



December 2020 Consolidated Newsletter

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The National Transitional Justice Working Group (NTJWG) is pleased to issue its final newsletter for the year 2020. The year is coming to a close and there is a need to reflect on the transitional justice developments emanating from this year while taking stock of the losses and gains as we plan for the coming year. 2020 has been a particularly challenging year for Zimbabwe and the rest of the world which had to contend with the COVID-19 pandemic that saw many countries and cities going on lockdowns and having to adopt new and mostly virtual ways of doing things. The emergence of the COVID-19 pandemic disrupted the lives of many and brought to the fore inequalities that exist in society which were only exacerbated by the pandemic.

Worryingly, even amidst a global health crisis, human rights violations in Zimbabwe continued unabated. The prevalence of human rights violations, the use of hate speech, and intolerance during this year only served to worsen the plight of Zimbabweans under the national lockdown. Early in August 2020, the #ZimbabweanLives-Matter movement emerged on various social media platforms and attracted global attention. The movement sought to raise awareness of the gross human rights violations that were being perpetrated by the Zimbabwean Government against its citizens. These violations include arbitrary arrests based on trumped-up charges, abductions, torture, and sexual assault of activists, journalists, and opposition party members that spoke out against corruption, bad governance, and human rights violations in the country. The movement caught the attention of prominent figures, celebrities, international human rights bodies, and foreign governments. The South African government responded by sending an envoy to Zimbabwe to assess the situation. The envoy was expected to meet with government officials as well as civil society representatives, but at the last minute, scheduled meetings with civil society representatives failed to proceed. Another delegation was sent by the South African ruling party, the African National Congress (ANC) and it met only ZANU PF officials. The ANC delegation similarly failed to meet with other relevant stakeholders. The NTJWG commends the initiative taken by Zimbabweans to call for the promotion and protection of human rights. Active participation by members of the citizenry is the key to solving the crisis in the country. However, the NTJWG notes with concern the lack of engagement of all key stakeholders by the Government of Zimbabwe (GoZ). The NTJWG, also urges the National Peace and Reconciliation Commission (NPRC) to resume the process of facilitating national dialogue as it is essential to providing a platform for the people of Zimbabwe to come together and formulate solutions to the nation's problems.

In this edition of the NTJWG newsletter, we package the highlights of the year 2020 for you using the lens of transitional justice. We cover local, regional, and global transitional justice news highlights, the activities of the NPRC, and the NTJWG. As always, we welcome your feedback.

IN THE NEWS

Consultations on Exhumations and Reburials the Matabeleland and Bulawayo Provinces

During the course of 2020, the NTJWG noted that there were some developments relating to the issue of exhumations and reburials of the remains of victims of violence and conflict in the country. In August, Charles Thomas a Gukurahundi survivor, Ibheshu Likazulu Trust, Mbuso Fuzwayo, and Zimbabwe African People's Union (ZAPU) approached the High Court sitting in Bulawayo to stop the executive and the Matabeleland Collective from carrying out exhumations.¹ Justice Makonese heard the matter and dismissed the application in October, on the basis that it was presumptuous and premature. He accepted the defendants' contention that they had no intention to act outside the law. Further, the judge found that the NPRC is constitutionally mandated to lead the process of exhumations and reburials, and the applicants needed to approach the NPRC to intervene if they feared that the process would be carried out unlawfully. This case is of great significance because it confirms the position of the NTJWG and other civil society organisations that the NPRC should be leading the process of exhumations and coordinating engagement with stakeholders on this important national issue.

