



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

REFLECTIONS ON THE EXPIRY OF THE FIRST TERM OF OFFICE OF THE NATIONAL PEACE AND
RECONCILIATION COMMISSIONERS AND GOING FORWARD
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The National Transitional Justice Working Group (NTJWG) notes that the first term for the commissioners of the National Peace and Reconciliation Commission (NPRC) ended on 24 February 2021, after five years of national service. The commissioners were sworn in in 2016 for a term ending in 2021 and now have an option to serve another term in accordance with section 320(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution). The Constitution stipulates that *“Except as otherwise provided in this Constitution, every member of a Commission is appointed for a term of five years which is renewable for one additional term only.”*

The NTJWG is aware that the NPRC had two vacant commissioner positions following the expiry of Reverend Masunungure’s first term of office as well as the resignation of Netty Musanhu in February 2020. Despite a December 2020 call by the Committee on Standing Rules and Orders (CSRO) of the Parliament of Zimbabwe for public nominations of persons to serve as NPRC commissioners, the ensuing steps to facilitate the appointment of new commissioners as outlined in section 237(1) of the Constitution remain outstanding.

For the commissioners who have chosen to renew their terms of office, the NTJWG notes that the President has the power to reappoint them as commissioners according to section 340 of the Constitution as read with section 251 of the Constitution. While the Constitution does not stipulate the procedure to be followed in the renewal of the terms of office for these commissioners, it is key for this process to be done transparently and for the public to be informed on which commissioners will continue to serve the nation as part of the NPRC. To date, no new commissioners have been appointed and no announcement has been made as to which commissioners have successfully renewed their terms of office. This delay is concerning and must be addressed post-haste as the Constitution stipulates in section 324 that *“All constitutional obligations must be performed diligently and without delay.”*

As the remaining commissioners start their second term of office, it is necessary to reflect on their first term of office in light of the challenges the commission has faced thus far and its mandate as articulated in section 252 of the Constitution.

Concerns Over NPRC Visibility

The COVID-19 pandemic has made the operating context very unpredictable and it is necessary for the Commission to adopt strategies to enable it to be more visible despite the existing contextual challenges. The NTJWG has previously engaged with survivors through community

dialogues and discussed the mandate of the NPRC. During these discussions, most survivors have indicated that they have little or no knowledge at all about the existence of the NPRC and raised concern over the Commission's lack of visibility in their communities. This situation has been compounded by COVID-19 which has proven to be not only a public health crisis but also a human rights and transitional justice crisis that disturbed the daily work of institutions including the NPRC.

As the independent commission mandated to facilitate post-conflict justice, healing and reconciliation it is incumbent on the NPRC to be visible in survivor communities and to lead the discourse on dealing with the past in the country. Therefore the NTJWG calls upon the NPRC to increase visibility at the local community level to enable it to better engage with survivors and other transitional justice stakeholders.

Lack of Adequate Funding

A perennial challenge regarding the procurement of appropriate funding has undermined the effectiveness of the NPRC leading to understaffing within its secretariat and adversely affecting the Commission's ability to decentralise its work. The NTJWG acknowledges the efforts made by the Commission to decentralise by establishing offices in Harare and Bulawayo as well as establishing provincial peace committees to lead peace and reconciliation processes in all the ten provinces in the country. However, the NTJWG notes that there is still much more to be done to ensure that the NPRC's operations are decentralised enough to enable survivors and other stakeholders to have easy access to the Commission and its services from different parts of the country. To this end, the NPRC's funding is a key consideration and should be addressed to enable the Commission to decentralise going into the next five years. Further, adequate funding is key to ensuring that the NPRC can attract and retain talent within its secretariat which has the mandate of driving the Commission's work. The NPRC must be fully resourced in terms of human expertise and financial resources to enable it to effectively execute its mandate countrywide. The State must therefore prioritise funding of the NPRC to enable it to efficiently dispense of its critical mandate.

NPRC Sidelined in Exhumations Consultations

The NPRC has a constitutional mandate to facilitate post-conflict justice, healing, and reconciliation. Survivors and civil society that constitute transitional justice stakeholders, therefore, expect the NPRC to lead the transitional justice discourse and initiatives. Carrying out exhumations and reburials is part of the NPRC's mandate and any role that may be assigned to any stakeholders in respect of exhumations must be one that is aimed at providing the necessary support to the NPRC to enable it to effectively lead the process. However, the Commission appears to be continuously side-lined in State-led consultations on the issue of exhumations and reburial of the remains of victims of human rights violations perpetrated during Gukurahundi. During the first term of office for the NPRC commissioners, the President had four meetings with stakeholders in the Matabeleland regions about the issue of exhumations. Contrary to the recommendations of stakeholders, the engagements on exhumations were led by the President not the NPRC and they were only open to a select few excluding the NPRC. Moving forward the NPRC must stand against the usurping of its mandate and lead the process of exhumations and reburials.

Delays in Establishing the NPRC and its Structures

The delays in the setting up of the NPRC have been perceived by survivors as a deliberate ploy to ensure that the Commission's mandate expires before it can fully deliver on its mandate. Such perceptions and the existing divergent views regarding when the NPRC's lifespan ends are detrimental to the work of the NPRC. The Commission was established in terms of section 251 of the Constitution in 2013 but the commissioners were sworn in in February 2016, three years after the establishment of the Commission. There was a further two-year delay in the enactment of the NPRC Act which was enacted in 2018. These delays marred the first term of office of the NPRC commissioners and limited their ability to effectively lead post-conflict justice, peace, and reconciliation. The inadequate funding availed to the Commission only served to compound the challenges faced by the commissioners as they endeavored to set up NPRC structures in their first term. With a lifespan of ten years, it is regrettable that the first term of office of the NPRC commissioners has mostly been used to simply set up the NPRC's structures. While these structures are necessary to enable the NPRC to deliver on its mandate they are still yet to be fully activated. It is therefore now incumbent on the NPRC commissioners to strive to ensure that the NPRC makes strides towards fulfilling its mandate as a way of building public confidence in the institution.

