



# DEAD IN SLEEP!

AN ANALYSIS OF THE TENURE OF THE  
NATIONAL PEACE AND RECONCILIATION COMMISSION  
2013 - 2023



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE

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## Contents

<b>1. INTRODUCTION .....</b>	<b>4</b>
<b>2. TRANSITIONAL JUSTICE CONTEXT IN ZIMBABWE .....</b>	<b>5</b>
<b>3. CIVIL SOCIETY AND THE DRIVE FOR TRANSITIONAL JUSTICE IN ZIMBABWE.....</b>	<b>7</b>
<b>4. NATIONAL PEACE AND RECONCILIATION COMMISSION ESTABLISHMENT .....</b>	<b>10</b>
<b>5. PERFORMANCE EVALUATION OBJECTIVES AND METHODOLOGY.....</b>	<b>12</b>
<b>6. NPRC PERFORMANCE: AN ANALYSIS.....</b>	<b>13</b>
6.1 Institutional Framework: The Transitional Justice Architecture .....	13
6.2 Transitional Justice in Motion: Official Actions of the NPRC.....	14
6.3 International Transitional Justice Policy, Practice and Processes.....	19
(i). Truth-Telling.....	19
(ii). Institutional Reforms .....	20
(iii). Justice and Accountability .....	20
(iv). Reparations and Rehabilitation.....	21
(v). Reconciliation .....	21
<b>7. THE SITUATION OF VICTIMS .....</b>	<b>22</b>
<b>8. OPERATIONAL AND STRUCTURAL GAPS AND CHALLENGES.....</b>	<b>23</b>
<b>9. CONCLUSION .....</b>	<b>25</b>
<b>10. RECOMMENDATIONS FOR FUTURE TRANSITIONAL JUSTICE EFFORTS .....</b>	<b>25</b>
10.1. The Government of Zimbabwe.....	26
10.2. Civil Society Organisations .....	26
10.3. Citizens, Victims and Survivors .....	26

# 1. INTRODUCTION

On 21 August 2023, Zimbabwe's National Peace and Reconciliation Commission (NPRC) died peacefully in its sleep. It happened just two days before a general election that was bound to continue the tradition of violence and fear in Zimbabwe. There was no statement, no official ending festivities. Nothing. Just silence. Not even resistance. No solidarity from likely supporters. It was like an end that the community never bothered to prevent when it happened, perhaps a reflection of the public attitudes towards the institution.

For years, civil society in Zimbabwe supported the NPRC, wishing it well. Indeed, civil society campaigned for the NPRC's establishment between 2008 and 2013. Upon its formation, civil society pushed for its operationalisation, resourcing and independence. But at its natural demise, it appeared no one could care less. Was it because the institution had completed its work or because it had failed so dismally that its loss created only indifference?

The National Transitional Justice Working Group (NTJWG) has worked since 2013 to support and enhance the work of the NPRC. Our stakeholders take great interest in the appraisal of the work of the NPRC and some thoughts on the way forward. This report reflects the performance of the NPRC during its lifespan between 2013 and 2023. The review explores the work of the NPRC measured against its constitutional mandate and deliverables as established in Section 252 of the Constitution of Zimbabwe. The analysis further examines the NPRC's performance measured against international transitional justice best practices and processes, including truth recovery, justice, institutional reforms, reconciliation, memorialisation and guarantees of non-repetition. These two evaluation approaches were adopted to enhance the evaluation results' reliability and validity and to present different perspectives on measuring the NPRC's performance.

The function of transitional justice is to respond to past gross human rights violations, facilitating acknowledgement, justice, truth and recourse to the grievances of the victims of such violations. The overall assumption of transitional justice presupposes a package of processes that addresses historical injustices through mechanisms that include, among others, accountability, reparations, memorialisation, healing and reconciliation. The strategy aims to “achieve truth, accountability and punishment, the rule of law, compensation to victims, institutional reform, long-term development, reconciliation, and public deliberation”.<sup>1</sup> In light of this, a review of the NPRC's work is based on the notion of transitional justice. It focuses on its achievements, successes and failures, operational gaps, and strategic options for future interventions. This pursuit is motivated by the desire to help Zimbabwe confront its legacies of past gross human rights violations to sustain democratic dispensations where all human rights are respected and fulfilled.

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<sup>1</sup> Crocker, David A (2009). "Rectificatory Justice: Righting Past Wrongs" in Spring, U. O., Aharoni, A., Summy, R. V., & Elliot, R. C. (Eds.) (2010) *Peace Studies, Public Policy and Global Security*—Volume V. EOLSS Publications.

## 2. TRANSITIONAL JUSTICE CONTEXT IN ZIMBABWE

Zimbabwe's past and present are littered with gross human rights violations that require a robust transitional justice process to break persistent cycles of violence and secure sustainable peace. The country endured violent experiences from the time it was colonised in the 1890s to the post-independence era beginning in 1980. Yet, little has been done to facilitate meaningful transitional justice interventions. Attempts have been made to promote transitional justice through redistributive, reparative, and restorative justice systems. Still, their impact has been extremely minimal, owing to a lack of political will, knowledge, and resources. The NPRC is the country's most recent attempt to address the consequences of past gross human rights violations.

