



---

**REPORT**

---

**OF THE JOINT PORTFOLIO COMMITTEES ON JUSTICE, LEGAL AND  
PARLIAMENTARY AFFAIRS AND DEFENCE, HOME AFFAIRS AND SECURITY  
SERVICES AND THEMATIC COMMITTEE ON PEACE AND SECURITY**

**ON**

**THE ZIMBABWE INDEPENDENT COMPLAINTS COMMISSION BILL (H.B. 5,2020)**

---

**THIRD SESSION – NINTH PARLIAMENT**

---

*Presented on.....*

SC., 2021

## **ORDER OF APPOINTMENT FOR THE PORTFOLIO COMMITTEES**

### **ORDERED IN TERMS STANDING ORDER NO. 17:**

1) At the commencement of every session, there shall be as many Committees to be designated according to government policy as the Standing Rules and Orders Committee may deem fit.

(2) Each select committee shall be known by the portfolio determined for it by the Standing Rules and Orders Committee.

### **SPEAKER'S ANNOUNCEMENT**

The Speaker announced that all the Committees of the First Session would continue to operate as previously constituted until such time that new Committee were appointed by the Committee on Standing Rules and Orders. On Tuesday 27 October 2020, the Hon Speaker, announced that Committees would resume sittings on Monday, 02 November, 2020. The following are Members of the Portfolio Committee on Justice, Legal and Parliamentary Affairs:

Hon Chikwama B, Hon Chinyanganya M, Hon Dube B, Hon Gonese I, Hon Kashiri C, Hon Madziva S, Hon Masango P, Hon Masuku E, Hon Mavetera T, Hon Mavhunga M, Hon Mawite D, Hon Mguni N, Hon Mpame C, Hon Misihairabwi P, Hon Munetsi J, Hon Musarurwa J, Hon Mutambisi C, Hon Murire J, Hon Ndebele J, Hon Nduna D, Hon Ngwenya S, Hon Nyashanu M, Hon Raidza M, Hon Sanyatwe C, Hon Sibanda L, Hon Sikhala J, Hon Sithole S, Hon Shirichena E, Hon Zemura L, Hon Zhou T. **Hon Mataranyika M.D to be the Chairperson.**

The following are Members of the Portfolio Committee on Defence, Home Affairs and Security Services:

Hon Muchimwe P.T, Hon Chidakwa J, Hon Brig. Gen. (Rtd) Gwanetsa K.K, Hon. Chimbaira G, Hon Maj. Gen. (Rtd) Khumalo S.S, Hon Nguluvhe A. Hon Mguni S.K, Hon Masenda N.T, Hon Col. (Rtd) Dr. Murire J, Hon Tsvangirai V, Hon January S, Hon Chamisa S, Hon Moyo L, Hon Chiyangwa P, Hon Chinotimba J, Hon Sewera J, Hon Rungani A, Hon Sikhala J, Hon Machingauta C, Hon Chipato A. **Hon Brig. Gen. (Rtd) Mayihlome L to be the Chairperson**

## **TERMS OF REFERENCE OF PORTFOLIO COMMITTEES**

### **STANDING ORDER NO. 20**

Subject to these Standing Orders, a portfolio committee shall

- a) examine expenditure administration and policy of government departments and other matters falling under their jurisdictions as Parliament may, by resolution determine.
- b) consider and deal with all bills other than a Constitutional Bill, and statutory instruments or other matters which are referred to it by or under resolution of the House or by the Speaker;
- c) consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by these Standing Orders or by or under a resolution of this House;
- d) monitor, investigate, inquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department; and
- e) consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

## **ORDER OF APPOINTMENT FOR THE THEMATIC COMMITTEES**

### **STANDING ORDER NO. 16**

- 1) At the commencement of every Session, there shall be Committees to be designated according to such government policy areas as the Committee on Standing Rules and Orders may deem fit.
- 2) Each Thematic Committee must be known by the theme determined for it by the Committee on Standing Rules and Orders.

