



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

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An Analysis  
of the  
**National Peace Reconciliation Commission  
Bill, H.B.2,2017**

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## **ABOUT THE NATIONAL TRANSITIONAL JUSTICE WORKING GROUP**

The National Transitional Justice Working Group (NTJWG) is a platform established by 46 Zimbabwean organisations representing various transitional justice stakeholders to provide the interface between transitional justice stakeholders and the official transitional justice processes in Zimbabwe.

### **Vision**

A peaceful, just, accountable and democratic society.

### **Mission**

To create inclusive space for the coordination of transitional justice stakeholders, share experiences; build synergies for comprehensive, accountable, victim-centred and participatory transitional justice processes in Zimbabwe.

### **Values**

Integrity  
Inclusivity  
Impartiality

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## 1.0 Introduction

On 10 February 2017, the Government of Zimbabwe gazetted the National Peace and Reconciliation Bill [H.B.2, 2017.] (the new NRPC Bill) to put the National Peace and Reconciliation Commission (NRPC) 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to the National Peace and Reconciliation Bill H.B 13, 2015 (the old Bill) which was gazetted on 18 December 2015 and withdrawn from Parliament in May 2016 following criticism by the National Transitional Justice Working Group (NTJWG), the Parliamentary Legal Committee, as well as members of the public during the Public Hearings held from 10 to 18 April 2016. Among many weaknesses pointed out in this analysis, three stand out with the potential to kill the Commission from its foundations. These are the lack of victim centredness, interference by the executive in various ways as well as the deafening silence on gender. These three must be addressed if the Commission is to be effective. A few things have improved from the previous Bill. These are the Ministerial Certificate which can now be set aside by the Commission, the reporting which is now direct to Parliament and is time bound. There is still more that needs to be done to ensure that the law meets the acceptable standards for a Commission of this nature. Such improvements are suggested in this report.

## 2.0 The Long Title

The NRPC Bill opens with a long title, which reads,

To put the National Peace and Reconciliation Commission into operation; to confer additional jurisdiction on the Commission, including the investigative powers, to provide for the terms of office, conditions of service, qualifications and vacation of office of Members of the National Peace and Reconciliation Commission and the appointment of the Executive Secretary; and to provide for matters connected with or incidental to the foregoing.

### 2.1 Comments on the Long Title

The purpose of a long title is to give a short descriptive summary of the subject matter of the Act. After reflecting on the purpose of the proposed law, stakeholders felt that the current title is weak and does not embrace the full purpose of the NRPC Law. The NRPC Law is not just another Act but has a special place in the history of Zimbabwe as it inaugurates Zimbabwe's process of dealing with its past by confronting the legacy of violence and commencing the process of transformation from a past of gross violence to a future of peace. Hence the long title must clearly show that purpose. It thus needs to be emphasised that the NRPC Law is not merely setting up an administrative tool for some simple task. It is a law of monumental significance, requested for by the masses of Zimbabwe to open a dialogue on violence, peace, truth and justice. A dialogue into the past and into the future is meant to assist the people of Zimbabwe to engage with an ugly and frightening past in order to design a better future.

### Extract from Liberia's Truth and Reconciliation Commission Act of 2005

Recognizing that introspection, national healing and reconciliation will be greatly enhanced by a process which seeks to establish the truth through a public dialogue which engages the nation about the nature, causes and effects of the civil conflicts and the impact it has had on the Liberian nation in order to make recommendations which will promote peace, justice and reconciliation;...

## **2.2 Suggested Long Title for the NRPC Bill**

Seeking a departure from a past of violence and gross violation of human rights;

Seeking a transition from fear and hatred;

And

Embracing the call to dialogue and truth;

A new path to a future of peace and respect for human rights,

A future of hope and love,

A new culture of justice and accountability

And

Since the Constitution provides that path to justice, dialogue and restoration;

Truth telling and the making of amends;

Support and rehabilitation of victims;

And

Since the Constitution offers new tools for the construction of a society of sustainable peace;

Through the establishment of the National Peace and Reconciliation Commission;

For the fulfilment of section 251 to 253 of the Constitution;

**BE IT THEREFORE ENACTED** by the Parliament and the President of Zimbabwe, as follows;

**Extract from South Africa's Promotion of National Unity and Reconciliation Act 34 of 1995**

SINCE the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex; ...

