

Joint Submission to the
Universal Periodic Review of Zimbabwe

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Submitted by:



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2016 Universal Periodic Review of Zimbabwe Joint Submission on Politically Motivated Sexual Violence

I. INTRODUCTION

This submission was prepared for the November 2016 Universal Periodic Review of Zimbabwe by a coalition of three non-governmental organizations, AIDS-Free World, Research & Advocacy Unit Zimbabwe and the Zimbabwe Human Rights NGO Forum.

AIDS-Free World is an international advocacy organization committed to speaking up for and with people affected by HIV and AIDS, and speaking out for the more urgent and effective global action needed to subdue the pandemic. To that end, its advocacy includes work on issues affecting women's rights and equality, including addressing sexual violence in all its forms.

Research and Advocacy Unit Zimbabwe ("RAU") was formed in 2006 and is an independent, nonpartisan, non-governmental organization with a mission to provide high-quality research on human rights and governance issues, particularly those pertaining to women and children, as empirical evidence for advocacy to influence relevant and appropriate policy change. RAU's authoritative research on women's participation, displacements, elections, and human rights is documented in 150 reports and opinion pieces, as well as four highly acclaimed videos.

The Zimbabwe Human Rights NGO Forum (the "Forum") is a coalition of twenty-one human rights NGOs in Zimbabwe and has been in existence since 1998. The Forum's members are collectively concerned about organized violence and torture in the country perpetuated mainly, though not exclusively, by state agents and their ancillaries. The Forum's members work in areas comprising women's rights, civil and political rights, freedom of expression and the media, gay and lesbian rights, prisoner's rights, anti-corruption, good governance, peace building and non-violent conflict resolution. Information contained in this submission is taken from the record of work carried out in Zimbabwe by RAU and the Forum, and drawn from face-to-face interviews conducted by AIDS-Free World with Zimbabwean victims of politically motivated rape.

The Government of Zimbabwe has failed to adequately investigate and prosecute perpetrators of politically motivated sexual violence for acts that occurred during the 2008 Zimbabwe elections. This has resulted in continued impunity for those who perpetrated these crimes and no justice for the victims. As documented in this report, there are worrisome signs that political violence is resurgent as the next national elections, scheduled for 2018, approach.

This submission details the failure by the Government of Zimbabwe to implement accepted recommendations from the 2011 UPR, and the culture of impunity towards crimes of sexual violence that this failure perpetuates. In particular, by failing to implement UPR recommendations regarding protection mechanisms against gender-based violence, as well as promised new legislative and administrative measures to fill existing gaps in the Government's response to gender-based violence, the Government of Zimbabwe has sent a clear message

that protecting women from sexual violence, and holding perpetrators accountable, is not important.

Additionally, despite its commitment in the 2011 UPR recommendations, the Government of Zimbabwe has failed to operationalize institutions to deal with national healing and reconciliation, most notably the National Peace and Reconciliation Commission.

Finally, this report will show that although the Government of Zimbabwe agreed to engage civil society to implement its 130 accepted recommendations, it has not done so with respect to the investigation of allegations of politically motivated violence, including sexual violence against women, nor with respect to the drafting of the National Peace and Reconciliation Commission Bill.

II. THE HUMAN RIGHTS SITUATION ON THE GROUND

In Zimbabwe today, the victims of politically motivated rape and other acts of violence that took place during the 2008 elections are still waiting for justice. This issue was raised at the country's last UPR in 2011 and ignored. Sadly, the continued impunity of perpetrators of politically motivated rape and other serious violations means that violence against women and acts of torture are likely to be repeated in the run-up to the 2018 elections, since perpetrators will feel secure with the knowledge that they won't be held accountable for their crimes.

The fact that perpetrators can act with impunity has already been heard: 799 cases of political violence were reported between July and September of 2015.¹ In December 2015, civil society groups expressed increasing concern that politically motivated acts of violence continued.² In January 2016, the Zimbabwe Peace Project reported that youth were still being used to coerce people to support the ruling Zimbabwe African National Union – Patriotic Front (ZANU PF) political party.³ And members of a new opposition party, the Zimbabwe People First party, were abducted and beaten by known ZANU PF youths.⁴ Despite making a report to the police, no further action to investigate the case or arrest perpetrators was made.

