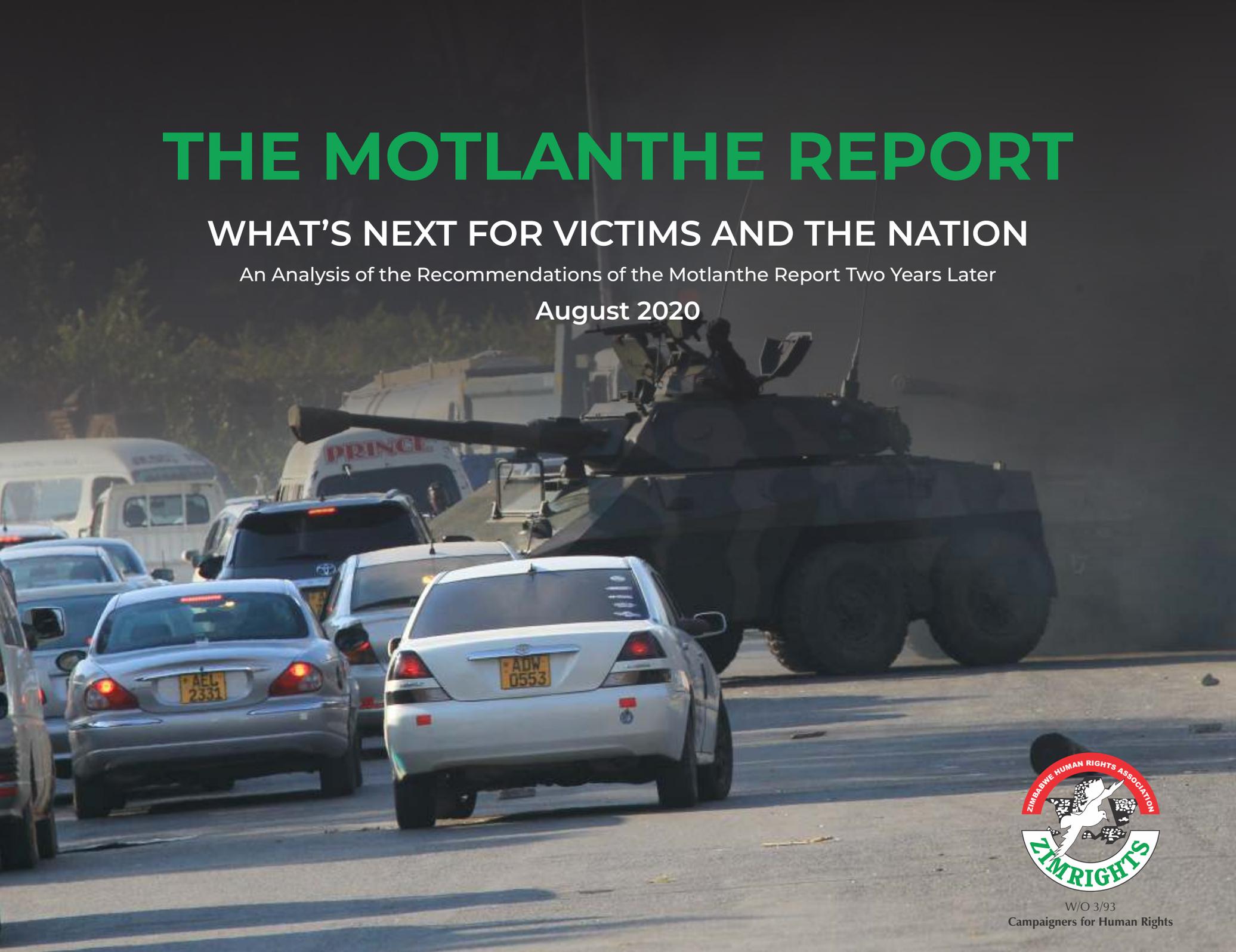


THE MOTLANTHE REPORT

WHAT'S NEXT FOR VICTIMS AND THE NATION

An Analysis of the Recommendations of the Motlanthe Report Two Years Later

August 2020



W/O 3/93

Campaigners for Human Rights



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Published in August 2020 in memory of the victims and survivors of the August 2018 shooting

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EXECUTIVE SUMMARY

This report analyses the government's progress in implementing the recommendations made by the Commission of Inquiry.

In the first chapter the report gives an account of what culminated to the military shootings. On 1 August 2018, following the delay in pronouncing the 2018 presidential election results, the military was deployed in Harare CBD's streets to 'disperse' demonstration. The deployment of members of the Zimbabwe National Army resulted in the deaths of six civilians and the injury of many citizens. After a public outcry condemning the military's deployment and the subsequent demand for justice for the crimes against humanity attributed to the members of the Zimbabwe National Army, President Emmerson Mnangagwa appointed a commission of inquiry to investigate into the shootings.

