



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

NPRCWATCH

PARLIAMENTARY BRIEFING

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About This Briefing

On the 16th of July 2020, the National Transitional Justice Working Group (NTJWG) presented its first ever Parliamentary Briefing to the Parliament of Zimbabwe through the Portfolio Committee on Justice, Legal and Parliamentary Affairs (the Committee). The NTJWG represented by Mr Alec Muchadehama, the NTJWG Chairperson and the NTJWG Secretariat met with members of the Committee namely Honorable Misheck Mataranyika, Honorable Stephen Ngwenya, Honorable Joshua Murire, Honorable Muchineripi Chinyanganya and Honorable Marko Raidza. In this briefing, the NTJWG sought to draw the attention of Parliament to the important developments in our country that relate to transitional justice and what role Parliament can play in furthering the transitional justice agenda in Zimbabwe.

The NTJWG is a platform established by forty-six Zimbabwean transitional justice stakeholder organisations in 2014 to provide an interface between transitional justice stakeholders and the official transitional justice processes in Zimbabwe. The secretariat of the NTJWG is the Zimbabwe Human Rights NGO Forum (the Forum), a coalition of twenty leading human rights organisations in Zimbabwe. Through its secretariat, the NTJWG has been monitoring and documenting transitional justice developments in Zimbabwe paying close attention to the activities of the NPRC, government interventions and policies as well the operating context for transitional justice actors in Zimbabwe. These monitoring activities have culminated in the production of monthly newsletters and a quarterly NPRC Watch Report. The NTJWG has gone a step further to engage with official transitional justice processes through the NPRC and the executive by producing quarterly briefings. These briefings have been compiled in a manner that makes them suited for purpose. The NPRC Briefing focuses on the NPRC's activities acknowledging what has been done well, what needs improvement, what has not been done and what needs to stop being done. The executive briefing has also been done in a similar manner but with a focus on the role of the executive in official transitional justice processes. Given the history of Zimbabwe it is, therefore, necessary for the NTJWG to engage government at all levels and that need for engagement resulted in the decision to compile a quarterly

Parliamentary Briefing detailing the important transitional justice developments and what role Parliament can play in furthering the transitional justice agenda in Zimbabwe.

The NTJWG collated feedback from stakeholders and incorporated it into this briefing. Furthermore, the NTJWG has scanned the operating environment taking note of the interventions of the government of Zimbabwe relevant to all national peace and reconciliation processes and these have been articulated in this brief. In this briefing, the NTJWG raised issues of concern to Zimbabwe's transitional justice journey from January to June 2020.

[The Role of Parliament in regards to Transitional Justice](#)

The Constitution of Zimbabwe gives Parliament an oversight role over the executive as a way of ensuring checks and balances in keeping with the norms of democracy. In section 119(2) and (3) the Constitution states that *“Parliament has power to ensure that the provisions of this Constitution are upheld and that the State and all institutions and agencies of government at every level act constitutionally and in the national interest. For the purposes of subsection (2), all institutions and agencies of the State and government at every level are accountable to Parliament.”* Section 107 of the Constitution provides that every Vice-President, Minister and Deputy Minister is accountable, collectively and individually, to the President for the performance of his or her functions. It goes further to state that every Vice-President, Minister and Deputy Minister must attend sessions of Parliament and parliamentary committees in order to answer questions concerning matters for which he or she is collectively or individually responsible. These provisions empower Parliament to play an oversight role over the executive and ensure accountability for the conduct of members of the executive. To this end, the NTJWG implores Parliament to exercise its oversight role in respect of past human rights violations as a way of ensuring non-recurrence.

[Executive Response to the COVID-19 Pandemic](#)

The first half of 2020 saw Zimbabwe being plunged into the COVID-19 pandemic along with the rest of the world, recording a total of eight cases and one death by the end of the quarter. As a measure of curbing the spread of the disease within Zimbabwe, the President reacted with haste and implemented a twenty-one (21) day lockdown from the 30th of March. This lockdown was subsequently extended by two weeks on two occasions and eventually indefinitely extended subject to fortnightly reviews. The implementation of a national lockdown was a necessary step for curbing the spread of COVID-19. While citizens were instructed to stay at home, law enforcement officers were deployed to ensure that citizens complied with the lockdown regulations. During this period, the NTJWG noted some issues it wishes to bring to the attention of Parliament.

