

Helpdesk Research Report: Vetting public employees

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Query: Please provide examples of current policies, good practices, and lessons learned for vetting public employees in various countries. What restrictions should there be on holding public sector positions for people who have a criminal record? How can sensitive public sector posts be defined that require a higher level of vetting? Are there examples of vetting policies that could be shared?

Enquirer: DFID

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1. Overview

Vetting refers to “processes for assessing an individual’s integrity as a means of determining his or her suitability for public employment.”¹ Vetting may be applied to people who already hold public service positions, typically in post-conflict, post-authoritarian, or otherwise transitional contexts with the objective of removing individuals responsible for war crimes, human rights abuses, corruption, or other activities that render them unsuitable for office. *Lustration* is a related term applied in Eastern Europe and the former Soviet Union, referring to removing public officials with links to the former Communist-era security services. Both vetting and lustration involve examination of individuals’ personal histories, while the more indiscriminate approach of *purging* refers to removing people from office on more general grounds of membership of a group without considering personal culpability. Vetting also refers to screening job applicants before they take up a post. This occurs most often where post-holders have regular access to confidential information or national security is involved, and where post-holders would be working with children or vulnerable groups.

The rigorousness of the vetting process varies depending on the degree of risk or sensitivity involved in a position. Basic vetting usually involves checking official records (such as criminal or intelligence service records). Positions with greater responsibility and risk often require credit and financial checks, interviews with the person being vetted, interviews with people familiar with the person, and background checks on people living in the same household.

Criminal records are not normally an absolute bar to employment in the public sector, except in certain sensitive positions. Applicants with criminal records are generally considered

¹ Duthie, Roger, 2007, “Introduction”, in Mayer-Rieckh, A. and de Greiff, P., eds., 2007, *Justice as Prevention: Vetting Public Employees in Transitional Societies*, International Centre for Transitional Justice, Social Science Research Council, New York, USA

eligible for positions if their offenses are unrelated to the post in question, if they occurred a long time ago, or if they otherwise appear to present a low risk of re-offending in the context of the job.

2. Vetting the existing public service

Widespread vetting of current public employees is usually undertaken only as part of a programme of institutional reform and as part of a major political transformation, such as a democratic transition following authoritarian rule, or the consolidation of peace after civil war.

Mayer-Rieckh, A. and de Greiff, P., eds., 2007, 'Justice as Prevention: Vetting Public Employees in Transitional Societies', International Centre for Transitional Justice, Social Science Research Council, New York, USA

http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B57efec93-284a-de11-afac-001cc477ec70%7D.pdf

This book is frequently cited as a key resource on the issue of vetting public employees. It focuses on countries undergoing political transitions and includes nine country case studies. In the introduction to the book, Roger Duthie argues that vetting processes must be designed to suit the context in which they will be used, considering nine basic questions:

- Targets: What are the institutions and positions to be vetted?
- Criteria: What misconduct is being screened for?
- Sanctions: What happens to positively vetted individuals?
- Design: What are the type, structure, and procedures of the vetting process?
- Scope: How many people are screened? How many people are sanctioned?
- Timing and Duration: When does vetting occur and how long does it last?
- Rationale: How is vetting justified? What are the reasons for vetting?
- Coherence: How does the vetting relate to other measures of institutional reform? How does it relate to other transitional justice measures?

The country case studies highlight different approaches to vetting in countries undergoing major political transitions: Argentina and Greece after military dictatorship; El Salvador and Bosnia and Herzegovina after civil war; South Africa after apartheid; and Poland, Hungary, the Czech Republic, and East Germany after communism. Each country case study provides a great deal of detail about the processes used.

The thematic chapters address:

- Gathering and managing information in vetting processes, noting major differences between post-conflict and post-authoritarian contexts, and the challenges of managing and sharing necessary information
- The importance (and challenges) of following due process and not violating the rights of people being vetted
- The integration of vetting with other institutional reforms as one part of a comprehensive package
- The justification and goals of vetting.