In order to bring an end to political violence and intimidation, including the horrific, widespread and systematic sexual violence that took place in 2008, the Government of Zimbabwe must hold perpetrators accountable. Zimbabwe must live up to its prior UPR commitments particularly to protect women from gender-based violence, so as to end the cycle of crimes and human rights violations that pervade each election cycle, and commit to become a thriving democracy, where the rule of law is respected and followed.

¹ "Quarterly Political and Human Rights Violations Report: July – September 2015", Zimbabwe Human Rights NGO Forum, October 2015, page 16.

² Moses Matenga, "Human Rights Group bemoans increased cases of violence", *NewsDay*, December 10, 2015.

³ Stephen Jakes, "Youth used as political guns in Zimbabwe", *Buluwayo24 News*, January 31, 2016.

⁴ Wongai Zhangazha, "Maiming of Opposition Activists Evokes memories", *Free & Fair Zimbabwe Election*, February 1st 2016.

III. FOLLOW-UP TO 2011 UPR REVIEW

During the 2011 UPR Review, the Government of Zimbabwe received 177 recommendations and accepted 130 of these. Among the accepted recommendations, we have identified three areas where Zimbabwe's failure to follow through on the recommendations has allowed politically motivated violence to continue: 1) the implementation of mechanisms to eliminate gender-based violence; 2) the creation of institutions for national healing and reconciliation; and 3) meaningful involvement of civil society and international organizations in the implementation of UPR 2011 recommendations.

1) Mechanisms to eliminate gender-based violence

2011 Accepted UPR Recommendations:

"Elaborate and implement where gaps exist, legislative and administrative measures to outlaw discrimination against women and eliminate gender-based violence." (recommendation #93.32 by South Africa)

"Strengthen protection mechanisms against gender-based violence."
(recommendation #93.39 by Angola)

"Consolidate the mechanisms to protect women against all forms of violence"
(recommendation #93.40 by Morocco)

By accepting recommendations to implement measures that protect women against all forms of violence, and specifically to strengthen protection mechanisms against gender-based violence, the Government of Zimbabwe committed itself to protecting the rights of women and holding perpetrators accountable. Unfortunately, its failure to investigate wide-spread, politically motivated sexual violence during the 2008 Presidential elections demonstrates that these recommendations have not been taken seriously. With perpetrators continuing to enjoy impunity for their crimes, the Government of Zimbabwe cannot be found to have upheld its commitment to fill existing gaps in its response to gender-based violence.

Zimbabwe's failure to live up to its commitments in this area is not solely through the UPR. As a state party to the Convention for the Elimination of All Forms of Discrimination Against Women, as well as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Zimbabwe has an international obligation to protect women from all forms of violence, including sexual violence. The Government's failure to investigate and prosecute credible claims is therefore a direct violation of Zimbabwe's international and regional obligations, as well as its UPR commitments.

It is evident that Zimbabwe lacks the political will to act on this issue, as only a handful of cases involving politically motivated rape have been pursued in the past eight years. One which was widely reported on was that of Lovemore Manenji in 2009. Manenji was a ZANU PF activist and election agent who was prosecuted and convicted in 2009 for the politically

motivated rape of the wife of a prominent MDC-T activist.⁵ However the vast majority of cases involving politically motivated rape are not brought to trial, or even investigated.

In 2012, Zimbabwe was reviewed by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).⁶ One of CEDAW's recommendations was for the Government of Zimbabwe to put in place measures to prevent and address politically motivated violence against women. Despite this recommendation, four years later, the Government of Zimbabwe has taken no action to prevent or address politically motivated rape through the provision of access to justice for victims.

The credibility of the allegations of politically motivated rape during the 2008 elections is not in question and can be confirmed in a number of different ways: i) witness testimonies compiled by legal professionals; ii) corroborating medical affidavits of the injuries suffered by victims; and iii) NGO reports.

i. Witness Testimonies

With a coalition of legal professionals, AIDS-Free World collected affidavits from seventy women who were victims of politically motivated sexual violence in 2008. The affiants provided specific details, including dates and time of day when the attacks occurred. While some were raped by unknown assailants, many were able to identify their rapists, as well as other members of their communities who witnessed or encouraged the attackers. Nearly every affiant was a member of the MDC, a supporter, or a woman closely related to an MDC member.⁷ It is evident from these affidavits that victims were targeted for rape because of their political affiliation to, or support of, the MDC.

