

RESEARCH REPORT

From Optimism to Disillusionment

Examining Civil Society Perceptions of Police Vetting in Kenya

June 2020



Cover Image: Protesters demanding an end to extra-judicial killings by police march from Uhuru Park to the Supreme Court in Nairobi, Kenya, on July 4, 2016. (Jill Craig/VOA)

RESEARCH REPORT

From Optimism to Disillusionment

Examining Civil Society Perceptions of Police Vetting in Kenya

June 2020

Daniel Blocq, Mary Mwikali, and Agatha Ndonga

About the Authors

Daniel Blocq (PhD) is a sociologist and affiliated researcher at the Van Vollenhoven Institute at Leiden Law School. He runs a boutique consultancy firm and is an expert on violent conflict, collective action, and organizational and political sociology.

Mary Mwikali is an international development practitioner. She has more than five years of experience working in the field of security sector reform in both the public and private sector.

Agatha Ndonga is ICTJ's head of office in Kenya. She has more than 10 years of experience in the fields of transitional justice, human rights, gender justice, and peacebuilding, and has provided technical assistance to transitional justice measures in Kenya.

Acknowledgments

This report is the outcome of the support and inspiration of many people inside Kenya. We are especially grateful to the dozens of interviewees who sat down with us, and who shared their thoughts and sometimes painful experiences. Without them, this research would not have been possible. 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 Alexander Mayer-Rieckh, Chris Gitari, Roseline Odede, Mohammed Murshid, Anna Myriam Roccatello, Janine Ubink, and Roger Duthie. 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 author(s).

About ICTJ

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

About the Van Vollenhoven Institute

The Van Vollenhoven Institute for Law, Governance and Society (VVI) is part of the Leiden Law School. The VVI seeks to develop and disseminate socio-legal knowledge and theory regarding the interaction between law, governance and society. More specifically, the Institute studies the emergence, functioning, and evolution of legal institutions. The VVI combines a top-down with a bottom-up approach; it considers perspectives of state agents, citizens and other non-state actors.

© 2020 International Center for Transitional Justice. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

CONTENTS

Abbreviations	vi
Introduction	1
Data	3
Background	4
Formal Design	7
Formation	7
Vetting Principles	7
Information Base.....	9
Hearings and Decision Making	9
Review Mechanisms	10
Implementation	11
Targets.....	11
Information Gathering and Public Awareness.....	11
Hearings and Courts	12
Numerical Outcomes	14
Optimism	15
Suspicion.....	16
Responsiveness, Sensitivity, Transparency, and Accountability	18
Responsiveness to CSO Concerns	19
Sensitivity.....	19
Transparency and Accountability.....	20
Substantive Focus.....	21
Underneath the NPSC Demeanor	23
Commitment	23
Outside Pressures	23
Resources	24
The Civil Society Organizations	24
Lavishness	25
Discussion and Conclusion	26
References	28

Abbreviations

CSO	Civil society organization
DIG	Deputy inspector general
IPOA	Independent Police Oversight Authority
IG	Inspector general
NPS	National Police Service
NPSC	National Police Service Commission
PRIC	Police Reforms Implementation Committee
PRWG-K	Police Reform Working Group—Kenya

Introduction

In 2013, a comprehensive police vetting process began in Kenya, instigated by the 2007–2008 post-election violence. Some reports suggested that the police had failed to stop the violence. Others that the police had actively contributed to violations. Whatever the truth is, the police generally had a poor reputation at the time. For decades, the police force had been notorious for its corruption, extrajudicial killings, and torture. This was the context in which a comprehensive police reform program was set up. The program included a vetting component and was led by the newly established National Police Service Commission (NPSC).¹ The NPSC was mandated to screen every officer inside the Kenyan police.

Civil society organizations (CSOs) initially expressed a great deal of optimism about the vetting plans. Indeed, political will for the process seemed to be present. The vetting of the judiciary, which had started shortly before the police vetting and was considered to be quite successful, also strengthened CSOs' beliefs that serious and genuine police vetting was possible. Unfortunately, their optimism quickly turned to disillusionment and their confidence in the process crumbled. Six years after the commencement of the police vetting process, CSO representatives commonly agreed that it had failed.

What happened? This report formulates an answer to that question. First, it provides a description of the police vetting process, from its design, to its implementation, to its outcomes. But a good understanding of the CSOs' disappointment requires more than factual information about decisions and outcomes. It also demands consideration of (a) the *interpretative lens* through which CSO representatives made sense of the NPSC's decisions and judged the results of the process and (b) the *attitude* of the NPSC toward CSOs—specifically, how transparent the NPSC was, the extent to which it tried to explain controversial decisions, and the degree to which it was responsive and sensitive to CSO concerns.

This report explicitly reflects on those two issues. By doing so, it also seeks to increase attention to interpretive lenses and attitudes in contexts of transitional vetting in general, that is, beyond the Kenyan case. Underlying this objective is an assumption that the perceptions of CSOs and civil society are meaningful. Transitional vetting is designed to increase trust in public institutions, among other things (see Box 1). A vetting exercise that is perceived by civil society to be poorly executed does not contribute to that goal and may even undermine it. Perceptions thus matter and warrant consideration.

1 The NPSC is discussed in further detail in Parts 1 and 2.

Box 1. What is transitional vetting?

Transitional vetting refers to a process that is designed to remove or otherwise disempower state agents who committed human rights violations or who engaged in other forms of serious professional misconduct. It is carried out in order to build or restore accountable, legitimate, and effective public institutions. Transitional vetting occurs after periods of large-scale human rights violations, systemic corruption, and other serious abuses of office. Because the circumstances of each situation are different, transitional vetting is a special, one-off process with a unique, ad hoc nature.

The report consists of seven parts. In Part 1, we consider the background of the police vetting process and the context in which it emerged. In Part 2, we describe the formal design of the vetting process. In Part 3, we discuss its implementation. In Part 4, we present the outcomes of the process in numerical terms. In Part 5, we assess the lens through which CSOs interpreted the NPSC's behavior. We also highlight how the lack of accountability and responsiveness by the NPSC, as experienced by the CSOs, contributed to CSO disillusionment about the vetting process. In Part 6, we reflect on possible reasons underlying the NPSC's attitude toward CSOs and civil society. This reflection also encompasses the CSOs' shortcomings in the vetting process. We conclude with a summary and set of lessons learned, both for the practice of transitional vetting and for policy and research on transitional vetting.

A final note: this report is one of two culminating from a larger research project on police vetting in Kenya. This report concentrates on interactions between the NPSC and civil society, on the one hand, and on the behavior of the NPSC *as observed by* CSOs, on the other. The second report focuses on aspects of the NPSC's behavior and decisions that were outside of the purview of CSOs, exploring the ways in which the NPSC conducted hearings and reached decisions in different cases.

Data

In writing this report, we relied on interviews with 19 CSO representatives; eight individuals who worked with the NPSC as commissioners, staff, or panelists; and two past members of the Independent Police Oversight Authority (IPOA). We also relied on interviews that we carried out with 23 victims of police violence.² We conducted our interviews between January and August 2019. In addition, we studied newspaper clippings and reports from the NPSC. All interviews were semistructured in nature, though some had a more unstructured nature than others. In the less structured interviews, we deliberately adopted a more exploratory approach, inviting interviewees to share their experiences related to the vetting process. We used probing questions to gather more information and asked interviewees to reflect upon events from different perspectives. In analyzing the interview transcripts, we searched for shared perspectives and also identified conflicting accounts. This report is the outcome of that exercise.

