



**NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE**

REVIEW OF THE NPRC'S STRATEGIC PLAN AND LEGAL FRAMEWORK

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EXECUTIVE SUMMARY

Section 251 of the 2013 Constitution of Zimbabwe provides for the establishment of the National Peace and Reconciliation Commission (NPRC). The NPRC has since been appointed and the NPRC Act, as well as Statutory Instrument 90 of 2018, have been enacted as the enabling legislation for the NPRC's work. These laws clearly give the NPRC, a mandate that is wide enough to initiate a transitional justice process that is capable of resulting in accountability, serving justice and achieving reconciliation. However, both the Constitution and the legislation leave room for executive interference with the independence of the NPRC. For instance, notwithstanding its constitutionally declared independence, the NPRC can only table its reports or draft regulations before Parliament through the Minister. When fundraising, the Commission has to do that in consultation with the Minister. In addition, the legislation renders the NPRC's recommendations non-binding. These shortcomings constrain the independence and effectiveness of the NPRC. Specifically, they have contributed to the non-implementation of certain key aspects of the NPRC's strategic plan, the sidelining of the NPRC and executive take-over of some of the key processes that are purportedly aimed at addressing issues arising from past atrocities. In light of these shortcomings, this policy brief makes recommendations to Parliament, the Executive, the NPRC and the National Transitional Justice Working Group. These recommendations are listed at the end of the paper.

METHODOLOGY

This policy brief was drafted from research conducted through a desktop review of key documents and through key informant interviews. Key documents reviewed as part of the desktop research include: academic articles on the history of violence and atrocities in the post-independence Zimbabwe; reports produced by human rights NGOs on the same subject, the relevant provisions of the Constitution of Zimbabwe of 2013, the NPRC Act, the NPRC regulations and the NPRC strategic plan. A total of 7 experts on transitional justice were

interviewed as key informants. These include Tony Reeler,¹ Dzikamai Bere² and Tendaishe Tlou.³ Other key informants have requested to remain anonymous.

1. INTRODUCTION

The Constitution of Zimbabwe provides for the establishment of the National Peace and Reconciliation Commission (NPRC). Following the appointment of the Commissioners, the legislature enacted the NPRC Act as well as approved Statutory 90 of 2018 (NPRC Regulations, 2018) to operationalize the NPRC. On its part, the NPRC adopted a five-year Strategic Plan, in 2018, which expires in 2022. This policy brief assesses whether the legal framework regulating the NPRC's work and the NPRC's strategic plan is adequate to address Zimbabwe's contemporary transitional justice issues, particularly those arising from the post-1980 atrocities.

This policy brief does not purport to be a comprehensive evaluation on the implementation of the NPRC's strategic plan. If it were, it would identify both the successes and failures in the implementation of the NPRC's current strategic plan. Instead, the policy brief focuses only on identifying the key challenges associated with the legal framework and the strategic plan, with the view of making recommendations to enrich the discourse and advocacy on how the NPRC Act and the strategic plan can be strengthened.

2. CONCEPTUAL AND INTERNATIONAL LEGAL FRAMEWORK

Conceptually, transitional justice is the idea that in order to create a firm foundation for a peaceful future, a society emerging from conflict or periods of conflict should find ways to specifically address the often large scale and systemic human rights violations which took place during the period of conflict. In his seminal 2004 report to the Security Council, the United Nations Secretary General, Kofi Atta Annan, described transitional justice as follows:

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The notion of transitional justice.....comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.⁴

Depending on their contextual realities, societies emerging from conflict adopt different approaches of facilitating transitional justice. These include judicial and non-judicial processes such as criminal prosecutions, truth seeking, reparations and institutional reforms.⁵ In many ways, these approaches are not mutually exclusive as they reinforce each other. As emphasized by the United Nations Secretary General, the most important considerations to be made when designing mechanisms for facilitating transitional justice are that the mechanisms must be adequate to ensure accountability, serve justice and achieve reconciliation.⁶ In order to attain these objectives, transitional justice processes must be anchored on certain principles which include the recognition of the dignity of individuals, acknowledgment and redress of violations as well as preventing recurrence of the violations.⁷

Invariably therefore, the design and implementation of transitional justice processes must involve the participation of the survivors of the atrocities and they must be geared towards serving the justice needs of the survivors. Without this, it is impossible to achieve healing and reconciliation.

At the core of the justice needs of the survivors are: the survivors' right to know what happened to them and or their families during the conflict (the right to know), and the right to remedies which redress the violations they suffered during the conflict. The right to a remedy for victims of violations of international human rights law is recognised in a number of treaties and conventions which Zimbabwe has signed and ratified. By so doing, Zimbabwe

⁴ See para 8 of 'The rule of law and transitional justice in conflict and post-conflict societies', Report of the Secretary-General to the Security Council on August 2004.

