

A vehicle for peacebuilding or cloak of impunity? The Zimbabwe National Peace and Reconciliation Commission

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ABSTRACT: This article interrogates the efficacy of truth commissions as mechanisms for peacebuilding and reconciliation in Africa, with reference to Zimbabwe's National Peace and Reconciliation Commission (NPRC). It questions the credibility and effectiveness of this institution in an attempt to establish whether the NPRC is a vehicle for peacebuilding or just a veil covering state impunity. Through a review of literature, the article explores the efficacy of the NPRC in comparison with the truth commissions established in Rwanda and South Africa. The article establishes that some of the challenges faced by the NPRC include a limited tenure, suppression of truth, limited institutional independence and resources, lack of political will, as well as usurpation of functions by the executive. Lessons identified from South Africa and Rwanda include adoption of diverse peacebuilding initiatives such as combining restorative justice with reparation, and provision of psychosocial care so as to achieve holistic reconciliation. In order to strengthen the capacity of the NPRC to usher in sustainable peace in Zimbabwe and enhance its credibility, the authors recommend extension of the tenure of the NPRC, truth-telling, cessation of state control and interference with operations of the NPRC, and adequate resourcing it.

TITRE ET RÉSUMÉ EN FRANCAIS:

Mécanisme de consolidation de la paix ou instrument d'impunité? La Commission nationale pour la paix et la réconciliation du Zimbabwe

RÉSUMÉ: Cet article questionne l'efficacité des «commissions vérité» en tant que mécanismes de consolidation de la paix et de réconciliation en Afrique avec un accent particulier sur la Commission nationale pour la paix et la réconciliation du Zimbabwe (NPRC). Il remet en question la crédibilité et l'efficacité de cette institution pour tenter de déterminer si le NPRC est un mécanisme de consolidation de la paix ou simplement un voile couvrant l'impunité de l'État. À travers une revue de la littérature, l'article explore l'efficacité du NPRC en comparaison avec les commissions vérité établies au Rwanda et en Afrique du Sud. L'article établit que certains des défis auxquels le NPRC est confronté comprennent un mandat limité, la suppression de la vérité, une indépendance institutionnelle et des ressources limitées, un manque de volonté politique, ainsi que l'usurpation de ses fonctions par l'exécutif. Les leçons identifiées de l'Afrique du Sud et du Rwanda comprennent l'adoption de diverses initiatives de

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consolidation de la paix telles que la combinaison de la justice restauratrices et la réparation, ainsi que la fourniture de soins psychosociaux afin de parvenir à une réconciliation holistique. Afin de renforcer la capacité du NPRC à impulser une paix durable au Zimbabwe et d'améliorer sa crédibilité, les auteurs recommandent l'extension du mandat du NPRC, la révélation de la vérité, la cessation du contrôle de l'État et l'interférence avec les opérations du NPRC, et de la ressourcer.

KEY WORDS: Truth and Reconciliation Commissions, Zimbabwe, efficacy, peacebuilding, sustainable peace

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1 BACKGROUND

Aspiration 4 of the African Union Agenda 2063 calls for a peaceful and secure Africa. In particular, paragraph 32 provides that mechanisms for peaceful prevention and resolution of conflicts should be functional at all levels. In response to this call, diverse transitional justice mechanisms have been put in place in order to prevent recurrence of both intra-state and inter-state conflict and violence in Africa. Truth commissions are one such mechanism established in line with Sustainable Development Goal 16, which seeks to promote attainment of peaceful, inclusive and just societies by 2030.

Hayner posits that a truth commission or a truth and reconciliation commission is a temporary body with a constitutional or statutory mandate, which is established with the aim of identifying the causes and consequences of abuses by oppressive regimes or armed groups.¹ The mandate of a truth commission is to investigate human rights violations, war crimes or other serious abuses that took place over a period of time, perpetrated by the State and in some instances by non-state actors, in the hope of resolving conflicts carried over from the past. Some of the key characteristics are that a truth commission focuses on the past, as opposed to ongoing events; it investigates a pattern of events that took place over a period of time; it engages directly and broadly with the affected population gathering information on their experiences and is supposed to conclude its mission with a final

1 PB Hayner *Unspeakable truth: facing the challenge of truth commissions* (2002).

report, including recommendations for ensuring non-recurrence of the hostilities and atrocities.²

Historically, truth commissions have operated since the mid-1980s but Latin America was the pace setter in the establishment of the first institutions for 'truth-telling'. Even though these institutions were not referred to as 'truth commissions', they served the same function as modern day institutions with a similar mandate. Some of the institutions were referred to as 'National Commission for the Disappeared' (Argentina, 1983); and 'Commission for Historical Clarification' (Guatemala, 1999). It was only in the 1990s that the term 'truth commission' was popularised through establishment of Commissions such as: Chile's National Commission for Truth and Reconciliation in 1990.³

In Africa, some of the most prominent commissions are the Truth and Reconciliation Commission of South Africa, which was established in 1995, and Rwanda's National Unity and Reconciliation Commission, established in 1999.⁴ Zimbabwe is one of the late comers in as far as establishment of truth commissions is concerned. Its National Peace and Reconciliation Commission was established by the 2013 Constitution of Zimbabwe but its enabling law was only promulgated five years later in 2018.⁵ The Commission lost five years of its life, which have to be reinstated if the institution is expected to serve its intended purpose and achieve the anticipated post-conflict justice, healing and reconciliation.

This article contributes to the body of knowledge on transitional justice and national peacebuilding mechanisms in Africa by adding the Zimbabwean perspective, through a discussion of the challenges and opportunities faced by the National Peace and Reconciliation Commission (NPRC), in the discharge of its constitutional mandate. The research also makes a comparison of the NPRC with the Truth and Reconciliation Commission of South Africa and Rwanda's National Unity and Reconciliation Commission in order to have a regional perspective of the general challenges and opportunities encountered by Africa's national peacebuilding mechanisms. Furthermore, appropriate measures can be put in place to enhance their capacities and effectiveness. Findings from this research can assist the NPRC to learn from the successes and challenges encountered by its predecessors in Rwanda and South Africa. Such lessons have the potential to promote attainment of sustainable peace and development at both national and regional levels.