The Zimbabwe Human Rights NGO Forum has been carrying out extensive monitoring of the human rights situation prevailing in the country in the wake of the COVID-19 pandemic. As of 20 June 2020, the Forum had documented a total of 278 cases of assault, 16 cases of attacks on journalists, 467 cases of arrests, 2 cases of malicious damage to property and 3 abductions. These violations are reported to have been committed by law

enforcement officers in some cases and by unknown offenders in some cases. The Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission (NPRC) released statements on the situation prevailing in Zimbabwe during the COVID-19 pandemic and both raised concern over the conduct of the security sector particularly the human rights violations against citizens and journalists. Although the NTJWG condemns the contravention of the lockdown regulations by the citizens, we also condemn the human rights violations by law enforcement officers. The NTJWG finds the heavy-handed conduct from the security sector very concerning in the Zimbabwean context where gross human rights violations have often been committed by law enforcement officers in the past. One of the fundamentals of transitional justice is the guarantee of non-recurrence. As such, it is necessary for transitional justice actors in Zimbabwe to work together to ensure that victims are guaranteed non-recurrence of human rights violations. The NTJWG, therefore, implores Parliament to use the power given to it by the Constitution in its section 107 (2) to make the Minister of Home Affairs and Cultural Heritage and the Minister of Defense and War Veterans Affairs, who are responsible for the Zimbabwe Republic Police and the Zimbabwe Defense Forces, accountable to Parliament for the violations of human rights by law enforcement officers. It is important for Parliament to not only hold the Ministers to account but to also ensure that investigations are made into these violations, perpetrators are held accountable and mechanisms are put in place to ensure that these violations do not recur.

The Committee indicated that it takes transitional justice issues seriously and has no problem playing its role as enshrined by the constitution. The Committee requested that the NTJWG shares with it its publications which detail emerging transitional justice issues to help the committee to be aware of developments and respond to them in accordance with its mandate.

While the Committee acknowledged the fact that the numbers of human rights violations perpetrated during the lockdown period was concerning it enquired if the violations had all been reported to the police. The NTJWG highlighted that some violations had been reported but given that the perpetrators were law enforcement officers it was difficult for citizens to lodge complaints with the police. The NTJWG buttressed the need for Parliament to push for the enactment that would operationalise the Independent Complaints Mechanism to allow citizens to lodge complaints against law enforcement officers. The members of the Committee recommended that the NTJWG could do a model bill and share it with the Committee as a way of aiding the committee to push for the enactment of a law operationalising the Independent Complaints Mechanism. The Committee asked the NTJWG why its reports on human rights violations during the COVID-19 period do not detail violations perpetrated by citizens against law enforcement officers. The NTJWG indicated that its reports are based on information received from its secretariat's monitors and the monitors of member organisation who welcome reports from all people without discrimination. The NTJWG acknowledged that the information received may be reflective only of violations against citizens because law enforcement

officers may be reluctant to go to the monitors with information on their experiences. The NTJWG however reiterated that its monitoring of human rights violations is not biased and people from all sectors are free to give information on any violations they witness regardless of who the perpetrators are.

Reporting Obligations of the NPRC

The NPRC officially became operational on 5 January 2018, following the promulgation of the National Peace and Reconciliation Commission Act [Chapter 10:32]. Section 323 of the Constitution mandates the NPRC to present an annual report to Parliament. This annual report must describe the NPRC's operations and activities for the previous year in full and it must be presented no later than the end of March of the year following the implementation of such activities. This means that the NPRC's 2018 Annual Report became due on the last day of March 2019 and the 2019 report also became due on the last day of March 2020. Moreover, section 16(7) of the NPRC Act obliges the NPRC to further make public the Annual Report and any other reports expected to have been presented to Parliament within thirty days. The NPRC is, therefore, mandated by the Constitution and the NPRC Act to report to Parliament.