UNDP, 2006, 'Vetting Public Employees in Post-conflict Settings: Operational Guidelines', United Nations Development Programme, Bureau for Crisis Prevention and Recovery <http://www.ictj.org/static/Vetting/UNDPVettingGuidelines.pdf>

These guidelines argue that vetting public employees is an important post-conflict institutional reform measure. Establishing a vetting process requires a government with sufficient authority and political will, a clear definition of the positions to be vetted and the individuals who will be subject to the process, a clear legal mandate, sufficient resources, and appropriate timing in coordination with other transitional processes. It is important to guard against political misuse, avoid creating a "governance gap" by removing competence, and avoid destabilisation that may result if large numbers of public employees are removed from posts and not properly re-integrated into society.

Some important choices that must be made in the vetting process are:

- Vet all positions in an organisation or only some of them?
- Review and remove current employees, or require everyone to reapply for their positions and be reappointed in a general competition?
- Vet currently-serving employees, or only new appointments, transfers, or promotions?
- Establish an ad hoc mechanism for the vetting process or use established processes where they are suitable?

A methodology for designing a vetting process is proposed, including the following steps:

- Inform and consult the public
- Establish vetting priorities and select vetting type
- Define vetting criteria and outcomes
- Develop the mechanism
- Respect international procedural standards

Vetting should be coordinated with other institutional reform measures. Processes must suit the historical, political, and institutional contexts in which they are used, and the rights of individuals subject to vetting must be respected.

Fithen, C., 2009, 'The Legacy of Four Vetting Programs: An Empirical Review', International Center for Transitional Justice, New York <http://www.ictj.org/images/content/1/2/1276.pdf>

This document reviews vetting and lustration programmes in four countries in the 1990s and early 2000s: vetting of police, judicial, and prosecutorial personnel in Liberia and in Bosnia and Herzegovina; and lustration of public officials in Hungary and the Czech Republic. The authors suggest that well-designed and well-implemented vetting can reinforce other institutional reform efforts and override political obstacles. Although emphasising that the transition from authoritarian to democratic rule and from conflict to peace are very different contexts requiring different strategies, they make several general recommendations for developing good vetting procedures:

- Consultation and the sharing of data between international and national partners are important success factors.
- Domestic authorities should be encouraged to adopt aspects of the vetting process by amending existing legislation as part of a long-term recruitment strategy.

- Supporting partners must commit to sufficient funding for the operational training and equipping of personnel and support a professional standards body to continually monitor progress afterwards.
- Planning for the vetting process should involve a thorough consultative process including all relevant national and international partners.
- Good quality records must be maintained to support the vetting decisions
- Vetting programmes must leave behind a functional structure to ensure that professional standards are maintained, including the retention of sufficient numbers of staff and adequate training and equipment for them to continue to perform their necessary functions.
- To improve public confidence, a public opinion survey should be held five years after the termination of the vetting programme to determine how much the public believes the institutions to have improved.
- Police vetting programmes must contain a credible and independent process of appeal, as well as incorporate proper mechanisms for the protection of informers to encourage broad public participation.

Office of the United Nations High Commissioner for Human Rights (OHCHR), 2006, 'Rule-of-Law Tools for Post-Conflict States: Vetting - An Operational Framework', United Nations, New York and Geneva

<http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf>

Reforming public institutions is a core task in countries in transition from authoritarianism to democracy or conflict to peace. This United Nations High Commissioner for Human Rights (OHCHR) publication sets out an operational framework for vetting and institutional reform. Increasingly, vetting public employees, particularly in the security and justice sectors, is recognised as part of an effective and legitimate transitional justice strategy. Personnel reform programmes require a formal mandate, which may be included in a formal agreement marking the end of a conflict or authoritarian regime. The process of personnel reform includes:

- The establishment of a special independent commission to administer the reform.
- The choice of the type of personnel reform to be undertaken (review or reappointment), depending on the extent of reform needed. In a review process, serving employees are screened to determine their suitability for continued service. In a reappointment process, an institution is first disbanded, all employees have to reapply to a new institution and there is a general competition for all posts.
- The three core phases of personnel reform: registration of the public employees to be vetted, screening to assess if they meet the criteria for continued employment and the certification of those who meet the employment criteria.
- The consideration of a phased approach: a personnel reform process could be phased to take into account the complex political and capacity-related challenges of a transition.