The NTJWG also noted the continued exclusion of the NPRC from consultations aimed at planning how exhumations and reburials will be conducted for victims of Gukurahundi in the Matabeleland and

¹ Charles Thomas and 3 Others v President of Zimbabwe and 5 Others HC 1454/20

Midlands provinces. The executive arm of the Zimbabwean government led by the President started carrying out consultations on this important issue of exhumations in 2019 and the latest meeting was convened in Bulawayo on 24 October 2020. Attendance at the meeting was exclusive to government officials and traditional leaders. According to media reports, the meeting resolved that traditional leaders will now take over the exhumation and reburial of victims of Gukurahundi in Matabeleland and Midlands, while the government will fund the process as part of initiatives to bring closure and promote national healing. The NTJWG accepts that traditional leaders have a pivotal role to play in the exhumations process and this role should not be negated by the existence of the NPRC. However, the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution) gives the NPRC the primary mandate to facilitate peace and reconciliation. Carrying out exhumations and reburials is part of the NPRC's mandate and any role that may be assigned to traditional leaders in respect of exhumations must be ancillary to the role played by the NPRC. To this end, the NTJWG engaged the NPRC to act and guard against the usurping of its mandate. The NTJWG also engaged Parliament during its quarterly Parliamentary briefings and implored Parliament to hold the Executive to account for its attempts to usurp the NPRC's mandate.

NPRC Recommendations Used to Close Civic Space

On 27 October, Minister of Information, Publicity, and Broadcasting Services Monica Mutsvangwa announced that Cabinet had approved of the proposed amendments to Criminal Law (Codification and Reform) Act [Chapter 9:23] by introducing provisions which seek to criminalise the conduct of isolated citizens or groups who, for self-gain, co-operate, or connive with hostile foreign governments to inflict suffering on Zimbabwean citizens and cause damage to national interests. This announcement came after several media reports and statements by the Ministry of Information, Publicity, and Broadcasting Services indicating that the Government of Zimbabwe intended to enact a new law to be known as the Patriot Act. Of particular concern to the NTJWG is the repeated assertion by the GoZ that the proposed amendments are predicated upon the recommendations of the NPRC made in its 2018 and 2019 reports. Specifically, the GoZ has claimed that the NPRC recommended that campaigning against one's country be criminalised. However, neither of the NPRC's 2018 or 2019 Annual Report refers to such a recommendation.

The proposed amendments to the criminal law are of great concern as they seek to stifle the right to freedom of expression which is already currently under attack in Zimbabwe with journalists and citizens being arrested and persecuted for exercising this right. Freedom of expression is a fundamental right that is enshrined and protected in terms of section 61(1) of the Constitution of Zimbabwe. This right is a key feature of any democratic society and facilitates dialogue through the contribution of dissenting and diverging views in a country. However, section 86 of the Constitution permits the limitation of fundamental rights and freedoms to the extent that the limitation is fair, reasonable, necessary, and justifiable in a democratic society. Therefore, while the right to freedom of expression is a fundamental right, it is not absolute and can be limited following the norms and standards of a democratic society. The NTJWG is concerned that there is a real risk that the proposed amendments will be weaponised to muzzle victims of human rights violations and advocacy and lobby organisations that stand against human rights violations. The government has previously publicly made known its hostility towards civil society organisations and their work particularly as it relates to bringing to light human rights violations and engaging the international community on the situation in Zimbabwe. It is therefore clear that the proposed law is a deliberate move away from democracy and towards repression of citizens and civil society. Therefore, the limitations sought to be imposed by the proposed amendments cannot be justified in a democratic society.

NPRC ACTIVITIES

Training of Provincial Peace Committees

From February to March the NPRC convened trainings for its provincial peace committees (PPCs) which were set up and given the mandate of solve conflicts in their areas because a "one-size-fits-all" approach had proved impractical. The trainings were aimed at equipping members with skills in conflict analysis, approaches to conflict resolution, indigenous solutions to conflicts, and peace education. The trainings emphasised the importance of a critical understanding of the actors, content, context, positions, interests, options, objectives, and relationship building in preventing, managing, resolving, and transforming conflict. The PPC also went through an exercise

