



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

THE ROLES AND RESPONSIBILITIES OF THE STATE IN TRANSITIONAL JUSTICE PROCESSES IN ZIMBABWE

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INTRODUCTION

The 2013 Constitution of Zimbabwe (the Constitution) is celebrated as a good reflection of the aspiration of Zimbabweans to move towards a more democratic society where human rights are respected, promoted, protected, and fulfilled. One of its most striking features is the inclusion of provisions for the establishment of the National Peace and Reconciliation Commission (NPRC). Section 252 of the Constitution details the NPRC's functions which include ensuring post-conflict justice, healing, and reconciliation. While the NPRC is the primary duty bearer for transitional justice processes in Zimbabwe, dealing with Zimbabwe's past is a mammoth task that cannot be assumed by one entity. Therefore, it is incumbent on all stakeholders, including the State, other independent commissions, civil society, and the public, to work together to ensure the success of Zimbabwe's efforts to deal with the past. There is thus need for all stakeholders to understand the role they play in transitional justice in Zimbabwe. This factsheet, therefore, breaks down the role that the three arms of Government play in transitional justice and how they can contribute to transitional justice processes.



THE ROLE OF THE LEGISLATURE IN TRANSITIONAL JUSTICE

The Zimbabwe legislature consists of the President and Parliament acting per the Constitution. The Parliament of Zimbabwe is made up of the Senate and the National Assembly, and its primary role is to enact legislation. However, its role extends beyond this; it includes exercising oversight over the executive arm of the Government and adopting the national budget. Resultantly, Parliament has a significant role to play in transitional justice.

According to section 119 of the Constitution, the role of Parliament is to:

- *promote democratic governance in Zimbabwe;*
- *ensure that the provisions of the Constitution are upheld and that the State and all institutions and agencies of Government at every level act constitutionally and in the national interest;*
- *and to hold all State institutions and agencies accountable.*

The role of Parliament in Zimbabwe in transitional justice falls within two broad categories: law-making and oversight.



i. LAW MAKING ROLE

Parliament has already effectively exercised its law-making function to significantly contribute to transitional justice in Zimbabwe through the enactment of the NPRC Act [Chapter 10:32]. The law facilitated the operationalisation of the NPRC. However, there remains room for Parliament to play a more active role in support of transitional justice through the enactment of more laws. Given Zimbabwe's history of conflict and violence for which victims, survivors, and their families have not been compensated, Parliament could enact a reparations law to ensure that reparations are made to those who were directly or indirectly harmed because of past violations. Parliament can also use its law-making function to enact laws or amend existing laws to ensure judicial and prosecutorial independence, which is key to ensuring justice and accountability. This can also be done through the enactment of laws that establish ad-hoc prosecutorial mechanisms tasked with the prosecution of perpetrators of violations linked to specific epochs of violence, such as the Gukurahundi.

Another way through which Parliament can exercise its law-making function to facilitate transitional justice in Zimbabwe is through amnesties. Zimbabwe has in the past granted amnesties to perpetrators of human rights abuses following different epochs of violence. However, this was done contrary to international law, which does not permit granting of amnesties for genocide, crimes against humanity, torture, and other gross violations of international human rights law. Therefore, Parliament must ensure that amnesty laws are enacted only as a last resort for dealing with the past, and they must be carefully couched so that they are not misused to grant amnesty to perpetrators of the violations which fall under gross violations of international human rights law.



Parliament can also use its law-making function to enact laws or amend existing laws to ensure judicial and prosecutorial independence.



ii. OVERSIGHT ROLE

Parliament's oversight role is another crucial role it plays in transitional justice to ensure that state institutions, agencies, and agents remain accountable to the people of Zimbabwe through Parliament. To begin with, Parliament plays an oversight role in the appointment process for NPRC commissioners.

According to section 237 the Parliamentary Committee on Standing Rules and Orders:

- must publicly advertise the positions,
- invite public nominations,
- conduct public interviews,
- prepare a list of the appropriate number of nominees for appointment and
- submit the list to the President.