In general, the recommended approach is to assess the situation, define the objectives, and design the process, but vetting strategies need to adapt to address the unique historical, social and political challenges of each society. Recommendations include:

- Personnel reform processes under domestic leadership will generally be preferable to internationalised processes, but where international leverage is needed, every effort should be made to involve domestic actors from the beginning and as broadly as possible.

- Institutional reform should be accompanied by other efforts to deal with a legacy of human rights abuse, including prosecuting those responsible for serious crimes, uncovering the truth and providing reparations to victims.
- Different types of public institutions raise specific concerns and vetting strategies need to respond to the particular requirements of the institution to be vetted.
- Personnel reform programmes should prioritise the military, law enforcement, intelligence services, the judiciary and other institutions that underpin the rule of law.
- Transparency about the reform efforts and consultation about its objectives will help in building public confidence and in (re-)legitimising public institutions.

3. Vetting applicants for public sector positions

Schreier, Fred, 2007, 'Introduction to Vetting Procedures', presentation at the Roundtable on the Implementation of Information Classification System and Vetting Procedures in Kosovo, March

http://se2.dcaf.ch/serviceengine/Files/DCAF/29745/ieventattachment_file/593E4289-2084-4FD2-BB74-5E865B39C81C/en/ev_ljubljana_070325_SchreierVet.pdf

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) organised a workshop on information classification and vetting procedures in Kosovo in March 2007. These slides from a presentation by Fred Schreier provide an overview of the vetting process. Schreier outlines the purpose and scope of vetting, and outlines a model vetting process which includes among other elements:

- Informed consent
- Impartial and consistent treatment
- Depth of investigation appropriate to need
- An interview that is “searching and intrusive, but not an interrogation”
- Opportunity for the person being vetted to give feedback on the process
- Verifying identity and searching criminal, national security, medical, and financial records
- Checking references and interviewing third parties

Security problems are usually due to a combination of factors, rather than just one, so the vetting process should develop a broad understanding of the subject. Discovering misrepresentations or omissions of information by people being vetted is extremely important. A criminal record alone is not necessarily reason to refuse clearance; “each case has to be judged on its own merits”. An adequate legal framework needs to be in place, covering security, privacy, data protection, and human rights.

For other presentations made at the workshop, see:

<http://www.dcaf.ch/news/diarydetailskms.cfm?lng=en&id=29512>

Defence Vetting Agency, 2006, UK Ministry of Defence

<http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/SecurityandIntelligencePublications/DVA/DefenceVettingAgencyPublications.htm>

The Defence Vetting Agency (DVA) carries out vetting of UK military and Ministry of Defence civil service personnel, defence contractors, and other public-sector agencies. The basic “security check” involves checking criminal records, credit references, and Security Service records, and may include medical records. People requiring access to facilities at risk of terrorist attack, or working in close proximity to public figures at risk of attack, undergo a more

detailed “counter terrorist check”. Positions requiring access to Top Secret and other sensitive materials require the most thorough level of screening, called “developed vetting”, which includes a two to three hour interview with the subject as well as interviews with referees. The details of how vetting is carried out are not public information, but copies of questionnaires and other information which demonstrate the kind of information collected during the vetting process are available at the web site address noted above. These include, among others:

- Information leaflets for people being vetted and for referees to explain the process
- Security Check (SC) / Counter Terrorist Check (CTC) questionnaire
- Developed Vetting (DV) questionnaire
- Financial questionnaire
- Security Appraisal Form, completed annually by those holding DV clearance

Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2006, ‘Vetting and the Security Sector’

