



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

NPRC WATCH

NPRC BRIEFING FOR THE THIRD QUARTER OF 2020 25 OCTOBER 2020

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About this Briefing

This briefing is a culmination of the efforts of the National Transitional Justice Working Group (NTJWG) to monitor the transitional justice developments emanating from the third quarter of 2020. In this briefing the NTJWG focused on developments that affect the National Peace and Reconciliation Commission (NPRC) and its work. The issues contained herein therefore emanate from the NTJWG's engagements with the NPRC and transitional justice stakeholders across the nation during the third quarter of the year 2020.

The third quarter of this year was marked by human rights abuses, State clampdown on dissent, abductions, and arbitrary arrests of citizens and journalists. The human rights situation in the country deteriorated significantly resulting in the emergence of the #ZimbabweanLivesMatter movement on social media. This movement was a citizen driven movement which was used to shed light on the human rights abuses in the country. Citizens and civil society alike called for a stop to the human rights abuses and national dialogue to address the crisis in the country. Unfortunately, these calls were responded to with hate speech, and all with dissenting voices were regarded as enemies of the State. Foreign efforts to shed light on the crisis and shed light on the crisis were also snubbed with delegations from South Africa being restricted to meeting with State officials despite requests for meetings by civil society and the Church. Despite the tense operating context, transitional justice stakeholders continued their efforts to bring the nation together. It is against this background that the NTJWG will present this briefing to the NPRC to discuss transitional justice developments emanating from the third quarter of 2020 and make suggestions for improvement going forward.

NPRC's Annual Reports

The NTJWG welcomes the presentation of the NPRC's 2018 and 2019 Annual Reports to Parliament on 3 and 8 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. This obligation has remained outstanding since March 2019 for the 2018 Annual Report and March 2020 for the 2019 Annual Report. The NTJWG, therefore, commends the NPRC for finally ensuring that the reports are presented to Parliament. The NTJWG is however concerned by the delay in compliance. Timely reporting is key to demonstrating the NPRC's sincerity in fulfilling its mandate. The NTJWG, therefore, urges the NPRC to ensure timely reporting for future reports.

Section 16(7) of the NPRC Act [Chapter 10:32] obliges the NPRC to make public the Annual Report and any other reports expected to have been presented to Parliament thirty days after the Minister is expected to have presented it to Parliament. However, the NTJWG notes that the thirty-day period is not applicable in this case as it is linked to a sequence of events and timelines that did not take place as envisaged by the NPRC Act. The NTJWG, therefore, implores the NPRC to urgently comply with the obligation of publicising both reports. The NTJWG urges

the NPRC to facilitate publication of the two reports to enable members of the public to interact with the reports. Transitional justice stakeholders need to have access to both reports as a matter of urgency as this will enable them to design interventions that complement the work of the NPRC and work towards peacebuilding in our country.

The NTJWG notes that according to the Post Cabinet Press Briefing of 4 August 2020, Vice President Mohadi in his capacity as the Chairperson of the Cabinet Committee on National Peace and Reconciliation presented the NPRC's reports to Cabinet prior to their presentation to Parliament. This act amounts to 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. This is a particularly worrisome recommendation which undermines the right to freedom of expression, a fundamental right which is currently under attack in Zimbabwe with the law being used to stifle citizens' voices. However, a close reading of the recommendations made by the NPRC in both the 2018 and 2019 reports shows that no such recommendation was made. The briefing is therefore misleading and portrays the NPRC in a bad light. The NTJWG therefore urges the NPRC to clarify the recommendations it made and how they differ from those contained in the briefing. Further the NTJWG implores that its reporting obligations are complied with in the as envisaged by the Constitution, this will ensure that contradictory information is not released to the public as this causes needless confusion among stakeholders which has an impact on perceptions on the NPRC.

Complaints on Hate Speech in Zimbabwe

The NPRC noted in both its 2018 and 2019 Annual Reports that the use of hate speech is a driver of conflict in Zimbabwe which leads to the incitement of violence and breeds intolerance. This is a very apt observation by the NPRC and the issue of the use of hate speech in the country continues to be an issue of concern in the current context. The NTJWG notes two recent and notable incidents of hate speech. Firstly, the address by the Acting ZANU PF Spokesperson Mr Patrick Chinamasa held a press conference in Harare on 27 July 2020 in which he called the American Ambassador a thug and urged Zanu PF youths to fight protestors who participated in the planned 31 July protests. In the second incident the Minister of Information, Publicity, and Broadcasting Services Monica Mustvanga gave an address at her offices on 15 August 2020 in response to a pastoral letter written by the Zimbabwe Catholic Bishops Conference called upon the Government of Zimbabwe to facilitate peace and nation-building through inclusive engagement and dialogue as a way of moving the country forward. Minister Mustvanga responded to the pastoral letter with an address that was filled with hate speech and derogatory language, even labelling the Catholic Bishops' message as evil. The NTJWG and its stakeholders such as the Zimbabwe Human Rights

Association noted the prevalence of the use of hate speech by government officials and politicians and filed complaints with the NPRC. The NTJWG implores the NPRC to investigate the complaints and act swiftly to curb the use of hate speech in the country. It is vital for all those that use hate speech to be censured to foster a culture of tolerance in the country.