Why focus on CSO perceptions? CSOs are not the same as civil society. They try to represent civil society or different segments thereof, but civil society as a whole is very diffuse and is never fully represented by civil society organizations. In fragile and conflict-affected countries, CSOs do nonetheless function as an important mouthpiece of civil society, especially its more vulnerable sections. Accordingly, a focus on the views of CSOs may be a useful point of entry into the perceptions of vulnerable populations.

In addition to their potential to represent civil society—and particular segments of society—CSOs can share valuable observations and opinions for the purposes of evaluation and understanding. CSOs are typically more informed about transitional vetting processes than most citizens are. While there is a great deal of information that CSO representatives cannot access, many of them look for such information they can access, follow vetting processes, and try to influence them. They are thus in a better position than ordinary citizens to provide a broader, even if incomplete, estimation of a vetting process. Those estimations do, in fact, contain bias. But this report examines that bias through a discussion of the interpretive lens, putting the CSOs' reflections into perspective.

² These victims shared meaningful and often heartbreaking stories with us but were mostly unable to offer many insights about the NPSC, either because they had never heard about the commission or because they had very limited information about it. This observation is a significant piece of information in itself and is also discussed in this report. For the purpose of understanding the vetting process, though, the interviews with victims were less informative and therefore are used less in the report.

Background

The organization and behavior of the police in Kenya can be partly traced back to the colonial era. During that time, the main duty of the police was to protect the colonial regime, secure its assets, manage the physical safety of the elites, and quell all forms of resistance. The police force was an institution serving elites, not the wider public. This became especially clear in the 1950s when the colonial powers were confronted with a rebellion and called a state of emergency. The police committed many atrocities during that period. Following independence and the end of the rebellion, their overall approach did not fundamentally change.³ According to various experts, the police continued to be an instrument of oppression by the government.⁴

The absence of an ethos focusing on the protection of the wider public allowed for the continuation of abusive and unprofessional behavior against citizens by the police.⁵ Other factors also contributed to police abuses: Security threats and terrorism posed serious challenges, especially since 2011. Gang violence was at the same time increasing in the slums of Nairobi. Some portions of society were accordingly calling for vigorous action in response to these threats. However, they did *not* call for the rampant and indiscriminate police violence that emerged.⁶

Violence was not the only challenge related to policing in Kenya. Corruption was another serious issue.⁷ In some cases, the police released suspects in exchange for bribes. In others, the police apprehended innocent people for the very purpose of extortion. Nepotism was widespread, and obtaining promotions within the police force often required payments.⁸ Junior officers explained that low wages created strong incentives for corruption.⁹

3 See also Anneke Osse, “Police Reform in Kenya: A Process of ‘Meddling Through,’” *Policing and Society* 26, no. 8 (2016): 907–924.

4 Ibid. See also Florence Simbiri-Jaoko, Saferworld, “Participation and Inclusion in Police Reforms in Kenya: Opportunities and Challenges since 2008” (2016), 1.

5 Peris S. Jones, Wangui Kimari, and Kavita Ramakrishnana, “Only the People Can Defend This Struggle: The Politics of the Everyday, Extrajudicial Executions and Civil Society in Mathare, Kenya,” *Review of African Political Economy* 44, no. 154 (2017): 559–576.

6 The police are also said to have taken the law into their own hands—according to police, because prosecutors and judges were not dealing with suspects effectively. See also Rachel Wahl, “Justice, Context, and Violence: Law Enforcement Officers on Why They Torture,” *Law & Society Review* 48, no. 4 (2014): 807–836.

7 See, generally, Kempe Ronald Hope Sr., “Kenya’s Corruption Problem: Causes and Consequences,” *Commonwealth & Comparative Politics* 52, no. 4 (2014): 493–512; Kempe Ronald Hope Sr., “The Police Corruption ‘Crime Problem’ in Kenya,” *Security Journal* 32 (2019): 85–101.

8 Hope, “The Police Corruption ‘Crime Problem.’”

9 Ibid.

It is against this background of police violence and corruption that the post-election violence took place in 2008.¹⁰ Violence had also occurred around previous elections, in 1992 and 1997. The Commission of Inquiry into Tribal Clashes, which investigated these earlier episodes, found that the government and police officers had been involved in the violence.¹¹ Thus, ethnic and political tensions were already quite high in the 1990s.¹² The 2002 elections were relatively peaceful. But following the elections in late 2007, ethnic and political tensions resurfaced and culminated in an eruption of violence in early 2008. According to some observers, the police facilitated and participated in the violence.¹³ According to others, the police did not take part in the violence but were nevertheless to blame for not having been able to stop it.¹⁴

Various inquiries were conducted into the post-election violence, including investigations by the Commission of Inquiry into the Post-Election Violence (also referred to as the Waki Report), the United Nations Special Rapporteur on Extrajudicial Summary or Arbitrary Executions (also referred to as the Philip Alston Report), and the National Taskforce on Police Reforms (also referred to as the Ransley Report). The studies all called for serious reform of the police force—to increase its professionalism and accountability, and to reduce the incidence of extrajudicial violence and corruption. The Police Reforms Implementation Committee (PRIC) was appointed by the president in 2010 and directed to fast-track and coordinate the implementation of the Ransley recommendations.¹⁵

The 2008 Kenya National Dialogue and Reconciliation Agreement instigated a constitutional review process. Lengthy consultations took place, culminating in a new constitution that was meant to better safeguard the rights of Kenyan citizens overall. Article 243 of the constitution provided for the establishment of a new National Police Service (NPS)—comprising the Kenya Police Service and the Administration Police Service—and for the creation of the National Police Service Commission.

The NPSC, a key player in the police vetting process, was authorized to “recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service...and *remove persons* holding or acting in offices within the Service.”¹⁶ Three new laws were passed for the police based on the new constitution: the National Police Service Act (NPS Act), the National Police Service Commission Act (NPSC Act), and the Independent Police Oversight Authority Act (IPOA Act).

10 We are not asserting that police abuse and corruption led to the post-election violence. Instead, we want to point out that the post-election violence occurred in a context in which there was also ongoing police abuse and corruption, which may or may not have contributed to the post-election violence.

11 *Report on the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya* (1999), also referred to as the Akiwumi Report.

12 Political and ethnic cleavages overlap in Kenya, with members of some ethnic groups being overrepresented in one political camp and members of other ethnic groups being overrepresented in another.

13 Findings from the Truth, Justice and Reconciliation Commission indicated that state security agencies, particularly the Kenya police and the Kenya army, have been the main perpetrators of bodily integrity violations of human rights in Kenya, including massacres, enforced disappearances, torture and ill treatment, and sexual violence. The Truth, Justice and Reconciliation Commission Kenya, “Report of the Truth, Justice and Reconciliation Commission, Volume 1” (2013), vii.

14 Commission of Inquiry into the Post Election Violence Report (2008); Osse, “Police Reform.”

15 Kenya National Commission on Human Rights and Centre for Human Rights and Peace (The University of Nairobi), “Audit of the Status of Police Reforms in Kenya” (2015), 15; Irene Ndungu, Institute for Security Studies, “Police Reforms in Kenya Crucial to Restore Public Confidence” (Oct. 20, 2011), <https://issafrica.org/iss-today/police-reforms-in-kenya-crucial-to-restore-public-confidence>. The PRIC drafted the National Police Service Bill, the National Police Service Commission Bill, the Independent Policing Oversight Authority (IPOA) Bill, the National Coroners Bill, and the Private Security Industry Regulation Bill.