Unaddressed past violations include the killings of over 30,000 people during the liberation struggle, massacres of approximately 20,000 people through state-sponsored violence against the Ndebele minority population between 1982 and 1987, violent land dispossession of roughly 3,900 farmers and the subsequent displacement of approximately 224,000 farm workers,<sup>2</sup> involuntary displacements of 700,000 urban dwellers in 2005 and political killings amounting to 200 deaths in 2008, among other cases. At the centre of contemporary gross human rights violations and repression in Zimbabwe are violent elections and electoral credibility crises. The 2017 military coup that replaced Robert Mugabe and sanitised by Justice Chiweshe's<sup>3</sup> ruling has created a perpetual state of emergency in Zimbabwe. In 2018, the election outcome was contested and post-election violence led to six people being killed and 14 injured during protests against the delayed election results.<sup>4</sup> A Commission of Inquiry was established to address the consequences of the violence, but its recommendations were never fulfilled to date. These human rights violations continue to occur, and they are severe, widespread, deliberate, systematic, and largely conducted with impunity to create an atmosphere of fear rather than peace.<sup>5</sup>

Yet again, January 2019 marked another dark episode in the human rights history of Zimbabwe. Citizens took to the streets in protest of a sharp increase in fuel prices, when the dust had settled, the Zimbabwe Human Rights NGO Forum (the Forum) recorded at least 844 human rights violations during the shutdown including extra-judicial killings (at least 17); injuries from gunshots (at least 78), assault, torture, inhumane and degrading treatment including dog bites (at least 242), destruction of property including vandalism and looting (at least 46), arbitrary arrests and detentions (466), rape and sexual assault (at least 17)<sup>6</sup>.

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<sup>2</sup> Sachikonye, L. (2001). *Land reform and farm workers*. Available: <http://ir.uz.ac.zw/jspui/bitstream/handle/10646/365/Sachikonye-land-reform.pdf>

<sup>3</sup> Justice Chiweshe ruled that the military takeover was necessary to prevent unauthorised people from exercising executive function and to stop former president Robert Mugabe's abdication of his functions. More on the constitutionality of the army's deployment: <https://old.zimlil.org/content/was-army-intervention-constitutional>

<sup>4</sup> IRI/NDI Zimbabwe International Election Observation Mission. (2018) *Final Report*. Harare: IRI/NDI Zimbabwe International Election Observation Mission.

<sup>5</sup> ZimRights (2023). *Facing the Fear: Confronting Threats to Personal Security in Zimbabwe*. Available here <https://www.zimrights.org.zw/wp-content/uploads/2023/08/Facing-the-Fear-Policy-Brief-Report-lr.pdf>

<sup>6</sup> Zimbabwe Human Rights NGO Forum (February 2019), *On the days of darkness in Zimbabwe*, available at <https://ntjwg.uwazi.io/api/files/1550125377360dhdbqvwv068g.pdf>

Since independence in 1980, transitional justice efforts failed to build sustainable peace, leading to the country’s continued relapse into political and socio-economic turmoil. Only “three mechanisms were used by the state between 1979 and 2014 to address the justice and reconciliation question in Zimbabwe: amnesties and pardons, amnesia and commissions of inquiry”.<sup>7</sup> For example, *General Amnesty Ordinance 3 of 1979* gave amnesty and blanket immunity to perpetrators of state-sponsored violence. In 1980, a forced reconciliation decree (forgive and forget) was declared. It silenced the victims and the Chihambakwe Commission and the 1987 Unity Accord muzzled voices of the *Gukurahundi* victims and survivors, where over 20,000 people were killed.<sup>8</sup> The ruling government repudiated the general reconciliation politics as it proceeded with “*politics of frontal assault*” instead of promoting meaningful transitional justice.<sup>9</sup> Between 2000 and 2008, multiple cases of politically motivated human rights violations, including torture, arson, murders, displacements, and economic injustices were recorded. Still, little has been done to facilitate effective justice, healing, and reconciliation processes.

**Table 1: Past Conflicts and Transitional Justice in Zimbabwe**

Zimbabwe’s Past Conflict Episodes* <sup>10</sup>	Zimbabwe TJ Efforts
<ul style="list-style-type: none"> <li>• Pre-colonial wars</li> <li>• Liberation war leading to independence in 1980</li> <li>• Entumbane uprisings (1981)</li> <li>• Gukurahundi (1983-1987)</li> <li>• Electoral /political violence (1980-1955; 2000, 2002, 2005, 2008, 2018, &amp; 2023)</li> <li>• Attacks on civil society protestors and citizens generally</li> <li>• Economic Structural Adjustment Programmes (ESAP) (1990s)</li> <li>• Fast track land reform conflict (2000 – present)</li> <li>• Operation Murambatsvina (2005)</li> <li>• Hyperinflationary economic conflict (2008)</li> <li>• Military coup (2017)</li> </ul>	<ul style="list-style-type: none"> <li>• Mugabe Independence Forgive and Forget Reconciliation Decree (1980)</li> <li>• Chihambakwe and Dumbutshena Commissions 1983</li> <li>• Unity Accord –Uniting ZANU PF and PF ZAPU (1987)</li> <li>• War Victims Compensation Fund (1995 &amp; 1997)</li> <li>• Constitutional Referendums (2000 &amp; 2013)</li> <li>• Fast track land reform (2000 onwards)</li> <li>• Global Political Agreement (establishing and coalition government with mechanisms such as the Organ on National Healing, Reconciliation and Integration, Joint Monitoring and Implementation Committee and Constitutional Select Committee) (2009)</li> <li>• Establishment of NPRC under the amended (2013) Constitution &amp; appointment of Commissioners. The Chair resigns due to delay in passing enabling legislation, the second Chair dies and the third Chair is appointed.</li> <li>• National Peace and Reconciliation Act (establishing the National Peace and Reconciliation Commission) (2019)</li> <li>• NPRC regulations and Strategic Plan</li> <li>• Several CSO efforts, including the setting up of the National Transitional Justice Working Group</li> <li>• Traditional mechanisms and CSO-initiated peace committees</li> </ul>

