

# NPRCWATCH



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

Follow all the Developments related to the NPRC

| ANALYSIS | PROFILES | NEWS | RECOMMENDATIONS | PARTICIPATION

[www.ntjwg.org.zw](http://www.ntjwg.org.zw)

EDITION 3 MARCH 2017

## WHAT IS WRONG WITH THE NPRC BILL?

**FULL ANALYSIS INSIDE**



**NPRC BILL IGNORES GENDER**



**WHERE ARE THE  
VICTIMS IN THE BILL?**



**WHAT ABOUT HEALING?**



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

# NPRC WATCH

Follow all the Developments related to the NPRC

| ANALYSIS | PROFILES | NEWS | RECOMMENDATIONS | PARTICIPATION

[www.ntjwg.org.zw](http://www.ntjwg.org.zw)

EDITION 3 **MARCH 2017**

Published by  
The National Transitional Justice Working Group, Zimbabwe  
Suite 4, Number 1 Raleigh Street  
P. O. Box. 9077, Harare, Zimbabwe

© National Transitional Justice Working Group, Zimbabwe, 2017

This publication maybe reproduced for non-commercial use in any form, provided due credit is given to NTJWG and the stakeholders cited, and the work is presented without any distortion.

NOT FOR SALE

[www.ntjwg.org.zw](http://www.ntjwg.org.zw)

Printed by Sable Press, Harare

# TABLE OF CONTENTS

|           |  |           |
|-----------|--|-----------|
| <b>01</b> | <b>Introduction</b>  |           |
|           | Editorial  | <b>5</b>  |
|           | NPRC Timeline  | <b>6</b>  |
| <b>02</b> | <b>Progress Update</b>   |           |
|           | What you must know about the NPRC Bill   | <b>9</b>  |
| <b>03</b> | <b>Women And Transitional Justice</b>  |           |
|           | How to Correct the NPRC Bill's Weaknesses on Gender                                | <b>15</b> |
| <b>04</b> | <b>Justice and Accountability</b>  |           |
|           | NPRC Bill Smuggles in Amnesties  |           |
|           | How to address amnesties in the Bill   | <b>19</b> |
| <b>05</b> | <b>Analysis</b>  |           |
|           | Peace and Reconciliation   | <b>23</b> |
|           | ...but what about healing  |           |
| <b>06</b> | <b>Survivor Perspectives</b>   |           |
|           | Where are the Victims in the NPRC Bill?  | <b>27</b> |
| <b>07</b> | <b>NPRC Legacy</b>   |           |
|           | What will happen to the Records of the NPRC<br>...and how the Bill can address it? | <b>31</b> |

# WELCOME

## Introduction

The process of establishing the National Peace and Reconciliation Commission (NPRC) has all along been painfully slow and we are losing a lot of time. It appears this has changed suddenly, with the government gazetting the NPRC Bill and quickly rushing it through the Public Hearings. We notice the rush with consternation. A commission of this nature is not a matter of ticking the boxes. We must pay attention to the details of the process. In as much as we are worried about time, we must not sacrifice substance. In this issue, we take time to ask some critical questions about the

**1**

How do we ensure  
a truly independent  
commission?

**2**

How do we make  
the process victim  
centered?

**3**

How do we locate  
gender in the process?

process. We analyse the Bill and investigate the place of women and victims in the Bill. We also invite you to reflect on these issues. Please share this information with your friends and representatives in Parliament.

We hope you find this issue informative. Below here are some key questions, we hope to address in this issue or at least start a conversation. We encourage you to continue the conversation with your policy makers. Feel free to write to us and follow us on social network. Details are at the back of this publication. Tell us your thoughts on [nprcwatch@ntjwg.org.zw](mailto:nprcwatch@ntjwg.org.zw)

**4**

**How do we handle the issue of amnesties?**

**5**

**What happens to the records of the commission?**

**?**

**Join the conversation on [www.ntjwg.org.zw](http://www.ntjwg.org.zw)**



## NPRC Bill Public Hearings: The Process Enhances the Substance

In the Minimum Standards for an Effective National Peace and Reconciliation Process (2014), the National Transitional Justice Working Group (NTJWG) emphasised the importance of inclusiveness, public information and participation in all processes regarding the establishment and the work of the National Peace and Reconciliation Commission (NPRC).

It has become critical that we reiterate the importance of these minimum standards, considering the developments surrounding the NPRC Bill public hearings

Following the gazetting of the NPRC Bill on 10 February 2017, the Parliament of Zimbabwe through the Parliamentary Thematic Committee on Peace and Security, Thematic Committee on Parliamentary and Legal Affairs, and the Thematic Committee on Human Rights conducted NPRC Bill public hearings across the country.

The hearings were held from 13 to 18 March 2017 in 10 locations of the country. The hearings were supposed to ensure the public input into the bill. Civil society organisations monitored the process and have shared their reports with NTJWG.

Stakeholders have raised concern over the public meetings being too few to reach sufficient people.

- The meetings were concentrated in the urban areas hence depriving the rural constituencies the opportunity to make contributions and input despite facing high levels of past and ongoing violations.
- The Parliament did not invest in awareness raising programmes ahead of the hearings. As a result, most of the participants had

no clue what the Bill was about.

- The meetings were disrupted and interfered by political activists resulting in some meetings being terminated prematurely.
- Participants in other areas complained that some Parliamentarians brought vehicles bearing political messages which triggered violence. Parliament had indicated that no political regalia would be allowed as is practice on consultations on bills.

It is the NTJWG's view that the nature of the consultation process has a significant bearing on the substance of the process. The Parliament must strive to promote meaningful public participation, not simply the ticking of boxes. No member of the Zimbabwean society who is willing to participate in this process must feel left out. The Parliament must ensure that expediency does not come at the expense of meaningful and effective participation of all interested actors, especially the victims and survivors of past violations.

It is recommended that there be a genuine consultation process that gives adequate time for public education. The Parliament has an obligation to carry out the necessary public education process so that people can make meaningful input.

The NTJWG invites Parliamentarians to begin a conversation on this process at constituency level to find ways in which participants who failed to participate in the public hearings for any reason can hand in their recommendations to Parliament through their representatives.

