



NATIONAL TRANSITIONAL JUSTICE WORKING GROUP ZIMBABWE

NPRC WATCH

EXECUTIVE BRIEFING FOR THE FIRST TO THIRD QUARTERS OF 2020 - 18 OCTOBER 2020

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About This Briefing

This is the executive briefing for the first to third quarters of the year 2020. In this briefing, the National Transitional Justice Working Group (NTJWG) aims to draw the government of Zimbabwe's (GoZ) attention to developments in the transitional justice sphere in our country during the past three quarters of 2020. The issues discussed in this briefing emerge from the monitoring of the operating context done by NTJWG, engagements with NTJWG stakeholders who are concerned with the national peace and reconciliation processes in Zimbabwe, and engagement with survivors of past and current human rights violations.

About the National Transitional Justice Working Group

The NTJWG is a platform that was 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 monitors transitional justice developments in Zimbabwe paying close attention to the activities of the National Peace and the Reconciliation Commission (NPRC), government interventions and policies as well as the operating context for transitional justice actors in Zimbabwe. Given Zimbabwe's history which is marked with conflict, violence and human rights violations the NTJWG seeks to engage official and non-official transitional justice processes at all levels to discuss important transitional justice developments and proffer solutions to the challenges that are faced by transitional justice stakeholders in the country.

Executive Briefing for the First to Third Quarters of 2020

From the first to the third quarter of 2020, the NTJWG noted the following developments and wishes to bring these to the attention of the Government of Zimbabwe (GoZ):

1. Response to COVID-19 Pandemic

2020 has largely been plagued by the COVID-19 pandemic which has put the nation's disaster preparedness and health system to test. The pandemic proved what most Zimbabweans already knew and had experienced, that the state of disaster preparedness is severely lacking and the public healthcare system is rapidly deteriorating. The NTJWG commends the fast response by the President which saw an initial twenty-one-day national lockdown being implemented from 30 March 2020 to curb the spread of the disease. The national lockdown was subsequently extended and remains in operation though at a lower level at the moment. While the lockdown was not only justifiable but necessary, the NTJWG is concerned with the violations of human rights that occurred during the enforcement of the lockdown. The Forum has produced a report documenting the first 180 days of the national lockdown, highlighting that this period was marred by violations of civil and political rights as well as economic, social, and cultural rights. The Forum recorded at least 920 human rights violations that occurred between 30 March and 18 September 2020. The consolidated statistics relate to abductions and torture, extrajudicial killings, assaults on citizens by law enforcement officers, attacks on journalists, unlawful arrests, and gunshots. Additionally, other violations could not be adequately quantified due to their high frequency and these include harassment, threats, and intimidation. The lockdown was also marred by reports of violations on fundamental rights to dignity and rights not to be tortured, rights to water, food, medical services, access to information, and restrictions to freedom of expression, noncompliance with court orders, and corruption. The Forum has documented these violations in its "180 Days of What?" report accessible by visiting this link.

The trend of human rights violations perpetrated during a global pandemic is indicative of a troubling culture of impunity and speaks to the urgent need for reform in Zimbabwe particularly within the security sector whose members were often the perpetrators. The NTJWG finds it concerning that despite the many reports of human rights violations by law enforcement officers during the lockdown there has been little done to stop the violations. This has left citizens with no choice but to approach the courts for relief as was done in an application made by the Zimbabwe Lawyers for Human Rights (ZLHR) representing Ms Lucia Masvondo, a woman from Karoi who was bitten by police dogs in April 2020. The respondents were the Minister of Health and Child Care, the Minister of Local Government, Rural and Urban Development July Moyo, the Minister of Home Affairs Minister and Cultural Heritage, Minister of Defence and War Veterans Affairs, the Urban Councils Association of Zimbabwe, and the National

Prosecuting Authority. Justice Tagu and Justice Musakwa presided over the matter in the High Court in Harare and granted the applicant interim relief on 14 April 2020 by giving an interim order that the implementation of the COVID-19 regulations shall be carried out with full respect for the dignity, human rights and fundamental freedoms of people. The order states that it is unlawful for law enforcement officers to affront the dignity of persons by assaulting them or ordering them to carry out humiliating acts that are only intended to debase or degrade their dignity. Despite the granting of this court order the human rights violations continued unabated. The NTJWG, therefore, urges the GoZ to ensure that the violations that occurred during the lockdown are investigated and the perpetrators are held accountable. Doing this will go a long way in demonstrating to the people of Zimbabwe that the GoZ is committed to ensuring peace.