As can be seen, Zimbabwe’s history, and Rhodesia’s before that, are replete with organised violence and torture, some of which have been so appalling that plausible claims can be made for war crimes

<sup>7</sup> Benyera, E. and Ndlovu Gatsheni, S. (2015). *Towards a framework for resolving the justice and reconciliation question in Zimbabwe*. Available at: <https://www.accord.org.za/ajcr-issues/towards-a-framework-for-resolving-the-justice-and-reconciliation-question-in-zimbabwe/>

<sup>8</sup> Kriger, N. (2005). ZANU (PF) strategies in general elections, 1980-2000: Discourse and coercion. *African Affairs*, 104 (414): 1-34.

<sup>9</sup> Raftopoulos, B. and Savage, T. eds. (2004). *Zimbabwe: Injustice and political reconciliation*. Cape Town: Institute for Justice and Reconciliation.

<sup>10</sup> This list of violent episodes is not exhaustive but highlights some of the most relevant epochs.

and crimes against humanity<sup>11</sup>. These claims can be made with respect to the Liberation War, especially the massacres by Rhodesian security forces in Mozambique and Zambia, *Gukurahundi*, the elections in 2002 and 2008, the Fast-Track Land Reform Programme (FTLRP), Operation *Murambatsvina*<sup>12</sup> and Operation *Makhavotera Papi*<sup>13</sup>, amongst others. Zimbabwe has a highly violent past and is the most violent country in the SADC region (with perhaps the exception of the DRC), as massively documented by Zimbabwe’s civil society. This is attested to by over 600 individual reports covering the period from 1965 to date. That Zimbabwe needs an effective transitional justice process is beyond dispute.<sup>14</sup>

Zimbabwe’s past conflict experiences require a holistic transitional justice process that facilitates healing, reconciliation, justice, and closure. Without appropriate transitional justice interventions, sustainable peace is inconceivable in Zimbabwe. Appropriate transitional justice offers a more profound, more prosperous and broader vision of justice which seeks to confront perpetrators, address the needs of victims and assist in the start of a process of reconciliation and transformation towards a socially cohesive and just society where victims and perpetrators (former enemies) are able to continue living together after conflict. However, Zimbabwe carried out an application of truces for several epochs of conflict and violence without befitting transitional justice mechanisms that foster sustainable peace. Declarations of peace, amnesties, prosecutions, amnesia, unity agreements, and partial dialogues were generated mostly to the advantage of perpetrators of violence without much regard for the victims’ interests.<sup>15</sup>

### 3. CIVIL SOCIETY AND THE DRIVE FOR TRANSITIONAL JUSTICE IN ZIMBABWE

In the absence of a robust state-led transitional justice mechanism, Civil Society Organisations (CSOs) played a crucial role in supporting Zimbabwe’s transitional justice. Through the National Transitional Justice Working Group (NTJWG), for instance, civic organisations have identified and documented cases of gross human rights violations. They have provided direct trauma healing and psychosocial support services to victims of gross human rights violations, and they continue doing so. CSOs have consistently lobbied the government to implement genuine transitional justice processes while at the same point providing capacity-building support to grassroots actors and citizens. Worrying, however, is that CSOs’ efforts have been limited by the government’s failure to legitimise their work in transitional justice processes through suppressing access to communities.

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<sup>11</sup> See “Ruled by violence, Zimbabwe Human Rights NGO Forum, <https://www.hrforumzim.org/wp-content/uploads/2023/09/Ruled-By-Violence.pdf>

<sup>12</sup> See <https://reliefweb.int/report/zimbabwe/zimbabwe-operation-murambatsvina-overview-and-summary>

<sup>13</sup> See [http://archive.kubatana.net/html/archive/demgg/120924ccdz.asp?sector=HR&year=2012&range\\_start=211](http://archive.kubatana.net/html/archive/demgg/120924ccdz.asp?sector=HR&year=2012&range_start=211)

<sup>14</sup> See the data bases of Veritas (<https://www.veritaszim.net>), The Zimbabwe Human Rights NGO Forum (<https://www.hrforumzim.org/media-resources>), The human rights archives of the National Transitional Justice Working Group (<https://ntjwg.uwazi.io/en>) or the legal database of Zimlilii (<https://zimlilii.org/>).