16 Art. 246(3); emphasis added.

Box 2. The Organization and Role of Civil Society

In post-independence Kenya, and especially during the Moi era (1978-2002), civil society organizations were not allowed to engage in questions pertaining to politics and governance. Moi started his presidency with a more democratic approach to government but slowly became more authoritarian, in the face of and at least partly in response to an attempted coup.* This changed after the 2007–2008 elections, creating space for the emergence of the Police Reform Working Group—Kenya (PRWG-K). The PRWG was an assembly of civil society groups that held an interest in police reforms. It started its work in 2011 and became a key stakeholder in the police vetting process. It was involved in the development of the vetting regulations and tools, it made efforts to monitor and evaluate the vetting process, and it stimulated media coverage of the vetting process. The group’s website was also one of the forums used by the NPSC to disseminate information to the public about police officers who were going to be vetted.

* Margaret K. Chemengich, “The Prospects of Civil Society Driven Change in Kenya,” in *Discourses on Civil Society in Kenya* (Nairobi: The African Research and Resource Forum, 2009), 20–30; Florence Simbiri-Jaoko, Saferworld, “Participation and Inclusion in Police Reforms in Kenya: Opportunities and Challenges since 2008” (2016); Korwa G. Adar and Isaac M. Munyae, “Human Rights Abuse in Kenya under Daniel Arap Moi, 1978–2001,” *African Studies Quarterly* 5, no. 1 (2001).

The NPSC Act addressed the (re)organization of human resources within the police—for example, in recruitment, transfers, and promotions. The Act was meant to contribute to the transformation of the Kenyan police from a police *force* to a police *service*. Pursuant to Article 7(2) of the NPS Act, the NPSC had a mandate to vet all police officers. The IPOA had, among other things, the authority “to receive and investigate any complaints related to disciplinary or criminal offences committed by any member of the Service.”¹⁷

17 IPOA Act, Art. 6(a).

Formal Design

The NPSC was given a broad directive that included vetting. The constitution, the NPS Act, and the NPSC Act provided the legal basis for the organization of the vetting process. These laws jointly outlined the composition of the NPSC and its mandate. However, the NPSC had to draft additional regulations in order to execute the vetting process.¹⁸ These regulations pertained to procedural aspects such as information collection, hearings, decision making, and reviews, and they specified details regarding the criteria for determining the suitability of each individual officer.

Formation

According to the constitution, the commission was to be composed of nine members. Six had to be civilian, including two *retired* police officers. The remaining three commissioners belonged to the police: the inspector general (IG) and his two deputies (DIGs).¹⁹ The civilian members were chosen by a selection committee that was set up by the president.²⁰ The constitution held that the NPSC had to “reflect the regional and ethnic diversity of the people of Kenya.”²¹ Short-listed candidates were heard in Parliament. Following approval by the National Assembly, they were appointed by the president.²²

When the NPSC started its work, the IG and DIG positions were still vacant. One of the first tasks for the six civilian commissioners was to select three police officers for these top positions.²³ Once all commissioners were appointed, the NPSC made several trips to the United States, Europe, and South Africa to gather information and glean insights about police reform, including vetting.²⁴ Then they began the drafting of the vetting regulations.

Vetting Principles

The NPS Act stipulated that all officers of the Kenya Police Force and the Administration Police Force would automatically become members of the newly established National Police *Service*

18 NPS Act, Sec. 124.

19 Constitution of Kenya 2010, Art. 246(2)(a)(ii), Art. 246(2)(b)(c); NPSC Act, Sec. 4-5.

20 NPSC Act, Sec. 6(1).

21 Constitution of Kenya 2010, Art. 246(4).

22 NPSC Act, Sec. 6(3-4, 6).

23 NPSC Annual Report 2012-2013, 11.

24 *Ibid.*

Box 3. Context of the Drafting Process

Some senior police officers initially tried to block the vetting process following accusations of “witch-hunting.” Disagreement between the chair of the commission and the inspector general (IG) about the deployment of high-ranking police officers further compounded the matter. In a context of rising insecurity in Kenya, and before the vetting process had started, the IG wanted to deploy a group of commanders across the country immediately. The chair disagreed. Ultimately, the president had to intervene. He declared that the vetting process would commence the following month*. Throughout this period, the commission had been working on the vetting regulations with the support of various national and international vetting experts. Furthermore, the NPSC had held a series of meetings with stakeholders, including civil society organizations, to receive their input[†]. However, the president’s announcement created serious time pressures. The NPSC hurriedly finished the regulations, gazetted them on December 16, and officially commenced the process on December 17.

* Cyrus Ombati, “Date Finally Set for Police Officers Vetting,” *The Standard*, Nov. 14, 2013, 6; Cyrus Ombati, “Uhuru Played Role in Ending Impasse on Police Vetting,” *The Star*, Nov. 11, 2013, 6; Cyrus Ombati, “Top Security Officers Meet over Rising Insecurity and Pending Vetting,” *The Standard*, Nov. 19, 2013, 22; Kinyuru Munuhe, “Vetting of Top Cops to Commence Next Month Says President,” *The People*, Nov. 8, 2013.

† National Police Service Commission Annual Report 2012–2013, 12.

(emphasis added). Officers would have to “undergo vetting by the Commission to assess their suitability and competence.”²⁵ The commission would “discontinue the service of any police officer who fails in the vetting.”²⁶

In screening officers, the commission had to “consider, assess and determine the suitability and competence of the officer.”²⁷ To make this determination, the commission would “consider (a) whether the officer meets the constitutional or other criteria required by law for recruitment and appointment of an officer; (b) the past record of an officer including conduct, discipline and diligence; (c) the integrity and financial probity of the officer; and (d) the human rights record of the officer.”²⁸

The vetting regulations further provided that “the vetting process shall not be bound by strict rules of evidence and the proof applicable shall be that of a balance of probabilities.”²⁹ In addition, they directed that “vetting shall be done in a transparent manner allowing for the person undergoing vetting to know and assess the information that has been used by the Commission to reach its decision.”³⁰

25 NPS Act, Sec. 7(2).

26 NPS Act, Sec. 7(3).

27 NPSC Regulation 14.

28 NPSC Regulation 14.

29 NPSC Regulation 4(f).

30 NPSC Regulation 4(g).

Information Base

All police officers subjected to the vetting process had to appear before the commission in person for an interview. Before the interview, officers would have to submit (a) a self-assessment form that listed information about their training, performance, and career; (b) a declaration of their income, assets, and liabilities; and (c) bank statements for themselves, their spouses, and their children under the age of 18.³¹ Any other person could also submit information related to the suitability and competence of a police officer being screened. This could be done in public, in camera, or anonymously.³²

The commission explicitly requested information from the public.³³ To that end, it placed a series of advertisements in two national newspapers: the *Daily Nation* and the *Standard*. The advertisements contained the names and ranks of police officers who were up for vetting, with up to 100 officers listed in each batch. Following the publication of an advertisement, members of the public had an opportunity to lodge complaints or submit other information that was relevant to the vetting of the respective police officers. Initially, the NPSC offered people one week to file complaints. That period was extended following objections from CSOs, but the time frame for filing complaints seems to have remained rather short, generally between two and three weeks.³⁴

Officers would receive a summary of complaints against them and be given an opportunity to respond to the claims before their hearing.³⁵ When it was deemed necessary, the commission could ask for additional information from a complainant and could mobilize the investigation unit of the NPSC secretariat to look more deeply into specific assertions and complaints.³⁶

Hearings and Decision Making

The NPSC had the authority to establish committees “for the better carrying out of its functions,” and to “co-opt” into these committees “persons whose knowledge and skills are found necessary for the functions of the Commission.”³⁷ These co-opted members had the power to attend meetings and participate in deliberations, but they were not allowed to vote.³⁸

Usually, hearings were open to the public.³⁹ However, the commission had the discretion to hold in camera, or private, sessions.⁴⁰ An in camera hearing could be called by the commission of its own volition or in response to a request by an officer. Decisions about holding in camera sessions weighed three issues: the privacy of an officer, the interest of justice, and national security.⁴¹

During the hearings, co-opted members and commissioners were required to disclose possible conflicts of interest. The NPSC as a whole would determine if a conflict of interest would

31 NPSC Regulations 7, 13; National Police Service Commission, “NPSC Inaugural Commissioners’ Exit Report” (2018), 96 (hereafter NPSC exit report).