⁵ Ibid.

⁶ Ibid.

⁷ See International Center for Transitional Justice, at <https://www.ictj.org/about/transitional-justice>

has voluntarily agreed to be bound by these treaties and conventions. These include: article 8 of the Universal Declaration of Human Rights; article 2 of the International Covenant on Civil and Political Rights; article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 39 of the Convention on the Rights of the Child and article 7 of the African Charter on Human and Peoples' Rights. The right to remedies for victims of atrocities is explained in greater detail in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted through a resolution of the United Nations General Assembly. In particular, this right entails the obligation of the State to, inter alia:

- “(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice.
- (d) Provide effective remedies to victims, including reparations.”⁸

3. A SYNOPSIS OF ATROCITIES IN POST-INDEPENDENCE ZIMBABWE.

Since gaining independence in 1980, Zimbabwe has experienced serious internal political conflicts which have resulted in violence, atrocities and these continue to render the country divided and polarized. In his recent thesis titled, *“Building Capacity for Reconciliation through a Restorative-Based Intervention in Zimbabwe”*, scholar Lawrence Mhandara identifies the *Gukurahundi* massacres; election violence (notably experienced in the 1990s, early 2000 and 2008); the fast-track land reform program and Operation *Murambatsvina*, as the major atrocities that have taken place since 1980. The violence associated with the November 2017

⁸ See para 3 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

military coup⁹, the violent crackdown of the January 2019 protests¹⁰ and the abduction of political activists should be added onto the list of atrocities witnessed in post-independent Zimbabwe. According to the United Nations, in 2019 alone, at least 49 cases of abductions and torture were reported in the country.¹¹

Soon after winning the 1980 general election, the then government of former President Robert Mugabe conducted a military operation in the Matabeleland and Midlands regions, which resulted in what is popularly known as the *Gukurahundi* massacres. Government argues that it had to conduct this operation to combat dissident activity in these regions.¹² However, both the context within which this operation was conducted and the victims' accounts, suggest otherwise. This was a military operation meant to neutralize political competition from the then opposition ZAPU party which had garnered massive support in those regions in the previous elections.¹³

It must be recalled that at the time when *Gukurahundi* was conducted, the leadership of the ruling ZANU party had made it clear that they were pursuing a one-party state policy.¹⁴ This policy could not be achieved as long as the opposition ZAPU party was in existence. Documented witness and victims' accounts suggest that they were targeted for supporting or being seen as politically affiliated to the ZAPU party.¹⁵ If at all there was any dissident activity in the targeted regions, it only provided government with a cover to conduct the military operation. It is estimated that 20 000 people were murdered and tens of thousands were displaced as a result of this operation.¹⁶ Regardless of the versions that have been put forward

⁹ Jonathan N. Moyo, *Excelgate: How Zimbabwe's 2018 Presidential Election was Stolen* (2019).

¹⁰ See <https://www.theguardian.com/world/2019/jan/16/authorities-launch-major-crackdown-amid-protests-zimbabwe>. Also see <https://www.bbc.com/news/world-africa-46938679>

¹¹ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25944&LangID=E>

¹² See, Hazel Cameron "The Matabeleland Massacres: Britain's willful blindness" (2018) 40(1) *International History Review*, 1-19. Also see <https://www.dailymaverick.co.za/article/2017-08-13-gukurahundi-origins-myth-and-reality-part-3-the-tourist-abduction-1982/>

¹³ Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation, 'Breaking The Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 – 1988' (published in 1997) available at <http://hrforumzim.org/wp-content/uploads/2010/06/breaking-the-silence.pdf>

¹⁴ See William H. Shaw "Towards the One-Party State in Zimbabwe: A Study in African Political Thought" (1986) 24(3) *Journal of Modern African Studies*, 373-394. Also see Joshua M Nkomo. *The Story of my Life* (2001).

¹⁵ Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation, 'Breaking The Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 – 1988' (published in 1997) available at <http://hrforumzim.org/wp-content/uploads/2010/06/breaking-the-silence.pdf>

¹⁶ *Ibid.*

in trying to explain or justify this operation, the reality is that the operation left a scar on the country which has not been addressed and, to date, continues to be a source of polarization, anger and agitation.

