Assistant Commissioner, Senior Superintendent, Superintendent, Chief Inspector, and Inspector of Police; and approximately 72,350 non-gazetted officers in the ranks of Senior Sergeant, Sergeant, Corporal, and Constable.

12 See National Police Service Commission Report 2015/2016, 23, and Patrick Vidija, "126 Traffic Officers Sacked after Failing NPSC Vetting," *Daily Star*, December 6, 2016, [http://www.the-star.co.ke/news/2016/12/06/127-traffic-officers-sacked-after-failing-npsc-vetting\\_c1469036](http://www.the-star.co.ke/news/2016/12/06/127-traffic-officers-sacked-after-failing-npsc-vetting_c1469036)

13 There are unconfirmed reports that as of September 2017, approximately 42,55 police officers have been vetted, including 1,800 Senior Superintendents of Police and above and 2,455 Traffic Police officers. As of June 2017, the Commission had so far officially vetted 2,273 traffic police officers, comprising 236 from the Coast Region, 192 from the Nyanza Region, 152 from Western, 328 from the Rift Valley, 672 from Nairobi, 317 from the Central Region, and 380 from the Eastern Region. A reported 904 traffic police officers were vetted in December 2016 and another 1,365 were to be vetted by June 2017. Of the 904 traffic officers, 127 failed and all applied for review. At the time of writing, the review results were not yet public. See National Police Service Commission Bulletin Issue #11 December, 2016, [www.npsc.go.ke/index.php/2014-03-25-12-08-21/publications](http://www.npsc.go.ke/index.php/2014-03-25-12-08-21/publications)

The International Center For Transitional Justice (ICTJ) has monitored Kenya's police vetting process from the onset. It provided technical assistance to the civil-society-driven Police Reforms Working Group (PRWG), supporting its efforts in crafting vetting guidelines to consultative meetings with various stakeholders, including the police. ICTJ also worked closely with the NPSC and provided policy advice for the National Police Service (Vetting) Regulations of 2013, crafting guidelines on public participation in the vetting process and holding consultative meetings between the NPSC and different stakeholders such as victims, the media, gender activists, and the public. ICTJ also engaged human rights defenders across Kenya regarding the process.

On October 25 2016, ICTJ wrote to the NPSC on behalf of civil society and human rights defenders (at their request), asking for responses to a variety of questions touching on the integrity of the vetting process and its effectiveness. In a drafted response, the NPSC countered assertions about the lack of public participation by blaming budgetary constraints for its inability to undertake comprehensive public outreach. It also asserted that it had sought to onboard important stakeholders such as lawyers and human rights actors by integrating public bodies such as the Law Society of Kenya and the Kenya National Commission for Human Rights into the process and running advertisements in newspapers of wide circulation calling for the public to submit complaints.

Nonetheless, the NPSC failed to critically respond to a variety of specific concerns regarding the vetting process, such as barring journalists from covering vetting hearings, concerns about corruption allegations in the vetting process levelled against members of the NPSC, and its failure to respond to complaints.

Both the Truth Justice and Reconciliation Commission (TJRC) and the Commission of Inquiry into the Post-Election Violence (CIPEV) noted that the security sector, and most notably the police, have been the most serial and serious violators of human rights in Kenya.

## 2. Concerns about the Vetting Process

### 1. Allegations of Corruption

Serious allegations have been made that some members of the NPSC secretariat staff are involved in corruption vis-à-vis the vetting process. First raised in the media, these allegations include that police officers facing vetting bribed members of the NPSC to get favorable outcomes.<sup>14</sup> There are also allegations that some commissioners and others in the NPSC staff are being bribed to overturn decisions. Although these are just allegations that are yet to be investigated or proven, they have nonetheless eroded public confidence in the process. The lack of a strong response from the NPSC in undertaking investigations into the allegations has cast doubt over the vetting process as a whole.

### 2. Failure of the NPSC to Independently and Competitively Recruit Staff

The NPSC has not fully operationalized or staffed its secretariat, nor has it recruited staff through a competitive and fair process. The majority of secretariat staff are not independently recruited, but seconded from other government departments.