When the NTJWG made its complaint to the NPRC it noted that it was required to redo the complaint several times to comply with the NPRC's requirements before the complaint was eventually accepted by the NPRC. The NTJWG implores the NPRC to publicise its complaints form which details how complaints to the Commission should be structured. Publication of the form is crucial to ensuring that complainants approach the NPRC knowing what structure their complaints should be in. This will ensure that complainants are not deterred from making their complaints by requests for them to redo their complaints before lodging them with the NPRC. Further, the NTJWG urges the NPRC to publicize the documentation complainants may need when making a complaint. This is necessary as the NPRC only has offices in Harare and Bulawayo as such complainants may have travelled from remote areas of the country and being asked to return to their homes and return with the required documentation may pose an undue hardship on them. Further, the NTJWG requests that the NPRC keep it and any other complainants that have lodged their complaints with the Commission appraised of the progress of its investigations. This is key to building confidence in the Commission's ability and willingness to fulfil its mandate.

Consultations in the Matabeleland and Bulawayo Provinces

The NTJWG noted the engagement between President Emmerson Mnangagwa and 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 and given the mandate of facilitating peace and reconciliation in Zimbabwe. Given the importance of dealing with the issue of Gukurahundi in a non-partisan manner that facilitates truth-telling and justice for victims, such engagements must be led by the NPRC. The NTJWG is therefore concerned by the exclusion of the NPRC in such engagements. The NTJWG notes that the NPRC in its 2019 report 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



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of this very sensitive issue are made within a policy framework that stakeholders particularly survivors have had input in. The NTJWG, therefore, urges the NPRC to see this recommendation through and engages with the Executive to ensure that its mandate is not usurped but rather the executive should support the NPRC's efforts and complement the work being done by the NPRC in dealing with the past in all parts of the country.

National Dialogue

The NTJWG notes that the NPRC referred to the need for national dialogue in its 2019 report and the role it has played in bringing political actors together through the Political Actors Dialogue (POLAD). The NTJWG echoes the NPRC's sentiments that national dialogue is key to facilitating national healing in the country. The need for national dialogue in Zimbabwe is now more urgent than before given the current crisis in which human rights violations, the clampdown on dissent, and intolerance are the order of the day. The NTJWG commends the process that the NPRC had embarked on at the beginning of 2019 where consultations for a national dialogue process were being made. As the body constitutionally mandated to facilitate peace and reconciliation the NPRC is ideally placed to lead such a process. It was however disappointing to see that this process was put on hold when the POLAD process began. While dialogue among political actors is necessary, Zimbabwe needs a national dialogue that is broad-based and involves all stakeholders. Past political dialogue efforts have done very little to address some of Zimbabwe's issues hence the use of hate speech, intolerance, human rights abuses, and lack of acknowledgement of past wrongdoings among other issues continue to be recurring themes that hinder the national healing. The NTJWG, therefore, urges the NPRC to resuscitate its efforts to facilitate the national dialogue process. This process should be all-encompassing and seek to bring about national healing and deal with the past in a way that enables the country to move forward.

Recommendations in the NPRC's Annual Reports

The NTJWG notes that the NPRC made several recommendations in its 2018 and 2019 annual reports, this is commendable as it is necessary for the Commission to not only identify problems but suggest possible solutions.

One of the recommendations made by the NPRC is that there is a need for legislation against hate speech. While the NTJWG agrees with the NPRC that hate speech is a problem that needs to be urgently addressed by the nation the NTJWG views the existing legislation as sufficient to address this issue. The Constitution in section 60 (1)(a) provides that every person has the right to freedom of conscience, which includes freedom of thought, opinion, religion, or belief. It goes further to state in section 61 (5) (b) that freedom of expression and freedom of the media exclude advocacy of hatred or hate speech. This provision shows that freedom of expression is a fundamental right of all but it does not extend to or excuse the use of hate speech. The right to freedom of expression is currently under attack in Zimbabwe with the justice system being weaponised to stifle dissenting voices. The NTJWG is therefore concerned that having laws on hate speech that extend beyond what is provided for the Constitution

may not have the effect intended by the NPRC but rather may result in abuse of the law with the law being used to criminalise legitimate freedom of expression. This would be an undesirable outcome, the NTJWG therefore urges the NPRC to reconsider this recommendation and instead recommend that the issue of hate speech be dealt with without favour using the current legislative framework.

