



National Transitional Justice Working Group In Zimbabwe

Minimum Standards for an Effective National Peace and
Reconciliation Commission
&
Guidelines for Gender Mainstreaming

November 2014

NATIONAL TRANSITIONAL JUSTICE WORKING GROUP

THEMATIC AREAS
PROMOTION OF TRUTH
GENDER

Minimum Standards for an Effective National Peace and Reconciliation Commission & Guidelines for Gender Mainstreaming

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About The National Transitional Justice Working Group

The National Transitional Justice Working Group (NTJWG) is a platform established by 46 non-state Zimbabwean transitional justice stakeholders to provide the interface between transitional justice stakeholders and the official transitional justice processes in Zimbabwe.

Vision

A peaceful, just, accountable and democratic society.

Mission

To create inclusive space for the coordination of transitional justice stakeholders, share experiences; build synergies for comprehensive, accountable, victim-centred and participatory transitional justice processes in Zimbabwe.

Values

- Integrity: Professionalism, Commitment, Truth, Transparency, Diligence, Honesty, Confidentiality
- Inclusivity: Involving everyone regardless of sex, race, ethnicity, age, sexuality, belief, ideology and geography
- Impartiality: Non-partisanship, Independence, Objectivity

Members

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1.0 Foreword

As members of the National Transitional Justice Working Group (NTJWG) we acknowledge the need to urgently set up the independent commissions as set out in Chapter 12 of the Constitution. We note that the operationalization of independent commissions is critical because some of the commissions, like the National Peace and Reconciliation Commission (NPRC), are time-bound. We thus wish today to set in motion an important conversation on the NPRC by introducing the Minimum Standards for an Effective National Peace and Reconciliation Commission, incorporating the Guidelines for effective gender mainstreaming. We are grateful to the many institutions and individuals who have contributed to the development of these standards and guidelines.

We call upon Parliament of Zimbabwe to consider seriously the issues raised in the standards we are presenting. We highlight the need for increased public participation. We believe that the independent commissions, in particular the NPRC, will derive their credibility mainly from the transparent manner in which they will be established and the way they will carry out their work. It is of utmost importance 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 of the process.

We further encourage Parliament to clarify the criteria being applied to determine shortlisting for the members of the NPRC.

In the end, the NPRC must reflect gender balance in line with the constitution. The nominated commissioners should not be selected secretly and announced suddenly. Their selection must be subjected to scrutiny and public discussion. The whole selection process up to the appointment of the commissioners should be consultative. The commissioners must satisfy beyond doubt the criteria set out in Section 251(4) of the constitution, which says 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 peace building. Additionally, they must possess

unquestionable commitment to, and leadership in, the cause of peace, justice and post-conflict reconciliation. They must have no history of association with events or organizations whose activities might be the subject of investigation by the NPRC. We stress that time is of utmost importance and we plead with Parliament to speed up the process.

A good NPRC Bill must measure up to these minimum standards, which we believe, are not only internationally acceptable but are also in harmony with the expectations of the majority of Zimbabweans. In coming up with these standards, the NTJWG has looked at many commissions of the same nature and like mandates that have worked in other parts of the world. We further looked at the unique history of Zimbabwe and the issues raised by stakeholders at different platforms. We also build on a number of broad consultations with Zimbabwean civil society, beginning with the ground-breaking international symposium in 2003.

We would like to stress our support to all stakeholders during all processes. We present these standards and guidelines to all stakeholders: both state and non-state actors. Do not take them as a prescription but our humble contribution to the process. Feel free to use them in your lobby and advocacy initiatives. With the presentation of these guidelines, we invite all to a national conversation not only on what must be done, but also how it must be done. We know many of you have better ideas on how to make the NPRC effective. Please bring them up. The NTJWG provides an inclusive space for such conversations among stakeholders.

Muchadehama Alec (Mr.)