A key principle of vetting is that it must be conducted by an independent institution. As per the Vetting Regulations, the process is guided by the principles and standards of

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<sup>14</sup> Hudson Gumbi, "Bribery claims rock police vetting," *Standard Digital*, February 9, 2016, [www.standardmedia.co.ke/article/2000190994/bribery-claims-rock-police-vetting](http://www.standardmedia.co.ke/article/2000190994/bribery-claims-rock-police-vetting)

impartiality.<sup>15</sup> Article 252 of the Constitution is clear: “the Commission shall recruit its own staff.” Further, in the course of recruitment, it must adhere to Articles 10 and 232, which speak to recruitment on the basis of competence, professionalism, and accountability.

Although the NPSC initially denied that it had not recruited its own staff and that further this state of affairs had dented the independence of the vetting process, the commission eventually bowed to pressure from civil society groups, including ICTJ, to recruit staff for various vacant positions. The NPSC has advertised a number of senior positions in the dailies and on its website.<sup>16</sup> However, it is unclear if its recruitment process will meet constitutional standards, including fair competition and merit as per Article 232 (1)(g) of the Constitution.

The NPSC’s inability to competitively recruit skilled and professional staff has limited its ability to effectively discharge its mandate, not just the vetting exercise. This has certainly negatively impacted the credibility of the overall vetting exercise. The recent apparent firing of the Secretary of the Commission, who is central to staff recruitment, casts doubt on the NPSC’s ability to undertake the recruitment of secretariat staff before the close of the year. This means that the recruitment process will face further delays.<sup>17</sup>

Filling two current vacancies left by the demise of Esther Chui and the apparent physical incapacitation of Shadrack Muiu provides an opportunity for the proper auditing of the vetting process, given the fresh eyes and objectivity new commissioners would bring.<sup>18</sup> As such, those individuals to be appointed should be persons that bring objectivity in the review of the vetting process.

### 3. Extremely High Retentions, Indicating Weak Investigative Process

The vetting process’s removal rate appears to be extremely low, at just 2 percent. The fact that so few officers were removed, and that even those who failed the vetting were readmitted in such large numbers, has raised serious doubts about the quality of the process.<sup>19</sup>

ICTJ identified a 2percent removal rate for police officers of the rank of Senior Superintendent of Police (SSPs), Superintendent of Police (SPs) and Assistant Superintendent of Police (ASPs) whose results were released on October 9, 2015. The NPSC indicated that 63 of 1,364 officers had failed the vetting process.<sup>20</sup> All but one who failed applied for a review, of which the NPSC admitted 36 requests for review and then retained 23 officers. Ultimately, 39 officers were removed.

ICTJ again observed a 2 percent removal rate among officers holding the ranks of Senior Deputy Commissioners of Police (I & II) (S/DCP I & II), Deputy Commissioners of Police, Senior Assistant Commissioner of Police (SACP), Assistant Commissioner of Police (ACP), Senior Superintendent of Police (SSP), Superintendent

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<sup>15</sup> As per regulation 4(e) the NPSC Vetting Rules.

<sup>16</sup> JobSpot Kenya website, “National Police Service Commission Job Vacancies 2017,” <http://jobs.biasharapoint.com/national-police-service-commission-job-vacancies-2017/>; and Fred Mukinda, “NPSC Positions Attract Experts from Private Sector,” *The Daily Nation*, January 19, 2017, [www.ipsos.co.ke/NEWBASE\\_EXPORTS/Kenya%20Revenue%20Authority/170119\\_Daily%20Nation%20-%20%20Thursday\\_10\\_c5e05.pdf](http://www.ipsos.co.ke/NEWBASE_EXPORTS/Kenya%20Revenue%20Authority/170119_Daily%20Nation%20-%20%20Thursday_10_c5e05.pdf)

<sup>17</sup> National Police Service Commission Act, Section 15(7)(c): the Secretary is responsible for the formulation and development of an efficient administration, the organization, control and management of the members of staff of the Commission and day-to-day administration and management of the affairs of the Commission.

