

MAY 2022

POLICY BRIEF

THE ROLE OF CHAPTER 12 INSTITUTIONS IN
ENHANCING OR INHIBITING ACCESS TO
JUSTICE AND SOCIAL COHESION BY YOUNG
WOMEN AND WOMEN IN ZIMBABWE



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INTRODUCTION

This policy brief is an analysis of the extent to which the National Peace and Reconciliation Commission (NPRC), Zimbabwe Human Rights Commission (ZHRC) and the Zimbabwe Gender Commission (ZGC) enhances or impedes access to justice and social cohesion by young women and women in Zimbabwe.

This is done by introspecting the constitutional provisions as well as their enabling legislation on their establishment, functions and operations. The Policy Brief is useful to civil society organizations, women's rights organizations and feminist organizations who are concerned about access to justice and social cohesion by young women and women. It is also relevant to the Constitution of Zimbabwe, Chapter 12 institutions as it helps them to introspect on their work with a view to improving the delivery of their mandates. It is useful to the Parliament of Zimbabwe which created the enabling legislation for these institutions and which has the power to repeal and or amend the same. Lastly, the brief is aimed at the executive arm of government which plays a pivotal role in the selection of the Commissioners, allocation of funds to the Commissions and guaranteeing independence of the Commissions. The brief looks at how accessible these institutions are to the young women and women, the mechanisms they have in place to protect survivors of violence, how their roles intersect, their independence or lack thereof, how they dispose of their investigative mandates, their tenures, their recruitment procedures, among other things. It proffers recommendations on how these institutions can effectively dispose of their mandates of delivering justice and social cohesion.



Picture 1.

Photo Credit

*Lovejoy
Mtongwizo*

Date Taken

*30 November
2021*

Description

*Tatenda
Wachenuka
facilitating a
Peace Committee
Training held at
May Fair Lodges
in Bindura.*

ACCESSIBILITY OF THE CHAPTER 12 INSTITUTIONS BY YOUNG WOMEN AND WOMEN

The ZHRC, the ZGC, and the NPRC are all mandated by the Zimbabwean Constitution and their respective enabling legislations to receive complaints from the young women and women, investigate them and provide appropriate remedies. The NPRC has an additional mandate of building social cohesion through providing healing to survivors of violence and reconciliation between conflicting parties. What this effectively means is that young women and women, particularly those in remote rural areas who have endured the human rights violations ranging from Sexual and Gender Based Violence (SGBV), politically motivated violence, economic violence and structural violence, need to have easy access to these Commissions so that they can lodge their complaints in pursuit of remedial action. These Chapter 12 institutions are however generally inaccessible and most young women in rural areas do not even know of their existence. The ZHRC's operations are confined to Harare and Bulawayo. The ZGC only has an office in Harare and does not have regional, provincial and district offices. The NPRC has established Provincial Peace Committees but these do not have budgetary support, rendering them virtually defunct. Although complaints may be lodged telephonically, by post, by telefacsimile, or electronically, such services are out of reach for the majority of young women in rural areas where only 29,3 percent of the population has access to the internet¹.

¹ World bank statistics, [https://tradingeconomics.com/zimbabwe/individuals-using-the-internet-percent-of-population-wb-data.html#:~:text=Individuals%20using%20the%20Internet%20\(%25%20of%20population\)%20in%20Zimbabwe%20was,compiled%20from%20officially%20recognized%20sources.](https://tradingeconomics.com/zimbabwe/individuals-using-the-internet-percent-of-population-wb-data.html#:~:text=Individuals%20using%20the%20Internet%20(%25%20of%20population)%20in%20Zimbabwe%20was,compiled%20from%20officially%20recognized%20sources.)



Picture 2.

Photo Credit

Lovejoy Mtongwizo

Date Taken

30 November 2021

Description

GIZ staff (Lenyora, Nyasha and Elizabeth) having a round table meeting with IYWD members, Vimbai Mukawu, Constance Mushayi and Onai Chitakunye.

MECHANISM FOR SURVIVOR PROTECTION

The mechanism for survivor protection when reporting and testifying to the Chapter 12 institutions needs to be strengthened. While the NPRC Act, Section 13 (1) (h) states that it is an offense to threaten, victimize, assault or do anything whatever calculated to harm or to prejudice the rights or interests of any person by reason of that other person having testified or appeared before the Commission or any of the Commission's Committees, the ZGC Act and the ZHRC Act do not have such similar express provisions. Even with respect to the NPRC, young women are not aware of this protection mechanism as evidenced by the reports of many young women interviewed by IYWD who stated that they are afraid of reporting and testifying. This is particularly true of cases which involve complaints against the security forces.