## **3.0 Definition of Terms**

Since the NRPC Bill extracts the relevant sections of the Constitution, stakeholders have suggested that some key terms be included in the definition of terms. The following terms were identified:

- Amnesty
- Conflict
- Healing
- Human Rights Violations
- Peace
- Perpetrator
- Post conflict-justice
- Reconciliation
- Rehabilitation
- Torture
- Victim
- Witness

During previous consultative meetings, officials from the Attorney General's Office indicated that they are reluctant to define terms in the Act which are also in the Constitution but which are not defined in the Constitution for fear of offending the Constitution. There are two ways of addressing the concerns of AG's office. Firstly, it is always safe to resort to the definition of terms as accepted in international law. The NRPC is one of the independent commissions established by the constitution to support and entrench human rights.<sup>1</sup> Most of the terms that are proposed here are terms that are already known in international law. Section 46 (1) (c) of the Constitution requires the recognition of international law in the interpretation of the bill of rights. A rights based approach to defining terms in the NRPC Bill that is in harmony with international law is certainly in harmony with the Constitution.

Secondly, there is always a disclaimer that usually comes in the interpretation section. The disclaimer reads, "In this Act, unless the context otherwise indicates..." This disclaimer will take care of the fears that the Constitution will be offended by the definition of terms that it uses which it does not define. Defining such terms in the Act by the legislature rather help realise the spirit and ideals of the constitution. It is the role of the Act to define in specific terms, that which the Constitution paints in broad general terms.

### ***3.1 Some suggested definitions***

***Victim(s)*** - Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the domestic or international law. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term "survivors" may, in some cases, be preferred by persons who have suffered harm. The legal term "victims" is used without prejudice to other terms which may be preferable in specific contexts.<sup>2</sup>

***Human rights violations*** - the violation of any one or more of the rights protected by the Constitution of Zimbabwe, international laws or any treaties or conventions that Zimbabwe has signed.

***Redress / Making of Amends*** include the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

***Restitution*** is a form of redress to re-establish the victim in his or her situation before the violation of his or her rights, taking into consideration the specificities of each case. International law requires that the victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment.

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<sup>1</sup> Section 233 (a) of the Constitution

<sup>2</sup> This is according to the Gen. Comment 3 of the Committee Against Torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Rehabilitation** refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

**Amnesty** means any measure that immunizes a person who has committed serious crimes from criminal and civil liability.

## 4.0 Procedure, Powers and Functions of the Commission

Part II of the NPRC Bill provides, among other things, for the procedure, powers and functions of the Commission. These however are just lumped up together and it is suggested that this section be divided into the following four separate sections.

- Functions
- Powers
- Procedures
- Amnesty

### 4.1 Functions

Under this section, all the functions listed in section 252 of the Constitution must be listed under this section.

### 4.2 Powers

The powers of the Commission must then be listed here and be derived from the functions. The current Bill gives more powers and less functions to the Commission. The following table is an example of how powers of the Constitution can be made to correspond with its functions.

Function	Power
To ensure post-conflict justice healing and reconciliation	The Commission shall have power to investigate past violations of human rights, incidences of violence, collect evidence, document and compile reports of its findings and recommend any of the following measures: <ul style="list-style-type: none"><li>• Prosecution of offenders/perpetrators</li><li>• Reparations and rehabilitation for victims</li><li>• Mediation for ongoing conflicts</li><li>• Any other measures the Commission may deem necessary</li></ul>
To develop programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes	Catered for by section 3 (2) (a) of the Bill
To bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and provision of justice	The Commission shall have power to establish a Truth Committee or any similar mechanism of its choice, for the purposes of undertaking truth seeking initiatives that help realise the right of societies to an accurate

