



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

"Longing for the Truth"



The State of Transitional Justice

REPORT 2021

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**NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE**

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## About the National Transitional Justice Working Group, Zimbabwe

National Transitional Justice Working Group (NTJWG) is a platform established by 46 Zimbabwean organisations in May 2014 representing various transitional justice stakeholders to interface with the official transitional justice processes in Zimbabwe.

### Vision and Mission

The NTJWG shares with all transitional justice stakeholders the vision for a peaceful, just, accountable and democratic society. Its purpose is to facilitate consensus among transitional justice actors on appropriate transitional justice principles and processes for Zimbabwe. Its mission is to create an inclusive space for coordinating transitional justice stakeholders, sharing experiences, and building synergies for comprehensive, accountable, victim-centred, and participatory transitional justice processes in Zimbabwe.

### Core Values

In pursuit of this vision, the NTJWG is guided by the following values:

- **Integrity:** Professionalism, Commitment, Truth, Transparency, Diligence, Honesty, Confidentiality
- **Inclusivity:** Involving everyone regardless of sex, race, ethnicity, age, sexuality, belief, ideology, and geography
- **Impartiality:** Non-partisanship, Independence, objectivity

# TABLE OF CONTENTS

About the National Transitional Justice Working Group, Zimbabwe	4
Vision and Mission	4
Core Values	4
Acronyms	6
Executive Summary	7
<b>Chapter 1: About The State of Transitional Justice Report</b>	<b>9</b>
1.1 Methodology	9
<b>Chapter 2: Official Transitional Justice Processes</b>	<b>11</b>
2.1 Appointment of New NPRC Commissioners	11
2.2 NPRC Controversies	14
2.3 NPRC Activities	16
2.4 Challenges Confronting the NPRC	17
2.5 Government Transitional Justice Initiatives	19
<b>Chapter 3: Non-Official Transitional Justice Processes</b>	<b>20</b>
3.1 Reflections on the Expiry of the First Term of Office of the NPRC Commissioners	22
3.2 NTJWG Reflective Meetings and Symposia	22
3.3 NTJWG Commemorative Statements and Events	24
3.4 Other Notable NTJWG Meetings	24
3.5 Knowledge Products	30
<b>Chapter 4: Emerging Transitional Justice Issues in Zimbabwe</b>	<b>31</b>
4.1 Recommendations of the Commission of Inquiry into the 1 August 2018 post-election violence	33
4.2 The Re-Introduction of the National Youth Service (NYS)	34
4.3 Outlook on the Harmonised Elections in 2023	35
<b>Chapter 5: Transitional Justice News from Across the Globe</b>	<b>37</b>
5.1 The Conviction and Sentencing of Derek Chauvin	37
5.2 The Trial of Thomas Sankara's Assassin	37
5.3 The Gambia Truth, Reconciliation and Reparations Commission	38
<b>Chapter 6: Key Findings and Recommendations</b>	<b>39</b>
6.1 Official Transitional Justice Processes	39
6.2 Unofficial Transitional Justice Activities	39
6.3 Outstanding Transitional Justice Issues and Outlook on 2023 Elections	40
6.4 Transitional Justice Across the Globe	40
6.5 Recommendations	40
<b>Chapter 7: Conclusion</b>	<b>42</b>

AU	African Union
AUTJP	African Union Transitional Justice Policy
CEWER	Conflict Early Warning and Early Response
CITE	Centre for Innovation and Technology
CSO	Civil Society Organisation
GoZ	Government of Zimbabwe
IAB	International Advisory Board
IJR	Institute for Justice and Reconciliation
MDC-A	Movement for Democratic Change- Alliance
NGO	Non-Governmental Organisation
NPRC	National Peace and Reconciliation Commission
NTJWG	National Transitional Justice Working Group
NYS	National Youth Service
POLAD	Political Actors Dialogue Platform
PVO	Private Voluntary Organisation
SOTJ	State of Transitional Justice
TRRC	Truth, Reconciliation and Reparations Commission
ZANU (PF)	Zimbabwe African National Union (Patriotic Front)
ZCBC	Zimbabwe Catholic Bishops' Conference
ZEC	Zimbabwe Election Commission
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZimRights	Zimbabwe Human Rights Association
ZMC	Zimbabwe Media Commission



## Executive Summary

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This report analyses the state of transitional justice in Zimbabwe in 2021, focusing on official transitional justice processes, activities and processes by the Government, the National Peace and Reconciliation Commission (NPRC) and other independent commissions. The report also focuses on the unofficial transitional justice processes and initiatives, focusing on civil society engagement with the Government- both the executive and legislative arms- and litigation on specific issues. The report also brings to the fore initiatives by community-based organisations to memorialise various epochs of violence, focusing on initiatives and hindrances they faced. The initiatives are analysed against the backdrop of Government and NPRC efforts and approaches to transitional justice initiatives.

The report further examines issues arising within the country against global developments with a view to drawing lessons. This is primarily done through a case study of The Gambia where a Truth, Reconciliation and Reparations Commission (TRRC) was established and managed to submit its report to the Gambian President towards the end of 2021. An overview of Transitional Justice processes from different countries is also provided.

The report highlights key lessons and provides recommendations for consideration by Government, independent Commissions and civil society actors, and other stakeholders. The report makes the following recommendations:

### To civil society organisations

- There is a need for CSOs to define their responsibilities towards transitional justice in a broader sense than just monitoring the NPRC and initiate proactive programming on areas such as exhumations and reburials which have not received adequate attention from authorities yet remain critical issues at family and community levels.
- There is a need for concerted efforts to advocate the implementation of the AUTJP.
- There is a need to consider ways to foster youth participation in political affairs and implement programming that dissuades youth from violent political mobilisation and organisation. This may entail strengthening and scaling up existing and effective approaches to youth engagement and adopting new and innovative methods of stemming apathy among young people.
- There is a need to strengthen and accelerate the work being done by media organisations in Transitional Justice programming so that media practitioners are trained in peacebuilding and transitional justice reporting.
- In view of the limitations exhibited by the NPRC and other independent Commissions it is incumbent upon the NTJWG and other stakeholders to continue working in an inclusive and victim-centred approach on transitional justice issues. This will help keep communities engaged and maintain the discourse on transitional justice in the country regardless of the NPRC's term of office.
- Civil society organisations must collaborate on peacebuilding initiatives and develop manuals for conflict prevention that should be shared widely, particularly in light of the 2023 elections.

### To the Government:

There is a need to capacitate and resource the NPRC to enable the body to function efficiently and independently in line with its mandate.

The Government needs to demonstrate sincerity on transitional justice by not undermining the NPRC through setting up parallel structures, processes and initiatives.

- The Government to implement the recommendations from the Report of the Commission of Inquiry into the 1 August 2018 Post-Election Violence chaired by the former President of South African Kgalema Motlanthe.
- The Government should take a lead in preserving memorial plaques erected by communities and condemn and investigate the theft and destruction of memorial plaques.

#### **To the NPRC:**

- The NPRC needs to be accessible and visible and work with communities in addressing transitional justice issues. This can be achieved through NPRC Commissioner being stationed in the respective provinces they represent.
- The NPRC to work alongside community-based organisations in transitional justice processes such as memorialisation and commemoration of key events to improve the body's visibility and accessibility and capture the voices of victims of human rights violations.
- In the context of the current COVID-19 pandemic, the NPRC should adopt the use of digital technologies that enable them to reach different segments of society. The NPRC should embrace the use of technology to create platforms whereby transitional justice issues are discussed openly. This could include virtual discussions and seminars that can attract broader participation.

#### **To the academic community:**

Universities need to offer peacebuilding and transitional justice modules in order for academics to proffer solutions to the local context.



# Chapter 1: About the State of Transitional Justice Report

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This report provides an analysis of the state of transitional justice in Zimbabwe in the year 2021. The report was commissioned by the National Transitional Justice Working Group (NTJWG), a platform established to provide an interface between transitional justice stakeholders and transitional justice processes in Zimbabwe. As part of its communication and information dissemination strategy, the NTJWG regularly develops and distributes documents such as the annual State of Transitional Justice (SOTJ) Reports that highlight pertinent transitional justice issues in Zimbabwe and beyond. The report details the country's state of compliance with its transitional justice obligations drawing from domestic constitutional and legislative provisions and international obligations. These obligations also emerge from reports and recommendations of independent commissions and other bodies mandated by law to carry out any inquiries or investigations into transitional justice issues.

The purpose of the SOTJ report is to provide a detailed and nuanced overview and analysis of key developments pertaining to transitional justice issues, processes and activities that emerged within the country in 2021. The report privileges the perspectives of victims/survivor groups and as such analysis is made from the lens of these groups. The SOTJ report also juxtaposes the issues and processes in Zimbabwe against the global context through the use of a case study from the Gambia a country that commissioned a Truth, Reconciliation and Reparations Commission (TRRC), which commission submitted its report at the end of 2021. The report highlights successes, failures as well as gaps and provides recommendations. Specifically, the report seeks to:

- Raise awareness of the key developments in the transitional justice sphere emanating from 2021;
- Highlight the gaps and challenges faced in 2021; and
- Provide recommendations on issues raised in the report.

## 1.1 Methodology

The report was compiled through a qualitative methodology that combined different data collection techniques. These included the analysis of key documents and key informant interviews. The underlying aim of the methodological approach was to obtain relevant information from multiple sources, using both primary and secondary data.

### Data Collection Techniques

#### Documentary Analysis

The material used in compiling the report was drawn from documents and literature relating to transitional justice issues, processes and activities. The documentary analysis focused on the work and activities of the National Peace and Reconciliation Commission (NPRC) and the executive and legislative arms of Government. The report also looks at the activities of the Zimbabwe Human Rights Commission (ZHRC) and the Zimbabwe Gender Commission (ZGC), whose work also speaks to transitional justice processes. In addition, the report interrogates the work of the NTJWG and that of its members and stakeholders.

Secondly, the report also relies on literature, reports, and articles pertaining to the country's socio-economic and political situation, particularly relating to issues of transitional justice, peace building and reconciliation, and human rights. Specifically, the documentary analysis focuses on the progress made in implementing recommendations from the independent commissions such as the Report of the Commission of Inquiry into the 1 August 2018 Post-Election Violence chaired by the former President of

South Africa Kgalema Motlanthe. The data gathered provides a contextual backdrop for the report.

## Key Informant Interviews

The report uses material drawn from key informant interviews (KIs) to complement the documentary analysis. The key informants that were interviewed include Webster Zambara, currently a Senior Project Leader at the Institute for Justice and Reconciliation (IJR). Zambara is a peacebuilding expert and has worked in conflict transformation, non-violence, justice, and reconciliation. The IJR works on transitional justice processes and seeks to promote post-conflict justice, good governance and human security. The second key informant interviewed is Tafadzwa Christmas, a renowned transitional justice scholar and commentator who has written extensively on peace and reconciliation. The third key informant whose insights are shared in the report is Mbuso Fuzwayo, the Secretary-General of Ibhetshu LikaZulu, a community-based pressure group working on Gukurahundi memorialisation with communities in the Matabeleland and Midlands provinces. Dzikamai Bere, the Zimbabwe Human Rights Association (ZimRights) National Director, was also interviewed. ZimRights is an NTJWG stakeholder that provides civic education, legal aid support, psychosocial support and community advocacy strategies to ensure the realisation of basic rights, particularly for the most marginalised communities.

