



Zimbabwe
HUMAN RIGHTS
N G O F o r u m

SUBMISSIONS ON THE ZIMBABWE HUMAN RIGHTS
COMMISSION BILL 2011

July 2011

1. Introduction

1.1. A National Human Rights Commission plays a pivotal role in the universality, interdependence, interrelatedness and indivisibility of human rights as well as the maintenance of good governance. It follows therefore that its mandate should be broad and outlive the current pre-occupation of the society. The need for the Commission to be accepted by the populace and to be in a position to form part of the daily lives of citizens is what should always remain at its forefront.

1.2. The Zimbabwe Human Rights Commission Bill (the Bill) was gazetted on 10 June 2011. According to the long title, the Act is to:-

“Provide for the procedure of the Zimbabwe Human Rights Commission, ... the appointment of the Deputy Chairperson, Executive Secretary and Staff of the Commission; and to provide for matters incidental to or connected with the foregoing.”

1.3. The Zimbabwe Human Rights NGO Forum (the Forum) affirms the need for the Commission to have a legislative and a constitutional base. In this regard, the Forum welcomes the gazetting of the Bill; particularly in consideration of the fact that the Commission has not been operational more than a year after its establishment, due to the absence of an enabling Act. The Forum hopes that the Commission would be given the competence and responsibilities such that would enable it to promote and protect the human rights of all citizens. It would therefore be desirable that the enabling Act adequately capacitates the Commission.

2. Ideal legislative framework for the Commission.

2.1. The Forum submits that the independence of the Commission should be the integral part of any legislative framework for the institution. The principles adopted by the United Nations Resolutions General Assembly¹ relating to status of National Institutions (Paris Principles) should be applied as the minimum standards for ensuring the independence and effective functioning of national human rights institutions such as the Commission. Suffice it to mention that compliance with these minimum standards is a condition for accreditation before international institutions such as the African Union and the United Nations. The Paris Principles provides that “a national institution shall be vested with competence to promote and protect human rights”² and further that it “.....shall be given as broad mandate as possible, which shall be clearly set forth in a constitutional and legislative text, specifying its composition and its sphere of competence”³.

2.2. The ideal framework should therefore empower the Commission to be able to:

1 A/RES/48/134 adopted on 20 December 1993.

<http://www.un.org/documents/ga/res/48/a48r134.htm> (13 July 2011)

2 Article 1

3 Article 2

- Adopt complaints procedures based on the principles of accessibility, transparency, accountability and efficiency;
 - Adopt complaints procedures that are just and fair, with the status of the procedures and reasons for decisions to be given to all complainants, and accessible to all victims of human rights;
 - Follow up on the implementation of their recommendations and decisions;
 - Intervene in relevant cases before the courts;
 - Initiate investigations into the human rights violations; and
 - Compel the presence of witnesses and the production of evidence;
 - Encourage ratification of international human rights instruments and ensure that domestic laws are in line with these laws.
- 2.3.** The framework should also broadly define the mandate and powers of the Commission so as to deal with the full range of issues covered by international human rights instruments. It should also provide for the interconnectedness of prevention, legal redress, rehabilitation and protection.
- 2.4.** It is in view of the foregoing that the Forum wishes to make the following commentaries to some Clauses in the Bill.

3. Analysis of the Bill.

- 3.1. Clause 2 - Interpretation: “*Human rights violation*” means a violation of - (b)**
any international human rights instrument that Zimbabwe is a party to and has domesticated as part of the laws: provided that the law domesticating the instrument in question must expressly bestow on the Commission the jurisdiction to entertain complaints arising from alleged violations of the instrument”
“*International human rights instrument*” means any international treaty, convention, protocol or other agreement to which Zimbabwe is a party and–
 (a) *is required in terms of the Constitution to be approved by Parliament; and*
 (b) *provides for any human right that is included in or additional to the Declaration of Rights in the Constitution;*

It is submitted that these definitions limit the scope of the Commission. The Commission should be given the broad mandate to monitor compliance by the government of its obligations under the international law. As a result, its scope of violations should cover all issues covered by international human rights instruments to which Zimbabwe is a party. Human rights should be defined not only by reference to domestic law, but also by reference to all international human rights instruments which Zimbabwe has ratified or to which it has acceded. Whether the treaty has been domesticated or not, is immaterial.