Section 253 of the Constitution states that "*The National Peace and Reconciliation Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to national peace and reconciliation which, in the Commission's opinion, should be brought to the attention of Parliament.*" This provision is not peremptory. As such, the NPRC has the discretion to decide whether to compile a report on a certain transitional justice issue or not. This provision differs materially to that in section 323, which is peremptory, and lack of compliance amounts to a breach of a constitutional obligation. While the NPRC is an independent commission, the principles of separation of powers, transparency and accountability demand that it be made to account to the people of Zimbabwe. Parliament is tasked by the Constitution to hold the NPRC accountable. Public resources are allocated to the NPRC to enable it to carry out its work and the NPRC should, therefore, account for how it has made use of these resources. Public evaluation of the NPRC's annual report is necessary to keep the public informed about the NPRC's activities. At a time when there is a public outcry for accountability from government and other public bodies, it is important that institutions like independent commissions be seen to be above reproach. According to information received by the NTJWG from the NPRC the NPRC's Annual Reports for 2018 and 2019 have been submitted to the Minister of Justice, Legal and Parliamentary Affairs for presentation to Parliament. The NTJWG urges Parliament to inquire on record from the Minister on the status of the NPRC's report and the convening of a sitting to present the report. The NTJWG is concerned with the delay in consideration of these reports by Parliament and urges Parliament to consider reports of this nature in a timeous manner once they have been submitted. Timeous consideration of such reports

will enable publication of the reports while they are still relevant so that the public can effectively stakeholders with the content of the reports.

From the discussions on the reporting obligations of the NPRC it emerged that the NPRC's Annual Report for 2018 has in fact been presented to Parliament and debated. However the 2019 report remains outstanding. The Committee highlighted that some of its members have had the opportunity to see the 2019 report although it has not yet been presented before Parliament. The NTJWG informed the Committee that while presentation of the report is key, its timeous presentation and publication for public scrutiny is also important. The NTJWG noted that the value of the reports may be eroded if the reports are presented and published after the time stipulated in the Constitution.

Abduction and Torture of MDC Alliance Members

On 13 May 2020 MDC Alliance Member of Parliament Honorable Joana Mamombe and party members Cecelia Chimbiri and Netsai Marova were arrested at a roadblock by the police along Samora Machel Avenue in Harare. They were taken to Harare Central Police Station on charges of breaking lockdown regulations and staging an unsanctioned demonstration. Their arrest was confirmed by the Zimbabwe Republic Police Spokesperson Assistant Commissioner Paul Nyathi in an article in the Herald newspaper on 14 May 2020. However, when their lawyers and families followed up with the police on their location, the three women could not be located. The Zimbabwe Republic Police (ZRP) through a series of three tweets on Twitter, a social media platform, denied having the three in their custody on 14 May 2020. In the early hours of 15 May 2020, the trio was found badly bruised and traumatised, dumped at Muchapondwa Business Centre in Bindura South. They reported that they had been, psychologically, physically and sexually assaulted, including being forced to drink and eat human excreta. The NTJWG has noted with concern that the ZRP on 26 May charged the three women with violating Section 37 of the Criminal Code gathering with intent to promote public violence, breach of peace and Section 5(3) and (1) of COVID-19 Regulations SI99 of 20 on gatherings. These charges have been brought against the trio at a time when they are still receiving treatment for the injuries they sustained during the period of their abduction. The NTJWG also notes that the trio is currently in remand prison facing charges of lying about their abductions.