2 RG Teitel *Transitional justice* (2000).

3 PJ Arroyo 'Truth and reconciliation commissions and the search for justice: a comparative study of Chile, Argentina and Guatemala' Claremont McKenna Colleges Senior Theses. 1783, 2018.

4 EB Mawhinney 'Restoring justice: lessons from truth and reconciliation in South Africa and Rwanda' (2015) 36 *Hamline University's School of Law's Journal of Public Law and Policy* 25.

5 See section 251 of the 2013 Constitution of Zimbabwe and the National Peace and Reconciliation Commission Act [Chapter 10:32].

The article commences with a background which puts into context the concept of truth commissions and also provides a brief context to the establishment of these institutions. In order to justify the establishment of Zimbabwe's NPRC, the research delves into a historical conflict analysis of post-independence Zimbabwe, which is followed by a discussion on the establishment, functions as well as challenges faced by the NPRC. A comparison is then made between the NPRC, South Africa's Truth and Reconciliation Commission as well as Rwanda's National Unity and Reconciliation Commission, after which a conclusion and lessons for Zimbabwe wind up the article.

2 JUSTIFICATION FOR ESTABLISHMENT OF A NATIONAL PEACEBUILDING MECHANISM IN ZIMBABWE

The history of Zimbabwe is inundated with varied intra-state conflicts which were characterised by violence and extra-judicial killings of some members of the general populace, such as the Matabeleland massacres where an estimated 30 000 people perished.⁶ Since 1980, several peacemaking and peace building efforts have been initiated by the government and other external players in order to restore peace in Zimbabwe. However, these initiatives failed since they did not adequately delve into the primary root causes of the conflicts and violence, hence the continued escalation of internal conflict and hostilities to date.⁷ This state of affairs necessitated the operationalisation of a specialised national institution with the mandate to promote peacemaking and peacebuilding. The NPRC is one of the independent Commissions supporting democracy established in Chapter 12 of the Constitution which has the mandate of ensuring post-conflict justice, healing and reconciliation in Zimbabwe.⁸

3 THE NATIONAL PEACE AND RECONCILIATION COMMISSION

The NPRC is one of the five independent Commissions supporting democracy in Zimbabwe, which were established in terms of section 232 under Chapter 12 of the Constitution. The collective objectives of the Chapter 12 Commissions as highlighted in Section 233 of the Constitution are:

- a) to support and entrench human rights and democracy;

6 The Catholic Commission for Justice and Peace in Zimbabwe 'Report on the 1980s disturbances in Matabeleland and the Midlands' (1997) 13.

7 R Murambadoro & C Wielenga 'Reconciliation in Zimbabwe: the conflict between a state-centred and people-centred approach' (2015) 37 *Strategic Review for Southern Africa* 31 at 52.

8 See Preamble to the National Peace and Reconciliation Commission Act [Chapter 10:32].

- b) to protect the sovereignty and interests of the people;
- c) to promote constitutionalism;
- d) to promote transparency and accountability in public institutions;
- e) to secure the observance of democratic values and principles by the state and all institutions and agencies of government, and government-controlled entities; and
- f) to ensure that injustices are remedied.

NPRC shares these common objectives with the other Chapter 12 Commissions, namely, the Zimbabwe Electoral Commission (ZEC), Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Gender Commission (ZGC), and the Zimbabwe Media Commission (ZMC). This means that in the execution of its constitutional mandate, which is centred on ensuring post-conflict justice, healing and reconciliation, the NPRC should support and entrench human rights and democracy, including good governance, and also contribute towards justice delivery and the rule of law through its role as an alternative dispute resolution mechanism.⁹

Over and above the collective establishment and role of the NPRC together with other independent Commissions, the NPRC was established by section 251 of the Constitution. Its functions are outlined in section 252 as follows:

- a) To ensure post-conflict justice, healing and reconciliation;
- b) To develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes;
- c) To bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;
- d) To develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future;
- e) To develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;
- f) To receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- g) To develop mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventive measures;
- h) To do anything incidental to the prevention of conflict and the promotion of peace;
- i) To conciliate and mediate disputes among communities, organisations, groups and individuals; and
- j) To recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances

These diverse functions cover alternative dispute resolution through facilitation of dialogues, handling and investigation of complaints, development of rehabilitation programmes, development of conflict early warning systems, facilitating law reform related to peacebuilding and any other relevant related functions. In spite of these numerous functions, section 251 of the Constitution contains a sunset clause that

9 See sec 233 of the Constitution which outlines common objectives of Independent Commissions.

states that the NPRC only has a ten-year lifespan. It defies logic to expect such a temporary institution to effectively discharge these multifarious functions, which even a permanent Commission is likely to struggle to effectively fulfil during an indefinite life span.

3.1 Major impediments to the effectiveness of the NPRC in executing its constitutional mandate

An analysis of the NPRC's legal framework, reports and scholarly works shows that some of the major impediments to the effective execution of the constitutional mandate of the NPRC include:

3.1.1 Limited tenure

As already highlighted, the NPRC has a ten-year lifespan. In spite of the existence of the sunset clause, there was a protracted delay in enactment of the Commission's enabling legislation due to lack of political will. However, the coming in of the new dispensation led by President Emmerson Mnangagwa saw the promulgation of the National Peace and Reconciliation Act [Chapter 10:32] in 2018, creating hope that the Commission was going to be fully operational and capacitated to execute its constitutional mandate.