<sup>15</sup> Machakanja, P. 2010. *National healing and reconciliation in Zimbabwe: Challenges and opportunities*, Cape Town: Institute for Justice and Reconciliation (IJR).

The early work on documenting organised violence and torture (OVT) began in the Rhodesian era after the Unilateral Declaration of Independence (UDI) with the ground-breaking work of the Catholic Commission for Justice and Peace (CCJP). Although the Commission provided strong evidence of the OVT taking place in the north-east of Zimbabwe, the work was stymied by the Smith regime promulgating the notorious Indemnity and Compensation Act that gave not only prospective immunity for gross human rights violations but egregiously made the act retrospective for the two years of violations uncovered by CCJP. The regime also began persecuting the members of the Commission, most of whom had to go into exile. This was the beginning of a pattern that has continued to date.

**Table 2: Civil Society and Transitional Justice in Zimbabwe.**

Organised Violence and Torture	Civil Society & Zimbabwe Human Rights NGO Forum Responses
<ul style="list-style-type: none"> <li>• Gukurahundi</li> <li>• Liberation war struggles in Southern Africa</li> <li>• Food Riots</li> <li>• Attack on peaceful protestors at “Peace March” (2000)</li> <li>• OVT in the 2000 Parliamentary Election</li> <li>• OVT in the 2002 Presidential election</li> <li>• Suspension from Commonwealth &amp; Abuja Agreement</li> <li>• Violence during by-elections, during land reform, &amp; against peaceful protestors.</li> <li>• Operation Murambatsvina</li> <li>• 2008 Harmonised Elections</li> <li>• Challenging impunity</li> </ul>	<ul style="list-style-type: none"> <li>• Catholic Bishops’ approach to the Government</li> <li>• International Conference on “<i>The Consequences of Organised Violence in Southern Africa</i>” (1990)</li> <li>• Breaking the Silence Report (1997)</li> <li>• Creation of Zimbabwe Human Rights NGO Forum (1998).</li> <li>• Reports &amp; presentation of reports to the UN Human Rights Committee.</li> <li>• “<i>The Unleashing of Violence</i>” report</li> <li>• “<i>Who is Responsible?</i>” &amp; “<i>Who was Responsible?</i>” reports.</li> <li>• “<i>Are They Accountable?</i>” report.</li> <li>• “<i>Zimbabwe, the Abuja Agreement and Commonwealth Principles: Compliance or Disregard?</i>” report</li> <li>• International Symposium on “<i>Civil Society and Justice in Zimbabwe</i>”, Johannesburg (2003)</li> <li>• “<i>Order out of Chaos, or Chaos out of Order?</i>” &amp; “<i>The Aftermath of a Disastrous Venture</i>” reports.</li> <li>• “<i>If you can’t join them, beat them!</i>” &amp; “<i>Damned Lies? Post-Election Violence in Zimbabwe</i>” reports.</li> <li>• Approaches to the African Commission on Human and Peoples’ Rights, SADC Tribunal &amp; UN Bodies; setting up of International Liaison Office by the Forum; extensive advocacy &amp; lobbying regionally &amp; internationally.</li> <li>• “<i>Taking Transitional Justice to the People. Vols I &amp; II</i>” reports (2010 &amp; 2011).</li> <li>• “<i>Transitional Justice National Survey. A Report on the People’s Perceptions and Recommendations</i>” report (2011).</li> <li>• International Conference on Transitional Justice in Zimbabwe (2012).</li> <li>• International Conference on Transitional Justice in Zimbabwe (2013).</li> <li>• Establishment of National Transitional Justice Working Group (2014).</li> </ul>



Since the 1970s, Zimbabwean civil society has diligently documented the OVT that has taken place, producing over 450 individual reports since 1972 on every severe episode of OVT as well as on ongoing OVT between the more serious episodes. Over the decades, there have been nearly 600 individual reports by Zimbabwean and international human rights organisations, making Zimbabwe possibly the best-documented country in the world when it comes to exposing OVT when no transition has taken place.<sup>16</sup>

Alongside the documentation, advocacy, and lobbying over the decades has been the pervasive presence of impunity, both formal and informal. This pattern began in the 1970s with the Smith regime passing the Indemnity and Compensation Act, as pointed out above, but continued immediately at independence. Firstly, by the British government in 1979, whilst supervising the Lancaster House transition and the 1980 elections, and subsequently reinforced by the Zimbabwe government in 1980. Hailed as a magnanimous gesture by the ZANU-PF government not to pursue transitional justice, and undoubtedly contributing to a peaceful transition, the formal impunity, and the peace gesture by Robert Mugabe in his accession to power, this quickly became a dubious gift when the events of the 1982 Matabeleland emergency unfolded.

The horrific violence inflicted on the southern half was cured by a formal amnesty in 1987, and once again, transitional justice was avoided. The pattern has continued with attempts at amnesty – in 2000 – and presidential pardons: not even after the terrible OVT inflicted during the presidential re-run in 2008 produced any serious attempt at transitional justice. The *sine qua non*<sup>17</sup> of the Global Political Agreement (GPA) in 2008 and the Inclusive Government in 2009 that was the consequence of bloody elections was an agreement to avoid any formal transitional justice process, and the problems of the extensive OVT over the decades were handed to the Organ of National Healing and Reconciliation and Integration (ONHRI) in 2009. Whilst the ONHRI was a significant factor in the inclusion of transitional justice in the amended Constitution of 2013, its shortcomings also prompted the creation of another independent commission, the National Peace and Reconciliation Commission (NPRC).