The COVID-19 pandemic brought to the fore the state of the health sector in Zimbabwe and exposed the weaknesses in our country's health institutions. While it is true that pandemics such as this may come unexpectedly the country needs to be prepared for such disasters. There were allegations of patients being turned away at the institutions that were designated to care for them. Concerns were also raised by health care workers who said that they did not have sufficient Personal Protective Equipment (PPEs) to protect them when caring for patients. The allegations and concerns raised all speak to the need for our health sector to be revamped and better equipped so that when pandemics like the COVID-19 pandemic strike, patients can be given the best care possible and avoidable loss of lives is avoided. The concerns expressed by medical practitioners culminated in them approaching the courts for relief with the Zimbabwe Association of Doctors for Human Rights litigating against the Ministers of Health and Child Care, Finance and Economic Development, and Transport and Infrastructural Development. Justices Musakwa and Tagu sitting in the High Court in Harare ordered the GoZ to ensure the capacitation of medical personnel and facilities. Regrettably, despite the court ruling, medical practitioners and institutions remained inadequately equipped hence hampering their efforts in the fight against COVID-19.

The concerns raised by the NTJWG in this briefing have also been articulated by independent commissions such as the NPRC and the Zimbabwe Human Rights Commission (ZHRC) who released statements on 15 April and 21 May respectively. In their press statements both commissions called for respect, protection, and promotion of human rights noting the rampant violations during the national lockdown. The NTJWG urges the GoZ to address concerns about human rights violations which have been echoed by civil society and independent commission alike with haste and ensure non-recurrence of these violations.

2. Demolitions during the COVID-19 Pandemic

On 26 April 2020, ZLHR on behalf of informal traders, residents, and residential associations represented by the Trustees of the Chitungwiza Residents Trust, Mr Obert Muchawaya, Mr Ruben Kondo, Mr John Watambwa, Mr Jabulani Moyo, Kushinga Epworth Residents Association, and Mr Bright Masuka made an urgent chamber application in the High Court sitting at Harare presided over by Justice Munangati-Manongwa. The respondents were the Minister of Local Government and Public Works, the Urban Councils Association of Zimbabwe, the Association of Rural District Councils of Zimbabwe, the Chitungwiza Municipality, and the Epworth Local Board. The applicants challenged the legality of the widespread demolitions of vending stalls and tuck shops by local authorities in Chitungwiza and Epworth. Justice Munangati-Manongwa sitting in the High Court in Harare granted the applicants interim relief through an interim order that directed for the demolitions to be stayed citing that they were not done in compliance with existing town planning laws, in particular, section 32 of the Regional Town and Country Planning Act [Chapter 29:12]. The order also directed that the applicants and any other informal traders be barred from conducting business in undesignated areas and they were ordered to conduct an informal business subject to the prior approval of the local authorities. The demolitions came as a result of Circular Minute 3 of 2020 which was issued by the Secretary for Local Government and Public Works on 8 April 2020, addressed to town clerks or secretaries and chief executive officers advising them of a Cabinet resolution to take advantage of the national lockdown to clean up and renovate small and medium enterprises and informal traders' workspaces. The circular implored the recipients to make every effort to comply with the resolution. However, the relief granted to the informal traders was short-lived as the Ministry of Local Government and Public Works ordered the resumption of demolitions of small and medium enterprises' informal structures in urban centres countrywide stating that "the court in its final determination ordered that the Circular Minute Number 3 of 2020 is legal and the clean-ups and renovations of Small and Medium Enterprises and informal traders' workspaces by local authorities should proceed". While the NTJWG accepts that illegal structures

may be demolished, this must be done in a manner that complies with the law. Legal compliance is necessary to ensure that violations such as those witnessed during Operation Murambatsvina do not recur.