	record of the past as well as the rights of individual victims or communities and families of victims to have access to the truth of past violations and justice for such violations. <sup>3</sup>
To develop procedures and institutions at national level to facilitate dialogue among political parties, communities, organisations, and other groups in order to prevent conflicts and disputes arising in the future	The Commission shall have power to set up a Mediation Committee or any such mechanism of its choice for purposes of mediating conflicts and promoting dialogue among conflicting parties at national and local level.
To develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support	The Commission shall have power to establish a Victim Support Unit which shall take all necessary measures to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support
To receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate	The Commission shall have power to set up mechanisms for the reception of complaints from the public on any matter regarding the disturbance of peace, presence of violence or threats of potential for violence
To develop mechanisms for early detection of areas of potential conflicts and disputes and to take appropriate preventive measures	Catered for by section 3 (2) (b) of the current NRPC Bill
To conciliate and mediate disputes among communities, organisations and individuals	Catered for by section 3 (2) (b) of the NRPC Bill.
To recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances	The Commission shall have power to set up a Documentation and Archival Unit or any other mechanisms of its choice for the purposes of documentation of past conflicts/pandemic and accounting for all the victims, and recommend legislative measures and other reforms necessary to avoid recurrence of such conflicts / pandemics.

## 5.0 Amnesties

The current NRPC Bill in section 19 (1) (e) gives the Commission power to make regulations that may provide for the procedure and conditions for the granting of pardon. This section placed under Miscellaneous Provisions is curious because the previous draft shared with stakeholders had this provision in Section 3 (2) (c) which giving the Commission power to recommend amnesty. Amnesty provisions featured again in the then section 9 (15). However, the current Bill features ‘pardon’ hidden away in the miscellaneous provisions. In essence, the Bill is trying here to smuggle in the issue of amnesties without giving it the

### The United Nations on Amnesties

Most importantly, amnesties that prevent the prosecution of individuals who may be legally responsible for war crimes, genocide, crimes against humanity and other gross violations of human rights are inconsistent with States' obligations under various sources of international law as well as with United Nations policy. In addition, amnesties may not restrict the right of victims of violations of human rights or of war crimes to an effective remedy and reparations; nor may they impede either victims' or societies' right to know the truth about such violations. ... Amnesties that exempt from criminal sanction those responsible for atrocious crimes in the hope of securing peace have often failed to achieve their aim and have instead emboldened their beneficiaries to commit further crimes.

<sup>3</sup> Study on the right to the truth by the Office of the High Commissioner for Human Rights E/CN.4/2006/91

*United Nations Rule of Law Tools for Post-Conflict States – Amnesties, HR/PUB/09/1*

prominence that it deserves. This must be scrutinised.

Section 10 of the NRPC Bill provides for what is usually referred to ‘use amnesty’ for the sake of compelling witnesses to give evidence which may be self-incriminating. This is standard and must be done after consulting with the prosecuting authority which is provided for in the current NRPC Bill. Beyond that, no general or blanket amnesties must be permissible by any name.

Amnesties are *prima facie* in violation of international law and have been known to promote impunity and recidivism. Zimbabwe’s past amnesties have been subject to international condemnation. The African Commission on Human and Peoples’ Rights (African Commission) in the case *Zimbabwe Human Rights NGO Forum versus Zimbabwe (245/2002)* noted that amnesties have a tendency of robbing victims of their access to remedy. The Clemency Order 1 of 2000 was found to be in violation of the African Charter on Human and People’s Rights. It is therefore recommended that the law must never give unchecked power to grant amnesty to anyone.

### **5.1 Suggestions on Amnesties**

All sections that make explicit or implied reference to general or unqualified amnesty must be removed. However, if any amnesty is entertained, it must not be hidden under any terms and it must be made explicit and qualified. It is known the world over that there are trade-ins in any transitional justice processes and amnesties can play a positive role in bringing about truth and healing. Where this is done, the powers to grant amnesty must be given to the Commission itself and must be worded to ensure that the amnesty provision prioritise the needs of the victims and are not used to promote impunity or reward perpetrators. The following is proposed in this regard:

If the provision on pardon / amnesty is to be maintained in the NRPC Bill, the Commission must be given power to set up an Amnesty Committee which shall develop rules and principles upon which amnesty may be granted provided which include and cannot be in contradiction with the following principles:

