

DISTRIBUTED BY VERITAS

E-mail: veritas@mango.zw Website: www.veritaszim.net

**VERITAS MAKES EVERY EFFORT TO ENSURE THE PROVISION OF RELIABLE INFORMATION,
BUT CANNOT TAKE LEGAL RESPONSIBILITY FOR INFORMATION SUPPLIED.**

In the National Assembly Tuesday 9th May 2017

REPORT BY THE PORTFOLIO COMMITTEE ON JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS NATIONAL PEACE AND RECONCILIATION COMMISSION BILL [H.B. 2, 2017]

HON. ZIYAMBI: On 10th February 2017, the Government of Zimbabwe gazetted the National Peace and Reconciliation Bill [H.B.2, 2017.] to put the National Peace and Reconciliation Commission (NPRC) into operation and related matters. This Bill is the successor to the National Peace and Reconciliation Bill [H.B 13, 2015] (the old Bill) which was gazetted on 18th December 2015 and withdrawn from Parliament in May 2016 following an adverse opinion on the Bill by the Parliamentary Legal Committee as well as members of the public during the Public Hearings held from 10 to 18 April 2016.

2.0 Methodology

The Justice Committee and Thematic Committees on Human Rights and on Peace and Security conducted joint public hearings in all of the country's provinces, and gathered views and opinions on the Bill. Hearings were conducted in all provinces of the country by two separate teams, Team A and Team B.

Team A held public hearing meetings in the following provinces: Matebeleland North (Victoria Falls; Chinotimba Hall, 13 March 2017); Bulawayo (Bulawayo Large City Hall, 14 March 2017); Matebelenad South (Plumtree, Plumtree Town Council Hall, 15 March 2017); Midlands Province (Gweru Civic Center Hall, 16 March 2017).

Team B conducted its public hearings in the following provinces: Masvingo (Masvingo, Civic Centre Hall, 13 March 2017); Manicaland (Mutare, Civic Centre Hall, 14 March, 2017); Mashonaland East (Marondera, Mbuya Nehanda, 15 March 2017); and Mashonaland Central (Bindura, Tendai Hall, 16 March 2017). The two teams held joint public hearing in Mashonaland West (Chinhoyi, Cooksey Hall, 17 March 2017); and Harare (New Ambassador Hotel, 18 March 2017).

2.1 Attendance figures at Public Hearings

During the public hearing, many organisations and individuals made their submissions and contributions. The following statistics reflects the level of participation. At Chinotimba Hall, 18 participants attended and 7 contributions were made; Bulawayo Large City Hall, 111 attended and the Committee received 38 contributions; and Plumtree Town Council Hall, 46 participants attended, 29 submissions were made; Gweru Civic Centre, 134 participants turned up and there were 36 contributions made; Masvingo Civic Centre, 42 participants attended, 21 submissions were received; Mutare Civic Centre Hall, 123 participants attended and 26 contributions were received; Marondera, Mbuya Nehanda Hall 156 participants attended, 34 contributions were received; and in Chinhoyi Cooksey Hall, 264 participants came and 11 contributions were made before the meeting was closed prematurely; at New Ambassador Hotel in Harare, 156

participants came and 31 contributions were received. Thus, for Team A and Team B, 10 meetings were held, 1050 participants attended, 607 were males, and 443 were females, and a total of 207 contributions were made.

Organisations that made their submissions include the following: The National Transitional Justice Working Group Zimbabwe (NTJWG); Catholic Commission for Justice and Peace in Zimbabwe (CCPJ); Zimbabwe Human Rights Associations (ZHRAs); Post-Independence Survivors' Trust (PIST); Centre for Public Engagement; The Ecumenical Church Leaders Forum (ECLF); and The Zimbabwe Christian Alliance (ZCA).

3.0 Submissions by members of the Public

3.1 Clause 1 – The long title

Members expressed that the purpose of a short title is to give a short descriptive summary of the subject matter of the Act. Hence, it was felt that the current title is weak and does not embrace the full purpose of the proposed law. It was the view that the purpose of the NPRC Bill and what it intends to achieve has to be stated clearly in the Long title.

3.2 Clause 2: Interpretation

The interpretation section was viewed as being shallow and not aiding in the interpretation of words used in the Bill. For instance, members of the public cited the definition of 'dispute' that was equated to 'conflict' which was then defined to mean any dispute or conflict of a kind within the scope of the Commission's constitutional mandate, which Constitution however does not provide a definition of a conflict. Stakeholders also noted that major terms used in a conflict situation are not defined in this Bill.

3.3 Clause 3: Powers, Procedures and Functions of Commission

Stakeholders raised concerns on the failure by the Bill to clearly categorise, list and define the functions of the Commission, its powers, procedures for handling complaints up to the stage of acquittal or conviction and conditions under which one is granted amnesty. It was a strong view that the functions of the Commission are not corresponding with the powers of the Commission.

3.4 Clause 4: Independence of the Commission

Stakeholders expressed concerns about the extent of the independence of the Commission in circumstances where the Minister of National Security is allowed to lodge a certificate to the effect that the disclosure of any evidence or document or class of evidence or documentation is, in his or her opinion, contrary to the public interest. Some concerns were also raised on the role of the Minister in the setting up of the secretariat arguing that this was some form of interference with the functions of the commission eroding its independence.

3.5 Clause 5: Seal of the Commission

No issues.