The victims were interviewed by trained legal experts and had the services of interpreters to ensure that information was accurately captured. Of the 31 women who attempted to report their rapes to the police, 13 said that the police did nothing at all or explicitly refused to write a report. Another five reported that the police took reports but did not investigate the crimes in any way.⁸ The remainder of the women were too frightened or intimidated to report their attacks, particularly because they understood that the attackers had the support of the government.

ii. Corroborating Medical Affidavits

Some of the women interviewed by AIDS-Free World were able to access medical assistance. These victims were examined by local doctors who produced medical affidavits

⁵ For mention of the Manenji case, see: Tichaona Sibanda, "Father of Murdered Boy Speaks Out", *Nehanda Radio*, February 26, 2013.

⁶ "Concluding observations of the Committee on the Elimination of Discrimination against Women", Committee on the Elimination of Discrimination against Women, Fifty-first session, 13 February – 2 March 2012. Page 6, paragraph (d).

⁷ "Electing to Rape. Sexual Terror in Mugabe's Zimbabwe", AIDS-Free World, 2009, page 12.

⁸ *Ibid*, page 26.

attesting to their injuries.⁹ RAU, Zimbabwe Association of Doctors for Human Rights (ZADHR) and the Doors of Hope Development Trust (a support group composed of victims of politically motivated rape in 2008) produced a study on politically motivated rapes based on the sworn affidavits and medical examinations of women who had been raped because of their political activities or their husbands' involvement in politics.¹⁰ The medical affidavits corroborate witness accounts of beatings and gang rapes.

iii. NGO Reports

A number of local and international NGO's independently reported on the issue of the 2008 politically motivated rapes, as did several media organizations.¹¹ For example, the UN Integrated Regional Information Networks reported on the rapes, including detailed interviews with some of the victims.¹² RAU and ZADHR reported that they interviewed and treated 27 victims of politically motivated rapes that occurred in the 2008 election period.¹³ The International Coalition on the Responsibility to Protect reported that in March 2008, rape was perpetrated against leaders and supporters of the opposition by security services and ZANU PF militia.¹⁴

In 2011, RAU lobbied representatives from Zimbabwe's Ministry of Health, the Ministry of Women and the Ministry of Justice, Legal & Parliamentary Affairs, notifying them of the politically motivated rapes and the ongoing harm caused to the victims.

In response to the meetings, the Government of Zimbabwe, through its Ministry of Health (then Minister Dr. Henry Madzorera) promised to create a multi-ministerial committee to provide assistance to survivors. Four years on, the committee is yet to be set up and victims have not received any assistance from the Government of Zimbabwe. The Government of Zimbabwe acknowledged that the rapes occurred, but argued that MDC supporters or affiliated women were not the only victims. RAU offered to document the experiences of ZANU PF supporters or affiliated women who suffered politically motivated rape, however, the Ministry of Women Affairs wrote to RAU stating that for security reasons such interviews would not be possible. In 2012, a conference was convened, involving civil society actors and senior Government of Zimbabwe officials, where the issue of politically motivated rapes was discussed once more. Key government officials represented at this conference included the Ministry of Women Affairs, Gender & Community Development, the Ministry of Justice & Legal Affairs and

⁹ *Supra*, page 51.

¹⁰ "No Hiding Place: Politically Motivated Rape of Women in Zimbabwe", Research and Advocacy Unit, December 2010.

¹¹ "Rape, Zimbabwe's Silent Political Weapon", *The Africa Report*, July 29, 2013. See also, Chris McGreal "Mugabe's men bring rape and torture to Harare suburbs", *The Guardian*, June 20, 2008. See also, Sebastian Berger, "Robert Mugabe's supporters used rape as a weapon in election". *The Telegraph*, December 10, 2009.