It would be remiss in examining the challenge of impunity, however, not to briefly point out the frequent resort by the Zimbabwe government to modes of informal impunity, particularly since 2000. This has been amply documented by Zimbabwean civil society organisations, and this ranges from:

- failures to prosecute its supporters who commit crimes of violence and other crimes,
- initiating counter-prosecutions against those reporting OVT to the police,
- using draconian laws to harass opposition supporters, and even members of parliament.<sup>18</sup>

This “practical” impunity has been fought continuously since 1998 by human rights organisations through the use of civil litigation, an immensely expensive and lengthy strategy, but one that has

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<sup>16</sup> ZHRNGOF (2016), *Transitional Justice in Pre-Transitional Times: Are there any lessons for Zimbabwe?* Harare: Zimbabwe Human Rights NGO Forum. <https://researchandadvocacyunit.org/report/transitional-justice-in-pre-transitional-times-are-there-any-lessons-for-zimbabwe/>

<sup>17</sup> Latin for “an indispensable and essential action”

<sup>18</sup> SPT (2005), *Subverting Justice: The role of the Judiciary in denying the will of the Zimbabwe electorate since 2000*. MARCH 2005. Zimbabwe & South Africa: Solidarity Peace Trust. <https://solidaritypeacetrust.org/191/subverting-justice/>

considerable success in validating the claims of OVT being inflicted by state and non-state agents.<sup>19</sup> However, it rarely results in prosecutions by the state of the offenders following a successful civil suit., even when ordered by the courts, as in the case of Joseph Mwale, a CIO accused of murder, and the ZRP were ordered to investigate, but nothing happened.<sup>20</sup> It is more usual, as in the case of Joanna Mamombe, Cecilia Chimhiri and Netsai Marova, who complained of being subjected to abduction, torture and rape while later being arrested and charged with making false reports, amongst other things. Impunity thus continues, albeit in a less visible manner, without flagrantly violating the international acceptance that there can be no impunity for gross human rights violations such as torture.

What should be clear from this brief history is that Zimbabwean civil society, and especially the National Transitional Justice Working Group (NTJWG) and its members, waged a long struggle over two decades to bring about a transitional justice process. Thus, the establishment of the National Peace and Reconciliation Commission (NPRC) could be seen as a significant victory for human rights, creating the opportunity to put right the wrongs of the past and bringing relief to the tens of thousands of victims and survivors. But was this hope met over the life of the just-ended NPRC?

## 4. NATIONAL PEACE AND RECONCILIATION COMMISSION ESTABLISHMENT

The National Peace and Reconciliation Commission is one of the five Chapter 12 Commissions (independent Commissions supporting democracy) established by Section 232 of the Constitution of Zimbabwe. The NPRC is established explicitly in section 251 of the Constitution, and it came as a response to the calls made by Zimbabweans for post-conflict justice, healing and reconciliation. The Commission's mandate described in the constitution is broad; it is cast as all at once, a truth commission of sorts responsible for fact-finding and disclosing the truth concerning past violations, a peacebuilding mechanism to ensure the peaceful resolution of disputes, a vehicle for the realisation of reconciliation and national healing, as well as an early warning mechanism to detect and prevent the outbreak of violent conflict. Its tenure or period of operation, according to the Constitution, is ten years, beginning on 22 August 2013. However, the law defining its function and powers, the National Peace and Reconciliation Act (Chapter 10:31), was only passed in 2018, five years later.<sup>21</sup>

In 2016, the late President, Robert Mugabe, appointed and swore in the NPRC Commissioners, but without an enabling law that operationalises the Commission. This rendered the NPRC inoperable until 05 January 2018, when the new President, Emmerson Mnangagwa, signed the NPRC Act into

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<sup>19</sup> ZHRNGOF (2006). *An Analysis of the ZHRNGOF Legal Cases, 1998–2006*. June 2006, Harare: Zimbabwe Human Rights NGO Forum; ZHRNGOF (2021). *The wheels of justice for victims of Organised Violence and Torture: Analysis of Legal Cases: Zimbabwe Human Rights NGO Forum*.

<sup>20</sup> Redress Trust (2004). *ZIMBABWE. TORTUOUS PATTERNS DESTINED TO REPEAT THEMSELVES IN UPCOMING ELECTION CAMPAIGN. Preliminary Study of Trends and Associations in the Pattern of Torture and Organised Violence in Zimbabwe, July 2001 - December 2003*, LONDON: REDRESS TRUST. <https://redress.org/publication/zimbabwe-torturous-patterns-destined-to-repeat-themselves-in-upcoming-election-campaign/>

<sup>21</sup> Read more about the NPRC in the NTJWG's Guide to Understanding the NPRC available here: <https://ntjwg.org.zw/wp-content/uploads/2021/02/The-Guide-to-Understanding-the-NPRC-3rd-Edition-2020.pdf>

law, thereby making the Commission active. To recover the lost time (between 2013 and 2017), Concilia Chinanzvavana, a survivor of past human rights violations, filed an application for a declaratory order that the NPRC's life span of ten years be deemed to have commenced from 5 January 2018 when the NPRC Act was promulgated into law. On 13 March 2019, Justice Mafusire sitting in the High Court in Masvingo granted the declaratory order. As a result of the order, the NPRC's life span was deemed to have started in 2018 and set to end in 2028. This decision was celebrated by stakeholders and the NPRC alike as it gave the Commission more time to be operational and fulfil its mandate.