- a. At least two members of the Amnesty Committee must be nominated by legitimate victim groups
- b. The rules and principles must be developed in consultation with victim groups
- c. No amnesty shall be granted for crimes against humanity, war crimes, sexual crimes, crimes that involve the abuse of children, murder and genocide
- d. Past amnesties shall be revoked where beneficiaries committed further crimes after benefitting from past amnesties
- e. Affected victims shall have a say in decisions regarding the granting of amnesties
- f. No blanket amnesties. Amnesties can only be decided on a case by case basis.

## **6.0 Giving Notice Before Investigations**

The old Bill required the Commission to give notice of any investigation it intends to carry out. This requirement has been taken out and this is positive and commendable.

Independent fact finding commissions are not normally required to publish a notice in the Government Gazette announcing an investigation into any dispute or conflict.

It may however be useful for purposes of soliciting inputs from the public and interested parties for the commission to make necessary invitations but this should not be a requirement at law unless grave injustice may otherwise occur. The Commission must therefore have the discretion to publicly announce the launching of an investigation if it so desires.

## **7.0 Disclosure, Preservation and Access to Information**

### ***7.1. Confidentiality***

Section 9 (5) prevents disclosure of information disclosed to the Commission except under certain circumstances. This section must be expanded to make it clear that the law seeks to protect the confidentiality of the information during the work of the Commission. It must then also protect other categories of information or evidence that should not be disclosed which includes identities and personal information of underage witnesses and victims; and victims of sexual violations. Adult victims of sexual violations should be allowed to decide whether they wish to testify publicly, after counselling. A new section must be added here to effect this principle.

### ***7.2. Use of Information for Judicial Proceedings***

Under the ground of exception to disclosure, an additional ground must be added after 9 (5) (c) which states, “in judicial proceedings before a competent court.”

Without this addition, this will make it impossible for persons affected by violations revealed during the commission’s work to pursue other remedies since there will be an embargo on any information which would have been placed before the Commission. Moreover, there is need for clear guidelines not only on non-disclosure but also on disclosure as truth recovery is part of the mandate of the Commission. Whatever information is recovered by the Commission must remain useful for history, archival and pursuit of other formal and non-formal remedies.

### ***7.3. Preservation and Access to Records of the Commission***

Section 15 (7) of the NRPC Bill obliges the NRPC publish its reports after 30 days from the day the Minister is expected to have presented the report before Parliament. Section 15 (8) provides that the Commission shall ensure that the rest of the information pertaining to the Commission’s business becomes accessible to the public eighteen months after the year to which the information relates.

This is an improvement from the previous old NRPC Bill. However, many gaps still exist which need to be filled.

There is need for section to be added to the NRPC Bill to provide for how it will access records that are necessary for its work. This section can be worded as follows;

“The different state institutions, public bodies and commissions, local municipalities, public institutions, departments and agencies of government as well as all the civil servants shall provide the Commission with all the information and data which they have received and could obtain while performing their tasks and which fall within the scope of the Commission’s duties or may help the Commission in its Constitutional functions to the best of its ability. These data and documents shall be directly submitted to the Commission at the Commission’s request.”

#### ***7.4. Documentation and Collection of Evidence***

The Bill must provide for all the necessary and technical safeguards in the reception of statements, documents and evidence which must include:

- a. Diligent filing of all documents, audio files, video files or any other items
- b. The creation of an archiving system with a backup system to secure the documents and files
- c. Ensuring that all copyright laws are adhered to
- d. Where information, documents or any other material is donated to the Commission, the necessary donor forms must be filled
- e. Where victims and perpetrators voluntarily give statements, the necessary consent must be obtained specifying the scope within the information can be used.