The NTJWG is particularly concerned that the government of Zimbabwe seems more focused on further persecuting the three women than investigating their abduction and torture. The Minister of Foreign Affairs General Sibusiso Moyo through a press statement dated 25 May indicated that the abduction of the three MDC Alliance female officials was a stage-managed theatrical display meant to tarnish the image of the government. Minister Moyo further added that the trio had violated the terms of the lockdown by staging an authorised demonstration. In the statement, Minister Moyo suggested that there is a third force behind the abductions and assault of the trio. Sentiments such as those expressed by the Minister are regrettable and trivialise the experiences of victims of

human rights violations. The history of our country is marred with cases like that of Itai Dzamara and Jestina Mukoko among others, which were characterised by abductions, torture and enforced disappearance and the recurrence of such violations does not bode well for national healing and reconciliation processes in our country. The NTJWG therefore urges Parliament to exercise its oversight role over the executive to ensure that the Minister of Home Affairs and Cultural Heritage ensures that reports of human rights violations emanating from the national lockdown are fully investigated. Investigation of such cases is vital to transitional justice as it assures victims of violations that justice will be served, perpetrators will be held accountable and the truth will be told about their experiences so as to ensure non-recurrence of violations.

The Committee declined to comment much of the abduction and torture of the three MDC Alliance members arguing that this matter is pending before the courts and it would not be prudent to discuss it. The NTJWG conceded that this is a matter that is currently before the courts but said that it was an example that shows the need for an Independent Complaints Mechanism. The NTJWG reasoned that in this case the law enforcement agents were being accused of abducting and torturing the three MDC Alliance members and it was the same law enforcement agents who were expected to investigate the claims and this shows a clear conflict of interest. The NTJWG expressed its concern over the gender bias of the human rights violations during the COVID-19 lockdown period. To this the Committee responded by asking for disaggregated data that shows this trend and highlighted that it could not do much without concrete evidence of the violations and the trend in the violations.

Constitution Amendments Public Hearings

Section 3 of the Zimbabwean Constitution lays out the founding values and principles for our country. Among these values is the supremacy of the Constitution, the rule of law and observance of the principle of separation of powers. These are principles that are essential for any democracy and it is vital for their observance to be prioritized. The government has made a move to amend the current Constitution with the gazetting of the Constitution of Zimbabwe Amendment (No. 2) Bill (the Bill). The Bill was initially gazetted on the 31st of December 2019 and subsequently regazetted on the 17th of January 2020 to correct anomalies in the original gazetting. In compliance with the provisions of the Constitution, Parliament had planned to conduct public hearing to solicit views from the public about the Bill. However these had to be postponed indefinitely when the national lockdown in response to COVID-19 was enforced. On 12 June 2020, President Mnangagwa announced several changes to the lockdown restrictions to open up the country and these changes were formalised through Statutory Instrument 136/2020 promulgated by the Minister of Health and Child Welfare. The statutory instrument also categorised Parliament public hearings as an essential service thus permitting resumption of the hearings.

The Zimbabwe Human Rights NGO Forum (the Forum) monitored the public hearings and the NTJWG would like to bring some of the pertinent issues arising from the public hearings to the attention of Parliament. Firstly, the conducting of public hearing in the current context was condemned by members of the public who participated in the public hearings. This is because for hearings that required the physical presence of citizens, the national lockdown and its enforcement made it impossible for citizens without exemption letters to participate. This was in case in Bulawayo, Gweru and Mount Darwin among other areas where participants indicated that they had trouble getting to the venues where the public hearings were held due to travel restrictions. Reports of this nature are very concerning to the NTJWG and indicative of a public hearing process that was flawed and the exclusionary. The NTJWG acknowledges the efforts made by Parliament to comply with COVID-19 safety regulations during the hearing such as checking temperatures and maintaining social distancing. However reports indicate that in some cases social distancing was not maintained outside the venues of the public hearings and in other cases individuals removed their masks while outside the venues. This is a cause for concern given the rising number of COVID-19 positive cases and speaks to the concerns expressed regarding conducting the hearing during this global pandemic.