**On 12 November 2016**

The Office of the President and Cabinet convened a meeting for stakeholders to input into the revised NPRC Draft Bill. NTJWG together with stakeholders from Mutare, Masvingo and Harare attended the meeting.

**On 10 February 2017**

The Government gazetted the NPRC Bill H.B.2, 2017, giving members of the public up to 3 March 2017 to comment on the Bill. This edition will give a critique of the Bill

## NPRC TIMELINE



**On 3 March 2017**

NTJWG submitted to the Parliament an analysis of the NPRC Bill citing a number of weaknesses and proposing some suggestions.

**On 13 March 2017**

From 13 to 18 March, Parliament held public hearings on the bill in the 10 provinces of Zimbabwe. In this edition we will summarise the views of the public.

**On 15 March 2017**

Vice President P. Mphoko, tabled the NPRC Bill in the National Assembly. Unconfirmed reports say the Bill was immediately referred to the Parliamentary Legal Committee.

**02**

## **PROGRESS UPDATE**

- What you must know about the NPRC Bill?
- What has changed in the Bill?
- What are its weaknesses

# WHAT YOU MUST KNOW ABOUT THE NPRC BILL

## What is the Background to the NPRC Bill?

On 10 February 2017, the Government of Zimbabwe gazetted the National Peace and Reconciliation Bill [H.B2, 2017.] (the new Bill) to put the National Peace and Reconciliation Commission (NPRC) into operation and related matters. The NPRC is one of the five independent commissions established by Chapter 12 of the Constitution of Zimbabwe. Section 251 specifically established the NPRC with the mandate to ensure post-conflict justice, healing and reconciliation. To operationalise the NPRC, there must be a law which provides the legal framework for the NPRC to start its work, hence this Bill. The new Bill is the successor to the National Peace and Reconciliation Bill H.B 13, 2015 (the old Bill) which was gazetted on 18 December 2015 and withdrawn from Parliament in May 2016 following criticism by stakeholders, the public as well as the Parliamentary Legal Committee.

## What has changed in the new NPRC Bill?

Not much! The old Bill provided for a Ministerial Certificate that could stop the disclosure of information in public if the Minister deemed the information inappropriate. The Commission had no power to go against the Certificate issued by the Minister. The new Bill still provides that if the Minister of State Security, in his opinion, believes certain

information to be a threat to national interests, he can issue a certificate to stop the disclosure of such information in public. However, anyone who finds that certificate to be inappropriate can appeal to the Commission, which now has power to set aside or vary the Minister's Certificate. Anyone who disagrees with the Commission's decision can appeal to the Administrative Court. Secondly, the old Bill gave the Commission power to grant amnesty. The new Bill changed the name to pardon and hid the section under Miscellaneous Provisions. Under the new Bill, it is now very clear that the Commission reports directly to the Parliament and that all its reports must be published 30 days later. The Minister is also obliged to make sure that reports to the Parliament are tabled within 10 days.

## What are the weaknesses of the new NPRC Bill?

The new NPRC Bill has four critical weaknesses which threaten the effectiveness of the Commission. These are the lack of victim centredness, interference by the executive in various ways, its deafening silence on gender and the power given to the Commission to grant pardon which in practice is amnesty. Additionally, the new Bill fails to acknowledge that the Commission is established to deal with Zimbabwe's legacy of violence and assist society to build a more peaceful and just society.

## The Bill is not Victim Centered

The Bill will create a Commission that will not do much for victims hence the probability that it will fail in its national healing mandate is very high. Although Section 9 (12) provides that the Commission shall provide safety and protection of witnesses no reference is made to victims and survivors. This is probably the weakest aspect of the NPRC Bill as this omission creates a gap which exposes victims and survivors and leaves out critical areas of the Commission's mandate as outlined in section 252 of the Constitution. According to the Minimum Standards for an Effective National Peace and Reconciliation Commission (NTJWG, 2015: 4), it is important that adequate protection mechanisms be put in place for victims and survivors. Standard 4 emphasises that the NPRC must adopt a victim centred approach and prioritise the needs of the victims. This minimum standard can only be achieved through a deliberate process of creating safeguards within the law for adequate protection of victims and survivors as well as reaching to and encouraging victims to be willing to approach the Commission and feel safe in the process. It is therefore imperative that a separate section on Victim Support and Rehabilitation be inserted into the Bill.

## Why is there a need for a victim support and rehabilitation section in the new Bill?

Generally the section must, among other principles, oblige the Commission to develop comprehensive regulations to support victims and survivors. This include the establishing a Victim Support and Rehabilitation Committee and taking appropriate measures to reach out to victims and survivors.

## In what way does the new Bill allow for interference with the Commission?

### Ministerial Certificate

Firstly, the ministerial certificate is in itself an interference with the Commission. The Bill's invocation of state security in trying to curtail the work of a Commission that is meant to encourage truth-telling regarding the past is a worrying affront to section 252 (c) of the Constitution which mandates the Commission to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice. This mandate given to the Commission is a positive step towards the realisation of the right to access of information enshrined in section 62 of the Constitution which states that every Zimbabwean citizen has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.

### Staffing

Section 13 of the new Bill provides for the establishment of the Secretariat of the Commission 'in consultation' with the Minister and the Minister responsible for Finance.' This is in violation of section 234 of the Constitution which gives the NPRC power to recruit and regulate its own staff. It is also in violation of section 235 of the Constitution which upholds the independence of all Chapter 12 Commissions. The NTJWG Minimum Standards state that the NPRC must be allowed to develop its own recruitment policy for its secretariat. It further states that it will be a violation of the NPRC's constitutional independence for any organ of the state or another body

to try to influence who will serve the Secretariat of the NPRC.

## Ministerial Approvals

The new Bill creates a Commission which lacks administrative and financial autonomy. All provisions that interfere with the financial autonomy of the Commission need to be revised so that they are in line with United Nations Standards which call for clear operational independence for independent Commissions. All provisions that refer to the need to consult or seek approval of the Minister must be changed to at most giving prior notice to the Minister in such cases were administratively the Commission will need executive support. The same must apply to regulations of hiring of staff. The Commission must also be empowered to make independent budgetary decisions including seeking funding from non-state entities

## What does the new Bill Say About Amnesties?

The new NPRC Bill in section 19 (1) (e) gives the Commission power to make regulations that may provide for the procedure and conditions for the granting of pardon. This section is hidden under Miscellaneous Provisions whereas the old Bill had this provision in Section 3 (2) (c) giving the Commission power to recommend amnesty. In essence, the new Bill is trying here to smuggle in the issue of amnesties.