3. President Emmerson Mnangagwa's Engagement with Matabeleland Civil Society Organisation on Gukurahundi

The NTJWG noted the engagement between President Emmerson Mnangagwa and some sections of Matabeleland civil society organisations to discuss the issue of Gukurahundi. The first engagement was in March 2019, the second in February 2020, and the latest engagement was on 21 August 2020. Of concern to the NTJWG is that these meetings appear to be attended by the executive and civil society organisations in Matabeleland whose participation in the engagements had dwindled with each meeting. Following these engagements, there has been increased discourse around the need for exhumations to be carried out in the Matabeleland and Bulawayo regions to bring closure to families of victims of Gukurahundi and for death and birth certificates to be issued to victims and children of victims of Gukurahundi.

The NPRC was established by the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 and given the mandate of facilitating peace and reconciliation in Zimbabwe. The NPRC has the mandate to deal with the issue of Gukurahundi in a non-partisan manner, and facilitate truth-telling and justice for victims. The NTJWG is therefore concerned by the exclusion of the NPRC in such engagements. The NTJWG notes that the according to the presentation made to Parliament on the NPRC's 2019 Annual Report the NPRC aptly recommended that there is a need to put in place legal and or policy frameworks to deal with exhumations and reburials of victims of past conflicts as well as secure documentation for victims' families. This is an important recommendation that should inform all interventions and engagements with stakeholders. It is vital to ensure that any interventions made in respect of this very sensitive issue are made within a policy framework that stakeholders particularly survivors have had input in. The NTJWG, therefore, urges the GoZ to support the implementation of the NPRC's recommendation concerning this issue and complement the work being done by the NPRC in dealing with the past in all parts of the country without usurping the NPRC's powers.

4. The Departure of Commissioner Netty Musanhu from the NPRC



On 20 February 2020, the NPRC announced that Commissioner Netty Musanhu had left the Commission. In its statement about Commissioner Musanhu's departure, the NPRC said that her departure was a resolution to a four-year conflict of interest in terms of section 236(2) of the Constitution of Zimbabwe. Section 236(2) of the Constitution of Zimbabwe states that "persons who are members of a political party or organisation on their appointment to an independent Commission must relinquish that membership without delay and in any event within thirty days of their appointment". Commissioner Musanhu's departure from the NPRC has resulted in a vacancy arising within the Commission. The NTJWG, therefore, reminds the GoZ that according to section 5 of the First Schedule of the NPRC Act [Chapter 10:32] the President must appoint a qualified person to fill the vacancy. Given that Commissioner Musanhu is said to have left the NPRC due to a conflict of interest in terms of section 236(2), it is prudent for the President to be careful not to appoint a replacement with whom similar issues may arise. The NTJWG urges the President to make this appointment as soon as practically possible bearing in mind that the NPRC is not a permanent commission but has an expansive mandate and limited human resources. These challenges already hamper the activities of the NPRC and not filling this vacancy soon will be detrimental to the NPRC's ability to fulfil its mandate.

5. Amendments to the Constitution of Zimbabwe

On 31 December 2019, the Clerk of Parliament gazetted the Constitution of Zimbabwe Amendment (No.2) Bill (the Bill), and then on 17 January 2020, the Bill was regazetted to correct anomalies in the original gazetting. The Bill proposes to make some changes that are detrimental to the values of rule of law, separation of powers, good governance, and independence of the judiciary in Zimbabwe. The NTJWG is concerned by the changes proposed in the Bill which appear to drive towards centralization of power on the President, something which does not bode well for democracy and has historically proven to be a cause of conflict. The NTJWG accepts that the Constitution may be amended. However, this is a sacrosanct document that must not be interfered with unnecessarily. Further the current Constitution came into effect after receiving a 95% approval vote by Zimbabweans in a referendum in March 2013. Although the Bill was subjected to public hearings, public participation in these hearings was severely limited as



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a result of the COVID-19 pandemic which deterred public participation. The NTJWG, therefore, views the efforts to amend the Constitution during a global pandemic as insincere and aimed at undermining the will and aspirations of Zimbabweans. The NTJWG would like to remind the GoZ that the Constitution in its current state has not been fully implemented and it is necessary to implement it fully to gauge if an amendment is necessary.

