



**Submissions on the Call for Nominations to the Independent Commissions under Chapter 12 of the Constitution
To
The Chairperson of the Parliamentary Committee of Standing Rules and Orders
By
The Zimbabwe Human Rights NGO Forum**

The Zimbabwe Human Rights NGO Forum (the Forum) applauds the parliament's move to operationalize the independent commissions set out in the Constitution of Zimbabwe. Since 1998, the Forum has been working with survivors of organized violence and torture. Between 2009 and 2011, the Forum carried out a series of outreach meetings to gather the views of the people of Zimbabwe regarding national healing within the broad scope of transitional justice. It is from this background that the Forum is mainly concerned about the process leading to the establishment of the National Peace and Reconciliation Commission (NPRC). The following are some of the issues, which we believe are key to the establishment of an effective NPRC.

- a. **Enabling Legislation** - Part 6 of the Constitution establishes the NPRC including its functions and reporting obligations. The Constitution does not oblige the parliament to create an enabling legislation for the NPRC. However, it is highly desirable that there be an Act of Parliament which deals with the details of how the NPRC is going to dispense its duties. This legislation will fill the gaps in the Constitution. The Constitution being the supreme law cannot deal with everything essential concerning the NPRC but can simply lay down the broad mandate. The experience with the Human Rights Commission shows that it is not easy to set up an effective commission without an enabling legislation. Putting in place an enabling legislation is inline with the best practices and experiences of other countries who have

carried out similar processes, for example South Africa, which established the *Truth and Reconciliation Commission* through the *Promotion of National Unity and Reconciliation Act, [Act 34 of 1995]*¹. Some of the visible gaps in the Zimbabwean Constitution that can be addressed by an enabling legislation are in the points that follow.

- b. ***Clear Objectives for the NPRC, Mandate and Outputs*** - The Constitution does not address this issue and only lays a broad framework on the functions and reporting obligations. Using the functions stated in the Constitution, an Act of Parliament could then formulate clear objectives for the NPRC, a clear mandate and the outputs in line with the best practices that are measurable within the given timeframe. This cannot wait for the appointment of commissioners but must be done in advance.
- c. ***Operational Modalities*** - The Constitution does not state the operational modalities. Rather, the Constitution states that the NPRC will have 9 members, and will report annually to the Parliament. The operational details will need to be addressed by legislation, which specifies how the NPRC will be structured, the specifics of who is qualified and disqualified from sitting on the NPRC. Questions such as, will the NPRC have judicial powers, can it summon witnesses, will its recommendations be binding on state and non-state actors, are questions that the Constitution is silent about.
- d. ***Code of conduct for the Commissioners*** - The Constitution provides for the appointment of Commissioners and how they can be relieved of their duties. It however does not lay the governance principles for the NPRC and the Commissioners. The work of the independent commissions, especially the NPRC and the Gender Commission involve dealing with fragile and sensitive persons in vulnerable circumstances. In this regard, there is need for strict principles that guide the way Commissioners conduct themselves. It must also specify how survivors and victims are to be treated and the sanctions upon the Commissioners if they fail to adhere to the set standards.
- e. ***Survivors and Witness Protection Mechanism***. The NPRC and the Gender Commission are being set up in circumstances that are not very different from the circumstances in which violations were committed and continue to be

¹ To read more about this act, visit <http://www.icrc.org/ihl-nat.nsf/0/AF494D2C3E5803FEC1256AF400524BE5>

committed. There is continued political violence in some areas like Epworth. Most perpetrators continue to act with impunity. Institutions that are implicated in human rights violations remain unreformed and the Independent Complaints Mechanism provided for in section 210 of the Constitution is still to be set up. And yet the commissions are expected to receive reports and complaints from survivors and victims within an atmosphere of insecurity. It is of utmost importance that an Act of Parliament provides for the protection of survivors and witnesses in their interaction with the NPRC.

- f. ***Quality of Persons Appointed to the Commission*** - Section 251 (4) of the Constitution which, states that members of the NPRC '*must be chosen for their integrity and their knowledge and understanding of, and experience in mediation, conciliation, conflict prevention and management, post-conflict reconciliation or peacebuilding*' is not adequate to ensure that the NPRC is composed of individuals who can make it effective. Many perpetrators would qualify to be appointed commissioners if only they appear to be persons of integrity to some sections of the society. The Forum has met with many survivors who were clear in what type of people they expect in the NPRC. Key among these is that persons who have been implicated in human rights violations or who presided over institutions that are implicated in human rights violations must not be appointed to the independent commissions. According to the Forum's database of human rights violations, 72% of human rights violations in Zimbabwe are perpetrated by political activists. Many survivors believe that a person actively associated with any political party in Zimbabwe must not be appointed to the NPRC. This view is in line with the experiences in other commissions like the *National Cohesion and Integration Commission* currently operational in Kenya in which anyone found to be actively involved with any political party would cease from being a commissioner.
- g. ***Transparency and Public Participation*** - The Forum believes that the NPRC will derive its credibility mainly from the transparent manner in which it will be established and the way it will carry out its work. This credibility will be difficult to attain if there is no participation of the public. It is not enough for the Parliament to make a public call for participation when the majority of Zimbabweans have no idea what the NPRC is and what its duties are. Thus there is need, before the nominations, for a public campaign to ensure that

people are aware of what the Commission is for and be able to contribute effectively. At the end of the day, it is important for a commission charged with bringing post-conflict justice, healing and reconciliation to be put together through a transparent public process, so that the people of Zimbabwe, especially the survivors of human rights violations have a sense of ownership for the process.

In light of these concerns and suggestions, the Forum implores the parliament to reconsider its procedural arrangements for setting up the NPRC and other commissions. The NPRC is a time driven commission, with an overloaded mandate. The sensitive nature of the post conflict work, requires judicious planning that values the survivors contribution and public perceptions, otherwise the underlying objective of bringing post-conflict justice, healing and reconciliation may not be achieved. For a country with a history of commissions without tangible outputs, there is need to be more diligent and ensure that these commissions are not just part of our rich history of ‘committees with no commitment.’

Members of the Zimbabwe Human Rights NGO Forum

Amnesty International (Zimbabwe), Catholic Commission for Justice and Peace (Zimbabwe), Counselling Services Unit, Gays and Lesbians of Zimbabwe, Justice for Children, Media Institute for Southern Africa, Media Monitoring Project of Zimbabwe, Non-Violent Action and Strategies for Social Change, Research and Advocacy Unit, Students Solidarity Trust, Transparency International (Zimbabwe), Women of Zimbabwe Arise, Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender, Zimbabwe Association of Doctors for Human Rights, Zimbabwe Civic Education Trust, Zimbabwe Human Rights Association, Zimbabwe Lawyers for Human Rights, Zimbabwe Peace Project, Zimbabwe Women Lawyers Association

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