Regrettably, the Minister of Justice, Legal and Parliamentary Affairs appealed the decision of the High Court in the Supreme Court. After hearing the matter, the Supreme Court held that the ruling by the High Court to extend the lifespan of the NPRC should be set aside.<sup>22</sup> The Supreme Court set aside the High Court's ruling suggests that the Court made a finding on the meaning of the words "after the effective date" however that is not the case. The Supreme Court, in its ruling, addressed technical issues and ultimately found that the High Court erred in granting the declaratory order. The Court, in its ruling, also stated that as a result of this erroneous granting of the declaratory order, the Court did not need to determine whether or not the interpretation given to s251 of the Constitution by the High Court was correct. Essentially, the Supreme Court set aside the High Court ruling without shedding light on the meaning of the words "after the effective date".

The government's inordinate delays in setting up the NPRC and the court appeal signalled the state's unwillingness to have the transitional justice and peacebuilding architecture from continuing to exist beyond 2023 in the recovery of the lost five years. This substantively points to the government's lack of political will to pursue a credible process of dealing with past violations and indications for delivery failures in the long term. In May 2023, Justice Minister Ziyambi Ziyambi revealed in Parliament that his ministry was working on transferring the functions of the NPRC to the Zimbabwe Human Rights Commission, as they cannot extend its term limit unless the country's constitution is amended to allow for that extension.<sup>23</sup>

The specific responsibilities of the Commission are outlined in Section 252, with the first three responsibilities serving as its central focuses, which are to (a) to ensure post-conflict justice, healing and reconciliation; (b) to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes and (c) to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice. The ten functions are:

- a) to ensure post-conflict justice, healing and reconciliation;
- b) to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes;
- c) to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;

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<sup>22</sup> Minister of Justice, Legal and Parliamentary Affairs and 3 Others v Chinanzvavana and Another (119 of 2021) [2021] ZWSC 119 (19 October 2021) retrieved from <https://zimlil.org/zw/judgment/supreme-court-zimbabwe/2021/119>

<sup>23</sup> See news report here <https://www.thezimbabwean.co/2023/05/govt-to-transfer-nprc-functions-to-zhrc/>

- d) to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups to prevent conflicts and disputes from arising in the future;
- e) to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;
- f) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- g) to develop mechanisms for early detection of areas of potential conflicts and disputes and to take appropriate preventive measures;
- h) to do anything incidental to the prevention of conflict and the promotion of peace;
- i) to conciliate and mediate disputes among communities, organisations, groups and individuals; and
- j) to recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances.

The adoption of these provisions (establishing the NPRC) in the constitution was a result of the Zimbabwean people's acceptance and recognition of the need to recreate a socially cohesive society founded on democratic values that promote peaceful communities.

## 5. PERFORMANCE EVALUATION OBJECTIVES AND METHODOLOGY

Establishing the extent to which the NPRC has progressed towards meeting its constitutional obligations is critical for two reasons. Firstly, the Commission's tenure has constitutionally come to an end. Secondly, transitional justice remains central to Zimbabwe's sustainable peace building processes and pathways to human security promotion and the restoration of the Zimbabwean citizens' dignity. The NPRC was expected to end the country's state fragility, eliminate structural violence, restore liberation ideals and promote peaceful coexistence. Hence, the overall performance assessment of the NPRC seeks to locate the Commission's progress, successes, failures, and challenges toward effective transitional justice planning and field intervention management. The evaluation report's outcomes will inform future efforts in transitional justice interventions, both during and beyond the NPRC's existence. Specific evaluation objectives are:

- To review the operations, successes, and failures of the NPRC since its inception in 2018 to 2023;
- To identify the NPRC's operational and legislative gaps in line with international best practices and
- To make recommendations for informed future transitional justice advocacy initiatives.

### Methodology

The research adopted a victim-centred approach in analysing the NPRC's performance since its establishment. A victim-centred approach responds to the victims' needs and perceptions of families and the needs and perceptions of communities, as opposed to solely punishing perpetrators. This approach puts victims and survivors at the very centre of transitional justice intervention strategies.

Qualitative research approaches in both data gathering and analysis were used to construct this report. Key informants interviewed were academics, peacebuilding and conflict transformation practitioners, human rights defenders, victims, and opinion leaders from various communities. Civic society leaders and transitional justice stakeholders from both within and outside government agencies were also consulted. Secondary data was gathered from journal articles, national transitional justice documents such as Acts of Parliament, the Constitution, transitional justice policies and reports and other publications.

Data analysis was performed using thematic analysis techniques. Thematic analysis is a technique used to identify, analyse and interpret patterns of meaning ('themes') within qualitative data. It is used to identify patterns within and across data concerning participants' lived experiences, views, perspectives and practices.