3.6 Clause 6: Offices and operations of Commission

A strong view was expressed that there is need for a clause sanctioning decentralisation by setting up offices even in very remote areas to ensure equal access to justice by all.

3.7 Clause 7: Removal of Members from Office

No issues.

3.8 Clause 8: Investigative Functions of Commission

Stakeholders took issue with Clause 8 (1) and submitted that it is vague, embarrassing and non-specific in that it does not define the nature of the dispute or conflict or of the action or the omission or what it means by authority and/or person. The public indicated that the nature of the dispute or issues to be investigated by the Commission must be described with sufficient detail so that the functions of the commission are transparent and clear to all. It was also submitted that its functions must be clearly demarcated from that of the Zimbabwe Human Rights Commission.

Concerns were also raised regarding Clause 8 (3) which acknowledges the due court processes under civil proceedings but negates to do the same for criminal proceedings which implies that the Commission can proceed to investigate matters before criminal courts. The argument raised by stakeholders is that transitional justice systems are put in place where the judicial system is inadequate and/or unable. Subjecting the same person to two parallel systems is against established legal practice especially in criminal matters.

3.9 Clause 9: Manner of conducting investigations

3.5.1 There was general discontent with this clause which affords perpetrators of violence, dispute or conflict, 14 working days to respond to the allegations raised in writing to the Commission. This period was viewed to be too long, thereby providing suspects with an opportunity to destroy evidence, abscond or intimidate witnesses since they will not be in custody or detention.

Clause 9 (4) of the new Bill regarding legal representation for people appearing before the Commission at their expense, is a condition that was viewed as prone to manipulation and abuse by those with financial resources.

3.5.4 Clause 9 (12)

No issues

3.6 Clause 10: Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

No issues

3.7 Clause 11: Appearance before Commission

No issues.

3.8 Clause 12: Other Offences

No issues.

3.9 Clause 13: Staff of Commission

No issues.

3.10 Clause 16: Funds of Commission

Concerns were raised on the import of consulting the Minister regarding donations to the Commission. This was viewed as eroding the independence of the commission.

4.0 Committee Findings and Recommendations

4.1 The Committee notes that the Short title of the Bill does not give a descriptive summary of the subject matter of the Bill. The need to have a short title that gives a descriptive summary of the mischief the

law is trying to cure is recommended. The Committee believes the South African Promotion of National Unity and Reconciliation Act 34 of 1995 is very informative in this regard.

4.2 There is need to have an interpretation section that defines key terms in accordance with internationally accepted standards. In its present format, the Bill does not define a victim, conflict, dispute, amnesty, perpetrator, post-conflict justice, torture and reconciliation among other terms. The interpretation section is too weak and evidently shows poor drafting.

4.3 Powers of the Commission must directly correspond with its functions.

4.4 It is the Committee's view that the issuance of a Ministerial certificate in the public interest is universal practice necessary for the preservation of law and order. As such, while some members of the public expressed reservations with this, it is a clause that is necessary for effective governance and maintenance of peace which are key state functions.

4.5 The Committee noted that in the event that the Commission is operationalised, its offices should be decentralised. Having this clause in the Bill, effectively provides a legal instrument to compel the commission to open offices closer to the people.

4.6 It is the Committee's finding that the Bill as earlier stated does not adequately define its terms and references. There is need to clearly define and list the functions of the Commission vis-a-vis the functions of the ZHRC. Notably also, is the fact that the Commission's operations are only limited to civil proceedings before the court but by implication, the Bill suggests that the Commission proceed to entertain a matter that is pending and/or ongoing in the criminal matters.

4.7 Regarding the 14 day period afforded suspects to respond in writing by the Commission, it is the Committee's view that the Constitution in terms of section 70, affords such persons rights to adequately prepare for their defence. As such, the 14 day period is considered to be reasonable and justifiable in a democratic society as ours.

Again in terms of section 69 (4) of the Constitution, it affords anyone the right at their own expense to choose and be represented by a legal practitioner before any court, tribunal or forum. As such, it is the Committee's recommendation that this provision be upheld.

4.8 Regarding donations to the Commission, it is the Committee's view that any nation would safeguard its independence and sovereignty by ensuring that donations from hostile nations or organisations meant to foment discontent are not allowed.

4.9 As a general observation, it is noted that the Bill is silent on gender and there is a need for a specific gender section. It is recommended that a separate section must be inserted on gender. This section must set up a gender unit or similar mechanism of choice which will do the following:

- (a) Develop specific guidelines and rules on how the Commission will incorporate gender into its work;
- (b) Develop strategies to encourage the participation of women, girls and other marginalised groups in the work of the Commission; and
- (c) Facilitate gender equity into the structure of the Commission.

5.0 Conclusion

Generally the Bill did not receive wide acceptance from the members of the public. More specifically, the Bill did not deal with legal issues pertaining to previous amnesties granted, and the period which the Commission has jurisdiction over. Also, the Bill failed to define salient terms and references, particularly the issues to do with perpetrators and victims. It is silent on the procedures to be used in ascertaining one's status as a perpetrator and/or victim. At the centre of any healing process are victims. The Constitution states in section 252 that healing is one of the functions of the NPRC. It further talks about providing rehabilitative treatment and support to victims and survivors.

This healing cannot be achieved if victims are left in the margins of the process. I thank you.