## Why is Amnesty/Pardon Undesirable?

Amnesties are prima facie in violation of international law and promote impunity and recidivism. Zimbabwe's past amnesties have been subject to international condemnation. The African Commission on Human and

Peoples' Rights in the case Zimbabwe Human Rights NGO Forum versus Zimbabwe (245/2002) noted that amnesties have a tendency of robbing victims of their access to remedy. It is therefore recommended that the NPRC Bill must never give unchecked power to grant amnesty to anyone. In this issue we carry an article that makes suggestions on how best to deal with amnesties.

## What does the new Bill say about gender?

The new Bill is deafeningly silent on gender just like its previous versions. The NTJWG Minimum Standards make several recommendations on how to ensure that the NPRC effectively mainstreams gender in its work. These include taking deliberate steps to ensure that the NPRC treats gender as both a specific theme as well as a cross cutting issue. It is therefore recommended that a separate section must be inserted on gender. In this issue, we make some suggestions to make the Bill better. You can refer to our detailed analysis for further information.

## What are the other Issues that the Bill Must Address?

The new Bill must make provision on how the media and the public can access the information from the Commission, during and after its work. It must further oblige government entities to make sure all information in their custody required by the Commission is made readily available in line with section 62 of the Constitution. The Bill must also provide for mechanisms for safe archival of the information and material collected by the Commission during its operations. The Bill must provide a clear mechanism for the speedy implementation of the recommendations of the Commission.

## What can the public do now?

The public can write to:

The Clerk of Parliament - Attention: Portfolio Committee on Justice Legal and Parliamentary Affairs; Thematic Committee on Peace and Security; Thematic Committee on Human Rights, P.O. Box CY 298, Causeway, Harare; Or email: [bill@parlzim.gov.zw](mailto:bill@parlzim.gov.zw)

centres close to you. Our coordinators will be able to give you all the information you need about the process. If you have problems accessing the Parliament, our Coordinators will gladly receive your submissions for onward submission. Meanwhile, please keep a tag on our social network pages for the latest developments regarding the NPRC Bill. You have the right to know, and to participate!

## Can NTJWG Assist?

Get in touch with us in the details at the back for information on information



# Deadly weaknesses of the NPRC Bill

**1**

**Lack of victim centredness**

**2**

**Excessive interference by the executive**

**3**

**Silence on gender**

**4**

**Power to grant amnesty**

**03**

## **WOMEN AND TRANSITIONAL JUSTICE**

- How to correct the NPRC Bill's weaknesses on gender
- Gender beyond the NPRC Bill

# HOW TO CORRECT THE NPRC BILL'S WEAKNESSES ON GENDER

## Introduction

The Constitution of Zimbabwe (No. 20) Act 2013 (the Constitution) in section 251 – 253 establishes a framework for our country to commence a national reconciliation process. The reconciliation process must take cognisance of the gender aspects of conflict transformation and peacebuilding. This calls into sharp focus the experiences of women in a period of conflict, the participation of women in conflict and peace processes, the gender dynamics of both man and women, the documentation and memorialisation of such experiences. This discourse goes beyond crimes against women, beyond rape, and other acts of sexual terrorism, but it brings in the structural and cultural aspects that shape and make such violations possible. These include the economic systems and power relations that breed and justify gender-based violations and harmful customs. Addressing these issues is not a matter of equality, but justice. Gender justice is not an addendum to a transitional justice process but must be at the heart of it. It constitutes more than 50% of the work that must be done. This article offers some suggestions on how Bill which operationalises the National Peace and Reconciliation Commission (NPRC), can make gender a key aspect of the healing process.

## Gender in the NPRC Bill

The NPRC Bill is deafeningly silent on gender just like its previous versions. The NTJWG Minimum Standards make several recommendations on how to ensure that the NPRC effectively mainstreams gender

in its work. These include taking deliberate steps to ensure that the NPRC treat gender as both a specific theme as well as a cross cutting issue.

It is therefore recommended that separate section must be inserted on gender. This section must set up a Gender Unit or any similar mechanism of choice, which will do the following:

- Develop specific guidelines and rules on how the Commission will incorporate gender into its work
- Develop strategies to encourage the participation of women, girls and other marginalised groups into the work of the Commission
- Facilitate gender equity in the structure of the Commission
- Ensure the needs of women and girls are prioritised in line with UN best practices
- Ensure the mainstreaming of gender imperatives into every aspect of the Commission's work
- Taking steps to ensure that all organs of the Commission shall consider and address the gender implications of their activities
- Conduct gender sensitivity training for all the Commission's personnel before the formal operations of the Commission commence and periodically during the Commission's operations
- Appoint or second a dedicated gender focal person to each committee and body;
- Recommend protocols for statement taking, collection and analysis of gender and sex-disaggregated data, the conduct of interviews and hearings and other operational matters to

- ensure that gender concerns are fully addressed
- Monitor gender related practices within the Commission and advice on best practice and principle.
- Investigate gender based human rights violations as they arose during the conflicts of the past
- Investigate the use of gendered violence by factions and public institutions
- Investigate the use of sexual crimes as a weapon during and after conflicts
- Reach out to and identify victims of gender based violations and provide such victims an opportunity, in private or public, to relate their own accounts of the violations or harm they have suffered and to set out their needs;
- Hold specific public or private hearings on the gendered nature and context of violence and marginalization; and investigate the causes of such violence and marginalization;
- Assess the needs of victims of gender based violations and marginalization and make recommendations which may include urgent interim measures, as to the appropriate measures required to redress such violations and marginalization, including the policy which should be followed or measures which should be taken to restore the human and civil dignity of such victims.
- What is the context within which these injustice took (and are) taking place?
- What were women's experiences of conflict?
- Have these experiences been documented?
- What were the pre-existing gendered power relations?
- What are the existing gendered power relations?
- What has been the impact of violations experienced?
- For which violations do we seek redress?
- What are the most effective remedies to the violations?
- Who are the key actors in the positive transformation of power relations in Zimbabwe?
- What is the role of man/women/+/- in the discourse?
- Which mechanisms can help transform harmful gender relations?
- Which practices can foster positive power relations and positive attitudinal change?