The list of nominees submitted to the President must consist of nominees who are chosen for their integrity and their knowledge and understanding of, and experience in, mediation, conciliation, conflict prevention and management, post-conflict reconciliation, or peacebuilding. Parliament's participation in this process is crucial because it ensures that the elected representatives of the people of Zimbabwe oversee a transparent appointment process.

Furthermore, Parliament plays an important role in determining who becomes part of the NPRC and it is incumbent on Parliament to be diligent and ensure that all the names given to the President are of individuals who can serve the interests of Zimbabweans.

Parliament plays an oversight role over the NPRC per sections 253 and 323 of the Constitution. Section 253 requires the NPRC, through the appropriate Minister, to submit reports to Parliament on particular matters relating to national peace and reconciliation which, in the Commission's opinion, should be brought to the attention of Parliament.

The wording of the Constitution makes this provision broad thus, the NPRC can report to Parliament on any issue. Regrettably, although there are various issues that the NPRC could have reported to Parliament based on this report, the NPRC has opted not to do so to date. An example of such an issue is the usurping of the NPRC's mandate by the Executive led by the President and the traditional leaders in addressing the Gukurahundi.

Section 323 also provides an opportunity for Parliament to exercise oversight over the NPRC. It obligates the NPRC to submit to Parliament, through the responsible Minister, an annual report describing its operations and activities fully. The report must be submitted no later than the end of March in the year following the year to which the report relates. This provision enables Parliament to evaluate the work carried out by the NPRC so it can hold it accountable for the fulfilment of its mandate bearing in mind that the NPRC is allocated public resources to fulfil its mandate.

Evaluation of the NPRC's annual report allows Parliament:

- to appreciate the work that the NPRC has done;
- evaluate if the funds allocated to the NPRC in the national budget are sufficient or require review;
- and identify state institutions, agencies, and agents who may be obstacles to the NPRC's work and hold them accountable.

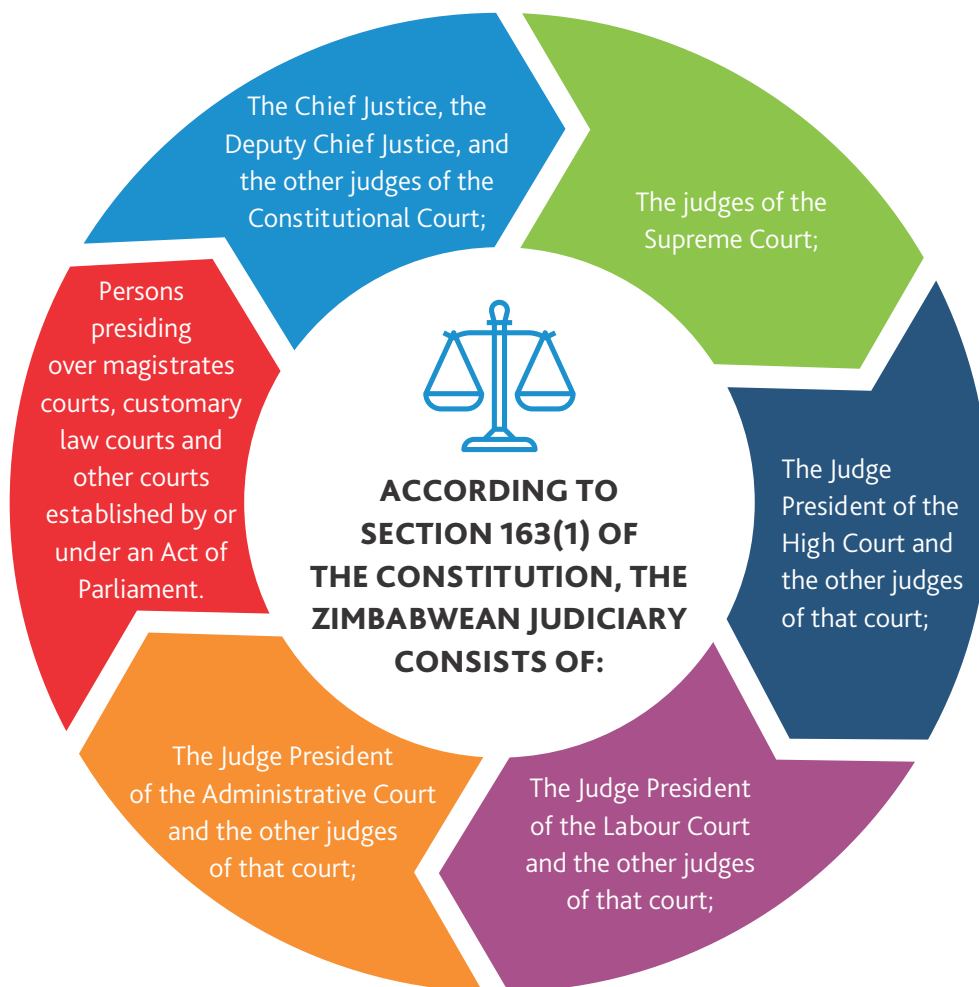
Furthermore, the submission of the report enables Parliament to review the recommendations made by the NPRC, consult their constituents on them, debate them during sessions, and implement those that are supported either through parliamentary committees or the Executive. Regrettably, since its operationalisation, the NPRC has not submitted its annual reports timeously, and Parliament must hold the NPRC accountable for this breach of its constitutional obligations.