## 6. NPRC PERFORMANCE: AN ANALYSIS

The NPRC, as part of the Chapter 12 Commissions, was established to complement the entrenchment of human rights, democracy, and constitutionalism. In accordance with Section 235 (1c) of the Constitution, the Commission is accountable to the Zimbabwean Parliament. This means that the Commission's official performance is measured against its constitutional mandate and actual work reported to the Parliament of Zimbabwe, including oversight reports provided by the relevant Parliamentary Committees. Hence, the precise constitutional functions described in section 252 must be used to assess the Commission's performance. In pursuit of this goal, the analysis below explains the extent to which the NPRC performed over its lifespan between 2013 and 2023. The timeframe is significant because it covers (i) the period during which the Commission's operationalisation was stalled [2013-2017] and (ii) the period during which the NPRC became operational following the passage of the NPRC Act [2018-2023]. The conclusions incorporate what the NPRC presented to parliament as well as expert perspectives from peacebuilders, academics, civic society leaders, and communities affected.

### 6.1 Institutional Framework: The Transitional Justice Architecture

The Zimbabwean government half-heartedly supported the establishment of the NPRC as the country's transitional justice architecture. The institution was established halfway through its constitutional lifespan. The new Constitution, enacted in 2013, envisaged the NPRC being established in the same year (2013) to advance national healing and reconciliation efforts. However, the traction to establish the Commission began in 2016 when the late President, Robert Mugabe, appointed Commissioners without enabling legislation. The Commission was then legally established in January 2018 through the enactment of the NRPC Act (Statutory Instrument 90 of 2018). By 2019, the Commission had established a Secretariat with only 34 staff members. Subsequently, through 2021, the Commission established provincial offices in Bulawayo, Gweru, Mutare, Masvingo and Chinhoyi. To assist its Secretariat and field operations, the NPRC also established 10 Provincial Peace Committees. The Committees have an average membership of 30 people drawn from "political parties, women and youth organisations, people with disabilities, faith-

based organisations, civic society, war veterans, traditional leaders and government departments".<sup>24</sup>

The NPRC's decentralisation process was essential in enhancing access to the Commission's services. However, it must be noted that the decentralisation was very lean as it covered only five of the ten country's provinces. To worsen matters, the provincial offices were very dormant without their own activities rolling out except in situations where they would have been invited to participate in CSO activities.

## 6.2 Transitional Justice in Motion: Official Actions of the NPRC

The basis of judging the NPRC's performance is based on its constitutional mandate and the content of its official national. As noted earlier, the NPRC was charged with ten functions, the first three being its core responsibilities. Using the work documented in the Commission's annual reports and a review of each of the NPRC's ten constitutional responsibilities shows that the NPRC failed to meet expectations, as shown below.

- a) **to ensure post-conflict justice, healing, and reconciliation** – post-conflict justice is achieved through a transitional justice process where truth-seeking, prosecutorial justice, reparations and reforms are carried out to strengthen possibilities for healing, healing and sustainable peace. Based on the Commission's official reports to the Parliament of Zimbabwe, the Commission did not carry out any discernible activities in order to ensure post-conflict justice, healing, and reconciliation. An attempt towards these actions was two rash activities that include organising meetings for women-only safe spaces; and (ii) exhumation and reburial campaigns.
- **Women safe spaces** -thinly spread plot study dialogues were organised between 2019 and 2020. The activities were platforms created for women to talk about their experiences during the country's various conflict episodes, particularly during the liberation struggle, during the 2008 and 2013 electoral violence (Mutoko) and during the Gukurahundi conflict (Zhombe, Tsholotsho, Entumbane and Maphisa). These meetings were numerically insignificant and prematurely ended as they did not go further to ensure that those who gave their testimonies received justice and reparations and that truth was recovered from the perpetrator's position.
  - **Exhumation and reburials** - the Commission never conducted any exhumation and reburials. It did, however, participate in two reburials in Tsholotsho conducted by a civil society organisation, Ukhuthula Trust, in 2020. The Commission acknowledges in its 2019 and 2020 reports that it stopped carrying out reburials and instead chose to draft a policy on exhumations and reburials in partnership with the Ministry of Home Affairs and Cultural Heritage and the Department of Museums and National Monuments of Zimbabwe to ensure that the process is guided. This purported policy, however, has not been made (accessible) public since 2020. Nonetheless, the Commission continued recording complaints about exhumations and reburials and the concerns were never

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<sup>24</sup> NPRC (2019) Annual Report – January – December 2019, page 18.

resolved despite the fact that the reburials were at the request of some victims of past conflicts in Matabeleland North and Matabeleland South provinces.<sup>25</sup>

While the aforementioned actions were initial pathways to post-conflict justice, healing, and reconciliation, they fall well short of meeting the demands of the victims. The NPRC failed to facilitate truth-telling, acknowledgement of historical events, apologies, reparations, and accountability of past violations, which are cardinal to post-conflict justice, healing, and reconciliation processes. The NPRC reports do not reveal any cases of past violations where justice was served and healing and reconciliation achieved.