These questions provide a practical starting point for the NPRC in the dialogue on gender, violence and reconciliation in Zimbabwe. They are developed from a number of international instruments, principles developed by Zimbabwean stakeholders as well as the minimum standards that have been generated from various stakeholder consultation engagements. They represent a beginning point, not an end. As long as these questions are not answered, and their substance not attended to, the war against women continues. There can never be genuine peace and reconciliation when society is at war with 52% of its own. Any claims of justice, freedom, democracy and all those nice words in our constitution will be empty.

## Gender Beyond the NPRC Bill

Beyond the Bill, NPRC has got some work to do. As it relates to gender, some key questions have to be addressed.

- What does justice mean for women affected by the conflict?
- What injustices have women experienced in the past?
- What injustices from the past are ongoing?
- What are the roots and the pillars that support such injustices?

# What the People Said at the NPRC Bill Public Hearings

10 meetings were held by the Parliamentary committees on the NPRC Bill. NTJWG has compiled reports from stakeholders who participated in the public hearings and the following are some of the recommendations which have been voiced out:

- Participants noted that most of the things have not changed in the Bill
- There must be a new section on compensation for all human rights violations
- Participants applauded reduction in powers of the Minister to interfere with the independence of the Commission
- Perpetrators must apologise for the violence they committed
- The bill must clearly show that this is a genuine truth, justice and reconciliation process meant to address past wrongs and deter any future violations
- There must be no amnesty to the perpetrators who committed crimes against humanity.
- Any person responsible for violence must be brought to book
- The bill should be translated to local languages for the public to understand it
- All perpetrators of past violations must not be allowed to hold public office
- The bill must put mechanisms to ensure that by 2018 past perpetrators of violence should have been severely punished for deterrence purposes during the electoral period
- The bill must be clear on how it will deal with victims of political violence who were disabled as a result of the violence and extend to the unborn babies who were affected at the maternal stage
- The bill is addressing administrative issues but is not victim-centred.
- The Commission must not rush people to reconcile but must carry out proper investigations on past issues and be given clear powers to prosecute perpetrators
- The bill should show what role the police will play to ensure they help as the commission carries out its investigations

Continued on page 21

# 04

## JUSTICE AND ACCOUNTABILITY

- NPRC Bill and amnesties
- What is wrong with amnesties?
- How can it be corrected?
- Basic principles on amnesties

# NPRC BILL SMUGGLES IN AMNESTIES

## Introduction

The question of amnesties has always been a big debate in Zimbabwe and around the world. The new NPRC Bill has brought that debate at the centre of the dialogue on transitional justice in Zimbabwe.

## NPRC Bill and Amnesties

The NPRC Bill in section 19 (1) (e) gives the Commission power to make regulations that may provide for the procedure and conditions for the granting of pardon. This section placed under Miscellaneous Provisions is curious because the previous draft shared with stakeholders had this provision in Section 3 (2) (c) which gave the Commission power to recommend amnesty. Amnesty provisions featured again in the then section 9 (15). However, the current Bill features 'pardon' hidden away in the miscellaneous provisions. In essence, the Bill is trying here to smuggle in the issue of amnesties without giving it the prominence that it deserves. This must be scrutinised.

Section 10 of the NPRC Bill provides for what is usually referred to as 'use amnesty' for the sake of compelling witnesses to give evidence which may be self-incriminating. This is standard and must be done after consulting with the prosecuting authority which is provided for in the current NPRC Bill. Beyond that, no general or blanket amnesties must be permissible by any name.

## What is wrong with amnesties

Amnesties are prima facie in violation of international law and have been known to promote impunity and recidivism. Zimbabwe's past amnesties have been subject to international condemnation. The African Commission on Human and Peoples' Rights (African Commission) in the case Zimbabwe Human Rights NGO Forum versus Zimbabwe (245/2002) noted that amnesties have a tendency of robbing victims of their access to remedy. The Clemency Order 1 of 2000 was found to be in violation of the African Charter on Human and People's Rights. It is therefore recommended that the law must never give unchecked power to grant amnesty to anyone.

## How can it be corrected

All sections that make explicit or implied reference to general or unqualified amnesty must be removed. However, if any amnesty is entertained, it must not be hidden under any terms and it must be made explicit and qualified. It is known the world over that there are trade-ins in any transitional justice processes and amnesties can play a positive role in bringing about truth and healing. Where this is done, the powers to grant amnesty must be given to the Commission itself and must be worded to ensure that the amnesty provisions prioritise the needs of the victims and are not used to promote impunity or reward perpetrators.

## Basic principles on amnesties

The following are basic principles regarding amnesties that can be incorporated into the bill.

If the provision on pardon / amnesty is to be maintained in the NPRC Bill, the Commission must be given power to set up an Amnesty Committee which shall develop rules and principles upon which amnesty may be granted provided which include and cannot be in contradiction with the following principles:

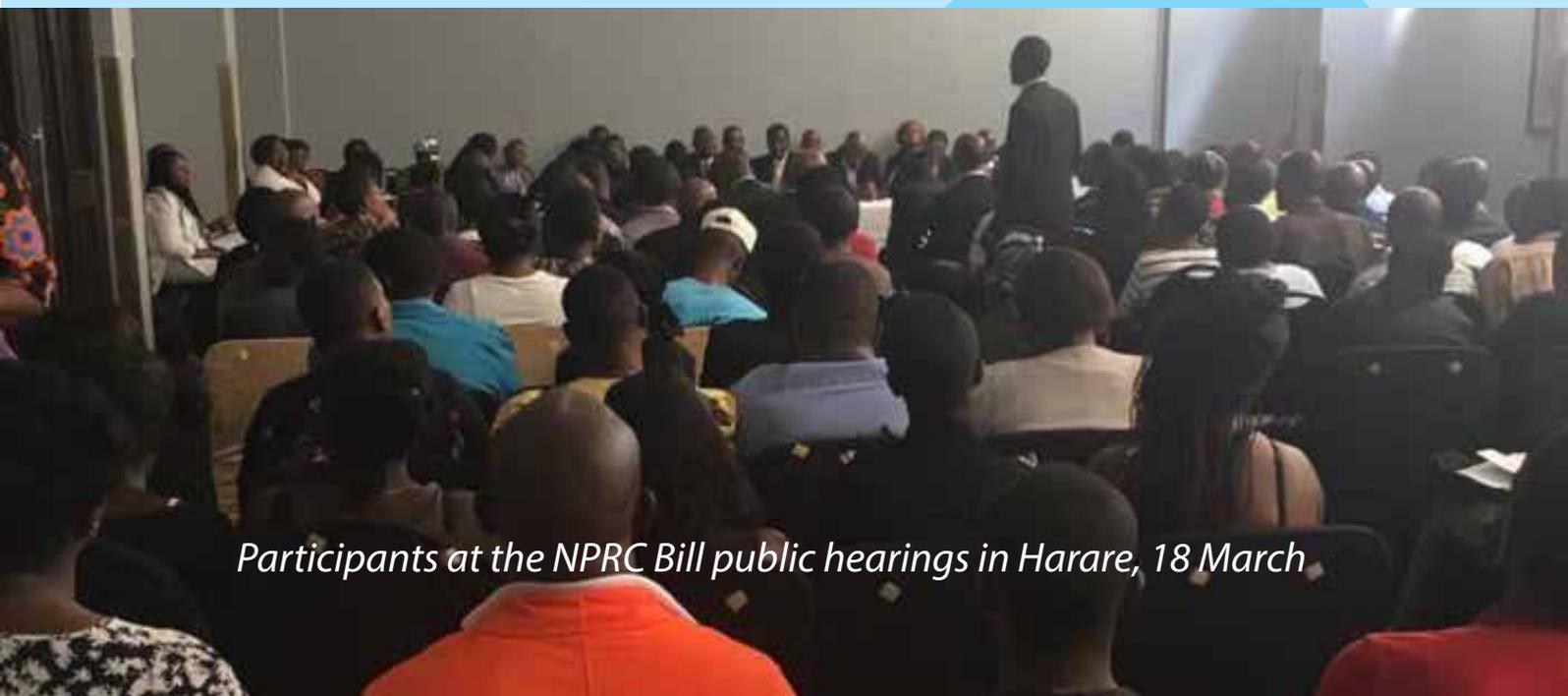
- a. At least two members of the Amnesty Committee must be nominated by legitimate victim groups
- b. The rules and principles must be developed in consultation with victim groups
- c. No amnesty shall be granted for crimes against humanity, war crimes, sexual crimes, crimes that involve the abuse of children, murder and genocide
- d. Past amnesties shall be revoked where beneficiaries committed further crimes after benefitting from past amnesties
- e. Affected victims shall have a say in decisions regarding the granting of amnesties
- f. No blanket amnesties. Amnesties can only be decided on a case by case basis.

***“The African Commission on Human and Peoples’ Rights (African Commission) in the case Zimbabwe Human Rights NGO Forum versus Zimbabwe (245/2002) noted that amnesties have a tendency of robbing victims of their access to remedy.”***

# What the People Said at the NPRC Bill Public Hearings

(Continued from Page 17)

- The Commission must be empowered to look at all violations that took place such as demolition of houses, job losses and the loss of savings due to dollarization
- Witness protection is not guaranteed in the bill
- Investigation processes should involve spiritual leaders and traditional healers who can assist in determining the truth of what happened
- The NPRC should be given powers to bring perpetrators to book down to ward level so that disputes are settled using bottom up processes.
- Participants want truth telling and freedom of expression.
- The Bill must have definitions of rape, torture, abduction etc.
- The Bill should be circulated well in advance.
- Churches should be involved in reconciliation processes.
- CIOs and security agents must not be part of the NPRC as they will intimidate victims.
- The NPRC must be decentralised up to ward level



*Participants at the NPRC Bill public hearings in Harare, 18 March*

# 05

## ANALYSIS

- Leaving no one behind: Peace and Reconciliation
- Locating healing in Transitional Justice processes
- Challenges and opportunities

# Peace and Reconciliation! ... but what about Healing?

**By Tony Reeler**

## **NTJWG Thematic Leader in Institutional Reform**

As the interest in the NPRC heats up, with the Commissioners appointed and the draft Bill subjected to scrutiny, it is worth looking at one of the most central reasons for having this Commission: the consequences of the deliberate infliction of harm. This may seem to many an overly emotional way of talking about the violence of the past, but, as I hope I can show briefly, not if you look at history through the eyes of those that have suffered under the decades of violence. And, for those unconvinced that Zimbabwe (and Rhodesia before it) has a very violent past, I recommend a read of Lloyd Sachikonye's excellent book, "When a State turns on its Citizens".

It is worth pointing out at the outset that the effects of violence have long been a cause of concern for health workers, and not merely those dealing with the effects of war, but also of those concerned about violent crimes such as rape. Ann Burgess and Lynda Holstrom first described the rape trauma syndrome in 1974. But health workers dealing with the effects of war eventually came to consensus on a description of a consistent set of symptoms that was first called a gross stress reaction in 1952, and then emerged as Post-Traumatic Stress Disorder (PTSD) in 1980. This has not been an entirely accepted definition, but has nonetheless become a useful way for looking at the effects of war, rape, torture and even terror. And all of these have strongly featured in the 60

years of violence documented by Lloyd Sachikonye.

An additional point, and why I raise PTSD, is that we too often think about the physical effects of violence – death, wounds, disability, etc. – but rarely about the psychological consequences which are probably the most common and frequently long-lasting consequences. And not just PTSD but also depression.

Now none of this is probably new to Zimbabwean citizens, but it does seem that we are largely unaware of the scale of the problem that 60 years of violence has left us, and must be a central preoccupation for the NPRC. As the Constitution expresses this in Section 252 (e), the NPRC has the function to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support.

