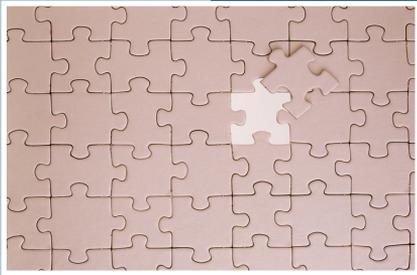




OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR
HUMAN RIGHTS



RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

*Vetting:
an operational framework*



UNITED NATIONS

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NOTE

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The Office of the United Nations High Commissioner for Human Rights (OHCHR) has increasingly recognized the need to enhance its assistance in United Nations-wide efforts to work quickly and effectively to re-establish the rule of law and the administration of justice in post-conflict missions. Countries emerging from conflict and crisis are vulnerable to weak or non-existent rule of law, inadequate law enforcement and justice administration capacity, and increased instances of human rights violations. This situation is often exacerbated by a lack of public confidence in State authorities and a shortage of resources.

In 2003, OHCHR, as the United Nations focal point for coordinating system-wide attention for human rights, democracy and the rule of law, began to develop rule-of-law tools so as to ensure sustainable, long-term institutional capacity within United Nations missions and transitional administrations to respond to these demands. These rule-of-law tools will provide practical guidance to field missions and transitional administrations in critical transitional justice and rule of law-related areas. Each tool can stand on its own, but also fits into a coherent operational perspective. The tools are intended to outline the basic principles involved in: *Mapping the Justice Sector*, *Prosecution Initiatives*, *Truth Commissions*, *Vetting* and *Monitoring Legal Systems*.

This publication sets out an operational framework for vetting and institutional reform and is intended to assist United Nations field staff in advising on approaches to addressing the challenges of institutional and personnel reform in post-conflict States through the creation of vetting processes that exclude from public institutions persons who lack integrity. The tool is divided into three major sections: the concept of vetting in the context of institutional reform and transitional justice; the political conditions of post-conflict or post-authoritarian reform, identifying the sources of a personnel reform mandate, recommending priorities in transitional personnel reform, and proposing the development of a public consultation and information strategy; and the operational guidelines themselves.

The principles used in this tool have been primarily garnered from previous experience and lessons learned in developing vetting processes. Clearly, this document cannot dictate strategic and programmatic decision-making, which needs to be made in the field in the light of the particular circumstances within each post-conflict environment. However, the tool is meant to provide field missions and transitional administrations with the fundamental information required to advise effectively on developing processes to ensure the exclusion from public institutions of persons who lack integrity, in line with international human rights standards and best practices.

The creation of these tools is only the beginning of the substantive engagement of OHCHR in transitional justice policy development. I wish to express my appreciation and gratitude to all those who have contributed to the preparation of this important initiative.



Louise Arbour

United Nations High Commissioner for Human Rights

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OHCHR wishes to thank the individuals and organizations that provided comments, suggestions and support for the preparation of this tool. In particular, it would like to gratefully acknowledge the consultant who had primary responsibility for developing the tool, Alexander Mayer-Rieckh. OHCHR would also like to acknowledge the organization that provided essential support to the consultant, the International Center for Transitional Justice.

Special thanks are due to the United Nations Development Programme and the European Commission, whose financial contributions made it possible carry out this project and publish this tool.

Reforming institutions contributes to achieving a central objective of an effective and legitimate transitional justice policy: the prevention of future human rights abuses. One important aspect of institutional reform efforts in countries in transition is vetting processes to exclude from public institutions persons who lack integrity. The multifaceted shortcomings of post-conflict or post-authoritarian public institutions call, however, for a comprehensive approach to institutional reform. These operational guidelines situate vetting in the broader context of reforming a public institution's personnel and propose a framework to develop an effective and legitimate personnel reform programme in countries in transition.

The document is divided into three major sections. The first defines the concept of vetting in the context of institutional reform and transitional justice. The second discusses the political conditions of post-conflict or post-authoritarian reform, identifies the sources of a personnel reform mandate, recommends priorities in transitional personnel reform, and proposes the development of a public consultation and information strategy. The third presents the operational guidelines themselves and recommends a three-stage methodology emphasizing the need to assess the situation and needs; to define the personnel reform objectives; and to design a feasible personnel reform process that respects fundamental rule-of-law standards.

The qualities of public personnel fall into two basic categories, capacity and integrity. *Capacity* refers to the qualities that enable personnel to fulfil the technical tasks of the institution's mandate. *Integrity* relates to the qualities that enable it to fulfil this mandate in accordance with fundamental human rights, professional and rule-of-law standards.

There is no "one-size-fits-all" response to vetting and personnel reform in transitional contexts. A context-specific approach based on public consultations and a realistic assessment of needs and available resources is, therefore, a basic condition for effective reform.¹ The operational guidelines provide a methodology to develop context-specific vetting and personnel reform programmes. Not every point of these guidelines will, however, be relevant in each situation; specific types of institutions raise particular challenges that are not all elaborated; and the political and practical realities of a country emerging from conflict or authoritarian rule might place considerable constraints on the reform process. While it is advisable to follow the three basic steps of the proposed methodology—assess the situation, define the objectives and design the process—these guidelines should be used as a toolbox rather than an operating manual.

¹ Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102, para. 9).

I. VETTING, INSTITUTIONAL REFORM AND TRANSITIONAL JUSTICE

Reforming public institutions is a core task in countries in transition from authoritarianism or conflict to democracy and peace.² Public institutions that perpetuated a conflict or served an authoritarian regime need to be transformed into institutions that support the transition, sustain peace and preserve the rule of law. Institutions that abused human rights and defended the partisan interests of a few need to become institutions that protect human rights, prevent abuses and impartially serve the public. Dysfunctional and inequitable institutions that created fear need to turn into efficient and fair institutions that enjoy civic trust.

In building fair and efficient institutions, institutional reform contributes to providing transitional justice in two principal ways. First, fair and efficient public institutions play a critical role in preventing future abuses. Following a period of massive human rights abuse, preventing its recurrence constitutes a central goal of a legitimate and effective transitional justice strategy.³

Second, institutional reform contributes to transitional justice in that it enables public institutions, in particular in the security and justice sectors, to provide criminal accountability for past abuses. A reformed police service, for example, can professionally investigate the abuses committed during the conflict or the authoritarian regime; a reformed prosecutor's office can effectively issue indictments; and a reformed court can impartially render judgement about those past abuses. Institutional reform may, therefore, be a precondition for providing domestic criminal accountability for the abuses of the conflict or the authoritarian past.

² See generally the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

³ Question of the impunity of perpetrators of human rights violations (civil and political), Revised final report prepared by Mr. Louis Joinet pursuant to Sub-Commission decision 1996/119, in which he refers to "guarantees of non-recurrence" "to avoid victims having to endure new violations affecting their dignity" (E/CN.4/Sub.2/1997/20/Rev.1, para. 43); and the updated Set of Principles for the protection and promotion of human rights through action to combat impunity, principle 35 (E/CN.4/2005/102/Add.1).