Starting from the early 1990s, Zimbabwe experienced another wave of political violence, when Edgar Tekere and others broke away from the ruling ZANU PF party and formed the opposition Zimbabwe Unity Movement (ZUM). The ruling ZANU PF party is accused of conducting a state sanctioned terror campaign against supporters and perceived supporters of ZUM, which resulted in thousands of deaths and displacements. Details on this terror campaign are recounted by Edgar Tekere in his autobiography titled "*A Lifetime of Struggle*".¹⁷ However, the brutal shooting of Patrick Kombayi (the then ZUM's National Organizing Secretary) remains a major highlight of this terror campaign. He was shot six to eight times on his groin. Although he survived the shootings, he became handicapped because of the injuries and eventually died in June 2009 as a result of those injuries.¹⁸ As is the case with the other survivors of this violence, Patrick Kombayi's family has not been served with justice.

In the mid-1990s, there was growing agitation led by civil society, labour and students, demanding economic and political reforms in Zimbabwe. This was mainly because the economy was in a crisis, unemployment was increasing, and poverty was on the rise due to poor economic policies and corruption.¹⁹ Government responded through a violent crackdown of protests by those agitating for reforms. The Movement for Democratic Change (MDC) was formed as an opposition party in 1999. In the run up to the parliamentary elections of 2000 and the presidential elections of 2002, a campaign of terror was conducted against supporters and perceived supporters of the MDC. This campaign resulted in several killings, beatings and abductions.²⁰ The abduction and forced disappearance of MDC activist Patrick

¹⁷ Edgar Zivanai Tekere, *A Lifetime of Struggle* (2007).

¹⁸ Justice Alfred Mavedzenge 'Episodes of violence and prospects for democratic and free elections in Zimbabwe' (2020). Democracy in Africa, available at <http://democracyinafrica.org/episodes-violence-prospects-democratic-free-elections-zimbabwe/>

¹⁹ See Godfrey Kanyenze and Timothy Kondo (Eds). *Beyond the Enclave. Towards a Pro-Poor and Inclusive Development Strategy for Zimbabwe* (2007).

²⁰ Justice Alfred Mavedzenge 'Episodes of violence and prospects for democratic and free elections in Zimbabwe' (2020). Democracy in Africa, available at <http://democracyinafrica.org/episodes-violence-prospects-democratic-free-elections-zimbabwe/>

Ndabanyana²¹, the petrol bombing and killing of MDC activists Tichaona Chiminya and Talent Mabika remain the most vivid reminders of this terror campaign.²² MDC supporters were also accused of engaging in retaliatory violence as a result of the failure by the police to protect them from violence at the hands of ZANU PF.

Starting from 1999, the Government embarked on a fast-track land reform program. Although land reform was necessary given the colonial history of Zimbabwe²³ and the unequal pattern of land ownership between blacks and whites at that time²⁴, the program was conducted in a very violent manner which resulted in killings, beatings and torture. Indeed, on a positive note, the program resulted in an estimate of 150 000²⁵ families gaining access to land, but this program has left the country sharply divided and polarized especially along racial lines as some of the white farmers who lost land are still aggrieved.

In 2008, Zimbabwe held a general election and ZANU PF lost its majority in Parliament and its candidate (former President Robert Mugabe) was defeated by the MDC's Morgan Tsvangirai in the first round of presidential elections. A presidential election run off was organised between ZANU PF's Robert Mugabe and MDC's Morgan Tsvangirai after the official results showed that the latter candidate had won by 47.87% and therefore, he had not garnered the mandatory minimum votes to form the next government. Various reports²⁶ reveal that the military coordinated a massive campaign of violence against supporters and perceived supporters of the opposition, resulting in at least 200 people being murdered, 137 cases of abductions, 1913 cases of assault, 19 cases of forced disappearances and 629 people being displaced from their homes.

²¹ Ibid. Also see David Coltart. *The Struggle Continues: 50 Years of Tyranny in Zimbabwe*. (2016).

²² Justice Alfred Mavedzenge 'Episodes of violence and prospects for democratic and free elections in Zimbabwe' (2020). Democracy in Africa, available at <http://democracyinafrica.org/episodes-violence-prospects-democratic-free-elections-zimbabwe/>

²³ Characterised by the unjust dispossession of land which belonged to black Africans.

²⁴ See Grasian Mkodzongi & Peter Lawrence "The fast-track land reform and agrarian change in Zimbabwe" (2019) 46(159) *Review of African Political Economy*, 1-13

²⁵ See Grasian Mkodzongi & Peter Lawrence "The fast-track land reform and agrarian change in Zimbabwe" (2019) 46(159) *Review of African Political Economy*, 1-13

²⁶ These are outlined in Justice Alfred Mavedzenge 'Episodes of violence and prospects for democratic and free elections in Zimbabwe' (2020). Democracy in Africa, available at <http://democracyinafrica.org/episodes-violence-prospects-democratic-free-elections-zimbabwe/>

This wave of violence was followed by the November 2017 military coup. The ruling ZANU PF party became engulfed in severe factionalism as different leaders positioned themselves to succeed the then President Mugabe, who had become quite advanced in age. In November 2017 the military intervened in ZANU PF's factionalism and staged a *coup de tat* code named "Operation Restore Legacy", which for all intents and purposes sought to remove President Mugabe and replace him with the current President Emmerson Mnangagwa. As recounted by Jonathan Moyo in his recent book,²⁷ several people were brutally tortured and killed, while others were forced to flee into exile and hiding in the course of this coup.