This will be no small task, because, as one might understand from the introduction, time does not easily heal, and hence we have the victims, and some survivors, from 60 years. This includes the political violence and torture of the 1950s and 1960s, the immense violence of the Liberation War, the thousands of casualties of the Gukurahundi, and all the sustained violence since 2000. And how many people might this be? There are attempts to estimate the scale. A recent report tried to estimate the scale of the problem, and even suggested some ways in which the problem might be addressed.

Take a look at the effects of the Liberation War, and there is no national

study on the psychological effects, but the severity was partially captured by the National Disability Survey in 1981. That survey estimated that there were 276,300 (4% of the population) persons living with moderate to severe disability, some of which was due to war. The survey, however, did not capture the psychological effects; after all, PTSD had only been “invented the year” before. But later work showed that the psychological burden was not trivial. A study carried out in Mount Darwin in 1998, severely affected during the Liberation War, showed that 1 in 10 adults over the age of 30 years, and coming to a primary care clinic for assistance, was primarily there because that person had been a victim of organised violence and torture during the Liberation War. This was nearly two decades after the war had ended and people were still suffering: time does not necessarily heal!

The figures were worse when the Gukurahundi was examined. One study in Matabeleland South showed that 5 in 10 adults, over 18 years, were attending a primary care clinic for problems related to the violence of the 1980s. Even more startling was the finding that 9 out of 10 adults in the same study reported being a victim of organised violence, but clearly not all were suffering. However, that half of the population studied had significant psychological disorder was distressing, and, if this actually extrapolates to the population of Matabeleland North and South, we are talking about a very large number of people in need of assistance.

And it just goes on. An ActionAid study on the effects of Operation Murambatsvina indicated that nearly 70% of the people interviewed had consequent psychological symptoms. It is always dangerous to extrapolate from such

surveys, but, if the conventional figure for the number of people displaced by Operation Murambatsvina, 800,000, is correct, then we are talking about half a million people.

This may not be so fanciful. A study carried out in 2006 in the clinics of Harare showed that the prevalence of psychological disorder had risen to 39%, up nearly 10% from the estimates of the 1990s. The risk factors for becoming psychologically disordered corroborated the ActionAid study: multiple experiences of violence and having property destroyed or confiscated were far and away the most common precipitants of psychological disorder.

Hopefully, the point here is becoming clear. Violence has long-lasting effects, and we in Zimbabwe have had an enormous amount of violence inflicted upon us. This will be an enormous task for the NPRC, and probably not able to be fully dealt with in the proposed life span of the Commission. It is a pressing reason to stop all the delays in establishing the NPRC, and getting on with the job of spearheading the task of healing the nation. After all, victims that are healed are probably more forgiving than those that are not; victims that are healed might make more informed participants in how truth and justice might operate; and, of course, there is the urgent need to ensure that we do not add more victims to the existing population.

*Tony Reeler is a Senior Researcher with the Research and Advocacy Unit, and a member of the National Transitional Justice Working Group (NTJWG). In the NTJWG, he leads the thematic area on Institutional Reform. Feedback on this article can be sent to [info@ntjwg.org.zw](mailto:info@ntjwg.org.zw)*

# Can our NPRC Process Learn Something from International Standards?



## United Nations on Transitional Justice

The UN should consistently promote the compliance of transitional justice processes and mechanisms with international norms and standards. The normative foundation for the work of the UN in advancing transitional justice is the Charter of the United Nations, along with four of the pillars of the modern international legal system: international human rights law, international humanitarian law, international criminal law, and international refugee law. Specifically, various UN instruments enshrine rights and duties relative to the right to justice, the right to truth, the International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance, International Covenant on Civil and Political Rights, International Convention for the Protection of All Persons from Enforced Disappearance, right to reparations, and the guarantees of non-recurrence of violations (duty of prevention).

*Guidance Note of the Secretary General, United Nations Approach to Transitional Justice*



## United Nations on the Centrality of Victims

Successful transitional justice programmes recognize the centrality of victims and their special status in the design and implementation of such processes.

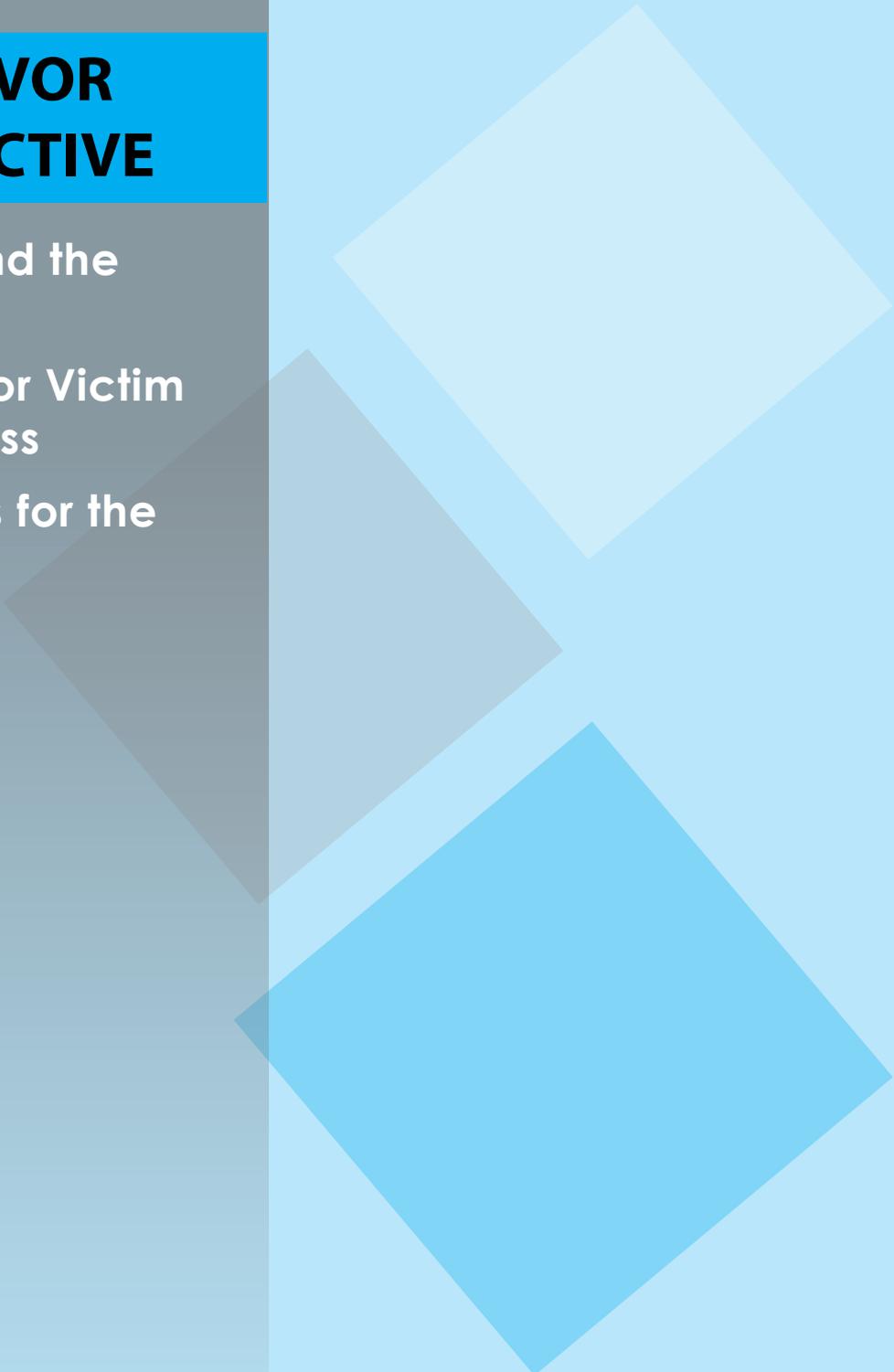
*Guidance Note of the Secretary General, United Nations Approach to Transitional Justice*