<sup>18</sup> Cyrus Ombati, “National Police Service Commission petitions president and Parliament to appoint new commissioners,” February 16, 2014, [www.standardmedia.co.ke/article/2000104789/national-police-service-commission-petitions-president-and-parliament-to-appoint-new-commissioners](http://www.standardmedia.co.ke/article/2000104789/national-police-service-commission-petitions-president-and-parliament-to-appoint-new-commissioners)

<sup>19</sup> Cyrus Ombati, “14 Senior Police Officers Sacked after Failing a Re-vetting Process,” *Standard Digital*, May 18, 2016, [www.standardmedia.co.ke/article/2000202275/14-senior-police-officers-sacked-after-failing-a-re-vetting-process](http://www.standardmedia.co.ke/article/2000202275/14-senior-police-officers-sacked-after-failing-a-re-vetting-process)

<sup>20</sup> Fred Mukinda, “63 senior police officers sacked over graft,” October 15, 2015, [www.nation.co.ke/news/63-police-bosses-sacked-over-graft/1056-2914516-ywlkwkz/index.html](http://www.nation.co.ke/news/63-police-bosses-sacked-over-graft/1056-2914516-ywlkwkz/index.html)

With no clear vetting timeline, a majority of police officers remain anxious and unable to predict when and whether they will be vetted. This has negatively impacted morale among police officers. It is the expectation of police officers that such vetting proceedings should be initiated within reasonable time and executed efficiently.

of Police (SP) and Assistant Superintendent of Police (ASP) who were vetted by June 2016.<sup>21</sup> In this specific cohort, approximately 7 S/DCP, 23 DCP, 170 SACP & ACP, and 1,366 SSPs, SPs, & ASPs were vetted—bringing the number of officers to 1,566. Of these, 1,501 were successful and 89 were removed and appealed. Of those who appealed, 33 were reinstated.

The NPSC has neither confirmed nor denied ICTJ's analysis on the actual figures on removal. The Chair of the NPSC, however, asserted this year that only 4 percent of police officers were corrupt.<sup>22</sup> To many Kenyans, these negligible figures on removals fail to justify the expense being incurred. Neither do they contribute to public confidence in the process.

#### 4. Poor Vetting Model, with No Clear Implementation Plan

The NPSC lacks a clear implementation plan for the vetting process. On several occasions, civil society organizations in the Police Reforms Working Group have requested a clear schedule for vetting, to enable them to mobilize resources and support public participation and monitoring. The schedules that the NPSC eventually released were haphazard and usually made available with such short notice as to ostensibly prevent civil society from effectively responding.

With no clear vetting timeline, a majority of police officers remain anxious and unable to predict when and whether they will be vetted. This has negatively impacted morale among police officers. It is the expectation of police officers that such vetting proceedings should be initiated within reasonable time and executed efficiently.

Under the current model, the NPSC seats and interviews each individual police officer, which is a lengthy and time-consuming approach.<sup>23</sup> It has taken the NPSC two and a half years to vet just 1,566 police officers, which means it is only capable of vetting approximately 627 police officers per year. At this rate, allowing for review and other appeal processes, it would take 122 years for all 77,000 police officers to be vetted. The NPSC understands this but has yet to propose an alternative model that would efficiently and effectively vet all officers. As recently as late June 2017, the NPSC attempted to fast-track the vetting process by prioritizing departments within the NPS, where most public complaints seem to emanate, particularly the Traffic Department and the Directorate on Criminal Investigations. Despite this prioritization strategy, the vetting process is still largely inefficient and unpredictable.

Further, the NPSC has failed to provide critical information on its decisions and how it arrived at them. For example, ICTJ has been unable to understand the criteria and process used to accept applications from police officers for review following removals. The NPSC's inability or refusal to supply this type of basic information leaves the process opaque and contributes to the perception that it lacks legitimacy.

21 See National Police Service Commission Annual Report 2015/2016, 23: 1,566 vetted; 1,501 passed vetting the first time; 33 reinstated after review. This brings the total number of officers vetted and successful to 1,534, representing a 98 percent success rate and a 2 percent failure rate.

