

Is Zimbabwe Ready for an Effective Truth, Justice, Healing and Reconciliation Process?

How Much Do Zimbabweans Know About the National Peace and Reconciliation Commission (NPRC)?



**A Snap Survey by Heal Zimbabwe
Trust**

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1. Introduction

Heal Zimbabwe conducted a snap survey in March 2016 to establish the level of knowledge among the Zimbabwean populace regarding the National Peace and Reconciliation Commission (NPRC) as the government designs enabling legislation that operationalizes the commission. The study was prompted by the government's embarking on public consultations for the NPRC Bill without having raised awareness about (i) the constitutional functions of the NPRC and (ii) providing the draft national healing legislation to the public before any soliciting for public views. The NPRC is constitutionally mandated to facilitate national peace, healing, reconciliation and integration in Zimbabwe. This justifies the importance of assessing the extent to which people know or understand the existence of the country's healing mechanism firstly in the constitution and secondly as an issue before parliament.

Research participants were randomly selected during Heal Zimbabwe public meetings and non-HZT platforms. Deliberate efforts were made to collect responses from diverse communities and groups to improve the representativeness of the sample. A total of 230 people from 6 provinces, participated in the study. The study found out that 79% of the participants did not know about the NPRC or ever remember getting information about the existence of the NPRC draft Bill –gazetted on the 18th of December 2015.

2. Knowledge about the National Peace and Reconciliation Commission

Most Zimbabweans hardly know about the constitutionally provided Independent Commissions (Chapter 4 of the Constitution) which makes it difficult for them to seek justice and reconciliation in a more informed way. Only 54% of 189 participants indicated that they have ever heard about the National Peace and Reconciliation Commission. Among the participants who said they once heard about the NPRC, most of them were able to demonstrate that they know the duties and responsibilities of the NPRC.

❖ *Have you ever heard about the National Peace and Reconciliation Commission (NPRC)?*

Response	Frequency	Percentage
YES	102	54
NO	87	46
Total	189	100

❖ *If YES, what are the NPRC's responsibilities?*

Most of the respondents were aware of the general responsibilities of the NPRC. These included violence prevention, promoting peace building and reconciliation by educating communities on reconciliation and national healing issues. However, it must be noted most of the respondents gave general responsibilities that do not necessarily fall under the commission and without elaborating on the specific responsibilities for the commission. Some of the responsibilities wrongly attributed to the NPRC by participants are constitutionally provided for under the Zimbabwe Electoral Commission, the Judicial Services Commission and the Zimbabwe Human Rights Commission. This further buttresses the idea that the majority of the citizens are not aware of the responsibilities of the NPRC and its difference with other Commissions established in the Constitution.

❖ **Would you like to see the NPRC operating and why?**

All the respondents acknowledged that they would like to see the NPRC working, albeit for various reasons ranging from its constitutional responsibilities of promoting reconciliation, healing and integration to issues beyond its mandate such as policing politicians from abusing their offices and fanning violence in the future. Relevant reasons for favouring the NPRC operation cited by participants included the promotion of peace, assisting warring parties or groups to forgive each other, promoting unity, reducing and preventing violence, bringing out the truth on past violations and raising awareness on human rights violations. Most of the respondents highlighted the importance of the NPRC citing that the commission have an obligation to bring unity, promote peace, ensuring that the truth comes out on past violations, raising awareness on human rights violations, promoting reconciliation.

3. Level of Knowledge about the NPRC Bill Gazetted in December 2015

❖ **Have you ever heard about the NPRC Bill?**

Response	Frequency	Percentage
YES	68	36
NO	121	64
Total	189	100

The survey results show that only 36 percent of the respondents heard about the NPRC Bill whilst 64 percent of the respondents highlighted that they never heard about the Bill. These statistics indicates that most of the general citizens were not aware of the NPRC Bill at the time the government was planning to roll out its thinly spread consultative meetings on the Bill. Lack of awareness campaigns and information dissemination across the country has been the major challenge to the NPRC processes. This means the government did not raise awareness with regard to the commission and the NPRC bill. As such, the results expose the government’s incapacity, failure and lack of sincerity in the reconciliation process.

	<i>If you heard about the Bill, have you seen a copy of it?</i>		<i>If you saw the Bill, are you aware of the contents of the Bill?</i>	
Response	Frequency	Percentage	Frequency	Percentage
YES	27	39.7	27	100
NO	41	60.3	0	0
Total	68	100		

Of the 68 respondents who had heard about the NPRC bill, only 39.7 percent of them acknowledged to have seen the bill whilst 60.3 percent highlighted that they had not seen the bill. All the respondents who saw the bill are aware of its contents. This study assumes that the slump in the number of people who are aware of the NPRC bill can be attributed to the lack of government commitment in the reconciliation process. Civic Society organisations might have also thinly spread their interventions, resulting in few populations accessing information about the NPRC Bill and actually participating in the processes relating to the NPRC.

4. People's Expectations to the NPRC

❖ *What important issues should be included within the reconciliation framework?*

All the respondents had high expectations regarding the NPRC. Some respondents highlighted that they expected the NPRC to raise awareness and educate citizens on justice, peace building and conflict prevention as part of its work. Other respondents wanted the NPRC to be able to ensure that the “police should be there to maintain order and enforce justice,” rather than being partisan when executing their duties. The NPRC must ensure that the structures are decentralised to districts or ward level such that the services might be accessible by all the citizens of Zimbabwe. The respondents highlighted that they hoped to see a functioning NPRC that is neutral and sincere in the reconciliation and healing of Zimbabwe through truth seeking, truth telling and reparations. The respondents highlighted that the NPRC must at all cost protect victims and witnesses from victimisation by perpetrators of violence. The respondents also highlighted that the NPRC should incorporate traditional peacebuilding mechanisms of reconciliation.

There were also demands for public education at grassroots level about the NPRC and its responsibilities, how it will interact with the victims and perpetrators. In addition the respondents highlighted that the NPRC must ensure that people are conscientised about their rights and freedoms to allow meaningful participation. The respondents indicated that the NPRC must combat tribalism and ethnic differences by promoting cultural tolerance and diversity. The respondents also said they anticipated to see an NPRC that is gender sensitive.