According to an article published in the Daily News newspaper on 24 February, the Permanent Secretary in the Ministry of Justice, Legal and Parliamentary Affairs, Ms Virginia Mabhiza said that a provision extending the lifespan of the NPRC to ensure that the NPRC does not cease to exist in 2023 had been erroneously omitted from the Bill. The Permanent Secretary reportedly said that the omission was a result of lack of engagement by the NPRC and civil society which she said should have lobbied for the inclusion of a provision extending the NPRC's lifespan in the Bill. The NTJWG wishes to draw the GoZ's attention to the last briefing that the NTJWG had with the executive in March 2019 during which the issue of the lifespan of the NPRC was discussed at length. This is one example of the lobby initiatives that have been embarked on regarding the lifespan of the NPRC. Moreover, given that there is currently an appeal pending before the courts on the interpretation of the constitutional provisions relating to the lifespan of the NPRC which was filed by the GoZ, the NTJWG opines that the GoZ is aware of this issue and the need for it to be definitively addressed. The NTJWG maintains that the Constitution should be preserved in its current state as much as possible and therefore the issue of the lifespan of the NPRC could be resolved without necessarily amending the Constitution. This could be done by adopting an approach that takes into consideration the mandate of the NPRC, the history behind its establishment, and the processes that took place before it became operational when interpreting the provision in the Constitution that relates to the NPRC's lifespan.

6. Call for Respect of the NPRC's Reporting Obligations

The NTJWG welcomes the presentation of the NPRC's 2018 and 2019 Annual Reports to Parliament on the 3rd and 8th of September 2020. Presentation of an annual report to Parliament describing in full the NPRC's operations and activities is a constitutional obligation of the Commission which is provided for in terms of section 323 of the Constitution. The NTJWG is however concerned by the delay in compliance. The NPRC's reporting obligations were outstanding since March 2019 for the 2018 Annual Report and since March 2020 for the 2019 Annual Report. Timely reporting is crucial to building public confidence in the NPRC's capacity to fulfil its mandate thus timely reporting should be prioritized. The Executive plays an important role in ensuring timely reporting by the NPRC as it bears the responsibility of presenting the report to Parliament. The NTJWG, therefore, urges the GoZ to play its role in ensuring that the NPRC provides its annual reports in time for them to be presented to Parliament within the timeframes stipulated by the Constitution. Furthermore, the NTJWG implores the GoZ to ensure that once the NPRC provides it with its reports they are presented to Parliament without delay and published to enable all stakeholders to engage with the contents of the reports.

The NTJWG notes that according to the Post Cabinet Press Briefing of 4 August 2020, Vice President Kembo Mohadi in his capacity as the Chairperson of the Cabinet Committee on National Peace and Reconciliation presented the NPRC's reports to Cabinet before their presentation to Parliament. This act amounts to a constitutional breach as the Constitution requires that the report be produced by the NPRC then presented to Parliament and not Cabinet. While Cabinet may eventually be given access to the reports of the NPRC it is the NTJWG's interpretation of the Constitution that the reports should be presented to Parliament before they can be presented to any other stakeholders including Cabinet. Further, the NTJWG notes that according to the briefing one of the recommendations made by the NPRC is that campaigning against one's country shall be legislated at law and criminalised. However, a close reading of the National Assembly Hansard which details the presentation of the 2018 and 2019 NPRC Annual Reports to Parliament does not refer to such a recommendation. The claims by the Executive are therefore disconcerting and detrimental to the NPRC's work which is of great national importance. The NTJWG is concerned that despite the NPRC not making any recommendations for the criminalisation of "campaigning against one's country" the GoZ appears to be making strides towards formulating legislation in line with this alleged recommendation. According to an article published in the Sunday Mail newspaper on 4 October 2020, Cabinet will soon consider the principal framework of a proposed law that will criminalise and impose stiff penalties for campaigning against the country through private correspondence by private citizens with foreign governments and harming national interests. Ms Virginia Mabhiza reportedly told the Sunday Mail that it is solely the State's mandate to engage other nations on issues about foreign relations and that the proposed law will criminalise acts such as corresponding with foreign governments without approval, making false statements which might harm the country and conniving with hostile foreign governments