Effective and sustainable institutional reform is a complex and challenging task. Institutional reform measures may include, for example, the creation of oversight, complaint and disciplinary procedures; the reform or establishment of legal frameworks; the development or revision of ethical guidelines and codes of conduct; changing symbols that are associated with abusive practices; and the provision of adequate salaries, equipment and infrastructure. Effective reform efforts might also have to review the functioning of an entire public sector and consider merging, disbanding or creating public institutions. The precise content and scope of those measures will depend on the country's circumstances.

While a comprehensive approach to institutional reform is critical to ensure its effectiveness and sustainability, these operational guidelines focus on one area: the reform of an institution's personnel. The principal constituents of a public institution are its employees. The institution acts through its employees and is represented by them. Past malfunctioning and abuses were often the result of various deficits of an institution's personnel. Personnel reform is, therefore, a central component of any effective and sustainable institutional reform process.

Vetting is an important aspect of personnel reform in countries in transition.⁴ Vetting can be defined as assessing integrity to determine suitability for public employment.⁵ Integrity refers to an employee's adherence to international standards of human rights and professional conduct, including a person's financial propriety.⁶ Public employees who are personally responsible for gross violations of human rights or serious crimes under international law revealed a basic lack of integrity and breached the trust of the citizens they were meant to serve. The citizens, in particular the victims of abuses, are unlikely to trust and rely on a public institution that retains or hires individuals with serious integrity deficits, which would fundamentally impair the institution's capacity to deliver its mandate. Vetting processes aim at excluding from public service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions.

Integrity is measured by a person's conduct. Vetting processes should, therefore, be based on assessments of individual conduct. Purges and other large-scale removals on the sole basis of group or party affiliation tend to cast the net too wide and to remove public employees of integrity who bear no individual responsibility for past abuses. At the same time, group removals may also be too narrow and overlook individuals who committed abuses but were not members of the group. Such broadly construed collective processes violate basic due process standards, are unlikely to achieve the intended reform goals, may remove employees whose expertise is

⁴ E/CN.4/2005/102/Add.1, principle 36 (a); see also E/CN.4/2005/102, para. 68.

⁵ See also S/2004/616, para. 52: "Vetting usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary."

⁶ For a detailed discussion on the meaning of the term integrity and the scope of integrity required to hold public office, see below (sect. IV.B.3 (b)).

needed in the post-conflict or post-authoritarian period, and may create a pool of discontented employees that might undermine the transition.

In addition to supporting institutional reform efforts, vetting and excluding abusers can fulfil another important function in a comprehensive transitional justice strategy. The scarcity of means and resources in a post-conflict or post-authoritarian context, as well as legal impediments, a lack of personnel and large numbers of perpetrators, often preclude the criminal prosecution of all abusers and leave a so-called impunity gap. While vetting processes also require significant resources, they are procedurally less complex than criminal prosecutions. Under circumstances of limited or delayed criminal prosecutions, the exclusion from public service of human rights abusers may help to fill the impunity gap by providing a partial measure of non-criminal accountability.⁷ Exclusions from public service have a punitive effect as they take away or pre-empt employment, public authority, and other privileges and benefits. Excluding abusers should, however, not be used as a pretext for not pursuing criminal prosecutions. Not only is there a duty to prosecute serious human rights crimes (see sect. IV.B.3 (b) below), but a transitional justice strategy will also be more effective and legitimate if the various transitional justice initiatives, in particular prosecutions, truth-telling, reparations and institutional reform, complement each other.⁸

More often than not, integrity deficits are not the only shortcomings of public employees in post-conflict or post-authoritarian situations, and the exclusion of persons who lack integrity may not bring about the personnel changes necessary to build a fair and efficient public institution, and prevent abuses from recurring.⁹ The employees of a public institution may, for example, not only be human rights abusers, but also lack qualifications and skills, and the personnel as a whole may fail to represent the population it is called to serve and/or have an inefficient organizational structure. Many of the employees may have been appointed unlawfully, violating procedural and qualification requirements. The multifaceted shortcomings of a public institution's personnel often represent complex and interrelated causes of past malfunctioning and abuses. The following operational guidelines, therefore, integrate vetting processes into broader personnel reform programmes without ignoring the specific challenges of integrity screening in post-conflict or post-authoritarian contexts.

⁷ E/CN.4/2005/102, para. 68.

⁸ E/CN.4/2005/102/Add.1, principle 1 (listing the general obligations of States to take effective action to combat impunity). See also the other OHCHR rule-of-law tools for post-conflict States in this series, e.g., those on truth commissions and prosecution initiatives.

⁹ S/2004/616, para. 53: “[V]etting processes should include attention to the technical skills, objective qualifications and integrity of candidates.”

II. ROLE OF INTERNATIONAL ACTORS

In countries emerging from conflict or authoritarian rule, international actors often play an important role in supporting fragile domestic institutions and in assisting to build peace and the rule of law. International involvement in the design and implementation of a personnel reform programme requires an invitation from domestic authorities or, in the case of domestic opposition, an international mandate that provides international actors with an authority and means to intervene directly in domestic affairs and overrule domestic procedures if necessary. Depending on the circumstances and the mandate, international actors could advise domestic authorities in designing a transitional personnel reform programme, assist in its implementation through training, advising, monitoring and providing resources, or take the lead role in personnel reform and establish an internationalized personnel reform process.

In general, personnel reform processes under domestic leadership will be preferable to internationalized processes, as they prevent resentment against external imposition, provide a better basis for local buy-in and sustainability of the process, and ensure the application of local know-how. Personnel reform processes are, however, often contested in the fragile political environment of a country emerging from conflict or authoritarian rule, as they affect access to and exclusion from governmental power structures. This is true in particular when representatives of a former abusive Government continue to wield formal or informal authority, which they stand to lose through the reform. Internationalized processes might then bring the necessary leverage and impartiality to ensure an effective and fair implementation of a personnel reform.

When an internationalized process is established, every effort should be made to involve domestic actors from the beginning and as broadly as possible, ensure its integration into domestic law, and put in place provisions guaranteeing a seamless changeover from the extraordinary transitional personnel reform process to regular domestic recruitment and disciplinary procedures. The establishment of a mixed domestic-international commission or a domestic commission supported by an international secretariat should be considered.

III. CONDITIONS OF TRANSITIONAL PERSONNEL REFORM

A. Post-conflict or post-authoritarian context: the need for pragmatism

At the end of a conflict or an authoritarian regime, the public sector is frequently in crisis. The institutional context is often fragmented and fluid. Frequently, the public sector continues to operate within organizational structures that supported the authoritarian rule or perpetuated the conflict. Public institutions often keep links with their former leaders, remain divided along partisan lines and continue to pursue factional political interests. Public employees from the conflict or authoritarian era often remain in place and oppose changes to the status quo. The number of employees is often inflated. Some institutions are not functioning, leaving a governance gap. Frequently, the public infrastructure is dysfunctional, and various reform needs compete for scarce resources. Civic trust in the public sector generally remains low.

