

# COMMISSIONS WATCH

[31st January 2019]

## RECOMMENDATIONS OF THE COMMISSION OF INQUIRY INTO THE 1st AUGUST 2018 POST-ELECTION VIOLENCE WERE THEY CARRIED OUT?

Recent disorders in our major cities, and the tragic killing of 12 or more people, give new relevance to the report and recommendations of the Commission of Inquiry [the Motlanthe Commission] set up to investigate the violence and shootings that followed last year's election. The Commission gave the President a summary of its report on the 29th November last year and the full report was released to the public on the 18th December. It is available on the Veritas website [\[link\]](#).

On the 28th January – just three days ago – it was announced that the President had appointed an inter-ministerial task force “to address issues arising from ... the findings of the Motlanthe Commission”. *[See the end of this bulletin for a list of its members]* More than a month after the Commission's full report was published, therefore, little seems to have been done to implement its recommendations.

*Note: Mr Ian Smith, leader of the pre-Independence white régime, used to establish a “small high-powered committee” whenever he was faced with a politically embarrassing problem; by the time the committee delivered its report, he hoped, the problem would have gone away. History repeats itself, first as farce and now as tragedy.*

In this Commissions Watch we shall outline the Commission's findings and recommendations in the hope that, even belatedly, something may be done to implement them.

### The Commission's Terms of Reference

These required the Commission to investigate:

- the circumstances leading up to the post-election violence
- the conduct of the Police in trying to contain the violence
- the involvement of the Army in assisting the Police, and
- whether the force used was proportionate in the circumstances.

The Commission was chaired by a former President of South Africa, Mr Kgalema Motlanthe, and consisted of three distinguished foreign members plus three Zimbabwean academics and lawyers.

### The Commission's Main Findings

The Commission's findings can be summarised as follows:

- Though the harmonised elections in July 2018 were peaceful and orderly, the country's news media were partisan and the main political parties and their supporters were deeply polarised.
- Opposition parties mistrusted the Zimbabwe Electoral Commission [ZEC].
- The protests against the late publication of election results were pre-planned and well organised by the MDC Alliance.
- The demonstrations were unsanctioned in terms of section 25 of the Public Order and Security Act [POSA] as the Police had not been notified.
- Orders by the Police to disperse the protesters were not carried out effectively, the demonstrators would tactically disperse only to regroup elsewhere, and the Police were undermanned. Hence they were overwhelmed as the demonstrations turned into a riot.
- Fake, fabricated and biased news on social media contributed to the violence.
- Rioters forced ordinary people to join them.
- It cannot be ruled out that people other than the Police and Army possessed weapons.
- In the circumstances, deploying the Army to assist the Police was justified, though it would have been better had the Police been able to deal with the situation on their own.
- The Army was deployed in accordance with section 213 of the Constitution and section 37 of POSA [*In a letter annexed to the Commission's report, Vice-President Chiwenga informed the Commander of the Defence Forces that the President had authorised the deployment*].
- However, the troops were not placed under the command of the Police as required by POSA. [Veritas underlining]
- Given the threat to property and lives, the firing of warning shots in the air to disperse the rioters was proportionate.
- The use of live ammunition directed at people, especially when they were fleeing, was clearly unjustified and disproportionate. So was the use of sjamboks, batons and rifle butts to assault members of the public indiscriminately. [Veritas underlining]
- Six people died and 35 were injured as a result of Army and Police action. At least six people were injured as a result of actions by the protesters.
- In addition, the protesters looted, damaged and burned property.