In January 2019, government unleashed security forces to crackdown on those who had staged protests against the deteriorating economic conditions and the hike in fuel prices.²⁸ Reports²⁹ indicate that several people were beaten, brutally tortured and some were raped as part of this crackdown.

The above-described atrocities were punctuated by a series of incidences of abductions of political and human rights activists. The abduction and torture of human rights activist and civil society leaders, Jestina Mukoko and her colleagues in December 2008³⁰ and Itai Dzamara in March 2015 are cases in point. Jestina Mukoko was released from abduction. Itai Dzamara has not been found. More recently in 2020, Joana Mamombe, Cecilia Chimhiri, Netsai Marova³¹ and Tawanda Muchehiwa³² reported that they were abducted and brutally tortured before they were released. As is the case with the other survivors and victims of these atrocities, the state has failed to conduct impartial investigations to establish the truth about these reports.

The political events described above have left the nation scarred, gripped with fear, divided and polarized. The country is bedeviled by tensions along ethnic, political and racial lines and

²⁷ Jonathan N. Moyo, *Excelgate: How Zimbabwe's 2018 Presidential Election was Stolen* (2019).

²⁸ See <https://www.theguardian.com/world/2019/jan/16/authorities-launch-major-crackdown-amid-protests-zimbabwe>. Also see <https://www.bbc.com/news/world-africa-46938679>

²⁹ Ibid.

³⁰ See Jestina Mukoko. *The Abduction and Trial of Jestina Mukoko: The Fight for Human Rights in Zimbabwe* (2016).

³¹ <https://www.bbc.com/news/world-africa-53005447>

³² <https://www.dailymaverick.co.za/article/2020-09-28-missing-witness-to-an-abduction-part-two/>

these tensions provide a fertile environment for the recurrence of violence (as has already happened) and they threaten to tear the nation apart. Therefore, Zimbabwe cannot transition into a peaceful future without finding ways to address these tensions and this can only be achieved by redressing these past violations. It is against this contextual background and the conceptual framework (summarized above) that Zimbabwe's legal framework regulating the work of the NPRC should be examined to establish its adequacy.

4. THE NPRC'S LEGAL FRAMEWORK

In section 251, the 2013 Constitution of Zimbabwe provides for the establishment of the National Peace and Reconciliation Commission (NPRC). It must be acknowledged that transitional justice is a much broader concept, which goes beyond the work of the NPRC. However, the NPRC is meant to be a key driver for transitional justice as evidenced by its constitutionally assigned mandate "to ensure post-conflict justice, healing and reconciliation."³³ The Constitution further mandates the NPRC 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."³⁴ In addition, the NPRC has the mandate to receive complaints from the public and take appropriate action.³⁵ On the basis of this constitutional mandate, the NPRC may adopt programmes targeted at promoting truth seeking about past violations, may come up with recommendations for criminal prosecutions and provision of justice including through compensation for survivors of past violations and their families. Thus, the NPRC's constitutional mandate is wide enough to set into motion a process that is aimed at achieving the three objectives of transitional justice namely to "ensure accountability, serve justice and achieve reconciliation."³⁶ The success of such a process would, no doubt, depend on the level of cooperation from the other institutions of the state, particularly the Parliament and the Executive.

³³ Section 252 (a) of the Constitution

³⁴ Section 252(c) of the Constitution

³⁵ Section 252(f) of the Constitution

³⁶ See para 8 of 'The rule of law and transitional justice in conflict and post-conflict societies', Report of the Secretary-General to the Security Council on August 2004.

Government has since established the NPRC and a legislative framework (NPRC Act and Statutory Instrument No. 90 of 2018) has been enacted to provide for the operations of the Commission. In part, the NPRC Act seeks to implement the constitutional mandate of the NPRC by empowering the Commission to conduct the necessary investigations.³⁷ The Commission has the power to initiate investigations on its own or after receiving a complaint.³⁸ In order to guarantee cooperation with the NPRC's investigations, the Act empowers the Commission with various powers,³⁹ including the power to issue a *subpoena* or to seek intervention from the police or Parliament. In terms of section 16(5), the Act empowers the NPRC to submit reports to Parliament, recommending "steps for the maintenance and promotion of peace."