to harm the nation. The article can be accessed using this link. This article came after the Post Cabinet Press Briefing of 4 August 2020 in which Cabinet reportedly adopted the recommendations made by the NPRC in its 2018 and 2019 Annual Reports. According to the briefing one of these recommendations was to legislate at law and criminalise campaigning against one's country.

The proposed law is a gross violation of freedom of expression, a fundamental right that is enshrined and protected in terms of section 61(1) of the Constitution. This violation is unjustifiable in terms of section 86 of the Constitution which permits the limitation of fundamental rights and freedoms to the extent that the limitation is fair, reasonable, necessary, and justifiable in a democratic society. Freedom of expression is key to facilitating free dialogue in a democracy and the proposed law will be detrimental to much-needed dialogue in Zimbabwe. The proposed law appears to be aimed at stifling dissent and muzzling citizens to stop them from freely addressing human rights violations they see and experience. The NTJWG is concerned that there is a real risk that the proposed law will be weaponised to the detriment of the values of democracy and constitutionalism in the country, therefore, any ongoing processes in its formulation should be halted.

7. Increase in the Use of Hate Speech and Intolerance by National Leaders

The NTJWG notes with concern a growing trend in the use of hate speech and the prevalence of intolerance in response to criticism and dissent in Zimbabwe. Of particular concern to the NTJWG is that the increase in the use of hate speech and intolerant language in a context where the nation is reeling from dealing with a pandemic that left two hundred and twenty-eight people dead as of 10 October 2020. The effects of the pandemic have been worsened by the human rights violations that have been perpetrated on the citizenry and the rampant corruption in which senior government officials have been implicated and the struggle to make ends meet that has characterised the lives of most Zimbabweans during this year. It is therefore concerning that when citizens, civil society, and the church have voiced their concerns and urged the GoZ to engage in a national dialogue process to address these problems, their concerns have been responded to with hate speech and intolerance. These responses are barriers to constructive dialogue that results in effective solutions and peacebuilding.

Given Zimbabwe's history of violence and conflict stemming from intolerance and hate it is deeply disturbing for the NTJWG that politicians and senior government officials, including the President, have recently been at the forefront in using hate speech and demonstrating intolerance for divergent views. Examples of such incidents are the address by ZANU-PF Politburo member Mr Patrick Chinamasa directing ZANU-PF members to use any means at their disposal to defend themselves during the 31 July 2020 protests. Mr Chinamasa used inciting language during his address which is likely to worsen polarisation in the country and fuel animosity as well as politically motivated hatred and violence. Similarly, the Minister of Information, Publicity, and Broadcasting Services Monica Mutsvangwa launched a hateful attack with tribal undertones against the Zimbabwe Catholic Bishops Conference in her response to its pastoral letter which called upon the GoZ to urgently address the challenges facing the country. The NTJWG again noted the theme of intolerance and the use of hate speech on 4 August 2020 when President Emmerson Mnangagwa addressed the nation. President Mnangagwa warned that he would "flush out" opponents and labelled the main opposition political party as a "terrorist" organisation. The President went further to call critics "bad apples" and accused them of acting in league with foreign detractors. The Constitution guarantees the right to freedom of expression in section 61. However, section 61 goes on to state that freedom of expression and freedom of the media exclude advocacy of hatred or hate speech. In Zimbabwe the use of hate speech has often resulted in violence and human rights violations as evidenced by the violence in the Matebeleland region in the early 1980s during Gukurahundi where people from the region were labeled dissents and almost 20000 people were killed as a result. Therefore, the use of hate speech goes against the values and provisions of the Constitution and should be condemned. The NTJWG, therefore, calls upon the GoZ, all government officials, and politicians to desist from perpetuating a culture of hate and intolerance in the country. The NTJWG urges the GoZ to work with the NPRC to lead the country away from hate and intolerance and towards nation-building dialogue. Such dialogue is key to ensuring non-recurrence of atrocities such as Gukurahundi which came about as a result of the culture of intolerance and hate.