Post-conflict or post-authoritarian circumstances constitute extremely challenging environments for institutional reform. Both the need for and resistance to reform arise from the public sector's entanglement in the past. Institutional reform programmes need to take into account the realities and contradictions of the post-conflict or post-authoritarian period. Resistance to reform should be overcome because unreformed institutions threaten the consolidation of peace and the rule of law. Yet employees removed from office by a personnel reform process might themselves turn to criminal activity and undermine the transition. Reform efforts also need to consider the public's needs in the post-conflict or post-authoritarian period. In the interim, imperfect public service is usually preferable to no service at all. Interim arrangements with existing institutions might have to be put in place to avoid a governance gap. Institutional reform in post-conflict or post-authoritarian contexts requires pragmatism, determination and endurance.

B. Legal mandate for personnel reform

The end of a conflict or an authoritarian regime is often marked by a formal agreement, such as a peace treaty, a powersharing agreement or a United Nations Security Council resolution mandating peace enforcement measures under Chapter VII of the Charter of the United Nations.

These agreements or resolutions may set out the terms of a truce, non-violent conflict-resolution mechanisms, interim powersharing arrangements, electoral provisions and a roadmap towards a constitutional State. They often define the roles and responsibilities of the parties and describe the tasks to be accomplished during the transition. Personnel reform provisions may be included in any of these agreements or resolutions or in a separate agreement.

Personnel reform programmes are less likely to take place or may be delayed without a formal mandate. Moreover, while a broad provision mandating institutional reform should be interpreted to include the reform of its personnel, explicit personnel reform and vetting provisions place an unambiguous obligation on the parties that is more difficult to circumvent. Peace negotiators should, therefore, if the political circumstances of the negotiations permit, encourage the inclusion of specific provisions requiring personnel reform in peace agreements in order to place a clear obligation on the parties.

Once a personnel reform mandate is established, it needs to be translated into concrete responsibilities and procedures. Doing so often involves taking controversial measures with significant consequences for both the State and individuals subject to the process. To avoid prolonged periods of uncertainty, a personnel reform programme should be enacted as expeditiously as the political and operational circumstances permit after thorough consideration of the views of the major stakeholders, including where appropriate a State's legislature. Furthermore, personnel reform legislation should comply with constitutional and international norms, and be clear and precise in order to establish legal certainty and avoid ambiguity and political interference. If an internationalized process is established, its regulations should be integrated in the domestic legal framework (see sect. II above).

C. Priorities in personnel reform

In a post-conflict or post-authoritarian context, the entire public administration might benefit from a personnel reform programme. Personnel reform programmes should, however, prioritize the military, law enforcement, intelligence services, the judiciary and other institutions that underpin the rule of law. These public institutions are most directly responsible for maintaining stability and fundamental security, and protecting basic human rights. Reforming these institutions, including the reform of their personnel, creates important conditions for an effective and expeditious transition to peace and the rule of law.¹⁰

Conflict and authoritarian rule lead regularly, however, to a fragmentation of public institutions, in particular in the security sector, with similar or overlapping mandates and inflated numbers of personnel. In such circumstances, an effective personnel reform programme should cover not

¹⁰ E/CN.4/2005/102/Add.1, principle 36.

only one institution but the entire sector in question. In such a context, and generally in situations that involve institutions with large numbers of personnel, a personnel reform programme might prioritize senior managers as their authority and influence provide them with significant leverage over the reform process. Particular attention should also be paid to employees who are publicly known to have committed gross violations of human rights. They might constitute a serious liability to the reform process and their continued employment undermines the trustworthiness of the public institution.

D. Public information and consultation

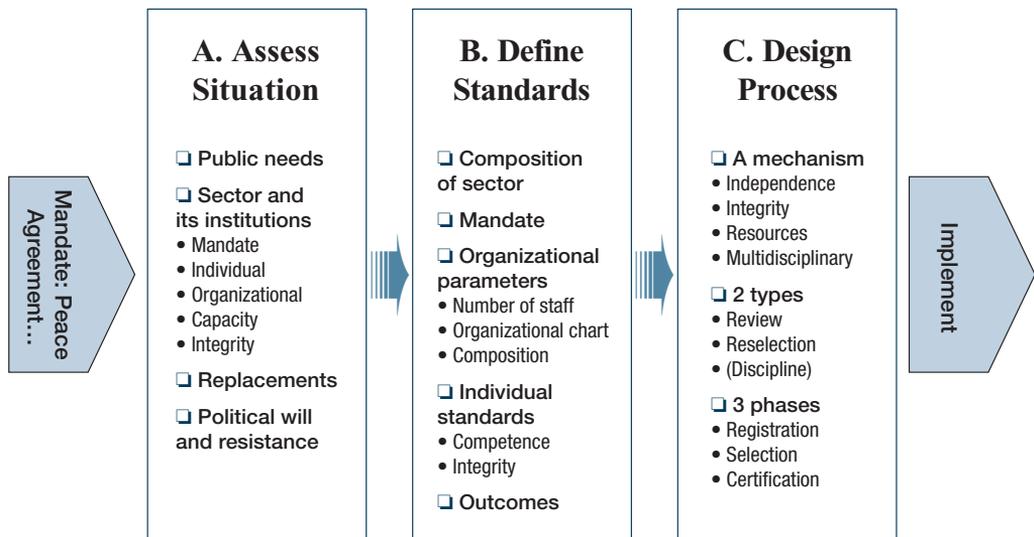
In order to (re-)establish civic trust and to (re-)legitimize public institutions, the public needs to be aware of and trust the institutional reform effort itself. Transparency about the reform efforts and consultation about its objectives will help in building confidence in the impartiality and effectiveness of the process, in ensuring that it effectively responds to the actual needs of victims and society in general, and in reducing uncertainty experienced by the personnel of the institutions undergoing reform. Public awareness can also help in pre-empting later attempts to cast doubt on the validity of the process and to reinsert public employees that have been removed through it. Not only should a reform process, therefore, include an effective public information mechanism, but the design of the process itself should be informed by broad consultations with civil society, in particular with victim groups and other reform-minded constituencies.¹¹ Section IV.A below provides several tools to ensure that the reform is based on a thorough assessment and broad public consultations.

¹¹ Ibid., principle 35 (stating that “institutional reforms... should be developed through a process of broad public consultations, including the participation of victims and other sectors of civil society”).

IV. OPERATIONAL GUIDELINES

It is advisable to follow a three-stage approach to establish a personnel reform programme in post-conflict or post-authoritarian contexts. First, the current status of an institution and its personnel should be assessed, as should its social context, in order to identify the personnel reform needs (sect. A). Second, on the basis of the assessment, the organizational parameters and standards for a personnel reform, in particular the number of staff, the composition of personnel, job requirements and integrity standards, can be determined (sect. B). Third, once these parameters and standards are defined, the reform process itself needs to be designed (sect. C). The following guidelines provide an operational framework for a three-stage personnel reform programme.

A personnel reform programme: overview



Different types of institutions raise specific challenges. Reforming security agencies, for example, usually elicits significant challenges concerning the processing of large numbers of employees. Screening judges creates specific concerns regarding the independence of the judiciary. Reviewing candidates for elected office raises questions concerning interference with the will of the electorate. Not every provision of the following operational guidelines applies to each type of public institution. These guidelines allow, however, for institutional differentiation and the development of institution-specific personnel reform programmes.