The second chapter captures the historical pre- and post-election violence of Zimbabwe. The report traces election violence from as far back as 2008 and the consistent use of security forces by the government to silence demonstration. This report dismisses the opinion by the police that they could not contain the protest.

The third section interrogates the response by the government to establish the Commission of Inquiry, led by former President of South Africa Motlanthe. The report starts by documenting the convictions that the investigations should have been carried by the Zimbabwe Human Rights Commission as a constitutionally established independent commission with the mandate to investigate allegations of human rights violations. It further re-iterates the terms of reference of the Commission of Inquiry. It further state and explains the recommendations by the Commission to the government and encourages our government to implement as preventative measures.

The forth section is the comprehensive analysis of the recommendations by the Motlanthe Commission. The report concludes that the government has neglected to fully and substantially implement the recommendations. It acknowledges that while our government has taken actions such as establishing the select committee to oversee the payment of victims and gazetted proposed bills to replace AIPPA, nothing significant has been done. The continuing conduct of human rights violations by members of the Zimbabwe Republic Police is proof that no training has been

conducted to capacitate them to respect fundamental human rights and freedoms in carrying out their duties. In so far as the electoral reform is concerned, the report concludes that the government has not done anything.

In the last chapter the report concludes by calling upon the Zimbabwe Human Rights Commission to adopt the recommendations by the Commission of Inquiry. The call is with realization that ZHRC is a constitutionally established independent commission as such our government is obligated to abide by its recommendation. This is not the same with the Commission of Inquiry. The Motlanthe Commission doesn't have the capacity to call our government to order.



After a public outcry condemning the military's deployment and the subsequent demand for justice for the crimes against humanity attributed to the members of the Zimbabwe National Army, President Emmerson Mnangagwa appointed a commission of inquiry to investigate into the shootings.



INTRODUCTION

“The Commission produced several progressive recommendations, but our government has not implemented it. It seems now it is our government’s culture and habit to ceremonially ‘act’ against human rights violations. Actions meant only to fool citizens and the international community in believing that the government cares about the welfare of the people and the agenda of human rights”

ZimRights Member.



Army tanker roaming the Harare CBD streets on 1 August

The year 2020 marks the second year after the 2018 report of findings and recommendations by the Commission of Inquiry into the 1 August 2018 post-election violence, commonly referred to by the name of the Commission's Chairperson, former South African President Kalema Motlanthe as the Motlanthe Commission (the Commission). Following the post-election violence, members of the Zimbabwe National Army (ZNA) were deployed in Harare's streets to assist the Zimbabwe Republic Police (ZRP) in dissolving demonstrations and restoring '*peace and order.*' The military used live ammunition and other forms of force, resulting in six (6) Zimbabweans whom all died of gunshot wounds. A seventh individual later died on admission at a medical facility, of injuries sustained as a result of the military conduct. Several others were injured. After a public outcry demanding justice and accountability, President Emmerson Mnangagwa established the Commission of Inquiry to investigate the incident. On 18 December 2018, the Commission issued a report of its findings, along with its recommendations.

This report assesses the progress made in implementing the Commission's recommendations by the Government of Zimbabwe. This report forms part of a first of its series, and it tracks, analyzes, and assesses the progressive implementation of the recommendations of the Commission.

HOW THIS REPORT WAS COMPILED

ZimRights engaged its members to inquire about what the communities believed to have been the Motlanthe Recommendations' progress. It is in the principle that justice must be seen to be done and realizing that it is the communities with the lived experience through their interfacing with public institutions and the police, their views form part of this report.

Further, this report is compiled based on a systematic, comprehensive gathering of verified information, coupled with a politically impartial analysis of the Commission's findings and recommendations. Statements made against work by the Commission by various human rights groups, also feed into this report, including reports by the following:

- Zimbabwe Peace Project (ZPP);
- Zimbabwe Human Rights NGO Forum;
- Zimbabwe Election Support Network (ZESN);
- Zimbabwe Lawyers for Human Rights (ZLHR);
- Elections Resource Centre (ERC);
- National Peace and Reconciliation Commission (NPRC);
- Government of Zimbabwe Ministries.

Individuals and institutions were key informants, including direct and indirect victims, and lawyers who have handled claims for damages on behalf of victims.

BACKGROUND

Zimbabwe has a history of political violence, experienced in times of elections. The Zimbabwe Association of Doctors for Human Rights (ZADHR) noted in a 2018 report that since 1980 virtually every poll carried out in Zimbabwe had been characterized by political violence.¹ According to the report by ZADHR, during these periods, civil society organizations have recorded the highest and alarming numbers of human rights violations.