*See also page 28*



**06**

## **SURVIVOR PERSPECTIVE**

- **NPRC Bill and the Victims**
  - **Standards for Victim centeredness**
  - **Suggestions for the NPRC Bill**
- 

# WHERE ARE THE VICTIMS IN THE NPRC BILL?

## Introduction

During NTJWG's stakeholder meeting held on 6 March 2017, one of the participants noted that the NPRC Bill talks about perpetrators (where it talks about pardon) and yet says nothing about victims. From 10 to 18 April 2016, three committees from Parliament visited different provinces of Zimbabwe holding public hearings on the National Peace and Reconciliation Bill. At these meetings, committees met with victims who told their views regarding the Bill. But when the Bill was gazetted in February 2017, those views were missing. Which brings the question: why are we so eager to 'unsee' the victims if this process is genuinely about healing?

## NPRC Bill and the Victims

Section 9 (12) of the Bill provides that the Commission shall provide safety and protection of witnesses. No reference is made to victims and survivors. This is probably the weakest aspect of the NPRC Bill as this creates a gap which exposes victims and survivors and misses critical areas of the Commission's mandate as outlined in section 252 of the Constitution. According to the Minimum Standards for an Effective National Peace and Reconciliation Commission (NTJWG, 2015: 4), it is important that adequate protection mechanisms be put in place for victims and survivors. Standard 4 emphasises that the NPRC must adopt a victim centred approach

and prioritise the needs of the victims. This minimum standard can only be achieved through a deliberate process of creating safeguards within the law for adequate protection of victims and survivors as well as reaching to and encouraging victims to be willing to approach the Commission and feel safe in the process.

It is therefore imperative that a separate section on Victim Support and Rehabilitation be inserted into the Bill. The section must, among other principles, oblige the Commission to develop comprehensive regulations to support victims/survivors which must include:

- Establishing a Victim Support and Rehabilitation Committee
- Taking measures to reach out to victims and survivors and offering assistance in the aftermath of victim and torture
- Facilitating the provision of rehabilitation facilities including medical treatment, counselling services and general accompaniment for victims who interact with the Commission
- Taking steps aimed at the restoration of the human and civil dignity of victims in line with mandate given to the Commission in section 252 (e) and (j)
- Measures aimed at safely identifying victims and victim communities , and provide victims an opportunity, in public or private, to relate their

own accounts of the violations or harm they have suffered and to clearly set out their needs and document their experiences as part of a national truth-telling, recovery and acknowledgment process.

- Assessing the needs of victims and victim communities and make recommendations which may include urgent interim measures for reparations and relief measures or any other measures aimed at rehabilitating and restoring the human and civil dignity of individual victims or victim communities
- Take steps to provide protective, legal, psycho-social and logistical support services to victims during the periods such victims are involved in activities of the Commission.

### **Principles on Victim Centred Approach**

The Bill must clearly lay down the key principles on the handling of victims which must include the following:

- a. Victims shall be treated with compassion and respect for their dignity;
- b. Victims shall not be unfairly discriminated against on any basis, including race, gender, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- c. Procedures for dealing with victims shall be expeditious, fair, inexpensive and accessible;
- d. Victims shall be informed through the press and any other medium of their rights in seeking

redress through the Commission, including information of-

- i. the role of the Commission and the scope of its activities;
  - ii. the right of victims to have their views and submissions presented and considered at appropriate stages of the Commission's operations;
- e. Appropriate measures shall be taken in order to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;
  - f. Appropriate measures shall be taken to allow victims to communicate in the language of their choice;
  - g. Informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice may be applied, where appropriate, to facilitate reconciliation and redress for victims.

### **Conclusion**

At the centre of any healing process are the victims. The constitution lays in section 252 that healing is one of the functions of the NPRC. It further talks about providing rehabilitative treatment and support to victims and survivors. This healing cannot be achieved if victims are left in the margins of the process.

# Can our NPRC Process Learn Something from International Standards?



## The United Nations on Amnesties

Most importantly, amnesties that prevent the prosecution of individuals who may be legally responsible for war crimes, genocide, crimes against humanity and other gross violations of human rights are inconsistent with States' obligations under various sources of international law as well as with United Nations policy. In addition, amnesties may not restrict the right of victims of violations of human rights or of war crimes to an effective remedy and reparations; nor may they impede either victims' or societies' right to know the truth about such violations. □ Amnesties that exempt from criminal sanction those responsible for atrocious crimes in the hope of securing peace have often failed to achieve their aim and have instead emboldened their beneficiaries to commit further crimes.