Collectively, the desk review and the perspectives of the key informants are used in referencing and analysing the Zimbabwean context against global norms and developments. The report also presents a case study of The Gambia - a country that has recently embarked on peace and reconciliation processes - to extract lessons for Zimbabwe.

## Chapter 2: Official Transitional Justice Processes

### 2.1 Appointment of New NPRC Commissioners

On 7 May 2021, President Emmerson Mnangagwa swore in six new Commissioners that were appointed to the NPRC following public interviews conducted by the Parliament of Zimbabwe. The six new Commissioners are Donwell Dube, Tinashe Rukuni, Reverend Chiropafadzo Moyo, Josephine Shambare, Obert Gutu, Nomaqhawe Gwere. Two Commissioners who served in the previous Commission were retained: Lillian Chigwedere and Golden Chekenyere. The eight Commissioners will serve under the Chairperson Justice Selo Nare who was appointed in 2018. The term of office for the inaugural Commissioners lapsed on 24 February 2021. They had served for five years, as required in section 320(1) of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013. A single vacancy for a commissioner arose following the resignation of Commissioner Netty Musanhu in February 2020. The other seven positions feel vacant after the tenure of office of the Commissioners lapsed in February 2021.

In accordance with sections 237 and 251 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 (The Constitution), the Committee on Standing Rules and Orders (CSRO) of the Parliament of Zimbabwe called for public nominations of persons to serve as NPRC commissioners in November 2020. The nominations were closed on 4 December 2020, and thirty candidates were shortlisted for interviews to fill the eight vacancies. The public interviews were conducted on 14 April 2021.

In line with section 17 of the Constitution, which mandates the State and all state institutions and agencies of government to ensure gender balance, four Commissioners are female. Gender parity in peace and reconciliation institutions and processes is imperative. As the NTJWG noted in its outline of the appointment process and the requisite characteristics of commissioners:



“Gender considerations in peace and reconciliation mechanisms and processes are informed by the recognition that the dynamics and experiences of different genders vary. Women’s voices and participation often go unrecognised, yet women suffer the brunt of violent conflict when they are brutalised, victimised, and endure the horrors of conflict before, during, and after conflict. Ensuring that gender considerations are prioritised in making these appointments would be a positive step towards redressing past gender inequalities and creating an NPRC that can better engage with women survivors seeking justice and acknowledgement”<sup>1</sup>

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<sup>1</sup> National Transitional Justice Working Group, (13 April 2021). Interviews for NPRC Commissioners at a glance, <https://kubatana.net/wp-content/uploads/2021/04/Indepth-analysis-of-NPRC-appointments.pdf>.

## The Commissioners hold the following portfolios:

**Table 1: List of Commissioners and their mandates**

Commissioner	Thematic Committee(s)	Province
Golden Chekenyere	Chairperson of the Resource Mobilisation and Partnerships Committee, Deputy Spokesperson of the NPRC	Manicaland Province.
Lilian Chigwedere	Deputy Chairperson of the Victim Support, Gender and Diversity thematic committee	Mashonaland East
Donwell Dube	Chairperson of the Research and Knowledge Management Committee	Mashonaland West
Obert Gutu	Chairperson of the Complaints Handling Investigations and Legal Services Committee, Deputy Chairperson of the Resource Mobilisation and Partnerships Committee and Chairperson of the Media and Communications Committee and NPRC Spokesperson.	Harare
Nomaqhawe Gwere	Chairperson of the Victim, Support, Gender, Deputy Chairperson of the Conflict Prevention Committee and Diversity Committee	Matabeleland South (individually) and Bulawayo with the assistance of the NPRC Chairperson, Retired Justice Nare.
Chiropafadzo Moyo	Chairperson of the Healing, Reconciliation, Deputy Chairperson for the Finance, Administration and Human Resources Committee and Rehabilitation Committee	Midlands
Tinashe Rukuni	Chairperson of the Conflict Prevention and Non-Recurrence Committee, Deputy Chairperson of the Research and Knowledge Management Committee	Masvingo
Josephine Shambare	Chairperson of the Finance, Administration and Human Resources Committee, Deputy Chairperson of the Complaints Handling Investigations and Legal Services Committee	Mashonaland Central

A notable observation is that some Commissioners such as Commissioner Obert Gutu were assigned more responsibilities than others. The uneven allocation of tasks may adversely affect delivery as some of the duties may be neglected. The Commissioners must reside in the provinces they oversee, and by so doing, they will be more accessible to stakeholders in their localities. This was a major challenge with the previous commissioners, most of them were not residents in their respective areas.

The appointment of Commissioner Josephine Shambare has been criticised as she has previously worked with the police as the former Deputy Commissioner General (Crime) in which she retired in November 2018. Her background might affect the work of the NPRC negatively in that survivors who have suffered at the hands of the police may not be keen to open up to her as police have been active perpetrators of human rights violations.



In December 2021 President Mnangagwa designated Reverend Chiropafadzo Moyo to the position of Vice-Chairperson of the Commission. The designation, which was done in terms of section 251 (1) (b) of the Constitution as read together with paragraph (6) (2) of the First Schedule to the NPRC Act stirred media speculation. The speculation stemmed from the fact that Lillian Chigwedere had, during her first term in office, been the Vice-Chairperson of the NPRC. She was also the Acting Chairperson in the absence of the Chairperson Justice Nare. No explanation was given for the designation of Reverend Moyo ahead of Commissioner Chigwedere.<sup>2</sup>

## 2.2 NPRC Controversies

### a. Commissioner Gutu's Sentiments on Gukurahundi

The newly appointed NPRC was immediately embroiled in controversy when its spokesperson Obert Gutu made remarks that trivialised the Gukurahundi atrocities. On 22 June 2021, Commissioner Gutu addressed a press conference to announce the mandates of the Commissioners, and in widely reported comments, he stated that:

“

“It's a pity that normally people look at the commission as only dealing with one issue of Gukurahundi. I think Gukurahundi is just a small, tiny fraction of the various other disputes we are talking about (own emphasis). We are talking of issues that happened in 2005; Murambatsvina, you are talking of various other issues, some dating back to pre-independence times. The issue of Gukurahundi is one of several other issues on the agenda of the Commission.”

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Undoubtedly, Zimbabwe has experienced various large scale human rights abuses dating back from the pre-independence era to the contemporary times. These include the atrocities committed during the liberation war of independence and post-independence, including Operation Murambatsvina in 2005, Operation Mavhotera Papi 2008 and Operation Hakudzokwe at the Chiadzwa diamond fields. However, in terms of scale and magnitude it is widely acknowledged that Gukurahundi is the largest violation of human rights that occurred after the attainment of independence. The remarks by Commissioner Gutu had the effect of trivialising the Gukurahundi massacres and disregarding the survivors' pain and suffering, given that the matter has not yet been resolved to date. There has not been redress for survivors of Gukurahundi, and the effects of the massacres persist to this day, with the victims' families enduring trauma and suffering forms of structural violence and exclusion through lack of closure and failure to acquire documents, among other difficulties.

The remarks by Commissioner Gutu were also disingenuous, given that the Gukurahundi massacres have always been characterised by silence, with the matter not being publicly acknowledged. The NPRC, through its Chairperson, Justice Nare apologised for the remarks.

In tendering the apology Justice Nare asserted that:

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<sup>2</sup> Mangwaya, M. (17 December 2021). ED, Chiwenga rivalry rocks NPRC. *Newsday*, <https://www.newsday.co.zw/2021/12/ed-chiwenga-rivalry-rocks-nprc/>



“

“In my view and in the view of the commission, those words ‘small tiny fraction of the issues’ were his (Commissioner Gutu) sentiments. The Commission’s view and my view is that Gukurahundi is a serious conflict that needs to be handled properly. So, on behalf of the commission, I apologise for those sentiments and I apologise to the nation for the words. The Gukurahundi issue has been dealt with as the number one conflict in particular in this region”.

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Justice Nare engaged prominent historian Pathisa Nyathi to dialogue with the Commissioners and assist them to understand the gravity of the Gukurahundi issue.<sup>3</sup>

### **Litigation on the Appointment of Commissioner Gutu**

On 1 July 2021, the Zimbabwe Human Rights Association (ZimRights) filed an application in the High Court in Harare, seeking a declaratory order that the newly appointed NPRC Commissioner, Advocate Obert Gutu had ceased to be a commissioner. Prior to his appointment to the NPRC on 7 May 2021, Commissioner Gutu had publicly joined the ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF). However, section 236 of the Constitution of Zimbabwe stipulates that if a commissioner of an independent commission is a member of a political party on his appointment, such a member is obliged to relinquish that membership within 30 days of the appointment or he/she immediately ceases to be a commissioner. By the end of the 30 days, Obert Gutu had not publicly announced his resignation. Commissioner Gutu filed his notice of opposition in which he denied ever joining ZANU-PF. In his opposition, he stated that the public interview in which he publicly joined ZANU-PF was an expression of interest and intention.

The matter ignited intense public debate as concerns were raised over his suitability and impartiality. In its analysis of fit and proper persons to be appointed as commissioners, the NTJWG highlighted that section 236(1) of the Constitution states that members of the independent Commissions must not, in the exercise of their functions, act in a partisan manner; further the interests of any political party or cause; prejudice the lawful interests of any political party or cause or violate the fundamental rights or freedoms of any person. It is, however, possible for a political party member to be appointed to the Commission. Still, section 236(2) of the Constitution requires that they relinquish their political party membership within thirty days of their appointment. Commissioner Gutu’s case created suspicion and doubt over his suitability to hold a position within the NPRC given its important mandate. In his notice of opposition, Commissioner Gutu declared that he is apolitical and is not a member of ZANU-PF. The matter is still before the courts.

### **Appointment of NPRC Secretariate Staff**

In November 2021 there were media reports concerning irregular staff appointments to fill vacant posts within the NPRC secretariate. Allegations were that two managerial appointments were made to fill in the positions of Communications and Advocacy Manager and External Relations, Resource Mobilisation and Partnerships Manager. Allegations were that the appointments were said to have been made in contravention of Public Service Commission (PSC) regulations.

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<sup>3</sup> Tshili, N. (29 June 2021). Gukurahundi Number One Priority: NPRC. The Herald, <https://www.herald.co.zw/gukurahundi-number-one-priority-nprc/>

The two managers were appointed before completing their probation period. Further allegations were of staff receiving threats when they questioned decisions, particularly those pertaining to inconsistencies in staffing policies. Staff based in Bulawayo were also being compelled to relocate to Harare. These issues resulted in low morale and disgruntlement at the institution.<sup>4</sup>

The emergence of such allegations within the public domain impugns the reputation of the Commission and calls into question the integrity of the institution and its ability to execute its mandate effectively.