Even though members of the Commission were appointed by the President as far back as 2016, there was no secretariat to implement the Commission's strategy and resolutions, thus further paralysing the work of the NPRC. This delayed operationalisation of the NPRC has a bearing on fulfilment of the long list of functions outlined in section 252 of the Constitution and expanded in the enabling Act. Hence, it becomes virtually impossible for the Commission to effectively deliver on its mandate given the further limited operational period. Some stakeholders are also pessimistic on the Commission's capacity to conclude its mission successfully and fulfil citizens' expectations of having a transformed Zimbabwe, characterised by nationhood, unity, tolerance and sustainable positive peace, given the above-mentioned shrinkage of its tenure.¹⁰

In order to assist the NPRC to claim its lost operational time, a former opposition member of the National Assembly made a court application to the High Court seeking an order to allow reinstatement of the five years that the NPRC lost before full operationalisation. The Court granted this order, but the government lodged an appeal against the judgment.¹¹ This court challenge by the government is a huge disappointment and contrary to dictates of good governance. The

10 R Murambadoro 'One year after: has the National Peace and Reconciliation Commission Act failed Zimbabweans?'(2019) <https://kujenga-amani.ssrc.org/2019/02/07/one-year-after-has-the-national-peace-and-reconciliation-commission-act-failed-zimbabweans/> (accessed 27 July 2020)

11 'High court extends NPRC's tenure to 2028' Zimbabwe situation 22 March 2019, <https://www.zimbabwesituation.com/news/high-court-extends-nprcs-tenure-to-2028/> (accessed 27 July 2020).

government is culpable by prejudicing citizens through delayed operationalisation of the Commission and thereafter refusing to make amends by reinstating the lost period of the NPRC's tenure. With the appeal still pending in the courts of law, the fate of the NPRC's lifespan therefore remains in limbo.

3.1.2 Suppression of the truth

In countries emerging from periods of great political turmoil the question of how to deal with the past has been a decisive part of the conflict transformation process.¹² In comparison with other similar commissions in Africa such as the TRC of South Africa, the NPRC's main focus is peace and reconciliation but truth-telling is not given much prominence. Yet peace and reconciliation cannot be fully achieved without knowing the truth of the motivations and justifications behind perpetration of past hostilities and atrocities. Section 252(c) of the NPRC's enabling Act states that the Commission should bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice.¹³ From this provision, truth telling is not prioritized as was the case in South Africa's TRC.

The TRC had a mandate to uncover the truth about past human rights violations.¹⁴ It sought closure on apartheid-era human rights violations, disappearances and state-sponsored political violence. The NPRC can only encourage people to tell the truth but truth-telling is not mandatory. Truth-telling was made an ancillary element of reconciliation. This anomaly raises the question of whether the NPRC will be in a position to adequately interrogate and address the root causes of conflict and offer recommendations for dealing with impunity, without knowing the truth. Where the truth has negative repercussions on perpetrators and their accomplices, encouragement to tell the truth is not good enough, without some form of coercion and penalties for failing, refusing or neglecting to tell the truth.

Truth-telling is indispensable in addressing past human rights violations and facilitating reconciliation. Two Commissions of Inquiry were established in Zimbabwe in 1981 and 1983 to deal with the plethora of injustices flowing from the past. However, reports and recommendations made by the Dumbutshena and Chihambakwe Commissions of Inquiry have not been released to date.¹⁵ As a sign of disgruntlement with the Government for withholding the truth some activists from Matabeleland Province protested demanding release of

12 J Sarkin 'The necessity and challenges of establishing a truth and reconciliation commission in Rwanda' (1999) 21 *Human Rights Quarterly* 767 at 823.

13 Heal Zimbabwe Trust 'Pathways to peace and reconciliation: literature lessons for Zimbabwe' (2018) Peace, Healing and Reconciliation Series 1.

14 See sec 3 of the Promotion of National Unity and Reconciliation Act 34 of 1995.

15 The Dumbutshena Commission of Inquiry was set up in 1981 to investigate the Entumbane uprisings which took place in Matabeleland just after independence. The Chihambakwe Commission of Inquiry was set up in 1983 to investigate 'Gukurahundi' massacres in Matabeleland and parts of Midlands Provinces.

the Chihambakwe Commission of Inquiry Report. The media reported that the NPRC's public hearings were disturbed by activists who demanded the release of the Chihambakwe Commission of Inquiry report.¹⁶ This continued agitation and unrest shows that survivors still want to know the truth of what transpired during the 1981 and 1983 disturbances in Matabeleland and Midlands Provinces.

That is why Ndlovu-Gatsheni and Benyera lament the fact that there has never been any serious national commitment to finding the truth, establishing effective justice mechanisms, and mapping long lasting reconciliation in Zimbabwe.¹⁷ They argue that peace and reconciliation cannot be fully realised without knowing what happened in the past. Failure to confront the past in a comprehensive manner obstructs justice, reconciliation and nation building.¹⁸ The creation of the NPRC is therefore viewed as an effort to forge national unity and reconciliation through denial of the truth.¹⁹

It can be argued, therefore, that there cannot be any closure to issues of violence in the absence of effective justice and truth-telling mechanisms. Endless denial and victim blaming on the part of those who committed those heinous acts signifies a serious flaw of the peacebuilding approach by both the government and NPRC to engage with the past in a holistic manner. It is the responsibility of the government to provide its citizens with the truth of what transpired during the darkest periods in the history of Zimbabwe so that peace and reconciliation can be holistically achieved and sustained.²⁰

3.1.3 Resource constraints

Section 235(2) of the Constitution provides that the state and all institutions and agencies of government at every level, must assist Independent Commissions and protect their independence, impartiality, integrity and effectiveness. The NPRC is, therefore, entitled to adequate support including funding so that it can execute its constitutional mandate. However, in spite of this guarantee the Commission still faces resource constraints, including financial and human resources. As of July 2020, the Complaints Handling and Investigations Department, which is supposed to conduct nation-wide investigations of human rights violations emanating from conflict from the pre-colonial to date, only has two officers. This is a huge handicap brought about by the freezing of positions on the Commission's

16 'NPRC chair meets disgruntled Matabeleland CSOs' *Newsday* 16 April 2018 <https://www.newsday.co.zw/2018/04/nprc-chair-meets-disgruntled-matabeleland-csos/> (accessed 20 July 2020).

17 SJ Ndlovu-Gatsheni & E Benyera 'Towards a framework for resolving the justice and reconciliation question in Zimbabwe' (2015) 15 *African Journal on Conflict Resolution* 9 at 33.

18 JL Gibson 'The contribution of truth to reconciliation: lessons from South Africa' (2006) 50 *Journal of Conflict Resolution* 409 at 432.