22 Charles Wanyoro, "Police should expect higher salaries, Kavuludi says," *Daily Nation*, July 20, 2017, [www.nation.co.ke/news/police-should-expect-higher-salaries-kavuludi-says/1056-4025114-voak98z/index.html](http://www.nation.co.ke/news/police-should-expect-higher-salaries-kavuludi-says/1056-4025114-voak98z/index.html)

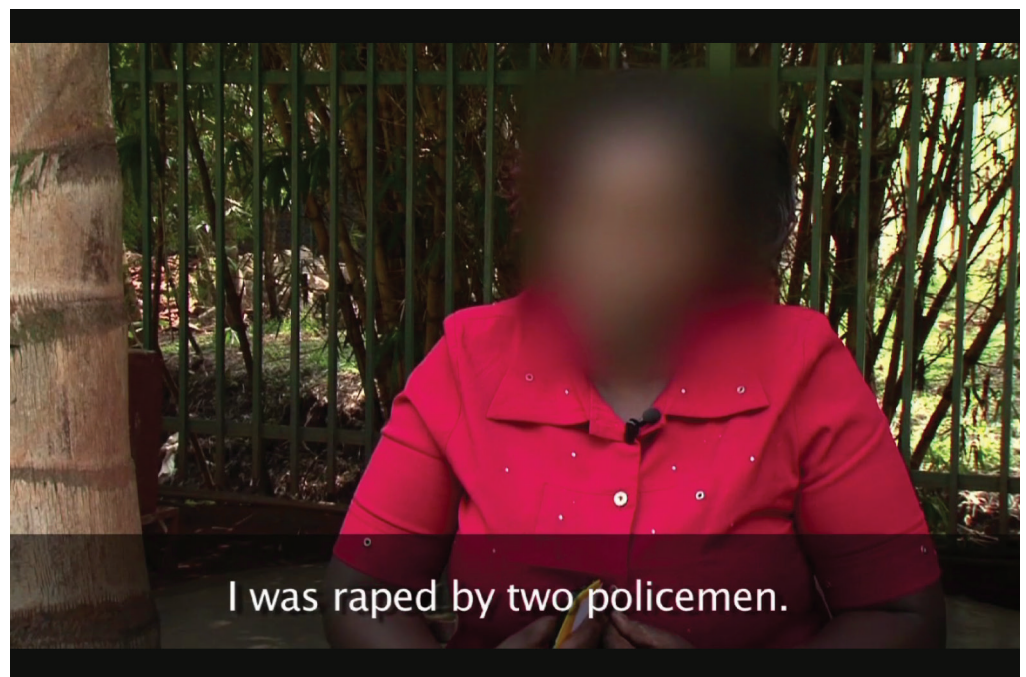
23 The National Police Service Website, "Vetting Panel," [www.npsc.go.ke/index.php/2014-03-25-12-07-38/2014-04-04-04-13-10/vetting-panel](http://www.npsc.go.ke/index.php/2014-03-25-12-07-38/2014-04-04-04-13-10/vetting-panel)

### 5. Vetted Senior Officers Were Later Implicated in Wrongdoing by Their Juniors

The NPSC has been unable to vet out senior police officers who were implicated in graft, abuse of power, and gross human rights violations.<sup>24</sup> Although the NPSC argues that it lacks the evidence to vet senior officers, ICTJ and other human rights defenders contend that there is enough credible information in the hands of the NPSC to hold such officers accountable, such as money transfer records and sworn statements by junior officers.

During the vetting process, a number of junior traffic officers confessed to sending illegally obtained assets (bribes) to their seniors over long periods of time through mobile money transfers<sup>25</sup>—and were unable to credibly explain the sources of their assets or reasons for continuously sending money to their seniors. This implicated a group of senior police officers in wrongdoing, some of whom had been cleared by the NPSC during the vetting process. The NPSC was hard pressed to explain its inability to remove adversely named senior officers who it had cleared.

The NPSC's continued silence on this matter and lack of action indicates a real possibility that there will be no accountability for senior police officers implicated in graft. It also shows confusion on the part of the NPSC as to how to deal with such evidence and cases.



Screen shot from the ICTJ film *From a Force to a Service: Police Reform - Vetting in Kenya*.

