



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

THE CODE OF INCLUSION

Guiding Principles on Inclusive
Public Consultation and Participation
in Transitional Justice Processes
in Zimbabwe

2018

"Inclusive public participation is one means of decreasing tension and conflict over public policy decisions. It is not a stumbling block to healing, but an opportunity to initiate an often difficult and emotive conversation"

THE CODE OF INCLUSION

Guiding Principles on Inclusive Public Consultation and Participation in Transitional Justice Processes in Zimbabwe 2018

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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-centred and participatory transitional justice processes in Zimbabwe.

Values

Integrity, Inclusivity & Impartiality

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FOREWORD

It is almost five years since NTJWG was established with the mission of creating an inclusive space for the coordination of transitional justice stakeholders, sharing experiences, and building of synergies for comprehensive, accountable, victim-centred and participatory transitional justice processes in Zimbabwe. Over the years, many tools have come out of our work to help in refining the process. In 2014 we released the *Minimum Standards for an Effective NPRC* which have helped policymakers to make sure that the *National Peace and Reconciliation Commission* is up and running. In 2015 we released the *Guiding Principles for Transitional Justice Policy and Practice* which have helped in crafting the law to operationalise the NPRC. In 2016, we released *An Analysis of the National Peace and Reconciliation Commission Bill* which critiqued the Bill to ensure that it aligns to the expectations of the people of Zimbabwe. In 2017, we drafted *Proposed Amendments to the Bill* to put into effect the views of stakeholders, giving the current NPRC Act the most comprehensive and gender sensitive provisions when compared to other laws in the country and in the world.

We have carefully observed this process and compiled some lessons. In line with our mission, we want this process to be participatory. We want the NPRC to have maximum impact. It is in that spirit that we are releasing what we call *'The Code of Inclusion: Guiding Principles on Public Consultation and Participation in Transitional Justice Processes in Zimbabwe'*. We have investigated our long history of failed commissions and we believe there are some lessons here. We have analysed public outreach missions by many of our stakeholders and indeed there are many lessons there. We have also looked at how commissions in other countries worked, and true, there are many lessons there. We have also gone through the guidelines of the UN and there are so many lessons. We have spoken to our stakeholders who themselves have a wealth of experience in carrying out public outreaches. On 7 March 2018, we convened the *Whats Next Conference* where these principles were presented to 56 delegates from 36 organisations at the frontline of work with victims. Comments and feedback were received and incorporated into this Code.

The views and experiences of Zimbabwe's most involved trauma healers,

lawyers and transitional justice experts were distilled into a set of 17 precise principles which are easy to read, understand and implement. This does not mean these are the only principles, but we are highlighting these and we believe they will help the Zimbabwean process. They are not a prescription, but rather, our humble contribution to the process. As has become our tradition, we invite all to continue this conversation not only about what must be done, but also how it must be done.

Muchadehama Alec (Mr.)

NTJWG CHAIRPERSON

1.0 INTRODUCTION

On 5 January 2018, the Government of Zimbabwe gazetted the National Peace and Reconciliation Commission Act (NPRC Act) operationalizing the National Peace and Reconciliation Commission (NPRC). This set into motion a very important chapter in the history of Zimbabwe. In this Code of Inclusion, NTJWG advances the mandate given by stakeholders to ensure that the processes of transitional justice in Zimbabwe are aligned to the expectations of the people of Zimbabwe and meet the best international standards.

In November 2014 (revised in 2015), NTJWG published the *Minimum Standards for an Effective National Peace and Reconciliation Commission in Zimbabwe*.

Standard number 5 reads as follows:

Inclusiveness, Public Information and Participation

The legitimacy of the NPRC does not end with its constitutionality but perpetuates and strengthens in the manner in which it is going to conduct its work. The NPRC must strive to promote an inclusive national truth-seeking and healing process with greater public participation and transparency. No member of the Zimbabwean society must feel left out or deprived of information regarding the work of the NPRC. Measures must be put in place to ensure that the NPRC works with everyone who is willing to be involved and that the public is adequately informed of its work at every stage. Selected public hearings and debates must be broadcasted as wide as possible without interfering with the integrity of the process and with due consent from the participants. Inclusivity and participation must not be a token but a major priority allowing the NPRC engagements to take a genuinely national character. 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. This is not just about the availability of information, but also the structures and facilities that make information meaningful and accessible to everyone in all languages and locations.