5. Issues that Could Affect Participation in Reconciliation Consultative Processes

❖ *What issues could affect participation in reconciliation processes?*

All the respondents expressed concern about public participation on the NPRC processes. They indicated that most citizens may not participate in consultative processes due to lack of knowledge by the citizens, disturbance from political parties, politicisation of the process, lack of awareness on the part of communities, poverty, partisan individuals leading the process and fear of the unknown. All the respondents expressed concern about the possible interference of politicians and political parties in the NPRC consultative processes. Findings confirmed that history has taught Zimbabwean citizens that political leaders' interference affects public participation in the reconciliation processes largely because most of them are perpetrators of violence or once victims of the same¹. This in turn leads to lack of trust in the whole NPRC consultative processes.

¹ Ngwenya, D and Harris G. (2015) The consequences of not healing: Evidence from the *Gukurahundi* violence in Zimbabwe Vol, 15 (2) pp35 – 53

6. Preferred Information Source about the NPRC

❖ *How do you want to be informed about the NPRC activities?*

Response	Frequency	Percentage
The NPRC itself	116	61.4
District Administrator's Office	7	3.7
Traditional Leader	7	3.7
Councillor	29	15.3
Church	30	15.9
Total	189	100

The majority of respondents highlighted that they preferred to be informed about the NPRC activities through the NPRC itself and these constituted 61.4 percent. This is so because communities believe that only the Commission itself can be trusted to implement reconciliation processes without being partisan or biased. A total of 15.9 percent highlighted that they preferred to be informed about the NPRC activities through the church while 15.3 percent highlighted that they preferred to be informed about the NPRC activities through the Councillor. This clearly shows that the citizens have more trust in the services of the church and councillors compared to traditional leaders and the District Administrator's offices.

The District Administrator and Traditional leaders scored 3.7 percent, the least preference among the listed stakeholders. Of late traditional leaders and district administrators have been accused of being politically biased and in support of the ruling party. Councillors in Zimbabwe are by nature political actors. Many times they have also been accused for being partisan but the fact that they were preferred ahead of traditional leaders means they are generally effective in disseminating information and are trusted by the electorate.

7. Research Conclusion

This snap survey demonstrated that the Zimbabwean people are not well informed about the National Peace and Reconciliation Commission. The NPRC is a crucial vehicle for national unity, peace and development. However, communities and its citizens cannot demonstratively engage in the NPRC processes without being aware of what reconciliation developments, mechanisms and actions are taking place at local and national levels. Awareness raising is vital in the reconciliation process to promote citizenry ownership and active participation.

Communities are in need of healing, reconciliation and integration but they hardly have trust in traditional leaders and District Administrators as sources of information. Preferred sources of information about national reconciliation issues are the NPRC itself, at most, followed by Churches and Councillors. This means grassroots structures are conscious about neutral spaces that can enhance the effectiveness and efficiency of the NPRC processes.

8. Post Survey Developments

There are several developments that took place after this snap survey was conducted and during its time of publication. Most notable national developments were the (i) launching of 17 public hearings on the NPRC Bill (ii) the publication of the Adverse Report of the Parliamentary Legal Committee on the National Peace and Reconciliation Bill, (iii) advocacy

work by civic society organisations on the NPRC and (iv) the subsequent withdrawal of the NPRC Bill from Parliament by the Minister responsible for National Healing and Reconciliation –Vice President Phelekezela Mphoko. The following snippets and excerpts and appendices are pointers to some documentation relating to the aforementioned developments.

a) NPRC Public Hearings –Parliamentary Process

The Parliament of Zimbabwe through the Portfolio Committee on Justice, Legal and Parliamentary Affairs, Thematic Committees on Peace and Security and the Human Rights Committee conducted NPRC public hearings from the 10th – 20th of April 2016. The public hearings were complying on Section 141 (a-b) of the Constitution of Zimbabwe which obliges the Parliament to

- a) facilitate public involvement in its legislative and other processes and in the processes of its committees*
- b) ensure that interested parties are consulted about the Bills being considered by Parliament, unless such consultation is inappropriate or impracticable and*
- c) conduct its business in a transparent manner*

However, the manner in which the public hearings were conducted procedurally and their geographical reach felt far beyond any reasonable men's test. Only 13 meetings were conducted in Kwekwe, Gweru, Victoria Falls, Hwange, Plumtree, Lupane, Bulawayo, Gutu, Masvingo Urban, Mutare Urban, Marondera, Bindura and Chinhoyi. Approximately 1775 people only were reached during the consultative meetings in a country with a population of over 6 million eligible voters. In addition, the choice of venues for the public hearings was discriminatory as it did not give the majority of victims of violence an opportunity to be heard as they were located far away from the affected people. For example, in Manicaland, survivors of political violence from Chimanimani, Chipinge, Buhera, Nyanga, and Mutasa were expected to air their views in Mutare at whose cost? To make matters worse, the choice of venues for the meetings did not pay attention to key historical concerns, for instance, the Bindura public hearing venue was Tendai Hall. The hall, according to participants at the hearing, was used as a torture base during the 2000, 2002, 2005 and 2008 election violence where people were subjected to gross human rights violations.

Poor participation within the targeted communities could have been caused by various reasons including lack of adequate information to the locals about the process and mere cynicism in the NPRC processes. Members of the public who participated in the meetings did not have copies of the Bill. The Parliamentary teams also did not avail any copies prior to the meetings and during the meetings sessions. The public hearings were only publicized at short notice via The Herald Newspaper, and few advertisements on ZiFM and Star FM radio stations (whose signals cannot reach three quarters of the target areas). Few posters were also noted placed within the meeting venues. Countries such as South Africa which carried out similar processes in the form of a Truth and Reconciliation Commission (TRC) in 1995, the hearings were broadcast live on radio and television with members of the public keenly following proceedings. This also allowed active participation of its citizens as the process was extensively advertised in advance through all major media platforms in the country.