A. Assess the situation

As a result of the conflict or authoritarian rule, the public sector is often fragmented, the boundaries between public institutions are fluid and porous, and the number of public employees is inflated. Frequently, public employees were recruited informally without adequate training. Often, public employees were involved in the conflict or the authoritarian regime, human rights abuses were widespread and systemic, and the consequences of these abuses are a matter of debate in the post-conflict or post-authoritarian period. The organizational structure of an institution is often distorted during this period and does not meet the needs of a country governed by the rule of law. Commonly, an institution's personnel does not represent the population it is mandated to serve.

Some of these circumstances may or may not apply to the country in question. In countries emerging from conflict or authoritarian rule, basic information about a public institution's personnel is frequently not available. A thorough assessment should be carried out to identify the personnel reform needs and risks, and design a suitable personnel reform programme. The assessment should involve (1) an evaluation of the public needs and capacities; (2) a review of the institution's personnel; (3) an appraisal of the pool of potential replacements; and (4) an analysis of the political will to reform.

1. Assess public needs and capacities

The needs of the public that an institution is called to serve should determine its organizational structure and the required profile of its personnel. A society with a high number of gender-related crimes, for example, may need to create specialized units with expert personnel to deal with these problems. A thorough assessment of the public's needs is necessary before determining the personnel reform requirements and designing a personnel reform programme. Broad consultations with civil society and an opinion survey will ensure a comprehensive identification of the public needs. Particular attention should be paid to the needs of victims, women, minorities and vulnerable groups.

Not only should the public needs be assessed but also the State's capacities and resources available to establish and implement the personnel reform. Capacities are generally limited and

resources scarce in a society emerging from conflict or authoritarian rule. Realistic planning should take into consideration the resources available to the process.

2. Assess personnel

(a) Capacity and integrity framework

The capacity and integrity framework provides a simple methodological tool to assess the personnel of public institutions and to develop realistic personnel reform measures.¹² It identifies two fundamental dimensions of public personnel, the individual and the organizational, and uses two basic categories to describe the qualities of public personnel: capacity and integrity.

The personnel of a public institution comprises the total number of individuals holding positions. Personnel, therefore, has an individual and an organizational dimension. On the one hand, an institution’s personnel consists of individual employees. On the other, the personnel of a public institution is defined by an organizational structure.

The qualities of public personnel fall into two basic categories, capacity and integrity. *Capacity* refers to the qualities that enable personnel to fulfil the technical tasks of the institution’s mandate. *Integrity* relates to the qualities that enable it to fulfil this mandate in accordance with fundamental human rights, professional and rule-of-law standards.

Capacity and integrity framework: a simple tool to assess



¹² The capacity and integrity framework was developed by Serge Rumin and Alexander Mayer-Rieckh, and has been applied in several United Nations peacekeeping operations.

The two vertical columns represent the individual and the organizational dimensions. The horizontal rows correspond to the two basic qualities, capacity and integrity. The resulting four fields represent a basic framework to assess comprehensively the status of an institution's personnel:

- Individual capacity relates to an employee's qualifications, such as general education and professional training, professional experience and competence, as well as her or his physical and mental aptitude.
- Individual integrity refers to an employee's adherence to international standards of human rights and professional conduct, including a person's financial propriety.
- Organizational capacity refers to institutional qualities of personnel, such as the number of staff, the organizational structure and composition (gender, ethnicity, origin and religion).
- Organizational integrity relates to procedures employed to institutionalize the principles and values of an institution, including disciplinary and complaint procedures, oversight mechanisms, ethical guidelines and codes of conduct.



(b) The institution's mandate

Using the capacity and integrity framework as a methodological tool, the assessment starts with an analysis of the mandate of the institution to be reformed. Defining the tasks and responsibilities of an institution, the mandate provides the substantive parameters for the organizational structure and for the terms of reference of each individual position. The mandate is described in the laws and statutes regulating the establishment, organization and responsibilities of the institution, and any internal rules and regulations.

During conflict or authoritarian rule, public institutions frequently take on tasks that differ from their mandated responsibilities. Some institutions transgress their responsibilities, other institutions take on the mandate of a different institution, and others again are marginalized or cease to function. The assessment process should briefly map the conflict or authoritarian histories in order to appreciate the actual tasks carried out by the public institutions in question. Mapping their histories provides basic information on institutional reform needs and also facilitates the integrity screening of public employees, as it provides indications on the past conduct of individual employees.

(c) Pilot registration

At the end of the conflict or the authoritarian regime, reliable information on the number and status of employees is often limited, in particular in the large institutions of the civilian and military security sectors. Frequently, personnel files and records have never been established or have been improperly maintained, manipulated or destroyed. Assignments of individual staff remain unclear and the organizational structure of a public institution is often ill-defined. The registration is necessary to assess the capacity and integrity of a public institution's personnel.

Registering is an important yet relatively uncontroversial start for a personnel reform process. In general, the registration of public employees can be carried out even when the political circumstances do not yet allow for the implementation of a comprehensive personnel reform programme. The registration provides information on the employees' professional experience and skills, as well as basic data on their activities during the conflict or authoritarian rule.

Registration is time-consuming and resource-intensive, in particular when the number of employees of a public institution (or several institutions) is large. Maintaining and updating the registry once the initial registration is completed requires additional resources. During the assessment stage, it is generally sufficient to carry out a pilot registration of a representative sample of employees in order to identify broad personnel reform needs and design a personnel reform programme. (For details on registration processes, see sect. IV.C.3 (a) below.)

(d) Integrity databank

Frequently, there is a particular lack of reliable information on the integrity of public employees and applicants for public service, especially on their conduct during the conflict or the authoritarian rule. During such periods, human rights abuses are often covered up and evidence is destroyed. The police and judiciary rarely investigate or prosecute abuses and indeed may maintain a climate of impunity. Non-governmental organizations (NGOs) monitoring and investigating human rights abuses are frequently suppressed. While registration will uncover some background information, it is usually not sufficient to assess the integrity of individual public employees and applicants for public service comprehensively.

To collect reliable data on the integrity of public employees or applicants, an integrity databank should be established through a proactive process of collecting background information from a variety of sources. Pertinent information should be registered by alleged perpetrator rather than by incident. Sources of information include personnel files, court records, party files, election registers, United Nations reports, NGO reports, truth commission reports, media reports and independent investigation reports. Information needs to be cross-referenced and assessed for its credibility and reliability, in particular when it originates from the period of conflict or the authoritarian rule.

Secret police agencies that keep extensive secret files on individuals are a regular feature of authoritarian regimes. In principle, these files can feed into an integrity databank. Information contained in secret files is, however, often suspect and has to be treated with great caution. Moreover, the privacy of individuals, in particular of victims, witnesses, potential witnesses and persons not involved in the personnel reform, needs to be protected in accordance with basic human rights standards.

Giving the public an opportunity to come forward with information is another useful avenue to collect information on the integrity of public employees and applicants. Provided

the security situation permits, lists with the names of employees and applicants could be broadly publicized and a contact point could be established to receive information on their background.