19 D Tshuma 'Reconciliation, integration and healing in Zimbabwe' (2018) *Conflict Trends Research Gate*.

20 Tshuma (n 19).

organogram by the government. To ameliorate this staff deficit, the Commission has resorted to seeking secondment of police officers from the Zimbabwe Republic Police to assist with investigations. Although necessitated by under-staffing, this working arrangement undermines the independence of the NPRC since most cases of violence against citizens in Zimbabwe emanate from the conduct of state agencies such as the police and the military. It is therefore not guaranteed that the police officers seconded to the NPRC will act impartially when investigating cases involving their colleagues or superiors.²¹

3.1.4 Lack of institutional independence

Institutional independence is the driving force that reinforces a national institution's legitimacy and credibility. The success of truth commissions pivots on their ability to establish and uphold legitimacy with ordinary citizens.²² The NPRC should therefore be independent and also seen as being independent in the execution of its constitutional mandate. The Commission should refrain from operating under the authority and direction of the executive since this undermines its effectiveness and credibility as a national institution. The NPRC reports to Parliament through one of the Vice Presidents who is responsible for peace and reconciliation.²³ This capture of the NPRC by the executive undermines its efficacy as a national peacebuilding mechanism. That is why after four decades of independence, the nation is still desperately in need of a holistic and comprehensive truth, justice and reconciliation mechanism.²⁴

Another contentious provision is section 10(7) of the NPRC Act, which is viewed as a major stumbling block to national healing and reconciliation processes. According to this provision the Minister of National Security is given the power to censor investigations by issuing a certificate blocking disclosure of evidence and documentation considered to be prejudicial to the defence, external relations, internal security or economic interests of the country. It is argued that such exercise of executive powers to curtail investigative powers of the Commission is contrary to section 235 of the Constitution which places emphasis on the institutional independence of Independent Commissions.²⁵ The NPRC has constitutional and statutory authority to exercise its mandate without undue influence from any authority or person and this should be the basis for its efficacy and credibility. Institutional independence of Independent Commissions such as the NPRC is enshrined in section 235(1) of the Constitution which states that the Commissions are independent and should not be subject to the

21 'From a presentation made by NPRC at a workshop for Chapter 12 Commissions in Kadoma, Zimbabwe' 22 July 2020.

22 Gibson (n 18).

23 Section 2 of National Peace and Reconciliation Commission Act.

24 Ndlovu-Gatsheni & Benyera (n 17).

25 D Marimbe 'A review of provincial peace committees: The NPRC's step towards sustainable peacebuilding in Zimbabwe' (2019) *Heal Zimbabwe Focus on Peace Building Issue 1*.

direction or control of anyone and must exercise their functions without fear, favour or prejudice.

Section 4 of the NPRC Act adds weight to section 235 of the Constitution by stating that the Commission should enjoy the independence provided for in terms of section 235 of the Constitution and should be subject only to the direction of the law. However, a close analysis of the operations of the Commission shows that the NPRC does not seem to be enjoying the guaranteed institutional independence due to the fact that it operates under the direction and control of the executive, contrary to provisions of section 235 of the Constitution and section 4 of the enabling Act. Section 252 of the Constitution states that NPRC must develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future. The NPRC had initially put in motion processes for convening a national dialogue as part of its constitutional mandate but the executive hijacked the Commission's mandate and instead launched the Political Actors Dialogue (POLAD) which is facilitated by the Office of the President and Cabinet. The NPRC and Zimbabwe Gender Commission Chairpersons were only roped in as co-conveners with no influence or decision-making in terms of agenda setting, processes, procedures, outputs and outcomes.

3.1.5 Lack of political will

Gatsheni-Ndlovu and Benyera,²⁶ argue that there is minimal political will to establish the truth and guarantee justice as a pathway for meaningful reconciliation in Zimbabwe. They explain that a paradigm of war refuses to fade in Zimbabwe and the recourse to military force appears as the most preferred solution to most national questions. This continued use of military force in governance issues is slowing down progress towards achieving sustainable peace and threatening personal security of citizens who live in fear of the defence forces who are supposed to be a symbol of national defence and security. Both the 1 August 2018 post-election violence and the January 2019 violence due to steep fuel price increases show militarization of the state and shrinkage of democratic space. Citizens live in fear of government repression through security forces.

A Commission of Inquiry was set up by President Mnangagwa and chaired by former President of South Africa, Kgalema Motlanthe, to investigate the 2018 post-election violence.²⁷ Two years later, recommendations of the Motlanthe Commission of Inquiry have still not been meaningfully implemented, due to lack of political will. When this Commission of Inquiry was set up, it was argued that the NPRC should have been afforded the opportunity to conduct the investigation

26 Ndlovu-Gatsheni & Benyera (n 17).

27 'Report of the Commission of inquiry into the 1 August 2018 post- election violence' (2018), <http://kubatana.net/wp-content/uploads/2018/12/Final-Report-of-the-Commission-of-Inquiry-18-DEC-18.pdf> (accessed 28 July 2020).

since issues of political and electoral conflict and violence fall squarely within its constitutional mandate. However, critics supported the sidelining of the NPRC by the government on the basis that it lacks institutional independence and capacity to delve into root causes of conflicts and handle highly technical conflict matters.

3.1.6 Impunity and unwillingness to apologize

Zimbabweans are longing for genuine peace and reconciliation processes. Regardless of the largely welcomed forced removal of late former President, Robert Mugabe, the country remains politically polarized and is still yearning for viable transitional justice and reconciliation approaches to confront its past that is tainted by gross human rights violations and impunity.²⁸ Impunity for past politically motivated violence and unwillingness to acknowledge past atrocities remains a challenge in Zimbabwe.²⁹ Atrocities of the past have to be acknowledged, apologies made and reparations paid.³⁰ Apologising is the most explicit way in which wrongdoing can be acknowledged.³¹ In Rwanda acknowledgement and reconciliation kick-started the healing process of a nation torn apart by a civil war and a dreadful genocide experience.³²

3.2 Milestones of the NPRC

The NPRC has achieved several milestones in the execution of its mandate. Some of them are:

3.2.1 Setting up of Provincial Peace Committees

The NPRC set up Provincial Peace Committees (PPCs) across ten provinces in Zimbabwe. The PPCs are a platform within the NPRC that deal with issues of peace-building in communities. A total of 10 PPCs were established by the NPRC in the months of May and June 2019. This process shows that the NPRC is moving in the right direction towards facilitating transitional justice, reconciliation and healing. The PCCs consist of various stakeholders (between 25-30 members)

28 W Zambara 'The prospects for social cohesion, healing and reconciliation in Zimbabwe: Putting the NPRC to task (2019) Institute for Justice and Reconciliation <http://www.citizens-manifesto.org/2019/09/14/the-prospects-for-social-cohesion-healing-and-reconciliation-in-zimbabwe-putting-the-nprc-to-task/> (accessed 2 August 2020).