MANDATE OVERLAPS

The establishment of an independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct envisaged in Section 210 of the constitution will create role overlaps with the ZHRC, ZGC and the NPRC which also have similar mandates. The human rights which the ZRC is mandated to promote and protect also include gender and gender equality related rights which also falls within the mandate of the ZGC. The functions conferred to the NPRC in Section 9 of the NPRC Act overlaps with the general mandate of the ZGC and those conferred to the ZHRC under the ZHRC Act, First Schedule, paragraph 7 (3) (b).



Picture 3.

Photo Credit

Lovejoy Mtongwizo

Date Taken

30 November 2021

Description

Lillian and Nancy Likiripa presenting their feedback to the gallery after a group discussion. This was at the Peace Committee Members Training Meeting held at May Fair Lodges in Bindura.

INDEPENDENCE OF CHAPTER 12 INSTITUTIONS

Section 235 of the Constitution of Zimbabwe guarantees the independence and autonomy of all Chapter 12 Commissions and their protection from interference. There is however a stark contradiction between theory and practice as the clarity of Section 235 of the Constitution is not matched by reality on the ground. The ZHRC, NPRC and ZGC are all accountable to parliament in terms of Section 235 of the Constitution of Zimbabwe but ironically, they do not report directly to parliament but rather through the ministers responsible for the administration of their enabling legislations. Through their enabling legislation, the institutions are obliged to submit reports to those responsible ministers who sometimes issue “policy directives” to the commissions. State interference in the affairs of the commissions renders them ineffective as they can’t check government excesses on human rights of young women. The ministers who report to parliament on behalf of these commissions may themselves be perpetrators of human rights violations and as such, may not submit to parliament reports which portray them in bad light

STATE INTERFERENCE WITH INVESTIGATIONS OF THE COMMISSIONS

The enabling legislative frameworks for the ZGC, NPRC and the ZHRC give wide powers to the ministers responsible for the administration of the enabling legislation, in violation of Section 235 of the Constitution. Section 12 (6) of the ZHRC Act, Section 6 (6) of the ZGC Act and Section 10 (7) of the NPRC Act all give respective Ministers assigned to administer the the respective Acts of these Commissions powers to interfere with the manner in which they should conduct their investigative roles. If the NPRC, the ZHRC and the ZGC are to be seen as independent, they must have sole discretion to regulate their own procedures without undue interference by the executive. In addition to being ultra vires Section 235 of the Constitution, these provisions can be invoked by the Ministers to provide a cloak of impunity and to evade accountability where government is the alleged perpetrator of the human rights violations under investigation. The propensity of the state to evade accountability on human rights violations has the effect of eroding confidence and trust of young women who may want to bring their cases for redress.

TRUTH TELLING NOT MANDATORY

The wording of Section 252 (c) of the Constitution of Zimbabwe simply encourages past perpetrators of human rights violations to tell the truth but does not make truth telling mandatory. Peace and reconciliation cannot be fully achieved without knowing the truth of the motivations and justifications behind perpetration of past hostilities and atrocities². 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 truth³. Where the truth has negative repercussions on perpetrators and their accomplices, encouragement to tell the truth is not good enough⁴

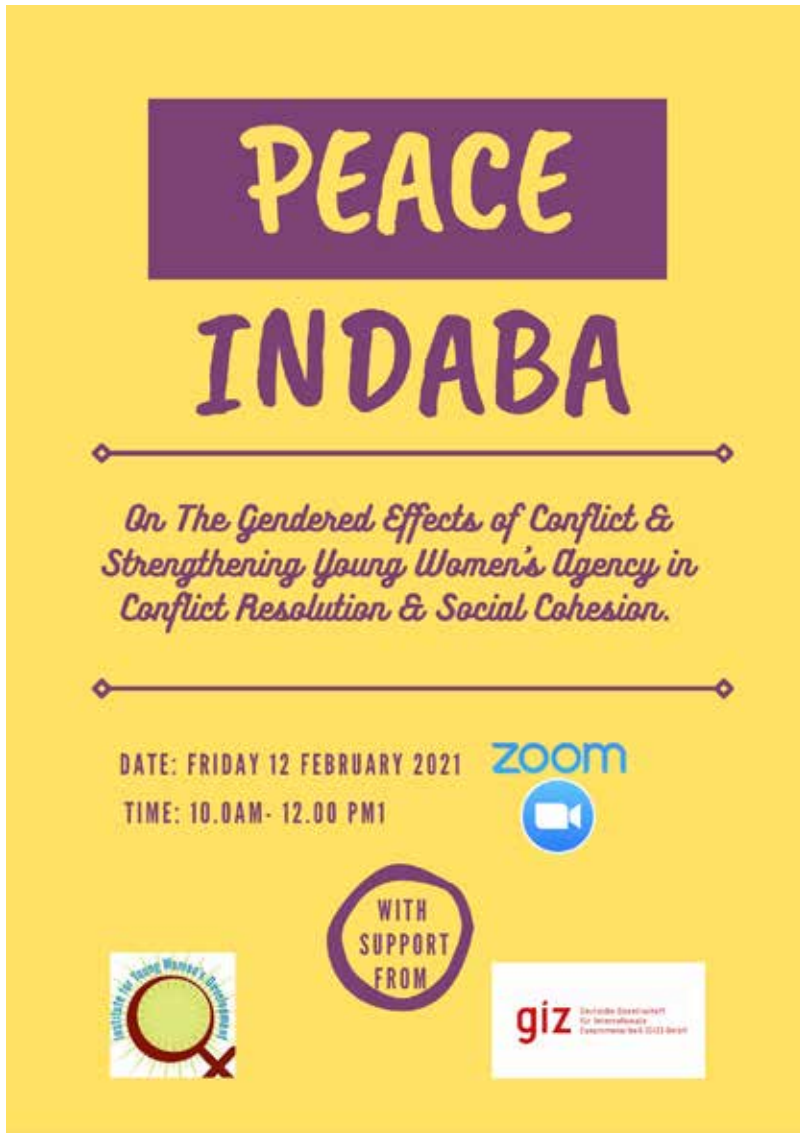
2 D Mazambani & NT Tapfumaneyi ‘A vehicle for peacebuilding or cloak of impunity? The Zimbabwe National Peace and Reconciliation Commission’ (2020) 4 *African Human Rights Yearbook* 277-297
<http://doi.org/10.29053/2523-1367/2020/v4a14>