Heal Zimbabwe Trust tracked the public meetings and observed that major issues raised by the communities were equal or closely related to those raised in the (i) Adverse Report of the Parliamentary Legal Committee on National Peace and Reconciliation Bill, (ii) the Heal

Zimbabwe Trust Position Paper on the NPRC Bill and (iii) other Civic Society Organisations analyses on the Bill.

b) Withdrawal of the NPRC Bill

The Minister responsible for National Healing and Reconciliation, Vice President Phelekezela Mphoko's Office withdrew the National Peace and Reconciliation Bill from Parliament. On the 10th of May 2016, the Minister of state in the Vice President's Office Tabitha Kanengoni Malinga, indicated that the reconciliation Ministry found it fit to first consider the adverse report by the Parliamentary Legal Committee. She said "*I move to withdraw the NPRC Bill for reasons that after receiving an adverse report on the Bill, the ministry has decided to consider those issues and then we will re-submit the Bill at a later date.*"

The withdrawal of the NPRC Bill was a welcome development as the existing Bill violated the people's rights and expectations for a viable independent reconciliation process. While the ministry responsible for National Healing and Reconciliation considered suggested that it withdrew the Bill to consider the adverse report from the Legal Committee, the Ministry should stand guided by both the constitution and, more importantly, the views of the people of Zimbabwe as expressed during the parliamentary public consultations. The ministry should also expeditiously ensure the commencement of the parliamentary processes leading to the enactment of the law and effective operationalization of the National Peace and Reconciliation Commission.

c) Advocacy work by Civic Society Organisation

Civic Society organisations played a crucial role in raising communities' awareness on the NPRC Bill as well as the role and functions of the NPRC as prescribed in the constitution. To contribute to the broader national healing and reconciliation awareness processes, Heal Zimbabwe conducted 67 meetings in 9 provinces namely, Matabeleland North, Bulawayo, Midlands, Manicaland, Masvingo, Harare and Mashonaland East, West, and Central provinces. A total of 2202 people were reached through public meetings and community peace clubs consultations. Public meetings reached 1126 people while HZT established 67 Community Peace Clubs meetings reached 1076 people. In its consultations HZT made efforts to reach both urban and rural communities. The meetings were held between January and March 2016, coinciding with our Snap Survey. Below is a table indicating areas reached during HZT's consultative meetings.

Activity	Area	No. of people reached
67 meetings with community peace clubs	Mutare, Buhera, Makoni, Chipinge, Muzarabani, Mazowe, Murehwa, Mutoko, Mbire, Zaka, Gutu, Bikita, Tsholotsho, Gokwe South and Gokwe North	1076 (596 males and 480 females)
Public Meetings	Gutu, Chitungwiza, Kwekwe, Chipinge, Chinhoyi, Marondera, Masvingo, Harare and Bulawayo	1126 (552 males and 574 females).
Total	24 areas visited	2202 people reached

Appendix 1: Heal Zimbabwe Trust Position Paper on the NPRC Bill

HEAL ZIMBABWE

Position Paper on the National Peace and Reconciliation Bill



March 2016

Introduction

On 18 December 2015, the government gazetted the National Peace and Reconciliation Commission (NPRC) Bill which seeks to set up the NPRC as per the provisions of sections 251 to 253 of the Constitution of Zimbabwe Amendment number 20 of 2013 (hereafter the Constitution). To enhance public participation and input to the Bill, between January and March 2016, Heal Zimbabwe conducted 13 public meetings and 67 consultative group trainings on the Bill targeting marginalised communities that were most affected by violence and conflicts. A total of 2202 people (1148 males and 1054 females) from nine provinces were reached to gather their views and reactions on the Bill. Therefore, HZT wishes to present views and comments collected, during the consultations, on a number of areas that could undermine the effectiveness of the NPRC and its work.

It is important to acknowledge that the drafting of this NPRC Bill and swearing in of Commissioners shows the government's positive attitude towards operationalizing the NPRC. The Bill ensures gender equality in the position of the Chair and Vice Chairperson and that half of the members of the Commission shall be women. This guarantees the participation of women in some of the highest decision making bodies in the country.

However, the gazetting of the NPRC Bill is consistent with the provisions of the Constitution but not substance. The Bill leaves out fundamental issues that relates to community healing, justice and reconciliation, decentralisation of the NPRC. There is little or no reference to the pillars of transitional justice including (i) truth telling, (ii) restoration, (iii) justice and (iv) reconciliation and (v) memorialisation. Therefore, views in this paper also touches on matters to do with constitutionality and constitutionalism; independence of the commission, impartiality of the Minister responsible for National Healing, protection and respect for the victims' rights; the day to day operations of the NPRC and the ultimate result that the NPRC seeks to achieve. Without paying attention to the below suggested issues, it would be futile to invest so much effort in a Bill that in the end will create an ineffective commission that cannot facilitate dependable and sustainable social cohesion within communities.

1. Context

The Constitution adopted in 2013 provides for the establishment of a National Peace and Reconciliation Commission (NPRC) aspiring to promote national healing, reconciliation and peacebuilding. In response to this constitutional provision, the government gazetted the NPRC Bill on 18 December 2015 to give effect to sections 251, 252 and to 253 of the Constitution. If passed into law, the Bill will provide the legal basis on which the NPRC will implement its mandate. However, HZT believes that in its current form, certain sections of the NPRC Bill are ultra-vires the Constitution and go against the spirit in which the setting up of this body was envisaged.

It is important to note from the outset that Zimbabwe's narrative of violence and conflict since the pre and post-independence eras is overwhelming and requires a holistic approach to address its remnants and effects. Before 1980, the Zimbabwean

populace were subjected to inhuman treatment, torture and perpetual violence by the colonial regime. Piece meal efforts to facilitate reconciliation and healing were made through the Lancaster House agreement which led to Zimbabwe's independence. Furthermore, the post-independence era was marked by several episodes of organised violence including the Gukurahundi massacre where reportedly close to 20 000 civilians were killed. There can be no dispute to the widely documented atrocities, torture and human rights violations that have been attendant on Zimbabwe's public sphere especially around the electoral periods in 1990, 2000, 2002, 2005 and 2008. These violations have not been addressed at a national level except in few instances where victims have demanded justice. In most instances victims have walked out more aggrieved due to the insensitivities of the justice system and the failure of the government to acknowledge the special circumstances most of these victims especially women and children find themselves in.