## 2.3 NPRC Activities

The NPRC embarked on a number of activities as outlined here. For a more detailed outline of the activities that the NPRC engaged in visit their website.<sup>5</sup>

### a. Launch of the Women Political Training and Mentorship Programme

The NPRC participated in the Virtual Launch of the Women Political Training and Mentorship Programme hosted by the Zimbabwe Gender Commission (ZGC) in collaboration with the UN Women. The launch was attended by representatives from the main political parties ZANU (PF), MDC A and MDC T. The launch was also attended by Civil Society Organisations such as the Women's Coalition of Zimbabwe (WCOZ). At the launch, participants discussed gender equality and women's involvement in politics. At this event, Commissioner Nomaqhawe Gwere emphasised that:

“

The NPRC Act emphasises on the development of procedures and institutions to facilitate dialogue among political parties, communities and other groups to prevent conflict and disputes”.

At the same event Commissioner Gwere expressed concern that the prevalence of political violence, which in the contemporary context is present and seen through abuse and hate on social media platforms and other communication platforms, perpetuates a culture of violence.<sup>6</sup>

### b. Launch of the Gender and Inclusion Policy and SOPs for Handling and Supporting Victims of Conflict Related Gender Based Violence (GBV)

The NPRC commemorated the 16 Days of Activism Against Gender Based Violence (GBV) through highlighting its mandate and interventions meant to address conflict related to gender-based violence. During the commemorations the NPRC launched their Gender and Inclusion Policy and Standard Operating Procedures (SOPs) for Handling and Supporting Victims of Conflict Related GBV on 9 December 2021. The Gender and Inclusion Policy covers a wide range of issues, including peace at the family, community, and national levels. The policy highlights that peace at the family level directly leads to the fair and equitable distribution and ownership of productive efforts across gender categories. Furthermore, the policy encourages gender sensitivity and promotes the active participation of women, girls and marginalised groups in transitional justice processes.<sup>7</sup>

4 Newsday (11 November 2021). Peace Commission in Turmoil. Newsday, <https://www.newsday.co.zw/2021/11/peace-commission-in-turmoil/>

5 Visit [www.nprc.org.zw](http://www.nprc.org.zw)

6 NTJWG (July-September 2021). NPRC Watch Quarterly Newsletter. [https://kubatana.net/wp-content/uploads/2021/10/nNational-Transitional-Justice-Working-Group-Quarterly-Newsletter22-October-2021\\_2-1.pdf](https://kubatana.net/wp-content/uploads/2021/10/nNational-Transitional-Justice-Working-Group-Quarterly-Newsletter22-October-2021_2-1.pdf)

7 Mercy Mtombeni (9 December 2021) NPRC's 16 Days of Activism Commemorative event and Launch of the NPRC Gender and Inclusion Policy and SOPs for Handling and Supporting Victims of Conflict Related GBV. <http://www.nprc.org.zw/nprcs-16-days-of-activism-commemorative-event-and-launch-of-the-nprc-gender-and-inclusion-policy-and-sops-for-handling-and-supporting-victims-of-conflict-related-gbv/>

The NPRC's focus on gender is imperative given that there is a gender dimension to transitional justice issues and processes. Women tend to suffer the worst effects of violence, conflict and humanitarian crisis yet they may also be excluded from processes of redress. The Commission's focus on different levels of violence encompassing family, community and national dimensions is critical. For instance, during the various COVID-19 induced lockdowns, the rates of gender-based violence increased. UN Women (2021) posits that:

“

Nearly 1 in 3 women have been abused in their lifetime. In times of crises, the numbers rise, as seen during the COVID-19 pandemic and recent humanitarian crises, conflicts and climate disasters. A new report from UN Women, based on data from 13 countries since the pandemic, shows that 2 in 3 women reported that they or a woman they know experienced some form of violence and are more likely to face food insecurity. Only 1 in 10 women said that victims would go to the police for help.”<sup>8</sup>

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### c. Provincial Peace Committee Preventative Dialogue Meetings

In the last quarter of 2021, the NPRC embarked on Provincial Peace Committee Preventative Dialogue meetings in all the provinces in the country. The meetings started off in Manicaland Province on 25 October 2021, followed by Midlands, Mashonaland Central, Mashonaland West, Mashonaland East, Bulawayo, Matabeleland North and South. The last meeting was held in Harare Province on 16 November 2021. The meetings provided a platform for the Provincial Peace Committee members to share experiences and interface with the new Commissioners. Other issues discussed in the meetings included COVID-19 related conflicts and conflict prevention strategies and models in electoral periods. The peace committee meetings were addressed by the then Acting Chairperson of the NPRC, Lilian Chigwedere. Ministers of State for Provincial Affairs and Devolution attended the meetings, who delivered key note addresses in their respective provinces. Various stakeholders attended the meetings and media organisations had the opportunity to interview the new NPRC Commissioners.

In the context of the COVID-19 pandemic and the attendant containment measures such as lockdowns, the meetings were essential in introducing the Commissioners to transitional justice stakeholders and discussing pertinent issues such as the surge in gender-based domestic violence.

Beyond the programmes, policies and dialogues, the work of the NPRC will be seen by the impact the body will have on peace and transitional justice processes in the country. However, in 2021 the Commission was not in compliance with its reporting obligations, and the body was side lined by the parallel transitional justice processes embarked on by the Executive branch of Government. These challenges are discussed in the following section.

## 2.4 Challenges Confronting the NPRC

### Production and Submission of Annual Report to Parliament

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<sup>8</sup> United Nations Women, (15 November 2021) In focus: 16 Days of Activism against Gender-based Violence. <https://www.unwomen.org/en/news-stories/in-focus/2021/11/in-focus-16-days-of-activism-against-gender-based-violence>

The NPRC is obligated under section 323 of the Constitution to present an annual report to the Parliament of Zimbabwe as part of accountability mechanisms to citizens. The report must detail the NPRC's full operations and activities by no later than the last day of March of the year following the implementation of such activities. The NPRC's 2020 Annual Report which became due on the last day of March 2021 was not presented to parliament. The NPRC was, therefore in breach of its constitutional obligations. On 13 May 2021 the NTJWG wrote to the NPRC enquiring about the status of the 2020 Annual Report. Regrettably, the NPRC did not respond to the letter and this report had still not been released in December 2021.

The NPRC has a history of non-compliance in respect of its reporting obligations. For instance, the NPRC's 2018 and 2019 Annual Reports were only presented to parliament on 3 and 8 September 2020, respectively, and published in October 2020. The annual reports were eventually published after their value had been eroded. The NPRC only tabled the reports in parliament after numerous correspondences and warnings of litigation from the NTJWG and other like-minded civil society organisations.

In the absence of the Annual Report, it is impossible for citizens to assess and evaluate the NPRC's activities or hold the Commission accountable for its resources. Sadly, the NPRC has not yet been able to publish any one of its annual reports as stipulated in the NPRC Act.

### Lack of Funding

It is concerning that independent commissions have the least budget allocations for the year 2022. The Zimbabwe Human Rights Commission, National Peace and Reconciliation Commission, Zimbabwe Gender Commission and Zimbabwe Media Commission have been allocated ZWL\$403,898,00; ZWL\$441,333,000; ZWL\$497,590,000 and ZWL\$510,990,000 respectively. However, the Zimbabwe Electoral Commission and the Zimbabwe Land Commission did not suffer the same predicament as they were allocated ZWL\$11,632,813,000 and ZWL\$1,759,307,000, respectively.

Lack of funding has been one of the reasons put forward as to why these Commissions have been failing to fulfil their constitutional mandate. Section 233 of the Constitution of Zimbabwe highlights the objectives of the independent commissions. Their general objective is to support and promote human rights, democracy and constitutionalism. Given this important role they play, it is imperative that they are financially capacitated to carry out their set objectives.

### Tenure of the NPRC

The NPRC is an independent commission that came into operation under section 251 of the Constitution. It has a lifespan of 10 years to deal with, ensuring post-conflict justice, healing, and reconciliation. It is unclear whether the 10 years are from when the constitution came into effect, which is 2013 or when the NPRC Act was enacted, and it became operational in 2018. In March 2019, Masvingo High Court Judge, Justice Mafusire granted a declaratory order in support of the latter, meaning that NPRC will be operational until 2028. This decision was, however, set aside in a ruling made in a Supreme Court appeal. As a result, it is unclear when the NPRC's lifespan ends, even though there are indications that the government might want to extend the lifespan.

The NTJWG acknowledges that the ruling on the appeal is likely to destabilise the NPRC by creating a sense of confusion. This may hamper the Commission's current programming and plans for its work. The import of the ruling also affects survivors and stakeholders who are now fearful that the NPRC's lifespan will expire without it having fulfilled its Constitutional mandate to effectively lead post-conflict justice, peace, and reconciliation.

## 2.5 Government Transitional Justice Initiatives

### President and Traditional Chief's Initiatives on Transitional Justice

On 21 August 2021 President Mnangagwa met members of the National Council of Chiefs to receive recommendations on how to resolve issues related to Gukurahundi. The meeting was a culmination of several meetings conducted between the President and traditional leaders and CSOs on the matter. In the first instance, the President engaged civil society organisations in Matabeleland under the auspices of the then Matabeleland Collective, a loose coalition of faith-based leaders and civil society groups from the Southern and Western parts of the country to discuss ways of addressing past injustices committed within these regions. In subsequent meetings, notably on 30 October 2020, the President met the National Council of Chiefs, and it was resolved that Traditional Leaders were to take the lead in resolving the Gukurahundi issue. 21 August meeting determined that each Chief would spearhead the resolution of the Gukurahundi issue in their area jurisdiction. Furthermore, the following areas of concern requiring resolution were to be addressed by the chiefs:

- Documentation (Birth, National IDs and Deaths Certificates);
- Underdevelopment and Marginalisation of Matabeleland region;
- National Healing, Reconciliation and National Building;
- Counselling and Psychosocial support;
- 5. Consultation of victims;
- Reburials, Exhumations and Memorials;
- Reparations and Compensation; and
- Social Security Benefits (Pensions, Free Education, Social Welfare and Health Services).

Following deliberations on the issues, the President highlighted that a systematic approach to the resolution of issues raised should be adopted. This would entail feedback on preparedness by a particular Chief on issues requiring attention in his or her area of jurisdiction. The traditional leaders were tasked with addressing exhumations and reburials on a case-by-case basis and in line with customs and traditions of specific localities. The chiefs would give guidance and direction on exhumations and reburials.





Traditional leaders were also assigned the responsibility to resolve family social security benefits on a case-by-case basis. The chiefs were to draft an implementation plan detailing preparedness in their area of jurisdiction to guide the process.

In a statement made by NTJWG on the International Day to the Right of the Truth, it was highlighted that the initiative by the President working in collaboration with traditional leaders is problematic in many respects. In the first instance, the NPRC is not involved in the initiative. The NPRC, whose mandate is to 'ensure post-conflict justice, healing and reconciliation, including developing programmes that promote national healing, unity and peaceful conflict resolution' has been side-lined from a process it is supposed to actively lead. The effort by the President on Gukurahundi not only duplicates the role of the NPRC but also trivialises a supposedly independent body. The approach by the President is also occurring in a context where the NPRC is poorly resourced to deliver on its mandate and is perceived as weak and ineffectual.