### **PRESIDENT OF THE SENATE'S ANNOUNCEMENT**

On Tuesday, 27 October, 2020, the President of the Senate announced that that the following Members shall serve on the Thematic Committee on Peace and Security:

Hon. Sen. Chief Charumbira F, Hon. Sen. Chimbudzi A, Hon. Sen. Chisorochengwe T, Hon. Sen. Denga P, Hon. Sen. Dube M.R, Hon. Sen. Khumalo N, Hon. Sen. Komichi M, Hon. Sen. Chief Makumbe S, Hon. Sen. Makone T, Hon. Sen. Chief Mapungwane , Hon. Sen. Chief Mathuthu T, Hon. Sen. Matirira A, Hon. Sen. Chief Matsiwo, Hon. Sen. Mkwebu A, Hon. Sen. Mohadi T.B, Hon. Sen. Moyo G, Hon. Sen. Moyo S, Hon. Sen. Mudziri E, Hon. Sen. Mwonzora D, Hon. Sen. Ndlovu D.M, Hon. Sen. Ndlovu M, Hon. Sen. Chief Ngezi, Hon. Sen. Chief Ngungumbane, Hon. Sen. Chief Ntabeni, Hon. Sen. Nyathi R, Hon. Sen. Parirenyatwa D.P, Hon. Sen. Chief Siansiali. **Hon Sen. Parirenyatwa to be the Chairperson.**

### **TERMS OF REFERENCE OF THEMATIC COMMITTEES**

#### **STANDING ORDER NO. 19**

Subject to these Standing Orders, a Thematic Committees must examine government policies which fall under or relate to the designated theme or themes and other matters falling under their jurisdiction as the Committee on Standing Rules and Orders may determine.

## 1.0 Introduction

The Independent Complaints Commission Bill is a creature of section 210 of the Constitution which stipulates that “*an Act of Parliament must provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of the security services and for remedying any harm caused by such misconduct*”. The security services are identified under Chapter 11 of the Constitution to include: the Defence Forces, the Police Service, the Intelligence Services, the Prisons and Correctional Service and any other security service established by an Act of Parliament. This Bill is an attempt to strengthen and buttress the work of the security services so that it observes fundamental rights that are listed in Chapter 4 of the Constitution which include the right to life, rights of arrested and detained persons among others. A number of recommendations emerged from the public hearings which touched on the composition of the Commission, the prescription period of complaints among other issues.

## 2.0 Methodology

The Portfolio Committees on Justice, Legal and Parliamentary Affairs and Defence, Home Affairs and Security Services and Thematic Committee on Peace and Security conducted a virtual meeting with the Southern African Parliamentary Support Trust (SAPST) with the purposes of unpacking the Bill. The three Committees then conducted joint public hearings on the Independent Complaints Commission Bill from 6 to 11 June 2021. The Committees split into two groups which held the public hearings as shown below:

### Team A – Public Hearings

DATE	PROVINCE	PUBLIC HEARING VENUE
07 June 2021	Harare	Ambassador Hotel Harare
08 June 2021	Mashonaland West	Cooksey Hall

		Chinhoyi
09 June 2021	Mashonaland Central	Chipadze Hall Bindura
10 June 2021	Mashonaland East	Mbuya Nehanda Hall Marondera
11 June 2021	Manicaland	Mutare Queens Hall Mutare

### **Team B – Public Hearings**

<b>DATE</b>	<b>PROVINCE</b>	<b>PUBLIC HEARING VENUE</b>
07 June 2021	Matabeleland North	Chinotimba Hall Victoria Falls
08 June 2021	Bulawayo	Selbourne Hotel Bulawayo
09 June 2021	Matabeleland South	Gwanda District Club Gwanda
10 June 2021	Masvingo	Masvingo Civic Centre, Masvingo
11 June 2021	Midlands	Gweru Theatre Gweru

The public hearings were attended by youths, business persons, Government officials, lawyers and residents' associations, representatives of disabled persons, civil society organizations and members of the public in general.

**2.1** Furthermore, the Committees considered written submissions received from various stakeholders, including; Office of the Judge Advocate General Defence Forces of Zimbabwe, Office of the President and Cabinet, Women of Zimbabwe Arise (WOZA) and Women's International League for Peace and Freedom- Zimbabwe Chapter, among others.

### 3.0 Findings

#### Clauses that need to be reviewed in the Bill

1. **Clause 2.** Stakeholders from the security sector submitted that the definition of misconduct should be deleted and substituted by the following:

**misconduct** *“includes an act by a member of a security service, outside the course and scope of his or her duties which constitutes a criminal offense that is not regulated under any other law”.*

The President’s Department is of the view that the other acts which are stated in this section are criminal in nature hence they are covered under the existing criminal laws.

2. **Clause 6:** Organisations representing the interests of women advocated for a gender sensitive and gender balanced Commission in terms of the appointment of Commissioners and subsequent recruitment of the secretariat and such other employees of the Commission. They categorically opined that the Bill should clearly state that there shall be equitable women representation in the Commission, in line with Constitutional provisions, particularly section 17(1)(b)(ii). This was viewed as important in advancing and protecting the interests of women, particularly the complainants. Furthermore, similar sentiments were raised in respect of people living with disabilities and the youth to be considered in the membership of the Commission.