According to the Research and Advocacy Unit (RAU) in a 2018 report, Zimbabwe has since 2000 been subject to violent elections, mass displacement, and continuous repression, and more often, victims are civilians with political affiliation and association other than the ruling party.²

Following the military coup, which resulted in the removal of President Robert Mugabe in 2017, Zimbabwe held harmonized national elections on 30 July 2018. As was observed by local and international observers, the elections were generally described as harmonious and peaceful.

According to the Zimbabwe Electoral Commission (ZEC), the pre-election period was relatively violence-free, with few cases of voter intimidation and intra-party violence from both the opposition and the ruling party recorded. However, following the delay in the announcement of the results of the ZEC presidential election, supporters of the MDC Alliance held a demonstration against ZEC.

The Motlanthe Commission report recorded that opposition supporters expressed growing impatience over the slow release of the historic presidential election results, and they took to the streets, alleging that their vote was being '*stolen*.' What started as a peaceful protest quickly turned violent, with opposition supporters allegedly burning cars and buses belonging to ZANU PF, and this led to the deployment of the anti-riot police to disperse and enforce law and order.

According to the Commissioner-General of Police, the anti-riot police could not contain the protesters, so they sought military intervention. Under the command of Brigadier-General Anselem Sanyatwe, soldiers were deployed to provide the situation.

1. Zimbabwe Association of Doctors for Human Rights 2018 Annual Report.

2. Research and Advocacy Unity 2018 Annual Report.



Police officers violating human rights

Security forces used disproportionate and indiscriminate use of force by both the army and police, which resulted in recorded deaths of civilians and the injury of many other civilians.

'Within a few minutes of the army's deployment, Harare's Central Business District (CBD) resembled a warzone, with army vehicles and helicopters patrolling the city, and soldiers opening live ammunition to the fleeing protestors.³

Following the death of at least six (6) civilians and the injuries to many others, on 1 August 2018, the army carried out a crackdown in Harare's high-density suburbs. Several civilians were assaulted and harassed during this crackdown.

After the local and international community expressed concern, President Emmerson Mnangagwa appointed a Commission of Inquiry to investigate what transpired and come up with recommendations. The Commission spent two months inquiring into the events of 1 August 2018, with the Commission hearing evidence in Harare, Mutare, and Bulawayo.

Notwithstanding the criticisms leveled against how the Commission handled its work,⁴ The Commission released its report in December 2018, with recommendations for Zimbabwe's government to ensure accountability on the part of the perpetrators and prevent the re-occurrence of further similar human rights violations and abuses.

TERMS OF REFERENCE FOR THE COMMISSION OF INQUIRY:

On 12 September 2018 President Emmerson Mnangagwa, appointed the Commission of Inquiry in terms of Section 2(1) of Commission of Inquiry Act [Chapter 10:07], with the following terms of reference:

- a. To inquire into the circumstances leading to 1 August 2018 post-election violence;
- b. To identify the actors and their leaders, their motive and strategies employed in the protests;
- c. To inquire into the intervention by the Zimbabwe Republic Police in the maintenance of law and order;

3. Zimbabwe Association of Doctors for Human Rights 2018 Annual Report page 7.

4. Among the criticisms leveled against the Commission's work, are that many key witnesses were not afforded a hearing before the Commission, and the Ministry of Justice, Legal and Parliamentary Affairs served as the Secretariat to the Commission, yet the Ministry was an interested party.

- d. Investigate the circumstances that necessitated the military's involvement in the maintenance of law and order;
- e. To consider whether the degree of force used was proportionate to the ensuing threat to public safety, law and order;
- c. To ascertain the extent of damage/injury thereof;
- d. Investigate into any other matter which the Commission of Inquiry may deem appropriate and relevant to the inquiry;
- e. To make suitable recommendations;
- f. Present a comprehensive report of findings and recommendations to the President.

“

Following the death of at least six (6) civilians and the injuries to many others, on 1 August 2018, the army carried out a crackdown in Harare's high-density suburbs.