Although some have hailed the President's approach as a show of political will in resolving the post-independence atrocities critics argue that the President's involvement might intimidate victims and survivors who may not be comfortable presenting themselves to traditional leaders individually. The traditional leaders may also not be properly capacitated- emotionally, materially, and legally- to handle Gukurahundi cases in their jurisdiction.

The seemingly victim-centred approach does not highlight how perpetrators will be held accountable. The initiative also does not seem to promote truth telling and risks the re-occurrence of violations of this nature. Prominent transitional justice scholar and commentator, Tafadzwa Christmas highlighted that, there is need to ensure that there is non-recurrence of human rights violations as an essential element of transitional justice:

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“So essentially there is no way we can talk about forming a new, a second republic or a new Zimbabwe without us addressing the past. We need to address the past and we need to put in place guarantees of non-recurrence to show that we won't go back to the violations of the past. And essentially that is what transitional justice is all about”.<sup>9</sup>

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Dzikamai Bere, the National Director of the Zimbabwe Human Rights Association (ZimRights), commenting on the involvement of the traditional leaders in the President's initiative on Gukurahundi bemoaned the exclusion of the NPRC from the process by stating that:

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“The State is trying to get to traditional leaders and shape their role in transitional justice ahead of the NPRC that is mandated to carry out this work. The NPRC does not take its work seriously.”<sup>10</sup>

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The Chairperson of the NTJWG Alec Muchadehama concurred and in remarks reported in the media he stated that:

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<sup>9</sup> Key informant interview with renowned transitional justice scholar and commentator Tafadzwa Christmas, (26 March 2022)

<sup>10</sup> Key informant interview with Dzikamai Bere, Director of ZimRights, NTJWG stakeholder, (12 January 2022)





“We were worried when chiefs in Matabeleland appeared to be collaborating with the president trying to deal with the issue of Gukurahundi to the exclusion of the National Peace and Reconciliation Commission when in our view, the NPRC is the first port of call when it comes with compressively dealing with the issue of past violations”.<sup>11</sup>

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While CSO leaders expressed their disquiet and displeasure at the exclusion of the NPRC, the sidelining of the Commission from this process by the traditional leaders and the executive did not elicit a formal response from the body itself. The NPRC’s silence on such an important issue gives credence to complaints that the body is not functioning independently and is not taking a leading role in resolving past and present human rights violations.

#### Monitoring of the Public Hearings on the Zimbabwe Independent Complaints Commission Bill, 2020

The Zimbabwe Independent Complaints Commission Bill H.B.5, 2020 (the ZICC Bill) was gazetted on 24 November 2020. In line with section 210 Constitution of Zimbabwe (2013) the Bill constitutes and outlines the functions of the ZICC.

The gazette was a culmination of efforts by VERITAS that initiated court proceedings compelling the Government of Zimbabwe to enact legislation implementing section 210. Veritas filed an application in the Constitutional Court in 2015 seeking an order that would compel the Government to Gazette a Bill for the Act envisaged by section 210 within 45 days from the date of the order. Section 210 of the Constitution states that an Act of Parliament must provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct. The Constitutional Court granted the sought order on 23 September 2020 and gave the Government 45 days within which to gazette the necessary Bill.<sup>12</sup> Public hearings were held between from the 7th-11th of June 2021 and the NTJWG attended the public hearings. The attendance was to monitor and ensure procedural compliance as well as to hear the voices of the people and that their views were captured correctly. NTJWG attended the Hearings in Harare, Chinhoyi, Bindura, Marondera and Mutare.<sup>13</sup> Following the hearings, the NTJWG produced an analysis of the Bill which was subsequently submitted to parliament for consideration. The Zimbabwe Lawyers for Human Rights (ZLHR) also produced an analysis of the Bill and submitted to parliament for consideration.<sup>14</sup>

11 The Standard (December 2021). ‘Mnangagwa scuttling Gukurahundi resolution’. The Standard. <https://thestandard.newsday.co.zw/2021/12/12/mnangagwa-scuttling-gukurahundi-resolution/>

12 Chironga and Mahiya v Minister of Justice, Legal and Parliamentary Affairs and Others, CCZ 14/20, <https://www.veritaszim.net/node/4445>

13 VERITAS, (2020). Bill Watch 77-2020 - The Zimbabwe Independent Complaints Commission Bill, <https://www.veritaszim.net/node/4446>

14 Zimbabwe Lawyers for Human Rights, (2020). Summary Analysis of the Independent Complaints Commission Bill, <https://www.zlhr.org.zw/wp-content/uploads/2021/06/ZLHR-Summary-Analysis-of-the-Independent-Complaints-Commission-Bill-2020-1.pdf>.

## Chapter 3: Non-Official Transitional Justice Processes

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### 3.1 Reflections on the Expiry of the First Term of Office of the NPRC Commissioners

In February 2021 and upon the lapse of the first term of office of the NPRC commissioners appointed in 2016, the NTJWG published a reflection on their tenure. This reflection highlighted the challenges the commissioners encountered during their term and drawing from these, proffered recommendations to the new commissioners. The reflection details challenge that the NPRC Commissioners grappled with, and these included the body's lack of visibility, inadequate funding, delays in the establishment of the NPRC and in setting up its structures, exclusion of the NPRC in consultations on exhumations and reburials and the perennial uncertainty on the Commission's tenure. The NTJWG encouraged the NPRC to improve its visibility by engaging local communities as well as other actors working within transitional justice. In addition, the NTJWG urged the NPRC to build partnerships with members of the public, civil society and human rights organisations to address some of the challenges it has encountered.<sup>15</sup>

The challenges encountered by the Commission have been persistent and they have precluded the Commission from meaningfully engaging with victims, survivors and stakeholders. Such issues deepen the mistrust and lack of confidence members of the public, human rights and civil society organisations have in the NPRC.

### 3.2 NTJWG Reflective Meetings and Symposia

The NTJWG conducted reflective meetings on key transitional justice issues, specifically, the Domestication of the African Union Transitional Justice Policy and Exhumations and Reburials Policy.

#### Domestication of African Union Transitional Justice Policy

The NTJWG conducted a policy reflective meeting on the domestication of the African Union Transitional Justice Policy (AUTJP) in Zimbabwe on 9 March 2021. In attendance were legislators from the Human Rights and Peace and Security Senate Thematic Committees and the Parliamentary Portfolio Committee on Justice, Legal, and Parliamentary Affairs. The NTJWG provided an overview of the provisions of the AUTJP and the discussions centred around the domestication and implementation of the AUTJP in Zimbabwe.<sup>16</sup>

The adoption of the AUTJP is momentous given that the policy gives African countries an opportunity to adopt an Afrocentric approach that is better suited to the experiences and realities of countries on the continent. Tafadzwa Christmas, an expert on transitional justice, posits that the adoption of the policy is critical in addressing transitional justice issues in the country:

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<sup>15</sup> NTJWG, (17 March 2021). Reflections on the expiry of the first term of office of the National Peace and Reconciliation Commissioners and going forward, <https://kubatana.net/wp-content/uploads/2021/03/Reflection-on-the-tenure-of-the-NPRC.pdf>

<sup>16</sup> African Union. (February 2019). Transitional Justice Policy. Retrieved from [https://au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf).

“The African Union transitional justice policy is defining transitional justice in a way that resonates with the African States and African values, which allows us to engage with our respective states. In the past, the Zimbabwean government would refer to UN basic guidelines of reparations, for example and all these international instruments that we would refer to- and they would say ‘ah these are quite Eurocentric approaches, they do not resonate with our context.’ But now that we have an African Policy document it helps us in advocacy and lobbying. We can now say that these are African solutions to African problems and the Governments cannot evade that. There is no space for the Zimbabwean government to say, ‘ah no, this is not relevant to us’, because they are part and parcel of the adoption (as a member of the AU).”<sup>17</sup>

## Exhumations and Reburial Policy

On 19 March 2021, the NTJWG convened a meeting with legislators and presented a policy paper on exhumations. The meeting highlighted the increasing demand for exhumations in Zimbabwe, particularly in Matabeleland. The meeting emphasised the need to recognise the right to mourn, the right to truth and the right to know which accrue to the families of victims. A key recommendation that arose out of the meeting was that the Government of Zimbabwe must develop a legal framework to guide the recovery of human remains and ensure that the needs of families and communities of the deceased are prioritised. Furthermore, there is need to consult and include families and communities in all processes related to exhumations and reburials. Some of the recommendations that were presented include:

- i. Government of Zimbabwe must develop a legal framework to guide the recovery of human remains from periods of political violence.
- ii. Exhumation policy and practice should be integrated into the National Peace and Reconciliation Processes.
- iii. The needs and wants of the family and community of the deceased are paramount. All processes must be in consultation with family and community.



<sup>17</sup> Interview with Tafadzwa Christmas, 26 March 2021

## Constitutional Commissions Symposium

On 9 November 2021 the NTJWG and the Zimbabwe Human Rights NGO Forum convened a Constitutional Commissions Symposium to commemorate International Human Rights Day in Mutare. The Symposium sought to establish a point of convergence between Chapter 12 Commissions and Civil Society Organisations (CSOs) in formulating cohesive efforts and strategies to reduce inequalities. The symposium further aimed to foster the establishment of a relationship and network between the NTJWG/Forum and the Commissions as well as to bring change to state policies and practices on human rights and transitional justice.

The symposium was attended by the ZHRC, ZMC, NTJWG, the Zimbabwe Human Rights NGO Forum, the Law Society of Zimbabwe (LSZ), ZLHR, and Transparency International Zimbabwe (TIZ).

The participants also deliberated on the Private Voluntary Organisations (PVO) Amendment Bill, 2021 which might affect the operations of organisations involved in promoting and defending human rights in the country. This will also affect citizens who rely on NGOs for various forms of assistance. The Bill, if passed into law, might make individuals prone to human rights abuses. Some clauses might be open to abuse through interpretation and application. For these reasons civil society organisations urged the Government to discard the Bill.

In the context of economic fragmentation and decline and against the background of COVID-19 the Bill might adversely affect communities that rely on donor support. It is imperative for actors working on transitional justice issues to engage legislators, communities, and the Government on the negativities that such a law might bring particularly to transitional justice processes.

### 3.3 NTJWG Commemorative Statements and Events

In 2021 the NTJWG continued to steer the discourse around national peace, reconciliation, and transitional justice by taking up the watchdog role on the NPRC and amplifying the clamour for transitional justice from victims and key stakeholders through various activities. This included issuing commemorative statements on international and national days. By so doing, the NTJWG contributed to growing public discourse around redress, healing and reconciliation for past and present violations.