The latest attempt to tackle the legacy of past human rights violations in Zimbabwe was through the 2008 Global Political Agreement which established the Organ on National Healing Reconciliation and Integration (ONHRI). The ONHRI can be credited for commencing the conversations on what mechanisms are required to address past violations. Beyond that conversation, the record of the ONHRI is unsatisfactory. HZT notes that any process that seeks to deal with Zimbabwe's past history of human rights violations will have to be comprehensive, inclusive of all stakeholders and should address key transitional justice issues namely; truth telling, reconciliation, justice and restoration.

2. HZT Public Meeting Outreach Views

The following are HZT's specific observations on the NPRC Bill. These views are mainly informed by past and current consultations organised by HZT from all 9 provinces namely, Matabeleland North, Bulawayo, Midlands, Manicaland, Masvingo, Harare and Mashonaland East, West, and Central provinces. A total of 2202 people were reached through public meetings and community peace clubs consultations. Public meetings reached 1126 people while HZT established 67 Community Peace Clubs meetings reached 1076 people. In its consultations HZT made efforts to reach both urban and rural communities. The meetings were held between January and March 2016. Below is a table indicated areas reached during HZT's consultative meetings.

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Total		2202 people reached

The analysis and observations of the NPRC Bill will be less legalistic, as the views contained are an attempt to package and present concerns and views expressed by victims, their families, survivors and other stakeholders for grounding in lived realities the need for an acceptable, lawful and constitutional NPRC Bill. The participant's views in this paper were gathered from both ordinary citizens, key informants and people who have been affected in different ways by Zimbabwe's past history of human rights violations from the time the organisation was established in 2008.

For ease of reference, the views gathered from the communities are categorised into two (3a) submissions dealing with the text of the NPRC Bill, and (3b) submissions that HZT considers essential to be part of the NPRC Bill

3. Specific clauses in the Bill

i) Limited Investigative Powers of the Commission

The NPRC is given specific mandate to carry out investigations in section 7 of the Bill. However, there are claw-back clauses which seem to want to have the effect of pulling the rug off the feet of the NPRC's intended functions. For example, section 7(1) notes that the NPRC has to advertise in a Government Gazette or national newspapers of its intention to investigate at least 14 days after the notice and no later than a month after the notice. This is counterproductive. On face value, it appears this clause is meant to serve as a whistle blower of sorts to alleged perpetrators making it easier for them to conceal and prepare/rehearse for the investigations. The provision also limits the number of cases that could be heard by a commission because of the number of days that should be given before instituting an inquiry. HZT recommends that this clause be struck off this Bill as it gives investigative powers to the NPRC with the right hand and takes them away with the left.

ii) Independence of the Commission

Section 8 (7) of the Bill, gives the responsible Minister unlimited powers over the operations of the NPRC. This section gives the responsible Minister Powers to *issue a Certificate* regarding the disclosure of evidence or any documentation associated with such if he deems it contrary to public interest. According to the Bill, the public interest is enunciated as affecting matters related to (national defence; external relations; internal security and the economic interest of the state). This proscription is too wide and borders on paralysing the work and independence of the constitution against Section 235 (1a) of the Constitution which states that "independent commissions are not subject to direction or control of anyone". Section 235(3) also states that "no person may interfere with the functioning of independent Commissions." Therefore, this clause would be *ultra-vires* the constitution. It may also be offensive as to render the Minister guilty of breaching section 8(13) "c and d" of the same Bill which proscribes anyone from "discouraging and dissuading" the NPRC from carrying out its constitutionally mandated duties.

Upon issuing a Certificate, the Bill states that the Commission will hear the case in a closed hearing. This militates against the spirit of transparency and public dialogue which the Commission is expected to facilitate.

On this particular issue, HZT recommends that the clauses protecting the security of the state must be clearly outlined. The extent to which the NPRC can investigate reported cases should be consistent with the constitution and not furthering impunity under the guise of national security and protecting state secrets. Wide discretion and interpretation of national security interests would undermine justice and reconciliation efforts.

Furthermore, the Bill does not offer any alternative in the event that the concerned Minister has vested interests in the case put before the commission. HZT therefore, argues that this role of issuing certificates should entirely rest in the powers of the Commission itself because if done by the Minister, it amounts to interference with the functioning of a commission consequently violating Section 235 of the Constitution.

The above clause has the ancillary effect of negatively affecting the good intention of establishing the truth. If the Minister's powers are left unchecked with regards to investigations it means the possibility of getting quality confessions and other revelations will be critically diminished as most information can then become classified easily.

iii) Ministerial interference with appointments to the NPRC (Commissioners and Secretariat)

HZT is approaching the above matter on two fronts. Firstly, the text in the NPRC Bill is incongruent with the text in Section 235 -237 of the constitution with regards to how Commissioners and even the Secretariat of the NPRC are appointed and removed from office. Genuine concerns exist, that the current text in the Bill might have been deliberately crafted to have the Minister be responsible to appoint Secretariat staff so that the secretariat staff at the ONHRI can be transferred to the NPRC. This compromises Section 234 of the constitution which empowers the Commission to employ its own staff and regulate their condition of service.

More disquieting is the fact that the Minister as outlined in the Bill is vested with powers to appoint among others civil servants as part of the NPRC secretariat; the Chief Executive Officer and the Secretary of the NPRC. This position questions the independence of the NPRC since it cannot recruit or appoint its own secretariat. It is our submission that the Minister and the Civil Service Commission can only give guidelines on recruitment, and administrative management of staff. This is consistent with section 234 of the Constitution which gives independent Commissions power to employ staff and, subject to the law, to regulate their conditions of service.

iv) Limited tenure of office for Commissioners

Section 3(1) of the NPRC Bill states that a member of the Commission shall be appointed for a term of 5 years upon which the President has powers to terminate or renew. The provisions in the Bill are unconstitutional in this regard. HZT believes that tenure of office for commissioners must be guided by the constitution as is the case with the appointment of judges as provided under the Constitution 237(3) of the Constitution. Section 237 (3) of the constitution already sets out the procedure of Commissioners removal as that judge removal. In addition, Section 237(2a-d) states the reasons causing removal of Commissioners. Therefore, the constitution must be followed in this regard. Furthermore, given the 10 year life span of the Commission itself and the task at hand, appointing commissioners once will improve efficacy and ensure continuity in fulfilling the NPRC mandate. The NPRC cannot be inundated with appointment and disappointment of Commissioners or any staff at the expense of fulfilling its mandate.

v) Limited powers of the Commission.