Another recommendation made by the NPRC is that there is a need for a policy on developing a shared national history and vision for the country. The history of Zimbabwe is shrouded in secrecy and remains the preserve of a few with even fewer having access to national platforms they can use to share their knowledge and recollection of the past. There is therefore consensus that there is a need for more to be done to build a comprehensive memory of the nation's past. Given the many varying narratives of the past it is important to guard against the use of such a policy to perpetuate one narrative that favours those in power at any given time. There is also a need to create space for all people to have access to national platforms they can use to share their experiences and stories of the past. There is also a need to ensure that the policy recommended by the NPRC is formulated in a manner that does not hinder other people from speaking out against the distortion of the country's history. The NTJWG acknowledges the need for a policy that aims to build a comprehensive memory of our nation's past but cautions that such a policy may be used to perpetuate one narrative to the detriment of others. Therefore, such a policy must be formulated and implemented by an independent body that will be driven by public interest.

The NPRC also recommended the enactment of legislation to ensure the protection of witnesses and victims. This is a crucial recommendation and the NTJWG commends the

NPRC for making it. In a country such as Zimbabwe where the State and State agents have been among the perpetrators of human rights abuses, victims and witnesses of violence may fear coming forward to share their experiences and testimonies. It therefore is necessary for there to be laws that protect them and guarantee their safety, this will assist in encouraging more victims and witnesses to get involved in peace and justice processes. The NTJWG urges the NPRC to collaborate with civil society organisations to draft a model bill that can be used to advocate for the enactment of such a law.

The NPRC made several recommendations that relate to the relationship between the Zimbabwe Republic Police and the communities it works in. Among these recommendations was the recommendation that; there is a need for protection of communities ZRP against violent elements within their communities especially in mining areas such as machete-wielding persons. The NTJWG acknowledges that the prevalence of machete gangs in Zimbabwe is an issue of concern which was especially problematic in 2019 and remains to date. The NTJWG is particularly concerned with the ZRP's slow response in dealing with this matter and the allegations that these gangs are affiliated with political elites in the country. This recommendation by the NPRC is a necessary first step in addressing this problematic issue. The NTJWG reminds the NPRC that it is permitted to work with the ZRP in fulfilment of its mandate therefore given the significant threat that this issue poses to peace in the country, the NTJWG urges the NPRC to work with the ZRP to ensure that this issue is addressed and perpetrators are held accountable. The NPRC also recommended that there is a need for swift response and action to reports made to the ZRP by the communities and for ensuring that the police

practice peaceful and victim-friendly mechanisms in their investigations. These recommendations are echoed by the NTJWG and they speak to the need for reform within the ZRP. The NPRC has previously engaged the ZRP on its role in peacebuilding and peacekeeping in the country and the NTJWG implores the NPRC to engage the ZRP again on the need for reform. Further, the NTJWG recommends that the NPRC collaborates with the ZRP and the civil society organisations to train police officers on how they can carry out their duties in a manner that is in line with the expectations of stakeholders and the communities they serve.

Upcoming NPRC Interventions

The NTJWG notes that the NPRC has indicated that it has intentions to roll out a program during which it will conduct private and public hearings throughout 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 urges the NPRC to take into consideration the current operating context which makes convening big public gatherings difficult. While the national lockdown measures may be easing, it is imperative to remember that COVID-19 is still among us and big gatherings still posed a significant threat of infection. Further, the NTJWG urges the NPRC to publicise information on how, where, and when the hearings will be conducted in advance to enable full participation by the public. The issue of visibility of the NPRC has been a recurring concern expressed by communities that the NTJWG has interacted with. It is, therefore, necessary for the NPRC to take extra care to publicise information on all interventions that it makes in advance particularly if these interventions require public participation to enable full participation of the public.

Conclusion

The NTJWG welcomes the recommendations made by the NPRC and sees these as providing an opportunity for engagement between the NPRC and transitional justice stakeholders. The NTJWG therefore reiterates once again its request for the NPRC to publish its reports to enable all stakeholders to have access to the reports and engage with the NPRC from an informed point of view.

Regrettably as a result of the NPRC's busy schedule during the third quarter, the NTJWG was unable to meet with the NPRC. However, this briefing was sent to the NPRC for its input before publication. The NTJWG appreciates the opportunity to address the NPRC and looks forward to having a meeting with the NPRC in the near future to discuss issues emerging from the fourth quarter of 2020.



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