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# 'NOT ALONE'

## THE ROLE OF INDEPENDENT COMMISSIONS IN TIMES OF CRISIS

### INTRODUCTION

The past few months have been trying times for the people of Zimbabwe. In times like these, very few are able to stand up and insist on *right* in the face of *might*. Many go under cover and sing the song that preserves their lives. We have however seen the rise of many brave men and women who have insisted that fundamental values of freedom and liberty be upheld and that justice must be pursued for the many victims of the ongoing atrocities. In this edition of the *NPRCWatch*, we are expanding the scope of the discussion to look at not only the National Peace and Reconciliation Commission (NPRC) but all relevant independent commissions that are established to support democracy and entrench human rights through Chapter 12 of the Constitution. We look at the role of these commissions in the times of crisis when violations of human rights are on the increase. It is for times like these that such commissions were established.

### The Context: Post Election Zimbabwe and the Rising Tensions

#### *No justice or truth for victims but reward for the killers*

The post-election environment in Zimbabwe has continued to see the rising tensions, economic meltdown as well as growing civil unrest. Following the August 1, post-election violence, the Montlanthe Commission's report, largely ignored by the government has failed to bring truth and justice to the victims of August 1 shootings. In fact, the *Newsday* of 18 December 2018 reports that President Mnangagwa promoted commander Brigadier-General Sanyatwe, the man who commanded the military unit that shot at unarmed protesters. By this, impunity was cemented. The message was that *'killing pays'*, hence the military did not hesitate to shoot again hardly a month after the release of the Montlanthe report.

#### *The return of state violence*

Between 14 January and 5 February 2019, the Zimbabwe Human Rights NGO Forum reports that 17 people were killed in the violence, the majority of whom were killed by the military through gun shots. 16 women suffered sexual abuse at the hands of soldiers, among many other serious violations. Following the violations, NTJWG issued an alert on crimes against humanity and called for the prosecution of the perpetrators. Statements from the state have indicated that there is no will to prosecute the offenders. The killings have led to renewed calls for national dialogue.

### The role of independent commissions in this madness

In this madness, evidence has come out that the state has committed gross violations of human rights. The commissions that are key to this issue are the Zimbabwe Human Rights Commission (ZHRC), the Zimbabwe Gender Commission (ZGC), the Zimbabwe Media Commission (ZMC) and the National Peace and Reconciliation Commission (NPRC). In a way, the Zimbabwe Electoral Commission (ZEC) sees well the bloody fruits of the manner in which it managed elections and may need to learn that peaceful resolution of disputes ahead of a crucial election is probably more helpful than its *'water under the bridge'* approach which in reality has actually thrown the nation under the bus.

### The Zimbabwe Human Rights Commission

Many victims are greatly indebted to the work of the ZHRC in these atrocities. Ahead of the Montlanthe Commission, the ZHRC received complaints of the state violence against civilians. The Commission responded, investigated the violations and issued a statement against the violations of human rights. Following the atrocities related to the shutdown, the ZHRC carried out an investigation and found that armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police instigated systematic torture. The torture was organized, said the ZHRC. It also found that the method of arrest and detention that was used by the police and soldiers amounted to arbitrary arrests and detention, a crackdown as opposed to law enforcement. The government dismissed the report as biased and offside on what really transpired. The ZHRC did play its role effectively in exposing the fallacy of state denial of the atrocities. As noted in the Zimbabwe Human Rights NGO Forum report, *On the Days of Darkness in Zimbabwe*, the atrocities are still ongoing by the time of the compilation of this report. The Constitution in section 243 (1) (f) and (g) gives the ZHRC power to investigate any authority or person alleged to have violated human rights. This will help in ensuring the right to truth for victims. The Commission has power to also secure redress for the victims. These Constitutional powers mean that the ZHRC can take it upon itself to pursue the issues complained of by the victims against the state and make sure that perpetrators are brought before the courts.

### Conclusion

Zimbabwe is at a crossroads. Promoting the fundamental values of human rights and democracy requires that independent commissions step up onto the leadership positions. To do so requires not only independence and competence but also vigilance. Not many commissions are doing well in standing for justice and standing with the victims. We do pay tribute to the Zimbabwe Human Rights Commission (ZHRC) which has in the period under review stood firm. More could be done however, in the areas of ensuring that there is redress for the victims. The NPRC, ZGC, and the ZMC, still have a lot of work to do in order to win the confidence of a society under siege from its own government.

### The Zimbabwe Gender Commission

Serious allegations have surfaced against the military of up to 16 cases of sexual violence including 15 cases of rape against women. The Zimbabwe Gender Commission (ZGC) is mandated by section 246 of the Constitution to investigate cases of human rights violations relating to gender and pursue appropriate remedy for the victims. We must express our disappointment at the deafening silence of the ZGC regarding the issues of sexual violence that were reported during the shutdown. The ZGC needs to be seized with issues of organised violence against women. To the consolation of victims, a number of voluntary organisations have stepped forward to assist the victims and make strong statements against organised sexual violence against women.

### The Zimbabwe Media Commission

The Zimbabwe Media Commission (ZMC) is established by the Constitution to uphold, promote and develop freedom of the media. During the Shutdown, there were a lot of complaints received regarding the violation of fundamental freedoms as they relate to the media as well as the attacks on journalists doing their work. The attacks include murder by the military officers of at least one journalist Elizabeth Zimunda. The silence of the Commission in this area is shocking to say the least and throws into question its independence. The state media's role in encouraging state violence has been outstanding. The ZMC, has an obligation under section 249 (b) to enforce good practices and ethics in the media. In fact, the ZMC has not stepped into its role in all the functions stipulated in the constitution.

### The National Peace and Reconciliation Commission

Following the August 1 killings, the NPRC indicated that they would not interfere with the work of the Montlanthe Commission but would wait to interact with its findings. The NPRC however has not yet responded to the findings of the Montlanthe Commission. On 14 January 2019, following the outbreak of violence in Harare, the NPRC called for a press conference which it cancelled 40 minutes later without making any pronouncement. On 31 January 2019, the NPRC convened a consultative meeting with a few selected stakeholders to develop a framework for comprehensive dialogue. However, the process was hijacked by the Office of the President which started its own consultations leading to the meeting of political parties on 6 February 2019. This again has exposed government's tendency of undermining the work of constitutional commissions. Not much since has emerged from the NPRC regarding attending to the needs of the victims after the violence or playing a prominent leadership role on pushing for national dialogue. That role has been played more effectively by the Zimbabwe Council of Churches which on 7 February 2019 successfully convened the National Leaders Breakfast Meeting. The reason why the NPRC is struggling for space in an area that it is constitutionally mandated maybe because of questions regarding its capacity, its secretariat and its independence. In a survey conducted by the NTJWG in November 2018 with victims of organised violence, 72.3% believe that the NPRC is not independent and is beholden to government and political influence. These fears have been confirmed by the statement in the Zimbabwe Independent of 8 February 2019, where the Chairperson of the NPRC Justice Nare is quoted as saying, *"...we are directly answerable to Vice President Kembo Mohadi."* This is wrong and worrying for the many victims who expect the NPRC to be truly independent.

Trust for any independent commission is important. And it must be earned, it can't be demanded. The NPRC needs to step into its leadership position and gain the trust of the stakeholders especially the victims if it is to play a positive role in the developments in our country otherwise it risks being ignored and its role will be taken over by more credible entities. In our *Minimum Standards for an Effective NPRC*, we have stated clearly that *'the legitimacy of the NPRC does not end with its constitutionality, but perpetuates in the manner in which it is going to conduct its work'*. (NTJWG, 2015)