Chairperson

National Transitional Justice Working Group

Harare

2.0 Minimum Standards for An Effective National Peace and Reconciliation

2.1 Introduction

Civil society work in Zimbabwe dates back as far as the colonial era. In this work, civil society has interacted with different stakeholders including victims and survivors of gross violation of human rights, some alleged perpetrators, policy makers, political activists, churches and independent commissions among many others. Several meetings have been convened locally and internationally with stakeholders to understand their expectations regarding transitional justice measures. Many stakeholders have, over the decades, worked with many survivors and victims of human rights violations. Some have litigated on behalf of these victims in local and regional courts, and others have offered relief and psychosocial support to those traumatised by past violence. When the new Constitution was signed into law in May 2013, stakeholders from various platforms welcomed the development and highlighted key issues regarding national healing with specific attention to the National Peace and Reconciliation Commission (NPRC), which is charged with ensuring post-conflict justice, healing, and reconciliation. Stakeholders have followed closely the procedure adopted by Parliament and invited Zimbabweans to be part of this process.

The National Transitional Justice Working Group (NTJWG) in Zimbabwe takes the demands of national healing and justice for our country seriously and has pledged unwavering support for any national process with such noble goals for our society.

The NTJWG is the latest in a long line of civic initiatives to ensure truth, justice, healing, and reconciliation for the victims of the political violence of the past decades. It builds upon the recommendations of the 2003 Symposium, which endorsed the *Joint Principles* and clearly stated that no period in history was less important than another. Accordingly, the work of the NPRC must be as inclusive of history as it is possible to be.

In line with our mandate to provide interface between transitional justice stakeholders and official transitional justice process, we now present what we

believe to be the key minimum standards for an effective NPRC. We encourage Parliament and any other persons working for the operationalization of the NPRC to strive to uphold these minimum standards because they determine the success or failure of the NPRC. These minimum standards are not new, but are carried in many documents and position papers developed by different stakeholders at different times in our history. They are not exhaustive, but rather reflect the minimum standards that any commission charged with ensuring post-conflict justice, healing and reconciliation needs to uphold in order to be effective.

a. Constitutional Foundation – The NPRC is one of the five independent commissions established by Chapter 12 of the Constitution of Zimbabwe for the purpose of supporting and entrenching a culture of human rights and democracy, protecting sovereignty and interests of the people, promoting constitutionalism, transparency and accountability in public institutions, securing the observance of democratic values and principles as well as ensuring that injustices are remedied (section 233). It must be emphasised that the NPRC is an outcome of a constitutional reform process, which involved a nationwide public consultation process. Because of that background, the NPRC’s constitutional foundation demands that it be treated with the sanctity that it deserves. This means the executive, the judiciary, parliament, and all institutions and agencies of government have a duty to ensure the protection of this constitutionally established body, and also to ensure that the provisions set out by the constitution are followed faithfully without compromise. Any temptation to limit or dilute the constitutional provisions establishing the NPRC must be resisted.

b. Legislative Foundation – Any effective commission must be built around a clear and firm legislative framework giving effect to the constitutional provisions. Thus Parliament must put in place a law that clearly outlines the objectives, operational modalities and powers of the NPRC. The law must not take anything away from what the constitution has given, but must remain guided by the relevant constitutional provisions.

c. Protection Mechanisms – The NPRC will be dealing with a very sensitive subject in Zimbabwe – past violent conflict, which in some areas is

still ongoing. It is important that adequate protection mechanisms be put in place for the following groups of people:

i. Victims and Survivors - many victims and survivors still live in fear because their perpetrators are still to face justice. Unless adequate protection mechanisms are put in place victims and survivors will not be free to interact with the commission. And those who are brave enough to do so may find themselves in danger of victimisation. This could prove to be a major obstacle to truth telling as envisaged by section 252 (c) of the constitution.

ii. Supporting Organisations – many organisations have worked with victims and survivors of human rights violations. As recently noted by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, commissions do not start from scratch but will depend a lot on the work done by civil society organisations. Equally important is the support that civil society organisations have to continue giving to victims and survivors of human rights violations. In that regard, it is important to ensure the security of organisations and individual who work with victims during and after their interaction with the NPRC and the victims and survivors.

iii. Witnesses – The NPRC will benefit from the information they will receive from many witnesses of past and ongoing violations. It is important that security be guaranteed for the witnesses during and after their interaction with the NPRC. Failure to guarantee this security will impede efforts at truth telling.