The NTJWG's assessment of the reports on the public hearings is that although the citizens that managed to make their contribution during the hearings demonstrated some knowledge of the Bill, Parliament did not do enough to inform them about the Bill in some cases. An example of this is the virtual public hearing held on the ZOOM platform on the 19th of June 2020 where there was no introductory session to briefly inform the participants of the contents of the Bill. In their contributions during the public hearings some participants highlighted that the proposed amendments that relate to promotion of judges to superior court as well as those relating to the extension of the tenure of judges are a risk to judicial independence which is an integral part of any democracy and thus opposed the proposed amendment. Regarding the quota system for women and youths, participants opposed the proposed amendments arguing that the Constitution provides for equality between genders and equality should therefore be the goal and not quotas. Regarding the youth quota participants viewed the proposal as a token and not a sincere effort to ensure youth representation citing that the youths make up over 50% of the Zimbabwean population and a sincere amendment would be reflective of that. Other participants highlighted the need for representation of disabled persons and requested a quota for persons living with disabilities.

In Gwanda, participants called for the full implementation of sections 17, 56 and 80 of the Constitution which provide for gender equality. The same sentiments were echoed by participants in the virtual public hearing, Marondera and Gokwe. In Gokwe and Marondera key submissions on the extension of the women's quota were that it is not benefitting women but rather it has led women to be ridiculed by their counterparts in

Parliament and has also led to a decrease in the number of women elected into Parliament. In Marondera some participants submitted that the Vice Presidents should be elected together with the President to avoid nepotism and chaos in instances when the President is incapacitated. Participants also called for the full implementation of the Constitution before amendment. There were also submissions that the President must select Vice President he knows and trusts, and should also be able to dismiss them when he feels the need to do so. In Sanyati, some participants explained that the President should choose running mates before elections so that the people know who will be leading them before voting. In Mberengwa some participants submitted that the President should have the right to appoint Vice Presidents since he will be working closely with them.

From the public hearings that the Forum monitored some participants said that they view the proposed amendments as detrimental to the observance of the values of rule of law, separation of powers, good governance and independence of the judiciary in Zimbabwe. The NTJWG therefore implores the Parliament to objectively consider the long term implications of the Bill when the time for debate comes.

The Committee informed the NTJWG that it had no other alternative but to proceed with the public hearings and that it had made every effort to ensure that they were well publicised and citizen participation was prioritised. The Committee brought to the NTJWG's attention that the Constitution allows Parliament not to convene public hearings if impossible or not feasible to convene them. It further pointed out that the decision to conduct the hearings despite the difficulties presented by the current operating context was informed by the realisation of the importance of citizen participation in the law making process. The Committee highlighted that it had hosted radio programs to publicise the hearings, convened virtual meetings and convened physical meetings were more than one session was held at a time in the same venue to ensure compliance with COVID-19 safety measures. The Committee said that the public hearings had probably been the most highly publicised hearings it has ever done. For future public hearings the Committee requested that if the NTJWG is to monitor public hearings its monitors should meet the Committee after each hearing they monitor to share their observations so that the Committee can make the necessary changes going forward to improve the quality of the public hearings. The NTJWG acknowledged that efforts were made to ensure public participation but said its concern was that some people without exemption letters had failed to access the venues, the radio programs were not very interactive and that COVID-19 safety measures were not complied with outside the venues for the public hearings. The NTJWG however commended the efforts by the Committee and expressed its hope for objective debate on the Bill in Parliament.

Conclusion

The NTJWG appreciates the opportunity to address the Parliament of Zimbabwe and hopes to continue on this path of fruitful engagements. As highlighted in this briefing, Parliament has an important role to play in transitional justice processes in Zimbabwe and is urged to play it diligently. The NTJWG remains committed to supporting the work of peace and reconciliation in Zimbabwe and will continue engaging Parliament around transitional justice issues in our country.

Conclusion

The NTJWG thanked the Committee for its participation in the meeting and expressed its interest to meet with the Committee periodically to discuss transitional justice developments. The Committee indicated that it would take the briefing to the full membership of its committee for further discussions and identification of possible interventions. The Committee also requested to be furnished with the NTJWG's publications as well as more information on the human rights violations reported in the briefing to enable it to play its oversight role and ensure it holds those accountable to account for the violations. The Committee also implore the NTJWG to participate in awareness raising on the COVID-19 pandemic in light of the surge in local transmissions. The NTJWG and the Committee acknowledged that there is room for further engagement in the future and agreed to engage further in the future in an effort to further the transitional justice agenda.