during which its strengths, weaknesses, threats, and opportunities were discussed as part of the training program. During its training, the Harare PPC identified political conflicts, boundary disputes, polarisation, and resource conflicts, social and economic conflicts as the major conflicts affecting Harare Metropolitan Province. Speaking at the Bulawayo Metropolitan PPC training, the Chairperson of the NPRC, Retired Justice Sello Nare emphasized that peace committee structures around the country should be the focal point for all the NPRC driven programs. He added that the PPCs need to be adequately capacitated so that they understand their responsibilities towards uniting all Zimbabweans and part of that capacitation was giving them skills that will enable them to interview victims among other things. The NTJWG commends the NPRC for taking the initiative to set up the PPCs and also train the members of each PPC on how they should carry out their mandate and will continue to follow the activities of the PPCs closely. The NPRC is encouraged to continue to support the PPCs and to ensure that as the new year starts, the PPCs are capacitated to carry out initiatives to increase the NPRC's visibility in their provinces. To that end, the NTJWG urges the NPRC to impress upon the members of the PPCs the importance of inclusivity in transitional justice processes to ensure long-lasting peace and reconciliation. For more information on issues of inclusivity as perceived by the NTJWG, please visit <https://www.ntjwg.org.zw/introducing-the-code-of-inclusion/> and read the NTJWG Code of Inclusion.

NPRC Engages Stakeholders on Politicisation Food Aid

On 30 April, the NPRC convened a meeting in Gwanda which was attended by the Town Clerk, the Mayor, local councilors, and representatives from the Department of Social Welfare, amongst others. This meeting was aimed at addressing the issue of politicisation of food aid and to call for transparency in the procurement and distribution of subsidised mealie-meal. The NTJWG commends the initiative being taken by the NPRC to engage stakeholders over this issue which continues to plague our communities. The NTJWG implores the NPRC to continue engaging with stakeholders across the country over the politicization of food aid which has proven to be a cause for conflict and division, particularly in rural communities.

Suspect Detained over Looting Government Subsidised Mealie-meal

On 18 April 2020, the NPRC announced that following a complaint by Transparency International Zimbabwe in connection with looting and hoarding of government subsidised mealie meal in Kuwadzana 5, Harare, it had engaged the Zimbabwe Republic Police (ZRP) for further investigation. The NPRC's engagement with the police resulted in a suspect being detained at ZRP Kuwadzana under CR 148/4/20 pending a court appearance. The NTJWG commends the collaboration between the civil society, the NPRC, and the ZRP that culminated in the detention of a suspect in this matter. This is a good first step in ensuring transparency and accountability around government subsidies and food aid in communities which remains an issue that has since plagued Zimbabwe causing tensions and conflict in communities. The NTJWG is however concerned that the NPRC did not give any more updates on this case. The NTJWG urges the NPRC to keep the public informed on developments in cases that are investigating or referred for investigation for purposes of accountability and raising awareness on what the NPRC is doing.

Engaging Victims of Police Brutality

On 7 May of 2020, Commissioner Leslie Ncube led an NPRC delegation that visited sisters Nokuthula and Ntombizodwa Mpofo who were assaulted by police officers in Bulawayo on 16 April. Commissioner Ncube condemned the conduct of the police officers and indicated that the NPRC will keep working on the matter until the responsible police officers are brought to book. The NTJWG commends the NPRC for taking up this case and urges the Commission to work with the ZRP as it is empowered to do by the Constitution to ensure that this case is thoroughly investigated and the police officers involved are held accountable. The conduct of the police, in this case, is an example of the culture of impunity by law enforcement officers in Zimbabwe which has been a source of conflict between the police and citizens for many years. This case, therefore, falls squarely within the ambit of the mandate of the NPRC as it has conflict inducing elements. Regrettably, the NTJWG notes that the NPRC did not give further updates on the work it did to deliver justice to the two sisters. It is vital for the NPRC to endeavor to keep the public informed on all the interventions it makes to assist survivors of human rights violations. Such information is crucial to building public confidence in the NPRC thus encouraging survivors to approach the NPRC with their stories.

