



WHAT YOU MUST KNOW ABOUT THE NPRC BILL HB.2. 2017

What is the Background to the NPRC Bill?

On 10 February 2017, the Government of Zimbabwe gazetted the National Peace and Reconciliation Bill [H.B.2, 2017.] (the new Bill) to put the National Peace and Reconciliation Commission (NPRC) into operation and related matters. The NPRC is one of the five independent commissions established by Chapter 12 of the Constitution of Zimbabwe. Section 251 specifically established the NPRC with the mandate to ensure post-conflict justice, healing and reconciliation. To operationalise the NPRC, there must be a law which provides the legal framework for the NPRC to start its work, hence this Bill. The new 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to the National Peace and Reconciliation Bill H.B 13, 2015 (the old Bill) which was gazetted on 18 December 2015 and withdrawn from Parliament in May 2016 following criticism by stakeholders, the public as well as the Parliamentary Legal Committee.

What has changed in the new NPRC Bill?

Not much! The old Bill provided for a Ministerial Certificate that could stop the disclosure of information in public if Minister deemed the information inappropriate. The Commission has no power to go against the Certificate issued by the Minister. The new Bill still provides that if the Minister of State Security, in his opinion, believes certain information to be a threat to national interests, he can issue a certificate to stop the disclosure of such information in public. However, anyone who finds that certificate to be inappropriate can appeal to the Commission, which now has power to set aside or vary the Minister's Certificate. Anyone who disagrees with the Commission's decision can appeal to the Administrative Court. Secondly, the old Bill gave the Commission power to grant amnesty. The new Bill changed the name to pardon and hid the section under Miscellaneous Provisions. Under the new Bill, it is now very clear that the Commission reports directly to the Parliament and that all its reports must be published 30 days later. The Minister is also obliged to make sure that reports to the Parliament are table within 10 days.

What are the weaknesses of the new NPRC Bill?

The new NPRC Bill has four critical weaknesses which threaten the effectiveness of the Commission. These are the lack of victim centredness, interference by the executive in various ways, its deafening silence on gender and the power given to the Commission to grant pardon which in practice is amnesty. Additionally, the new Bill fails to acknowledge that the Commission is established to deal with Zimbabwe's legacy of violence and assist society to build a more peaceful and just society.

What do we mean when we say the new Bill is not Victim Centred?

We mean that the Bill will create a Commission that will not do much for victims hence the probability that it will fail in its national healing mandate is very high. Although 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 omission creates a gap which exposes victims and

survivors and leaves out 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 NPRC 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.

Why is there a need for a victim support and rehabilitation section in the new Bill?

Generally the section must, among other principles, oblige the Commission to develop comprehensive regulations to support victims and survivors. This includes:

- Establishing a Victim Support and Rehabilitation Committee,
- taking appropriate measures to reach out to victims and survivors
- 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 the mandate given to the Commission in section 252 (e) and (j),
- taking appropriate 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,
- taking appropriate steps to provide protective, legal, psycho-social and logistical support services to victims during the periods in which victims are involved in activities of the Commission.

A comprehensive set of principles on victim centeredness has since been submitted together with the main analysis to the Parliament. The main report is available from NTJWG secretariat on request.

In what way does the new Bill allow for interference with the Commission?

Ministerial Certificate

Firstly, the ministerial certificate is in itself an interference with the Commission. The 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 of 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.

Staffing

Section 13 of the new Bill 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 NPRC 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 12 Commissions. The NTJWG Minimum Standards state that the NPRC must be allowed to develop its own recruitment policy for its secretariat. It further states that it will be a violation of the NPRC's constitutional independence for any organ of the state or another body to try to influence who will serve the Secretariat of the NPRC.

Ministerial Approvals

The new Bill creates a Commission which lacks administrative and financial autonomy. 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 independent Commissions. 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 where administratively the Commission will need executive support. The same must apply to regulations of hiring of staff. The Commission must also be empowered to make independent budgetary decisions including seeking funding from foreign entities

What does the new Bill Say About Amnesties?

The new NPRC 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 is hidden under Miscellaneous Provisions whereas the old Bill had this provision in Section 3 (2) (c) giving the Commission power to recommend amnesty. In essence, the new Bill is trying here to smuggle in the issue of amnesties tarnishing it under 'pardon'.

Why is Amnesty/Pardon Undesirable?

Amnesties are prima facie in violation of international law and promote impunity and recidivism. Zimbabwe's past amnesties have been subject to international condemnation. The African Commission on Human and Peoples' Rights 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. It is therefore recommended that the NPRC Bill must never give unchecked power to grant amnesty to anyone.

What are the better ways of handling 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 provisions prioritise the needs of the victims and are not used to promote impunity or reward perpetrators. If the provision on pardon / amnesty is to be maintained in the new NPRC 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, the rules are not in contradiction with the following principles: the rules and principles must be developed in consultation with victim groups, no amnesty must be granted for crimes against humanity, war crimes, sexual crimes, crimes that involve the abuse of children, murder and genocide; past amnesties must be revoked where beneficiaries committed further crimes after benefitting from past amnesties, affected victims must have a say in decisions regarding the granting of amnesties, no blanket amnesties, amnesties can only be decided on a case by case basis.

What does the new Bill say about gender?

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

How Can the new Bill Address the Issue of Gender?

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 among others 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.

What are the other Issues that the Bill Must Address?

The new Bill must make provision on how the media and the public can access the information from the Commission, during and after its work. It must further oblige government entities to make sure all information in their custody required by the Commission is made readily available in line with section 62 of the Constitution. The Bill must also provide for mechanisms for safe archival of the information and material collected by the Commission during its operations. The Bill must provide a clear mechanism for the speedy implementation of the recommendations of the Commission.

What can the public do now?

Firstly, the public can write to the Parliament of Zimbabwe with their views on the Bill. Write to:

The Clerk of Parliament- Attention: Portfolio Committee on Justice Legal and Parliamentary Affairs; Thematic Committee on Peace and Security; Thematic Committee on Human Rights, P.O. Box CY 298, Causeway, Harare; Or email: bills@parlzim.gov.zw

Secondly, the public can also attend the Public Hearings on the NPRC Bill. All information is tabled below.

Date	Place	Venue	Time
13 March	Victoria Falls	Chinotimba Hall	9am
13 March	Masvingo	Civic Centre Hall	10am
14 March	Bulawayo	Large City Hall	10am
14 March	Mutare	Mutare Civic Centre Hall	10am
15 March	Plumtree	Plumtree Town Council Hall	11am
15 March	Marondera	Mbuyanehanda Hall, Dombotombo	12noon
16 March	Gweru	Gweru Civic Centre	12noon
16 March	Bindura	Tendai Hall	1pm
17 March	Chinhoyi	Cookesy Hall	12noon
10 March	Harare	Ambassador Hotel	10am

Can NTJWG Assist?

NTJWG Stakeholders will be present in all the provinces. Get in touch with us in the details below for information on information centres close to you. Our coordinators will be able to give you all the information you need about the process, give you the NPRC Bill, the detailed analysis, as well as explain to you what the Bill means. If you have problems accessing the Parliament, our Coordinators will gladly receive your submissions for onward submission. Meanwhile, please keep a tag on our social network pages for the latest developments regarding the NPRC Bill. You have the right to know, and to participate!

This factsheet is produced by the National Transitional Justice Working Group.
If you would like to distribute our material, please feel free to get in touch with us at :
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