(e) Risks of removals

Removed public employees who do not find alternative employment and are not integrated into society may drift into criminality and obstruct the reform process. In particular the removal of a large number of armed security personnel may constitute a significant security risk and represent a threat to the transition itself. The potential risks of removals should be assessed before designing a personnel reform programme, and options for providing severance pay and other temporary assistance should be explored, in particular for public employees who are removed for reasons other than a lack of integrity. Personnel reform programmes may be linked with disarmament, demobilization and reintegration programmes. However, care should also be taken to consider the rights of victims and assistance to removed officials has to be balanced with the needs of victims.

3. Assess pool of potential replacements

A personnel reform programme may require the recruitment of new public employees to replace removed employees or fill new positions. Competent replacements of integrity may not be readily available, however. To minimize the risks of governance gaps and to measure the time and resources needed to identify, prepare and train new recruits, the pool of potential replacements, and their general capacity and integrity, should be assessed.

In countries emerging from conflict or authoritarian rule, there may be great difficulties finding qualified candidates and special training courses may have to be designed to build capacity quickly. It can also be difficult to persuade more qualified individuals to join the public service as public employment in a transitional context might not be viewed as an attractive and safe occupation.

4. Assess political will and resistance

Resistance to reform is a regular feature in countries emerging from conflict or authoritarian rule. Individuals and groups that risk losing power and influence through a reform programme often resist its implementation. Leaders may, for example, continue to pursue the objectives of the former regime or the conflict era. Public employees who were involved or complicit in past abuses have an interest in covering up those abuses and protecting their positions. The assessment should identify potential resistance to the personnel reform process and risks to the political transition, as well as reform-minded individuals and constituencies that may assist in the design and implementation of a personnel reform programme.

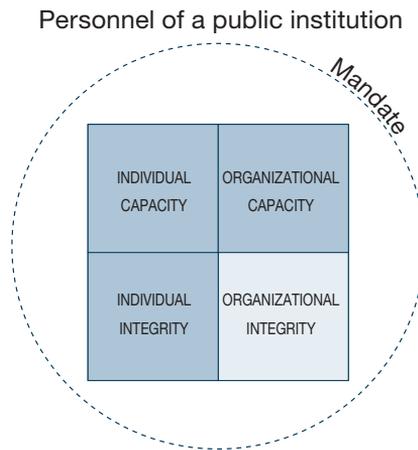
B. Define the parameters, standards and outcomes

On the basis of the assessment, the objectives of the personnel reform programme should be defined. These include:

- (1) Defining an institution's mandate
- (2) Defining the organizational parameters (composition and structure)
- (3) Defining the individual employment standards (job descriptions, entry qualifications, etc.)
- (4) Balancing competing objectives and
- (5) Determining the consequences for those removed by the process

Again, the capacity and integrity framework can serve as a methodological tool to define the mandate, parameters and standards.

Capacity and integrity framework: a simple tool to plan



1. Define the institution's mandate



The mandate of a post-conflict or post-authoritarian public institution may have to be changed to meet the needs and requirements of a country governed by the rule of law. Significant changes to a public institution's mandate will generally require organizational changes. Institutions may have to be merged or consolidated, reduced in size or enlarged, newly created or abolished as a result of changes to the mandate. Such organizational changes have a major impact on the personnel requirements of an institution and, therefore, should be made before establishing a personnel reform programme. Changes to the mandate of a public institution will generally require a political process resulting in legislative changes.

2. Define organizational parameters



Depending on changes to its mandate and on efforts to improve the efficiency of a public institution, its organizational capacity may have to be strengthened. This may result in changes to the size and kind of departments, the number of posts, the ratio of senior management to middle management to normal posts, and the composition of the institution's personnel.

The personnel composition of a public institution in a country governed by the rule of law should broadly reflect the composition of the population it is called to serve. Representative institutions have a better understanding of the particular concerns and needs of the various groups in a society, and more easily gain the trust of the public. There is, however, a wide variety of views on how "representative" public institutions should be, which depend on the type of institution and its mandate, the specific social-historical situation and political opinion.

Representativeness relates to a number of criteria, in particular gender, ethnicity, geographic origin and religion. Special measures might have to be taken to integrate former warring factions and ex-combatants. Institutional representativeness is of acute relevance in countries emerging from a conflict with an ethnic, geographic or religious dimension, and particularly when the reform involves integrating public institutions that were divided along ethnic, geographic or religious lines.

Decisions on the organizational structure and composition set the organizational parameters of a personnel reform because they determine the number and type of public employees needed, affect the job requirements for individual employees, and limit the number of posts available for employees from each gender, ethnic and religious group, and geographic region.

3. Define individual employment standards

(a) Define individual capacity standards



Once the organizational structure and the personnel composition of an institution are defined, post-specific job descriptions setting out the personal and professional qualifications need to be established. These criteria refer to the professional competence and experience, and to the physical and mental aptitude necessary to accomplish the technical aspects of a certain position. Information collected during a pilot registration will provide useful indicators to define individual capacity standards that are appropriate and realistic in the specific context. The realities of a post-conflict or post-authoritarian context may impose an initially low standard of professional competence, which should be gradually increased following the provision of training.

(b) Define individual integrity standards



To hold public office, individuals not only have to be competent but also need to be persons of integrity. Individual integrity manifests itself in a person's adherence to international standards of human rights and professional conduct, including a person's financial propriety. While there is general agreement that integrity is a fundamental requirement for public service, there is much debate over its precise meaning, as well as over the kind and scope of integrity required to hold public office, in particular in countries emerging from conflict or authoritarian rule.

While conduct is the measure of a person's integrity, past abuse cannot be more than an indication of possible future conduct. The circumstances of conflict and authoritarian rule may extenuate certain past acts, and, depending on the type of abuse, integrity can be at least partially restored over time. Nevertheless, persons who committed gross violations of human rights or serious crimes under international law should not hold public office. These include in particular genocide, war crimes, crimes against humanity, extrajudicial execution, torture and similar cruel, inhuman and degrading treatment, enforced disappearance and slavery.¹³ These are serious crimes which indicate a lack of integrity at a level that fundamentally affects a person's credibility to hold public service. If a person were convicted and punished for such crimes—and, in fact, States have an obligation to prosecute these crimes—exclusion from public service would be a normal consequence.¹⁴ A public employee who committed such acts has forfeited the special trust placed in her or him and should be removed from office.¹⁵ A new recruit who committed serious crimes is unlikely to gain trust. Retaining or hiring such persons is likely to undermine the trustworthiness of the entire public institution.

For abuse and misconduct below the level of gross violations of human rights or serious crimes under international law, certain factors may provide an indication of whether a person's integrity has since been restored or may be regained in the future. The following questions may help to determine such circumstances:

- What was the specific nature of the abuse or misconduct and what was the context?
- Was it a generalized institutional practice (e.g., a generally corrupt professional milieu)?

¹³ There is broad overlap between the concepts of gross violations of human rights and serious crimes under international law. For a definition of serious crimes under international law, see E/CN.4/2005/102/Add.1, p. 6 and E/CN.4/2005/102, para. 13. See also Human Rights Committee, general comment No. 31 (CCPR/C/21/Rev.1/Add.13, para. 18).