¹² "Tortured, Raped and Forgotten", *IRIN News*, September 23, 2008.

¹³ "Politically Motivated Rape in Zimbabwe", Research and Advocacy Unit, 2011, page 11.

¹⁴ "Crisis in Zimbabwe", International Coalition on the Responsibility to Protect, 2008.

the Attorney General's Office.¹⁵ Despite these interventions by civil society, and a wealth of corroborating information, the Government of Zimbabwe did not take any action to investigate the politically motivated rape.

In 2015, the NGO Forum engaged in efforts to hold perpetrators of some of the 2008 politically motivated violence financially liable. The NGO Forum brought a total of 19 civil cases before the courts, with most plaintiffs awarded some damages. None of these cases, however, involved criminal accountability, and none of these cases involved sexual violence.

2) Institutions for national healing and reconciliation

2011 Accepted UPR Recommendations:

"Ensure the Organ for National Healing, Reconciliation and Integration be able to fully implement its mandates based on truth, reconciliation and forward-looking approaches." (recommendation #93.28 by Indonesia)

"Pursue relentlessly the implementation of the national priorities, initiatives and commitments, especially the national process of healing and reconciliation as well as the creation of a Human Rights Commission." (recommendation #93.12 by Democratic Republic of the Congo)

In the 2011 UPR, the Government of Zimbabwe accepted recommendations to create and set up three institutions to give effect to the national priority of healing and reconciliation: the Organ for National Healing and Reconciliation (ONHRI), the National Peace & Reconciliation Commission (NPRC) and the Zimbabwe Human Rights Commission (ZHRC). To date, only the ZHRC has been created and is pursuing its mandate, while the ONHRI and NPRC are already four years overdue in terms of being operationalized. Further, the Minister for the ONHRI was present at the 2012 conference on violence against women mentioned above, but did not take any decisive action in ensuring that victims of politically motivated rape receive the assistance they require.

The NPRC was called for in the 2013 Constitution, but a draft bill to fund and operationalize the Commission remains under discussion in Parliament. While it is possible that the draft bill will change before it becomes law, in its current form, the NPRC already has significant problems. In fact, the NPRC's current proposed structure violates a number of international standards adopted by the UN General Assembly in 1993 to frame and guide the work of national human rights institutions (known as the "UN Paris Principles for National

¹⁵ In relation to the 2008 politically motivated rapes, the Attorney General's Office provided the following response, it "reiterated its commitment to prosecution without fear or favor" and the Ministry of Home Affairs responded "that people should feel free to report cases of politically motivated rape". "Women and Peace Conference: An end to sexual violence against women and girls", Musasa Project Zimbabwe, 29-30 November 2012, page 16-17.

Human Rights Institutions”). That proposed structure, as well as a flawed nomination process, undermines the NPRCs mission in five ways:¹⁶

i. A failure to nominate experienced leaders

The Commissioners and Chairperson nominated by President Mugabe lack relevant experience related to the work of peace and reconciliation.¹⁷ According to the Constitution, members of the NPRC must be selected for their knowledge, understanding and experience in mediation, peace-building, conciliation, conflict prevention and post-conflict reconciliation.¹⁸ It is commendable that the Government of Zimbabwe, following pressure from civil society, has replaced the previously appointed chair of the NPRC, Bishop Emeritus Ambrose Moyo, with a chairperson who has the constitutionally required legal qualifications.¹⁹ However, many of the remaining appointees lack relevant experience²⁰ and have no real public record of speaking out about human rights abuses or injustices. All are politically connected to the ruling ZANU PF party.²¹

ii. The NPRC will not be independent and impartial

The NPRC will report to the Minister of National Healing, Peace and Reconciliation (Section 9, NPRC Bill), a position currently held by ZANU PF member Phelekezela Mphoko, who also serves as the Vice-President of Zimbabwe. To have the NPRC report to the executive branch run by the ZANU-PF, which has been directly implicated in many of the illegal acts that occurred during the 2008 elections, would completely compromise the NPRC’s impartiality and independence.²² Any actions taken by the NPRC regarding allegations against ZANU PF party members or members of the executive branch would represent a clear conflict of interest for Minister Mphoko and undermine the credibility of any reports the NPRC would provide to Parliament.