3 Ibid

4 Ibid

TURNAROUND TIME FOR PROCESSING OF COMPLAINTS

The few young women and women who, against all odds managed to file their complaints with the Chapter 12 institutions reported that it takes years for the cases to be finalized. Complainants who filed complaints in 2020 are still to have their cases finalized. The long case management turnaround time is a result of inadequate funding which in turn leads to understaffing.



Picture 4.

Photo Credit

Sharon
Sigauke

Date Taken

12 February 2021

Description

The Peace Indaba flier of a virtual Peace Indaba held with young women and relevant stakeholders. Stakeholders included Chiefs, representatives from the National Peace and Reconciliation Commission and the Zimbabwe Human Rights Commission.

FUNDING OF CHAPTER 12 INSTITUTIONS

The ZHRC, the NPRC and the Gender Commission are seriously underfunded; they receive a budgetary support which is way less than they require. In the 2022 budget, the NPRC was allocated 441.3 million ZWL Dollars, the ZHRC was allocated 403.9 million ZWL Dollars and the Zimbabwe Gender Commission was allocated 497.6 million ZWL Dollars. These figures are paltry given the magnitude of their mandates. The commissions are unable to recruit the requisite staff due to dearth of funds. They are mainly relying on donor funds in order to fund its operations which may dent their credibility and independence. The Complaints Handling and Investigations Department of the NPRC, to ameliorate underfunding induced staff deficit, resorted to seeking secondment of police officers from the Zimbabwe Republic Police, which 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 superiors⁵. Understaffing also means delays in case finalization in addition to undermining the quality of the work of the commissions. It also means that the commissions, in their present state of funding, are not able to deal with all the cases brought to them by the young women.

RECRUITMENT OF COMMISSIONERS

Section 236 of the Constitution dictates that members of the Commissions must be non-partisan but it does not bar people who once held senior political party positions from being commissioners. As such, Commissioners with links to partisan politics can be appointed to the Commissions, denting their trust and credibility. Young women and women may be dissuaded from bringing complaints to the Commissions, citing their lack of credibility.

The appointments of commissioners of the Chapter 12 institutions are made by the President, with the input from the legislature's Committee of Standing Rules and Orders (CSRO) and the Judicial Services Commission (JSC)⁶. The public participates in the appointment of the eight ordinary members of the ZHRC, but the procedure for appointing the chairperson excludes public participation⁷. The President, when appointing the chairperson of the ZGC is only obliged to consult the CSRO but he is not obliged to follow their recommendations or advice. There is also no clearly laid down procedure regarding what that consultation entails and what the extent of the JSC and CSRO's involvement in it is. The fact that the President can choose and pick from a list of candidates exacerbates the influence of politics in the appointment of commissioners⁸. Section 320(1) of the Constitution provides that every member of commission is appointed for a term of five years which is renewable for one additional term. It is not desirable that the term of office be made renewable after its expiration as it greatly affects the autonomy of the commissions. Commissioners may not want to displease the government in an endeavor to ensure that their terms of office will be renewed⁹.