By and large, Statutory Instrument 90 of 2018 (NPRC Regulations) reinforces these powers by providing details on how complaints are to be filed by the public and managed by the NPRC;⁴⁰ procedures to be followed when the Commission is conducting investigations to ensure confidentiality, transparency and accountability; the handling of witnesses and how evidence is to be assessed.⁴¹ Thus, the Constitution, the NPRC Act and the NPRC Regulations saddle the NPRC with the mandate and powers to promote truth telling, conduct investigations into past atrocities and table reports in Parliament with recommendations of measures that should be considered in order to promote peace, justice and reconciliation.

5. ASSESSING THE NPRC'S LEGAL FRAMEWORK

5.1 Lack of independence

One of the principles of transitional justice, as explained above is that the survivors of past atrocities must be served with justice. Under international law⁴², Zimbabwe has the obligation

³⁷ Section 8 of the Act.

³⁸ See section 25(4) of Statutory Instrument 90 of 2018.

³⁹ See section 10(1) of the Act.

⁴⁰ See section 17 of Statutory Instrument 90 of 2018.

⁴¹ *Ibid*, Part V.

⁴² Para 3 of United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

to establish an impartial mechanism to serve justice to the survivors. One such mechanism is the establishment of the NPRC as an independent commission under the Constitution.

However, although the Constitution, the NPRC Act and the regulations appear to give the NPRC a mandate and powers that are sufficient to drive a transitional justice process, these laws do not adequately guarantee the Commission the independence it requires to fulfil this mandate and exercise the assigned powers impartially, without fear or favour. Given that some of the leaders in the governing party (ZANU PF) have been implicated as perpetrators of some of the human rights violations to be investigated by the NPRC, it is necessary that the law must guarantee the independence of the Commission to work without interference from the government of the day. Section 235 (1) of the Constitution declares that independent Commissions, including the NPRC, are “independent and are not subject to the direction or control of anyone.....although they are accountable to Parliament.” However, section 253 of the same Constitution says:

“...the National Peace and Reconciliation Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to peace and reconciliation which, in the Commission’s opinion, should be brought to the attention of Parliament”.

The above has been reproduced in section 16 (5) of the NPRC Act. In addition, the Act⁴³ empowers the NPRC to draft its own regulations but requires the Commission to table them, through the Minister, before Parliament for approval. *Prima facie*, the above provisions appear to simply designate the Minister as a messenger of the NPRC, who receives the report or draft regulations from the NPRC and tables them before Parliament, without affecting their substantive content. Yet in practice, the involvement of the Minister has created room for the executive branch of government to interfere with the work of the NPRC by exerting pressure on the Commission to alter certain recommendations in its reports, or altering certain proposed regulations. The NPRC has in the past alleged that the Minister tabled their report

⁴³ Section 21(4).

for discussion in Cabinet,⁴⁴ yet the law requires him to take it straight to Parliament and not through Cabinet. If true, such actions by the Minister amount to interference with the work of the Commission and he is aided in doing so by section 253 of the Constitution.

Even if these allegations are not true, the mere fact that the Minister is involved in taking the report of an independent commission to Parliament undermines public confidence in the independence of the NPRC. Not least when the Minister is part of the leadership of a party that is accused of having perpetrated some of the violations which are to be addressed by the NPRC. Without public confidence in the NPRC, the survivors of the past atrocities may not engage the Commission, as was witnessed when the Commission attempted to engage survivors of the *Gukurahundi* massacres in 2018.⁴⁵

5.2 Non-binding nature of recommendations

Another constraint against the independence and effectiveness of the NPRC is that the law does not accord the NPRC with authority to make binding recommendations. For instance, in terms of section 17 of the NPRC Act, the Minister (on behalf of government) is required to address Parliament indicating whether or not the government agrees to implement any of the recommendations made by the NPRC. In a context where some of the senior leaders in government are accused of being perpetrators or beneficiaries of past atrocities, this legal provision allows those leaders to veto or reject those recommendations which could result in them being called to account. Therefore, this makes it impossible for the NPRC to achieve one of the key objectives of transitional justice, which is ensuring accountability.

In comparative jurisdictions such as South Africa, the Commission's recommendations on certain key aspects such as the granting of amnesty were binding.⁴⁶ In Sierra Leone, article 17 of the Truth and Reconciliation Commission Act states that:

⁴⁴ <https://www.newsday.co.zw/2020/10/gukurahundi-govt-snubs-nprc/>

⁴⁵ <https://www.newsday.co.zw/2018/04/nprc-chair-meets-disgruntled-matabeleland-csos/>

⁴⁶ See section 19(3) and (4) of the Promotion of National Unity and Reconciliation Act 34 of 1995 of South Africa.