iii. The state can interfere in the conduct of investigations

Section 8 (7) & (10) of the NPRC Bill allows the Minister to issue a certificate barring disclosure of evidence or documents. Reasons for such a certificate are allowed to remain vague, and include prejudice to defense, economic interests, internal security or external relations. It is a worrisome clause, as it enables ZANU-PF, through the executive branch, to influence the conduct of investigations and the ability of citizens to access information. Without

¹⁶ “Paris Principles: 20 years guiding the work of National Human Rights Institutions”, United Nations Office of the High Commissioner.

¹⁷ Tony Reeler, “The NPRC Bill: Incompetence or Cynicism?”, Research and Advocacy Unit, 2015.

¹⁸ Constitution of Zimbabwe Amendment (No. 19) Act, 2008 [Zimbabwe], Act No. 1 of 2009, February 13, 2009. Sections 251 (4) and 251 (2).

¹⁹ Felix Share, “President swears in commissioners”, *The Herald Newspaper*, February 25, 2016.

²⁰ Constitution of Zimbabwe Amendment (No. 19) Act, 2008 [Zimbabwe], Act No. 1 of 2009, February 13, 2009. Section 251(2).

²¹ Dumisani Nyoni, “Peace Commission Yes But Bob Must Apologise - Mat Politicians”, *Radio Voice of the People*, February 28, 2016.

²² “NPRC Bill is Unconstitutional”, *NewsDay*, January 9, 2016.

full and unfettered disclosure of information relating to past abuses, any hope of reconciliation will be undermined. Such interference will also affect the transparency of the NPRC, undermining its role in bringing national healing and reconciliation to all Zimbabweans. The NPRC should be entrusted to implement its mandate with the full cooperation of all state and non-governmental institutions, and should not have a partisan overseer controlling its actions.

- iv. *The NPRC's scope and mandate are not sufficiently clear to enable it to function effectively.*

The preamble of the NPRC Bill makes no mention of Zimbabwe's contentious and violent past, including the decades-long liberation struggle and the election-related violence from 1985 to date. Through the omission of any mention of the historical injustices that must be addressed by the NPRC, the commission's mandate will remain unclear and its mission malleable to political exigencies. Unless it explicitly tackles Zimbabwe's difficult past, the NPRC will fail to diminish the culture of impunity that has prevailed. Only an explicit mandate can ensure that the NPRC is itself accountable if it refuses to address historical issues; excluding certain issues from its mandate limits any ability to question or appeal the NPRC's operation.²³

- v. *Transitional justice mechanisms must complement judicial mechanisms for serious crimes*

While national healing and reconciliation bodies such as the NPRC have important roles to play in Zimbabwe, there are egregious crimes where legal accountability must be applied.²⁴ Truth commissions have their functions in reconciling a nation, but they must be seen as a complementary tool and not the sole approach to address past injustices. For that reason, it is imperative that the NPRC be given the power to refer matters to an appropriate court of law, and the authority to direct the Zimbabwe Republic Police to institute full criminal investigations. For Zimbabwe's cycle of impunity to end, this authority is critical.

Zimbabwe also needs a mechanism to ensure accountability for international crimes. The politically motivated rapes during the 2008 Zimbabwe election campaign, as well as documented incidents of torture, were widespread and systematic, and rose to the level of crimes against humanity.²⁵ The rapes and widespread acts of violence were planned and carried out as part of a Government of Zimbabwe strategy code-named *Operation*:

²³ "...attempts at fostering peace and reconciliation without facing [Zimbabwe's] history, or requiring justice, is pure farce." Tony Reeler, "The NPRC Bill: Incompetence or Cynicism?", Research and Advocacy Unit, 2015.

²⁴ "The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General", UN Security Council, 23 August 2004, S/2004/616.

²⁵ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6. Article 7(1)(g) states: "Crimes against humanity" include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" & Article 7(1)(f) torture.

Makhavhoterapapi? (“Where did you vote?”).²⁶ As a member of the international community, the Government of Zimbabwe has a responsibility to ensure punishment for perpetrators of crimes against humanity during the 2008 election violence.