32 NPSC Regulations 15, 16.

33 See also NPSC Regulation 15.

34 Brian Otieno, “Rights Activists Want the Vetting of Police Extended,” *The Star*, Dec. 21, 2013, 12; see also NPSC exit report, 99.

35 NPSC Regulation 18.

36 NPSC Regulation 21; see also NPSC exit report, 99.

37 NPSC Act, Sec. 13(1)(2).

38 NPSC Act, Sec. 13(3).

39 NPSC Regulation 5 (1).

40 *Ibid.*

41 NPSC Regulation 5(1,2).

interfere with the process. If it was found to present an obstacle, the co-opted member or commissioner would have to withdraw from the deliberations.⁴² Decisions on cases were taken in meetings including six or more commissioners.⁴³ When unanimity could not be attained, decisions were made by the majority. In the case of a tie, the vote of the member presiding over the meeting would be decisive.⁴⁴

Review Mechanisms

An officer who was found unsuitable to continue serving could seek redress in court or ask for review with the NPSC.⁴⁵ To obtain a review, an officer would have to submit an appeal within seven days after receiving the decision. The commission could grant a request for review in the case of “the discovery of a new and important matter,” if there had been a “mistake or error [that was] apparent on the face of the record,” or for “any reason the Commission considers just and proper.”⁴⁶ Officers would remain in service but not continue their daily work during a review process; they would officially be on leave.⁴⁷

42 NPSC Regulation 6(1,2).

43 NPSC Act, Second schedule, Rule 3.

44 NPSC Act, Second schedule, Rule 4.

45 NPSC Regulation 33(1).

46 NPSC Regulation 33(2). As for the discovery of new information, the regulations made a qualification, indicating that “the discovery of a new and important matter which was not within the knowledge of, or could not be produced by the officer at the time the determination or finding sought to be reviewed was made, provided that the lack of knowledge on the part of the officer was not due to lack of due diligence.”

47 NPSC Regulation 33(3).

Implementation

Once the regulations were in place, the NPSC had to develop a strategy for the vetting process. Under the NPS Act, the commission had to vet *all* police officers.⁴⁸

Targets

The NPSC started at the top, with the most senior-level officers. As it explained in its exit report, it took this approach “partly to debunk the myth that senior officers were untouchable and to send a clear message that the law would be adhered to.”⁴⁹ Furthermore, the NPSC argued,

It made more sense to start at the top because of the pyramid structure of the National Police Service.... Starting at the bottom would have meant that it would take a considerably long time to get to the top, a situation that would have serious ramifications on the command and control of the Service as senior officers still waiting to be vetted would have inhibitions asserting authority.⁵⁰

As the process continued, the NPSC started receiving criticism, not just from the public but also from members of Parliament. A former commissioner recalled, “I remember a very clear gentleman called Dalmas Otieno, he was telling us: guys, you are wasting time, you know for us in the public we want to see change.”⁵¹ According to the commissioner, this was an important reason for the NPSC to alter its strategy and focus on particular sections of the police, starting with the traffic police, a division that had been notorious for bribery and corruption. Another commissioner explained, “We do traffic because...they were visible as bribe takers and all.”⁵² By the end of the term of the inaugural commission—the first commission, which served between 2012 and 2018—the NPSC had not been able to move beyond the traffic police.

Information Gathering and Public Awareness

In order to effectively vet police officers, the NPSC needed information about them. Some of the information would have to come from the public, which meant that citizens needed to be

48 NPS Act, Art. 7(2).

49 NPSC exit report, 108.

50 NPSC exit report, 108.

51 Interview, Nairobi, April 25, 2019.

52 Interview, Nairobi, April 23, 2019.

informed about the process. As described in the exit report of the inaugural commission, the NPSC used “social media platforms [and] radio and television [to reach the public and] to educate them on their role in vetting.”⁵³

CSOs were also active. According to one of the CSO representatives, the groups invested in awareness campaigns. They printed posters, produced newspaper advertisements, set up hot-lines, and went out into the counties to inform the people who lived there and encourage them to submit complaints.⁵⁴ These visits into the counties were challenging, though. As a representative of one of the leading CSOs explained,

It was an uphill task in terms of our interaction with citizens and police because... the public fear the police. The public are suspicious of the police. Their level of trust is very low. They have seen attempts to reform the police over the years that have not succeeded.⁵⁵

Fear did not exist only among citizens. It was also present within the police, among junior officers who wanted to share information about their superiors.

It was difficult for police officers to submit information in this kind of process because the first consequence is that you face a disciplinary action. There are other likely consequences, including that they kill you. We have seen officers who have dared to come forward disappear or die. They said they would disappear or get killed.⁵⁶

In the early stages of the vetting process, CSOs did appear to receive a fair amount of complaints and information. The exit report of the inaugural commission mentions that “during the vetting of the first seven officers, the Commission was overwhelmed by complaints.”⁵⁷ But it also seems that a good deal of that information did not directly pertain to officers who were being subjected to vetting at that moment; it often related to junior officers rather than the seniors who were up for vetting. The CSOs, however, collected information on *all* police officers. One of the CSO representatives reported of the information-collection process,

It was open. We said, any information you have on a police officer whether or not they have been listed in a newspaper...[and] they [citizens] would give info about a corporal rather than about the seniors, even though the vetting began with seniors. But we still analyzed it and sent it to the commission to use later.⁵⁸

Hearings and Courts

The early hearings were broadcast on TV and received a lot of media attention. In the interest of transparency and accountability, the NPSC had decided to allow the media to sit in on the hearings. For the top commanders, hearings were held with all commissioners present. Over time, when the NPSC reached lower levels of command and started vetting traffic police officers, some commissioners moved out, into the country, and began working on panels. Every

53 NPSC exit report, 78.

54 Interview, Nairobi, April 25, 2019.

55 Interview, Nairobi, April 12, 2019.

56 Interview, Nairobi, April 12, 2019. The exit report of the NPSC also indicated, “A key finding during these stakeholder meetings was that members of the public were apprehensive about filing complaints because of the threat of reprisals” (79).

57 NPSC exit report, 108.

58 Interview, Nairobi, April 12, 2019.

panel included two commissioners and several co-opted members, locally recruited. The final decision on any given case was made by the commission as a whole.⁵⁹

Officers who were found unsuitable to continue serving could turn to court. In various cases, judges found that the NPSC had violated rules of procedural fairness or had not complied with their own regulations. Sometimes, judges ordered the NPSC to re-vet an officer.⁶⁰ In other situations, they referred files back to the NPSC review panel⁶¹ or, more controversially, ordered an officer to be directly reinstated.⁶²

59 Interview, Nairobi, April 23, 2019.

60 See, for example, Petition no. 6 of 2014 consolidated with Judicial Review Miscellaneous Application nos. 11 and 12 of 2014, Immanuel Masinde Okutoyi & Others v. NPSC.