### 6. Excluding the Media from Covering Hearings

The NPSC has actively excluded the media from covering Traffic Police Department vetting hearings. It barred the media from reporting on vetting hearings for traffic police officers in Nairobi in September and October 2016. On various occasions in January

24 Hilton Otenyo, "Traffic Bosses Extort Money from Juniors, Vettors Learn," *The Star*, August 18, 2016, [www.the-star.co.ke/news/2016/08/18/traffic-bosses-extort-money-from-juniors-vettors-learn\\_c1405042](http://www.the-star.co.ke/news/2016/08/18/traffic-bosses-extort-money-from-juniors-vettors-learn_c1405042); Hilton Otenyo, "I Collected Money from Junior Cops to Fuel Seniors Cars, Officer Tells Vetting Panel," *The Star*, August 16, 2016, [www.the-star.co.ke/news/2016/08/16/i-collected-money-from-junior-cops-to-fuel-seniors-cars-officer-tells\\_c1404629](http://www.the-star.co.ke/news/2016/08/16/i-collected-money-from-junior-cops-to-fuel-seniors-cars-officer-tells_c1404629); K24TV, "Vetting reveals how Senior Police officer demand money from juniors," May 25, 2016, [www.youtube.com/watch?v=oejtQVovhU](http://www.youtube.com/watch?v=oejtQVovhU)

25 *Ibid.*

and February 2017, the media was barred from covering vetting proceedings in Nyeri County.<sup>26</sup>

As a part of the state, the NPSC is therefore bound to observe this article of the Constitution. It is only legally justified in excluding media from hearings under limited circumstances, when national security is threatened. According to Regulation 5 of the National Police Service (Vetting) Regulations 2015 states that

The vetting process shall be open to the public provided that the Commission may decide to hold in camera proceedings in order to protect the right of privacy of any person in the vetting process or if it is in the interest of justice or national security.

Further, Regulation 4(c) incorporates national values and principles of the Constitution under Article 10, specifically regarding transparency and accountability, as principles of vetting. The NPSC's conduct disregards Articles 33 and 34 of the Constitution, which protects the right of every person the freedom to seek, receive, and impart information and enshrines the freedom and independence of the media.

It also violates Article 35 of the Constitution, which protects the right of citizens to access information held by the state. That is, the state is required to publicize important information affecting the nation.

The blanket exclusion of the media is unjustifiable, unreasonable, and unconstitutional unless the legal (and security) reasons for the exclusion are explained. Yet, when questioned as to why it had excluded media, the NPSC failed to give a reasonable explanation, arguing that excluding media was the result of logistical challenges.<sup>27</sup> This contradicts another explanation, from February 2017, that it was due to national security.<sup>28</sup>



Kenyans, including human rights activists, lawyers, and taxi operators, peacefully protest in Nairobi against alleged pervasive killings and enforced disappearances linked to police, July 2016. (J. Craig/VOA).

26 Dimas Kiprono, "Media Must Be Allowed to Cover Police Vetting," *Daily Nation*, February 19, 2017, [www.nation.co.ke/oped/Opinion/-Media-must-cover-police-vetting/440808-3818290-format-xhtml-8nv9whz/index.html](http://www.nation.co.ke/oped/Opinion/-Media-must-cover-police-vetting/440808-3818290-format-xhtml-8nv9whz/index.html)

27 Letter from the Commission to ICTJ, December 1, 2016, Ref: NPSC/1/3/9/Vol. XI (140).

28 Nicholas Komu, "Sacked Police Officers Still Receive Bribes from Juniors," *Daily Nation*, July 2, 2017, <http://mobile.nation.co.ke/news/Sacked-police-still-receive-bribes-/1950946-3803774-format-sitemap-xgksoq/index.html>



Human rights defenders and civil society actors believe that the NPSC excluded the media because they were widely publicizing the deep-seated rot within the Traffic Police Department, which has a reputation for corruption and extortion.<sup>29</sup> Through different mediums, the media carried narratives of Traffic Department police officers confessing to involvement in corruption syndicates along with their seniors, some of whom the NPSC had found suitable to continue serving. It was able to show the public the extent of corruption within the police service, including its inner mechanics and criminal networks.