Furthermore, Parliament must encourage the NPRC to submit its reports on time and the necessary support must be provided to enable it to do so.



THE ROLE OF THE JUDICIARY

Although transitional justice extends beyond justice in the courts, the judiciary still plays an important role in transitional justice, particularly concerning justice and accountability.



The judiciary's role revolves around applying the law, settling disputes, and holding those who break the law accountable.

While Zimbabwe has experienced varying degrees of violence over the years, what has remained constant are the calls for justice and accountability for human rights violations perpetrated during different epochs of violence. However, despite those calls for justice and accountability, impunity remains a significant challenge to transitional justice in Zimbabwe. The judiciary is vital in fighting impunity by holding perpetrators accountable and delivering justice for the victims. This can be done through criminal or civil law. Under criminal law, the courts preside over cases of violations and deliver their rulings regarding the alleged perpetrators' guilt, and if they are guilty, the courts also impose sentences on them. Through the criminal justice system, the courts can contribute to transitional justice by imposing hefty sentences on proven perpetrators of violations. The imposition of such sentences is important because it deters potential perpetrators and aids the fight against impunity. Through civil law, the courts may also contribute to transitional justice by awarding damages for violations, which may act as a deterrent. Furthermore, where there is a liability, the courts must, as much as possible, grant remedies that adequately provide redress for the harm suffered. These remedies may extend beyond compensation through damages. While the courts may be urged to be sensitive to the experiences of victims and ensure that they get justice, the courts must remain fair and impartial as they adjudicate matters brought before them. Furthermore, the courts must always ensure that they retain their independence and not be influenced by external actors.

Another way in which the courts may contribute to transitional justice is through the interpretation of the law. The courts must try to interpret the law in a manner that is consistent with the Constitution and international human rights law and standards. Where necessary, the judiciary must also make orders for the enactment of laws or their amendment to ensure compliance or alignment with the Constitution. For example, in 2020 the Constitutional Court ordered the Government to gazette a law within 45 days to operationalise the Independent Complaints Mechanism provided for in section 210 of the Constitution.

The judiciary is vital in fighting impunity by holding perpetrators accountable and delivering justice for the victims. This can be done through criminal or civil law.

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THE EXECUTIVE

In Zimbabwe, the executive arm of Government consists of the President, the Vice-Presidents, and Cabinet. The Executive oversees the day-to-day running of the country, and per the separation of powers doctrine, it enforces the law while the legislature makes it and the judiciary interprets it.