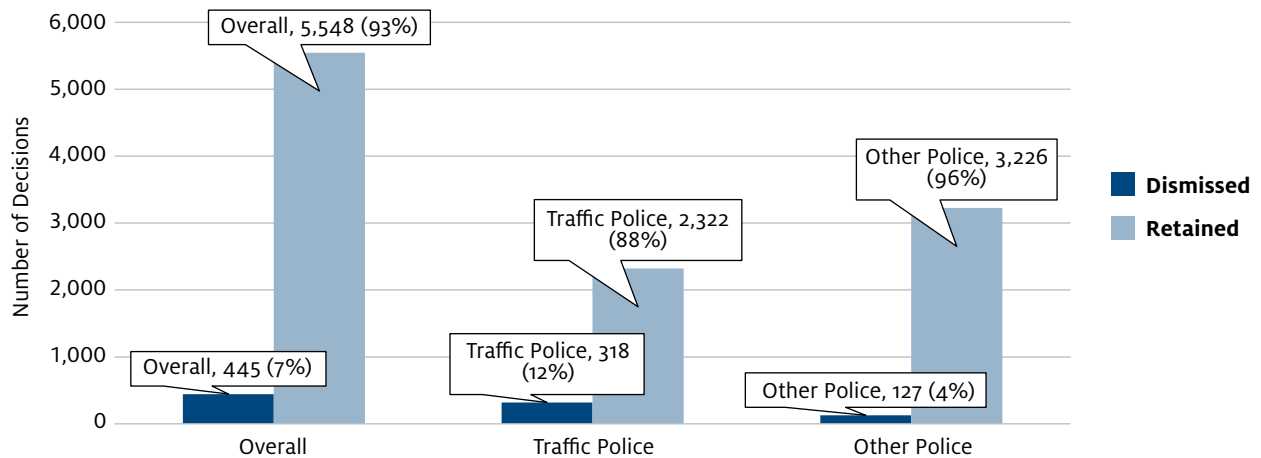
61 See, for example, Margaret Nyaruai Theuri v. NPSC, ELRC JR Application no. 1 of 2016.

62 See, for example, Benard Mburu Mbaru v. NPSC, ELRC Petition no. 91 of 2016.

Numerical Outcomes

Out of the estimated 80,000 officers in service, the inaugural commission vetted 5,993 officers. Of those, 5,548 were retained and 445 were found unsuitable and therefore dismissed.⁶³ Figure 1 provides an overview of the decisions. These numbers can be interpreted in different ways.

Figure 1. Vetting Decisions for Traffic and Other Police



On the one hand, the vetting exercise can be considered an accomplishment. Although the NPSC did not realize the task that the constitution outlined—the vetting of *all* police officers—it did subject the very top police commanders to vetting. Three out of the seven highest-ranking commanders were dismissed.⁶⁴ Additionally, the early hearings occurred in public, which was groundbreaking, and arguably signaled commitment to the process and transparency.

But there is another way to conceive of the process and its outcomes. Less than 7.5% of all police officers were subjected to vetting, while the goal was set at 100%. Furthermore, the focus

⁶³ NPSC exit report, 102, 108.

⁶⁴ NPSC exit report, 108.

on financial probity instead of human rights could be interpreted as a forced escape, in the absence of good evidence of human rights violations, or as a deliberate choice—one that indicated a missed opportunity at best and a fatal mistake at worst.

To CSO representatives, this second, more negative view of the police vetting exercise was more prevalent (for quotes, see Part 6). Two important factors appear to have been relevant in creating this perception: (a) the *lens* through which CSO representatives made sense of the NPSC’s behavior, and (b) the way in which the NPSC communicated with civil society—that is, their responsiveness to CSO concerns and the extent to which they accounted for controversial decisions they made. In this section, we shed light on the interpretive lens. Thereafter, in Part 6, we elaborate on the issue of communication and the NPSC’s attitude.

Box 4. Complaints and Reasons for Dismissal

The research team requested more detailed information from the NPSC about complaints and the basis for dismissals, but that information was not provided. Hence, it is unclear (a) how many complaints were received, (b) to what extent complaints played a role in the decision-making process, and (c) to what extent certain vetting criteria—for example, an officer’s human rights record or integrity and financial probity—were *overall* more or less relevant in vetting decisions. Some speculation on these matters is possible. As for complaints, it seems that relatively few relevant complaints were received. In the early stages of the vetting process, complaints were filed, but they were not necessarily connected to the officers who were being vetted. Even if the complaints were relevant, many appeared to be too vague to merit use during the vetting process, according to a former NPSC commissioner.* Analysis of transcripts from several dozen hearings (in the Hansard reports, or hearing transcripts), and the fact that 71% of all removed officers were from the traffic police (318 out of 445 total dismissals), jointly suggest that the question of financial impropriety dominated in hearings and was the primary reason for dismissals.

* Interview, Nairobi, April 25, 2019.

Optimism

In the initial stages of the process, CSO representatives appeared to be optimistic about the vetting exercise. As one CSO representative remembered, “When it came to 2011 and we had the new law, one of the requirements was the vetting of the police. We were so happy with that provision. We were so excited about that provision.”⁶⁵ It was not just the existence of the provision that caused excitement. CSO representatives also believed that police vetting could—and would—be carried out in a fair and serious manner. There were at least two reasons for this belief.

65 Interview, Nairobi, April 25, 2019.

First, some representatives thought, at the time, that the political elite would *not* block fair execution of the police vetting process because they were too preoccupied by investigations that had been initiated by the prosecutor of the International Criminal Court—investigations into the role of the political elite in the post-election violence.⁶⁶ Some CSO representatives observed that there was thus a window of opportunity in which effective police vetting could take place, free from political interference.⁶⁷

A second reason for optimism stemmed from the success of the judiciary vetting. Shortly before the police vetting process began, a similar activity had been launched for the judiciary. It turned out to be quite effective: all of the judges who were scheduled for vetting were indeed vetted. A number of judges were dismissed, and the process appeared to have been fair. One of the representatives remarked of the judiciary vetting, “We thought that it had gone really well...so we felt that if we did the same and the NPSC also took that approach, then at least the country would be on a better trajectory.”⁶⁸

Suspicion

Though the CSOs expressed enthusiasm about the police vetting, it was counterbalanced by suspicion generated by Kenya’s history of police violence and corruption. In its exit report, the NPSC described the sentiment of civil society as involving “cautious optimism.” It explained,

The vetting of police officers started in December 2013 amid a mood of great expectation and cautious optimism. Many factors contributed to this atmosphere. First, a long history of corruption, brutality and impunity had led many Kenyans to view the police as untouchable. That the police could therefore be called to account for their wealth and conduct in an open and transparent process was, to most people, inconceivable.⁶⁹

Some CSO representatives were also skeptical because of the political tensions that existed at the time. In the aftermath of the electoral violence, a government of national unity was formed in which the two rival political camps were both represented. This solution prevented the exclusion of some political and ethnic groups, but it also contributed to CSO representatives’ belief that the violent struggle of 2007–2008 continued in politics. One of the CSO representatives suggested that the political conflict affected the very appointment of the commissioners. He observed,

Within the NPSC, even the constitution of the NPSC itself was not above board.... [T]he appointment of those commissioners, you cannot argue that it was transparent and we ended up getting the best candidates to populate the commission. Because at that point, the recruitment panel comprised the two [political rivals], each one of them trying to get their person in, and these people getting into the commission were going there with a script, with an agenda, and their agenda might not have been a common agenda.⁷⁰

66 It was only the very top echelon of the political elite that was being investigated. But, that top level is typically important when it comes to blocking or facilitating vetting processes. In this case, one could even imagine that it was in the interest of the president and the vice president to facilitate the process to show a commitment to the protection of human rights.