Section 9(1) of the Bill notes that the NPRC will report to the Minister and give recommendations on its findings after investigations. However, in the constitution section 235 is clear that the NPRC is accountable to Parliament. The NPRC like any commission will submit its report to Parliament through minister responsible not to the minister responsible under section 323 (1) of the Constitution. These differences point to a divergence from the constitutional provisions enunciating where the Commission's accountability lies. It dilutes the powers of the NPRC by placing it under the direct control of the responsible Minister.

This situation is unacceptable both at law and in practice. The NPRC cannot carry out investigations and then give their recommendations to a political appointee in the Executive when there are other bodies such as the Police and the Prosecutor General who can expedite the recommendations if they have to deal with justice delivery faster and more efficiently. Where there are other recommendations concerning other pillars of transitional justice the recommendations can be directed to specific offices and the responsible Minister kept duly informed.

Furthermore, a closer look to the Bill shows that the Minister's powers are gradually increasing as the Bill unravels. First he is able to appoint staffers of his choice to the Secretariat, he can issue certificates barring investigations and now in this clause he has to be given recommendations which he/she according to section 9 (2b) of the Bill "shall deal with in any manner that the Minister deems necessary in the circumstances". Such open and ambiguous statements add to the further entrenchment of the Ministers' powers in placating the work of the NPRC. The powers conferred to the Minister in Clause 9 gives the Commission the responsibilities of investigations and making recommendations to the Minister only which is contrary to functions of the Commission stipulated in Section 252 of the constitution.

HZT recommends that the reporting and accountability procedure for the NPRC be laid out clearly and consistent with the Constitution such that the NPRC does not have to report directly to the Minister. The Minister should be able to get reports from the NPRC and pass them on or act on them without alterations. The fact that the

Minister is only mandated to deliver reports to Parliament after one year does not augur well for efficiency and the pursuit of justice. The NPRC must be left to carry out its work; producing regular reports on its investigations and sharing them with relevant authorities as and when the NPRC deems fit in furtherance of its mandate.

vi) Funding of the Commission

It is critical that for any Commission to function there has to be enough funds for the Commission to meet and the Secretariat to establish its functions at an administrative and programmatic level. The text of the Bill seems to suggest that the NPRC will receive adequate funding from the Treasury and Parliament yet in the current 2016 budget, the Ministry responsible for reconciliation only received \$200 000. Moreover, judging from the operations of past Commissions it is clear that it might not be possible for the NPRC to operate efficiently with funding from Treasury only. The fact that the Bill takes note of this and makes room for donations and grants from any other government bodies is welcome. However, the claw-back clause which gives the responsible Minister power to approve the acceptance and use of the external funds is problematic. HZT believes that it cannot be left to the Minister's whims to regulate what is clean, safe and good money. This function should be left to the Commission so that they are able to raise adequate funds from other external sources taking due notice of national regulations on money laundering, seeking funds from banned organisations, criminal institutions etc.

vii) Interactions with victims – Receiving complaints

The Bill does not indicate or acknowledge the mode of communication and type of languages that will be used as the Commission proceed with investigations. The NPRC Bill needs to acknowledge in its text the diversity of Zimbabwe's languages and note that victims will be allowed to give evidence in a language of their choice and interpreters will be made available. Language barriers should not be underestimated as the issue will arise at some point.

In addition, the Bill also notes that any affected individuals may write the Commission to file complaints. The Bill does not however give any other alternatives. It is not clear whether there will be room for transcribers and complaints being recorded by the staff of the NPRC. There can be no presumptuous conceptions that overestimate the literacy of the complainants and thus all measures have to be built into the structure of the NPRC Bill before it becomes law.

viii) Protection of victims/witnesses

The Bill in section 8(13) provides for protection of any persons associated with the investigation. However, there is a real possibility that the provisions of the Bill as they stand may fail to protect the victims. For example the provision for advertising the intention to investigate might put already victimised people into more trouble especially vulnerable groups such as women and children. Heal Zimbabwe; therefore, recommend the inclusion of mechanisms that protect victims and witnesses from accused perpetrators be they private individual or state security personnel. Removing a provision that allow advertisements before conducting an investigation is one such a solution.

ix) Threatening Prosecutorial language

The criminalisation of the actions of people summoned to appear before the Commission has the potential of instilling fear in the victims of past injustices. Section 8(11a and b) makes use of language that criminalises some actions associated with the investigations such that it deters the victims from taking part in investigations, even as witnesses. However, given the time frame taken to deal with national peace and reconciliation issues, some evidence is likely to have been interfered with, forgotten, distorted and even destroyed. In addition, witnesses may not have to be forced to answer questions on the ground that they may incriminate themselves which is regarded as due process at law.

Therefore, HZT recommends that the NPRC Bill must not criminalise actions that are before the Commission, but rather deal with actions after the investigations given the time that the violations took place. It should be clear on what constitutes true or false evidence by the commission. Any criminalisation of witnesses and complainants reduces the propensity of victims (most of whom cannot afford legal aid) to report their cases. The Bill may also need to include provisions that guarantees unconditional legal support for victims (complainants) and witnesses.

x) Early Warning System Architecture

The Bill, in its current form does not guarantee non-recurrence of acts of violence. This guarantee should be accompanied with violence and conflict detection mechanisms as stated in the Constitution, Section 252 (g-h. Section 252g states that the commission should "develop mechanisms for early detection of areas of potential conflicts and disputes and to take appropriate preventive measures." Therefore, the NPRC Bill should clearly state how the Commission is going to establish an effective Early Warning System from the national to community levels. Absence of mechanisms to deal with recurring violence or violence in future is contrary to provisions of the Constitution.

3B. Considered Omissions in the NPRC Bill

i) The power to initiate investigations

The Bill does not in any of its text refer to processes or the power of the NPRC to initiate investigations. It is a well - known fact that some of the most egregious violations of human rights occurred in remote areas where victims might have been frustrated so much they will not be interested in taking the initiative of writing the NPRC. In this regard, it will be important for the NPRC to have such express powers to initiate investigations and take justice to victims and survivors doorsteps.