The NTJWG issued commemorative statements on various days aligned to transitional justice issues and highlighted their significance. Issues ranged from calling upon the Government to end impunity and uphold the rule of law as well as implementing the Motlanthe Commission's recommendations; to protect the human rights in fulfilment of the ideals of the liberation struggle; urged the defence forces to carry out their Constitutional mandate in ways that do not violate the Constitution; implored the Government to pay special attention to child-headed homes and the youth including distributing food in a non-partisan manner and establish programmes to support individuals who lost incomes as a result of the COVID-19 pandemic. The following commemorative statements were issued:

- i. Statement in Commemoration of 1 August 2018.<sup>18</sup>
- ii. Statement in Commemoration of Heroes Day on 9 August 2021.<sup>19</sup>

18 NTJWG. (1 August 2021). Three Years Later: Still No Justice For The Victims And Survivors Of The 1 August 2018 Post-Election Violence,

<https://www.facebook.com/NTJWGZim/photos/a.902636386482643/4279855372094044/>

19 NTJWG. (9 August 2021). Heroes Day 2021 Statement,

<https://www.facebook.com/NTJWGZim/photos/a.902636386482643/4303102866435961/>



- iii. Statement in Commemoration of Defense Forces Day on 10 August 2021.<sup>20</sup>
- iv. Statement in Commemoration of the International Youth Day on 12 August 2021.<sup>21</sup>
- v. Commemoration of the International Day for Victims of Enforced Disappearances: Factsheet and Statement on 30 August 2021.<sup>22</sup>
- vi. NTJWG International Day of Peace Commemorations.<sup>23</sup>
- vii. Commemoration of the International Day in Support of Victims of Torture on 26 June.<sup>24</sup>

### 3.4 Other Notable NTJWG Meetings

The NTJWG convened meetings and notable among these were meetings with different parliamentary thematic committees. These meetings aimed to address pertinent issues around transitional justice processes in the country. The meetings covered issues such as tackling impunity and promoting justice, gender inclusivity in transitional justice processes, the promotion of truth-telling and truth-seeking initiatives, and memorialisation. Apart from being a watchdog to the NPRC and other institutions involved in transitional justice, the NTJWG sought to influence legislative processes in ways that the NPRC has not done. By so doing, the NTJWG has taken a proactive approach towards addressing transitional justice issues and processes in the country.

#### NTJWG Justice And Accountability Thematic Committee Meeting

The meeting with the Justice and Accountability thematic Committee members took place on 22 September 2021. The meeting aimed to provide a platform for the NTJWG stakeholders working on Justice and Accountability to reflect and discuss the advocacy mechanisms to end impunity. The meeting explored ways to tackle the obstacles to justice that allow perpetrators to evade accountability. The meeting also sought to discuss and adopt advocacy strategies to promote justice and accountability.

A key outcome of the meeting was the consensus on the need to convene training workshops for Traditional Leaders and to sensitise church leaders and security personnel on their role in Transitional Justice processes in Zimbabwe.

#### Gender Thematic Committee Meeting

The meeting with the Gender Thematic Committee was held on 5 October 2021 to discuss the findings and recommendations made in the policy paper and policy brief on the implementation of section 9 of the National Peace and Reconciliation Commission (NPRC) Act which the NTJWG commissioned in 2020. The meeting also sought to adopt the policy paper and policy brief for use by the NTJWG and to identify advocacy activities that can be undertaken to popularise the policy paper and use it to influence policy on gender-related issues in transitional justice in Zimbabwe. The committee resolved to:

20 NTJWG. (10 August 2021). A Legacy Of 41 Years: Commemorating Defence Forces Day, <https://www.facebook.com/NTJWGZim/photos/a.902636386482643/4306187469460834>

21 NTJWG. (12 August 2021). "Transforming Food Systems: Youth Innovation For Human And Planetary Health" Statement In Commemoration Of International Youth Day, <https://www.facebook.com/NTJWGZim/photos/a.902636386482643/4312395482173366/>

22 NTJWG. (30 August 2021). Fact Sheet: Enforced Disappearances, <https://ntjwg.org.zw/fact-sheet-enforced-disappearances/>

23 NTJWG. (21 September 2021). "Address the past for sustainable positive peace in Zimbabwe" International Day of Peace commemorative Statement,

<https://www.facebook.com/NTJWGZim/photos/a.902636386482643/4436760319736881>

24 Maengahama, L., Madzokere, T., Muchadehama, A., Gorejena, B. & Kwaramba, C. (28 June 2021). Commemoration of International day in support of victims of torture. [Webinar]. NTJWG. <https://www.facebook.com/NTJWGZim/videos/370578981092820>

- Participate in the NPRC's strategic plan review in order to ensure that the plan incorporates gender issues.
- Convene training workshops that are specifically meant for women to enable them to share their truths and include their voices in the transitional justice processes.
- Hold validation meetings with members of the Gender thematic committee and Civil Society Organisations to share their thoughts on the policy paper.
- Engage with Parliamentarians and the NPRC on the deliberations of the stakeholders in the gender cluster.

### Promotion of Truth Committee Meeting

On 7 October 2021, the NTJWG convened the Promotion of Truth Thematic Committee meeting. The purpose of the meeting was to discuss and identify ways in which the NTJWG can contribute to the promotion of truth in transitional justice. The meeting also took stock of current initiatives to promote truth in national peace and reconciliation processes and discussed the current operating context. The meeting adopted action points to promote truth-telling and truth-seeking initiatives and to review the NTJWG Strategic Plan for 2019 to 2022. Lastly, a plan of action was formulated and adopted. The committee agreed to:

- Work on the nationalisation of transitional justice issues like the Gukurahundi
- Train journalists to effectively report on transitional justice issues, to separate transitional justice issues and political issues.
- Work closely with community radios to publicise transitional justice issues.
- Take stock of the players and stakeholders who are already working with the local communities and using them as entry points.
- Come up with initiatives to build trust among the survivors.

### Memorialisation Thematic Committee Meeting

A meeting was convened between the NTJWG and Memorialisation thematic committee. The meeting sought to provide a platform for NTJWG stakeholders working on memorialisation initiatives in Zimbabwe to discuss how the NTJWG can contribute to building an inclusive national memory of the past. The objectives of the meeting were to review the current national memorialisation activities, formulate and develop memorialisation strategies in response to the current operating context, and review the NTJWG Strategic Plan for 2019 to 2022. The meeting also sought to explore the opportunities presented by the Strategic Plan vis-a-vis the operating context. At the end of the meeting the Committee resolved to:

- Educate stakeholders and ordinary people about the various creative forms of memorialisation.
- Work with traditional chiefs as custodians of history, the chiefs should be equipped and supported in addressing the issues of past human rights violations.
- Hold dialogues with the ordinary people and the chiefs on memorialisation.
- Produce a policy paper on memorialisation to give guidance to the NPRC, the Government and other stakeholders.

### NTJWG Meeting with the International Advisory Board (IAB)

The NTJWG convened a meeting with the International Advisory Board (IAB) on 18 October 2021. The virtual meeting discussed the draft IAB implementation plan and identified steps that needed to be taken by the IAB and the NTJWG Secretariat to operationalise the IAB, to discuss the IAB implementation plan and develop the NTJWG's international strategy and identify the IAB's areas of focus for 2021 to 2022 strategic period.



## Interface Meeting with the Zimbabwe Media Commission

On 6 October 2021, the NTJWG convened an interface meeting with the Zimbabwe Media Commission (ZMC). The meeting was held after the realisation that the media is essential in disseminating information about transitional justice processes, mechanisms, and results to broader publics. The media is essential in raising public awareness and promoting civic participation. Among the pertinent issues discussed was the need for ZMC to ensure that journalists, content producers and storytellers are not attacked in their line of duty. There is a need for journalists and media practitioners to be truthful and responsible in telling their stories. The ZMC is reaching out to have interface meetings with various stakeholders to raise awareness on the importance of peace especially with the harmonised general elections in 2023 on the horizon. The NTJWG and the ZMC agreed to collaborate and on transitional justice matters.

## Silobela Community Dialogue

On 25 May 2021, a Gukurahundi memorial plaque was unveiled by Chief Fuyane with the support of Ibhetshu Likazulu, an organisation that seeks justice for victims of Gukurahundi. The plaque was unveiled at Bhalagwe, a mass grave site in Kezi in the Matabeleland South Province.

The plaque which was erected to replace one that was destroyed in 2019 was however stolen.<sup>25</sup>

On 29 August 2021, Ibhetshu Likazulu, an NTJWG stakeholder that works in pursuit of justice for the victims of human rights violations in Zimbabwe, focusing on the Gukurahundi massacres, worked with the people of Silobela in building a memorial plaque. The memorial plaque was built in remembrance of the men known as the Silobela 12, who were abducted and disappeared on 31 January 1985 during the Gukurahundi atrocities. The plaque was unveiled on 31 August 2021 in commemoration of the International Day for Victims of Enforced Disappearances and had been stolen by the morning of 1 September 2021. This was the second time this had happened in Silobela, as the first memorial plaque was stolen on 5 June 2021, a day before it was to be unveiled on 6 June 2021.

On 20 September 2021 the NTJWG filed a complaint with the NRPC pertaining the theft of the Gukurahundi Memorial Plaque in Silobela. The NTJWG requested that the NRPC investigates the theft, publicise its findings after the investigation and refer the matter to the government to denounce such actions to affirm its commitment to peace and reconciliation. The NRPC responded to the complaint confirming receipt and enquiring if the complaint had not been filed with any other body to avoid duplication of efforts in the investigation.

Following these occurrences, on 14 October 2021, the NTJWG and Ibhetshu Likazulu visited Silobela on 14 October 2021 and met with representatives of the families of the Silobela 12 to discuss the theft of the memorial plaque, its meaning and significance and how they wanted to proceed in view of this. The deliberations revealed that:

The building of memorials is a key part of healing, and the theft of the plaque is detrimental to the healing process as it re-traumatises families of victims of violence and reminds them of the events of 31 January 1985 when their loved ones were abducted.

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25 NTJWG. (31 May 2021). Statement on the Destruction of Memorial Plaque at Bhalagwe, <https://kubatana.net/2021/05/31/statement-on-the-destruction-of-memorial-plaque-at-bhalagwe/>

There is a need for counselling and trauma healing services to be urgently provided to the Silobela families to help them heal as individuals, as families, and as a community.

### **Compensation is a key concern for the people of Silobela.**

The families of the Silobela 12 are struggling to find peace and to forgive the perpetrators not only because no formal apology has been issued, but also because the national authorities have not taken any action to deal with the theft of the memorial plaque which is viewed as endorsement of the theft.

While some families of the Silobela 12 are willing to speak out about the events of 31 January 1985, the trauma suffered by the families coupled with the theft of the memorial plaque makes others fearful and apprehensive that they might face retribution for speaking out.

Closely related to the theft and destruction of the memorial plaques was the disruption of a memorial event hosted by Ibhetshu LikaZulu. The organisation sought to hold a Gukurahundi memorial event at Stanley Hall in Makokoba on 22 December 2021 but the event was stopped after police cordoned off the venue. The event was meant to coincide with the signing of the Unity Accord between the late former President Robert Mugabe and ZAPU leader Joshua Nkomo on 22 December 1987, to mark the end of the Gukurahundi killings.

