
HEAL ZIMBABWE REPORT ON NPRC PUBLIC HEARINGS

April 2016



1. EXECUTIVE SUMMARY

On the 18th of December 2015, the Zimbabwean Government gazetted the National Peace and Reconciliation (NPRC) Bill. This is in line with Sections 251, 252, and 253 of the Zimbabwean constitution that provides for the establishment of an Independent Commission known as the NPRC. Following this, in March 2016, 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, carried out public hearings on the Bill from the 10-20th of April 2016. Two teams carried out the task: Team (A): Kwekwe, Gweru, Victoria Falls, Hwange, Plumtree, Lupane and Bulawayo. Team (B): Gutu, Masvingo Urban, Mutare, Marondera, Bindura and Chinhoyi. The public hearing in Harare comprised of both teams.

The major aim of the public hearings was to collect the views of communities on the NPRC Bill but the task was comprised by a lot of technical, procedural and logistical challenges. To note is the fact that the hearings were carried out without a robust information dissemination exercise by Parliament as well as failure to avail copies of the Bill to the communities. The hearings were only publicized at short notice via the herald newspaper, and few adverts in ZiFM and Star FM radio stations (whose signals cannot reach three quarters of the target areas) and a few posters. In 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 widely and extensively advertised way in advance through all major media platforms in the country.

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 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

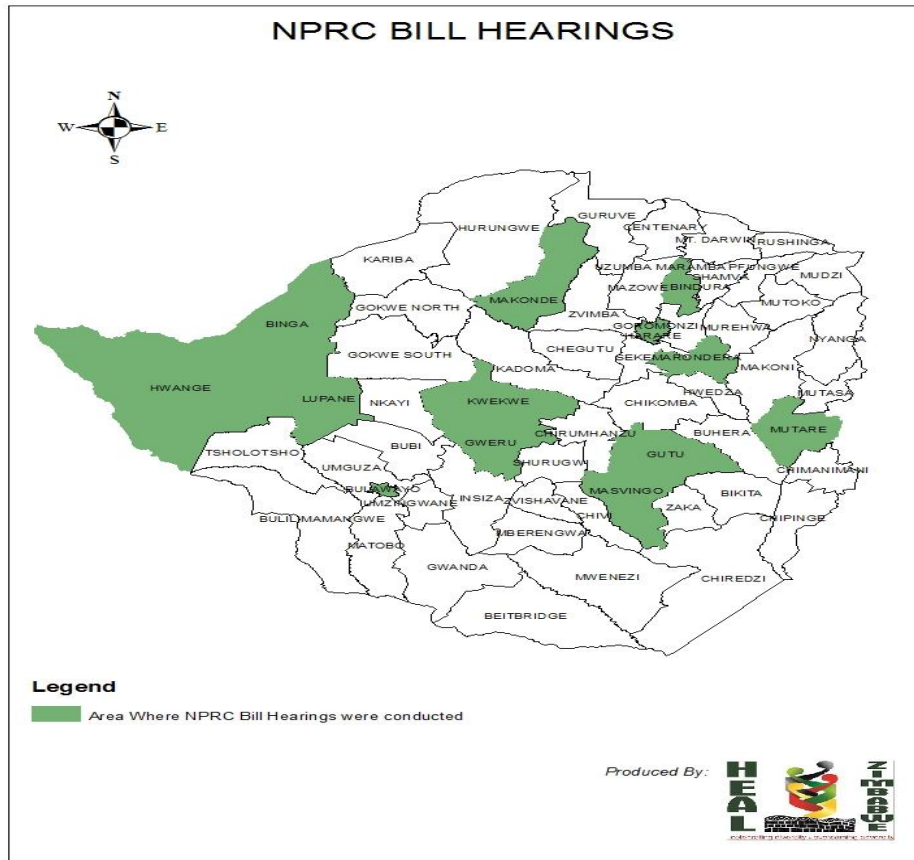
the hearing was used as a torture base during the 2000, 2002, 2005 and 2008 election violence where people were subjected to gross human rights violations. In addition, the venue for the Harare hearing was Parliament, and several participants complained about the venue citing strict entry conditions which were not necessary for a public event. Close to 20 people were turned away for "inappropriate dressing"(short dresses, casual wear etc) a move that was seen by many as discriminatory for a public gathering. 11 people were also turned away for failing to produce identity cards.