67 Interview, Nairobi, Aug. 7, 2019.

68 Interview, Nairobi, April 23, 2019.

69 NPSC exit report, 107.

70 Interview, Nairobi, April 23, 2019.

While we have not seen proof supporting the observation that appointments were manipulated in this sense, CSO representatives were suspicious and believed that there was or could have been political interference. That conviction is important as it influenced how CSOs interpreted actions and decisions in the police vetting exercise. Overall, the ways in which civil society perceived the vetting process and the lens through which CSO representatives interpreted the NPSC's decisions and behavior were thus a mix of optimism and skepticism.

Responsiveness, Sensitivity, Transparency, and Accountability

Using the lens described above, CSO representatives started to evaluate the work of the NPSC and its commissioners. Some of the commissioners were proud to be appointed, were excited about the job, and appeared to be committed to the vetting exercise, at least in the early stages.⁷¹ But there were also divides and clashes inside the NPSC, especially between the chair of the NPSC and the IGs—clashes related to promotions, deployments, and composition of vetting panels.⁷² (See also Box 3.) These disagreements undoubtedly affected the vetting process.

To the outside world, there was no unequivocal evidence of political manipulation or white-washing. And yet, CSO representatives were greatly disappointed in the process. In part, they objected to the *outcomes* of the process. As one representative said,

The process did not realize the intended goals either because at some point it was hijacked or for other reasons.... I know there are those [police officers] who were considered unfit to serve, and I know some of them went to court, some were going to appeal...but there are many, many more officers who were left in the service who ought to have been removed.⁷³

CSOs also expressed dissatisfaction with the *behavior* and *attitude* of the NPSC. Some of this feeling could be accounted for by the interpretive lens. But there was something else that arose in interviews and that appears to have been equally important: there was an apparent lack of responsiveness by the NPSC to CSO concerns, a lack of sensitivity, limited transparency, and an observed failure of the NPSC to effectively account for its controversial decisions and actions. In many cases, CSO representatives identified shortcomings in the vetting process while it was ongoing. They informed the NPSC of those defects but either did not see follow-up from the NPSC or did not receive a response from the commission and its secretariat at all. Furthermore, CSO representatives described how, at crucial moments in the vetting process, when controversial decisions were made, the NPSC did not make serious efforts to explain its reasoning or rationale.

71 Interviews, Nairobi, April 22, 2019, and Nairobi, April 25, 2019.

72 Samuel Born Maina, "Kimaiyo and Kavuludi Row over Panel Threatens to Derail Vetting of Top Officers," *Daily Nation*, Dec. 5, 2013, 8–9; Angira Zadock, "Kavuludi Opposes Police Transfers," *Daily Nation*, March 21, 2014, 5.

73 Interview, Nairobi, July 10, 2019.

Responsiveness to CSO Concerns

A lack of responsiveness could be identified in several areas. Information collection was a crucial one. This was an area in which CSOs could make a very tangible contribution to the vetting process. Consequently, they invested time and resources in awareness campaigns and the collection of information.⁷⁴

The NPSC, in contrast, mostly limited its outreach efforts to announcing names in the two national newspapers and on its website. The newspapers did not reach many of the citizens who were affected by police brutality. CSO representatives brought this fact to the attention of the NPSC, but the commission did not alter its strategy. In fact, over time, when the NPSC started vetting traffic police officers, it even stopped publishing the names of officers who were going to be vetted in the newspapers. Citizens could find those names only on the NPSC website.

Another challenge that concerned the CSO representatives related to the identification of officers who were up for vetting. The CSO representatives discovered that the names of police officers, as they were published in the newspapers, were hardly ever known to the victims of police abuse. Victims only knew the nicknames of officers: “Here in mtaani [village] they [police officers] go by their nick name.”⁷⁵ The discrepancy could perhaps have been addressed by the NPSC, and CSO representatives asked for support. But the NPSC did not seem to be responsive.

We began asking the commission—demanding more from them, saying, we have concrete information on “buffalo.” Are you able to go to that particular police station, talk to the community, and they will tell you who this person was...buffalo or rhino or whatever it is. But the commission made no effort at all.⁷⁶

It was also unclear to CSOs how the NPSC treated complaints that *were* brought to them. On paper, there was a procedure for processing complaints.⁷⁷ Yet it did not seem to be followed and did not include a feedback mechanism. One CSO representative said,

There was *no* feedback mechanism. We asked for it; we begged. We almost went on our knees but we could not get it... We also began getting demands from victims saying, hey, you took information to these guys. What are they saying? What do we tell the citizens? We found ourselves in the middle of these two forces, almost to a point of beginning to feel guilty that we had made this promise to the victims and their families.⁷⁸

Sensitivity

CSO representatives also experienced an occasional lack of sensitivity. To the CSOs, complaints were delicate, but they were not treated as such by the NPSC.

74 The PRWG, for instance, sponsored an advertisement in the local dailies detailing the information that would be useful in the vetting process (see, e.g., *Daily Nation*, Dec. 5, 2013, 34).

75 Interview, Nairobi, March 1, 2019; also interview, Nairobi, March 8, 2019. Some CSO representatives argued that this was the *primary* reason for noncomplaints: “The main reason why people did not file complaints is, not knowing the service numbers of the police who abused them” (interview, Nairobi, March 1, 2019; also interview, Nairobi, March 8, 2019).

76 Interview, Nairobi, April 25, 2019.

77 NPSC exit report, 97–98.

78 Interview, Nairobi, April 25, 2019.

I remember going to see the chairman of the commission in his office, demanding to know who was handling the information and to get a guarantee that we were safe with the information we gave. We were submitting in confidentiality. What happened in that instance was the chairperson then called two people into the room and he said, “This is the person who will be the liaison person from now on, the person who has been handling the files.” What happens?... [T]he person who was produced before me as the best bet was a person seconded from the National Intelligence Service. You know the person. I said, “No, I think I am no longer interested.” She looked quite professional, by the way. I have no grudge against her, but the fact is that this institution has been one of the most repressive, and that is the person they are giving information.⁷⁹

In this case and many others, the NPSC did not show CSOs how it adapted its practice of dealing with information, if it adapted at all—making it not just an issue of sensitivity but also one of responsiveness. To many CSO representatives, the NPSC’s reactions gave the impression that it was not really committed to the vetting exercise, or that its commitment had declined over time.⁸⁰

Transparency and Accountability

In addition to the lack of responsiveness and sensitivity, CSO representatives pointed out that the NPSC was not very transparent. One of the representatives observed, “They didn’t give us accountability. They didn’t even give us information on the last vetting of officers, for instance ‘that we have removed 5,000 officers of a certain rank,’ nothing.”⁸¹ As the process continued, it also became harder for CSO representatives to attend hearings.