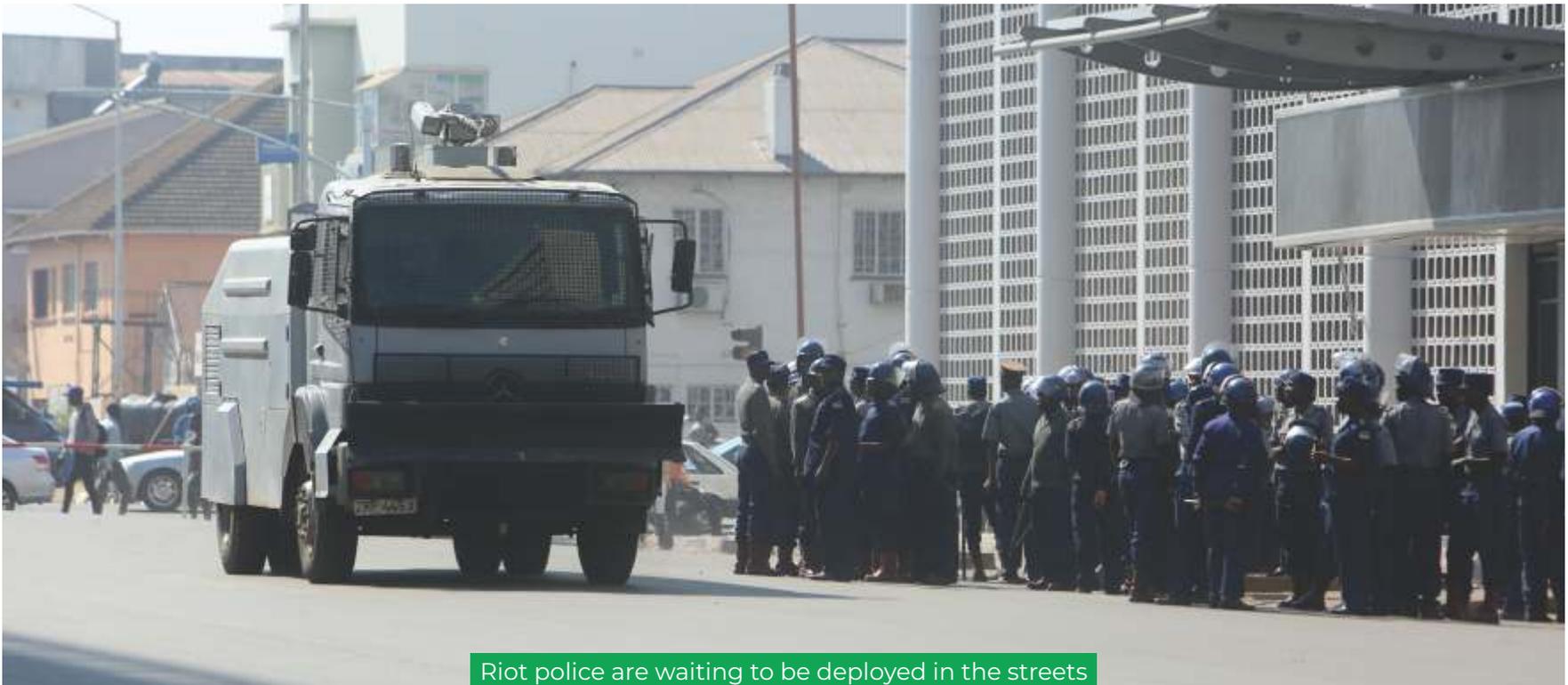
Several civilians were assaulted and harassed during this crackdown.

”

RECOMMENDATIONS OF THE COMMISSION

“Commission yakaita zvakanaka hazvo but our government is not serious, perpetrators have not made to be accountable for their actions and victims have not been compensated”

ZimRights Member.