This *Code of Inclusion* builds on this standard, as the NPRC gets ready to launch several processes. The principles outlined here have been extracted from various consultations with stakeholders, various guidelines by international organisations working in the area of transitional justice, and the lessons learnt in similar processes here in Zimbabwe.

The Code of Inclusion includes the need for pre-planning, effective use of tools that empower the public before the consultation as well as planning with the community.

The NPRC tackles one of the most sensitive aspects of Zimbabwe's social fabric; the legacy of violence. A well - planned public participation programme in the crafting of programmes for the Commission is a step in the journey to healing the relations between the state and the citizens. Inclusive public participation is one means of decreasing tension and conflict over public policy decisions. It is not a stumbling block to healing, but an opportunity to initiate an often difficult and emotive conversation. A badly implemented public participation programme will achieve quite the opposite; increase tension and mistrust.

It is therefore the intention of this Code of Inclusion to enhance not only the quality of the process but also its credibility and sustainability.

Dzikamai Bere

NTJWG Coordinator

2:0 INCLUSION AND PARTICIPATION: GUIDING PRINCIPLES

2.1 The Commission's Own Guidelines on Public Participation

Past initiatives have taught us as a country of the importance of setting standards for an intervention. The NPRC needs to spend some time and resources in designing standards, tools and mechanisms for ensuring effective and substantial participation of the public in its programme. This will allow it to draw key principles and guidelines of how to make it deliberate and clear from the beginning that this will be a process hinged on radical transparency. These guidelines, which we recommend to include some of the guidelines discussed here, could be part of the regulations that are provided for in the NPRC Act, hence with the force of law. Failure to adhere to such regulations should have consequences.

2.2 Consultations as an Ongoing Process, not an Event

Consultations at individual and community levels need to be treated as a process not a one-off event. The process should be cognizant of the preparatory work that needs to take place *before* the Commission's interventions, hearings or other activities in a community. There is need for a supporting process *during* the activity, follow-up support and peace-building processes *after* the Commission has completed the engagement.

2.3 'Do No Harm!'

The area that the NPRC is going to work is highly sensitive. The trauma is real and widespread, and unless acknowledged in the process will exacerbate distress and deepen conflict in communities. A DO NO HARM, conflict sensitive, approach must be central to the NPRC process. There needs to be a specific guideline addressing the *Do No Harm* principle in the operational standards.

2.4 Public Participation is at the Heart of Victims Centeredness

In June 2015, over 48 organisations met in Nyanga and came up with Guiding Principles on Transitional Justice Policy and Practice in Zimbabwe (NTJWG, 2015). One thing that cuts across this set of principles is the emphasis on ensuring that individuals and communities affected by past violations remain at the centre of the process. The commission's guidelines

should give a clear outline of procedures and essentials for executing public consultations.

2.5 Provision of Psycho Social Support

Public outreach meetings can be very difficult especially for persons affected by violence. It matters not that sometime the subject is about the past event, victims and survivors often find themselves having to express themselves and this may lead to re-victimisation. The NPRC should make provision for psycho-social support during its outreach meetings and at their offices. Best practice requires that the NPRC recruits a competent and well qualified Welfare Officer/ Resident Counselor who works with the Commission to attend to persons that need such support as they come into the office or as the Commission carries out its outreach missions. This enhances the principle that the commission must be a safe space for victims. Where the Commission is going to travel to other regions, their team must have the resident counselor but in addition, they need to work with victim welfare organisations in different regions which already have the trust of the victims. When conducting public hearings or consultations, a victims' welfare desk must be clearly visible and accessible for anyone requiring their services

2.6 Capacity Building

During the public consultations for the NPRC Bill in 2016, NTJWG reported that the process was rushed and Parliamentarians were poorly prepared to deal with the situation on the ground. In Mutare, at a meeting held on 13 April 2016, some participants claiming to be war veterans asked the meeting to adjourn and came into confrontation with victims who at the end rescued the situation and asked the so - called war veterans to leave the place. In Chinhoyi, a few days earlier, violence erupted leading to destruction of property and the meeting was abandoned. It could be worse for the NPRC.

