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# COMMISSIONS WATCH

25th September 2018

- **Commission of Inquiry into Post-Election Violence**

The Commission of Inquiry into Post-Election Violence has now been set up.

On the 14th September the President published a proclamation (No 6 of 2018) establishing the Commission [*The proclamation can be viewed on the Veritas website – [link](#)*] and the seven Commissioners were sworn in on the 19th September.

## Members of the Commission

The Commissioners are:

**Mr Kgalema Motlanthe**, a former President of South Africa; he is the Commission's chairman

**Mr Rodney Dixon QC**, a British barrister

**Chief Emeka Anayaoku**, a former Commonwealth Secretary-General

**Gen Davis Mwamunyange**, a former head of the Defence Forces of Tanzania

**Prof Charity Manyeruke**, a professor at the University of Zimbabwe

**Prof Lovemore Madhuku**, also a professor at the University of Zimbabwe

**Mrs Vimbai Nyemba**, a former President of the Law Society of Zimbabwe

The Secretary to the Commission is Mrs Virginia Mabiza, the Permanent Secretary for Justice, Legal and Parliamentary Affairs.

## Commission's Terms of Reference

The Commission's proposed terms of reference were set out in our bulletin of the 3rd September [[link](#)] and they remain the same in the proclamation. Essentially the Commission is charged with investigating the circumstances leading up to what the proclamation calls "the 1st of August, 2018, post-election violence" – a euphemism for the killing of six demonstrators in Harare on that date – and making "suitable recommendations" in the matter.

## Commission's Procedures, Powers and Duties

### **Procedure**

Section 10 of the Commissions of Inquiry Act gives the Commissioners power to make rules "for their own guidance and the conduct and management of proceedings before them and the hours and times and places for their sittings". The rules do not have to be published; they can be informal.

The Commission will have the same power as a magistrates court to summon witnesses and examine them on oath, and to require witnesses to produce documents in evidence. Witnesses who fail or refuse to attend after being summoned, or who give false evidence on oath, may be prosecuted. Generally witnesses will have to answer all questions put to them, though there are exceptions: for example, they will not be obliged to incriminate themselves [*section 11(3) of the Commissions of Inquiry Act*] and journalists will not have to disclose their sources of information [*section 61(2) of the Constitution*].

### **Publicity**

The proclamation allows the Commission to hold its inquiry “both in public, or privately, as the exigencies of the Inquiry may determine.” It is to be hoped that, in the interests of transparency, all evidence will be heard in public.

### **Deadline**

The Commission is given three months to investigate the violence and deliver its written report and recommendations to the President. The deadline for the Commission to complete its work is therefore the 19th December.

### **Publication of report**

In his proclamation the President has directed that the Commission’s report “shall be availed at the Conclusion of the Inquiry”. It is not clear what this means because even in Zimbabwean usage “avail” does not necessarily mean “publish”. It is to be hoped that the report will be published in full as soon as possible after the Commission has delivered it to the President. We have a sad history of “burying” sensitive reports – the reports of the Dumbutshena and Chihambakwe commissions spring to mind. In this case Zimbabwe’s international reputation and standing demand that the Commission’s report must be published, no matter what its conclusions may be.

### **Commission’s proposed schedule**

On the 22nd September the Chairman of the Commission, Mr Motlanthe, announced that the Commission would be holding public hearings from mid-October. In the meantime he invited institutions and members of the public to send in written submissions to reach the Commission’s secretariat before the 12th October. Mr Motlanthe’s statement is on the Veritas website [[link](#)].

The Commission’s offices are situated at:

Cresta Lodge Harare,  
Cnr Samora Machel Avenue East and Robert Mugabe Road,  
Harare

## Court Challenge to Commission

On the same day the proclamation establishing the Commission was published in the *Gazette*, an application was filed in the High Court to set aside its establishment. The applicants' papers in the case [*Charles & the Counselling Services Unit v the President of Zimbabwe and 10 Others*] can be viewed on the Veritas website [[link](#)].

The applicants challenge the Commission on several grounds:

The President established the Commission without seeking the advice of the Cabinet [*This ground is based on the fact that the President announced the Commission's establishment before he had appointed a Cabinet*].

The President established the Commission without publishing a proclamation as required by the Commissions of Inquiry Act [*Now of course the President has done so*].

The President could not appoint a Commission to inquire into his own conduct [*This challenge arises because, under section 213 of the Constitution, the President is responsible for deploying the Defence Forces and therefore, the applicants assume, he ordered their deployment on the 1st August*].

Two of the Commissioners, in public statements, have allegedly shown that they are likely to be biased or that they have prejudged the subject-matter of the Commission's inquiry.

The Commission's terms of reference presuppose that it was justifiable for armed soldiers to be present on the streets of Harare on the 1st August.

Whether the High Court will rule in the applicants' favour – indeed whether the court will hear the matter at all before the Commission delivers its report – remains to be seen.

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