



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

# NPRCWATCH

PARLIAMENTARY BRIEFING FOR THE FOURTH QUARTER OF 2020

24 NOVEMBER 2020

## About this Briefing

The National Transitional Justice Working Group (NTJWG) is pleased to issue its final Parliamentary Briefing for the year 2020. This briefing is a culmination of the NTJWG's efforts to monitor the transitional justice developments during the fourth quarter of 2020. This briefing was presented to the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs (the Committee) on 24 November 2020. Through this briefing the NTJWG sought to draw the attention of Parliament to the important developments in the country that relate to transitional justice, the work of the National Peace and Reconciliation Commission (NPRC) and what role Parliament can play in furthering the transitional justice agenda in Zimbabwe through this briefing. In compiling this briefing, the NTJWG engaged with stakeholders including civil society organisations and survivors among others, and identified areas in which the intervention of Parliament is key to furthering transitional justice in the country.

The final quarter of 2020 was characterised by growing hostility by the Government of Zimbabwe (GoZ) towards civil society. This hostility was shown not only in the utterances of government officials but also in its efforts to amend existing laws with an aim to close operating space for civil society in Zimbabwe. Consultations on exhumations and reburials of the remains of victims of human rights violations perpetrated during Gukurahundi continued during the fourth quarter with the NPRC still being excluded from the consultations despite having resumed its normal operations.

## Establishment of the Independent Complaints Mechanism

In the last Parliamentary Briefing, the NTJWG referred to the establishment of the Independent Complaints Mechanism (ICM) highlighting its importance particularly in the face of continued human rights violations by members of the security sector. Shortly after the last briefing, the Constitutional Court handed down a ruling in the case of *Chironga and Mahiya v Minister of Justice, Legal and Parliamentary Affairs & Others*<sup>1</sup> where the applicants were seeking an order that would compel the GoZ to gazette a Bill for the establishment of the ICM in line with section 210 of the Constitution. The court noted that the Constitution has mechanisms to control the exercise of public power and these must be put in place within a reasonable time. The Constitutional Court ruled that the GoZ must gazette the Bill envisaged by section 210 of the Constitution within forty-five days from the date the order was handed down.

On 3 November 2020, the Minister of Information, Publicity and Broadcasting Services Monica Mutsvangwa announced that Cabinet had approved the principles for the Bill establishing the ICM. Two weeks later on 18 November, almost forty-days after the Constitutional Court handed down its ruling, in a post-Cabinet briefing Minister Mutsvangwa announced that Cabinet had approved a bill establishing the ICM as envisioned by section 210. She highlighted that the Bill seeks to provide for an independent complaints mechanism that will investigate complaints against members of the security

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<sup>1</sup> *Chironga and Mahiya v Minister of Justice, Legal and Parliamentary Affairs & Others* (CCZ14/2020)

services and ensure that offending members are brought to account through recommendations for disciplinary action to be taken against them and appropriate remedies to be granted to complainants. While it is concerning for the NTJWG that the GoZ had to be compelled through a court order to take action to ensure the establishment of the ICM, the progress that has been made in compliance with the court order is welcome.

The establishment of the ICM is crucial particularly in Zimbabwe where there are rampant violations of the human rights of citizens by members of the security forces. The establishment of the ICM if done as envisaged by the Constitution will be key to addressing the existing culture of impunity towards human rights violations particularly those perpetrated by the security forces. Ending this culture of impunity is key to rebuilding the trust between citizens and the security sector. During the briefing, the NJWG reminded Parliament that as it awaits the gazetting of the Bill and the commencement of the public hearings during which stakeholders will express their views on the contents of the Bill, Parliament needs to bear in mind that the independence of the ICM is of utmost importance. Therefore, a bill that establishes an ICM that is not or may be perceived as not being independent is contrary to the provisions of section 210 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) and will not be acceptable. As the law-making body of the GoZ, it is key for Parliament to ensure that the enabling law that is eventually enacted is in line with the provisions of section 210 and does not result in the establishment of an ICM that is compromised and will not be able to independently deliver on its mandate.