Before embarking on its programme, the NPRC should ensure that itself, its secretariat and partners across the country, are adequately prepared to reach out and face the nation. This preparation includes making sure that enough environmental scanning has been done, sufficient information has reached the participants, key facilitators have been identified and training

has been done for facilitators on how to deal with situations that may arise. Relevant tools must be made available for the Commission before they embark on an outreach programme. Translators, interpreters, counselors, rapporteurs, security officers are all an important part of an outreach team that must undergo thorough capacity building to ensure that they are on top of the situation.

2.7 Tools for public participation

An opportunity for participation is useless without the tools that facilitate effective and meaningful participation. There are a variety of techniques available to ensure meaningful participation of the public in the NPRC processes. The process should begin with publicity. The commission must equip the public with all the necessary background information about the NPRC, the commissioners, its laws and its regulations. Information must be supplied in the languages that communities understand. The public broadcaster, community radio stations and newspapers are essential resources for empowering communities for effective participation. During the NPRC Bill public hearings, Parliamentarians arrived at meetings to talk about the NPRC Bill to people who had never seen that Bill. In some cases, few copies of the Bill were distributed at the meeting and participants complained that the documents were written in the languages that they did not understand. This caused tension and frustration. For the NPRC, information must be packaged explaining what the NPRC is, what laws support it, who are the commissioners, and how the public can interact with the Commission before and after the meeting, where to find their offices among other things. The information must be packaged in simple language that the people can understand. It is important that before the NPRC comes to a community, there be deployed sensitization missions that merely do publicity. Colleges, schools and churches are perfect avenues for such sensitization missions. The best people to use for such publicity are the local community leaders resident in such areas.

2.8 Co-planning of Outreach Meetings and Publicity Programmes with Local Communities

Zimbabwe is a highly centralized state with everything done in Harare then transmitted everywhere. This culture has poisoned the running of programmes that require public participation. The NPRC must not fall into

the same trap of planning things in Harare for people in other places. It is important that in planning programmes, the communities affected by the subject matter be part of the planning process. It is ideal, for example, that if an event is scheduled for Masvingo, the planning meeting for such an event must be held in Masvingo, with Masvingo stakeholders playing a leading role, identifying the relevant partners, service providers, key leaders and the protocol. This then makes it imperative for the Commission to have facilitators and partners in every province. When we say local stakeholders we do not mean local representatives of Harare-based organisations. This is the mistake which many organisations make. It is better that organisations headquartered in that province to be in the lead. Such an approach would, for example, prioritize and put in the fore front TellZim ahead of Zimbabwe Human Rights Forum for an event in Masvingo, even though Zimbabwe Human Rights Forum may have an office in Masvingo. Doing this allows for local ownership of the process and is also safe when it comes to community sensitivities which the Commission may not be familiar with. Community processes, if not well handled, can exacerbate conflict long after and the commissioners have left. There needs to be local front liners who can deal with conflict resolution at community level during the process. Ministry of Health also have national presence at community level through the Village Health Workers. This group could, if properly trained and supported, offer some of the community level psycho-social support that will be required.

2.9 Choice of Office Space and Venues for Meetings

Public participation in a programme can be hindered by a simple thing like location of the offices of the Commission. When the NPRC Act was gazetted, the NPRC decided to call for a press briefing and the venue for the briefing was a Boardroom at the Munhumutapa Building, the headquarters of the Office of the President and Cabinet. That was a terrible choice of an office for many reasons, as stakeholders later reflected. First, the Commission struggles with convincing the people that they will be independent from the government. Secondly, for many victims, the Office of the President brings memories of the dreaded spy organisation implicated in many human rights violations. Thirdly, the security protocol to enter the office is very discouraging. In the end, the press briefing was poorly attended.

When the Parliamentary committees were holding public hearings in April 2016 in Bindura, the public hearing was held at a venue that had been used as a torture camp in 2008. This stirred a lot of emotions among victims who were asked to come back to the 'torture camp' to discuss the law on healing. They even went on to allege that some of the MPs present were perpetrators.