2. CONTEXT

The Zimbabwean Constitution adopted in 2013 provides for the establishment of the National Peace and Reconciliation Commission (NPRC) hence the need for enacting appropriate law. If *passed into law*, the NPRC Act will provide the legal basis on which the NPRC will implement its mandate. However, in its current form, this NPRC Bill violates the constitutional provisions that establish the Commission in various ways basing on the submissions made by members of the public during the Parliamentary public hearings.

The national healing and reconciliation debate in Zimbabwe has its roots firmly grounded in the Organ on National Healing, Reconciliation and Integration (ONHRI) as established through the 2008 Global Political Agreement (GPA). The ONHRI can be credited for commencing the conversations on what mechanisms are required to address past violations and putting in place an infrastructure for peace. However, the adoption of the new Zimbabwean Constitution in 2013, paved way for an NPRC through Chapter 12. This means the NPRC becomes the central institution tasked with ensuring that atrocities of the past are dealt with. Heal Zimbabwe Trust is convinced 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 pillars namely; promotion of truth, justice and accountability, reparations, memorialisation, gender and institutional reform.

3. Public Hearings- Geographical Coverage



From the map above, it can be noted that the hearings were thinly spread which resulted in very few people participating with an average of 60-70 people per each meeting. Parliament cited resource constraints as the reason for conducting few meetings. While varying reasons can be given to justify the choice of the venues the cost to attend the hearings was beyond the reach of many given that they had to board transport to access the venues. This therefore made the hearings highly discriminatory in nature. In addition, most hearings like the ones in Hwange, Plumtree, Bulawayo, Chinhoyi and Marondera were held in the afternoon meaning that participants had to secure accommodation after the hearings. The issue of costs restricted many participants particularly survivors of political violence who naturally are key stakeholders in the quest for healing and reconciliation.

4.1. PROCEDURES FOR THE CONDUCT OF THE PUBLIC HEARINGS

The Constitution provides in Section 141 that there must be public participation in the legislative process. As such, public hearings are one vehicle through which Parliament allows the public to participate in the business of Parliament. According to the Draft Public Hearing Guidelines of Parliament, October 2003, the purpose of Public Hearings includes;

- To inform the public and interested parties about proposed changes and implications of public policy.
- To obtain public views and recommendations on public policy and programs.
- To facilitate an appreciation of government policies and legislation and therefore reduce chances of difficulty in policy implementation.
- Sensitize Members of Parliament and policy makers on popular sentiments and to get first hand feedback from the public about local concerns, perspectives and suggestions for improvement through interaction.

Public hearings are held under three broad areas namely Pre-hearings, Hearings and Post Hearings. The activities that are associated with these aforementioned phases are as follows:

PRE-HEARING- This stage involves planning and designing the public hearings by establishing dates and times. Once the dates and times are available, the venues may also be identified so that advertisements are made. Security is supposed to be provided both physically and verbally as well as media coverage of the event in a bid to uphold democratic ideals of transparency and accountability. Record keeping in the form of attendance registers is also a requirement of the pre-hearing process.

With regards to the NPRC public hearings, it was observed that despite Parliament complying with some of the pre-hearing requirements such as establishing dates and venues, the venues were not suitable to accommodate all participants. Kwekwe theatre in particular, was dark and had no seats for all participants resulting in some of them standing during the hearing process. In addition, Tendai Hall in Bindura according to some participants, is alleged to have been used as a torture base during past election periods and yet the NPRC public hearing was held at the same place. Some acts of lawlessness also occurred in Chinhoyi where some self-proclaiming ZANU-

PF supporters intimidated and harassed other participants resulting in the cancellation of the hearing. The supporters were chanting party slogans and singing disrupting the whole process.

Inadequate advertising of the hearings also negatively affected the participation of many people. For example in Hwange, many people were seen milling around the venue but refused to attend the hearings claiming that they were never informed and proposed that next time Parliament should use other sources of media besides radio as the area has poor signal.

HEARINGS-This stage mandates the relevant chairperson to allocate adequate time for a person to make an oral submission as well as record the proceedings for future reference. A participant is therefore allowed to use any of the three official Zimbabwean languages; Shona, Ndebele and English when making a submission. Ground rules for the meeting must be explained beforehand as a way of controlling its flow.