Independence of the ICM is crucial as it will ensure that citizens can report human rights violations they experience without fear of reprisal. Further, an independent ICM will bolster public confidence that there is a sincere effort to end human rights violations by security forces in Zimbabwe through independent investigations of reports of violations and holding of perpetrators accountable. Currently, when citizens' rights are violated by security forces citizens are reluctant to report the violations as there is often little to nothing at all done to give victims justice through the criminal justice system. Furthermore, the fact that victims of human rights violations perpetrated by members of the security sector have to go and report the violations to the police who are members of the security sector retraumatizes victims which also deters them from reporting the violations. The NTJWG, therefore, urged Parliament to bear these issues in mind when it considers the Bill establishing the ICM and prioritise the issue of the ICM's independence in any discussions on the Bill.

#### [Developments Relating to Exhumations and Reburials of the Remains of Victims of Human Rights Violations](#)

When the NTJWG last met Parliament in September 2020, one of the issues that were discussed was the recommendation by the NPRC that there should be a national policy on exhumations and reburials of victims of human rights violations. The NTJWG endorsed the NPRC's recommendation and highlighted the need to have a coordinated national approach to exhumations and reburials that is led by the NPRC with all other stakeholders' different roles to support the NPRC. Since the last briefing, there have been two significant developments relating to the issue of exhumations in the country that must be taken into consideration as the country grapples with the questions on how to handle exhumations and reburials.

Firstly, the High Court sitting in Bulawayo handed down a ruling on exhumations following a court application that was made in response to the recent consultations by the President of Zimbabwe in the Midlands and Matabeleland provinces. In August 2020, Charles Thomas a Gukurahundi survivor, Ibhetshu Likazulu Trust, Mbuso Fuzwayo, and Zimbabwe African People's Union approached the High Court sitting in Bulawayo to stop the executive and the Matabeleland Collective from carrying out exhumations.<sup>2</sup> Justice Makonese heard the matter and dismissed the application in October 2020, on

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<sup>2</sup> Charles Thomas and 3 Others v President of Zimbabwe and 5 Others HC 1454/20

the basis that it was presumptuous and premature. He accepted the defendants' contention that they had no intention to act outside the law. The judge found that the NPRC is constitutionally mandated to lead the process of exhumations and reburials, and the applicants needed to approach the NPRC to intervene if they feared that the process would be carried out unlawfully. This ruling by the High Court echoes the position that the NPRC should be leading this process which has been the position of the NTJWG, civil society, and survivors of past human rights violations, and the families of the victims of past human rights violations.

Another development that has been noted by the NTJWG relating to exhumations is the continued exclusion of the NPRC from consultations aimed at planning how exhumations and reburials will be conducted for victims of Gukurahundi in the Matabeleland and Midlands provinces. The executive arm of the GoZ led by the President has been carrying out these consultations since 2019. While the exclusion of the NPRC from these consultations by the executive is not new and has continued to date, the latest consultation brought a new and worrisome dimension to this issue. On 24 October, the executive met with traditional leaders in Bulawayo to discuss the issue of exhumations and reburials of the remains of the victims of violations perpetrated during Gukurahundi. Of particular concern to the NTJWG is that this meeting resolved that traditional leaders will now take over the exhumation and reburial of victims of Gukurahundi in Matabeleland and Midlands, while the government will fund the process as part of initiatives to bring closure and promote national healing.

The NTJWG accepts that traditional leaders have a pivotal role to play in the exhumations process and this role should not be negated by the existence of the NPRC. However, the Constitution gives the NPRC the primary mandate to facilitate peace and reconciliation. Carrying out exhumations and reburials is part of the NPRC's mandate and any role that may be assigned to traditional leaders in respect of exhumations must be one that is aimed at providing the necessary support to the NPRC to enable it to effectively lead the process. It therefore would appear that the GoZ is usurping the power of the NPRC through the traditional leaders. The NTJWG, therefore utilized this briefing to urge Parliament to play its oversight role and hold the GoZ accountable for its interference with the mandate of the NPRC. Furthermore, the NTJWG highlighted that according to section 16(3) of the NPRC Act [Chapter 10:32], Parliament may through the relevant Parliamentary Portfolio Committee Chairperson cause the Commission regarding its operations, undertakings, and property to submit such other reports as the Parliament may require. In light of this provision, the NTJWG recommended that the Committee on requests that the NPRC furnishes it with a report on the issue of exhumations focusing on its involvement in the ongoing processes, the challenges it is encountering, and its recommendations for the way forward. Such a report will be key in informing Parliament on how best it can intervene to assist the NPRC to deliver on its mandate without Executive interference.

