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THE NPRC AND THE NEED FOR AN INCLUSIVE PROCESS TO DEVELOP A LEGAL FRAMEWORK FOR EXHUMATIONS

STATEMENT ON CURRENT TRANSITIONAL JUSTICE RELATED DEVELOPMENTS

This statement relates to a number of emerging transitional justice questions relating to the ongoing transitional justice processes. These concerns came from the regional consultative meetings convened by the NTJWG as well as quarterly briefings with the NPRC and the general feedback from stakeholders.

Legal Framework for Exhumations in Compliance with the 2011 High Court Order

In a recent briefing with the NTJWG, the NPRC indicated that it has gotten the green light from the President to carry out exhumations with the help of experts from the National Museums and Monuments. The NPRC noted that a Presidential Proclamation has been published to that effect. The NTJWG would like to draw the attention of the NPRC to a number of issues regarding exhumations in Zimbabwe.

Currently, there is no official policy surrounding the question of exhumations. By nature, exhumations are a difficult area to explore in transitional justice and there has not been a comprehensive approach since independence. However, the existence of mass graves and individual graves with unidentified remains is widely acknowledged. At family level, there have been exhumations carried out with the assistance of some non-state actors.

In 2011, an organisation called *Fallen Heroes Trust* started a series of exhumations around the country claiming to be exhuming remains of freedom fighters. The process faced criticism from many experts who claimed that such a process requires from an expert approach within a national policy framework. Ultimately, the *Fallen Heroes Trust* initiative was stopped by the High Court following an application by the ZPRA Veterans Trust, which successfully argued that the process was meant to interfere with evidence of post-independence atrocities and that some of the people being exhumed were part of its own membership massacred during Gukurahundi. In a judgment delivered by Justice Mathonsi in April 2011, the court directed the government to “come up with a legal process, after consultation with all stakeholders and interested parties countrywide, which shall be the framework for any exhumation of the remains or persons who died or disappeared during the pre-independence or post-independence military or political hostilities in Zimbabwe.” (See ZPRA Veterans Trust v fallen Heroes Trust and Others (Case No. HC 880/11) [2011] ZWBHC 61).

With this background in mind, the NTJWG notes that there are a number of issues that the NPRC needs to undertake before a credible exhumation process starts:

- The need to acknowledge the High Court’s order to stop exhumations in the

absence of a legal framework;

- The High Court’s order that such legal framework on exhumations should come out of a consultative process including the views and needs of stakeholders in Zimbabwe, particularly those of victims;
- The NPRC, while an independent commission, remains a public institution whose mandate is governed by law. A Presidential Proclamation (if any) does not appear to meet the transparent standards expected of a national transitional justice process; and
- Exhumations must be handled as part of a comprehensive transitional justice process which includes issues of truth recovery, healing and justice. In this process, documentation and preservation of evidence of crimes is an essential part of the process.

In this regard, the NTJWG expects that the NPRC will pay due attention to the issues raised in the past by stakeholders and the High Court of Zimbabwe.

For its part, the NTJWG has initiated a conversation with its diverse stakeholders on the matter. Outcomes of this conversation will be shared with the Commission, which stands invited to all NTJWG processes.

Conclusion

In the Code of Inclusion, the NTJWG noted that participation in national healing and reconciliation processes must be substantial and not based on mere tokenism. The NPRC must ensure that expediency does not come at the expense of meaningful participation of all interested parties. There must be a clear demonstration by the NPRC of its willingness to engage and facilitate meaningful and effective participation. The NTJWG urges the NPRC to rise above partisan politics or positions only exclusive to a few powerful actors, and promote an inclusive conversation on key transitional justice processes, including questions of national dialogue, exhumations and addressing perceptions relating to its independence. Failure to acknowledge and pursue these issues creates a real threat that the national healing processes in Zimbabwe may end up being captured by the few to the exclusion of the many. The NTJWG remains committed to supporting the NPRC in its work, including through frank and truthful conversations on areas where the commission is at risk of violating key principles and laws in the pursuit of its mandate.