29 'Zimbabwe 2012 human rights report' <https://2009-2017.state.gov/documents/organization/204395.pdf> (accessed 8 October 2020).

30 R Magede 'Peace and reconciliation a remedy for Gukurahundi' (2014) <https://www.newzimbabwe.com/peace-and-reconciliation-a-remedy-for-gukurahundi/> (accessed 10 October 2020).

31 EL Awoh & WG Nkwi 'South Africa and Rwanda: truth and reconciliation commissions, peacebuilding, religious and local African authorities in conflict situations' (2017) 20 *Conflict Studies Quarterly* 20 at 33.

32 Heal Zimbabwe Trust (n 13).

representing government, civic society, church organisations, business, traditional leaders, political parties, youth, among others. The NPRC should be commended for devolving its work as this will ease institutional burdens. Nevertheless, the success or failure of the PPCs hinges on who is and is not involved since the selection process for members of the committees is not fully inclusive.³³ For example, the representation of the victims in the PPCs composition is not clearly expressed. Exclusion of victims in the composition may hinder the victims' and ordinary citizens' participation due to lack of trust and sincerity.³⁴ Concomitantly, the inclusion of government elites might also affect the smooth operation of the PPCs.

3.2.2 Facilitation of multi-stakeholder engagement meetings

Peace is a group right which should be a shared responsibility for all stakeholders such as the government, civil society, political parties, the church, war veterans, citizens, victims and media.³⁵ The NPRC realised the importance of collective effort and the indispensable need for inclusion of partners and stakeholders in its peacebuilding initiatives. The NPRC, therefore, decided to bring the nation together through multi-stakeholder peace and reconciliation processes. Engagements by the NPRC with the civil society and other relevant stakeholders will possibly reap the peace dividend that will not only ensure social cohesion, healing and reconciliation, but also trigger economic recovery and prosperity. In February 2018 the NPRC rolled out provincial outreach programmes. The main objectives for the provincial visits were to enhance stakeholders' awareness of the NPRC and its functions, to provide a platform for stakeholders to work with the NPRC for peace, healing and reconciliation in the country.³⁶

The NPRC has also been working with churches to facilitate national healing processes. In July 2018, the Churches Convergence on Peace Consortium (CCCOP) held a peace march and Ukuthula-Runyararo Peace Covenant signing ceremony in Bulawayo in support of the peace pledge initiated by the NPRC. One of the key religious players is CCCOP, a religious lobby group focused on capacitating grassroots churches to promote peace and cohesion. It is made up of Dan Church Aid, Zimbabwe Christian Alliance, Zimbabwe Council of Churches and Zimbabwe Divine Destiny.³⁷

33 Zambara (n 28).

34 Marimbe (n 25).

35 Zambara (n 28).

36 'National Peace and Reconciliation Commission launches 21-day outreaches programmes' 9 April <http://kubatana.net/2019/04/09/national-peace-and-reconciliation-commission-launches-21-day-outreach-programme/> (accessed 8 August 2020).

37 'Churches organise peace march' *Newsday* 18 July 2018 <https://www.newsday.co.zw/2018/07/churches-organise-peace-march/> (accessed 30 July 2020).

4 LESSONS FOR NPRC FROM THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA

4.1 Performance of South Africa's TRC

South Africa's history was characterised by racism and discrimination. In the late 1980s and early 1990s, the apartheid regime faced massive confrontation from both domestic resistance groups and international actors. This pressure eventually led to the downfall of the apartheid government. The most pressing concern in the transition process was how to deal with the perpetrators of human rights abuses. This paved the way for the establishment of a Truth and Reconciliation Commission (TRC). The TRC was given the mandate to promote national unity and reconciliation by establishing the truth and disseminating its findings.³⁸

The TRC has been applauded for enabling the country to transition from its repressive past to a democracy by disinterring a wide range of gross human rights violations committed in South Africa from 1 March 1960 to 10 May 1994. The Commission presented its final report on 20 October 1998. Barry highlights that the Commission created a space which did not exist before, thus allowing a better understanding between different sections of South African society.³⁹ The world recognised the success of the TRC through many attempts to replicate its truth and reconciliation processes in other troubled countries.⁴⁰

However, other scholars like Campbell,⁴¹ contend that there is no process without limitations and such was the case with South Africa's TRC. Some of the criticisms of the TRC are that it sought to restore peace and facilitate reconciliation without calling the perpetrators to fully account for their actions. The Commission was allowed to grant amnesty to those who confessed to engaging in gross human rights violations.

Another criticism which was highlighted by the African Union Panel of the Wise was that the TRC intensified racial tensions in the

38 Berkley Center for Religion, peace and world affairs 'Religion and conflict case study series, South Africa: The religious foundations of the Truth and Reconciliation Commission (2013) George Town University: Washington DC.

39 S Barry 'Reconciliation: The South African Truth and Reconciliation Commission's contribution to dealing with the past, reconciling and building the nation' (2006) 40 *In die Skriflig* 691 at 714

40 JL Gibson 'The truth about truth and reconciliation in South Africa' (2005) 26 *International Political Science Review* 341 at 361.