Presentation and Publication of the NPRC's Annual Reports

One of the biggest transitional justice highlights emanating from





Stakeholders, Friends, and Partners

ANALYSIS ■ PROFILES ■ NEWS ■ RECOMMENDATIONS ■ PARTICIPATION

2020 is the presentation of the NPRC's 2018 and 2019 Annual Reports to Parliament and the subsequent publication of the reports. This was a step in the right direction for the NPRC, a welcome development that enabled stakeholders particularly survivors to interact with the NPRC's report and reflect on the recommendations it made. While the reports were presented to Parliament and published late contrary to the NPRC's constitutional obligations, the NTJWG welcomes their eventual publication. Looking towards the future, the NTJWG urges the NPRC to ensure timely compliance with its reporting obligations. Section 323 of the Constitution obliges all Commissions including the NPRC to submit to Parliament their annual reports not later than the end of March in the year following the year to which the report relates. Section 16(7) of the NPRC Act [Chapter 10:32] further obliges the NPRC to make public the Annual Report and any other reports expected to have been presented to Parliament thirty days after the Minister is expected to have presented it to Parliament. The presentation of the NPRC's annual report to Parliament and the publication of the annual report is an obligation that must be fulfilled promptly every year to ensure that the NPRC accounts to the people of Zimbabwe on what it would have done in the previous year and the areas it identified as requiring legislative or policy reform as well as any other issues of interest that the NPRC will have identified. To read the 2018 report please visit <http://www.nprc.org.zw/nprc-2018-annual-report/> and for the 2019 report visit <http://www.nprc.org.zw/nprc-2019-annual-report/>

NTJWG ACTIVITIES

Policy Dialogue and Breakfast Meeting on Reparations and Rehabilitation

On 6 February 2020, the NTJWG convened a policy dialogue on reparations and rehabilitation in Harare. The purpose of the dialogue was to create a platform for stakeholders to make recommendations and adopt steps towards the adoption of a model reparations and rehabilitation policy for Zimbabwe. This policy dialogue was cofacilitated by Ms. Paula Gaviria, an international expert on reparations and rehabilitation and the former Director of the Special Administrative Unit for the Comprehensive Reparation of Victims in Colombia, and Dr. Frances Lovemore, a local expert on reparations and rehabilitation and the Executive Director of the Counselling Services Unit. Ms. Gaviria and Dr. Lovemore were specifically selected because of their vast expertise in dealing with survivors of past human rights violations particularly in respect of issues around reparations and rehabilitation. Each of the two experts presented a research paper on their recommendations for a national reparations and rehabilitation policy framework for Zimbabwe before NTJWG stakeholders and members, Parliamentarians, Commissioners of the NPRC, government officials from the Attorney General's office and the Ministry of Justice, Legal and Parliamentary Affairs, the media, survivors of past human rights violations and members of the public. The policy dialogue provided a platform for informative discussions on reparations and rehabilitation among stakeholders in Zimbabwe. The NTJWG hopes that this policy dialogue sparked interest in reparations and rehabilitation in the public and will usher in greater discourse around this very important issue by the public which will be followed by more engagement with the policymakers and implementers in respect of issues to do with reparations and rehabilitation.

Following the policy dialogue, the NTJWG hosted a post-dialogue breakfast meeting on 7 February 2020 and it was attended by representatives from the NPRC, the office of the Attorney General, the Ministry of Justice, Legal and Parliamentary Affairs, and survivors of past human rights violations and the NTJWG members. This meeting aimed at creating a platform for engagement among the key stakeholders who are critical to the development of any policies or laws relating to reparations and rehabilitation. The transitional justice stakeholders that attended this meeting agreed that there is a need to develop a model law on reparations and rehabilitation that will guide the process after the realisation that the implementation of a reparations and rehabilitation programme in Zimbabwe should be guided by a well-crafted and well-defined policy. This meeting laid the necessary foundation for collaboration between transitional justice stakeholders across the country as they work to further the transitional justice agenda, particularly concerning reparations and rehabilitation.