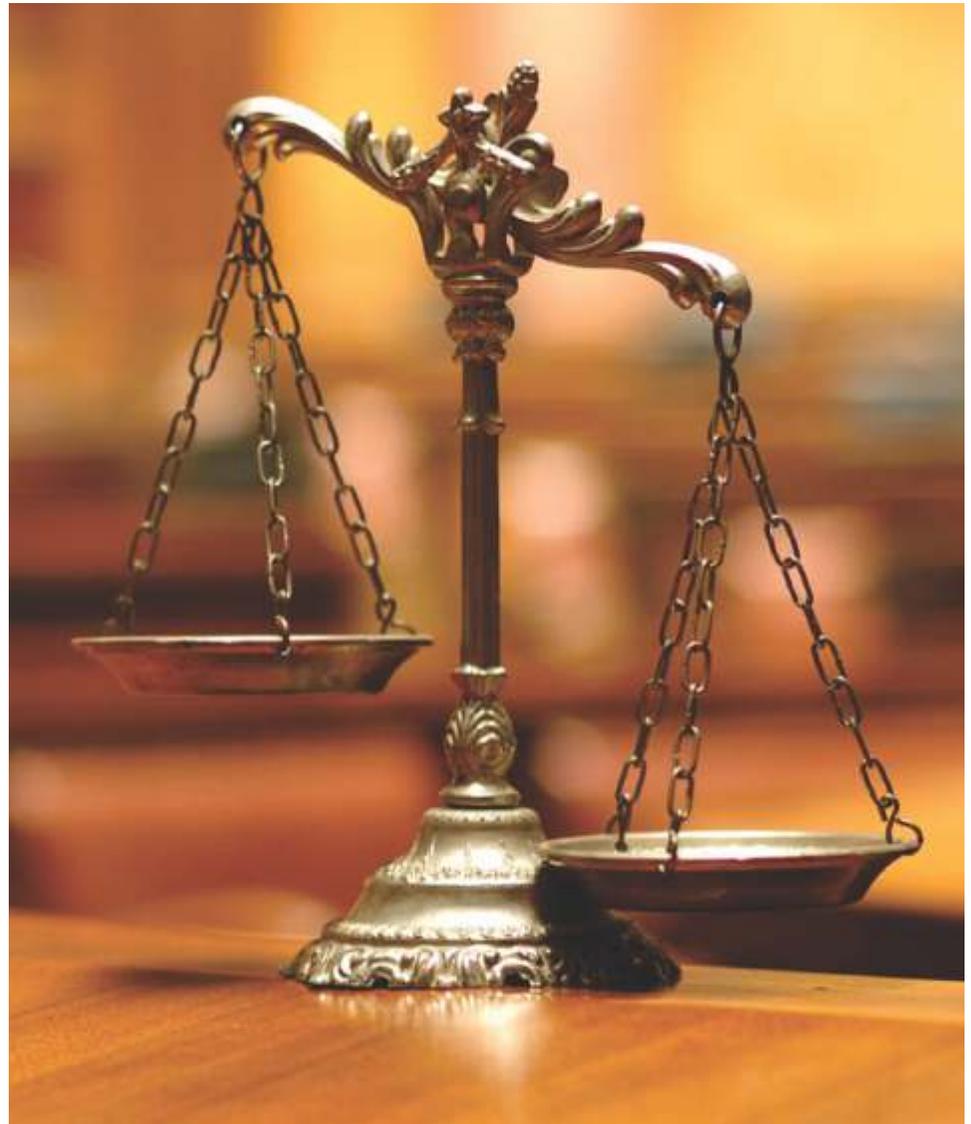


Riot police are waiting to be deployed in the streets

Following an elaborate process and coming up with its findings, the Commission came up with several recommendations.

Among the key recommendations are the following:

- a. Payment through a select Committee to be set up by the government, of compensation for losses and damages caused including, in particular, support and school fees for the children of the deceased;
- b. Electoral reforms including the development of Information Communication Technology (ICT) systems, to among other things enhance the transparent and expeditious announcement of election results;
- c. The enforcement of law and order to ensure that the events of 1 August 2018 do not repeat;
- d. Accountability in respect of the alleged perpetrators;
- e. Nation-building and reconciliation, including an initiative for multi-party dialogue and cooperation.



The enforcement of law and order to ensure that the events of 1 August 2018 do not repeat

ANALYSIS OF IMPLEMENTATION OF THE RECOMMENDATIONS

i. PAYMENTS AND COMPENSATION

Payments through a select Committee to be set up by the government of compensation for losses and damages caused including, support and school fees for the children of the deceased.

Commission meant to ensure justice to the victims through a form of satisfaction, by ensuring that victims of the violence and dependents of the deceased are compensated. It was recommended that the government set up a committee to assess the amount of compensation and a fund to assist those affected. According to a local newspaper, published on 16 August 2019,⁵ while the government has set up a committee to meet this objective, no further steps have been taken. The government is yet to set up the fund and facilitate the payment of victims' families and dependents. Dependents of the victims remain vulnerable as a result.



Citizens were paying respect to the deceased victim of 1 August Shootings.

According to Zimbabwe Lawyers for Human Rights, who have been handling cases of two victims Loveday Munesi who was injured, and Tapiwa Tshuma, who represents his deceased brother, have not been compensated to date.

5. 'Govt to implement Motlanthe recommendations in September' NewsDay, 16 August 2019, <https://www.newsday.co.zw/2019/08/govt-to-implement-motlanthe-recommendations-in-september/>

The Zimbabwe Lawyers for Human Rights has instituted court proceedings to have the court order payment of damages for some victims who were injured. Through a firm of private lawyers, the Minister of Defence has excepted to the summons' claims, raising that the summons is defective as they do not identify the specific members of the military who caused the harm.

Loveday Munesi was shot in the right buttock and still has a bullet stuck, and is facing a real risk of paralysis. She is suffering chronic back pain as a result. The government has not shown compassion in Loveness' situation. Tapiwa Tshuma carries the burden of caring for the family that was left by his brother.

ii. ELECTORAL REFORMS

Electoral reforms, including the development of Information Communication Technology (ICT), among other things, enhance the transparent and expeditious announcement of election results.