Zimbabwe signed the Rome Statute of the International Criminal Court (the “Rome Statute”) on July 17, 1998.²⁷ Though it has not yet ratified the Rome Statute, Zimbabwe has an obligation as a signatory to refrain from acts that would defeat the object and purpose of the treaty.²⁸ Since the Government has demonstrated that it is unable and unwilling to investigate and prosecute politically motivated rape that constituted crimes against humanity, Zimbabwe must permit state parties to investigate and prosecute international crimes that occurred within its borders, and cooperate with the International Criminal Court and other state parties to the Rome Statute who wish to do so.

3) Involvement of civil society

2011 Accepted UPR Recommendation

“Engage civil society in the process of implementation of UPR recommendations.”
(recommendation #93.72 by Poland)

Despite committing to engaging civil society in the implementation of all 130 recommendations from the 2011 UPR cycle, the Government of Zimbabwe has not engaged civil society for the fulfilment of the recommendations cited in this submission or in the drafting of the National Peace and Reconciliation Bill (NPRC Bill).

In response, civil society has been forced to engage in parallel processes to try to influence national healing and reconciliation mechanisms. For example, a network of civil society actors under the National Transitional Justice Working Group (“NTJWG”, a member of the Forum) have been working to propose a more constitutionally compliant NPRC Bill.²⁹

To this end, the NTJWG has drafted a shadow NPRC Bill which reflects the constitutional aspirations for a National Peace and Reconciliation Commission. The NTJWG has publicly stated its willingness to work with the Government of Zimbabwe to amend the NPRC Bill, but authorities have not responded to this request. The NTWG has shared the shadow bill with

²⁶ “Seeking Justice for Zimbabwe a Case for Accountability Against Robert Mugabe and Others| 1981-2008, Enough Project, July 2008, page 7.

²⁷ “The Rome Statute in the World 119 States Parties, 32 Signatories, 44 Non Signatories (195) As of 10 November 2011”, Coalition for the International Criminal Court, page 2.

²⁸ United Nations, Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, p. 331. Article 18 (a) “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.”

²⁹ “Zimbabwe: Peace and Reconciliation Bill Unconstitutional, Says NTJWG”, *AllAfrica.com*, January 10, 2016.

Parliament and is currently lobbying the OHNRI and the Senate Thematic Committee on Peace and Security for the inclusion of portions of the shadow bill in the current NPRC draft Bill.

The Government of Zimbabwe should partner with civil society groups, such as the NTJWG, in the creation and operationalization of the NPRC. By creating a strong NPRC, citizens, including victims of politically motivated rapes in 2008, will have the opportunity to seek redress for the harms committed against them. The NPRC has the potential to end the cycle of violence connected to elections in Zimbabwe. By engaging the NTJWG, the Government of Zimbabwe will move towards fulfilling the UPR recommendation to engage with civil society in prioritizing national healing and reconciliation.

IV. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

AIDS-Free World, RAU and the Forum call on the Government of Zimbabwe to:

1. Recognize that the Government's commitments in the 2011 UPR to protect women from violence and strengthen protection mechanisms against gender-based violence, as well as its international and regional treaty obligations, must include a duty to investigate all allegations of politically motivated rape, including from the 2008 presidential elections.
2. Amend the National Peace & Reconciliation Commission Bill to conform with the Constitution of Zimbabwe. Give powers to the NPRC to order criminal investigations where crimes have been committed and to make provision for psychosocial support for victims.
3. Amend the National Peace & Reconciliation Commission Bill to ensure that the NPRC is independent and impartial, and that it reports directly to Parliament rather than to a Minister.
4. Expand the mandate and scope of the National Peace and Reconciliation Commission to include acts of violence that occurred from 1980 to the present.
5. Strike sections 8 (7) & 8(10) from the National Peace and Reconciliation Bill, which allow for undue ministerial interference in the work of the NPRC.
6. Operationalize the Organ for National Healing and Reconciliation as an independent institution.
7. Permit states parties to investigate and prosecute international crimes that occurred in Zimbabwe and cooperate with the International Criminal Court and other states parties to the Rome Statute who wish to do so.