Complaint against Minister Monica Mutsvangwa

In a pastoral letter dated 14 August, the Zimbabwe Catholic Bishops Conference called upon the Government of Zimbabwe to facilitate peace and nation-building through inclusive engagement and dialogue. The Minister of Information, Publicity and Broadcasting Services, Monica Mutsvangwa responded to the pastoral letter in an address made at her offices on 15 August. The Minister's address was filled with hate speech and derogatory language that went as far as to label the ZCBC's message as evil. In her address, the Minister launched a personal attack against the President of the ZCBC, Archbishop Robert Christopher Ndlovu, whom she singled out and

accused of hoping "to sow seeds of internecine strife as a prelude to civil war and national disintegration". In response to this, the NTJWG lodged a complaint with the NPRC on 3 September requesting that the NPRC censure Minister Mutsvangwa and ensure that she retracts her hateful statements. The NTJWG is still awaiting the outcome of this complaint and encourages the NPRC to act with haste to address this matter without favour to ensure that the use of hate speech is curbed and that offenders are censured. The NTJWG notes that the Zimbabwe Human Rights Association made similar complaints to the NPRC regarding utterances made by the ZANU PF Acting Spokesperson, Mr Patrick Chinamasa, for his utterances in anticipation of the 31 July protests. The NTJWG commends the initiative taken by the Zimbabwe Human Rights Association and encourages the NPRC to make public the outcomes of complaints such as these which are made in the public interest.

Survivors' Radio Program Campaign

As a result of the COVID-19 pandemic the NTJWG was compelled to restructure some of its programs. Affected programmes included the community dialogues that the NTJWG was convening in different communities across the country to concertise survivors on the mandate of the NPRC. From October, the NTJWG began hosting the survivor radio program campaign aimed at creating a platform for survivors and other stakeholders to engage in sustainable dialogue and debate on critical transitional justice issues.

The NTJWG carried out a total of twelve radio programs as part of this campaign in Bulawayo, Harare, Masvingo, Mashonaland East, and West, as well as Matabeleland North and South. The radio program campaign was made-up of several radio program sessions, each with three panellists who focused on the NTJWG's thematic areas of Memorialisation, the Promotion of Truth, Justice and Accountability, Institutional Reforms, and Gender. The panellists included NTJWG stakeholders from -organisations such as Christian Alliance, Habakuk Trust, Emthonjeni Women's Forum, Zimbabwe Political Victims Trust Foundation, National Association of Non-Governmental Organisations, and survivors selected from each region.

To listen to the above radio programs and any other radio programs hosted by the NTJWG please visit <https://soundcloud.com/user-575637068-15080092/tracks> please feel free to get in touch with us with your views about the issues raised in any of the NTJWG's radio programs.

Transitional Justice Policy Reflective Meeting

On 18 November, the NTJWG met with representatives from the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs and from the Senate Thematic Committee on Human Rights. During the meeting, the NTJWG presented a policy paper and policy brief on reparations in Zimbabwe and made recommendations on how a policy on reparations in Zimbabwe may be formulated and what should be addressed in such a policy. The meeting presented an opportunity for the NTJWG and Parliament to share ideas on how they can work together to facilitate the formulation and implementation of a national reparations policy.

NTJWG Publications

State of Transitional Justice Report

On 27 October, the NTJWG launched its 2019 State of Transitional Justice Report. This report is a culmination of the NTJWG's efforts to monitor national, regional, and international transitional justice developments emanating from the year 2019. Some of the NTJWG's key findings in the report were that there has been no traction in establishing outstanding constitutional transitional justice bodies like the Independent Complaints Mechanism; recommendations made by the Motlanthe Commission have not been implemented especially recommendations relating to compensation for victims; the NPRC failed to meet its reporting obligations for 2018 within the timeframe stipulated by law, and the lack of funding hampered the full implementation of the NPRC Strategy including establishing a competent Secretariat. To address the findings and concerns highlighted in the report the NTJWG made the following recommendations among others the GoZ should fully implement the recommendations made by the Motlanthe Commission of Inquiry; there should be increased funding and support for the NPRC; the Independent Complaints Mechanism must be urgently established as provided for under section 210 of the Constitution. To read the full report visit <https://www.ntjwg.org.zw/wp-content/uploads/2020/10/State-of-Transitional-Justice-in-Zimbabwe-2019lr.pdf>