<http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25449&nav1=4>

This “backgrounder” provides a concise overview of the vetting process. Vetting is necessary to exclude from public office individuals who hold anti-constitutional views, are affiliated with terrorist groups, organized crime or political pressure groups, or are vulnerable to pressure, extortion or corruption. Candidates for the following positions are nearly always vetted:

- Staff serving key members of the executive
- Members of the security forces (intelligence and security agencies, the military, national police and gendarmerie)
- Staff of parliamentarians mandated with oversight of the national security apparatus
- Staff with physical access to sensitive sites
- Employees of contractors or think tanks having access to classified information or providing services to the government related to national security.

Some countries also require the vetting of elected officials with access to sensitive information. In most countries, a specialised agency handles the bulk of national vetting tasks, but some agencies are empowered to conduct their own vetting activities and some vetting activities can be outsourced to private sector agencies. Vetting usually involves at least checking criminal and national security records, medical records, and financial records of the subject and their family. Interviews with the subject and references are normally also included. Other techniques that may be used include medical and psychological exams, polygraph interviews and fingerprinting. There are usually several different levels of sensitivity, with the vetting process being stricter (and more expensive) for positions with the highest risk.

Department of the Prime Minister and Cabinet (New Zealand), 2002, ‘Security in the Government Sector’ <http://www.security.govt.nz/sigs/sigs.pdf>

Chapter 5 of this manual, “Personnel Security”, outlines New Zealand Government policies on recruitment and vetting. A “Basic Check” is required for people with access to sensitive sites (e.g. defence establishments, police stations, and Parliament), and involves a criminal record check and screening against New Zealand Security Intelligence Service (NZSIS) records. For access to classified materials, more rigorous checks are required:

- For lower levels of clearance, candidates and their immediate family are checked against police criminal history and criminal intelligence records, and NZSIS records

- For higher levels of clearance, candidates must provide additional personal information and nominate referees to complete a questionnaire or be personally interviewed
- For the highest levels of clearance, credit checks are done
- Sometimes the NZSIS will interview additional non-nominated referees or the candidates themselves.

Canadian Security Intelligence Service, 2004, 'Backgrounder No. 9 - Security Screening', Government of Canada

<http://www.csis-scrs.gc.ca/nwsrm/bckgrndrs/bckgrndr09-eng.asp>

The Canadian Security Intelligence Service (CSIS) is responsible for vetting for all government departments and institutions except the Royal Canadian Mounted Police. Three levels of security clearance are defined for government employees, members of the Armed Forces, and contractors who require access to classified government assets or information. Confidential and Secret security clearance requests are conducted electronically against CSIS records. The highest level of vetting involves CSIS records checks, interviews with friends, neighbours and employers, local police checks and possibly an interview of the applicant. During the course of the enquiries, every effort is made to explain the purpose of the questions being posed and participation in the interviews is voluntary.

Antončič, Marjan, 2007, 'Comparative Overview of Vetting Procedures in Different EU Countries', presentation at the Roundtable on the Implementation of Information Classification System and Vetting Procedures in Kosovo, March

http://se2.dcaf.ch/serviceengine/Files/DCAF/29858/ieventattachment_file/FE80C532-2C8F-4413-BC81-B89829059354/en/ev_ljubljana_070325_Comparative_vetting_antoncic.pdf

These slides, also from a presentation at the DCAF workshop mentioned above, provide a basic outline of security vetting procedures in the Czech Republic, Poland, Germany, the Netherlands, Finland, and the UK. Responsibility for carrying out vetting rests with various security, intelligence, and police agencies in each country, and in some cases with other agencies under certain delegated authority. Most of these countries have three or four levels of vetting depending on the sensitivity of posts. Basic vetting typically involves reviewing identity and other documents and searching official records such as criminal records. More advanced vetting can include interviewing the person being vetted, interviewing people familiar with the subject, checks on bank accounts and other financial indicators, and checks on people living in the same household.