¹⁴ Removal from office does not obviate the duty to hold abusive employees criminally accountable. See, e.g., Human Rights Committee, Concluding observations: Guatemala (CCPR/CO/72/GTM, para. 13). On the obligation to investigate and prosecute serious human rights violations and relevant case law, see also E/CN.4/2004/88, paras. 24–56.

¹⁵ See Human Rights Committee, Concluding observations: Argentina (CCPR/CO/70/ARG, para. 9), in which the Committee recommended that Argentina should take measures “to ensure that persons involved in gross human rights violations are removed from military or public service”. See also Concluding observations: Bolivia (CCPR/C/79/Add. 74, para. 15); case of *Velásquez Rodríguez*, Inter-American Court of Human Rights, No. 4 (series C), para. 175, 29 July 1988; E/CN.4/Sub.2/1997/20/Rev.1, para. 43; and E/CN.4/2005/102/Add.1, principle 36.

- Has the act of abuse or misconduct concluded or is it continuous?
- If concluded, has the act been acknowledged? Has the record improved?
- Has the act fundamentally affected civic trust? If so, will it be possible to regain civic trust? Under what conditions?

A number of international codes provide norms that may assist in the development of concrete integrity standards in specific post-conflict or post-authoritarian contexts. These include the United Nations professional codes, in particular the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Code of Conduct for Law Enforcement Officials, the United Nations Convention against Corruption, and international criminal, human rights and humanitarian law.¹⁶ Information collected in the integrity database will provide useful indications on existing integrity deficits and will assist in developing appropriate and realistic integrity standards for the situation in question. There are, however, no obvious criteria to define the precise kind and scope of integrity standards for lesser levels of misconduct and these will have to be defined in context.

4. Balance competing standards

The parameters and standards defined within the categories of the capacity and integrity framework (organizational capacity, individual capacity and individual integrity) may project conflicting objectives of personnel reform. The design of a personnel reform programme may therefore require difficult trade-offs and compromises.

In general, the legitimacy of a personnel reform programme will depend on attaining certain minimum standards in each of the three categories. A public institution with competent but mono-ethnic personnel, for example, is unlikely to be trusted by other ethnic groups and might not understand their languages and concerns. The personnel of another institution might have high levels of integrity but lack competence. Despite best intentions, the personnel will not be able to fulfil the mandate of the institution. While employees with serious integrity deficits should not be kept on, a careful assessment that both manages the political legacy of a particular conflict or authoritarian regime and aims at establishing a fair and efficient public institution should take place.

5. Define outcomes

Various outcomes are possible if a public employee does not meet the minimum standards for continued employment. Outcomes should be defined for each standard. If a public employee was removed for a serious lack of integrity, his or her future access to comparable public posts

¹⁶ For the professional codes and other basic standards, see *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police* (United Nations publication, Sales No. E.96.XIV.5).

should be restricted because his or her reduced trustworthiness undermines the effectiveness and legitimacy of the public institution. A public employee could be disqualified from a certain category of post, from all posts in a public institution or from public service in general. The disqualification could be permanent or temporary, and reintegration into public service could depend on the fulfilment of certain conditions, for instance, the acknowledgement of or compensation for certain acts of misconduct. The employee could also be reassigned, put on probation, demoted or barred from promotion. Disqualifications could also result in denial of privileges and other benefits. Decisions about appropriate outcomes are context-specific. While employees who committed gross violations of human rights or serious crimes under international law should generally be disqualified from public office, the determination of appropriate outcomes depends largely on the specific circumstances of the transition.

If an employee is removed only as a result of changes to the organizational structure, number or composition of personnel, this should not have any consequences for future employability. The employee can immediately apply for another public post. If an employee lacks professional competence that can be corrected through additional training, the employee could reapply for the same position or apply for a similar position as soon as he or she has acquired the missing skills. While any appearance of rewarding abusers should be avoided, great care should also be taken to prevent, or at least alleviate, the detrimental effects that removals might have on public employees who are removed for reasons other than lack of integrity. The personnel reform process might, for example, foresee the provision of alternative employment, severance pay, reintegration assistance or retraining.

C. Design the process

Once the organizational parameters and employment standards of a public institution are established, the reform process itself needs to be established. The following section provides guidance on designing the actual personnel reform.

1. Special mechanism

Self-reform is generally difficult because vested interests undermine an objective assessment of reform needs and obstruct an effective and fair implementation of the process. In the complex political circumstances of a country emerging from conflict or authoritarian rule, the ability of public institutions to reform themselves is even more limited. Frequently, these institutions have an interest in covering up past abuses and resist reform. Often, they maintain links with former leaders or continue to pursue the objectives of the former regime or the conflict era. The need for reform arises, however, to a significant extent from the institutions' entanglement in the past. Moreover, the limited resources of public institutions in a post-conflict or post-authoritarian situation leave them little room to implement burdensome personnel reform in addition to pursuing their regular responsibilities.

A transitional personnel reform should, therefore, generally be administered by a specially created mechanism in the form of a commission. This special commission should be independent to ensure a fair, impartial and legitimate implementation of the process. Establishing an independent commission and ensuring the impartiality of its members may not be easy in the politically tense circumstances of a country emerging from conflict or authoritarian rule. Its members should be distinguished citizens of integrity who are not associated with a political party or former warring faction. The inclusion of non-national members may increase the independence and legitimacy of the commission. Broad consultations should precede the appointment of its senior members by a high and independent authority, such as the constitutional court, the Head of State or an international institution. To ensure wide acceptability of the senior members, their appointment may be subject to approval by a body that enjoys wide civic trust. The senior members should be appointed for the duration of the personnel reform and should not be removable during this period. Depending on the political circumstances and operational challenges, there could be one commission for the entire public sector or separate commissions for specific public institutions.

Personnel reform processes are complex, time-consuming and resource-intensive, in particular when they concern institutions with large numbers of employees. Their success or failure significantly depends on a thorough evaluation of operational requirements and the provision of adequate time and resources. Registering employees, screening them, assessing their competence and, in particular, investigating their background are all complex tasks that take time and require specialized skills. The special commission will need a well-staffed secretariat to prepare the necessary information and support the decision-making process. The staff of the secretariat should be multidisciplinary and include project managers, information system managers, lawyers and technical experts. The commission and its secretariat should also be given adequate financial and material resources, including secure office space, filing and information management systems, means of transport and investigation equipment.

The establishment of a special and independent mechanism may pose serious challenges for the generally stretched economies of countries in transition. Given the importance of transitional personnel reform processes, the international community should support the establishment of these mechanisms.

The special commission may have to make unpopular decisions that could lead to security risks for its members. Arrangements need to be put in place to provide security for them.

2. Two principal types of personnel reform processes

There are two principal types of transitional personnel reform processes: review and reappointment. 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. These two

types correspond to two basic approaches to institutional reform: institutional restructuring and institutional re-establishment. The choice of type depends, in particular, on the extent of overall personnel reform required. At the end of this section, a less likely third type is introduced: regular disciplinary procedures.