#### ***7.5. Archival and Access to the Records***

In the course of its work, the Commission will collect enormous amounts of data which will constitute valuable national memory which can be used for history and educational purposes the next generations. It is important that the NRPC Bill make provision for the preservation and access to this important national heritage. In that regard, the NRPC Bill must provide for the following:

- a. That at the conclusion of its work, the Commission shall submit all the documents and files in its possession to the national archives and backup copies to be submitted at an institution entrusted with the preservation of national memory.
- b. That such information shall be accessible to the public in line with 62 of the Constitution of Zimbabwe with the necessary protection mechanisms for witnesses, victims and juveniles.
- c. The Commission members and employees as well as any other person having performed the tasks entrusted by the Commission shall not be held liable for any report contents, conclusions, points of view or recommendations expressed by virtue hereof.

### **8.0 Legal Representation**

Section 9(4) of the Bill provides that any person appearing before the Commission maybe represented by a legal practitioner at his/her expense. This is not in harmony with section 31 of the Constitution on legal aid. It is recommended that the commission should appoint a legal representative from the Legal Aid Directorate to appear on behalf a person where that person is indigent and has been asked or subpoenaed to appear before the Commission, and

where the Commission is of the view that it is in the interests of justice that the person be legally represented.

## **9.0 Ministerial Certificate to Prevent Public Disclosure of Evidence**

Section 9 (6) provides that the Minister responsible for National Security may at any stage during an investigation by the Commission issue a certificate in writing when he/she is *of the opinion* that the evidence about to be disclosed publicly is to the prejudice of state interests and the Commission shall only receive the evidence in camera. This provision was widely condemned in the previous Bill, the revised draft Bill and it has resurfaced in the current NPRC Bill with slight changes.

Previously, the Commission did not have power to vary the Minister's Certificate. The current Bill now gives the Commission power to confirm, vary or set aside the certificate issued by the Minister if any one makes an appeal to the Commission. If any person is dissatisfied by the decision of the Commission, then such a person may appeal to the Administrative Court. This is a compromise which has increased the power of the Commission in a positive way.

However, stakeholders consulted by NTJWG felt that the Bill would be better without that provision at all as it still opens an undesirable avenue for interference with proceedings of the Commission. The NPRC Bill's invocation of state security in trying to curtail the work of a Commission that is meant to encourage truth-telling regarding the past is a worrying affront to section 252 (c) of the Constitution which mandates the Commission *to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice*. This mandate given to the Commission is a positive step towards the realisation of the right to access information enshrined in section 62 of the Constitution which states that every Zimbabwean citizen has the right of access to *any information held by the State* or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.

In a possible obstruction of the right to access the information, it defies reason, justice and fairness to allow the Minister of State Security any measure of disturbing the work of the Commission. In that regard, stakeholders remain convinced that the Commission must be allowed to carry its work without interference from the Minister of State Security. What makes this provision even more dangerous is that it does not even qualify or attempt to define what it deems to be 'contrary to the public interest' leaving such to the mere 'opinion' of the Minister of State Security.

## **10.0 Victim Centredness**

### ***10.1 The Need for Victim Support and Rehabilitation Mechanism***

Section 9 (12) provides that the Commission shall provide safety and protection of witnesses. No reference is made to victims and survivors. This is probably the weakest aspect of the NPRC Bill as this creates a gap which exposes victims and survivors and misses critical areas of

the Commission's mandate as outlined in section 252 of the Constitution. According to the Minimum Standards for an Effective National Peace and Reconciliation Commission (NTJWG, 2015: 4), it is important that adequate protection mechanisms be put in place for victims and survivors. Standard 4 emphasises that *the NRPC must adopt a victim centred approach and prioritise the needs of the victims*. This minimum standard can only be achieved through a deliberate process of creating safeguards within the law for adequate protection of victims and survivors as well as reaching to and encouraging victims to be willing to approach the Commission and feel safe in the process.