“The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.”

However, it is important to acknowledge that section 17 of the Zimbabwean NPRC Act is not necessarily the problem. The defect is in the Constitution which does not explicitly give the NPRC the power to make binding recommendations.

5.3 NPRC sidelined

As a result of the non-binding nature of the NPRC’s recommendations, the Commission appears to be side-lined when policies are being developed on addressing certain key issues arising from the past atrocities. For instance, the government recently announced that it had crafted a policy on the exhumations and reburials of the victims of the *Gukurahundi* atrocities.⁴⁷ Government has determined that the exhumations and reburials will be led by traditional chiefs. The Chairperson of the NPRC has confirmed that the process of crafting this policy was led by the Ministry of Home Affairs and Cultural Heritage.⁴⁸ In line with the international law principle on impartiality, the process of developing such policies ought to be led by the NPRC but the Commission cannot do that because they lack the legal mandate to direct the process. The NPRC can only make recommendations which the government is free to reject.

5.4 Limited funding

Section 322 of the Constitution requires Parliament to ensure that sufficient funds are appropriated to Commissions such as the NPRC, to enable them to fulfil their functions effectively. This notwithstanding, the NPRC is grossly underfunded.⁴⁹ To worsen this position, the law does not permit the NPRC to fundraise without involving the Minister. Section 18(1)

⁴⁷ <https://www.chronicle.co.zw/govt-crafts-gukurahundi-burials-policy/>

⁴⁸ Ibid

⁴⁹ This was confirmed during the key informant interviews. Also see <https://allafrica.com/stories/201902150509.html>

(c) of the Act permits the Commission to receive donations “provided that the Commission shall accept such donations, grants or bequests after it has consulted the Minister”. Again, although on paper this appears as if the Minister’s views are non-binding, it is reported⁵⁰ that the Minister has, for political reasons, forced the Commission to reject offers for funding and technical co-operation from certain foreign governments and foundations.

The law does not give the Minister the veto powers against offers for donations, but section 18(1)(c) provides room for such undue interference. The NPRC is supposed to be an independent commission and therefore, it must be left to independently determine its sources of funding. In the event that the government deems certain sources of funding to be unlawful, it has the choice of taking on judicial review of the Commission’s decision to receive those donations.

In comparative jurisdictions, including Sierra Leone,⁵¹ a Commission similar to Zimbabwe’s NPRC was legally permitted to receive donations without consulting the executive branch of government. Without being saddled with a duty to consult the executive, the TRC of Sierra Leone⁵² was also permitted to enter into technical cooperation agreements with multilateral institutions to which Sierra Leone was a member.

6. ASSESSING THE NPA STRATEGIC PLAN

In 2018, the NPRC adopted its five-year strategic plan which runs until 2022. *Prima facie*, this strategic plan has the ingredients that are necessary for the NPRC to initiate a transitional justice process that can lead to the attainment of the Commission’s stated goals of achieving healing, peace, reconciliation and preventing non-recurrence of atrocities.⁵³ Of particular importance is Section 5 of the Strategic plan which identifies “strategic pathways”⁵⁴ for the implementation of the strategic plan. These pathways are listed as “consensus building and

⁵⁰ This was mentioned during the key informant interviews.

⁵¹ See article 12(1) (b) of the Truth and Reconciliation Commission Act 2000.

⁵² *Ibid*, see article 12(1) (2).

⁵³ See page 27 of the NPRC Strategic Plan 2018-2022.

⁵⁴ See pages 36-37 of the Strategic Plan

dialogue”; “truth telling”; “mainstreaming cross cutting approaches, including human rights based approaches to conflict management”; “legislative and policy analysis”; “institutional strengthening”; “partnerships building” and “strategic communications”. If properly implemented, these strategic pathways are broad enough to allow the NPRC to implement programs in pursuit of the achievement of the key objectives of transitional justice. For instance, a key objective for transitional justice is to ensure accountability and serve justice. This can be achieved through taking a human rights-based approach to conflict management (under strategic pathway No.3). This can also be achieved by making certain legislative and policy recommendations which require alleged perpetrators to be called to account and justice to be served for the survivors.

Furthermore, as a cardinal principle discussed earlier in this paper, transitional justice processes must be survivor centred. In practice, this means that the process of developing the mechanisms must incorporate the participation of the survivors and the processes must be geared at delivering the justice needs of the survivors. These needs include redressing the human rights violations suffered by the survivors through compensation/reparations, fulfilling the right of the survivors to know what happened to them or their loved ones during the conflict.⁵⁵

On paper, the NPRC’s strategic plan speaks to these principles very clearly. For instance, the development of the strategic plan⁵⁶ was done through a consultative process with input from various stakeholders including those who represented survivors. The strategic plan aims to facilitate the survivors’ right to know by adopting “truth telling” as a strategic pathway. It provides for mechanisms for survivors to file complaints of violations. The adoption of a human rights-based approach to conflict resolution under strategic pathway No. 3 also incorporates the over-arching right to justice for survivors. Thus, on paper the strategic plan appears to have the necessary ingredients for the initiation of a transitional justice process.