These two unfortunate incidences illustrate the importance of paying attention to the choice of office space and venues for meetings. In our Minimum Standards, we have said that the offices of the NPRC must be accessible to the public. It follows that public participation is enhanced when the commission is easily accessible. On outreach meetings, including local communities to determine which spaces to use for meetings can be very helpful.

2.10 Speaking the language of the community

The NPRC should be conversant in the language of the communities that they are going to engage. As a general principle, it would be better if the Commission and its secretariat reflected the diversity of the country. As a minimum standard, the Commission must ensure that its Secretariat, speaks the language of the communities that it will work in. When the Organ on National Healing Reconciliation (ONHRI) went to hold a public meeting in Bulawayo, they were met with a public demonstration. Inside the emotive meeting, residents complained that ONHRI was coming to them speaking in 'foreign languages'. Some languages, while being national languages, in certain communities, are regarded as 'the language of a perpetrator'. Even where translation services are available, it would be ideal if the lead facilitators did not need translation because many things are 'lost in translation'. The Commission in order to get the best out of the process and to enhance public participation should be fluent in the language of the communities.

2.11 Being Alert to the Cultural sensitivities of different communities

The Commission, in addition to being fluent in the language of the communities, that is going beyond the language of speech, it must understand the cultural sensitivities in certain communities and harmonize its practices with such. Working with local organisations, the Commission

must invest in acculturation to allow them to be able to blend and harmonize their mission with the community. This is not a burden to the Commission but a privilege to learn and understand more the communities that they have to serve. Simple things can endanger a meeting if not attended to. Things like how a Commissioner decides to dress, or what day of the week they choose to hold a meeting or how they master the opening greeting. These can set a meeting ablaze with passion or fire with anger. The difference is very small but the effect is huge. Where resources permit, a special advisor on culture and diversity must be appointed in the Commission to assist in this aspect.

2.12 Paying Attention to Diversity and Inclusion

The NPRC should be truly national in character but also very domestic to all communities. This must include paying attention to all groups and individuals. Many a times individuals are lost in groups and groups are lost in the nation. Special attention must be paid to ensure that this loss does not happen. The NPRC's programme design must ensure that previously marginalized groups are part of the process. Minority groups leaving outside the big cities are sometimes forgotten. When the Parliament held public hearings for the NPRC Bill in Victoria Falls, violence almost broke out because the rapporteurs did not understand the language of the community. This meant the committee was not prepared as a result the contributions of this community were not going to be included as no one understood their language. Diversity and inclusion requires special tools, programming and training. It is not a simple thing of the Commission outsourcing its work to a local group. The commission must find a more sustained approach of making marginalized groups part of their programme. These may include language minorities who have not been part of the national conversation on healing and reconciliation. It includes sexual minorities who have suffered gross violations but have been afraid of speaking because of the stigma attached to their orientation. These may include persons with disabilities who have no access to venues for the meetings. The Commission must make provision for their inclusion. This is not just about physical access, but also the ability to participate in the whole process for those who have disabilities impacting hearing, vision, speech and expression. The venues for meetings/ hearing will need not only be accessible but cater for a range of disabilities. Hence the need for

braille versions of documents and sign language interpretation at meetings. There are victims and perpetrators who fled to other countries like South Africa, Botswana and Zambia. The Commission will need to consider how they can be involved in the process. It may need to consider modalities for working with regional partner organisations.

2.13 Participation of Women, Youth and Children

Special attention must be paid to women, youth and children. Special tools could be deployed to facilitate their participation. The NPRC must assign a special office to ensure that the needs of women, youth and children are attended to and that their voices are amplified. Section 9 of the NPRC Act provides that a focal person on gender be appointed into every committee or unit of the Commission to attend to the special needs of women. In other cultures, women, youth and children are not allowed to attend meetings. Or if they attend, they are not allowed to speak. The Commission must carry out a special study and identify obstacles to participation and put in place measures to activate the participation of such groups. Other measures include the need to create special focus groups, community support structures and ensuring that the facilitation team has specific gender composition.