iv. Commissioners – Commissioners of the NPRC must enjoy a great deal of protection to ensure that they do their work without fear or favour. They must be protected from undue influence, financial inducements, threats or anything that may sway their independence, impartiality and integrity.

v. Alleged Perpetrators – Protection must also be guaranteed to proven and alleged perpetrators of human rights violations against unlawful retribution or attacks on their dignity. The NPRC must try in its dealings with all parties to be impartial, non-judgemental, open minded and fair with the objective

of achieving truth, justice, healing and reconciliation for affected persons.

d. Victim-Centeredness – The NPRC must adopt a victim-centred approach and prioritise the needs of victims and respond to their expectations. In order to achieve genuine victim centred-ness, there is need to observe the following:

i. Respect and Compassion – All victims must be treated with compassion and respect for their dignity. The NPRC enabling law must develop guidelines to ensure that the Commissioners, staff, partners and all stakeholders who interact with victims operate within the expected parameters, which promote respect and compassion for the dignity of victims.

ii. Equality and Fairness – All victims must be treated fairly and equally without discriminating against race, ethnicity, religion, language, gender, ability, nationality, language, age or political affiliation. Victims must be free to speak in the language of their choice under secure conditions. No victim from any point in history must feel left out of the process, undermined or undervalued.

iii. Gender-Sensitivity - The NPRC must be sensitive to the gender dynamics in Zimbabwe and the complexity of certain violations in its interaction with victims and witnesses, in meetings, interviews and investigations. The NPRC must pay attention to the nature of the violations in receiving of testimonies and be attentive to the gender sensitive needs of the victims, families and or communities. Alongside these standards, the NTJWG has also developed guidelines on gender mainstreaming.

e. Inclusiveness and Public Information and Participation – The legitimacy of the NPRC does not end with its constitutionality, but perpetuates in the manner in which it is going to conduct its work. The NPRC and its partners must strive to promote an inclusive national truth-seeking and healing process with greater public participation and transparency. No member of the Zimbabwean society must feel left out or deprived of information regarding the work of the NPRC. Measures must be put in place to ensure that the NPRC works with everyone who is willing

to be involved and that the public is adequately informed of its work at every stage. Public hearings and debates must be broadcasted as wide as possible without interfering with the integrity of the process. Inclusivity and participation must not be a token. The NPRC must ensure that expediency does not come at the expense of meaningful participation of all interested parties. There must be a clear demonstration by the NPRC of its willingness to engage and facilitate meaningful and effective participation. This is not just about availability of information, but also the structures and facilities must be accessible to everyone, for example language, location.

f. Privacy and Confidentiality – The NPRC must put in place measures to ensure privacy and confidentiality. Many stakeholders who will interact with the NPRC will need to see in place measures to protect their identities and the information they may wish to share with the NPRC. Every member and every staff member of the NPRC must treat all information with confidence which comes to his or her knowledge by virtue of their office or association with the NPRC, and shall take an oath or affirmation to that effect. Adequate sanctions and retribution must visit those who compromise the integrity of the NPRC by divulging any privileged information and endangering victims, witnesses or the NPRC. However, this standard must not be used to frustrate transparency, which is equally important in the work of the NPRC.

g. Provision for Persons with Special Needs – The NPRC must be accessible to all as a general standard. Additionally, special attention must be paid to persons with special needs for example people with disabilities requiring special provisions to be able to interact with the NPRC without difficulty or discouragement. This must include provision for minority groups in terms of language or other needs. It is recommended that a dedicated Unit must be established in the NPRC to look at the specific issue and address the needs to such persons.

h. Recruitment Policy – Section 234 of the Constitution gives the NPRC power to recruit and regulate its own staff. By the nature of its work, the NPRC must develop a recruitment standard to ensure that the people who will serve in the secretariat are not accused persons, potential suspects,

witnesses, or individuals with a possible blemish in respect of past violations. It would severely affect the integrity of the NPRC if persons associated with organisations reputed for violation of human rights find themselves in the secretariat of the NPRC. A rigorous vetting process must be undertaken during the hiring process.