In the same vein, the NPRC should also be given express power to first enforce the publication past commissions' reports and implementation of their recommendations; the Dumbutshena Commission and Chihambakwe Reports and the Tibaijuka report on Murambatsvina, for example. This means the Bill should oblige the Commission to not only wait to receive complaints but to investigate cases which they already know or have researched on.

ii) Decentralisation of the NPRC process

The NPRC Bill does not make mention of any attempts or plans to decentralise its functions to the lowest level of communities (provincial, district and ward levels). There is need for representation of the NPRC from the highest to the lowest levels of society so that a thorough healing and reconciliation process is undertaken.

iii) Engaging the diaspora community

It is important to acknowledge the large diaspora community resident outside Zimbabwe either for economic or political reasons needs to be engaged on matters concerning violations that occurred in the past. Whereas this part of the Zimbabwean community and their grievances reportedly remain sensitive they will need to be consulted if the country is to heal and reconcile completely.

iv) Pillars of Transitional Justice

The pillars of Transitional Justice vital to any peace and reconciliation process are not mentioned in the NPRC Bill. The issues of trauma healing, truth telling and restoration being the major thrust of healing and reconciliation are not expressly mentioned in the Bill. The NPRC Bill seems to be placing more emphasis on investigations and prosecutions while failing to address the past. In dealing with the past, there are spaces where traditional peace building mechanisms that already existing in communities can be employed. This is in line with HZT's realisation in the course of carrying out its mandate that some communities are more interested in hearing the truth rather than investigations and prosecution. The NPRC Bill must therefore expressly state that it seeks to deal with the past and facilitate truth telling as provided by the Constitution.

v) The NPRC's unexplained relationship with the police and prosecuting authorities in Zimbabwe

A point related to the issue of investigations concerns the silence in the Bill on how the NPRC will have linkages with the police and prosecuting authorities in Zimbabwe. Only section 8(d) mentions that the NPRC may request the assistance of the police in carrying out investigations. This point could be protected further in the Bill by making it obligatory for the police force to assist the NPRC in its investigations were deemed necessary. Leaving the section vague like this will definitely not yield results when dealing with a police force that usually does not have vehicles, enough lab technicians to carry forensic investigations and many other tools needed for the trade. In addition, the police are known for being unmilling to cooperate with victims and survivors of violence to investigate past reports of violations.

In relation to the security forces, the Bill is not clear on how it will handle violations attributed to security organs such as the police, army and the central intelligence. HZT recommends that this section be outlined clearly on what relationship and authority does the NPRC has over the police and army because already there is a clause which allows the Minister to veto investigations over issues of national security through a mere Certificate.

vi) Recognition of Civil Society Oversight Mechanism

Nowhere in the Bill is the oversight role of Zimbabwe's civil society mentioned with regards to the work and functions of the Commission. Civil society organisations can play a key role in making sure that victims, their families, survivors and other stakeholders are properly organised when it comes to engaging such bodies as the NPRC. Although there are various mechanisms such as the Auditor General overseeing and auditing the finances of the Commission; the regular reports to Parliament through the Minister, there is every need for an officially recognised process where different civil society groups have access on a regular basis to the Commission. Civil Society Organisations bring a huge value to the Commission given their wide reach to marginalised communities and their cross-sector interventions. Therefore, their official inclusion and involvement in the NPRC could amplify the work of the NPRC. In South Africa, the Truth and Reconciliation Commission acknowledge the role of civil society and the media as very crucial in the healing process. Therefore, Zimbabwe can also benefit from this lesson by adopting a similar stance.

vii) Scope of investigations on economic and sexual rights violations

The scope of investigation in the Bill does not include economic and sexual rights as part of violations that will be investigated by the NPRC. In fact, the Bill does not provide a list and definition of violations that will be investigated or be considered by the NPRC during its lifespan. Reconciliation laws in Nepal, Sierra Leone and South Africa actually stipulate the nature of violations that were intended for investigation. This could be also important for Zimbabwe to avoid legal insufficiency and miscarriage of justice during the operations of the NPRC.

HZT gathered from community leaders all over the country that it would be more preferable to have such violations as sexual crimes against women in a political conflict context; economic crimes perpetrated by individuals and financial institutions during the Zimbabwe dollar era and the turnover to the multi-currency regime and or the government be clearly specified so that they receive special treatment in line with the more obvious rights violations such as torture, assaults, arson etc.

While Section 252 of the constitution does not specifically include economic crimes and violations against women as part of the NPRC functions, Section 321 (1) of the Constitution allows an Act of Parliament to confer additional functions on a Commission. Therefore, HZT recommends that the NPRC functions be expanded with specific mention of crimes committed against women, and economic crimes.

viii) Acknowledgement of the need to use Zimbabwe's traditional justice systems in peace and reconciliation by the NPRC

There is every need for the NPRC Bill to acknowledge the sheer potential that sits with Zimbabwean traditional justice systems in reviving reconciliation and peace in Zimbabwe. The absence of this acknowledgement is disconcerting for HZT. It is acknowledged that traditional justice mechanisms at times go against the spirit of international human rights violations. However, it is also quite true that in other countries such as Rwanda, Uganda, and Kenya and far afield as the South

Americas, traditional justice systems particular to those societies have been used to achieve justice, reconciliation and peace. HZT enjoins the drafters of the NPRC Bill and all stakeholders to consider making Zimbabwe traditional justice mechanisms part and parcel of the mechanisms to be used by the NPRC. Section 282(e) of the constitution stipulates that traditional leaders can “resolve disputes amongst people in their communities in accordance with customary law.” HZT has over the years built the expertise and knowledge around this area and would be more than willing to share with any parties interested especially the NPRC Commissioners and its Secretariat.

ix) Justice

The Bill does not address the different justice mechanisms that will be provided to the victims and survivors whose rights were violated. It will be prudent for the healing regulation to stipulate standard measures and remedies in terms of sentence or compensation for those found guilty of having committed violations in the past. This will also prevent selective application of justice and corruption when administering justice. It is international best practice to stipulate remedies that facilitate universal justice and healing. Therefore, the Bill must stipulate justice mechanisms and standard remedies which should be followed when addressing specific violations.