2.14 Special Measures for Participation of Children

The participation of children, in particular, will need to be carefully programmed for. Child protection and safeguarding measures will need to be planned and trained and oriented specialists for each cognitive age group will need to support the process. There needs to be a child protection framework which is consistent with national law, and a focal person for child rights and child protection. The Commission may find it useful to engage with the education sector to facilitate a well-coordinated

education process for all children and young people and build in psycho-social support into schools and education centres. This will need to take cognizance of the fact that in some areas schools were used as torture bases and that teachers were particularly targeted for election violence. It will also need to be acknowledged that many of the teachers today are former “green bombers” and so can be perceived as complicit in violations.

2.15 Paying attention to the Concerns of victims

The NPRC’s main mandate is to ensure healing for victims. This will be impossible if the voices of victims are lumped into everyone. The Commission could then open special channels of communication for persons and communities affected by violence. This means that if the commission is going to hold public hearing or consultations, besides geographical balance of the missions, there must be a specific focus on outreach to victim communities. An outreach to Manicaland will not be enough without a visit to communities displaced in Chiadzwa. An outreach to Matebeleland will not be adequate without a visit to communities affected by Gukurahundi. For maximum benefit, it is better if the Commission speaks to victims themselves as many victim voices are usurped by agencies that tend to speak on their behalf. The Commission will not understand these voices without visiting the sites of atrocities as this complete the stories of victims.

2.16 Safety and Protection of Survivors and Witnesses

The physical safety and security of victims who interact with the Commission should be guaranteed and programmed for. This will require intentional trust building and genuine will from the Commission to protect the individual, their family/community and the information. The Commission will need to ensure that communities will also be protected and safeguarded. This will mean ensuring that there are no adverse repercussions for individuals, families, groups, community leaders or whole communities. This may require a confidential reporting mechanism. Lessons from the Montlanthe Commission of Inquiry into the August 1, 2018 Post-Election Violence can be helpful for the NPRC. During public hearings in Bulawayo, people giving testimony to the Commission were arrested as soon as they stepped out of the venue of the hearing. This should be never be the case in the case of the commission. Further legal

mechanisms should be explored to make sure there is adequate protection for victims, survivors and witnesses. Such mechanisms should be widely publicized with the affected groups and possible violators of this principle like the police must make a public commitment that witnesses will not be victimized for their testimonies. A more detailed discussion on this matter is necessary.

2.17 Media and Communications

The story of national healing is more than just news. It is about human dignity. It matters how the NPRC activities are going to be reported. Names of victims and perpetrators are a sensitive part of information. And yet the society has the right to information. The NPRC should develop a comprehensive media policy to ensure that it provides adequate information to the media on its programme. This media policy must also layout the reporting guidelines for the media especially as it relates to the dignity of victims and alleged perpetrators. The commission should also not starve the media of information. History has shown that where the media is starved of information, rumours take over and there is a lot of misinformation. If resources permit, a media and information officer must be appointed to attend to all information needs of the society and ensure that the principles of peace journalism are ingrained in the manner in which the NPRC handles its information. In our Minimum Standards, we have noted that our society must ensure that the need to sell news does not overtake the respect for the dignity of victims.

2.18 Reporting and Feedback Mechanisms

The NPRC Act and the Constitution create an obligation for the NPRC to make certain reports to different bodies including Parliament. Besides the statutory obligations, the NPRC should make it mandatory that all its work and activities are documented, reported, and carefully archived. These reports must be time sensitive. The NPRC diary could be juxtaposed with relevant reports. Outreach meetings must be well documented and reported. After an outreach meeting, the report of such an outreach mission should be shared with the community in which the outreach was held and the community must certify that the report is accurate. A feedback mechanism could be developed to ensure that what was agreed is implemented. This is not only an ethical thing to do, but also helps in building trust with the community and gives fruit to their efforts.

3.0 CONCLUSION

There can never be an exhaustive list of guidelines in this area. There are many standards the world over. This set that we present here is drawn from experiences mainly with public participation in Zimbabwe, complimented by the best international practices. We present these to both the NPRC and our stakeholders who will participate in this process, hoping that they will use this Code to the best ends and to achieve the best results. We remain committed to ensuring that process of national healing in Zimbabwe is aligned to the expectations of the people of Zimbabwe. Working with victim communities is a venture that requires extreme care and adequate preparation. We can only wish Zimbabwe a successful healing mission and a peaceful, just, accountable and democratic society.