6.1 Non implementation of certain key aspects of the strategic plan

⁵⁵ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

⁵⁶ At page 12

However, what appears to be missing is the ability of the NPRC to implement its own strategy in a manner that is robust and coherent. For instance, whilst the NPRC claims that building strategic partnerships is one of its key pillars of work, there is no evidence to show that the Commission is leveraging on the work that has been done, especially by civil society in documenting atrocities. As alluded to by one of the key informants⁵⁷ during this research, there is a lot of information that has been documented on Gukurahundi massacres as well as the political violence of 2008. Such documentation could be used as reference materials for truth telling sessions.

Although the authenticity of the information carried in these documents may be disputed, they still can be verified by means of conducting truth telling sessions. Three years after adopting this strategic plan, the NPRC has not been able to conduct any truth telling sessions on any of the atrocities that have taken place in Zimbabwe. As pointed out during one of the key informant interviews⁵⁸, the NPRC could (as part of implementing its strategy on building partnerships) collaborate with civil society and health professionals to provide survivors with counselling and treatment on post conflict trauma. This should be possible given that there is willingness on the part of civil society and health professional bodies to facilitate such interventions.

Furthermore, although the strategic plan identifies making legislative and policy reforms as one of the pillars of the NPRC's work, there are no publicly known substantive legislative and policy reforms that have been made by the Commission to facilitate accountability for the perpetrators and justice for the survivors of past atrocities. In some cases, as argued by one of the key informant interviewees,⁵⁹ the NPRC has not made any publicly known recommendations for accountability despite the overwhelming evidence against certain known perpetrators of past violations, notably the *Gukurahundi* massacres and the political violence of 2008.

⁵⁷ Mr Antony Reeler, Senior Researcher at the Research and Advocacy Unit.

⁵⁸ Ibid.

⁵⁹ Ibid and Mr Dzikamai Bere, National Director for the Zimbabwe Human Rights Association.

6.2 No clarity on how to deal with specific atrocities

Although the NPRC's strategic plan identifies clear goals and strategic pathways for the achievement of those goals, the Commission does not have a publicly known strategy or approaches for addressing atrocities that took place in specific conflicts. For instance, as part of implementing its strategic plan on truth telling, legislative and policy recommendations, the NPRC should have by now developed and tabled before Parliament, solid policy proposals on approaches towards dealing with the *Gukurahundi* atrocities, the 2008 election violence atrocities, the violations associated with the land reform, amongst other key conflicts. For example, those approaches could include proposals on criminal prosecutions, conducting truth telling sessions and providing reparations.

Although in April 2018,⁶⁰ the NPRC made attempts to engage stakeholders on how to address the *Gukurahundi* atrocities, those attempts failed mainly because of limited survivors' confidence in the NPRC (as alluded earlier), but also because the process was taken over by the government and the NPRC was relegated to the side-lines. For example, as captured by the Zimbabwe Broadcasting Corporation⁶¹ it is the President (instead of the NPRC) who is leading engagements with civil society in Matabeleland, purportedly to develop a plan on addressing the issues arising from the *Gukurahundi* atrocities.

7. RECOMMENDATIONS

In light of the foregoing discussion, the below are proposed as recommendations to be considered by the Legislature, the Executive, the NPRC and the National Transitional Justice Working Group.

7.1 Parliament

On the NPRC's Funding

⁶⁰ <https://www.newsday.co.zw/2018/04/nprc-chair-meets-disgruntled-matabeleland-csos/>

⁶¹ <https://www.zbcnews.co.zw/outcome-of-pres-mnangagwa-and-civic-society-meeting-in-byo/>

- i. Implement section 322 of the Constitution by ensuring that sufficient funds are appropriated to the NPRC to enable it to discharge its functions effectively.
- ii. Consider enacting an amendment to section 18 (1) (c) of the NPRC Act in order to give the NPRC the independence to determine whether or not to receive donations without having to consult the Minister. This would remove possibilities of executive interference with the fundraising efforts of the NPRC and enable it to raise the resources necessary to fulfil its functions effectively.

