



**NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE**

NPRC WATCH

PARLIAMENTARY BRIEFING - THIRD QUARTER of 2020

NEWSLETTER

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About This Briefing

On 30 September 2020, the National Transitional Justice Working Group (the NTJWG) met with the Parliamentary Portfolio Committee on Justice, Legal, and Parliamentary Affairs (the Committee) in order to present the Parliamentary Briefing for the third quarter of 2020. This was the second time that the NTJWG was presenting the Parliamentary Briefing. In this briefing, the NTJWG sought to draw the attention of Parliament to the important transitional justice developments in our country emanating from the third quarter of 2020 with a particular focus on the 2018 and 2019 NPRC Annual Reports which were presented to Parliament on 3 and 8 September 2020 respectively.

The third quarter of 2020 was a particularly difficult period for Zimbabweans as it was marked by human rights abuses, State clampdowns 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 those with dissenting voices were regarded as enemies of the State. Foreign efforts to 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 contextual challenges, there were some significant transitional justice developments during this period. The main development was the presentation of the National Peace and Reconciliation Commission's 2018 and 2019 Annual Reports to Parliament. It is against this background that the NTJWG presented the third quarter Parliamentary Briefing to the Committee.

Reporting Obligations of the NPRC

The NTJWG welcomed the presentation of the NPRC's 2018 and 2019 Annual Reports to Parliament on 3 and 8 September 2020. This action remedied the NPRC's breach of its reporting obligations in respect of the 2018 report which was outstanding from March 2019 and the 2019 Annual Report which was outstanding from 2020. While both reports were long overdue, the NTJWG welcomes their presentation as it provides an opportunity for Parliament to engage with the work being done by the NPRC and identify ways in which it can complement and support the NPRC.

The NPRC however, has still not complied with its statutory obligation to publicise its reports as provided for in section 16 (7) of the National Peace and Reconciliation Commission Act [Chapter 10:32] which obliges the NPRC to make public Annual Reports and any other reports expected to have been presented to Parliament thirty days after the Minister is expected to have presented the reports to Parliament. Despite that, the NPRC has not yet formally publicised its reports. These reports have been released and are circulating within the public domain. Formal publication of the NPRC's reports is necessary for transitional justice stakeholders to have access to authentic reports and this must be addressed as a matter of urgency. Access to these reports will enable transitional justice stakeholders to design interventions that complement the work of the NPRC and work towards peacebuilding in our country.

Recommendations by the NPRC

Recommendation to Increase Support for the Commission
The NPRC's 2018 and 2019 reports show that while the NPRC made efforts to carry out several activities in fulfilment of its mandate in 2018 and 2019, the funding challenges it faced continued to cripple the Commission. The NPRC reported that by the end of 2019 it had a staff complement of thirty-four out

of a desired one hundred and four. That is not even half of the required staff complement. The NPRC has a very expansive mandate which it must fulfil within a very limited time period. The NTJWG, therefore, urged Parliament to ensure that the NPRC is allocated more resources to enable it to implement its programs as envisioned in its strategy and its mandate as established by law. The NPRC's mandate is of great national importance and the value of its work should be reflected in the resources allocated to it.

Recommendation on Exhumations and Reburials of Victims of Past Conflicts

Despite Zimbabwe's long history of violence and conflict, the question of persons who have disappeared in the country remains unanswered. Key to the question of disappeared persons is the issue of exhumations and reburials of the remains of victims of violence. As there is currently no legislative or policy framework guiding how reburials and exhumations in Zimbabwe should be carried out, the NPRC recommended that a policy and/or law should be put in place to deal with exhumations and reburials of victims of past conflicts as well as securing documentation for the victims' families as part of its recommendations in the 2019 annual report. This is a progressive recommendation by the NPRC that is indicative of the recognition of the importance of carrying out such as exhumations in accordance to prescribed procedures, particularly given the sensitive nature of the exercise. Exhumations and reburials require considerable experience and technical expertise but the exercise is critical for transitional justice purposes, especially in our country where an estimated twenty thousand people were killed in the Gukurahundi atrocities alone.