In the same vein, there were calls to decentralize the Commission in order to reach out to all the citizens including those residing in very remote areas.

3. **Clause (6)(1)(b):** This clause highlights the composition of the members to sit on the Commission which include a legal practitioner, a medical practitioner, a psychologist and a member with experience in the security services. A request was made that there is need to appoint a person who is a survivor of human rights violations under the security services.

4. **Clause 6 (2) (d):** The Bill allows for the appointment of a member of the security services to sit on the Commission. A request was made that no member of the security services should be allowed to sit on the Commission given that they are the ones that would be under the spotlight. Furthermore, it was suggested that this might comprise the investigation of complaints that would have been raised by the public.
5. Furthermore, the majority of the presenters disputed the involvement of the President in the appointment and dismissal of Commissioners. They argued that the powers given to the Executive in the establishment and operations of the Commission were excessive and were likely to compromise the independence of the Commission on the grounds of potential political interests and thus rendering it ‘a mere toothless bulldog.’
6. **Clause 11:** This clause highlights that the Commission must submit to Parliament, its annual reports. This will be done through the President or the Minister. However, there was a submission that the Commission should submit its reports directly to Parliament and not through the Minister or the President. It was also suggested that reporting should be biannual instead of just once a year.
7. **Clause 13 (2) (b)** should be amended to read as “*where the action complained of is the subject of any court proceedings or any investigations by any other independent commission or the security service concerned*”.

It was argued that allowing the Commission to be the first port of call with regards to complaints against security service members would mean that the security sector concerned will not have jurisdiction over their members. Each security service has mechanisms to deal with errant members hence the need for the amendment.

8. **Clause 13(2):** It stipulates that the Commission shall not investigate a complaint unless if it has been reported within three years of the date on which it occurred. A call was made that the prescription period should be open-ended given that there are persons who live on



the fringes of our country and they may struggle to get access on information on the existence of the Commission.

Secondly, some cases particularly those of sexual harassment and rape have deep psychological and emotional wounds on the victims and the victims may take a long time to open up on their experiences. Hence it would be prudent to live the prescription period open ended to enable victims to recover and to report their complaints.

9. On the contrary, some members pointed out that the prescribed time of 3 years was reasonable considering that there were some Commissions which were already instituted to deal with more or less similar issues hence increasing the prescription period was irrelevant. They also argued that in practice, it was uncommon for laws to apply retrospectively.
10. **Clause 13(3):** A request was made that the form prescribed under this clause should specify the date, time, place, address and medical report were necessary. This will also enable the relevant institutions such as Zimbabwe Defence Forces to also institute their own internal remedial action on errant officers.
11. **Clause 14(2):** The clause speaks on protection of the complainant in the event that there are threats to his/her life or personal liberty. Calls were made that witness protection should be extended to include the family, and other witnesses to case, in the event that there are threats to life or personal liberty. The need for confidentiality was emphasized as critical in as far as ensuring the protection of victims and or witnesses.
12. **Clause 15 (3) and (4):** These clauses talk about the fact that a member of the security service against whom a complaint has been made is entitled to legal representation and secondly the member of the security service can be represented by another member of the security services of his or her choice. The Judge Advocate of the Zimbabwe Defence Forces, Brigadier General Tarumbwa, called for an expansion of the term to include that the member of the security services should be represented by their military commanders, because by nature the officer operates according to orders. This only applies for authorized

operations. By allowing the military commanders to appear before the Commission, it gives them a sense of control and respect of the work that they do. Furthermore, this will not violate the court decision that was made by Justice Mwayera at the High Court in Mutare, that an individual member of the security services cannot be held accountable for the military operation that was instituted through its line of command. The Zimbabwe Defence Forces operate as a unit and not as individuals during military operations.

13. However, if the crime is instituted outside an authorized operation the provisions of clause 15 become applicable, where the member of the security service has a right to legal representation.
14. **Clause 17:** The military operates on orders through a clear line of command. In order to reduce conflict on the line on command, a call was made that the Commission should not be mandated to issue orders to the defence forces. The word 'order' in clause 17 should be replaced with the word 'request'.
15. **Clause 20(1)(b):** This clause allows the Commission to receive donations, grants or bequests made by any person or organization or any government of any country. Concern was raised on that some donors may seek influence through donations. Secondly, the Commission may become compromised in its decisions through the influence or manipulation of donors. Hence it was important that donors to the Commission are carefully scrutinized to enhance the integrity and independence of the Commission.
16. There was also a section of the population which supported the funding of the Commission by the government on the grounds that allowing external donations had the potential to manipulate the functions of the Commission subsequently compromising the security of the country in one way or another.
17. However, there were some participants who supported the clause that the Commission should receive support from other sources to enable the Commission to do its work.
18. **New Clause:** The Bill should give the Commission arresting powers of perpetrators of the crimes listed in the Bill. This will also act as a buffer towards the protection of witnesses

and complainants. The arresting powers should be modelled alongside those that were granted to the Zimbabwe Anti-Corruption Commission.