#### Closure of Civic and Democratic Space through Repressive Laws

On 27 October, Minister of Information, Publicity, and Broadcasting Services Monica Mutsvangwa announced that Cabinet had approved of the proposed amendments to Criminal Law (Codification and Reform) Act [Chapter 9:23]. According to Minister Mutsvangwa, the proposed amendments seek to criminalise the conduct of isolated citizens or groups who, for self-gain, co-operate, or connive with hostile foreign governments to inflict suffering on Zimbabwean citizens and cause damage to national interests. This announcement came after several media reports and statements by the Ministry of Information, Publicity, and Broadcasting Services indicating that the Government of Zimbabwe intended to enact a new law to be known as the Patriot Act. However, it appears the plans to enact a new law have been abandoned with Cabinet opting to amend the existing criminal law. Furthermore, the proposed amendments are the criminalisation of the making of unsubstantiated claims of torture and abductions that are perceived as having been concocted to tarnish the image of the government.

Zimbabwe has a record of human rights violations which are most often perpetrated by members of the security sector and denied by the GoZ. In several documented cases citizens have been assaulted and tortured by masked soldiers and police officers who dumped citizens in different parts of the country after torturing them. In some instances, the citizens were dumped having been drugged with no recollection of how they got to where they are found. This has been done to ensure that besides the wounds on their bodies the victims of human rights violations are left with no evidence besides their word to prove that they were tortured or abducted. In the past, citizens and civil society using the right to freedom of expression which is enshrined in section 86 of the Constitution have often shed light on human rights violations in the country and drew the attention of the international community to the violations. The proposed amendments however seek to take that power away and deter citizens and civil society from speaking out about human rights violations and their experiences.

The GoZ has often publicly made pronouncements that are indicative of its hostility towards civil society. Most recently, during his 22 October State of the Nation Address, President Emmerson Mnangagwa said that the conduct of some Non-Governmental Organisations and Private Voluntary Organisations who operate outside their mandates and out of sync with the GoZ's humanitarian priority programmes remain a cause for concern. According to the President, to deal with this concern Parliament will soon consider the Private Voluntary Organisations Amendment Bill which is aimed at revamping the administration of NGOs and PVOs and correcting the current anomalies. It appears the GoZ understands the work of civil society limited to humanitarian work, this is an erroneous position. The work of civil society is broad and includes playing a watchdog role and holding the government accountable for not fulfilling its national, regional, and international obligations in any field including respect, promotion, protection and fulfillment of human rights. It is therefore well within the mandate of civil society to document human rights violations in Zimbabwe and carry out international advocacy and lobby initiatives to ensure that the GoZ complies with its obligations.

The NTJWG, therefore, implored Parliament to guard against the GoZ's efforts to muzzle citizens and civil society. The NTJWG noted that it cannot be disputed that civil society and individuals should act in good faith when engaging international organisations and foreign governments about the human rights situation in Zimbabwe. However, it is also important for the international community to have information that comes from more than one source on this issue so a true reflection of the human rights situation may be known. This will help the international community to play its role in engaging the GoZ to comply with its international obligations. The proposed amendments are likely to be abused and should therefore not be passed into law by Parliament in keeping the tenets of democracy and constitutionalism. The NTJWG indicated that it is concerned that the GoZ has repeatedly asserted that some of the proposed amendments particularly the amendment that will result in the criminalisation of what has been termed "campaigning against the country" through engagement with foreign governments is predicated upon the recommendations of the NPRC made in its 2018 and 2019 reports. However, neither of the NPRC's 2018 or 2019 Annual Report refers to such a recommendation. The claims by the GoZ are therefore detrimental to the work of the NPRC as they are likely to create the perception that the NPRC is complicit in the GoZ's efforts to stifle freedom of expression. Such a perception is likely to make survivors of human rights violations reluctant to engage the NPRC thus crippling the NPRC and making it very difficult for the NPRC to deliver on its mandate. The NTJWG, therefore, urged Parliament to hold the GoZ accountable for these false claims.

