

# The Vetting of Judges & Magistrates

## What You Need to Know!!



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### a) What is Vetting?

Vetting is a process to determine the suitability of a serving judge or magistrate to continue serving in the Kenyan Judiciary based on a criterion that evaluates their past performance.



### b) Does the Kenyan judiciary require Vetting?

**YES!** Kenyans had at some point completely lost confidence in the judiciary due to inefficiency, incompetence and corruption that caused lengthy case delays and backlog as well as weak or non-existence of sanctions for unethical behavior.

### c) Does the Constitution allow for Vetting?

**YES!** Section 23 of the 6<sup>th</sup> Schedule required Parliament to pass a law providing for mechanisms and procedures for vetting the suitability of all judges and magistrates who were in office on 27<sup>th</sup> August, 2010, to continue serving in accordance to the values and principles in Articles 10 and 159 of the Constitution.

### d) What values and principles should a newly reformed Kenyan judiciary uphold?

Article 10(2) requires upholding of equity, human dignity, social justice, equality, human rights, non-discrimination and protection of the marginalized while Article 159 requires judicial officers to dispense justice expeditiously to all without regard to status and with minimal procedures.



### e) Has Parliament passed the law necessary for the Vetting process?

**YES!** The Vetting of Judges and Magistrates' Act 2011 was enacted in mid 2011. It establishes an independent Board to oversee the vetting exercise based on a criteria pegged on performance measuring indicator.

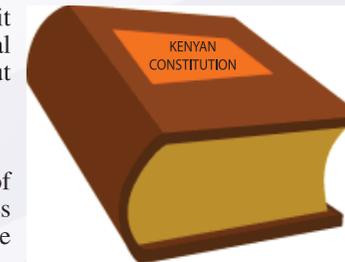
### f) Who sits on this board and how were they appointed?

It is composed of nine members appointed through a transparent and competitive process that culminated with Parliamentary vetting; three (3) are serving or retired judges of superior courts from the Commonwealth while the remaining six (6) are Kenyans three (3) of who are lawyers. The foreign judges are Chief Justice Georgina Woods from Ghana, retired Justice Albi Sachs formerly of the South African Constitutional Court and Justice Chomba former Chief Justice of Zambia. The Kenyans are Sharad Rao (Chairman), Roselyn Odede (Vice-Chair), Justus Munyithya, Abdirashid Abdulahi, Prof Kamau Ngotho and Meuledi Iseme

### g) For what reasons is Vetting necessary for Kenya at this moment?

In 2007 the disputed Presidential election results could not be submitted for court's determination due to a complete loss of faith in the ability of the judiciary to expeditiously,

impartially and independently resolve disputes before it especially those involving vested political or commercial interests. Vetting will reform the judiciary by weeding out unsuitable judicial officers.



### h) What laws will guide the Vetting process?

The principles of integrity in Constitution, the criteria of performance measuring outlined in the Vetting of Judges and Magistrates Act and the fair administrative procedure provided in regulations made by the Board.

### i) What are benefits of Vetting?

Vetting will totally restructure the judiciary by removing from service judicial officers who will have failed to satisfy the criteria to continue serving thus help:

- ❖ Establish an independent judicial system in which justice is dispensed impartially, competently and effectively.
- ❖ Restore the confidence of the public in the judiciary as the vanguard of a free and democratic society where the rights of all are respected irrespective of status.
- ❖ Improve the integrity and competence of the judicial officers which translates to sound legal reasoning that would enrich the human rights jurisprudence.
- ❖ Reduce the stigma and apathy associated with the court system as an avenue of resolving disputes, thereby reducing the chances of extrajudicial options.
- ❖ Instil efficiency in the Judiciary by emphasizing on competency thus improving the criminal justice system by lessening lengthy case delays.

### j) Who can participate in the Vetting process?

All Individuals, associations, companies, bodies of persons whether incorporated or unincorporated may participate in the vetting of judges and magistrates by submitting complaints or other information directly to the Board or through any of the following bodies which may also submit the complaints to the Board:

- (i) Law Society of Kenya;
- (ii) Ethics and Anti-Corruption Commission;
- (iii) Advocates Disciplinary Committee;
- (iv) Advocates Complaints Commission;
- (v) Attorney General;
- (vi) Public Complaints Standing Committee;
- (vii) Kenya national Human Rights Commission;
- (viii) Gender & Equality Commission;
- (ix) National Intelligence Service;
- (x) Police; or
- (xi) Judicial Service Commission.



### k) What misconduct or failures will be vetted?

The vetting criterion seeks to verify evidence of suitability, integrity and competence of the relevant officers to continue serving in judicial office. Individuals found to fall below the