4. Vetting job applicants with criminal records
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Public Service Commission (South Africa), 2009, 'Management of Job Applicants with a Criminal Record in the Public Service', Government of South Africa

<http://www.psc.gov.za/docs/reports/2009/Report%20Text%20Disk.pdf>

This report details a comprehensive review of policies and practices across national and provincial government departments in South Africa related to job applicants with criminal records. Only 57% of the departments surveyed screened job applicants to determine whether they had criminal records. Those that did such screening took into account factors such as the nature and number of convictions, the likely risk related to employment, time passed since conviction and the age of the individual at the time of the offence, other employment history and performance assessments, and whether there was any misrepresentation or withholding of information. Applicants with criminal records were

considered eligible for jobs if they met the requirements of the job, their criminal records were not related to the duties of the post, they had completed their sentences or paid their fines, the crimes committed were minor, and/or sufficient time had passed since offending. The majority of crimes committed by employees appointed during the period examined by this study were drunken or reckless driving, assault, and theft.

As part of this investigation, the report also examined current practices in Canada, the UK, Australia, and the USA, and found that in those countries:

- Legislation requires equal employment opportunities and prohibits restrictions based on a criminal record where past offenses are not related to the conduct required by a specific job
- Enquiries about criminal records and convictions are discouraged, unless they are related to job-specific requirements.
- Systems are in place to provide easy access to criminal records information for public and private sector organisations for the purposes of recruitment and selection
- Employers can be held liable for the risk created by employing a person with a criminal record should that person intentionally harm other employees or clients.

The report recommends:

- Providing more national policy direction and developing department-level policies on employment of persons with criminal records, noting guidelines already available
- Departments create and situate vetting units where appropriate for their own organisational structures
- Speeding up criminal record checks
- Improving record-keeping related to job applicants with criminal records

United States Equal Employment Opportunity Commission, 1990, 'Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. (1982)', United States Equal Employment Opportunity Commission, Washington

http://www.eeoc.gov/policy/docs/arrest_records.html

In the United States, because of anti-discrimination policies that apply to the private sector as well as the public sector, a criminal record *per se* is generally not sufficient to disqualify a job applicant from consideration. An employer may reject an applicant who has demonstrated conduct that would render him or her unsuitable for a position, and a criminal record may be used as evidence of unsuitability, but there must be a direct connection between the offenses committed and the requirements and duties of the position sought. In most cases, it is prohibited to rely on records of arrests, as opposed to convictions.

Chartered Institute of Personnel and Development, 2004, 'Employing Ex-Offenders: A Practical Guide', Chartered Institute of Personnel and Development and Criminal Records Bureau, London

<http://www.cipd.co.uk/subjects/dvsequ/exoffenders/empexoffendguide.htm>

The Chartered Institute of Personnel and Development has produced several reports about employment of ex-offenders. These publications are primarily for private-sector guidance but reflect UK law relevant to the public sector as well.

The suitability of a person with a criminal record for employment will vary depending on the nature of the job and of the past offences. Factors to consider include whether the post

involves one-on-one contact with children or other vulnerable groups, the level of supervision that will be provided, whether the post involves responsibility for finance or valuable items or direct contact with the public, and generally whether the nature of the job will present opportunities for re-offending. Employers should consider factors such as:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients or property;
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties
- Whether the offence was a one-off, or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

Positions involving access to children, young people, the elderly, disabled people, alcohol or drug abusers and the chronically sick are considered sensitive and are specially regulated. Employers of these posts must conduct background checks through the Criminal Records Bureau.

Other CIPD publications on this subject are available at:

<http://www.cipd.co.uk/research/offenders.htm>

Additional information

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Websites visited

Google, International Centre for Transitional Justice, GSDRC, GFN SSR, Eldis, Commonwealth Secretariat Public Service Country Profile Series, Chartered Institute of Personnel and Development, United States Equal Employment Opportunity Commission, Geneva Centre for the Democratic Control of Armed Forces, Defence Vetting Agency

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