(a) Review process – institutional restructuring

(i) Concept

In a review process, a special transitional mechanism is usually established to screen serving public employees and determine their suitability for continued service. The primary objective is to remove those who are unfit to hold office. In a review process, basic due process standards apply, the burden of proof falls on the reviewing body and balance of probabilities will be the appropriate standard of proof (for a detailed discussion of basic legal standards, see below).

A decision to put in place a review process builds on two premises. First, a special mechanism is needed to implement the necessary personnel reforms in the post-conflict or post-authoritarian period. The normal disciplinary and dismissal processes would be overwhelmed or insufficient. Second, the reform objectives can be achieved through the removal of those employees that are not fit for service, and other organizational changes are not required or can be implemented separately. A review process implies contractual continuity at the individual level and institutional continuity at the organizational level. Individual employees remain employed unless the reviewing body finds them unfit to hold office. At the organizational level, a review process represents a gradual restructuring of a continuously existing institution. A review process is better suited to addressing individual capacity and integrity deficits than to tackling organizational deficits. Significant organizational changes can be addressed more efficiently by means of a reappointment process (see sect. IV.C.2 (b) below).

(ii) Legal requirements

Fundamental due process guarantees also apply to non-criminal proceedings.¹⁷ Public employees that are subject to a review should, therefore, be afforded the basic guarantees that apply to an administrative due process of law.¹⁸

¹⁷ International Covenant on Civil and Political Rights (ICCPR), art. 14 (“In the determination of... his rights and obligations in a suit at law...”). The European Court of Human Rights holds, however, that the due process protections of the European Convention do generally not apply to disputes between public officials and the State (*Pellegrin v France*, 8 December 1999). Public officials who are subject to a vetting process in the European context may not be protected by the due process requirements of the Convention. The Human Rights Committee took a different approach stating that the concept of “suit at law” under article 14 of ICCPR was based on “the nature of the right in question rather than on the status of one of the parties” (CCPR/C/51/D/441/1990, para. 5.2). In a more recent decision, the Human Rights Chamber for Bosnia and Herzegovina departed from the Pellegrin precedent and admitted the case of a police officer who challenged his dismissal (*Rusmir Džaferović v The Federation of Bosnia and Herzegovina* (3 December 2003), CH/03/12932).

¹⁸ In international human rights law, the due process requirements for non-criminal proceedings are less explicitly defined than those for criminal proceedings. The basic guarantees described hereafter apply, however, to any due process of law.

A review process should be individualized. Thus if a person is to be removed from public office on the basis of criminal conduct, personal responsibility for the act must be established (although not necessarily according to the criminal standard of proof; see below). Group liability generally contravenes basic due process standards.¹⁹

Employees subject to a review should be granted a fair hearing. This right includes certain basic elements: initiation of proceedings within a reasonable time and generally in public; notification of the parties under investigation of the proceedings and the case against them; an opportunity for those parties to prepare a defence, including access to relevant data; an opportunity for them to present arguments and evidence, and to respond to opposing arguments and evidence, before a body administering the vetting process; the opportunity of being represented by counsel; and notification of the parties of the decision and the reasons for the decision. As an overall rule, a hearing should be guided by the principle of “equality of arms.” Also, employees subject to a review should be afforded the right to appeal an adverse decision to a court or other independent body.²⁰

In general, the burden of proof falls on the reviewing body to establish that a public employee is not suitable to hold office. Under exceptional circumstances, the burden may be reversed when the group or unit the public employee belonged to during the conflict or authoritarian rule has a well-known history of human rights abuse. A reversal would create a rebuttable presumption of unsuitability to hold office.²¹ However, the use of a reappointment process should be considered when a culture of abuse permeated the entire institution and large numbers of employees might have to be removed (see below).

As in administrative proceedings in general, a balance-of-probabilities standard will be the appropriate standard of proof in a review process, in contrast to the beyond-reasonable-doubt standard required in criminal proceedings.²² Under this standard, the review body is to follow the version of events that appears the most probable, reasonable or likely, after taking all the evidence into account.

Public employees (including judges) who were unlawfully appointed—in violation of procedural or qualification requirements—may be relieved of their functions by law. There is no need to

¹⁹ See, e.g., Council of Europe, Parliamentary Assembly resolution 1096 (1996), para. 12.

²⁰ E/CN.4/2005/102, para. 69.

²¹ Council of Europe, Parliamentary Assembly, Measures to dismantle the heritage of former communist totalitarian systems: Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a State based on the rule of law (doc. 7568, para. 16 (h)), 3 June 1996.

²² The appropriate standard of proof is relative to the potential consequences of the proceedings. Since the consequences of vetting proceedings are less severe than those of criminal proceedings, proof beyond reasonable doubt is not required.

establish other reasons for their removal.²³ They may, however, ask for an independent and impartial body to review the decision.

The contractual obligations resulting from separation of public employees as a result of a review should be honoured, in particular when employees are removed for reasons other than lack of integrity. These may include a severance package and other special benefits, pensions, etc.²⁴

(b) Reappointment process – institutional re-establishment

(i) Concept

A reappointment process reverses the fundamental dynamics of a review. The public institution in question is first disbanded, a new institution is established and there is a general competition for all posts. All serving employees have to apply if they want to continue working in the new public institution. To avoid a governance gap, the employees may remain in office until such time as a final decision is made about their future employment status. If a serving employee is not reselected, she or he ceases to hold office. While the primary objective of a review is to remove those individuals unfit for service, the aim of a reappointment process is to select for office the most suitable and qualified.

A reappointment process constitutes a profound intervention both at the individual and at the organizational level. At the individual level, employees are turned into applicants and continued employment is conditional upon reappointment. A reappointment process shifts the burden of proof to the applicant, who has to establish that he or she is the most suitable for the vacant post. Unlike employees who are terminated in the course of a review, applicants in a reappointment process generally have no right to a hearing or judicial review if they are not selected, as there is no right to be appointed to public office. These procedural simplifications, including the reversal of the burden of proof, streamline the personnel reform significantly. In a country emerging from conflict or authoritarian rule, a reappointment process facilitates the selection of the most suitable employees, rather than just weeding out those who are clearly unacceptable.

At the organizational level, a reappointment process represents the establishment of a new public institution. The old institution ceases to exist. This approach facilitates personnel reform processes that not only address individual capacity and integrity deficits but also require significant changes to the organizational structure and composition of an organization. A

²³ E/CN.4/2005/102/Add.1, principle 30 (stating that “judges unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions by law in accordance with the principle of parallelism”).

²⁴ Council of Europe, Parliamentary Assembly resolution 1096 (1996), para. 14.

reappointment process provides a better opportunity for undoing structural inequalities and implementing necessary institutional reforms, such as significantly modifying the ethnic or gender composition of a public institution, and facilitates the reduction or reassignment of personnel in the context of a consolidation or disbandment of public institutions.

The opportunity for reforming a public institution by means of a reappointment process is limited by the number of qualified replacements. In general, a reappointment process will be opened up to external candidates in order to replace unsuitable public employees or to fill new positions following changes to the composition or organizational structure of a public institution.