The discussion on exhumations in Zimbabwe can be traced back to 2011 when an organisation called Fallen Heroes Trust initiated a series of exhumations around the country claiming to be exhuming the remains of freedom fighters. The process was criticised as stakeholders argued that such a process required an expert approach, particularly within a national policy framework. Ultimately, these exhumations were stopped after the Zimbabwe People's Revolutionary Army Veterans Trust was granted an interim order to stop the process. There have been significant developments since 2011, the most important being the establishment of the NPRC which was given the mandate to lead the nation in peace and reconciliation processes. Given its constitutional mandate, it is well within the NPRC's purview to make recommendations regarding the formulation of a policy and legal framework for exhumations. Exhumations form part of a comprehensive transitional justice process that includes issues of truth recovery, healing, and justice. Documentation and preservation of evidence of crimes is thus an essential part of the process. The NTJWG, therefore, urged Parliament to endorse the NPRC's recommendation and ensure that no exhumations are carried out by the State or its agents before the formulation of a policy and/or legislative framework to guide the process.

Recommendation for the Enactment of Victim and Witness Protection Laws

The NPRC has also recommended the enactment of laws to protect victims and witnesses in order to ensure that they have access to services that guarantee their safety and protection, in addition to ensuring that they receive rehabilitative support. This recommendation is indicative of the NPRC's engagements with communities wherein victims and witnesses of violence and conflict are still living in fear. Victims and witnesses of violence in Zimbabwe live in fear of victimisation should they speak out about the violence that they have been subjected to or have witnessed. This fear is often caused by the fact that the perpetrators are either State agents, people of influence in the country or people that they live with in their communities. The fear among victims and witnesses has resulted in very few of them being willing to engage with official processes such as the NPRC. It therefore necessary to put in place safeguards in order to encourage victims and witnesses to speak out. An

environment in which victims and witnesses can testify freely without fear of victimisation is key to the delivery of justice and holding perpetrators of human rights abuses accountable. The NTJWG, therefore, echoed the NPRC's recommendation and implored Parliament as the law-making arm of the government, to ensure that a law to protect victims and witnesses is enacted.

Recommendation for the Enactment of Legislation against the Use of Hate Speech

In carrying out its work between 2018 and 2019, the NPRC observed that the use of hate speech was one of the sources of violent conflict in Zimbabwe. The NPRC thus recommended that there be legislation prohibiting the use of such language by political and other related actors. The use of hate speech is a common and disturbing trend in Zimbabwe and is usually witnessed when State officials and politicians respond to divergent views. This trend undermines principles of democracy and is an abuse of the fundamental right to freedom of expression which, according to section 61 of the Constitution, excludes advocacy of hatred or hate speech. Although the NTJWG concurs with the NPRC that the use of hate speech is an issue that must be addressed, this issue can be addressed through the implementation of the current legislative framework, if it is applied to all without favour. The NTJWG is concerned that the enactment of more laws to address this issue may result in the right to freedom of expression being eroded and the law being weaponised to stifle dissenting voices. Having laws on hate speech that extend beyond what is provided for in the Constitution may not have the effect intended by the NPRC but rather, may result in abuse of the law. The NTJWG therefore implored Parliament to ensure that the existing laws are implemented fully. This will ensure that the problem of hate speech is dealt without promulgating additional laws that may be subject to abuse.

Recommendation of Enactment of Law for Registration and Regulation of Conduct of Political Parties

Another recommendation made by the NPRC was for the enactment of a law to regulate the registration and regulation of the conduct of political parties in Zimbabwe. The NPRC justified this recommendation by indicating the experiences of other countries where such laws exist. The NTJWG notes that politically motivated violence has and continues to be a problem in Zimbabwe, particularly because the current legislative framework is such that only individual perpetrators may be held accountable but not their political parties. This has led to an undesirable situation in which supporters of political parties unleash violence in their communities to further their party's interests and are then protected from facing the law by leaders of their parties. The recommendation by the NPRC would result in political parties being compelled to ensure that their supporters adhere to the conduct that is expected of them, failing which, the party will be held accountable. This is a progressive recommendation. However, the NTJWG cautioned Parliament to ensure that implementation of this recommendation does not result in the closing of political space with the law being used to disallow some citizens to form their political parties and realise their political aspirations.