41 PJ Campbell 'The Truth and Reconciliation Commission (TRC): human rights and state transitions – The South African model' (2000) 4 *African Studies Quarterly* 41 at 55.

country by revealing the wrongdoings of the apartheid regime, its agents, and the liberation forces.⁴² The Commission was also criticised for failing to address the socio-economic effects of apartheid and failing to hold individual and institutional beneficiaries of apartheid accountable. The issue of compensation also generated a lot of debate in South Africa and beyond but complete redress was not forthcoming and victims of apartheid government policies were neglected in spite of the majority view that some form of reparation was necessary. Nonetheless many of the underprivileged survivors of apartheid and generations after them still struggle with access to education, housing, health care and jobs to this day.⁴³

4.2 Lessons for NPRC from South Africa's TRC

South Africa's TRC is viewed as one of the most effective truth and reconciliation processes in Africa. The TRC is lauded for meeting the core elements and conditions that guide truth and reconciliation processes.⁴⁴ The most salient feature of the TRC was its conflict mapping and analysis which saw the Commission apportioning blame to all parties which engaged in the struggle over apartheid; namely the apartheid regime, its agents, and the liberation forces. This disaggregation of actors to the conflict enabled the TRC to identify the roles played by each of the actors and their wrongfulness for purposes of ensuring delivery of justice.

The NPRC can benefit by adopting this approach since Zimbabwe's conflicts involve inter-linkages between atrocities perpetrated by political parties and government. Disaggregation of actors involved in conflicts will enable the NPRC to correctly apportion wrongfulness and thereafter make appropriate recommendations for purposes of securing appropriate redress for victims and survivors.

South Africa's TRC facilitated restorative justice that allowed all the parties involved to restore justice by alternative means. Restorative justice heals the wounds of both victims and perpetrators by focusing on peacebuilding and restoration as opposed to punishment of offenders.⁴⁵ Restorative justice offers an alternative framework in which perpetrators and victims are empowered to resolve their own conflict and restore relations in a broken society. The TRC adopted a viable and effective conflict resolution model which can provide lessons for the NPRC since punitive measures by themselves can hinder

42 African Union Panel of the Wise 'Peace, justice, and reconciliation in Africa: Opportunities and challenges in the fight against impunity' 2013 The African Union Series, International Peace Institute: New York.

43 Berkley Center for Religion, Peace and World Affairs (n 38).

44 Mawhinney (n 4).

45 As above.

national healing and reconciliation processes in fragile countries like Zimbabwe.⁴⁶

South Africa's government accorded the TRC power to grant amnesty. Through amnesties the TRC encouraged perpetrators to give full and truthful testimony as a strategy to deal with a hostile past. South Africa's transitional justice approach provides a cautionary tale about the usefulness of amnesty powers. The TRC's amnesties complimented other reconciliation and justice mechanisms which were established. In spite of granting amnesty to perpetrators of violence, the TRC generated justice that appeared to satisfy many survivors who believed that the TRC had the capacity to usher in long-lasting peace and reconciliation. Zimbabwe also granted amnesty to Gukurahundi perpetrators when the Unity Accord was signed in 1987 so that the nation could move forward but issues surrounding reprove have not yet been adequately addressed. There are many contrasting views on the question of amnesty and whether it is logical to effect it as a healing and reconciliation instrument. Some survivors discredited the amnesty and still call for retributive justice.⁴⁷

In spite of the mentioned process limitations, by and large South Africa's TRC effectively executed its mandate. The Commission enjoyed the support of the executive which had the political will to facilitate conflict transformation and reconciliation. However, the NPRC suffers a deficiency of political will by the executive, hence the challenges that it faces in its attempts to facilitate genuine conflict transformation, unity and reconciliation. With this absence of political will and respect for democratic values it is extremely difficult for the NPRC to achieve the same success as that of South Africa's TRC. In order to enhance its effectiveness, the NPRC should therefore strive to attain Boraine's five objectives for peacebuilding; which are accountability, truth recovery, reconciliation, institutional reform, and reparations.⁴⁸

4.3 Lessons for NPRC from the National Unity and Reconciliation Commission of Rwanda

4.3.1 Rwanda's National Unity and Reconciliation Commission

The National Unity and Reconciliation Commission of Rwanda was established in the aftermath of the Rwandan Civil War which began in 1990 when the Rwandan Patriotic Front (RPF) invaded Rwanda from

46 D Munemo 'The search for peace, reconciliation and unity in Zimbabwe: From The 1978 Internal Settlement to the 2008 Global Political Agreement' Thesis, University of South Africa, 2016.

47 Gatsheni-Ndlovu & Benyera (n 17).

48 As above.

Uganda in an effort to unseat the government of President Juvenal Habyarimana.⁴⁹ Government-controlled forces attacked Tutsi minority populations and moderate Hutus. In reprisal, the RPF attacked numerous civilian targets and reportedly recruited child soldiers.⁵⁰

A ceasefire agreement was reached in July 1992, and the war officially ended on 4 August 1993, after the signing of the Arusha Accords. In spite of unity accords and the agreements on power-sharing, tensions still persisted between Hutu and Tutsi factions leading to the assassination of President Habyarimana in April 1994. His assassination sparked the 1994 genocide.

The Arusha Accords of 1993 provided for the establishment of a Commission of Inquiry to investigate human rights violations committed by all parties in Rwanda. Due to supervening violence, the National Unity and Reconciliation Commission was not officially set up until 1999 when it was established by the Transitional National Authority.

The Commission was established in terms of article 16 of the 1993 Arusha Accords and tasked to investigate human rights violations committed during the war. It was operationalised by the Government of National Unity Law No 03/99 and subsequently the Commission was made a permanent institution by Law No 35/2002. This law also specified the mandate and powers of the Commission. The functions of the Commission included: organising national public debates aimed at promoting reconciliation; foster tolerance and a culture of peace and human rights; and denounce any ideas aimed at disunity. It also educates Rwandese on their rights and the rights of others; draft laws to foster reconciliation; and monitor whether authorities and citizens in general respect and observe the policy of national unity and reconciliation as contained in the Political Code of Ethics of the Arusha Accord.