The initial attempt was having open hearings; I think that position was reviewed. The hearings were no longer open in the tail end and it was more like in camera proceedings and I tend to think that in itself also undermined the process. I think if they really wanted genuine public support they ought to have made those hearings extremely public. That would have strengthened the process, irrespective of the outcome, whether there were officers who would be recommended for removal or not.⁸²

The lack of transparency and accountability was especially manifest in the case of Kingori Mwangi—a pivotal case that many CSO representatives referred to as a turning point. Kingori Mwangi was a high-ranking police officer suspected of committing gross human rights violations. After his hearings, which were also broadcast on TV, the NPSC originally decided that he was not suited for office. But then, without providing any clear reasons, the chair of the commission announced in the media that the decision had been reversed. A co-opted member charged that the decision was the outcome of political pressures—it did not seem to be a matter of evidence—and noted that he and his colleagues were initially not even informed of the reasons for the reversal. According to the member,

We noticed the political establishment realized we were very serious...the chairman started getting calls and we kept telling the chairman, don’t succumb to those calls.... But one day we were seated in our homes, watching TV, and we saw our

79 Interview, Nairobi, April 25, 2019.

80 Interview, Nairobi, April 12, 2019.

81 Interview, Nairobi, March 1, 2019.

82 Interview, Nairobi, April 23, 2019.

chairman say [Kingori Mwangi] will be vetted again. [But] that is not what we decided.... [S]o I picked up the phone and I called the chairman.... He was trying to explain.... Now what annoyed most of us was that even before explaining to us what had happened he went to the media and announced that this officer would be brought back without talking to us. So, we felt slighted, especially me.⁸³

The CSOs were crushed by the revised decision, as one of the representatives recalled.

The day when Kingori Mwangi passed the vetting, I think that was the day when the vetting ended because he was soiled with a lot of allegations and was not expected to go through this without being netted. That was the end of the vetting process. Anybody else who until then was worried now thought that if Kingori Mwangi had been cleared, then anybody else would.⁸⁴

Another CSO representative said, “He was initially vetted and a recommendation was made that he was unsuitable to continue serving, and that decision was recalled...[and] that was the tipping point.... [I]t was palpable that public interest had diminished.”⁸⁵ The problem was not just the final decision itself. It was also the lack of transparency surrounding the reversal of the initial decision.

Substantive Focus

The CSOs were also disturbed by the NPSC’s focus on corruption. The CSOs were eager to address police violence and abuse through the vetting process. Instead, early in the process, the NPSC started to concentrate on corruption. Corruption was indeed a serious problem in Kenya. Furthermore, evidence for corruption was easier to collect, such as through bank statements and M-Pesa account statements. However, the emphasis on corruption and the subsequent neglect of human rights violations frustrated the CSOs.

I tend to think at one point it got to where the public was no longer interested, and that was the same time that the vetting team started overconcentrating on bribery allegations—the bribery taking place on our roads and the flow of money on M-Pesa. So now the reporting became about how rich these ordinary policemen were and what other businesses they did.⁸⁶

Another CSO representative noted,

They did not allow real victims to have an opportunity to address the panel or the commission with very serious human rights issues. Overall, that [vetting] process did not appear to be taking human rights issues or human rights elements as serious parameters for determining whether someone was fit or not fit to serve in the service.⁸⁷

Already frustrated, CSO representatives grew increasingly skeptical when they realized that even the NPSC’s dealings with corruption were imperfect. It turned out that lower-ranking police officers were being heavily punished, while the higher-ranking ones, who were equally if not more guilty of corruption, were kept out of the firing line.

83 Interview, Nairobi, June 11, 2019.

84 Interview, Nairobi, March 7, 2019.

85 Interview, Nairobi, April 23, 2019.

86 Ibid.; also interview, Nairobi, March 7, 2019.

87 Interview, July 10, 2019.

When they got [to the lower levels], it emerged that the fellows being vetted had moved millions of shillings but were actually moving those millions of shillings upwards to officers who had already been vetted and [whom were] found fit to continue serving.⁸⁸

88 Interview, Nairobi, April 23, 2019.

Underneath the NPSC Demeanor

The behavior of the NPSC, as discussed above, may have been the outcome of its unwillingness or inability to engage in genuine vetting, or some combination thereof. An assessment of the commissioners' demeanors may reveal some answers.

Commitment

In the early days of the police vetting process, excitement seemed to prevail among NPSC commissioners. Some recalled a sense of pride and responsibility: "You feel the weight of that appointment."⁸⁹ The following excerpt illustrates the mood that surrounded the attempt to *vet* all Kenyan police officers in 18 months.

Commissioner: We thought it was doable. (laughter)

Interviewer: Why did you think it was doable?

Commissioner: You know, you are full of energy and ... you must start with the sense that it's achievable.... it's possible. And that is the Kenyan spirit, by the way. No Kenyan will tell you that this can't happen; it will happen.

Interviewer: Yes.

Commissioner: We have that internal spirit as a people that anything is achievable, and we were of the view that it was achievable.⁹⁰

Outside advisors warned the NPSC about the infeasibility of completing the project in such a short time frame. The commissioners would not listen: "He [the advisor] was telling us, no, no, no, and we were saying, yes, yes, yes, it is possible."⁹¹

Outside Pressures

It appears that there was support for the NPSC and the vetting process among the lower ranks of the police. Many had been forced to engage in corruption and siphon the money up the

89 Interview, Nairobi, April 25, 2019.

90 Ibid.

91 Ibid.

chain of command. One inside observer related, “The commission had built trust among the lower ranks [of the police]. Most of this corruption and extortion—the money goes up. It does not go down or horizontally.”⁹² The higher ranks thus had reason to fear the NPSC. The exit report of the inaugural commission explains, “There was considerable disquiet in certain quarters [of the police] about the police vetting process. This found expression in diverse forms, the most notable being a bizarre incident where a box containing a human head was dumped at the Commission’s offices with a threatening note.”⁹³ It was unclear who delivered the head. But most Kenyans believed that the police were behind it.

Journalists also reported tensions between the NPSC and segments of the police. In one of those accounts, the chair of the NPSC indicated “that members of the commission are under constant intimidation and threats from various people opposed to the ongoing police reforms.” Trying to alleviate tensions, the chair continued, “Let officers know this is a procedural exercise and it is not meant to punish or victimize anyone.”⁹⁴

Resources

In addition to the pressures that the NPSC experienced from outside, the commission also indicated that funding was limited. In its exit report, the inaugural commission, for instance, observed, “The main challenge to achieving a higher level of visibility has been funding.”⁹⁵ Furthermore, the report indicated that the commission lacked “the resources to hire venues big enough to accommodate members of the public.”⁹⁶ One commissioner identified funding as a critical factor in what the commission was able to accomplish, as described in the following excerpt:

Past commissioner: [I]f the government was serious and the money was there, we would have finished [vetting] those people. We would have finished vetting everybody.

Interviewer: You mean the entire service, all 80,000—

Past commissioner: Yes, we would have finished.⁹⁷

The Civil Society Organizations

Outside pressures on the commission appear to have been real. Additionally, resources were probably insufficient, affecting the behavior of the NPSC and even its overall commitment to the vetting process. But to understand the NPSC’s lack of responsiveness, transparency, sensitivity, and accountability, it is also necessary to look at the behavior of the CSOs and their interactions with the commission.

According to one of the commissioners, the CSOs pushed too much and had unrealistic expectations: They wanted a “blood bath,” he said. “If they had their way, there would have been an image of change but there would have been no change.”⁹⁸ Such a situation would “destabilize

92 Ibid.

93 NPSC exit report, 107–108.

94 *Standard Media*, May 29, 2013.

95 NPSC exit report, 78.

96 Ibid., 79.

97 Interview, Nairobi, April 23, 2019.

98 Interview, Nairobi, April 25, 2019.

the service.”⁹⁹ Instead, what was needed was cultural change, the commissioner believed: “It’s a matter of time because dealing with cultural change, system change, you are dealing with change of orientation.”¹⁰⁰ In trying to understand these considerations, it may be helpful to recall that the NPSC was responsible for human resources within the police in general; vetting was only one part of its mandate.