4: Conclusion

HZT acknowledges the NPRC Bill as a necessary step towards reconciliation and national healing. However after consultation with our constituents across the length and breadth of Zimbabwe we are inclined to reject the Bill in its current form and call upon all stakeholders to reconsider more importantly issues around the independence of the NPRC; the protection of victims and witnesses' interests; and the guarantees to decentralise the work of the NPRC to remote areas in Zimbabwe to ensure every Zimbabwean interested is reached. Most important the NPRC will have to acknowledge the uniqueness of Zimbabwe's traditional justice mechanisms and how they can be used officially at a national level as a tool to assist with reconciliation. HZT will therefore; continue to work with all stakeholders in ensuring the realisation of an acceptable NPRC Bill in order to ensure that peacebuilding and national reconciliation efforts meet expectations of the people of Zimbabwe as enshrined in the Constitution of the country.

-End-

**Appendix 2: Adverse Report of the Parliamentary Legal
Committee on National Peace and Reconciliation Bill**

**ADVERSE REPORT
OF THE
PARLIAMENTARY LEGAL COMMITTEE
ON
NATIONAL PEACE AND
RECONCILIATION BILL [H.B. 13, 2015.]**

In pursuit of its Constitutional mandate as provided for in Section 152 of the Constitution, the Parliamentary Legal Committee (hereinafter referred to as “the Committee”) on the 24th of February 2016 at 1045hrs met to consider the National Peace and Reconciliation Bill [H.B. 13, 2015]. After deliberations, it unanimously resolved that an adverse report be issued in respect of the Bill, gazetted in the month of January 2015, due to the following considerations:—

1. Clause 3 National Peace and Reconciliation Commission:

Clause 3 (1)

The clause states that “a member shall hold office for such period, being not more than five years”. The interpretation of that clause suggests that the President is able to remove a member from office before the 5 year tenure which contravenes section 320 (1) of the Constitution which reads that, *except otherwise provided in this Constitution, every member of a Commission is appointed for a term of five years which is renewable for one additional term only*. Accordingly, there is no discretion on the part of the appointing authority to remove a member from office before the prescribed office tenure of 5 years, unless the member resigns or removed from office on the grounds provided for in section 237(2) as read with subsection (3) of that section.

Further the reappointment procedure set out in clause 3 (1) suggests that there is automatic reappointment without having to go through the procedure set in section 237 of the Constitution. This contravenes section 237 of the Constitution as read with section 340 of the Constitution which sets out the appointment procedure of members of Independent Commissions. The re-appointing powers of the appointing authority in section 340 does not suggest that the procedure laid out in section 237 will be abrogated.

Clause 3 (6),(7) and (8)

The Committee on Standing Rules and Orders and the Judicial Service Commission are being given powers to review performance of the members of the Commission and the Chairperson respectively, who wish to be re-appointed on the expiry of five years. The clauses are unconstitutional in that the two institutions are being conferred with more powers than what the Constitution provides for them in section 251. The Committee on Standing Rules and Orders cannot as a matter of principle exercise powers of performance appraisal of Commissioners, when in fact it has the mandate of interviewing and recommending suitable candidates to the President in terms of section 237. It is through this process that a Commissioner wishing to be re-appointed could be re-appointed. The constitutional mandate of the CSRO in this Commission and all other Commissions is clearly laid out in section 237 and 251(1) (a) (in relation to this Commission).

The Judicial Service Commission is in terms of section 251(1)(a) consulted by the President on the appointment of the Chairperson of the Commission, and advises the President on the removal of a

member of the Commission from office in terms of section 237(3) as read with section 187 of the Constitution. Therefore, simply reviewing performance for purposes of re-appointing as envisaged in clause 3(6) to (8) is unconstitutional.

2. Clause 6 Functions of the Commission

Clause 6(1) (b) is in violation of Section 252(b) of the Constitution which sets out the functions of the Commission. It purports to limit the functions of the Commission to only producing a report and making recommendations to the Minister instead of implementing their mandate as bestowed by the Constitution. The Bill must allow the Commission to “develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of dispute”, as provided in section 252. The Committee is of the view that Clause 6(1) (b) must be deleted. Further the additional functions of the Bill to the Commission should add on rather than limit what the Constitution has given the Commission.

Clause 8 Manner of Conducting Investigations

The clause empowers the Minister to issue a “Ministerial Certificate” that the evidence to be adduced during a hearing is contrary to public or economic interests whereupon such evidence is to be heard *in camera*. Issuance of Ministerial Certificates and conducting closed hearing means there is no way to tell if justice was served based on that evidence. The provision is similar to provisions of Section 296 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], which states that a Minister may prevent the disclosure in criminal proceedings of evidence which the Minister considers would prejudice State security. This may appear to be a necessary provision with the intention of protecting the State but on the other hand it infringes on the rights to administrative justice and right to fair hearing, section 68 and 69 respectively. These rights are fundamental in administration of justice which the Commission has to adhere to in order to execute its constitutional mandate.

Feltoe G, in his book, “*A Guide to Administrative and Local Government Law in Zimbabwe*”, highlights the fact that evidence excluded due to a State privilege claim in a civil matter may be vital to the proof of the claim. In a criminal case, even more drastic consequences can occur because the excluded evidence may be pivotal to the successful advancement of some defence and thus an accused might be convicted, whereas if the evidence had been available, he might have been acquitted.

The Committee is of the opinion that the certificate must be obtained by the Minister in charge of Security and Defence or any other Minister who claims that the evidence qualifies for a Ministerial Certificate, and such issuance must be subject to judicial review. The relevant Minister must approach the Courts where he feels that there is evidence which should be heard in camera. The Court has the safety valve of judicial review as they are allowed to take a judicial peek and decide whether the evidence is indeed harmful or not.

This approach was also crystallised in *Ngaru v Chief Immigration Officer* [2004] ZWSC 26. In that case the Minister of Home Affairs had issued a Ministerial Certificate that it was not in the public interest to disclose the reasons why the applicant's husband could not be allowed to stay in the country as he was deemed to be an undesirable inhabitant of or visitor to Zimbabwe. The court's final decision was that the Minister come before the court and cite his reasons for non-disclosure to the court *in camera* so that the court could reach a decision.