### **The Commission's Recommendations**

The Commission made the following recommendations:

- **Compensation:** All victims of violence, and dependants of the deceased, should be compensated. The Government should set up a committee to assess the amount of compensation and a fund to assist those affected.
- **Political parties:** Parties should be registered to ensure their accountability. The Code of Conduct for Political Parties and Candidates [*the Fourth Schedule to the Electoral Act*] should be enforced, with sanctions for offenders.
- **Hate speech, etc:** The laws relating to hate speech, abuse of cyberspace and incitement to violence should be reviewed.
- **Electoral reform:** The Electoral Act should be amended to shorten the time for presidential election results to be announced.
- **Law enforcement:**
  - The provisions of POSA for deploying the military should be aligned with the Constitution.
  - The Police should be given the skills and capacity to deal with rioters. They should also be trained to be professional and non-partisan.
  - Deployment of the military to assist the Police should be a measure of last resort in extraordinary situations.
  - The Army should conduct an audit of its standing orders and procedures for riot control and law enforcement. The results of the audit, and the lessons learnt and remedial measures taken, should be published in a public report.
  - The military in conjunction with the Police should adopt contingency plans for dealing with emergency situations.
  - The use of live ammunition as warning shots should be discouraged and should be used only in limited circumstances of danger to public safety. [*Veritas underlining*].
- **National healing and reconciliation:** A multi-party reconciliation initiative, including youths and with national and international mediation, should be established to address the root causes of the post-election violence. The Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission should increase their efforts to implement their mandates.
- **Accountability:** All those responsible for alleged crimes on the 1st August 2018 should be prosecuted. Members of the Army and Police who were in breach of their professional duties and discipline should be identified as soon as possible for internal investigations and appropriate sanction.

Few if any of these recommendations have been implemented. The Government has set up an ad-hoc Cabinet Committee to assess damage caused during the recent disturbances – but not to compensate victims of the 1st August riot. The National Peace and Reconciliation Commission has announced a “multi-stakeholder consultative dialogue process” to find ways out of the current economic and political situation, but this seems to have been prompted by the recent disturbances rather than the Motlanthe Commission’s report. Some opposition politicians are being prosecuted, but not for crimes arising out of the 1st August riot. None of those responsible for the killings have been brought to book.

*If more of the Commission’s recommendations had been implemented, some of the killings, beatings and human rights violations perpetrated in the recent disturbances might have been prevented. Something must be done to end the cycle of impunity.*

### **Comment on the Report**

The Commission’s report identifies extreme political polarisation as one of the root causes of the disorder, and it is hard to quarrel with that. Out of the polarisation came the distrust of ZEC, as well as the false news and hate speech, which were more immediate causes of the post-election disturbances.

The Commission laid blame for the violence on the MDC Alliance since the demonstrations which gave rise to it were “pre-planned and well organised” by that party. The commissioners reached this conclusion from their assessment of the evidence given to them, and whether they were correct in doing so is open to debate. Unfortunately, an objective assessment of the evidence is difficult for Zimbabweans because of the extreme political polarisation noted in the report.

There are however some points on which the report is clearly open to criticism:

- **Right to demonstrate:** The report does not mention that section 59 of the Constitution gives everyone the right to demonstrate peacefully. Commissioners apparently assumed that because notice was not given under section 25 of POSA, the demonstration was unlawful and the Police were entitled to break it up. That is not so: section 25 does not say that demonstrations become unlawful simply because the convenors have not notified the Police.
- **Right to life is sacrosanct:** Section 86(3) of the Constitution says that the right to life cannot be limited or violated by any law. Hence any killing by the Police or Army, in whatever circumstances, is illegal. The report makes no mention of this, even though Veritas sent a written submission to the Commission pointing it out.

## **Membership of the Task Force**

**Chairperson:** *Minister Ziyambi Ziyambi, (Justice, Legal and Parliamentary Affairs)*

**Deputy Chairperson:** *Minister Sibusiso Moyo (Foreign Affairs and International Trade)*

### **Other Members:**

*Minister Monica Mutsvanga (Information, Media and Broadcasting Services)*

*Minister Mthuli Ncube (Finance and Economic Development)*

*Minister Cain Mathema (Home Affairs)*

*Minister Mangaliso Ndlovu (Industry and Commerce)*

*Minister Owen Ncube (Minister of State Security)*

*Mr Prince Machaya (Attorney-General)*

*Judge Priscilla Chigumba (Chairperson, ZEC)*

*A representative of the Law Society of Zimbabwe.*

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