i. Power to Call for Evidence – The NPRC enabling act must give the NPRC power to subpoena witnesses or anyone from whom the NPRC believes it can get information required for it to dispense its mandate and achieve its objectives. The act must also provide sanction upon those who deliberately sabotage the work of the commission. Without these powers, the commission will be ineffective and most of its efforts will not bear fruit.

j. Funding and Resource Mobilisation – Section 322 provides that Parliament must ensure that the NPRC has adequate financing. Without adequate funding, the NPRC cannot perform its functions and may not attract competent personnel. An Act of Parliament must provide the specifics of how the NPRC is going to be funded. History shows that in the majority of cases, government funding is usually inadequate and resource starvation can be used to paralyse Commissions. The NPRC must be allowed to source funding in addition to the funding that comes from government. Measures can be put in place to ensure that whatever funding comes to the NPRC does not interfere with the NPRC’s independence and integrity. Financing guidelines can be developed to regulate the funding to avoid conflict of interests, ensure transparency of donations and avoid prejudice to the activities of the NPRC.

k. Adequate Support Structure – Section 236 of the Constitution obliges the State and all institutions and agencies of government at every level to assist the NPRC and protect its independence, impartiality, integrity and effectiveness. This obligation must extend to all non-state actors. It is thus very critical that there is an adequate support system for the NPRC from key actors including the judiciary, the security sector, civil society, the executive, the legislature and the development community among many other actors. An operational tool must be developed to facilitate the supply of adequate

support for the NPRC from different institutions. The effectiveness of the NPRC depends on such support.

2.2 Conclusion

The National Transitional Justice Working Group is always available to support the work of the NPRC. We remain guided by our vision for a peaceful, just, accountable and democratic society. We believe the NPRC has an important role in shaping and realising this vision. We encourage Parliament's Committee on Standing Rules and Orders to accelerate the establishment of the NPRC as well as ensuring that the public remains informed of all the developments towards this goal. We remain open to dialogue from all actors regarding the way forward.

3.0 Guidelines for Effective Gender Mainstreaming in the Work of the National Peace and Reconciliation Commission

3.1 Introduction

Through section 252 of the Constitution, the National Peace and Reconciliation Commission (NPRC) is established with the objective to bring about post-conflict justice, healing and reconciliation. The National Transitional Justice Working Group (NTJWG) has published a set of general minimum standards for an effective NPRC.

In addition to the general minimum standards, the NTJWG now presents the guidelines for gender mainstreaming into the work of the NPRC. The motivation for specific guidelines for the NPRC is the realisation that the NPRC presents a unique opportunity for the country to be gender responsive in the application of non-discriminatory and equality principles of transitional justice. Furthermore there has been recognition that the dynamics and experiences of different genders vary. Women's voices and participation often goes unrecognised, yet women suffer the brunt, are brutalised, victimised, and carry the heaviest burden before, during and after conflict. The NPRC, if well constituted, is a positive step towards redressing these past gender inequalities and platform and mechanism to better engage with women survivors seeking justice and acknowledgment. These guidelines are designed to ensure that the NPRC is responsive to the gendered dynamics of past human rights violation, and cognisant of how they may be addressed.

Just like the general minimum standards, guidelines are not exhaustive, but rather reflect the least standards that any commission charged with ensuring post-conflict justice, healing and reconciliation needs to observe in order to be satisfactory to the needs of gender justice, equity and responsiveness.

a. Composition and Organisation of the Commission – Section 17 of the Constitution of Zimbabwe binds the state and all state institutions and agencies of government to ensuring gender balance. It requires that at least half of the members of all commissions must be women. It follows that the composition of the NPRC must have 50% or more of the members

being women. It is emphasised that it is not enough just to have women for the sake of satisfying this requirement. It is submitted that the women appointed to the NPRC must reflect real substance, which speaks to the objectives of the constitution in insisting on gender balance. It is further submitted that the Chairperson and the Vice Chairperson must not belong to the same gender in line with section 320 (4) of the Constitution. In addition to these measures, gender balance must be incorporated into the entire organisational structure and operational procedures to ensure that gender becomes an organising principle throughout the commission's life cycle in its daily work, hearings, and final report-writing process. A clear legislative framework must clearly reflect the value of gender balance as envisaged in section 17 of the Constitution.