Recommendation for the Promotion of Development in Marginalised Communities

Marginalisation of certain communities and people in society often causes conflict. Noting the link between marginalisation and conflict, the NPRC recommended the promotion of development in marginalised communities as a peacebuilding, healing, and reconciliation mechanism. The NPRC noted that marginalised communities need to be developed in all areas including infrastructure, access to media, and freedom of political participation and choice of political leaders to prevent violence. The NTJWG endorsed the NPRC's recommendation and further implored Parliament, particularly Parliamentarians representing rural constituencies to facilitate the promotion of development in their communities. The rural-urban divide



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is a cause for conflict and division in Zimbabwe that requires attention and development is key to promoting unity.

Recommendation for Formulation of Government Policy on Non-Partisan Distribution of Agricultural Inputs and Food

Partisan distribution of agricultural inputs and food aid has historically been and continues to be a big problem in Zimbabwe. This problem is especially prevalent and evident in rural areas where traditional leaders and politicians have, in some cases, denied certain members of the community aid because they are known opposition party supporters. The NPRC pointed this problem out in its reports and recommended that there needs to be a policy that will govern the distribution of agricultural inputs and food aid. This recommendation is indicative of the NPRC's awareness of the problems that plague Zimbabwean communities and threaten peace. The policy recommended by the NPRC will guide community leaders in the fair and equitable allocation of resources. Further, the policy should put in place punitive measures that can be taken against community leaders who distribute agricultural inputs and food aid in a partisan manner. Such measures should be implemented without favour and serve as a deterrent for all community leaders. The trend of partisan distribution of agricultural inputs and food aid continues to plague the country because of a lack of punitive measures that are fully implemented. Such implementation is key to ending this divisive trend.

Recommendation for the Zimbabwe Republic Police

The NPRC made several recommendations that relate to the relationship between the Zimbabwe Republic Police (ZRP) and the communities it works in. Among these recommendations was that; there was a need for the ZRP to protect communities against violent elements within their communities, especially in mining areas where there are machete-wielding persons. The NTJWG acknowledged that the prevalence of machete gangs in Zimbabwe is an issue of concern which has been especially problematic in 2019 and remains so up until now. The NTJWG informed the Committee that it was 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 urged Parliament to hold the Ministry of Home Affairs and Cultural Heritage accountable for the ZRP's slow response in addressing this issue and to compel the Minister to ensure that cases of violence are investigated and that the perpetrators are held accountable without fear or favour.

The NPRC also recommended that there be swift responses and action to reports made to the ZRP by communities. This recommendation was echoed by the NTJWG to the Committee. The NTJWG also noted that in some cases, the ZRP is slow to respond to reports made to it because its officers are implicated. This is often the case in cases of human rights violations perpetrated against citizens. To guard against this problem, the NTJWG reiterated the need for the establishment of the Independent Complaints Mechanism. This mechanism is vital to ensuring that human rights violations by the State and its agents are fully investigated and that the perpetrators are held accountable and justice is served for victims.

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 Committee asked the NTJWG to highlight any positive developments within the transitional justice sphere which emanated from the third quarter and the NTJWG highlighted its engagement with the NPRC as a positive development. The NTJWG noted that the NPRC had been

involved in NTJWG programs such as radio programs and this had resulted in increased information dissemination regarding the NPRC's existence, mandate, activities, and plans.