The lack of transparency around hearings has only exacerbated public skepticism and cast doubt on the credibility and effectiveness of the vetting process.

### **7. No Process for Receiving and Investigating Complaints**

Kenya's police vetting process relies in part on complaints sent to the NPSC by members of the public. The 2013 National Police Service (Vetting) Regulations confirms that the NPSC requires information from the public to carry out its work, including in helping to assess and determine the suitability and competence of officers undergoing vetting. However, the NPSC has so far failed to put in place an effective complaints mechanism and it lacks the capacity to respond to complainants, particularly regarding complaints it has decided not to investigate.

Under the current approach, the NPSC issues calls for submission of complaints on their website and in two daily national newspapers, providing a period, usually of 21 days, in which these complaints are to be submitted either physically or electronically to their office in Nairobi. Civil society groups have warned that the period of time open for receiving was too short. They also argued that the submission process, being so centralized, was generally inaccessible for most Kenyans.

Several human rights groups complained that they never received feedback on complaints they had submitted to the NPSC and that the Commission failed to acknowledge their receipt. This has led to doubts about the NPSC's commitment to the process.

Undoubtedly, the NPSC is at liberty to determine the utility of the information it receives from the public toward assessing the suitability and competence of an officer. It has on occasion used public complaints to vet out police officers.<sup>30</sup> But the lack of clarity around complaints has contributed to scepticism about the NPSC's ability to implement a transparent and effective vetting process.

### **8. Lack of Public Engagement and Outreach**

The Commission's mode of disseminating public notices regarding the vetting process—and the identities of particular officers being vetted—as well as the inaccessibility of the overall process have alienated the public, especially vulnerable groups, for whom the vetting process is most important. The Commission has disregarded advice from civil society to make use of inexpensive avenues of public outreach and communication platforms, such as churches, mosques, chief's barazas, and community radio stations. Neither has it established collection points across the country, to ensure ease of submission of complaints from ordinary Kenyans, as has been suggested.

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29 Report of the National Task Force on Police Reforms, Gazette Notice No. 4790, *Kenya Gazette* (The Phillip Ransley Report), October 2009, 60.

30 Angira Zadock, "AP Spokesman Sacked over 'Abuse of Office,'" *Daily Nation*, October 25, 2015, [www.nation.co.ke/news/AP-spokesman-sacked-/1056-2930100-89qae5z/index.html](http://www.nation.co.ke/news/AP-spokesman-sacked-/1056-2930100-89qae5z/index.html)

At the community level, police officers are not known by their official title, rank, or given names, but through pseudonyms or aliases. Civil society groups, therefore, recommended that the NPSC issue detailed information on officers being vetted, beyond their official identity and current rank. In particular, they urged the NPSC to include a recent photograph of the officer, any nicknames/aliases (which would have required close collaboration between the NPSC and human rights groups at the grassroots level), previous stations where the officer served, as well as the time periods when the officer served in those stations. However, the NPSC did not avail these types of important details to the public. This is partially the reason why victims of police brutality and abuse have failed to submit complaints to the NPSC.

### 3. Conclusions

Kenya's police vetting process may be a missed opportunity to confront the culture of impunity that is deep-seated in the National Police Service and to disrupt networks that have taken root in the institution. The NPSC has failed to substantively respond to inquiries raised by human rights defenders monitoring the process that would have enabled a better understanding of the weaknesses of the vetting process and proposed interventions.

Continued police misconduct and abuse of citizenry, engagement in extra-judicial killings, and lack of professionalism in investigating gross human rights violations has put to the sword any efforts to foster public trust in the National Police Service. Given the host of challenges bedeviling the process, only a reconstituted NPSC to spearhead the next phases of the vetting process based on lessons learned may be successful. Unless good faith reforms efforts are put in place so as to realize a functional police service, impunity will continue to reign in Kenya.