“The government doesn't care about the recommendations by the Commission of Inquiry; that is why they haven't put any reforms as recommended”

ZimRights Member.

In 2018, the International Republican Institute (IRI) and the National Democratic Institute (NDI) Zimbabwe International Election Observation Mission, in its final report, made eleven priority recommendations that seek to promote credible and democratic elections in Zimbabwe. The recommendations include the following:

- An alignment of the Electoral Act with the 2013 Constitution;
- Adopting more transparent and consultative procedures to build public trust in the ZEC and ensure that ZEC is widely perceived to be a credible institution;
- Elections management body to adopt and publicize transparent procedures for the tabulation, transmission, and announcement of results;
- Ensure a media environment that fosters a diverse, independent media representing a variety of political perspectives;
- Develop a complaint mechanism that will provide for prosecution of perpetrators of violence and other forms of political coercion.

The Commission of Inquiry came up with almost similar recommendations as it noted that the political space and electoral law are leading to the mistrust of the Zimbabwe Electoral Commission.

Following recommendations of the Commission of Inquiry, the government has since facilitated the establishment of an Inter-Ministerial Task Force chaired by the Minister of Justice, Legal and Parliamentary Affairs, and the creation of a Committee for Political and Electoral Reforms in Cabinet.

The government has also set up a Cabinet committee whose focus is to instigate political reform recommended by the Motlanthe Commission of Inquiry. The Task Force and the Cabinet committees have not issued a report or statement about the progress of their work.

However, according to the NDI, the government made a few notable efforts. In December 2018, the National Assembly accepted and discussed a petition submitted by the Zimbabwe Elections Support Network (ZESN). ZESN also presented its recommendations to Parliament in February 2019, followed by ZEC hosting a multi-stakeholder conference. Both events signaled the beginnings of an inclusive reform process. However, beyond that, the government has not taken further and substantial steps to facilitate and ensure electoral reform.

Per the recommendation of the Commission of Inquiry that ZEC must be transparent in its work to foster public trust, ZEC published its 2018 elections report, marking an effort to be open with the public about its successes and shortcomings. However, concerning transparency on current and plans in light of the expected 2023 elections, ZEC has not done much. In 2019, ZEC held by-elections, which were observed by ZESN and other civil society organizations. In its report, ZESN found that since the 2018 post-election violence, the political spaces have not changed.

The Election Resource Centre has, in its observations of the November 2019 by-elections noted, that non-compliance with legal provisions subsist since 2018 harmonized elections.

ZEC needs to publicize its current and plans to build greater public confidence in the electoral institution and to ensure accessibility of information on issues about elections. There are continued inadequacies in ZEC's communication and public outreach efforts, and ZEC must urgently adopt and implement an open and proactive communications strategy.

iii. LAW AND ORDER



Law and Order officers in streets with button sticks

This process involves the following steps:

- Ensuring that provisions of the Public Order and Security Act (POSA) for deploying the military aligns with the Constitution;
- Ensuring that members of the Zimbabwe Republic Police can deal with rioters and are trained to be professional and non-partisan;
- Ensuring that the military's deployment to assist the police should be a measure of last resort in extraordinary situations;
- Ensuring that the army conducts an audit of its standing orders and procedures for riot control and law enforcement. The results of the review and the lessons learned and remedial measures should be published in a public report;
- Ensuring that the military in conjunction with the police adopt contingency plans for dealing with emergencies;
- Ensuring that the use of live ammunition as warning shots is discouraged and used only in limited circumstances of danger to public safety.

Parliament, acting on the recommendations from numerous election observation missions, the Commission of Inquiry and appeals by civil society, has introduced legislation to repeal and replace the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA). POSA and AIPPA are legislative enactments falling foul of the provisions and fundamental rights and freedoms enshrined in the Constitution. As such, the government has taken positive steps in moving to repeal both enactments.

POSA has replaced the Maintenance of Peace and Order (MPOA) Act [Chapter 11:23], which accepted into law in November 2019. While this can be deemed progressive, it is imperative to note that some critical contents of the law are termed with the famous historical adage *'old wine in a new bottle.'* The new law that purports to replace POSA violates the fundamental rights to freedom of assembly and association, as recognized and ratified under international standards. The right to peaceful assembly is not fully guaranteed as the law enforcement agencies have a broad regulatory discretion to sanction gatherings and demonstrations. It was the same under POSA.