During the public hearings by both teams, ground rules were always made clear however, challenges arose in Gutu where functions of the NPRC Bill were read out in English despite Shona being the major language of communication by the participants. It was also revealed during the hearings that copies of the translated Bill were not availed and Parliament did not have an interpreter on standby to assist with unpacking the provisions of the Bill. The Matabeleland team members struggled to communicate provisions of the Bill in Ndebele because some of the Committee members who are Ndebele speakers were not very conversant with provisions of the Bill thereby struggling to interpret from English to Ndebele. In addition some members of the Parliamentary Committee failed to avail adequate time for participants to contribute. This was noted in areas such as Gutu and Lupane. Heal Zimbabwe is also dismayed by the lack of participation by political parties during the hearings. Political parties were supposed to mobilize their supporters for the hearings since in most cases, violence that takes place in the country is usually linked to political processes like elections.

POST HEARINGS- This stage largely outlines what the committee will do after each hearing and at the end of all the hearings.

Concluding each NPRC public hearing, the chairpersons of each team made it clear that a report that captured community views would be produced and debated in the House of Assembly and the Senate. It was also made clear that written submissions could also be made via email or post of which the addresses were provided. Now the bill awaits the second reading stage in both houses.

5. CONTENT OF THE HEARINGS.

Heal Zimbabwe Trust captured views in all the areas that it monitored. The following is a summary of the issues raised during the hearings:

Independence of the Commission

Sections 235(1a) of the Constitution states that “independent commissions are not subject to direction or control of anyone” Further, section 235(3) also states that “no person may interfere with the functioning of independent commissions”. Therefore communities raised the following concerns regarding the independence of the Commission:

The Commission should be allowed to report directly to Parliament instead of going through the Minister. This is because the Minister might alter contents of the report to suit his own agenda. 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.

Section 8 (7) of the Bill, gives the responsible Minister unlimited powers over the operations of the NPRC. 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. The communities are of the views that the Minister alone must not be vest with powers to issue a *Certificate* regarding the disclosure of evidence or any document if he deems it contrary to public interest. This decision if possible, must be subject to judicial review by courts of law so that it leaves room for transparency.

Ministerial Interference with appointments to the NPRC (Secretariat)

Section 234 of the Constitution states that the “Independent Commissions have power to employ staff and, subject to the law, to regulate their conditions of service”. This means that clauses 10 and 11 that empower the Minister to appoint the Chief Executive Officer and Secretary of the Commission are an interference with the activities of the Commission. The communities are therefore of the view that the Minister has too much power and his intensive involvements with the work of the NPRC are a threat to its independence. This is especially with regards to appointing staff of the Commission, the Chief Executive Officer and Secretary for the Commission. The recommendation is that appointments must be the sole responsibility of the Commission itself.

Protection of victims/witnesses

Section 8(13) of the Bill provides for protection of any persons associated with the investigation. Clause 7 states that before carrying out an investigation, the Commission must give at least 14 days’ notice, in the *Gazette* and in newspapers, before it conducts an investigation. The issue raised by communities regarding this is that the 14-30 days’ time period of publishing cases is too much such that perpetrators are alerted and can affect the process by either running away, destroying evidence or by intimidating and harassing witnesses. The advertising days must therefore be completely removed or reduced to a more reasonable time frame such that victims remain protected and need not fear revictimisation.

Prosecuting Language

The prosecuting language used in the Bill seems to actually instill fear in the witnesses and victims. Section 8(11a and b) of the Bill states that those who are said to provide false evidence will be prosecuted or subjected to still penalties. The criminalization of the actions of people summoned to appear before the Commission has the potential of instilling fear in the victims of past violations. This therefore means the Bill must make clear what real evidence is given

situations where some cases of past injustices were handled by police officers that have since been transferred to other duty stations.

Early Warning System Architecture

The Bill must speak to the setting up of an early warning system that detects cases of violence especially since the country is headed towards the 2018 elections as stated in Section 252g-h of the Constitution. The section makes it clear that the commission should “develop mechanisms for early detection of areas of potential conflicts and disputes and to take appropriate preventive measures”. The Bill however, does not clearly state what mechanisms have been put in place to guarantee non-recurrence of violations.

Funding for the Commission

According to Clause 14 of the Bill, the responsible Minister has the overall with regards to funding of the Commission. The Minister must first approve any donations and grants. The current 2016 budget, the Ministry responsible for reconciliation only received \$200 000 which shows lack of seriousness on the part of the government to fully operationalize the commission given the number of cases that have to be investigated. In South Africa, the Truth and Reconciliation Commission was working on an annual budget of USD 18million from donor agencies and taxes among other sources. It is therefore recommended that the Commission must be empowered to fund itself so as to avoid manipulation by politicians and failing to carry out its mandate due to inadequate funding.