The destruction and theft of memorial plaques as well as the disruption of the memorial event are at odds with the stated Government position to encourage dialogue on Gukurahundi that President Mnangagwa has often articulated. These actions highlight that there are conflicting interests at play some of which do not want the violations to be discussed and for victims to find redress and closure. These incidences also point to a lack of sincerity on transitional justice and further traumatise and hurt victims, survivors and communities as perpetrators are not held accountable and truth-telling is suppressed.

The NPRC has been found wanting in not publicly condemning the destruction of the plaques and the disruption of the events.



The destruction and theft of the memorial plaques has been recurring yet plaques like other memorials such as museums, constitute key sites of memory in transitional justice and they are essential in promoting healing processes. As aforementioned, the destruction and theft of memorial plaques re-traumatises victims' families and communities, denying them an opportunity to heal and find closure. The destruction also denies contemporary and future generations of key platforms of education, learning and reflection and may result in recurrence.<sup>26</sup>

The silence by the Commission on the destruction and theft of plaques is deeply troubling as it relegates transitional justice discourse into the realm of silence and invisibility whereas the issues should ordinarily be spoken about as victims, survivors, communities and stakeholders dialogue on the past, the present and processes of redress. In an interview one of the key informants, Dzikamai Bere, perceived the NPRC's silence as symptomatic of the body's lack of capacity to deliver on its stated mandate. Bere posits that: 'There is lack of political will. The bodies that are mandated to work are incapacitated to do so'. Another key informant, Webster Zambara, commenting on the NPRC's silence on the destruction of plaques asserted that:

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“The NPRC should speak out, for example, on the plaque destructions, the Commission needs to be creative within difficult spaces.”<sup>27</sup>

### Response by NPRC to NTJWG Complaint on Hate Speech

On 14 August 2020 Minister Monica Mutsvangwa wrote a letter responding to the Zimbabwe Catholic Bishops' Conference's (ZCBC) letter. The NTJWG lodged a complaint with the NPRC against the Minister on 3 September 2020. The complaint was lodged in the public interest on the understanding that the Minister's letter constituted hate speech. On 29 September 2021, the NTJWG wrote a letter to the NPRC enquiring on the progress made in investigating the complaint. This letter was a follow up to several email correspondence that had not been responded to. On 11 October 2021, the NPRC wrote a letter to the NTJWG responding to the enquiry and stated that the investigation had stalled due to the expiry of the term of office of the commissioner who had been handling the investigation.

The NPRC highlighted that due to the profile of the Minister the investigation could not proceed without a commissioner to handle it. The NPRC further highlighted that the investigation had now resumed but it was one of many complaints the body was dealing with, and feedback would be provided once it was available.

While the NTJWG is engaging with stakeholders at the level of policy and practice as well as working with other stakeholders and communities, it is important to highlight the silence and inaction of the NPRC on key events and occurrences. For instance, it has taken a relatively long period of time to deal with the complaint on the alleged hate speech by Minister Mutsvangwa. Cast against the backdrop of the insidious effects of hate speech in different contexts it is imperative for the such matters to handled expeditiously.

26 Bennett, E. (2020). Genocide Memorialization in the Modern Era: Communal Mourning Through Institutions and Culture. *Inquiries Journal* [Online]. 12 (12),1, <http://www.inquiriesjournal.com/a?id=1847>

Haider, H. (2016). Transitional justice: Topic guide. Birmingham, UK: GSDRC, University of Birmingham, <https://gsdrc.org/topic-guides/transitional-justice/concepts-and-mechanisms/mechanisms/memorialisation/>

27 Key informant interview with Dr. Webster Zambara, (13 January 2022)



Notwithstanding the change that occurred at the Commission, the apparent inertia in handling such matters affects the institution's credibility, whose mandate is to 'ensure post-conflict justice, healing and reconciliation, including developing programmes that promote national healing, unity and peaceful conflict resolution'. Mbuso Fuzwayo, from Ibhetshu Likazulu pointed out that the NPRC was not fulfilling its mandate as expected. He highlighted that:

“

“There is the NPRC, it should be doing this [memorialisation] because the Constitution gives it power. But they have done nothing. No meetings with victims or communities. There is no sincerity. Nothing done on exhumations. No political will, support or resources, nothing has been done. There are compromised Commissioners. The moment you appoint compromised people it becomes insincere.”<sup>28</sup>

### 3.5 Knowledge Products

The NTJWG produced newsletters that enable the working group to document its activities and the activities of the NPRC and other independent commissions, the state and other stakeholders whose work has a bearing on transitional justice processes.<sup>29</sup> In addition, the NTJWG also produced the following reports:

#### **Launch of Language of Intolerance, Intransigence, Authoritarianism and Violence in the “New Dispensation” in Zimbabwe Report**

On 23 February 2021, the NTJWG in collaboration with Zimbabwe Human Rights NGO Forum launched a report titled “The Language of Intolerance, Intransigence, Authoritarianism and Violence in the “New Dispensation” In Zimbabwe”. Hate speech is defined as public speech expressing hatred towards a group based on ethnicity, political affiliation or religious beliefs. The report was launched at a dialogue platform hosted by the Southern African Political Economy Series Trust (SAPES). The report makes the point that at the core of state sponsored human rights violations is hate speech. Hate speech finds immense expression within discourses - both popular and political, and social media platforms have amplified the reach of such speech. The report makes the following recommendations:<sup>30</sup>

1. There is need for a more streamlined legal framework to deal with cases of hate speech to include its broader facets, bearing in mind the propensity for violence and conflict driven by hate speech. The legal framework should be based on international standards, principles and best practices.
2. Cases of hate speech and their subsequent effects should be investigated and documented as basis for legal proceedings to curb impunity.

<sup>28</sup> Key informant interview with Mbuso Fuzwayo, (16 December 2021)

<sup>29</sup> NTJWG. (22 July 2021). NPRC Watch. Newsletter, <https://ntjwg.org.zw/january-to-june-2021/>

NTJWG. (27 October 2021). NPRC Watch. Newsletter, [https://ntjwg.org.zw/wp-content/uploads/2021/10/nNational-Transitional-Justice-Working-Group-Quarterly-Newsletter22-October-2021\\_2-1.pdf?fbclid=IwAR1HToGrKq\\_ajd\\_\\_pH9j3f3zp5NCsOPY9AzvELVsyJH-hF-PoVS-0JUQsIG4](https://ntjwg.org.zw/wp-content/uploads/2021/10/nNational-Transitional-Justice-Working-Group-Quarterly-Newsletter22-October-2021_2-1.pdf?fbclid=IwAR1HToGrKq_ajd__pH9j3f3zp5NCsOPY9AzvELVsyJH-hF-PoVS-0JUQsIG4)

<sup>30</sup> The Southern African Political Economy Series Trust (SAPES) is a regional non-profit organisation operating in Southern Africa and regularly hosts policy dialogues on pertinent political issues.

3. Civil society should intensify its advocacy efforts in relation to ending politically motivated hate speech.<sup>31</sup>

There is an urgent need for the development of a code of conduct for the use of social media by political parties. We recognise the difficulties and deplore any form of censorship, but believe that political parties and civil society organisations can take the lead to ensure that they provide an appropriate model for the general citizenry.<sup>32</sup>

## Launch of the 2020 State of Transitional Justice Report

The 2020 SOTJ Report was launched on 1 September 2021. The report explores the critical highlights in the transitional justice sphere emanating from the year 2020. The report presents key findings and recommendations, annotating what has been achieved in the year under review and benchmarking the outstanding work in the cause of justice, healing, and reconciliation in Zimbabwe.

The report noted that the COVID-19 pandemic had a huge impact on the ongoing work by the NPRC and other key stakeholders resulting in the limited reach of transitional justice programs to people with enabling technological devices. The report also shares the achievements of the NPRC, its shortcomings and proffers recommendations to the incoming Commissioners. Concerns were raised about the continual destruction of the Gukurahundi memorial plaques. The government suggested that the government ensure a national policy on memorialisation and active participation in memorialisation initiatives by protecting memorial plaques and prosecuting the people who destroy and steal the plaques.

To improve the efficiency of transitional justice processes in Zimbabwe and ensure lasting peace and reconciliation the reports make the following recommendations to the independent commissions, government entities, and civil society organisations:

- The NPRC's proposed Conflict Early Warning and Early Response (CEWER) should be broad-based, inclusive, and be able to adapt to the ever-changing conflict dynamic.
- Exhumations and reburials of victims of Gukurahundi must be conducted with full consultations and unfettered participation of the relatives of the deceased and following their cultural practices.
- President Emerson Mnangagwa and the Government of Zimbabwe must design and deliver an effective apology to the nation for the enduring legacies of human rights abuses.
- Gender-specific harms must be unambiguously addressed in public apologies.
- Reforms in the security sector must be prioritised.

In addition, the Stakeholders recommended that there is a need for other Independent Commissions like the ZHRC and the ZGC to contribute to the Transitional Justice Process by addressing the issues that the NPRC is not addressing.<sup>33</sup>

## CITE Gukurahundi Documentary

The Centre for Innovation and Technology (CITE) launched a documentary on Gukurahundi on 25 October 2021. The documentary entitled One Night in 1985 revolves around 11 men from Silobela who were abducted in January 1985.

31 Schabas, W. A. (2000). Hate speech in Rwanda: The road to genocide. McGill LJ, 46, 141.

32 Zimbabwe Human Rights NGO Forum and National Transitional Justice Working Group. (December 2020). The Language Of Intolerance, Intransigence, Authoritarianism and Violence in the "New Dispensation" in Zimbabwe, <https://kubatana.net/wp-content/uploads/2021/02/The-Language-of-hate-report.pdf>

33 Muchadehama, A., Nyathi, P. T., Chirisa, A. & Nhara, Y. (1 September 2021). 2020 State of Transitional Justice Report. [Webinar]. NTJWG. <https://ne-np.facebook.com/NTJWGZim/videos/2020-state-of-transitional-justice-report-launch/308865597701456/>

The documentary was launched as part of the Asakhe Film Festival which was held under the theme The Power of Memory.<sup>34</sup>

The initiatives by transitional justice actors are essential in holding the NPRC accountable and memorialising historical and contemporary forms of gross human rights violations and abuses and monitoring the work of the NPRC. In addition, the documentation of violations- past and present- is essential in truth telling and in educating present and future generations about some of the darkest episodes in the country's history. Transitional justice stakeholders are, in essence, contributing to the discourse on peace, reconciliation and justice processes in ways that the NPRC and other independent bodies are not.

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34 Ndebele, N. [CITE]. (26 October 2021). One night in 1985 [Video]. YouTube. [https://www.youtube.com/watch?v=o\\_Tluthyg34](https://www.youtube.com/watch?v=o_Tluthyg34)



## Chapter 4: Emerging Transitional Justice Issues in Zimbabwe

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There are a number of transitional justice issues that either remain outstanding or are emerging but need to be closely monitored in order to advance the discourse on transitional justice in the country.