### [Request for NPRC Work Plan and Policy for Witness Protection](#)

The NTJWG noted that during the fourth quarter the NPRC appeared to have returned to regular programming. Previously, the NPRC had indicated that it has intentions to roll out a program during which it will conduct private and public hearings throughout the country once it resumed normal programming. This will see the NPRC going into communities and engaging stakeholders in different regions of the country. This is a welcome initiative which is a necessary step in facilitating national healing and peace. This program will provide victims of conflict with a national platform to speak out on their experiences which is long overdue in Zimbabwe. The NTJWG engaged the NPRC requesting its work plan detailing how it plans to roll out this program so that the NTJWG could assist in disseminating information on the program. The NTJWG also requested information from the NPRC on how it plans to ensure the protection of witnesses and survivors of past human rights violations once it embarks on these hearings. Unfortunately, neither of the NTJWG's requests were met by the NPRC. The NTJWG, therefore, recommended that Parliament requests a report from the NPRC detailing how it intends to conduct its public and private hearings with a specific focus on how witnesses and survivors will be protected throughout the process. The NTJWG reminded the Committee that as elected representatives of the people of Zimbabwe, Parliamentarians need to ensure that the NPRC has a comprehensive plan for the protection of their constituents. Such a plan is key to ensuring that the NPRC's program does not retraumatize survivors.

### [Call for Better Resourcing for the NPRC](#)

The NTJWG acknowledged that while funds were allocated to the NPRC in the national budget in 2020, the Commission remained financially constrained, unable to attend to its mandate because non-availability of resources. As highlighted in the NPRC's 2018 and 2019 Annual Reports inadequate funding has plagued the Commission from its inception and continues to be an issue of concern to date. The NTJWG noted that during the fourth quarter the NPRC was in a recruitment drive and advertised eighteen vacancies. Expansion of the NPRC Secretariat is important given the expansive mandate of the Commission and all the work it must do to fulfill its mandate within its limited lifespan. In light of this it is important for the NPRC to invest in its Secretariat in a manner that guarantees that it attracts the best talent that can get the job done. In that regard, the NTJWG urged Parliament to ensure that more funds are allocated to the NPRC when the Minister of Finance and Economic Development presents the 2021 national budget on 26 November.

### [Response by the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs](#)

After the presentation of the Parliamentary Briefing to the Committee, the NTJWG gave the Committee an opportunity to give feedback regarding the observations, suggestions, and recommendations made by the NTJWG. The following issues were raised by the Committee:

- The Parliamentarians highlighted that they were concerned with the delay in implementation of section 210 of the Constitution and thanked the NTJWG for the role it had played in advocating for the enactment of a law in line with the provisions of section 210. Furthermore, they requested information on best practices and principles that they must be guided by as they consider any bill that was presented to them which sought to establish the Independent Complaints Mechanism in line with section 210. The Committee emphasised the importance of the enactment of a law that draws from Zimbabwe's previous experiences with independent commissions. Particularly the Committee noted that there is need for the Independent Complaints Mechanism to be an institution that is backed by public confidence as this will affect its effectiveness. It is therefore important for civil society to assist Parliament with the knowledge on which issues the section 210 Bill needs to provide for and what can be done to ensure that the institution that is established is one that the public can have confidence in and will view in a positive light. The provisions of section 210 were discussed at length with the Committee indicating that section 210 is very short but this is not a

disadvantage but rather it gives room for the formulation of the Bill establishing the Independent Complaints Mechanism to be as broad and creative as necessary to deal with the problem of human rights violations by members of the security sector. Regarding resources of the ICM, the Committee asked if the option of the ICM being a department of an already established institution like the Zimbabwe Human Rights Commission could be explored. To this the NTJWG highlighted that Cabinet had indicated that this was not an option and the ICM had to be established independently in line with the provisions of section 210 to ensure constitutional compliance.