8. Implementation of the Recommendations of the Motlanthe Commission of Inquiry into the 1 August 2018 Post-election Violence

Following the 1 August 2018 post-election violence, President Emmerson Mnangagwa appointed a Commission of Inquiry (the Motlanthe Commission) in terms of section 2(1) of the Commissions of Inquiry Act [Chapter 10:07] through Proclamation Number 6 of 2018 published in Statutory Instrument 181 of 2018. The Motlanthe Commission was tasked with looking into the post-election violence and making recommendations for how the country could move forward and ensure the non-recurrence of the violence. The Motlanthe Commission which was chaired by former South African President Kgalema Motlanthe released its report in December 2018. One of the crucial findings made by the Commission in its report is that six people died and thirty-five were injured as a result of actions by the military and the police. Among the recommendations made by the Commission was the recommendation for payment of compensation for losses and damages caused including, in particular, support and school fees for the children of the deceased and such compensation would be made by a Special Committee set up by the GoZ; and for the perpetrators of the violations that occurred on 1 August 2018 to be held accountable for their wrongful actions.

On 28 June 2020, over a year after the Motlanthe Commission released its report the Sunday Mail Newspaper published an article claiming that the GoZ had fully complied with the recommendations made by the Motlanthe Commission. The article reported that Ms Virginia Mabhiza who also served as the Motlanthe Commission's secretary had informed the Sunday Mail that the GoZ had fully complied with the recommendations, this article can be accessed by visiting this link. Ms Mabhiza reportedly claimed that in terms of compensation for the victims the Government had communicated with victims and informed them of the procedures to follow to enable them to get compensation from the Minister of Public Service, Labour, and Social Welfare. However, information received from by the Zimbabwe Human Rights NGO Forum the victims, their families, and their legal representatives show that they were not contacted and still have not been compensated almost two years after the Motlanthe Commission released its report. The claims by the GoZ have therefore been largely unsubstantiated and disputed by the intended beneficiaries of some of the interventions recommended by the Motlanthe Commission. The NTJWG urges the GoZ to prioritise implementing the Motlanthe Commission's recommendations post-haste and make public the steps it has taken in the implementation of each recommendation. False claims about the implementation of recommendations such as those made by the Motlanthe Commission are detrimental to the rebuilding trust between the people of Zimbabwe and the GoZ and the NTJWG urges the GoZ to desist from making such claims.

Conclusion

The NTJWG is concerned with the human rights situation in Zimbabwe whose deterioration has only been worsened by the COVID-19 pandemic. The continued injustice and persecution of victims of human rights is indicative of a reluctance to hold perpetrators of human rights violations in Zimbabwe accountable for their actions. This is detrimental to the enjoyment of human rights and fundamental freedoms by all and undermines the national peace and reconciliation process. The increase in the use of hate speech and intolerance in the country is also concerning to the NTJWG as it is contrary to the calls for broad based national dialogue on how to move the country forward. It is critical for justice, constitutionalism, respect for human rights and building tolerance to be prioritised to ensure non-recurrence of human rights and realise national healing and sustainable peace.

Regrettably, the NTJWG's efforts to meet with the Executive and present this briefing were unsuccessful with the Executive citing its busy schedule as the reason for its unavailability. While the NTJWG appreciates the many commitments of the Executive it implores the Executive to engage more with civil society, the church, and citizens. Such engagement is necessary particularly when divergence in views is likely as engagement will facilitate much-needed dialogue and help move the country forward with a unified vision.



About this briefing

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