Since the Commission transitioned from an institution with a prescribed lifespan to a permanent organ, it dispensed with the previous requirement for production of a final report. The Commission, however, has been submitting periodic reports which have highlighted that political and socio-economic issues were the key drivers of divisions rather than any fundamental differences between Hutus and Tutsis. The Commission has also established that a combination of bad governance, a culture of impunity and social injustices by successive regimes perpetuated ethnic differences.

Some of the recommendations which were made by the Commission were that Parliament should enact a law prohibiting and punishing all forms of discrimination. In response to the Commission's recommendation, in 2004, Rwanda's Transitional Assembly passed an anti-discrimination law, imposing a maximum two-year prison term

49 JN Clark 'National unity and reconciliation in Rwanda: a flawed approach?' (2010) 28 *Journal of Contemporary African Studies* 137 at 154.

50 Truth Commission: Rwanda 99, <https://www.usip.org/publications/1999/03/truth-commission-rwanda-99> (accessed 11 October 2020).

and up to Rwandese million-franc (approximately USD 1, 765) fine and damages on any person practising discrimination or segregation. The Commission also recommended that a history book, which it produced for public schools, be adopted and used in schools as part of the education curricula. The book has not yet been adopted for use in schools.

4.3.2 Lessons for NPRC from Rwanda's NURC

The success story of Rwanda's reconciliation efforts provides valuable lessons for the peace and reconciliation process in Zimbabwe. Two different court systems and a commission for unity and reconciliation spearheaded peace and reconciliation processes in Rwanda. The court systems included the International Criminal Tribunal for Rwanda (ICTR) and the Gacaca courts. The courts played a fundamental role in shaping the truth and reconciliation processes and assisted in bringing closure and justice to the victims and survivors of the genocide. The Gacaca system opened channels for dialogue between victims, offenders, and communities by creating opportunities for those involved to have an honest and meaningful engagement. The Gacaca trials assisted in promoting reconciliation by establishing platforms for victims to hear the truth about what happened in the past. It was also an opportunity for the perpetrators of gross human rights violations to confess their crimes and ask for forgiveness in front of their communities.⁵¹

The most important lesson from Rwanda was the willingness by the government to genuinely confront the genocide experience. Political will acted as a springboard towards achieving peace, stability and reconciliation. On the contrary, Zimbabwe's peace processes seek to achieve national healing and reconciliation through the creation of a false unity that ignores the critical aspect of truth-telling and accountability.⁵² There is readiness for peacebuilding by communities, but in the absence of political will the quest of achieving meaningful and genuine reconciliation remains elusive. In most cases lack of commitment and injustice in the higher echelons of the State is a major stumbling block when dealing with the concept of reconciliation. Many people have been wounded through recurrence of violence thus, truth-telling and forgiveness are crucial aspects of Zimbabwe's reconciliation process. Reconciliation should settle hostilities between conflicting parties, as this develops a shared feeling of a common history that can be accommodated by the perpetrators and victims, and reduces feelings of blame, distrust and resentment. The NPRC can only achieve this goal through emulating Rwanda's spirit of commitment towards attaining genuine reconciliation.⁵³

51 S Hassan 'Reconciliation and Peace-building in Post-genocide Societies: A Structured Focused Comparison in Rwanda and Cambodia' Thesis, Linnaeus University, 2019.

52 Tshuma (n 19).

53 EL Awow & WG Nkwi (n 31).

The NURC offers vital lessons for the NPRC about the search for the truth and facilitation of reconciliation processes. Rwandan co-existence has improved significantly, growth levels are high, and levels of inter-group violence are low. The Commission transferred ownership of unity and reconciliation to grassroots levels and this established sustainable and functional reconciliation structures.⁵⁴ Rwanda's NURC demonstrated the necessity of implementing a clearly restorative truth and reconciliation process before undertaking retributive punishment. Reconciliation builds a mechanism that seeks to engage the offenders and victims as humans-in-relationship.⁵⁵

Also, of critical importance is the fact that Rwanda's truth and reconciliation process placed emphasis on acknowledgement of wrongfulness. It emphasised on the need for reconciliation to be accompanied by acknowledgement of the past and acceptance of responsibility. It was agreed that admitting that one acted wrongfully represented one of the first steps towards rebuilding trust since reconciliation is a societal process that involves mutual acknowledgment of past suffering and the shifting of destructive attitudes and behaviour into constructive relationships toward sustainable peace.⁵⁶

Other notable achievements by Rwanda's NURC are its ability to infuse different peacebuilding approaches in its reconciliation endeavours. It is hoped that the NPRC will adopt a similar approach of facilitating restorative justice and reparation so that there is some form of appeasement to survivors for wrongs suffered in the past and the feelings of hurt which they still harbour. Besides facilitating payment of monetary compensation, NURC also ensured that psycho-social and spiritual needs of survivors and perpetrators were taken care of. The NPRC should also prioritise provision of psychosocial therapy or counselling services to survivors who are still harbouring mental anguish and psychological trauma due to the atrocities that they went through or witnessed.⁵⁷

The NURC has done tremendously well in supporting communities to reconcile with an ugly past. Rwanda's NURC experience can therefore provide practical and valuable insights which can act as a yardstick for effectiveness and credibility of the NPRC. Despite all the success stories, attaining complete unity and reconciliation in Rwanda

54 SM Moss 'Beyond conflict and spoilt identities: How Rwandan leaders justify a single recategorization model for post-conflict reconciliation' (2014) 2 *Journal of Social and Political Psychology* 435.

55 M Fischer 'Transitional justice and reconciliation: theory and practice' in B Austin, M Fischer and HJ Giessmann (eds) *Advancing conflict transformation* (2011) 405 at 430.

56 K Brouneus 'Reconciliation: Theory and practice for development cooperation' (2003), Swedish International Development Cooperation Agency: Stockholm.

57 Munemo (n 46).

remains a challenge. Most of the interference to unity and reconciliation efforts emanates from the national unity and reconciliation policy itself.⁵⁸ The foundation on which both the NURC and the government's wider national unity and reconciliation policy rest on is flawed.⁵⁹ Genocide ideology and ethnic stereotypes remain an obstacle to the process of unity and reconciliation in Rwanda.⁶⁰ The unity that the government attempts to achieve orbits around a negation of ethnicity, thus denying an open and honest engagement with the past. The Commission also lacks adequate resources to monitor unity and reconciliation.