- The Committee enquired if the NTJWG had people on the ground monitoring the NPRC's work and if the NTJWG had information on the NPRC's activities in communities. To this, the NTJWG stated that it had stakeholder organisations which worked in communities and that they often engaged with the NPRC and shared information on these engagements with the NTJWG. Further, the NTJWG highlighted that survivors it trained in communities also kept the NTJWG informed about the NPRC's activities in their communities. The NTJWG also highlighted that it engaged the NPRC in its activities and that the NPRC shared information on its activities during engagements with the NTJWG through its secretariat.
- The Committee noted that the NPRC Act empowers the Chairperson of the Committee to request that the NPRC bring a report before the Committee. The Committee enquired if there were any particular reports that the NTJWG thought the NPRC should be requested to provide. To this, the NTJWG highlighted that the NPRC's annual reports gave an account of past activities and could be used to pre-empt possible conflict. The NTJWG recommended that the Committee be furnished with reports of its activities soon after their completion so that the Committee could address emerging issues while there was still time to do so and to also provide any necessary support to the NPRC. This is necessary to ensure that the Committee remains updated on transitional justice issues in the country, how the NPRC is tackling them and how the Committee can assist the NPRC with any challenges it may be facing.
- The Committee informed the NTJWG that some of the issues relating to legislative reform that it had brought before the committee were under consideration by Parliament. For example, the Committee highlighted that the Zimbabwe Election Support Network had presented a model law around the registration and regulation of political parties. The Committee requested that the NTJWG work with organisations involved in legislative reform, particularly tracking of bills before Parliament that may be of interest to the NTJWG's work. This would ensure that the NTJWG's discussions with Parliament would be based on the latest available information.
- Regarding registration and regulation of political parties, the Committee enquired if the NTJWG was opposed to this. The NTJWG responded by stating that while regulation was important, registration could result in the violation of citizens' political rights with people not being allowed to register their political parties. The NTJWG highlighted that a law for the registration of political parties could easily be abused by those in charge of implementing it and result in the closing of political space.
- The Committee noted the NPRC's recommendation for a policy or law regulating how exhumations and reburials would be done in the country. The NTJWG highlighted that addressing this issue would be important, considering that this was a national issue which was not confined to the Gukurahundi matter alone. As a result it was indicated that a national approach would be desirable.
- Concerning the #ZimbabweanLivesMatter movement, the Committee enquired if the movement was linked to the American #BlackLives Matter movement and if such a movement was warranted in Zimbabwe. Further, the Committee indicated its concern over the use of old images to support this movement. The NTJWG informed the Committee that while the movements may have similarities, the Zimbabwean and American movements were not linked. The Zimbabwean movement was initiated by citizens in response to human rights violations. Referring to the use of old images, the NTJWG noted that these images were circulated on social media and there was no way of regulating conduct on social media. However, the NTJWG highlighted that it was important to ensure that human rights were respected, promoted, and protected to

eliminate reports of human rights violations.

- The Committee asked the NTJWG what efforts it was making to support the NPRC since it had aptly noted its funding challenges. The NTJWG responded that through its engagement with the NPRC, it was providing technical assistance and advice on how it could improve its operation. The NTJWG also indicated that it provided the NPRC with platforms to raise awareness of its mandate and activities. Finally, through engagement with Parliament and the Executive, the NTJWG indicated that it was assisting the NPRC to appeal for more funding.
- On the issue of national dialogue, the Committee noted that the NTJWG had highlighted calls by the church for dialogue. The Committee reminded the NTJWG that President Mnangagwa has also called for dialogue through the Political Actors Dialogue (POLAD) platform. The NTJWG acknowledged the calls by the President and highlighted that what was needed in Zimbabwe was a national dialogue underpinned by principles of inclusivity and convened by an independent third-party. The dialogue would facilitate the interests of all relevant stakeholders among other issues. The NTJWG highlighted that the POLAD platform focused solely on politics and excluded all other stakeholders. The NTJWG pointed out that dialogue was taking place in Zimbabwe at different levels and between different stakeholders and what was needed was for all ongoing dialogue processes to be consolidated into one national process in which there would be consensus on the objectives, the method for engaging in the dialogue and the desired outcome of the dialogue.

Conclusion



The NTJWG appreciates the opportunity to address the Parliament of Zimbabwe and hopes to continue on this path of fruitful engagement. As highlighted in this briefing, Parliament as the legislature has an important role to play in carrying forward recommendations made by the NPRC. Parliament is therefore urged to play its role diligently. As the legislative arm of the government, Parliament's role in furthering the transitional justice agenda in the country cannot be overemphasised. The NTJWG welcomes the Committee's willingness to engage with the NTJWG and interrogate transitional justice issues in the country. Such engagements are key to driving transitional justice in Zimbabwe as they provide opportunities for the NTJWG and Parliament to identify actions they must each take to further transitional justice interests and the actions they can take collaboratively. NTJWG remains committed to supporting the work of peace and reconciliation in Zimbabwe and will continue engaging Parliament and offering its support to Parliament to enable it to play its role more effectively.


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