Considered Omissions to the NPRC Bill:

i) Involvement of the Church and Civil Society.

The communities made submissions that church leaders must be the frontrunners of the healing process since some government officials were chief perpetrators and facilitators of gross human rights violations. The South African Truth and Reconciliation can exemplify this as Archbishop Desmond Tutu chaired the Commission.

The Civil Society Organisations in Zimbabwe have been carrying out extensive work in communities torn by violence. In order for the NPRC to effectively carry out its work, it needs to work with Civil Society Organizations. This can be in two ways where CSOs must be allowed to play an oversight role over the Commission or provide narratives from victims of the various episodes of violence that they experienced.

ii) Provision of Counseling Service.

In addition, it was suggested that the NPRC Bill must have additional functions such as provision of counseling services because many communities have been traumatized by acts of violence and are still living in fear.

iii) Engaging the Diaspora Community.

The Bill must be clear on how Zimbabwean citizens in the Diaspora will take part in the national healing and reconciliation process because most of them were affected by acts of violence and fled the country.

iii) Pillars of Transitional Justice.

The mandate of any institution that seeks to achieve healing and reconciliation must consider Transitional Justice Pillars. However, the Bill does not address issues of trauma healing, truth – telling and restorative justice. Communities have realized that the Bill must facilitate truth telling so that national healing and reconciliation can be achieved. Further, victims of violence who lost their sources of livelihoods must be compensated and perpetrators punished accordingly. This includes pensioners and victims of Gukurahundi, Chiadzwa, Murambatsvina and 2008 violence.

iv) Past Violations.

The communities are of the view that past violations must be thoroughly dealt with and concluded. Therefore, the Commission must go out and investigate well known epochs of violence such as the Gukurahundi, operation Murambatsvina, 2008 political violence and also release the findings of past Commissions like the Chihambakwe and Dumbutshena Commissions.

In a bid to address past violations, it was the view across communities that there should be no amnesty for those who committed gross violations such as rape and murder due to their grievousness.

There are some public official who facilitated the above mentioned violations. Recommendations were that there should be a clause that investigates Members of Parliament who perpetrated violence in the past.

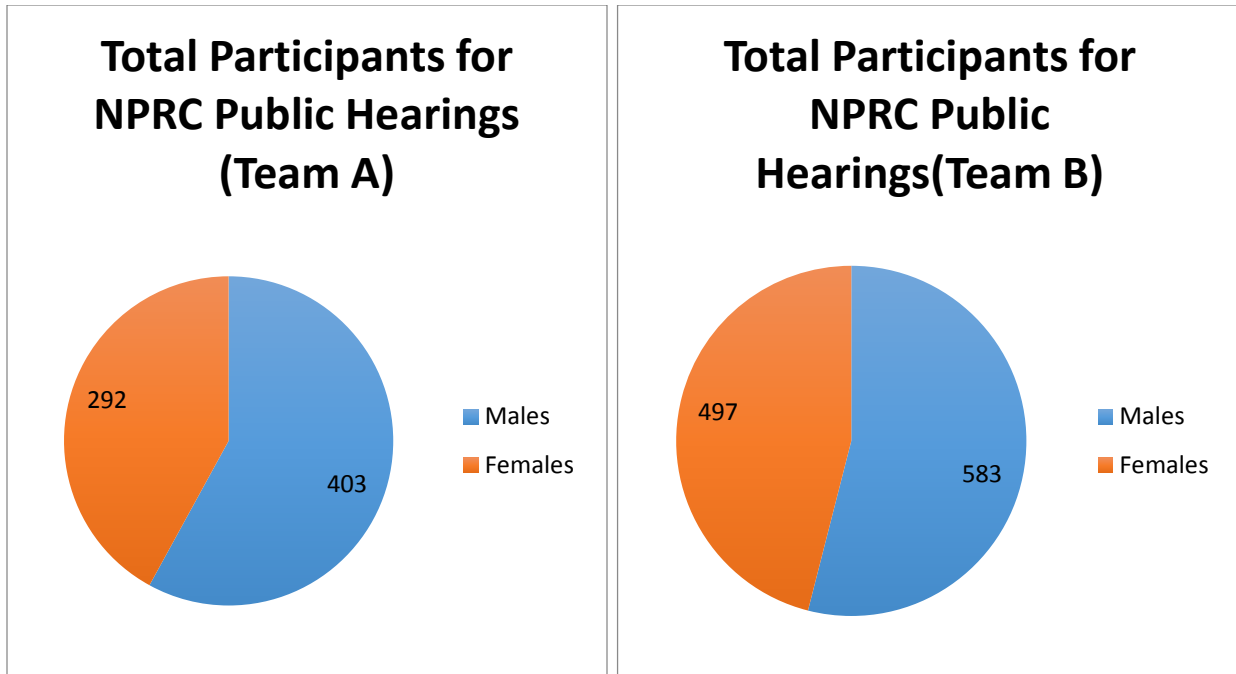
v) Decentralization of the Commission.