Recommendation; The provisos in both definitions should be deleted and the definitions should include the violation of “any international instrument to which Zimbabwe is a party.”

- 3.2. Clause 4 :** The provisions set out the functions of the Commission as set out in the Constitution. It is noted that the functions are only limited to promotional activities and do not confer the Commission with a protective mandate. The Commission should be given the competence to promote, protect and secure human rights and this should be clearly outlined in the Act. Its specific powers

in that regard should be clearly and expressly prescribed in the Bill. Furthermore, in addition to providing for the protection and promotion of human rights the functions should, cover both the public and private sector. Further, the Commission should be tasked with responsibility to ensure that domestic or national legislation, regulations, policies and practices are harmonised with the international human rights instruments to which Zimbabwe is a party and that these are ratified and acceded to⁴. The Constitution of Zimbabwe provides for the domestication of international law before it can be applied in the local jurisdiction. It is therefore imperative that institutions like the Commission be given the powers to promote harmonisation of domestic laws with international human rights standards. This function is also important for the promotion of human rights as it leads into the codification of international human rights standards and principles into the national laws.

Clause 4f gives the Commission the responsibility to assist the Minister to prepare any report for submission to international and regional bodies established under the treaties or conventions to which Zimbabwe is a party. It is submitted that this is against the notion of independence of the Commission. Article 3d of the Paris Principles provides that national human rights institutions shall have the responsibility to

“contribute to the reports which states are required to submit to the UN bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independency.”

Recommendation: The Commission should be divorced from any government activities and should be empowered to file its own reports before these human rights treaty bodies.

It is also noted that the Bill does not mention how the Commission is going to cooperate with the other international, regional and sub-regional human rights institutions such as the UN Human Rights Council, the African Union and its organs, SADC etc. The UN principles provides that national institutions shall have the responsibility to cooperate with international, regional and sub-regional institutions⁵ This is a critical area that needs to be addressed by the Bill considering that Zimbabwe is a party to international instruments that create these institutions.

The Commission should also be given the power to inspect prisons and other places of detention and submit their reports and or recommendations to the relevant authorities.

Recommendation: The functions should be expressly stated in the Bill. The current provision which is an extract from the framework provided by the Constitution should be expanded to include the areas highlighted. It is desirable to have the functions and mandate of the Commission clearly outlined in the enabling Act. The Commission’s mandate to protect and secure human rights should be expressly stated in addition to the promotional

4 see articles 3(a) and (b) of the Paris Principles.

5 Article 3e of the Paris Principles.

mandate.

- 3.3. Clause 7: Independence and impartiality** - The independence of the Commission is vital to the performance of its duties. It is one of the critical and crucial values the Commission must uphold at all times. At the cornerstone of this is its ability to act impartially. This aspect also transforms to the resourcing of the Commission. The Forum is of the view that the independence of the Commission is also depended on adequate human and financial resources. Thus **Part III, Clause 17** (Funds of the Commission) of the Bill should guarantee the independence of the Commission. **Clause 7** should include a clause providing that the government shall at all times ensure that adequate resources are available for the Commission to discharge its mandate independently and impartially. Furthermore, it is submitted that for this clause to be given serious and effective meaning, it should provide for punitive measures against those who interfere with the work of the Commission in order to undermine its independence.
- 3.4. Clause 8: Report of Commission** - Whereas it is desirable that the report by the Commission be tabled before Parliament by the Minister, the Bill should also make provision for the reports to be made available to the public and the media once they have been presented before Parliament.
- 3.5. Clause 9: Jurisdiction of the Commission to conduct investigations.- Clause 9 (4) (a)**, provides for the period within which a complaint can be filed with the Commission. It is submitted that human violations are reprehensible by their nature. The period within which a complaint must be filed with the Commission should be increased for as long as the evidence is still available. Alternatively the same provisions as in the criminal procedure and Evidence Act Chapter 9:07, which provides for the prescription period of 20 years⁶, should be adopted. The three year period is too short considering that some human rights violations such as torture, are too sensitive and the victim might require more than three years to recover from the traumatic effects (evidenced by medical reports of some victims that have approached the Forum). By the time the victim tries to pursue recourse, he will already be barred by the operation of the law.