On non-implementation of certain key aspects of the NPRC strategic plan

- i. Implement section 119 (2) and (3) as well as section 235 (1) of the Constitution by summoning the NPRC to appear before Parliament and account on challenges and progress regarding the implementation of its current strategic plan. This is especially important given that the NPRC has a limited tenure under the Constitution and the current strategic plan will be expiring in the next two years.

On protecting the independence of the NPRC

- i. Implement section 119(2) and (3) as well as section 235(1) of the Constitution by calling the NPRC and the Minister of Home Affairs as well as the Vice President⁶² to appear before Parliament or the relevant portfolio committee to account on allegations of executive interference with the work of the NPRC. For instance, the NPRC is reported by the media⁶³ as having expressed frustration over the fact that the Minister tabled their report in Cabinet before the report was tabled in Parliament. There is also a need to inquire from the NPRC on its level of contribution towards the development of the national healing policies being implemented by government, including the policy on the exhumations and reburials of the victims of *Gukurahundi*.

⁶² In his capacity as the Minister responsible for the administration of the NPRC Act.

⁶³ <https://www.newsday.co.zw/2020/10/gukurahundi-govt-snubs-nprc/>

- ii. Consider an amendment to section 253 of the Constitution to allow the NPRC to account directly to Parliament by tabling its reports without having to do so through the Minister. The involvement of the Minister is unnecessary considering that the NPRC has its own fully functional administrative secretariat who can prepare the reports and table them before Parliament. In the political context of Zimbabwe, the involvement of the Minister creates room for executive interference and a negative public perception of executive meddling in the work of the NPRC.

On the non-binding nature of the NPRC's recommendations

- i. Amend section 17 of the NPRC Act to make the recommendations of the NPRC binding upon the executive branch of government. The Constitution is silent on this and therefore, there is room for the NPRC Act to make the NPRC's recommendations binding upon the executive. This is necessary for purposes of enabling the NPRC to discharge its mandate effectively as the driving force behind national healing, peace and reconciliation. In the event that the executive is not pleased with the recommendations, they can take those recommendations on judicial review.

7.2 National Peace and Reconciliation Commission

On the non-implementation of certain aspects of the NPRC strategic plan

- i. The NPRC should leverage on the work that has been done by civil society to document atrocities in Zimbabwe and should use these documents as the starting point for organizing truth telling sessions.
- ii. The NPRC should leverage the presence and willingness of professional health bodies to assist with the implementation of trauma healing for survivors of atrocities and their families. The survivors of some of these atrocities are well documented by civil society and can be identified.

- iii. In collaboration with relevant stakeholders, the NPRC should develop policy proposals on how to address issues arising from each conflict, inter alia: the *Gukurahundi* violence, election violence, the fast-track land reform issues, political abductions, issues which arose from Operation *Murambatsvina*, the 2017 coup and the January 2019 protests.

On protecting the independence of the NPRC

- i. The NPRC should be more assertive to protect its independence and credibility. Whenever there is meddling with the NPRC's work, the NPRC should take bold steps including issuing public statements, seeking judicial review and reporting to Parliament. Such steps would preserve the public reputation of the NPRC as an institution which jealously guards its independence. Silence when the independence of the Commission is being interfered with or when the NPRC's functions are being taken over by the executive only diminishes public and survivors' confidence in the NPRC. This makes it difficult for the public and the survivors to co-operate with the NPRC.

7.3 The Executive

- i. Respect the independence of the NPRC by desisting from tampering with reports submitted by the Commission to the Minister.
- ii. Respect the NPRC's input on the development and implementation of national healing and reconciliation policies.
- iii. Support the legislative and constitutional amendments, outlined above, that are necessary for protecting the independence of the NPRC.

7.4 National Transitional Justice Working Group

- i. Advocate for the legislative and constitutional amendments (identified above) necessary to protect the independence of the NPRC.

- ii. Undertake advocacy actions, including public interest litigation, to protect the independence of the NPRC.
- iii. Engage the NPRC to leverage on the work that has been done by civil society to document atrocities in Zimbabwe, so that this information can be the basis for organizing truth telling programs.
- iv. Engage the NPRC to leverage on the presence and willingness of professional health bodies to assist with the implementation of trauma healing programs for the benefit of the survivors of atrocities and their families.
- v. In the event that the above steps do not bear positive fruits, consider returning to the drawing board. In this regard, the report on the 2012 international conference on transitional justice in Zimbabwe⁶⁴ provides some useful sign posts, including campaigning for the disbandment of the NPRC and its replacement by a truly independent body that is capable of facilitating transitional justice. Steps towards that could include setting-up a parallel truth and reconciliation commission.

⁶⁴ Available at <https://reliefweb.int/report/zimbabwe/international-conference-transitional-justice-zimbabwe-%E2%80%93-conference-report-4%E2%80%93>