### Recommendations

The following recommendations should be given serious consideration in an effort salvage the credibility of the current police-vetting process:

#### To the Executive and the National Assembly

- **Immediately fully constitute the NPSC, as per Article 246 of the Constitution.** The NPSC, when fully constituted, should consist of three commissioners from the service (Inspector General of Police and his two deputies) and six civilians (including two retired police officers). At the moment two vacancies exist. Their recruitment provides an opportunity for the proper auditing of the vetting process, given their fresh eyes and objectivity. Those to be appointed should be persons that bring objectivity in the review of the vetting process and issuance of a deeply thought-out interim report. Given their favorable standing and input, it would be hoped that the fully constituted NPSC can deliver a roadmap to a revitalized police-vetting process.

#### To the current NPSC:

- **Halt the ongoing vetting process and focus on fully constituting its secretariat.** Recruit staff strictly through an independent, transparent, and competitive process, as is required under Article 251 1(c) and 232 (1) (g) of the Constitution.
- **Once fully constituted, work towards issuance of an interim report that comprehensively details critical aspects of the vetting process thus far,** with a view

to assisting stakeholders (primarily the Executive and the National Assembly) on assessing its viability as a reform measure. The NPSC's report to the Government and stakeholders should address the following:

- a. sufficiency of financial, human, and other resources available for vetting
- b. extent of public outreach in the vetting process
- c. description of the working procedures and methods of the vetting process
- d. basic criteria and evidentiary standards being applied
- e. analysis of sufficiency of power to investigate and summon and generally undertake the vetting process
- f. data-management systems in place
- g. reasons for holding closed vetting hearings and the specific instances when such hearings were held, including the constitutional safeguards put in place to protect public interests
- h. informant-protection measures established
- i. number of complaints submitted and stages of investigation of said complaints
- j. initial and review decisions arrived at and reasons for those decisions
- k. political pressures the NPSC is currently facing or has faced vis-à-vis vetting
- l. role of the Executive, National Assembly, and Judiciary in supporting the vetting process or undermining it
- m. role of civil society and human rights defenders in this process
- n. role of the donor community in this process
- o. interconnection between other judicial and quasi-judicial processes
- p. overall and specific challenges the NPSC is facing
- q. adequacy of the Vetting Regulations
- r. impact of the vetting process on the NPSC's ability to fulfill its other mandates and probable impact on the NPS

The report should also carry specific details on the vetting outcomes so far, such as

- a. Number of police officers, according to rank, vetted so far
- b. Number of police officers who declined to be vetted and retired
- c. Number of police officers found unsuitable after vetting, including reasons for removal in accordance with regulations 14(2) of the Vetting Regulations
- d. Number of police officers who applied for review after being found unsuitable
- e. Number of police officers who applied for and were rejected for review, including reasons for denial, in line with regulation 33(2) of the Vetting Regulations
- f. Number of police officers who were accepted for review and were retained

- g. Number of police officers accepted for review, but were removed after review
- h. Number of complaints received regarding the various cohorts already vetted

- **Urgently refer to the Ethics and Anti-Corruption Commission (EACC) for investigation the specific complaints on bribery made by certain police officers in the months of January and February 2016 and reported in the media in February 2016.** Similar allegations were made in May 2017. The NPSC has yet to report to the public on the outcome of its own investigations into the matter. Further, senior police officers who were established to have received bribes from their juniors but had previously been cleared in the vetting process should be retired in public interest.
- **Collaborate with the EACC, the Kenya Revenue Authority, and anti-money laundering agencies, like the Financial Reporting Centre, in identifying police officers engaged in bribery, tax evasion, and money laundering,** with a view to holding them to criminal account.
- **Immediately establish a public outreach and communications unit to ensure public engagement and civil society participation in the vetting process at the county and community levels.** Ensure the smooth flow of information to the public, advance notice to stakeholders on persons to be vetted, advance notice of public hearing venues, and decentralized avenues for the public to submit complaints.
- **Ensure that vetting hearings are held in public with full access by media.** The NPSC should ensure that members of the public and the media are kept continuously informed of police-vetting proceedings. Implement a media strategy that enables it to reach segments of the population that have been most vulnerable to police brutality and abuse, such as those in urban slum areas or communities in the North Eastern or Coastal regions, who continue to bear the brunt of police abuse and brutality.