5 TRANSITIONAL JUSTICE IN ZIMBABWE: STRENGTHENING THE EFFECTIVENESS AND ENHANCING THE CREDIBILITY OF THE NPRC

Gready and Robins provide a holistic understanding of transitional justice. According to them the concept of transitional justice is not only limited to criminal prosecutions, truth telling, institutional reform and reparations, but extends to commemorative practices and memory work, educational reform and reconciliation initiatives.⁶¹ They emphasise the adoption of a holistic approach that treats all rights as universal, interdependent and indivisible and that situates violence on a continuum spanning interpersonal and structural violence.⁶²

The NPRC should therefore confront Zimbabwe's past, which is marred with gross human rights violations and a society with many divisions along lines of race, class, ethnicity, gender and geography.⁶³ For reconciliation and unity processes to be fruitful they should be horizontal not structural and top-down. Munemo argues that peacebuilding and reconciliation processes should not be infiltrated by political expediency at the cost of genuine commitment to eliminate violence and achieve sustainable peace.⁶⁴ Transformative justice should not be a top-down imposition of external legal frameworks rather it should be a bottom-up understanding and analysis of the lives and needs of populations. Through adoption of a bottom-up process the focus is to address all unresolved issues of the conflict as to prevent future recurrences.⁶⁵

58 International Alert 'Unity and reconciliation in Rwanda: a look at policy implication vis-a-vis social cohesion (2018) Policy Brief.

59 JN Clark (n 49).

60 International Alert (n 58).

61 P Gready & S Robins 'From transitional to transformative Justice: a new agenda for practice (2014) 8 *International Journal of Transitional Justice* 339 at 361.

62 As above.

63 Zambara (n 28).

64 Munemo (n 46).

65 Hassan (n 51).

In the absence of a more holistic approach in peacemaking and peacebuilding, the journey to attain meaningful truth and reconciliation process in Zimbabwe remains a dream. Reconciliation must focus on justice in terms of accountability and compensation, and on truth, acknowledgement and recognition.⁶⁶ The NPRC has failed to prevent the rise of political tensions in the country for the past years because it has been unable to create an environment for peaceful dialogue. Atrocities have gone unpunished, unacknowledged and without redress. The continuous use of military operations in governance issues has led to a nation that is pervaded institutionally by militarism and violence. Reconciliation processes remain ineffective as long as the vicious cycle of impunity exists.⁶⁷

Murambadoro also observes that the involvement of political leaders in administration processes of the NPRC impedes impartial execution of its mandate.⁶⁸ Political interference has resulted in some independent Commissions set up by governments failing to deliver on their constitutional mandates, thereby becoming ineffective mechanisms. The NPRC has so far been unable to fully execute its constitutional mandate. A deteriorating economic crisis and political instability continues to pose serious threat to peace and justice in Zimbabwe. Murambadoro further observes that the effectiveness of the NPRC is compromised by its politicization. She highlights that political figures have been using the NPRC as a political strategy to gather support from the electorate and be seen as compliant to international standards of justice and respect for human rights.

Lederach advocates for a transformative approach in which inharmonious relations are restructured over a long term by education, advocacy and mediation. Conflict transformation is defined as a process of transforming the relationships, interests, discourses, and the very constitution of society that supports the perpetuation of violence.⁶⁹ Conflict transformation encourages the creation of cooperative and just societies. The concept of conflict transformation focuses on ongoing processes, taking into consideration the transformation of relationships, actions, institutions and structures that perpetuate violence. Kriesberg, as quoted by Fischer,⁷⁰ identifies four dimensions of reconciliation which are essential for conflict transformation and peacebuilding in post-conflict societies: shared truth, justice, regard and security.

Conflict transformation views peace as centered and rooted in the quality of relationships. The tenets of the approach are: if the victims feel recognised and reintegrated in society; if people are mindful of the importance of confronting the past; if trust in police and security forces

66 Fischer (n 55).

67 Ndlovu-Gatsheni & Benyera (n 17).

68 Murambadoro (n 10).

69 JP Lederach 'The little book of conflict transformation: Clear articulation of the guiding principles by a pioneer in the field (The little books of justice and peacebuilding' (2014).

70 Fischer (n 55).

is established; if reform processes suggested and offenders are excluded from violence, and the changes of nonrecurrence to violence are enhanced.⁷¹ Transformational view believes that dialogue is of paramount importance for creating and addressing social and public spheres where human institutions, structures, and patterns of relationships are built. Conflict transformation seeks to devise strategies in order to transform violent conflict into non-violent forms of dealing with conflict.⁷²

It is therefore important to change the various manifestations of conflict by addressing the root causes. Conflict transformation encourages the promotion of a non-violent society symbolising new social relations, institutions, and visions.⁷³ A successful conflict management structure takes into consideration the grievances and needs of various actors in society.

6 RECOMMENDATIONS

From the arguments presented in this article, the following recommendations are proffered:

- (a) It is very crucial for the government to explore what happened at various historical stages so that victims find closure and the truth about what really happened.
- (b) The government should establish transparent engagement platforms and processes that encourage truth telling and reconciliation.
- (c) All parties involved in perpetrating violence should be held accountable. Victims and survivors should obtain justice, and reparations of the victims is also a vital aspect towards achieving sustainable peace and genuine reconciliation.
- (d) The government should effectively empower the NPRC in order to confront past and present injustices. The government should give the much-needed support to the NPRC itself as well as to everyone who is complementing the mandate of the commission.
- (e) The government should protect people who are willing to air their grievances on politically motivated violence.
- (f) The government through the NPRC should cultivate an environment that encourages apology and acknowledgement of wrongdoings.
- (g) Most importantly, the government should extend the tenure of the NPRC in order for it to complete its constitutional mandate.

71 B Jones, E Baumgartner & S Gabriel A *transformative approach to dealing with the past* (2015).

72 Lederach (n 69).

73 AJ Muste in DP Barash, D (ed) *Approaches to peace: a reader in peace studies* (2000).