For its part, the NPSC also appeared to be somewhat disillusioned with the CSOs’ contribution to strengthening the vetting process. The NPSC expected to receive plentiful and useful evidence from the CSOs. Instead, as one of the commissioners observed,

It was so incoherent. Again, not to blame these good people who were doing very good work; at the time that they were reporting atrocities by the police officers, [they would say] it’s about a platoon, it’s about these police officers who descended on a demonstration with very fuzzy ideas as to where the command center was. They don’t tell the names of—you know vetting was specific to an individual, not to a group of officers.¹⁰¹

The lack of evidence and information resulted, to some extent, from the NPSC’s poor management of efforts to collect information. Nevertheless, the NPSC expected to receive more information, and of a better quality, and was disappointed. That disappointment may have contributed to its attitude and behavior toward the CSOs.

Lavishness

Overall, it seems that some of the commissioners were committed to the vetting process. Yet they experienced outside pressures and incomplete support from the government, and they believed that the CSOs were not always very constructive, all of which led to the behavioral patterns discussed above. But it is also important to note that the NPSC appeared to be, at times, more committed to itself than it was to the wider public. A former commissioner from the IPOA recalled, “National Police Service commissioners, very interesting people, they entered office and...they bought 13-million [Land Rover] Discoveries, a car worth 13 million [KSH].”¹⁰² The offices of the NPSC were located in a high-end area in Nairobi, where it was difficult for the general public to gain access. The IPOA commissioner further argued,

Vetting became a way of milking the taxpayer because if you give somebody [a commissioner] 10,000 a day and they stay in their position for 10 days, that’s 100,000, and that does not include the salary, or the motor vehicle because the motor vehicle is fueled by the taxpayer, it’s bought by the taxpayers, and there is a driver.¹⁰³

99 Ibid.

100 Ibid.

101 Interview, Nairobi, April 25, 2019.

102 Interview, Nairobi, June 12, 2019.

103 Ibid.

Discussion and Conclusion

This report has offered an account of the police vetting process in Kenya, focusing specifically on the causes underlying the disillusionment of the civil society organizations. The CSOs did not observe a commission that was simply engaged in a whitewashing exercise. Instead, it encountered a commission that was at times, at least initially, quite committed to the vetting process. It was also a commission that was occasionally stubborn and preoccupied by status considerations. And, crucially, it was a commission that did not always take the CSOs seriously, culminating in a lack of responsiveness, sensitivity, and transparency on the commission's part. That behavior seems to have also resulted from pressures from outside and the CSOs themselves. However, regardless of the source of the NPSC's attitude toward the CSOs, it seriously hurt the overall assessment of the vetting exercise by the CSOs. They became disillusioned.

That disillusionment is important. It may reflect the experiences of civil society in general—in this case, of Kenyan citizens. It may also influence the perceptions of those citizens. The ways in which CSOs talk about the vetting exercise can affect beliefs about the exercise within civil society, particularly certain segments of society. CSOs' appraisal of the vetting process thus warrants attention. In studying that appraisal, this report deliberately distinguishes between *outcome* and *behavior*, where *outcome* describes the numbers and proportions of officers who were subjected to vetting and removed from their positions, while *behavior* references the actions, decisions, and attitudes of the vetting body, all of which affect the outcome.

The evaluation of an outcome—for example, the number of officers who are dismissed—is always subjective and influenced by an evaluation of the behavior that led to it, or the way in which the outcome came about. Outside observers will assess a given outcome very differently, for example, if they perceive a vetting body as being committed to the vetting exercise, compared to it not being serious about the process. More attention should therefore be paid to the appraisal of behavior. We hope that this report stimulates research on the issue.

A final note on terminology: we call for attention to interpretive lenses. We do not consider these to be mere opinions. Instead, we describe them as the pair of glasses through which people sense or observe behavior—and perhaps even filter or look for certain behavior. That set of glasses is different for every person. But in a context of transitional justice, which always follows a socially disturbing episode, those glasses may be very tinted. That makes vetting and transitional justice processes, in terms of effects like trust, probably even harder than they already are. That is unfortunate but also a fact, and knowing that fact allows for action. Acknowledging the obstacles related to perceptions can prompt valuable steps: constantly informing the public

about various processes, involving them in the processes, acting transparently, and accounting for all decisions. These actions may be equally as valuable for regaining trust in public institutions as the outcome of a transitional justice process itself.

References

- Benard Mburu Mbaru v. NPSC, ELRC Petition no. 91 of 2016.
- Born Maina, Samuel. “Kimaiyo and Kavuludi Row over Panel Threatens to Derail Vetting of Top Officers.” *Daily Nation*, December 5, 2013.
- Commission of Inquiry into the Post Election Violence Report, 2008.
- Constitution of Kenya, 2010.
- Independent Police Oversight Authority Act (IPOA Act), 2011.
- Jones, Peris S., Wangui Kimari, and Kavita Ramakrishnana. “Only the People Can Defend This Struggle: The Politics of the Everyday, Extrajudicial Executions and Civil Society in Mathare, Kenya,” *Review of African Political Economy* 44, no. 154 (2017): 559–576.
- Kenya National Commission on Human Rights and Centre for Human Rights and Peace (The University of Nairobi). “Audit of the Status of Police Reforms in Kenya,” 2015.
- Margaret Nyaruai Theuri v. NPSC, ELRC JR Application no. 1 of 2016.
- National Police Service Act (NPS Act), 2011.
- National Police Service Commission. “NPSC Inaugural Commissioners’ Exit Report,” 2018.
- National Police Service Commission Act (NPSC Act), 2011.
- National Police Service Commission Annual Report, 2012–2013.
- Ndungu, Irene, Institute for Security Studies. “Police Reforms in Kenya Crucial to Restore Public Confidence,” 2011.
- Osse, Anneke. “Police Reform in Kenya: A Process of ‘Meddling Through,’” *Policing and Society* 26, no. 8 (2016): 907–924.
- Otieno, Brian. “Rights Activists Want the Vetting of Police Extended,” *The Star*, December 21, 2013.
- Petition no. 6 of 2014 consolidated with Judicial Review Miscellaneous Application nos. 11 and 12 of 2014, Immanuel Masinde Okutoyi & Others v. NPSC.
- Report on the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya, 1999.
- Ronald Hope Sr., Kempe. “Kenya’s Corruption Problem: Causes and Consequences,” *Commonwealth & Comparative Politics* 52, no. 4 (2014): 493–512.
- Ronald Hope Sr., Kempe. “The Police Corruption ‘Crime Problem’ in Kenya,” *Security Journal* 32 (2019): 85–101.
- Simbiri-Jaoko, Florence, Saferworld. “Participation and Inclusion in Police Reforms in Kenya: Opportunities and Challenges since 2008,” 2016.

The Truth, Justice and Reconciliation Commission Kenya. "Report of the Truth, Justice and Reconciliation Commission, Volume 1," 2013.

Wahl, Rachel. "Justice, Context, and Violence: Law Enforcement Officers on Why They Torture," *Law & Society Review* 48, no. 4 (2014): 807–836.

Zadock, Angira. "Kavuludi Opposes Police Transfers," *Daily Nation*, March 21, 2014.

ICTJ

Justice
Truth
Dignity

 **Van Vollenhoven Institute**
for Law, Governance & Society

ICTJ New York
50 Broadway, 23rd Floor
New York, NY 10004
Tel +1 917 637 3800
Fax +1 917 637 3900
www.ictj.org

Van Vollenhoven Institute
Rapenburg 70
2311 EZ Leiden
The Netherlands
Tel +31 71 527 27 27
www.universiteitleiden.nl



Ministry of Foreign Affairs