It is therefore imperative that a separate section on Victim Support and Rehabilitation be inserted into the Bill. The section must, among other principles, oblige the Commission to develop comprehensive regulations to support victims/survivors which must include:

- Establishing a Victim Support and Rehabilitation Committee
- Taking measures to reach out to victims and survivors and offering assistance in the aftermath of victim and torture
- Facilitating the provision of rehabilitation facilities including medical treatment, counselling services and general accompaniment for victims who interact with the Commission
- Taking steps aimed at the restoration of the human and civil dignity of victims in line with mandate given to the Commission in section 252 (e) and (j)
- Measures aimed at safely identifying victims and victim communities , and provide victims an opportunity, in public or private, to relate their own accounts of the violations or harm they have suffered and to clearly set out their needs and document their experiences as part of a national truth-telling, recovery and acknowledgment process.
- Assessing the needs of victims and victim communities and make recommendations which may include urgent interim measures for reparations and relief measures or any other measures aimed at rehabilitating and restoring the human and civil dignity of individual victims or victim communities
- Take steps to provide protective, legal, psycho-social and logistical support services to victims during the periods such victims are involved in activities of the Commission.

## **10.2 Principles on Victim Centred Approach**

The Bill must clearly lay down the key principles on the handling of victims which must include the following:

- a. Victims shall be treated with compassion and respect for their dignity;
- b. Victims shall not be unfairly discriminated against on any basis, including race, gender, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- c. Procedures for dealing with victims shall be expeditious, fair, inexpensive and accessible;
- d. Victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of:
  - i. the role of the Commission and the scope of its activities;
  - ii. the right of victims to have their views and submissions presented and considered at appropriate stages of the Commission's operations;

- e. Appropriate measures shall be taken in order to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;
- f. Appropriate measures shall be taken to allow victims to communicate in the language of their choice;
- g. Informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice may be applied, where appropriate, to facilitate reconciliation and redress for victims.

## **11.0 The Need for a Specific Section on Gender**

The Bill is deafeningly silent on gender just like its previous versions. The NTJWG Minimum Standards make several recommendations on how to ensure that the NRPC effectively mainstreams gender in its work. These include taking deliberate steps to ensure that the NRPC treat gender as both a specific theme as well as a cross cutting issue.

It is therefore recommended that separate section must be inserted on gender. This section must set up a Gender Unit or any similar mechanism of choice, which will do the following:

- Develop specific guidelines and rules on how the Commission will incorporate gender into its work
- Develop strategies to encourage the participation of women, girls and other marginalised groups into the work of the Commission
- Facilitate gender equity in the structure of the Commission
- Ensure the needs of women and girls are prioritised in line with UN best practices
- Ensure the mainstreaming of gender imperatives into every aspect of the Commission's work
- Taking steps to ensure that all organs of the Commission shall consider and address the gender implications of their activities
- Conduct gender sensitivity training for all the Commission's personnel before the formal operations of the Commission commence and periodically during the Commission's operations
- Appoint or second a dedicated gender focal person to each committee and body;
- Recommend protocols for statement taking, collection and analysis of gender and sex-disaggregated data, the conduct of interviews and hearings and other operational matters to ensure that gender concerns are fully addressed
- Monitor gender related practices within the Commission and advice on best practice and principle.
- Investigate gender based human rights violations as they arose during the conflicts of the past
- Investigate the use of gendered violence by factions and public institutions
- Investigate the use of sexual crimes as a weapon during and after conflicts
- Reach out to and identify victims of gender based violations and provide such victims an opportunity, in private or public, to relate their own accounts of the violations or harm they have suffered and to set out their needs;
- Hold specific public or private hearings on the gendered nature and context of violence and marginalization; and investigate the causes of such violence and marginalization;

- Assess the needs of victims of gender based violations and marginalization and make recommendations which may include urgent interim measures, as to the appropriate measures required to redress such violations and marginalization, including the policy which should be followed or measures which should be taken to restore the human and civil dignity of such victims;

## 12.0 Executive Appointments

Section 13 provides for the establishment of the Secretariat of the Commission ‘in consultation’ with the Minister and the Minister responsible for Finance. This is in violation of section 234 of the Constitution which gives the NRPC power to recruit and regulate its own staff. It is also in violation of section 235 of the Constitution which upholds the independence of all Chapter XII Commissions. The NTJWG Minimum Standards states that the NRPC must be allowed to develop its own recruitment policy for its secretariat. It further states that it will be a violation of the NRPC’s constitutional independence for any organ of the state or another body to try to influence who will serve the Secretariat of the NRPC.<sup>4</sup>

Apart from the Chairperson and commissioners this position is the most important position in the Commission. The Executive Secretary is arguably the most powerful person in the Commission after the Chairperson. The Secretary, typically, controls the finances, logistics and operations of the Commission.