Three Bills are to replace AIPPA. These are the:

- Freedom of Information (FOI) Bill,
- Cybersecurity and Data Protection Bill, and
- Zimbabwe Media Commission Bill.

The FOI and the Cybersecurity and Data Protection Bill were gazetted, and public hearings are expected to take place in due course. The government has also approved the Broadcasting Services Amendment Bill, aimed at balancing Zimbabwe's government-dominated media environment.



However, there are concerns that these Bills do not wholly align to the protection of freedoms as enshrined in the Constitution of Zimbabwe, and contain some repressive provisions.

Law enforcement, as recommended by the Commission, has not been implemented, and there has been a continuing violation of human rights by members of the uniformed security forces. In January 2019, several individuals were killed by gunshots and were assaulted by police and army officers following protests in major cities of the country, triggered by an announcement of a significant fuel price hike by the President.

iv. ACCOUNTABILITY IN RESPECT OF THE ALLEGED PERPETRATORS

“The government knows the persons who are responsible for the shootings, but they will not act. It doesn’t punish its and supporters”

ZimRights Member.

The Zimbabwe Human Rights Commission (ZHRC) issued a monitoring report in the aftermath of 14 to 16 January 2019 protests, in which it condemned the unnecessary and disproportionate use of force by members of the army and the police.

The ZHRC reported systemic torture and recorded the case of Tinashe Choto, who died during the January 2019 crackdown, and whose post mortem report recorded the cause of death as gunshots. It is an indicator that law enforcement remains untransformed primarily to prevent the re-occurrence of events of 1 August 2018.



Member of the Zimbabwean National Army
Assaulting a civilian

The law requires that all persons responsible for contravening the law be held accountable for their actions. Members of the army and police who were in breach of their professional duties and discipline should be identified, and subsequent investigations and appropriate prescribed punishment be effected.

Although some citizens have identified some perpetrators of the shootings that resulted in the killing of six and injury of Zimbabweans through video footage that circulated via social media, they have not been made to account for their actions of disregarding the inalienable right of every human being to life. To date, no persons have been punished for the death and injury of Zimbabwe's many citizens on 1 August 2018. Instead, the commanding officer of the Presidential Guard army unit who deployed to the streets on 1 August 2018, Brigadier-General Anselem Nhamo Sanyatwe, was promoted by the President in December 2018 to the rank of Major-General. The Zimbabwe Republic Police has only issued statements to the effect that they were still making investigations. To the victims, this is a case of delayed justice, which amounts to justice denied.

If the government is sincere about protecting human rights and the accountability of persons who violate the laws of Zimbabwe, then members of the uniformed security forces must not be untouchable. This matter must be treated with

utmost urgency and respect as it is an issue of life. While the government's establishment of the Commission of Inquiry was noble and showed some concern about the events that unfolded and the people of Zimbabwe, failure by the government to implement the recommendations by the Commission to hold perpetrators of the violations to account is ironic.

It is also important to highlight that government is yet to set up the Independent Complaints Mechanism as required under section 210 of the Constitution. It is for civilians to lodge complaints against misconduct and human rights abuses by members of the security forces, seven years into the 2013 Constitution. It's an institution that should enhance the accountability of perpetrators, who are State security officers.

V. PROGRESS AND RECONCILIATION

What progress has been made in nation-building and reconciliation, including an initiative for multi-party dialogue and cooperation?

Concerning the recommendation of a multi-party reconciliation initiative, no notable progress is apparent. After the 2018 election, the government made an initiative of creating the Political Actors Dialogue (POLAD), a platform designed for 'willing' 2018 presidential candidates to share