(ii) Legal requirements

Under regular circumstances, the procedural consequences of a reappointment process, in particular the denial of a hearing and a judicial review, as well as the reversal of the burden of proof, would violate the fundamental due process rights of the serving employees who are not reselected. These procedural reversals are justifiable by a transitional process that requires significant changes to the number of personnel, the organizational structure and/or the personnel composition of the public institution in question.

Moreover, in a country governed by the rule of law, constitutional safeguards are in place, in particular the separation of governmental powers, to protect the rule of law and prevent political interference between public institutions, including arbitrary replacements in and restructuring of the public sector by the executive branch of government. The independence of the judiciary provides special safeguards for judges, in particular the principle of irremovability. Legal provisions generally protect the operational independence of the police and other security agencies. A reappointment process could fundamentally undermine the rule of law and provides opportunities for arbitrary interference in the workings of otherwise independently operating governmental sectors. Therefore, a reappointment process should be limited to circumstances when the public institution in question is fundamentally dysfunctional and when an overall improvement of the rule of law is unlikely to be accomplished without it. Moreover, a reappointment process should be carried out as quickly and as early as the political circumstances permit in order to avoid protracted periods of legal uncertainty.

Again, the contractual rights resulting from the separation of employees as a result of a reappointment process should be honoured, in particular when employees are excluded for reasons other than lack of integrity. These may include a severance package and other special benefits, pensions, etc.

(c) Disciplinary process – institutional regeneration

Review and reappointment are the two principal types of personnel reform processes in post-conflict or post-authoritarian contexts. In an established rule-of-law context, normal disciplinary

procedures are applied to ensure the removal of public employees who lack competence or integrity. The particular challenges of a transitional process generally overstrain these regular procedures, and the capacity and will of public institutions to self-reform are particularly limited in post-conflict or post-authoritarian situations.

Nevertheless, the possibility of implementing the required personnel changes through the normal disciplinary procedures cannot be entirely discarded. Normal procedures can and should be used if the number of individuals that need to be screened is small or limited to a particular section within a public institution, and if there is sufficiently strong political will to implement self-reform. As a general rule, normal procedures should be given preference over any special processes that infringe on the certainty of the law.

3. Three phases of a personnel reform process

A personnel reform process generally consists of three phases: registration, screening and certification.

(a) Registration

The registration of the public employees to be vetted is necessary if the personnel records of a public institution are not properly maintained and if the number and the status of public employees are uncertain. This is frequently the case with large institutions in the security sector that informally took on and dismissed personnel during the conflict or the authoritarian rule. If the registration has not been completed during the assessment (see sect. IV. A.2 (c) above), it should be carried out as the first phase of the personnel reform process itself. In a reappointment process, the registration can take place during the application process.

The basic objective of registration is to determine and close the pool of those individuals who belong to a public institution and are, therefore, to be included in the personnel reform. This determination has an important secondary effect that fulfils a critical regulatory function in a country emerging from conflict or authoritarian rule: individuals who did not register should not be considered members of the public institution. Once the registration is concluded, individuals should join the public institution only through the regular application and selection procedures.

The registration also provides the basis for assessing and screening public employees. Registration forms include basic information on a public employee and her or his professional record. The regulations guiding the personnel reform should impose a strict obligation on the public employees to comply with the registration process. A significant material misrepresentation should in itself constitute grounds for disqualification.

Registering and maintaining a personnel registry are complex and time-consuming exercises, in particular when they concern institutions with large numbers of employees. It requires detailed planning, competent personnel and significant resources.

(b) Screening

The second phase represents the core of the personnel reform. Once the public employees to be included in the reform process have been determined, they are screened to assess if they meet the criteria for continued employment. Employment criteria are post-specific and are determined in accordance with the level of the post in the organizational structure of an institution (see sect. IV.B above).

Information on individual employees is systematically collected and stored in the personnel registry. Data from the integrity databank need to be integrated in order to include relevant background information in the personnel registry. The screening consists in applying the employment criteria to the data on individual employees. Additional checks and independent investigations may be necessary to complete missing information or verify doubtful information. Training programmes may be put in place to raise the competence level of public employees that lack skills and expertise.

(c) Certification

Those public employees who meet the employment criteria are certified. Certification constitutes the final decision on the status of a public employee in the transition. The personnel reform is completed once the certification status of all public employees has been determined. From then on regular procedures should regulate the management of personnel.

Certification could also require completion of a probationary period of service. This might be advisable if the management of the reform process is complex and the investigation of past conduct is limited. During the probationary period, public employees and new recruits could be removed more easily if additional information emerged about past misconduct.

At the conclusion of the transitional personnel reform process, efforts should be made to ensure its sustainability and put in place regular appointment and oversight mechanisms. The special commission could be turned into a regular appointment and oversight body or it could be terminated and other institutions could take on these functions.

4. Phase a personnel reform process

Transitional personnel reform is politically controversial, operationally complex and resource-intensive. While operational guidelines provide a methodological framework to develop a per-

sonnel reform programme, differences in the political context, specificities of the personnel reform mandate and institutional particularities require context-specific approaches. In a slow-moving and gradual transition, for example, in which former leaders continue to hold power, the removal of employees who committed human rights abuses may be resisted, but it may still be possible to change the organizational structure of a public institution, integrate the personnel of divided institutions and remove employees who lack competence. Rather than applying all personnel reform criteria simultaneously, a personnel reform process could be phased to take into consideration the complex political and capacity-related challenges of a transition. Such decisions are, however, likely to affect public perceptions of the legitimacy or trustworthiness of the institution. While a personnel reform process should aim at selecting competent and representative personnel of integrity, its concrete design should be adapted to the political realities, resources and reform capacities of the transition in question.

Institutions with large numbers of personnel create significant operational challenges for a vetting process. Again, a personnel reform process could be implemented in phases or it could prioritize certain groups of employees, in particular employees in senior management and supervisory positions.

Conclusion

Increasingly, vetting public employees, in particular in the security and justice sectors, is recognized as a central component of an effective and legitimate transitional justice strategy. Countries emerging from conflict or undergoing a transition to democracy frequently put in place processes to exclude from public office persons with serious integrity deficits in order to build fair and efficient public institutions. There is, however, a broad variety of views about, and approaches to, vetting. This is an emerging field of transitional justice and lessons continue to be learned.

While international law obliges States to adopt measures—including vetting—to prevent the recurrence of human rights abuse, there is nevertheless significant flexibility regarding the form such processes should take. Vetting strategies need to address the unique historical, social and political challenges of each society confronting a legacy of serious human rights abuses and seeking to reform institutions in order to prevent the recurrence of such abuses. Different types of public institutions also raise specific concerns and vetting strategies need to respond to the particular requirements of the institution to be vetted.

The operational vetting guidelines do not provide pre-packaged solutions and do not attempt to answer all questions that arise in the development of a vetting mechanism in a concrete historical situation. Rather, they provide methodological tools that may help in the design of context- and institution-specific vetting strategies. They emphasize, therefore, the need to begin any reform effort with broad consultations and a thorough assessment of the specific contextual and institutional needs.

The guidelines also stress that the complex challenges of transitional contexts require a comprehensive approach to institutional reform. Vetting is but one aspect of institutional reform, and an effective and legitimate reform strategy will situate vetting in its broader context. Likewise, 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.