According to the African Union Transitional Justice Policy, AU member states must develop strategies, policies, programs, and projects that can ensure that transitional justice is implemented. Furthermore, the AUTJP requires states to incorporate memory initiatives into the education curricula. Although these obligations are placed on the states as a whole, they fall primarily within the purview of the Executive, which must work with transitional justice stakeholders to make transitional justice processes a success.



MAKING APPOINTMENTS

Section 110(2)(d) of the Constitution empowers the President to make constitutional appointments. This is significant for transitional justice because the President appoints judges, the Prosecutor-General, the Commissioner General of Police, and other actors who play an important role in ensuring justice and accountability for victims and survivors of past violence.

More specifically, 251(1) of the Constitution gives the President the power to appoint the NPRC Commissioners. As the NPRC has the primary mandate to lead the dealing with the past processes in Zimbabwe the people appointed to lead it are critical to its ability to deliver on its mandate. Therefore, the President must ensure that the people he appoints to these positions are not just impartial and competent but also have the will to fight impunity and play their roles in ensuring the success of Zimbabwe's transitional justice efforts.

The President also appoints the Ministers in Cabinet, and through these appointments, he is in a position to contribute to transitional justice. According to the Constitution and the NPRC Act, there must be a minister responsible for the NPRC. Although the NPRC is an independent commission, it has a limited lifespan of ten years, an expansive mandate whose successful fulfilment heavily relies on the Executive's cooperation. Thus the minister responsible for the NPRC must act as a bridge between the Commission and the Executive during the Commission's existence. Furthermore, the minister must also facilitate the continuation of the NPRC's work after it ceases to exist because transitional justice is a process and not an event thus, its continuity must be guaranteed. However, Zimbabwe currently does not have a stand-alone Ministry of National Peace and Reconciliation, and there is no mention of its inclusion as part of any of the existing ministries. Additionally, it is unclear who the minister responsible for the NPRC is at the moment.

MAKING AND IMPLEMENTING POLICIES

The Cabinet is responsible for making and implementing national policies per section 110(3)(d) of the Constitution.

Policy formulation and implementation are critical, particularly in a country like Zimbabwe where the Constitution shows the people's willingness to deal with the past. Cabinet thus should make and implement policies that honour the aspirations of Zimbabweans to address the wrongs of the past.

This can be done by:

- developing and implementing policies that promote multiple narratives of the past;
- aiming to reform institutions such as the police force and the army;
- incorporating transitional justice knowledge into the education curriculum, which is necessary to ensure non-recurrence, among other initiatives.

As part of its policy formulation function, Cabinet must ensure that its policies are informed by extensive consultation with stakeholders such as victims and survivors of past violations and their families, civil society, and traditional leaders, among others.

DEVELOPING THE NATIONAL BUDGET

Another important Cabinet function is developing the annual national budget. Although Parliament approves the budget, it originates from Cabinet. When developing the national budget, Cabinet should ensure that it provides for transitional justice initiatives and processes. The NPRC has, since its operationalisation, bemoaned the financial constraints it has endured, which have hampered its work. Given the national importance of the NPRC's work, it is crucial for it to be adequately funded to enable it to deliver on its mandate. Therefore, Cabinet must consider the scope of the work that must be undertaken by the NPRC and balance this with other national funding needs when formulating the national budget for consideration by Parliament.



CONCLUSION

Whilst various state organs have a role to play in advancing transitional justice, it should be clear to mention the importance of collaboration amongst all transitional justice stakeholders. Vertical and horizontal collaboration necessitates strong collaborative working wherein one stakeholder's weaknesses and faults are complemented with the strengths of the other. Transitional institutions and the State should be guided by the willingness and will to usher justice for the multitudes of victims and survivors who are forced to endure traumatic experiences.



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ABOUT THE NTJWG

The National Transitional Justice Working Group is a platform established by forty-six Zimbabwean transitional justice stakeholders to provide the interface between transitional justice stakeholders and the official transitional justice processes in Zimbabwe.



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