### 4.1 Recommendations of the Commission of Inquiry into the 1 August 2018 post-election violence

In the aftermath of the 2018 post-election violence that resulted in 6 people being shot dead by the security forces, President Mnangagwa appointed an independent commission to investigate the violence in accordance with section 2(1) of the Commission of Inquiry Act, Chapter 10:07. The Commission headed by former President of South Africa, Kgalema Motlanthe made several recommendations that enjoined the Government to:

- Provide Compensation for Victims
- Register of Political Parties
- Review Laws relating to hate speech, abuse of cyberspace and incitement to violence
- Amend the Electoral Reforms
- Review Law Enforcement Procedures
- Promote Nation-Building and Reconciliation
- Hold those Responsible for the Shootings Accountability

An analysis by Veritas, a transitional justice stakeholder shows that many of these recommendations have not yet been implemented. Veritas (2021) highlight, for example, that:

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“An inter-ministerial committee was set up in 2019 to implement the recommendation on compensating victims of violence and dependants of the deceased but the compensation fund has not been established. Compensation has been paid to some victims who suffered property damage caused by rioters, but families of those who were killed, and people who suffered physical injuries, have not been compensated. This is inexplicable since those who were killed and injured by the military and police were identified and named in the Commission’s report.”<sup>35</sup>

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Victims of 1 August shootings have not been compensated while members of the security forces responsible for the shootings have not been prosecuted. No amendments have been made to the Electoral Laws. However, the President established the Political Actors Dialogue (POLAD), a platform constituted of presidential elections contestants from the 2018 elections. It is unclear how long the platform will function and its role post the 2023 elections. As presently constituted POLAD is widely perceived as a partisan and exclusionary platform made up of parties and contestants from the 2018 presidential election who President Mnangagwa invited, but it excludes the main opposition political party, the MDC Alliance led by Nelson Chamisa who came second in the Presidential poll after receiving 44,39% of the vote.

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35 Veritas. (23 February 2021). Commissions Watch 03/2021 - The Motlanthe Commission Recommendations Reviewed, COMMISSIONS WATCH 03/2021 - The Motlanthe Commission Recommendations Reviewed | veritaszim

The platform also excludes civil society organisations and churches among other interests' groups and is therefore an inadequate mechanism in addressing transitional justice issues.

The NPRC Chairperson is a co-convenor of the POLAD platform, a move that has been widely criticised, particularly after the NPRC abandoned its own national dialogue platform. Such a move undermines the independence and impartiality of the NPRC, which are key currencies in the promotion of national peace, healing and reconciliation. Webster Zambara pointed out that NPRC's participation in POLAD compromises its role of supporting other Chapter 12 institutions such as the Zimbabwe Electoral Commission (ZEC), ZGC, ZMC and the ZHRC. He stated that:

"With the advent of POLAD [and Justice Nare co-convening the platform] how will the NPRC support Chapter 12 institutions. The NPRC is in a catch 22 situation. They need to consult and clarify their role drawing from the 2018 peace pledge that was signed."<sup>36</sup>

## 4.2 The Re-Introduction of the National Youth Service (NYS)

On 13 April 2021 the Zimbabwean Government announced the reintroduction of the National Youth Service (NYS). In a position paper drafted by Heal Zimbabwe a key transitional justice stakeholder, the rationale for the re-introduction of the NYS programme is predicated on the assumption that the programme is:

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“Crucial in nurturing young people into becoming responsible and resilient citizens with a clear sense of national identity and respect for national values,” yet past experiences bred violent youths who were largely involved in politically motivated violence and gross human rights violations (Heal Zimbabwe 2021).”<sup>37</sup>

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Heal Zimbabwe (ibid) highlights that the Zimbabwean NYS programme that was initially introduced in 2001 and suspended in 2007 due to resource constraints trained approximately 80 000 youths from about 150 camps around the country. Heal Zimbabwe posits that although the NYS is authorised by an Act of Parliament –the National Service Act introduced in 1979 and established in 2001 (National Service Act Chapter 11:08), historically the youth enrolled in the NYS have been used as instruments for violent political mobilisation.

One of the key informants interviewed for the 2021 SOTJ Report, Dzikamai Bere, stated that:

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<sup>36</sup> Key informant interview with Dr. Webster Zambara, (13 January 2022)

<sup>37</sup> Heal Zimbabwe Trust (15 April 2021). National Youth Service Reintroduction: A Promise for Political Violence in 2023, National Youth Service Reintroduction: A Promise for Political V.pdf (kubatana.net)



“In light of the upcoming 2023 elections a key area to watch is the NYS. The re-introduction of the NYS is indicative of the violence that is likely to happen and the role of young people. Peace and Transitional Justice Actors need to be proactive and speak out against the NYS or mobilise young people to be unavailable for violence.”<sup>38</sup>

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The re-introduction of the NYS training for young people seems not only to be a harbinger of the electoral contestations that lie ahead but speaks to already simmering political disputes especially centred around electoral reforms.

### 4.3 Outlook on the Harmonised Elections in 2023

Zimbabwe is approaching the 2023 harmonised general elections. An analysis of key political developments and events indicates that the elections will be intensely contested and there is a high likelihood of political disputes and a possibility of violence. Although this analysis might be embryonic, it stems from the lack of electoral reforms, deep seated political disputes that have emerged both within and between the major political parties, the recall of elected representatives and the re-introduction of the NYS discussed before.

#### Lack of Electoral Reforms

Since the disputed 2018 elections there have been calls for the reform of electoral processes in the country. The Zimbabwe Election Support Network (ZESN) highlights that no political reforms have been implemented in respect of:

- a. Enhancing the independence of ZEC
- b. Reviewing Legal Provisions on Voter Registration and the Voter's Roll
- c. Voter education and Election Observation
- d. Tightening the Provisions on Results Management to enhance transparency and reduce suspicion and results contestation.
- e. Streamlining the election dispute mechanism
- f. Domestication of Regional and international instruments to which Zimbabwe is a party
- g. Enhancing electoral administration through clearer legal provision and electoral practice
- h. Reviewing provisions on political party registration and regulation
- i. Reviewing Provisions around the delimitation of electoral boundaries
- j. Tightening Provisions on the role of Traditional Leaders in elections
- k. Enhancing the right to vote and inclusivity
- l. Enhancing participation of women, youth and persons with disabilities in the electoral process as voters and candidates.<sup>39</sup>

In addition, the COVID-19 pandemic and attendant containment measures such as lockdowns have resulted in the curtailment of civil and political rights with parliamentary and local authority by-elections suspended.

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<sup>38</sup> Key informant interview with Dzikamai Bere, (12 January 2022)

<sup>39</sup> Zimbabwe Election Support Network. (July 2021). Electoral Reforms Tracking Report January-July 2021, Electoral-Reforms-Tracking-Report-web.pdf

The right to assembly has also been suspended as the lockdown measures limit the number of people that can congregate at any given time.

ZEC scheduled a voter registration blitz from 6 December 2021. The exercise was aimed at ‘addressing under-registration and affording new voters who have turned 18 a chance to register’. The Election Resource Centre (ERC) noted that;

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“Voter registration is arguably one of the most important pre-election activities, as voter registration ensures equitable participation in elections, enhances voter turnout, and impacts on the delimitation of constituency boundaries”

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However, the voter registration blitz was suspended in November 2021 and this denied prospective new voters a chance to register and be eligible to vote. The concern is that since April 2020 there has not been marked electoral activity including voter registration due to the COVID-19 pandemic yet there are increasing numbers of young people that have attained the legal age of majority and are eligible to register as voters. This denies them an opportunity to participate in political processes as voters and this has a bearing on their ability to shape their future and could potentially stir hostility and tensions in the country.

While CSOs expressed their dismay at ZEC’s conduct, the NPRC did not issue any communication or engage with ZEC regarding universal suffrage. The matter has implications for peace and stability in the country and affect young people who constitute the largest demographic group.

## Chapter 5: Transitional Justice News from Across the Globe

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### 5.1 The Conviction and Sentencing of Derek Chauvin

In April 2021 Derek Chauvin, a former police officer, was convicted of murdering George Floyd and he was subsequently sentenced to 22 and half years in jail on 26 June 2021. In passing sentence, the Judge, Peter Cahill stated that he wanted to:

“Acknowledge the deep and tremendous pain that all of the families are feeling, especially the Floyd family’. The Judge also revealed that Chauvin “abused his position of trust or authority” and treated Floyd with “particular cruelty.” The judge opined that the former police officer had treated Floyd “without respect and denied him the dignity owed to all human beings.”<sup>40</sup>

The murder of George Floyd sparked widespread demonstrations around the world organised around the ‘Black Lives Matter’ movement. The brutal killing also stirred conversations around the legacies of racism, colonialism and violence. The conviction of Derek Chauvin was imperative in highlighting that perpetrators of human rights violations and abuses ought to be held accountable. When perpetrators are not held accountable there is likely to be re-occurrence and impunity.

### 5.2 The Trial of Thomas Sankara’s Assassin

On 11 October 2021, Burkina Faso under a transitional government initiated the trial of 14 men accused of assassinating Thomas Sankara, the country’s former leader who was killed on 15 October 1987 at the age of 37.

Sankara came to power through a coup d’état in 1983 in the then Upper Volta. He changed the name of the country to Burkina Faso meaning ‘the land of upright people’.

Sankara’s government, operating under a combination of Marxist-Socialist and Pan-African ideologies, implemented far-reaching economic and social policies that included nationalisations, land redistribution, public housing construction, expanded access to education, and advancing women’s rights by banning female genital mutilation, polygamy and forced marriages. His rule was said to be characterised by repression which pushed some of his critics out of the country. Sankara was murdered in 1987 during a coup orchestrated by his friend Blaise Compaoré, who went on to rule for 27 years until he was forced out of power by popular protests. The transitional government that came to power instituted an inquiry into Sankara’s murder, which led to the arrest and trial of Campaore and thirteen others. The transitional government ordered the exhumation of Sankara’s remains, which had more than 12 bullets.

The key lessons from the Burkinabe account are the accountability of perpetrators. The case also speaks to the importance of exhumations and how graves may be sites of evidence for people killed during times of political upheaval, conflict and atrocities. Sankara’s statues have been erected and are emerging as sites of history and memory illustrating the importance of memorialising key events and personalities.<sup>41</sup>

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<sup>40</sup> Wamsley, L. (25 June 2021). The Derek Chauvin Sentencing Decision. National Public Radio, <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/06/25/1010385046/read-the-derek-chauvin-sentencing-decision>

<sup>41</sup> Surin, K. (20 October 2021). The trial of Thomas Sankara’s Killers. CounterPunch, The Trial Of Thomas Sankara’s Killers - CounterPunch.org



### 5.3 The Gambia Truth, Reconciliation and Reparations Commission

On 25 November 2021 the Gambia Truth, Reconciliation and Reparations Commission (TRRC) submitted its final report to President Adama Barrow. The Commission was established to investigate State sanctioned human rights violations under the repressive rule of Yahya Jammeh.