Even though, it is the Commission that appoints the Executive Secretary, the two Ministers will be in a particularly strong position to influence who is ultimately appointed. In so doing the government can effectively influence the way the commission operates through this appointment.

A provision in line with the Constitution, the recommendations of the people during the public hearings as well as UN standards would give full power to the Commission to hire and fire its own staff.

It may as well be mentioned here that the current state of affairs in which members of the Office of the President have been delegated to act as Secretariat of the NRPC is undesirable and will not stand a constitutional challenge as it undermines the independence of the NRPC and weakens the foundations upon which it is being established. It will be tragic for the NRPC if persons associated with organs of the State previously accused of human rights violations end up being the Secretariat of the NRPC as this will severely damage the integrity of the NRPC and scare away victims from ever associating with the Commission.

### UN on Independence of the Commission

Once established, the commission should operate free of direct influence or control by the Government, including in its research and investigations, budgetary decision-making, and in its report and recommendations. Where financial oversight is needed, operational independence should be preserved. Political authorities should give clear signals that the commission will be operating independently.

## 13.0 Ministerial Approval

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<sup>4</sup> NTJWG, 2015, Standard 8

All provisions that interfere with the financial autonomy of the Commission need to be revised so that they are in line with United Nations Standards which call for clear operational independence for the Commission. All provisions that refer to the need to consult or seek approval of the Minister must be changed to at most giving prior notice to the Minister in such cases were administratively the Commission will need executive support. The same must apply to regulations and the hiring of staff. The Commission must be empowered to hire and fire their own staff and make independent budgetary decisions. A study of other Commissions of this nature show that the Minister's role in other jurisdictions is only strengthened where the Commission needs cooperation of foreign entities, or the Commission is making decisions that need funding from the government.

## **14.0 The Final Report**

Unlike the old Bill and the previous revised draft, there is an improvement on the reporting procedure proposed by the current NRPC Bill. Section 15 now provides that the Commission will submit its annual report to the Parliament and that the Parliament can now request a report from the Commission. The Bill now further places a time frame of 10 days within which the Minister must submit to Parliament the reports of the Commission. The Bill further provides that reports pertaining to the Commission's work shall become public after 18 months.

In as much as this is an improvement, there are problems in this section which must be addressed. The section seems to be still limiting recommendations of the Commission to peacebuilding and conflict management. This falls far short of the functions listed in section 252 of the Constitution which includes ensuring post-conflict justice, healing and reconciliations; making of amends and provision of justice; and developing programmes to ensure that persons subjected to torture and other forms of abuses receive rehabilitative treatment. As such, this section must be further expanded to give the commission to make any recommendation that meets the functions listed in the Constitution. The Bill must further task the relevant portfolio committee with ensuring implementation and monitoring of the recommendations of the Commission.

## **15.0 Conclusion**

There is still a wealth of information to help enrich and strengthen the current Bill from a legion of stakeholders who are eager to input into the process. With over 30 Commissions having been established since 1978, Zimbabwe has a lot to learn and a better law is possible for a better commission. The United Nations has provided helpful tools for such law as the NRPC Law. Most importantly, stakeholders have already spoken clearly of their expectations during the Public Hearing conducted by the Parliament from 10 to 18 April 2016. NTJWG sincerely believes that with all this wealth, Zimbabwe can put in place an excellent piece of legislation which will set the tone for a transformative national healing process. The NTJWG expresses its gratitude to all stakeholders who have patiently engaged with this process tirelessly. It further acknowledges the assistance granted by experts<sup>5</sup> consulted in the

compilation of this report as well as the policy makers who have honestly sought the participation of stakeholders with sincerity. It is the sincere hope of the NTJWG that the suggestions of stakeholders will be incorporated in the revised NRPC Bill enabling the NRPC to commence to implement its mandate based on a strong law guaranteeing its constitutionally enshrined independence.

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