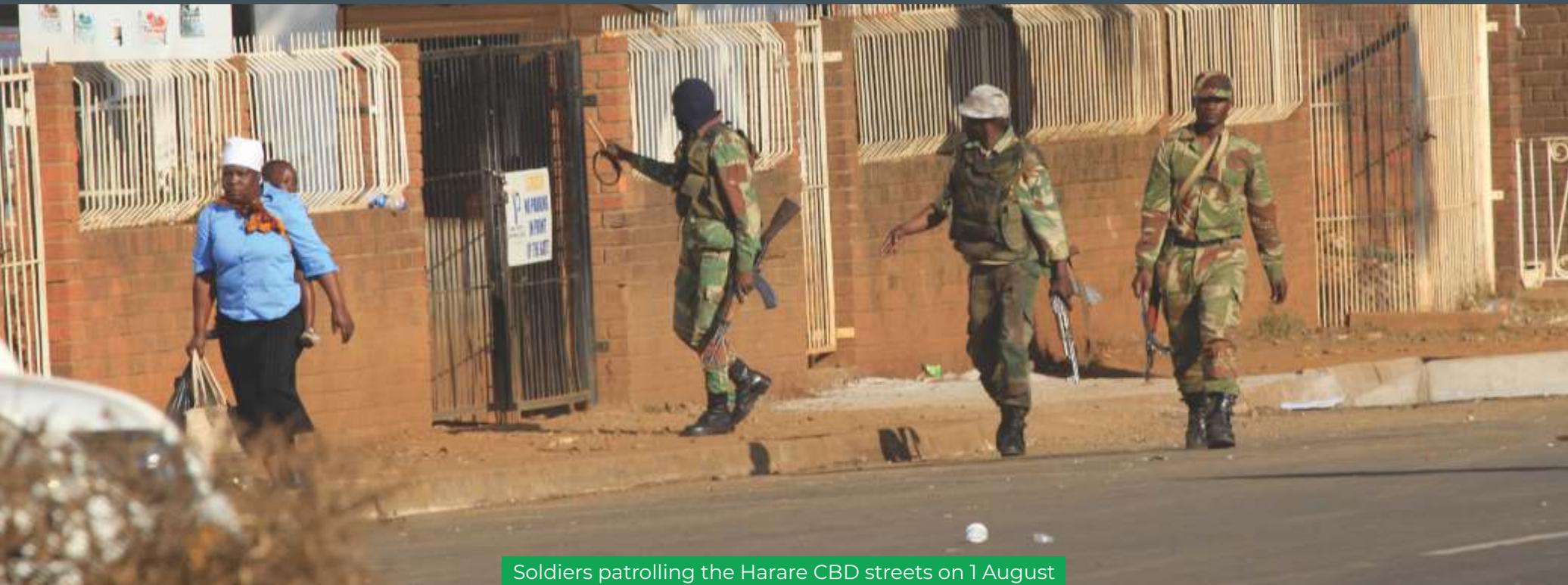
ideas of creating a better Zimbabwe with the ruling party. The platform discusses social, political, and economic issues affecting the country. While this initiative has been considered to reflect the political will for the co-existence of political parties, the platform is criticized for having parties that do not have representation in Parliament. POLAD platform, driven at the whim of the President, who is the convener and driver of the platform is not an inclusive and agenda-driven platform. Further to this, the platform is not representative of the electorate as one of the country's two major political parties in the country is not represented. The National Peace and Reconciliation Commission should increase its efforts to implement its mandate insofar as nation-building and reconciliation are concerned.



CONCLUSION

Human rights groups have since the occurrence of the events called upon the government to not interfere with the Zimbabwe Human Rights Commission (ZHRC), a constitutionally established independent commission, whose mandate is to investigate into reports of human rights violations and to allow the ZHRC to carry out its duties.

Regardless of the human rights groups' call, in demanding that investigations be carried out by ZHRC, President Emmerson Munangagwa established and appointed a Commission of his choice to take over the mandate of the ZHRC temporarily. The initiative, regardless of its flaws, raised hopes of victims, families of victims, citizens, and civil society



Soldiers patrolling the Harare CBD streets on 1 August

organizations that the atrocities that were faced by civilians were going to be addressed.

Despite the criticisms against how the Commission of Inquiry conducted its assignment, some of its recommendations are progressive in ensuring justice, creating conditions for peace, and public trust in public institutions and government. However, an analysis of the steps taken by the government to implement the recommendations of the Commission reveals substantial non-compliance. A year and a half into the Commission of Inquiry's findings and recommendations, no justice has been done for the victims, and perpetrators remain at large.

It leaves in question the government's band-aid intention in establishing and appointing the Commission of Inquiry with whom it had no obligations to implement the recommendations. The government has not fulfilled the recommendations. Instead, politicians have sought to use the report more as a public relations document rather than a sincere quest for reform and nation-building. It is important for the government to seek dialogue first with its citizens and affected families before parading the report to foreign governments. Human rights are for the benefit of the people of Zimbabwe. Anything else is secondary. That is true of the Motlanthe report, two years later. Many believe, it was wasted money and time.



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Campaigners for Human Rights

HARARE OFFICE

ZimRights House, Alverston Court
90 S. V. Muzenda Street
P.O. Box 3951, Harare, Zimbabwe
Tel: +263 242 707278/ 705898

BULAWAYO OFFICE

4 ESAT House, Fort Street
Between 12th & 13th Avenue,
Bulawayo
Tel: +263 292 61826/ 63721

MASVINGO OFFICE

ZIMRE Centre
Cnr Hughes/ S. Mazorodze
2nd Floor, East Wing, Masvingo
Tel: +263 392 266224/ 0772 318 047

Email: info@zimrights.org.zw
www.zimrights.org.zw