19. The Commission should strive to investigate cases expeditiously. It was suggested that 30 days were good enough to carry out and complete investigations. Presenters opposed the 60-day period as they argued that longer periods had the potential of creating room for collusion or corruption and exposing victims and witnesses to the treats of the accused.

#### **4.0 Committee Observations**

1. There was concern on the level of independence of the Commission. A call was made that the security services should not be allowed to hold any office within the Commission, in order to enhance transparency and accountability.
2. There is need for a clear distinction between the roles and functions of the Chapter 12 Commissions in the Constitution to avoid duplication of responsibilities. An example was cited where the Zimbabwe Human Rights Commission has the power and right to look into human rights abuses committed by security services, hence there was need to ensure that Commissions cited under Chapter 12 of the Constitution work together and complement each other. Furthermore, the Zimbabwe Defence Forces expressed concern that the Zimbabwe Independent Complaints Commission would take over the oversight role of the Portfolio Committee on Defence, Home Affairs and Security Services. There would be duplication of oversight work between that of Parliament and the Zimbabwe Independent Complaints Commission.
3. The proposed law should be written in all the official languages in order to ensure that it is understood by all the citizens across the country. It must leave no-one behind!
4. Stakeholders in the Security Services are of the view that the Zimbabwe Independent Complaints Commission is superimposing itself over institutions given prominence in Chapter 11 of the Constitution. The Committee observed that respect and integrity of the security services need to be maintained. Hence the balancing of power between the security

services and the Commission is critical particularly on the issuance of orders to be implemented.

5. A lot of concern was raised on the protection of victims and witnesses of crimes listed in the Bill. There were suggestions that during the investigation processes, there was need to put in place victim friendly mechanisms, so that victims and witnesses can freely speak of their ordeal.
6. Other Jurisdictions such as South Africa and America which have a similar legal framework do not include the Defence Forces but cover the police services only. However, the Zimbabwe Defence Forces are willing to be held accountable for their actions, as outlined in the Bill.
7. The Zimbabwe Defence Forces has its own internal disciplinary systems through the court Marshall. The Zimbabwe Defence Forces acknowledged that there are members of the security services that have been court marshalled and given stiff penalties, as much as 20year jail sentence.

## **5.0 Recommendations**

1. The members of the security services should be allowed to participate as observers in the investigation of crimes listed in the Bill, in order to provide to technical assistance and information.
2. All Commissions listed under Chapter 12 of the Constitution should work complimentary with the Zimbabwe Independent Complaints Mechanism Commission, in order to serve the citizens of the country.
3. The Ministry of Justice should endeavour to ensure that this law and all other laws are written in the official languages of the country.
4. The Commission should make use of victim friendly units already in existence in the justice delivery system as they conduct their investigations. This is essential for victims that have been heavily traumatized.

6. There is need for the Executive and Parliament to conduct a benchmarking visit and study on whether it is appropriate for the Zimbabwe Defence Forces to be held accountable for their military operations. Other jurisdictions such as South Africa and America which have a similar law, applies to the police services only.
7. Parliament should give adequate budgetary support to the Ministry of Defence, and War Veterans Affairs for the training of its members on human rights instruments both at national and international level.
8. There is need to decentralize the Commission to most parts of the country so that its accessible to all citizens of the country.
9. Appointments to the Commission should be merit based, so as to build confidence and integrity of the Commission.
10. The Bill needs to reconsider the prescription period in light of concerns raised by the general public, especially women.

## **6.0 Conclusion**

Whilst the Bill itself is a positive step towards holding the security forces accountable to their actions of abuse, it goes without saying that for an effective mechanism, it must be accessible by all the stakeholders and the officers/commission must be adequately resourced so as to effectively carry out its mandate. Persons violated by members of the security services should promptly receive information, both orally and in writing, about all avenues of complaint, both internal and external to the places in which they are to be lodged. They should also have a clear understanding of the modalities for exercising their right to lodge a complaint. For this purpose, appropriate information tools should be developed and made available to them, in straightforward, user-friendly and non-legalistic formats. It should also be stressed that the capacity of the Commission to carry out their task depends largely on the allocation of adequate resources to their functioning, including human resources. Therefore, the effectiveness and independence of the Commission will depend more on the qualities and integrity of its members than on the law under which it operates.