NTJWG 2019 Annual Report

On 9 November the NTJWG launched its 2019 NTJWG Annual Report highlighting the activities that were carried out by the NTJWG in 2019, the opportunities, challenges, failures, and successes. Among the key activities carried out by the NTJWG in 2019 were the community dialogues that the NTJWG carried out in communities across

the country. These dialogues were aimed at building survivor knowledge on the mandate of the NPRC to ensure effective engagement of survivors with the NPRC. The NTJWG also trained identified survivors who led the community dialogues in their communities as a way of building the capacity of survivors not just to participate but to also lead transitional justice processes. To read the full report visit <https://www.ntjwg.org.zw/wp-content/uploads/2020/11/NTJWG-Annual-Report-2019lr.pdf>

WORLD NEWS

UN Security Council Zeros in on Transitional Justice

On 13 February, the UN Security Council held a six-hour-long open debate on transitional justice in Belgium. This debate was the first of its kind and indicates increased interest by the UN Security Council in transitional justice. The debate was attended by representatives and senior officials from over thirty countries from across the world. The delegates called for the Security Council to take decisive approaches to conflicts in concert with other United Nations bodies. They also said that transitional justice mechanisms that are locally owned and focused on the needs of victims have repeatedly helped to address grievances and pave the way for more peaceful societies to take root. The United Nations High Commissioner for Human Rights Michelle Bachelet said the recent overthrow of the regime in Sudan was driven by demands for justice across society and it is now necessary for suffering needs to be acknowledged, confidence in State institutions restored and justice to be served. South Africa's delegate similarly said transitional justice was vital to securing a peaceful transition for his country from apartheid to constitutional democracy. He encouraged countries to explore a range of measures, from criminal prosecutions, truth commissions, and reparations, to exhumation of mass graves, apologies, and institutional reforms to redress abuses. To read more about this debate please visit <https://www.un.org/press/en/2020/sc14109.doc.htm>

Gender-Based Crimes before the ICC

The month of March saw the Trial Chamber of the International Criminal Court (ICC) hearing closing arguments in the trial of Dominic Ongwen which commenced in December 2016. Mr Ongwen is a former senior leader of the Lord's Resistance Army (LRA), a rebel group that operates in northern Uganda, South Sudan, the Central African Republic, and the Democratic Republic of the Congo. The accused is alleged to have committed seventy counts of war crimes and crimes against humanity against civilian populations in Northern Uganda between July 2002 and December 2005. Among the charges against the accused are nineteen counts of sexual and gender-based crimes, including rape, sexual slavery, forced marriage, and enslavement. This is the widest range of sexual crimes that have ever been brought to trial before the ICC. This case, therefore, marks a key milestone in developing a progressive jurisprudence on gender justice and accountability for sexual crimes in contexts of armed conflict. Mr. Ongwen is the first person to be charged with the crime of forced marriage as a crime against humanity under Article 7(1)(k) of the Rome Statute. The prosecutor's decision to bring the charge is significant, not only because the Rome Statute does not specifically stipulate the crime of forced marriage, but because it signifies an attempt to capture the full extent of the abuse suffered by victims of the LRA, which charges of sexual slavery and rape alone cannot do. As the judges of the ICC's Trial Chamber adjourn to write their judgment, victims will be waiting for the verdict, which they hope will vindicate their long quest for truth and justice. The NTJWG stands with the victims and implores the Government of Uganda to view this trial as an opportunity to deliver truth, justice, and acknowledgment to victims. The prosecution of Mr. Ongwen is an important first step toward holding perpetrators accountable and attaining justice for victims but it is not enough, there is still more to be done including provision of psycho social support for victims.



FEEDBACK

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