b. Gender Specific Theme Focus – In many commissions that have been charged with doing the work like that the NPRC will be working on, it has proven to be very helpful to have a dedicated special Unit or Department working on gender, well positioned with a budget, support staff and decision making mandate. During the course of the NPRC's work, the gender unit handles most of the operational responsibilities of gender-related work. This may include convening trainings, conducting other capacity-development programmes for commissioners and secretariat, and doing background research on gendered patterns of human rights violations that will eventually feed into the final report's gender-focused chapters. The public hearings on gender need to be done in consultation with other women's rights groups and contributions from the gender unit. Despite the gender unit being a specific unit, its work must permeate to other units to ensure a gender-conscious commission that is responsive and sensitive to gender issues as a whole. In the end, gender must become both a specific focus area, and a cross – cutting theme influencing the work of other units as well as the outcomes and recommendations.

c. Paying Close Attention to Gender Specific Violations – The Zimbabwean society has many unacknowledged gender-specific violations that date back to pre colonial era which the commission will have to deal with; i.e. violations like the treatment of fellow female freedom fighters as

sex slaves during the liberation struggle, ‘raping’ of small boys by both male and female perpetrators, the abuse and discrimination of sexual minorities, and mass raping of women and girls as a weapon of war for supporting a particular political party or position. These violations have not been given the attention that they deserve, mainly because of cultural obstacles like the inability of ‘men’ and ‘boys’ to report ‘rape’, or the idea that rape is an inevitable consequence of conflict. Equally objectionable has been the general classification of rape under harsh bodily injuries rather than a crime against humanity or a war crime. As a matter of principle, the NPRC needs to adopt a more vigilant approach in the definition of gender-related violations so as to ensure recovery of the whole truth including the nature of violations and recommending strategies for remedy, access to justice, prosecution of perpetrators, healing and rehabilitation for affected persons. The NPRC should speak strongly against gender-specific violations to make sure non-recurrence, justice and rehabilitation.

d. Victim-Centeredness – Victims of gender-related violations in many cases suffer extreme trauma, and are unable to report due to lack of protection mechanisms and non-prosecution of perpetrators. The NPRC must adopt an approach to create mechanisms and an environment that is sensitive to such victims to ensure that the commissioners and staff do not end up re-victimising the victims. Commissioners and staff must receive adequate training on handling gender-related cases. A trained counsellor must be made available during all such meetings to ensure that such matters are handled with care, respect and compassion. Where extra care is required, the NPRC must work with institutions that provide such support to ensure that there is constant support and protection for such victims.

e. Privacy and Confidentiality – The NPRC must put in place measures to ensure privacy and confidentiality for all victims but most importantly for victims of gender-related violations, their spouses and families. Members of the NPRC and staff must treat all information, which comes to their knowledge by virtue of their office or association with the NPRC with confidence, and must take an oath or affirmation to that effect. Adequate sanctions and retribution must be applied to those who compromise

the integrity of the NPRC by divulging any privileged information and endangering victims, witnesses or the NPRC. These guidelines must not be used to avoid transparency.

f. Media and Gender-Related Violations - In many instances in other jurisdictions and in Zimbabwe, the role of the media in reporting and disseminating information is very critical. It is even more so when it comes to gender-related violations. The NPRC must develop guidelines on reporting matters relating to gender-related violations to ensure that the need to sell news does not overtake the respect for the dignity of the victims. Many international guidelines on conflict reporting can be used in engaging media to report responsibly without victimising the victims. It is important that adequate sanction be put in place in case of violations in this area.

3.2 Conclusion

The National Transitional Justice Working Group is convinced that the NPRC has a national duty to ensure post-conflict justice, healing and reconciliation. To achieve this, the NPRC will inevitably tread some sensitive ground, which requires extreme care and professionalism. By implementing these guidelines, it is possible that the NPRC can do justice to the needs of the many victims of gender-related violations, ensure participation of all genders in particular women at all levels of decision making. The NPRC must ensure adequate budgetary allocations; design of gender specific indicators for monitoring implementation and girding all its work using accepted internationally acceptable human rights principles.