Community views were that the NPRC should be decentralized so that it can be accessible to all Zimbabweans at the lowest level of the community. This is essential since most acts of violence occurred at the lowest level structures of communities. Further, the strained economic situation does not allow one to be travelling to and from Harare to attend the cases.

vi) The NPRC's unexplained relationship with the police.

Section 8(d) mentions that the NPRC may request the assistance of the police in carrying out investigations. However, that is the only clause that makes mention of police involvement with the Commission. There is need for the Bill to clarify how the police will work with the NPRC as well as state how police officers and state security agents who committed injustices must be dealt with. This will aid in regulating civil and state security relations.

6. Gender disaggregation of Public Hearing Participants.



7. Brief Analysis

While the public got an opportunity to contribute and scrutinize the Bill, it is saddening to note that the participation of women was lower than that of men. Both teams as shown in the figure above had a total of only 44% of women participating in the public hearings. Women should be encouraged to participate in such processes as their contributions and experiences help in bring out the urgent need for a genuine healing and reconciliation process. Many women have been exposed to all sorts of grievous acts of politically motivated violence such as rape, arson, murder, assault and forced displacements that have not only robbed them of their dignity but of their health, as well, given that some were infected with HIV/AIDS. Some of the violations are often unique to women compared to those affecting men thus prompting the need for Parliament to deliberately enhance women participation. CSOs can support in the mobilization of women so that they are able to effectively participate in such processes.

Furthermore, the NPRC bill in its current form falls short of international best practices and standards. When compared with the South African Promotion of National Unity and Reconciliation Act which established the South African Truth and Reconciliation Commission, the NPRC fails to clearly define what constitute human rights violations and what justice

mechanisms shall be effected on the various crimes committed. The NPRC also fails to clearly state if state security agents and political parties will be investigated for past crimes. This clearly understates the seriousness of the NPRC given that political parties have been at the forefront of perpetuating violence as evidenced by close to 300 people being murdered in the 2008 election related violence. Further, state security agents have been used against civilians in acts of violence and human rights violations. Failing to bring such institutions before the Commission goes against the spirit of national healing, justice, reconciliation and peace building.

The term “peace” is a subjective term that communities felt needed to be defined. Under normal circumstances, the Bill must define the term peace since its agenda involves building peace. Zimbabwe has over the years experienced sporadic acts of violence experienced by different communities in political, economic and social sectors. In order for violence torn communities to have confidence in the enabling legislation there is need for the Bill to clearly define “peace” in relation to its mandate.

8. CONCLUSION

Though the Zimbabwean Constitution gives effect to the establishment of an NPRC, it is apparent that the effectiveness of the NPRC lies with the legal framework that will govern its operations. The confidence of Zimbabweans in the institution lies in whether or not their submissions are taken into consideration when crafting the enabling Act. This is especially so with regards to the over arching powers of the Minister who makes appointments of staff members to work with the Commission, issues a certificate regarding non-disclosure of evidence and reporting to Parliament on behalf of the commission. Issues of concern to communities in Matebeleland are the need for Government to acknowledge Gukurahundi as an atrocity and take steps necessary to facilitate healing. These are just but a few of the issues that Parliament must incorporate into the Bill. Despite the public hearings taking off without a robust information dissemination campaign on the part of Parliament, communities should be applauded for taking part in this process. It is HZT’s hope that communities will take their cases to the NPRC so that national healing and reconciliation can be achieved for purposes of social cohesion and propagating a never again culture to violence and impunity.

9. Public hearings in pictures



Fig 1 Panel from the Portfolio Committee on Justice, Legal Affairs and participants - the Victoria Falls hearing



Fig 2: Participants at the Plumtree and Bulawayo hearing



Fig 3: Participants at the hearings in Chinhoyi and Masvingo