NPRC Involvement in POLAD

During the year 2019, the NPRC started consultations with stakeholders on a framework for national dialogue, this was a welcome initiative that inspired confidence in the body. Soon after the NPRC started its consultations, President Emmerson Mnangagwa launched the Political Actors Dialogue (POLAD) and the NPRC, unfortunately, immediately stopped its consultations and shifted its attention to the POLAD process. To a great extent, the POLAD has remained an exclusive space mainly for political actors that find themselves in agreement with the ruling party, ZANU PF, to the exclusion of stakeholders with dissenting views. A dialogue of only a few political actors cannot be called 'national dialogue' and a platform such as POLAD cannot adequately address the wide variety of issues that the country must contend with to ensure national peace and reconciliation. The role of the NPRC in this platform has caused concern among stakeholders who have seen this as a serious assault on the independence of the NPRC as the platform is perceived as exclusive and partisan. The NTJWG, therefore, encourages the NPRC commissioners going into their second term and the new commissioners that will be appointed to strive to assert the NPRC's independence and avoid acting in any manner that may create a perception that the Commission is an extension of the Office of the President.

NPRC in Breach of its Reporting Obligations

The NTJWG urges the NPRC commissioners that will renew their terms of office and the new commissioners that will be appointed to take leadership and ensure that the NPRC does not find itself in breach of its reporting obligations in the next five years. The Commission was in breach of its obligations for the year 2018 and 2019 until October 2020. The 2018 and 2019 Annual Reports were presented to Parliament on 3 and 8 September 2020 respectively, long after they were both due and they were subsequently published in October 2020. The NPRC must be held accountable through public evaluation of its Annual Report, which should outline what activities have been carried out and how the Commission has made use of the public resources allocated

to it. According to section 323 of the Constitution, the NPRC should present its annual report to Parliament describing in full its operations and activities no later than by the end of March of the year following the implementation of such activities. Moreover, section 16(7) of the NPRC Act obliges the NPRC to further make public the Annual Report and any other reports expected to have been presented to Parliament within thirty days. This means that the NPRC has constitutional and statutory reporting obligations that it must fulfill every year. Regrettably, in the first term of office of the NPRC commissioners, the NPRC failed to ensure timely compliance with its reporting obligations. While the NPRC is an independent commission given the national importance of its mandate, accountability is key. The Commission must be held accountable through public evaluation of its Annual Report, which should outline what activities have been carried out and how the Commission has made use of the public resources allocated to it.

Conclusion

The NTJWG advocates for a smooth transition between the recently ended and new terms of office that is not marred by the perennial problems of funding that have hampered progress in the past. The strengthening of existing relations with the NPRC commissioners who will continue in their capacities and creation of new avenues for cooperation with the new commissioners remain priority for the NTJWG.

Recommendations

To Parliament and the President, the NTJWG calls on the following:

The Parliament and the President to urgently finalise the process of appointment of a new commissioner and notify the public of which commissioners have successfully renewed their terms of office to ensure that critical functions of the NPRC are not unduly suspended.

To the NPRC commissioners starting their second terms and the new commissioners who will be appointed, the NTJWG calls on the following:

- a) In setting the transitional justice agenda and priorities, the NPRC in partnership with members of the public, civil society, and human rights organisations, must create widely accessible information platforms aimed towards massive public outreach to educate the public about the NPRC mandate and to build social consensus on the key national transitional justice issues.
- b) The centrality of survivors' views and victim's rights must guide the design and implementation of transitional justice interventions. Investigations and public hearings should be inclusive of survivor-sensitive procedures that ensure safety and dignity and the development of specific capacities to assist. At all stages, support and protection of survivors of violence and conflict as well as that of witnesses must be guaranteed.
- c) The NPRC must do more work to mainstream the needs of women, people living with disabilities, the elderly, Zimbabweans in the diaspora, children, and the youth in the transitional justice discourse. Women and girls are vulnerable to entrenched forms of gender-based violence which make them susceptible to conflict-related human rights abuses, including systematic sexual violence. Engaging the youth in transitional justice is critical for sustainable peace and reconciliation. The NPRC must also do more to

investigate and initiate programmes that offer effective remedies to children to protect and promote the human rights-based approach in its executing all its functions.

- d) The NPRC should endeavour to create more joint initiatives with other Chapter 12 institutions mandated to support human rights and other democratic values to fully dispense its constitutional mandate.
- e) The NPRC must engage more widely with survivors and conduct more public hearings countrywide to enable survivors' and stakeholders' constitutional rights to public participation in the processes of reconciliation and peacebuilding. In the case of continued restrictions on gathering, the Commission must develop innovative communication tools and means that facilitate two-way communication with stakeholders.
- f) The NPRC should actively engage the State and civil society actors to come up with a national policy framework to guide the exhumation exercise.
- g) The NPRC should spearhead a multisectoral exercise towards the development of a culturally inclusive and contextually appropriate framework for mental health and psychosocial support of victims and survivors in a bid to promote national healing in Zimbabwe.