5 D Mazambani & NT Tapfumaneyi 'A vehicle for peacebuilding or cloak of impunity? The Zimbabwe National Peace and Reconciliation Commission' (2020) 4 *African Human Rights Yearbook* 277-297 <http://doi.org/10.29053/2523-1367/2020/v4a14>

6 Ibid

7 Ibid

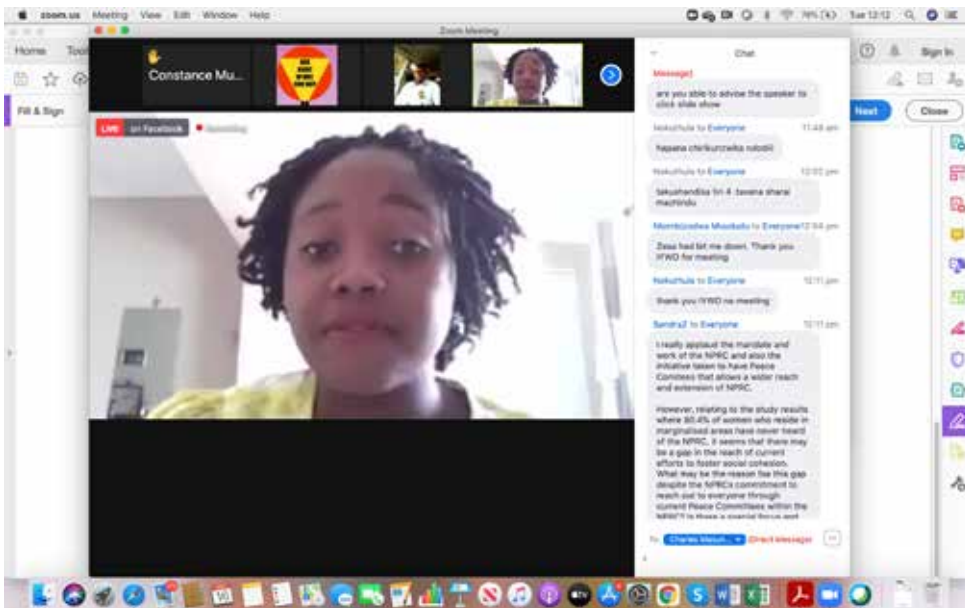
8 D Tandiri, Analyzing the mandate and independence of the Zimbabwe Gender Commission, 2018, https://www.academia.edu/35198285/analysing_the_mandate_and_independence_of_the_Zimbabwe_Gender_Commission_ZGC

9 Ibid

THE SUNSET CLAUSE OF THE NPRC

Section 251 of the Constitution contains a sunset clause that 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 fulfill during an indefinite life span¹⁰. There was also a protracted delay in enactment of the commission's for five years which has a bearing on fulfillment of the long list of functions outlined in section 252 of the Constitution and expanded in the enabling Act. An application was made at 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. With the appeal still pending in the courts of law, the fate of the NPRC's lifespan therefore remains uncertain.

¹⁰ D Mazambani & NT Tapfumaneyi 'A vehicle for peacebuilding or cloak of impunity? The Zimbabwe National Peace and Reconciliation Commission' (2020) 4 *African Human Rights Yearbook* 277-297 <http://doi.org/10.29053/2523-1367/2020/v4a14>



Picture 5.

Photo Credit
Glanis
Changachirere

Date Taken
12 February

Description
2021 Tinotenda
Chihera
facilitating the
virtual Peace
Indaba.

RECOMMENDATIONS

- Chapter 12 institutions mandated to provide access to justice and cohesion to young women must progressively set up offices in all the provinces and districts. They must enhance their visibility and increase their number of offices so as to strengthen their capacity to provide access to justice and cohesion to young women in particular and to citizens in general. They must employ outreach officers in each district who are tasked with educating people about the existence of the commissions, their mandates and how to report cases
- The ZGC must have exclusive jurisdiction over all issues relating to gender and gender equality. Legislation must be harmonized by taking away issues relating to gender and gender equality apportioned to other Chapter 12 institutions and giving them back to the ZGC
- Chapter 12 institutions mandated to provide access to justice and social cohesion by young women and women must be independent and also seen as being independent in the execution of their constitutional mandate. They should refrain from operating under the authority and direction of the executive since this undermines their effectiveness and credibility. This entails repealing provisions of the enabling legislations (Section 12 (6) of the ZHRC Act, Section 6 (6) of the ZGC Act and Section 10 (7) of the NPRC Act) that give power to the Executive to interfere with the independence of the Commissions
- Chapter 12 commissions mandated to provide access to justice and cohesion by young women's reports should also be prepared timeously and posted on their websites to improve accountability to the public. This would go some way to inspiring public confidence
- Parliament must repeal the sunset clause of the NPRC in the Constitution and expand its lifeline
- Parliament must repeal clauses in the ZHRC Act, ZGC Act and the NPRC Act that impedes these commissions from reporting directly to parliament
- Case Management turnaround time for the Chapter 12 institutions needs to be shortened