The TRRC was set up in 2019 with a brief to examine the abuses under Jammeh, the President of the Gambia from 1994 to 2017. The Commission heard testimonies from 393 witnesses that included former Government insiders such as ministers, police, intelligence operatives and members of the notorious paramilitary unit called the 'Junglers'. The Commission also spoke to experts and victims. The TRRC's brief was to make recommendations with regards to reparations, banning individuals from the public service, repeal of draconian laws, proposing legal and institutional reforms and training and capacity building for security personnel.

Jammeh's regime stood accused of torture, extrajudicial executions and arbitrary arrests. Human rights violations included enforced disappearances, sexual and gender based-violence and attacks on the freedoms of expression and peaceful assembly.

The Commission found that the abuses had resulted in the death of 240-250 Gambians and non-Gambians at the hands of the State or its agents. Jammeh was linked to the killings of scores of political opponents, the unlawful killing of over 50 West African migrants, arbitrary detentions, HIV treatment programmes that compelled patients to give up their medicines and be under Jammeh's personal care. Jammeh was also said to rape and sexually assault women.

According to Amnesty International the broad objective of the TRRC was to create an impartial historical record of violations and abuses of human rights from July 1994 to January 2017 in order to "promote healing and reconciliation, respond to the needs of the victims, address impunity, and prevent a repetition of the violations and abuses suffered by making recommendations for the establishment of appropriate preventive mechanisms, including institutional and legal reforms." (own emphasis).<sup>42</sup>

The implementation of the TRRC's recommendations is still in its infancy but the Chairperson of the Commission, Dr. Lamin J. Sise stated that they had: 'identified and recommended for prosecution those most responsible for gross human rights violations and abuses' and that 'the individuals involved in perpetrating the violations and abuses must be held accountable for their crimes.'<sup>43</sup>

While the jury is still out on how the Commission's findings will be implemented there are several key transitional justice lessons that can be alluded to. These include:

Truth telling is indispensable to the quest for justice and it is the building block for healing and reconciliation. Any transitional justice process must respond and centre the needs of the victims/survivors. It is imperative to address impunity by holding perpetrators accountable for their crimes in order to avoid re-occurrence.

Mechanisms and institutions established to address transitional justice issues must be well resourced and they must conduct their work independently.

There is need for the domestication of the AUTJP.

<sup>42</sup> Eken, M. (25 November 2021). Gambia: Truth and Reconciliation report must lead to justice and reparations for victims, <https://www.amnesty.org/en/latest/news/2021/11/gambia-truth-and-reconciliation-report-must-lead-to-justice-and-reparations-for-victims/>

<sup>43</sup> International Commission of Jurists (226 November 2021). The Gambia: Truth Commission calls for prosecution of ex-officials, <https://www.icj.org/the-gambia-truth-commission-calls-for-prosecution-of-ex-officials/>

## Chapter 6: Key Findings and Recommendations

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### 6.1 Official Transitional Justice Processes

The report discusses the official transitional justice processes, particularly those initiated and led by the State and the NPRC, a Constitutional Commission with a mandate to ‘ensure post-conflict justice, healing and reconciliation, including developing programmes that promote national healing, unity peaceful conflict resolution’. The key highlights in 2021 include:

- The appointment of new Commissioners. 6 new Commissioners were appointed while 2 were retained.
- The NPRC launched the Gender and Inclusion Policy and Standard Operating Procedures (SOPs) for handling and supporting victims of conflict related GBV.
- The Provincial Peace Committees convened Preventative Dialogue Meetings
- The gazetting of the Zimbabwe Independent Complaints Commission Bill.

Challenges beset the NPRC and official transitional justice processes. These included:

- The NPRC’s failure to comply with its reporting obligations. The Commission has not yet submitted its 2020 Annual report.
- The Government through the President continued to work on a parallel initiative and structure in collaboration with Traditional leaders in addressing the Gukurahundi atrocities. The NPRC is excluded from this process.
- The appointment of Commissioner Gutu and his alleged failure to renounce his political party membership elicited legal proceedings instituted by ZimRights. Commissioner Gutu’s statements on Gukurahundi stirred controversy and the NPRC through its Chair had to tender an apology.
- The NPRC remained silent in the face of destruction and theft of memorial plaques as well as the continued exclusion of the body from key processes falling directly under its ambit.
- There is continued violation of human rights by state agencies, and these were accentuated during the enforcement of the COVID-19 pandemic lockdowns.

### 6.2 Unofficial Transitional Justice Activities

The report details the activities by key transitional justice stakeholders primarily the NTJWG. The report observes that the NTJWG and other stakeholders have continued to engage the Government, independent Commissions, Communities and other stakeholders in addressing transitional justice issues in the country at the level of legislation, policy and practice. The key highlights for 2021 are:

- The NTJWG convened reflective meetings on the domestication of the AUTJP and Exhumation and Reburial Policy with legislators.
- The NTJWG maintained a monitoring brief on the appointment of the NPRC.
- The NTJWG also convened meetings with Parliamentary Thematic Committees specifically, the Justice and Accountability; Gender; Truth and Memorialisation thematic committees.
- The NTJWG working in collaboration with Ibhetshu Likazulu engaged with communities in Silobela in the aftermath of the theft and destruction of memorial plaques.
- Other key stakeholders working on transitional justice engaged in litigation on the appointment of new Commissioners; memorialisation and documentation of Gukurahundi atrocities. ZimRights initiated court proceedings against the appointment of Commissioner Gutu after his alleged failure to renounce

his ZANU (PF) membership in terms of the law. Ibhetshu Likazulu worked with communities in erecting memorial plaques in Bhalagwe and Silobela. CITE produced a documentary on Gukurahundi.

### 6.3 Outstanding Transitional Justice Issues and Outlook on 2023 Elections

The report outlines outstanding and emerging transitional justice issues in the country and how and in what ways these issues impinge on the 2023 harmonised general elections. Specifically, the report states that:

- The Government has not yet issued an apology on the Gukurahundi atrocities.
- The recommendation of the Commission of Inquiry into the 1 August 2018 post-election election violence led by President Motlanthe have not been implemented.
- The re-introduction of the NYS might be a harbinger to a violent electoral context based on precedent.
- Lack of electoral reforms especially the apparent suppression of voter registration might disenfranchise prospective young voters creating tensions and grievances which might threaten peace in the country.

### 6.4 Transitional Justice Across the Globe

The report outlines some of the transitional justice issues from across the globe. Specifically, these are drawn from the United States of America, Burkina Faso and the Gambia.

- In the USA Derek Chauvin was convicted and jailed for the murder of George Floyd.
- Burkina Faso started the trial of 14 men accused of assassinating Thomas Sankara in 1987.
- The Gambia Truth, Reconciliation and Reparations Commission released its findings and recommendations that the Government has started implementing.

### 6.5 Recommendations

Drawing from these findings the report makes the following recommendations:

#### To Civil Society Organisations

- CSO transitional justice mechanisms pivot around monitoring the role, activities and processes of the NPRC. There is a need for CSOs to define their responsibilities towards transitional justice in a broader sense than just monitoring the NPRC and initiate proactive programming on areas such as exhumations and reburials which have not received adequate attention from authorities yet remain critical issues at family and community levels.
- There is a need for concerted efforts to advocate the implementation of the AUTJP.
- There is a need to consider ways of fostering youth participation in political affairs and to implement programming that dissuades youth from violent political mobilisation and organisation. This may entail strengthening and scaling up existing and effective approaches to youth engagement as well as adopting new and innovative methods of stemming apathy among young people.
- There is a need to strengthen and accelerate the work being done by media organisations in Transitional Justice programming so that media practitioners are trained in peacebuilding and transitional justice reporting.
- In view of the limitations exhibited by the NPRC and other independent Commissions it is incumbent upon the NTJWG and other stakeholders to continue working in an inclusive and victim centred approach on transitional justice issues. This will help keep communities engaged and maintain the discourse on transitional justice in the country regardless of the NPRC's term of office.
- Civil Society organisations to collaborate on peace building initiatives and develop manuals for conflict prevention that should be shared widely particularly in light of the 2023 elections.

### **To the Government:**

There is a need to capacitate and resource the NPRC to enable the body to function efficiently and independently in line with its mandate.

The Government needs to demonstrate sincerity on transitional justice by not undermining the NPRC through setting up parallel structures, processes and initiatives.

The Government to implement the recommendations from the Report of the Commission of Inquiry into the 1 August 2018 Post-Election Violence chaired by the former President of South African Kgalema Motlanthe.

The Government to take a lead in preserving memorial plaques that are erected by communities and to condemn and investigate the theft and destruction of memorial plaques.

### **To the NPRC:**

The NPRC needs to be accessible and visible and work with communities in addressing transitional justice issues. This can be achieved through NPRC Commissioner being stationed in the respective provinces they represent.

The NPRC to work alongside community-based organisations in transitional justices processes such as memorialisation and commemoration of key events in order to improve the body's visibility and accessibility as well as to capture the voices of victims of human rights violations.

In the context of the current COVID-19 pandemic the NPRC to use technologies that enable them to reach different segments of society. The NPRC should embrace the use of technology so that they create platforms whereby transitional justice issues are discussed openly. This could include virtual discussions and seminars that can attract broader participation.

### **To the Academic Community:**

- There is a need for universities to offer peacebuilding and transitional justice modules in order for academics to proffer solutions relevant to the local context.

## Chapter 7: Conclusion

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Transitional justice processes remain contested in the country. While a second set of Commissioners has been selected into the NPRC the body mandated with ensuring ‘post-conflict justice, healing and reconciliation, including developing programmes that promote national healing, unity and peaceful conflict resolution’ is still beset by persistent constraints. These challenges stem from inadequate resourcing, precluding the NPRC from effectively fulfilling its mandate. The NPRC has on two previous years failed to submit its annual reports in accordance with the law. The 2020 annual report remains outstanding. The non-compliance with the reporting obligation hinders the public and stakeholders from holding the body accountable and in turn diminishes confidence in its operations.

The approach adopted by the GoZ of taking the lead in trying to resolve the Gukurahundi atrocities whereby the President is working in collaboration with traditional leaders further undermines the NPRC that is supposed to take a leading role in resolving the matter.

The NPRC has also failed to demonstrate the capacity to operate independently by failing to speak out against blatant violations in memorialisation processes such as the destruction of plaques.

A number of issues remain unresolved and outstanding. These include the implementation of the recommendations of the Commission of Inquiry into 1 August 2018 post- election violence and the GoZ’s failure to tender an apology for the Gukurahundi atrocities. Such failures widen rifts and create mistrust among victims, survivors and stakeholders alike.

CSOs, the NTJWG have kept transitional justice processes topical by closely monitoring official transitional justice processes and holding the State and independent institutions accountable. The approach taken by CSOs is also inclusive and affords communities safe platforms to discuss human rights violations openly, which in turn promotes truth telling and healing of victims and survivors. There is a need to address the demands for exhumations and reburials in a legal manner that also considers the spiritual/transcendental, social, economic, and political implications of such an exercise.

Drawing from other African contexts it is imperative for the GoZ to work in close collaboration with transitional justice stakeholders and domesticate the AUTJP as the policy speaks to the realities and experiences of the victims, survivors and perpetrators.





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