- The Committee echoed the NTJWG's concerns regarding the ongoing processes around exhumations and reburials of the remains of victims of human rights violations perpetrated during the Gukurahundi. However, the Committee noted that it needs more information on what is going on with these processes, particularly, the extent of the GoZ's involvement in the processes, the involvement of the NPRC and other stakeholders. Furthermore, the Committee requested that the NTJWG works on a draft policy that could then be used as a starting point for engagement with stakeholders on exhumations. The draft policy that was requested by the Committee should clearly outline the role to be played by different stakeholders in exhumations to avoid the current confusion and conflation of roles that is being witnessed in the country. The Committee encouraged the NTJWG to develop a draft policy that derives lessons from other jurisdictions but is tailor made for the Zimbabwean context. The Committee also highlighted that there is need for the NTJWG and other concerned stakeholders to engage the NPRC on the issue of exhumations and get information on what the NPRC is doing in respect of exhumations and the role the NPRC is playing in the ongoing processes. According to the Committee the formulation of the draft policy and engagement with the NPRC are both key to informing Parliament's decision on how to intervene in the ongoing exhumations processes.
- In response to the NTJWG's analysis of the GoZ's efforts to close civic and democratic space through the introduction of repressive laws, the Committee noted that such action by the GoZ would most likely increase the polarisation in the country. The Committee therefore requested that the NTJWG works together with other civil society organisations to consolidate their views on the issues of concern regarding the amendment of the criminal law. The Committee requested that civil society's concerns be particularised looking specifically at the impact that the proposed amendments may have on the ability of civil society to carry out its work and the levels of intolerance and polarisation in the country. It was noted that having a full appreciation of the concerns of civil society as they relate to the proposed amendments to the criminal law would enable Parliament to assess if its intervention was necessary and if so to decide on the most appropriate intervention.
- The Committee did not say much regarding the NTJWG's request that the Committee requests for the NPRC's work plan and policy for witness protection save to acknowledge that there is need for stakeholders to be aware of the work the NPRC intends to do. The Committee agreed that this knowledge is key to enabling stakeholders to disseminate information to survivors so they can participate in the NPRC's programs.
- In considering the NTJWG's call for Parliament to ensure adequate resourcing for the NPRC when the national budget for 2021 was passed, the Committee expressed its concern over the current economic situation in Zimbabwe. The Committee noted that the NPRC is currently resourced however the Committee appreciated that such resourcing may not be enough to enable the NPRC to carry out all its programs. While the Committee acknowledged that it may be necessary for the NPRC's resources to be increased to enable it to fulfil its mandate, the Committee bemoaned the country's economic hardships stating that it may be difficult for the NPRC's resources to be increased as the country itself had limited resources and was struggling to ensure adequate resourcing of all sectors and institutions.

## Conclusion

There is a window of opportunity to address the issue of exhumations and reburial of the remains of the victims of human rights violations in Zimbabwe through a comprehensive national approach that is victim-centered and stakeholder-driven. However, it is incumbent upon all stakeholders to play their role to ensure that this process is done in line with the Constitution. Key to constitutional compliance in this regard is safeguarding the NPRC's mandate of leading this process, the NTJWG, therefore, reiterates its call for Parliament to take the suggested steps to hold the GoZ accountable for its attempts to usurp the NPRC's mandate. In that regard, NTJWG remains committed to supporting the cause of transitional justice and playing its part to bring attention to the roles that must be played by different stakeholders in this important process.

As always, the NTJWG appreciates the opportunity to address Parliament and looks forward to continued engagement over the issues raised in this briefing and any other emerging issues. The NTJWG urged Parliament to disseminate information on the NPRC and its mandate in their constituencies because the NPRC's mandate is of national importance and public participation in NPRC programs is key to building sustainable peace. 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.