3. Clause 9 Report and recommendations to Minister after investigation

The provisions of clause 9 are inconsistent with the provisions of section 253 and 323 of the Constitution in that the Bill requires the Commission to report to the Minister who will in turn "take necessary steps to implement the recommendations of the Commissions or deal with these recommendation in any manner that he deems necessary in the circumstances". The Constitution empowers the Commission to take measures at the end of its investigation, rather than just produce a report with recommendations to the Minister. The power given to the Minister to implement the recommendations of the Commission is unconstitutional as it infringes on the independence guaranteed in section 235. In terms of the Constitution, the Minister is a conduit of the Commission as far tabling reports of the Commission in Parliament in terms of section 324.

As alluded to above this infringes on the independence of the Commission as the Constitution does not provide that the Commission shall report to the Minister but is required to report to Parliament. The Commission is empowered by the Constitution to implement its findings in various ways outlined in section 252 and to engage with other institutions implied in that section in order to fully execute its mandate. Therefore, the effect of clause 9 in its current form limits the power of the National Peace and Reconciliation as stipulated by the Constitution.

In terms of section 253 and 323 of the Constitution the Commission submit its report to Parliament through the appropriate Minister. The Commission is accountable to Parliament hence it is requires to submit reports, not accountable to the Minister the interpretation of this clause seems to suggest. The submission of the report to the Minister is for the purposes provided in section 253 and 323 not for the Minister to implement recommendations.

Zimbabwean legislation on Independent Commissions must conform to the Paris Principles adopted by world countries where countries agreed that National Human Rights Institutions must conform to certain principles and standards. One of the principles is that the institution must be guaranteed its independence from Government interference. We have such a provision in our Constitution in section 235 which guarantees such independence. The Bill must not take away that independence by empowering the Minister to infringe on that independence.

Other jurisdictions with almost similar Commission like our NPRC, have such reporting provisions but

the relevant Minister does not interfere at all. Of contrast, according to section 44 of the Promotion of National Unity and Reconciliation Act of Rwanda, “the President shall, in such manner as he or she may deem fit bring the final report of the Commission to the notice of the Nation among others, by laying such report within two months after having received it upon the table in Parliament.” Article 178 of the Rwandan Constitution read together with Article 10, requires the Commission to “submit each year its program and activity report to the President of the Republic and the Senate and to provide copies thereof to other organs as may be determined by the law.” Section 48 of the Truth Justice and Reconciliation Commission Act of South Africa similarly requires the Commission to submit the report of its work to the President at the end of its operation. In terms of subsection of this Act, the Minister shall table the report in Parliament within twenty one days of its publication.

Section 8(2) (a) of the Public Protector Act of South Africa provides that, the Public Protector shall report in writing on the activities of his or her office to the National Assembly once every year provided that any report shall also be tabled in the National Council of Provinces.

It is important to note that the above provisions from other jurisdictions are consistent with the enabling provision of their Constitutions. Therefore, clause 9 must be construed in line with the Constitutional provisions in this case section 253 and section 323, as section 2 (1) provides that “the Constitution is the Supreme law of Zimbabwe and any law... inconsistent with it is invalid to the extent of this inconsistency.”

4. Clause 10 Appointment and functions of the Chief Executive Officer

Clause 11 Appointment and functions of Secretary

The Committee is of the opinion that the proviso to clauses 10 (1) and 11 (1) are unconstitutional in that they permit the Minister to second persons from the Civil service Commission to the Commission without consultation with the Commission this infringes on the independence of the Commission and deviates from the Paris Principles the clauses have the potential of jeopardising the independence of the Commission but takes away from the Constitutional directive set out in section 234 that the “Independent Commissions have power to employ staff and, subject to the law, to regulate their conditions of service”.

It is suggested that the wording of section 6 of the Zimbabwe Human Rights Commission Act [*Chapter 10:30*], as quoted below, is more amenable to the Constitution.

Section 6 of the Zimbabwe Human Rights Commission Act reads as follows:

“(1) The Commission shall—

(a) appoint an Executive Secretary; and

(b) employ such other staff as maybe necessary for the proper exercise of its functions, and engage consultants where necessary:

Provided that the Commission shall consult the Minister and the Minister responsible for Finance on the extent to which additional public moneys maybe required for this purpose”.

5. Clause 14 Funds of Commission

Clause 14 (1) (c) relegates power to accept donations, grants, bequests and loans to the Minister of National Peace and Reconciliation. This power should be vested in the Commission.

Further the manner of investment of moneys not immediately required by the Commission is also reliant on approval by the Minister. This seems an unnecessary limitation in the Commissions' financial governance. Adequate funding empowers the Commission to carry out its objectives and putting funding matters through many hoops to reach the Commission could impair its effectiveness. The hand of the Minister should also be removed from clause 14 (3) and left between the Commission and the Minister responsible for Finance. Section 322 of the Constitution provides that Parliament must ensure that sufficient funds are appropriated to the Commissions to enable them to exercise their functions effectively.

6. Clause 18 Expiry of Act

According to the Constitution the Commission shall run for a period of 10 years after the *effective date*. The effective date is the date on which the Constitution came wholly into operation, such date being the 22nd of August 2013, the date upon which the President was sworn in. Clause 18's premise that the Act shall cease to have effect 10 years after the Commission is appointed is accordingly *ultra vires* as the life span of the Commission ceases on the 21st of August 2023 ten years after the Constitution came into place. There is no constitutional provision that permits an Act of Parliament to lengthen the Commission's life span.

7. First Schedule Provisions applicable to Commission

Paragraph 2 of the First Schedule is unconstitutional as it contravenes section 320 (3) of the Constitution which sets out disqualification of membership of Commissions and does not provide for further provisions to be established by an Act. Unless these are additional reasons for disqualification, if so it should be stated clearly that they are additional.

Paragraph 3 allows a member to hold an office for a maximum period of 6 months pending appointment of his or her successor. This is unconstitutional because the Constitution is clear that

office tenure is 5 years. It is suggested that paragraphs 2 and 3 of the First Schedule be deleted or redrafted accordingly.

8. Second Schedule Ancillary Powers of Commission

Paragraph 7 states that the Commission needs the Minister's approval to establish and administer funds not specifically provided for in the Act as the Commission considers appropriate for the proper exercise of its functions. The constitutional issues herein are related to those expounded in para 4 for clause 14.

Hon. J. Samukange

CHAIRMAN

PARLIAMENTARY LEGAL COMMITTEE