Furthermore, in the event that a prescriptive period is set, there should be provisions for exceptional circumstances when the *Commission should investigate a complaint filed after the prescribed period*, particularly where in the opinion of the Commission there are justified reasons why the complaint was not lodged within the prescribed period.

In addition, the proviso to **Clause 9 (4) (a)** should be reconsidered in order to give the Commission a retrospective mandate. Limiting its mandate only to violations that occurred post 13 February 2009, will no doubt affect the public's confidence in the institution. The human rights situation of the country has been deteriorating for over a decade and most of it has been associated with elections. 2008 was arguably the worst that the country experienced in terms of elections-related violence. It is the negotiations around solving the 2008 crisis

6 Section 23 (2) of the Criminal Procedure and evidence Act.

among others which resulted in the Global Political Agreement (GPA), signed by the three political parties i.e. ZANU PF and the two MDC formations. The GPA provided for the creation of the Commission. One will be forgiven for assuming the creation of the Commission was to express the commitment by the principals to resolve permanently the recent “*challenges that we have faced as a country and the multiple threats to the well being of our people*”⁷. To then take this particular responsibility away from the Commission would be tantamount to defeating the very purpose of its establishment.

Recommendation: The Commission should be given a mandate that enables it to investigate the 2008 violations.

- 3.6. Clause 10: Manner of making complaints-** It is important that the Bill ensures that the complaint mechanism is simple, accessible, inexpensive and expeditious. **Clause 10** seeks to provide for that and this is applauded. However, the protection of victims’ and witnesses’ confidentiality should be guaranteed.
- 3.7. Clause 12(1)(d)- Manner of conducting investigations-**The Bill provides that the Commission may request the assistance of the police. It is suggested that state institutions should be given reciprocal responsibility in order to assist the Commission. The provision may then read that “*all state institutions shall afford the Commission such assistance as may be reasonably required*”.
- 3.8. Clause 12(3)** gives the alleged offender adequate time to respond to allegations. To avoid inordinate delays in the hearing of complaints, the alleged offender should be given a reasonable time to respond and this reasonable period should be determined by the Commission and not the alleged offender.
- 3.9. Clause 12(6):** The wording of this clause is too broad. It gives the Minister authority to prevent the Commission from receiving information in certain cases regarding human rights violations in the “interest of the public”. Human rights violations can never be in the “interest of the public, external relations or economic interests” of the State as the clause seems to suggest. Alternatively, the Commission should retain residual powers to examine the document in camera to determine whether the ‘immunity’ has been properly claimed, that the information is truly related to the affairs of the State and that public interest will be harmed by such disclosure. Organs of the State or individuals should be truly prohibited from interfering with, hindering or obstructing the Commission in the exercise of its mandate.
- 3.10. Clause 14 (2) (a) and (b) –** The Commission should be able to provide effective remedies. The absence of effective remedies will deter victims from looking to the Commission for redress. Availability of effective remedies will also instil public confidence in its work. This Clause should therefore provide for the enforcement of decisions by the Commission especially when compensation or the release of someone from custody has been ordered. The mechanism for enforcement of the decisions should be expressly established. Consequently the victims/ complainants as well as those against whom the complaint would have been lodged, should be able to approach the courts should they be dissatisfied by the decision of the Commission. Furthermore

7 Preamble to the Global Political Agreement

the decisions of the Commission should also be subject to judicial review.

Another important aspect missing is the power of the Commission to order prosecution of perpetrators in terms of the criminal law. This is important in addressing impunity.

- 3.11.** **Clause 15** - Should also include cases of non-compliance of its decisions. The Commission should be able to also refer cases of non-compliance of its decision before the courts.

4. Relationship with NGOs.

- 4.1.** The Forum is concerned that the Bill is ignorant of the role played by the NGOs in the promotion of human rights. The Commission should be given the powers to develop relations with NGOs working in the field of human rights⁸.

5. Conclusion.

The Bill has the potential to strengthen human rights protection in Zimbabwe and in order to fulfil this potential; it should be in tune with international human rights law and international standards and best practices.

⁸ Article 3 (g) of the Paris Principles