*United Nations Rule of Law Tools for Post-Conflict States – Amnesties, HR/PUB/09/*



## UN on Independence of the Commission

Once established, the commission should operate free of direct influence or control by the Government, including in its research and investigations, budgetary decision-making, and in its report and recommendations. Where financial oversight is needed, operational independence should be preserved. Political authorities should give clear signals that the commission will be operating independently.

*Rule of Law Tools for Post-Conflict States – Truth Commissions*

*See also page 25*



**07**

## **NPRC LEGACY**

- **NPRC and Information Management**
  - **The use of Information in Judicial Proceedings**
  - **Preservation and Access of Records**
  - **Suggestions for the Bill**
- 

# WHAT WILL HAPPEN TO THE RECORDS OF THE NPRC?

## Introduction

The NPRC is a unique commission in comparison with other Commissions in Chapter 12 of the Constitution. It has a temporary life. This means it will one day close its doors after years of gathering information, thousands of statements from victims, possible confessions and records of major historical episodes. When that happens, what will happen to its legacy? What will happen to all these records? Will anyone have power to access them? How will that work?

## NPRC and Information Management

Section 9 (5) prevents disclosure of information disclosed to the Commission except under certain circumstances. This section must be expanded to make it clear that the law seeks to protect the confidentiality of the information during the work of the Commission. It must then also protect other categories of information or evidence that should not be disclosed which includes identities and personal information of underage witnesses and victims; and victims of sexual violations. Adult victims of sexual violations should be allowed to decide whether they wish to testify publicly, after counselling. A new section must be added here to effect this principle.

## Use of Information for Judicial Proceedings

Under the ground of exception to

disclosure, an additional ground must be added after 9 (5) (c) which states, "in judicial proceedings before a competent court."

Without this addition, this will make it impossible for persons affected by violations revealed during the commission's work to pursue other remedies since there will be an embargo on any information which would have been placed before the Commission. Moreover, there is need for clear guidelines not only on non-disclosure but also on disclosure as truth recovery is part of the mandate of the Commission. Whatever information is recovered by the Commission must remain useful for history, archival and pursuit of other formal and non-formal remedies.

## Preservation and Access to Records of the Commission

Section 15 (7) of the NPRC Bill obliges the NPRC publish its reports after 30 days from the day the Minister is expected to have presented the report before Parliament. Section 15 (8) provides that the Commission shall ensure that the rest of the information pertaining to the Commission's business becomes accessible to the public eighteen months after the year to which the information relates.

This is an improvement from the previous old NPRC Bill. However, many gaps still exist which need to be filled.

There is need for section to be added to the NPRC Bill to provide for how it will

access records that are necessary for its work. This section can be worded as follows;

“The different state institutions, public bodies and commissions, local municipalities, public institutions, departments and agencies of government as well as all the civil servants shall provide the Commission with all the information and data which they have received and could obtain while performing their tasks and which fall within the scope of the Commission’s duties or may help the Commission in its Constitutional functions to the best of its ability. These data and documents shall be directly submitted to the Commission at the Commission’s request.”

## Documentation and Collection of Evidence

The Bill must provide for all the necessary and technical safeguards in the reception of statements, documents and evidence which must include:

- a. Diligent filing of all documents, audio files, video files or any other items
- b. The creation of an archiving system with a backup system to secure the documents and files
- c. Ensuring that all copyright laws are adhered to
- d. Where information, documents or any other material is donated to the Commission, the necessary donor forms must be filled
- e. Where victims and perpetrators voluntarily give statements, the necessary consent must be obtained specifying the scope within the information can be used.

## Archival and Access to the Records

In the course of its work, the Commission will collect enormous amounts of data which will constitute valuable national memory which can be used for history and educational purposes the next generations. It is important that the NPRC Bill make provision for the preservation and access to this important national heritage. In that regard, the NPRC Bill must provide for the following:

- a. That at the conclusion of its work, the Commission shall submit all the documents and files in its possession to the national archives and backup copies to be submitted at an institution entrusted with the preservation of national memory.
- b. That such information shall be accessible to the public in line with 62 of the Constitution of Zimbabwe with the necessary protection mechanisms for witnesses, victims and juveniles.
- c. The Commission members and employees as well as any other person having performed the tasks entrusted by the Commission shall not be held liable for any report contents, conclusions, points of view or recommendations expressed by virtue hereof.



## About The National Transitional Justice Working Group

The National Transitional Justice Working Group (NTJWG) is a platform established by 46 Zimbabwean organisations representing various 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-centered and participatory transitional justice processes in Zimbabwe.

### Values

Integrity  
Inclusivity  
Impartiality

### Members

|                              |   |
|------------------------------|---|
| Mr. Alec Muchadehama:        | Chairperson/Reparations                   |
| Mr. Paul Themba Nyathi       | Deputy Chairperson                        |
| Rev. Dr. Fradereck Chiromba: | Promotion of Truth                        |
| Ms. Roselyn Hanzi:           | Justice and Accountability                |
| Rev. Dr. Ray Motsi:          | Memorialization                           |
| Ms. Memory Kachambwa:        | Gender                                    |
| Mr. Anthony Reeler:          | Independent Expert / Institutional Reform |
| Mr. Otto Saki                | Independent Expert                        |
| Ms. Samukeliso Khumalo       | Independent Expert                        |

### Secretariat

Zimbabwe Human Rights NGO Forum  
NTJWG Coordinator: Dzikamai Bere

### Physical and Postal Address

Suite 4, Number 1 Raleigh Street, Harare  
P.O Box 9077, Harare

### Phones

Tel - 04 – 770177/8, 772860

### NTJWG Online

Facebook - [www.facebook.com/ntjwg](http://www.facebook.com/ntjwg)  
Twitter - [www.twitter.com/ntjwgzimbabwe](http://www.twitter.com/ntjwgzimbabwe)  
Email – [info@ntjwg.org.zw](mailto:info@ntjwg.org.zw)  
Website - [www.ntjwg.org.zw/nprcwatch](http://www.ntjwg.org.zw/nprcwatch)