- b) **to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes** – the NTJWG acknowledges that the NPRC was able to establish structures that would catalyse the implementation of programmes that promote national healing, unity, and cohesion in Zimbabwe. These structures include the Commission’s internal and external committees such as:
- a. The Conflict Prevention, Management, Resolution and Transformation
  - b. Healing, Reconciliation and Rehabilitation
  - c. Victim Support, Gender, and Diversity
  - d. Complaints Handling, Investigations and Legal Services
  - e. Research and Knowledge Management among others.

The NPRC also established Provincial Peace Committees and regional offices in Mutare, Chinhoyi, Gweru and Bulawayo.

However, these structures were isolated, away from grassroots spaces. The NPRC’s technical committees in the Secretariat implemented inward-looking programmes targeted at enhancing staff institutional capacities. In cases of external programmes, the NPRC’s activities were blatantly elite, non-transitional justice in nature and distant from the victims and survivors. For example, the NPRC recorded in its annual reports that it carried out strategic engagements with the key stakeholders in peacebuilding, including national security institutions, traditional leaders, government agencies, and the national dialogue process through the Political Actors Dialogue (POLAD). These processes were elitist without the affected masses. The Commission deliberately knew that the actions were immaterial and of no consequence to the victims of gross human rights violations. Hence, the NPRC arguably did not substantively deliver on this core function.

- c) **To bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;** – in this core function, truth-telling and truth-seeking are central. In transitional justice contexts, the function required the NPRC to establish a narrative of events that happened during various conflict episodes in Zimbabwe (with a focus on human rights violations) and to ensure that the truth is made public. During the NPRC’s existence since 2018, there have not been any notable or rather deliberate programmes aimed at encouraging truth-telling, reconciliation or justice provision. The Commission’s reports are deathly silent on truth-seeking.

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<sup>25</sup> NPRC (2020) Annual Report – January – December 2020, page 46.

If the NPRC had encouraged truth-telling, it would have created spaces for victims and survivors to share their experiences and receive information and affirmation of their experiences, which leads to healing and reconciliation. Truth-seeking opportunities re-creates the victims' voices, unknown stories and facts would come to the open and blame would be assigned to the relevant perpetrators – who must take responsibility for their actions. This has not happened in the life of the NPRC's existence and operations.

- d) **to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations, and other groups in order to prevent conflicts and disputes arising in the future** – as noted in the Commission's second constitutional function, it indeed established mechanisms for peacebuilding including Provincial Peace Committees, and regional offices in Masvingo, Mutare, Bulawayo, Chinhoyi and Gweru. Within its secretariat, the Commission had solid committees responsible for investigations and complaints handling, victims and gender support, conflict prevention and knowledge management. These were commendable essential systems and infrastructures ready to advance transitional justice projects.

However, the structures and institutions operated at elite levels, while some were never functional after their establishment. For example, the Provincial Peace Committees never carried out programmes that sought to promote dialogue, healing, and reconciliation on their own. The Committees were highly controlled and functionally censured by the NPRC Secretariat and could not function on their own. They were starved of financial and human resources and, in some, incapacitated by societal political polarisation.

- e) **to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;** – the NPRC ought to have been central in ensuring that this function is undertaken with the utmost diligence, but it dismally failed. There are not any publicly acknowledged initiatives to combat torture and persecution that the NPRC undertook. Since 2018, there have been multiple cases of torture and inhuman and degrading treatment that were perpetrated by members of the state security and political parties, but the NPRC never outrightly condemned these barbaric acts, no publicly known investigations took place, and no accountability measures were taken against the perpetrators.

For example, the abduction and torture of Joana Mamombe, Netsai Marowa and Cecilia Chimhiri is a clear demonstration of the NPRC's failure to ensure that the prevention of torture and inhuman treatment as well as the provision of rehabilitation and reparation support services. The three were unlawfully arrested and detained at Harare Central police station. The victims were later driven out of the city, thrown into a pit, beaten, sexually assaulted and forced to eat human excrement. They were found two days later, 80km from Harare. The NPRC left this case to lie low, and the state won over gross human rights violations. To show concern and substantively execute its mandate, the NPRC ought to have reached out to these poor, persecuted activists for support.

The table below summarises some of the notable cases where the NPRC dismally failed to demonstrate its force and capacity to prevent torture and persecution, as well as provide psychosocial rehabilitative support for the victims.



Year	Violations
• 2018	<ul style="list-style-type: none"> <li>A total of 6 people died. More than 35 were injured and hundreds were traumatised.</li> <li>The Motlanthe Commission of Inquiry was established and the state was found culpable of gross human rights violations.</li> <li>There was no attempt to investigate and prosecute these serious violations committed by state security forces.</li> <li>The NPRC did not reach out to these victims for support except for civic society organisations who provided psychosocial needs.</li> </ul>
• 2019	<ul style="list-style-type: none"> <li>In January 2019, state security used excessive force to crush civilian protests against increased fuel prices and severe food shortages.<sup>26</sup></li> <li>About 17 people were killed and 17 women were arrested and raped by uniformed soldiers.<sup>27</sup></li> <li>Other victims of torture and persecution included Obert Masaraure, comedian Samantha Kureya (known as “Gonyeti”), activist Tatenda Mombeyarara, and students Tawanda Muchehiwa and Takudzwa Ngadziore.</li> <li>The NPRC did not reach out to these victims regardless of the prominence of the cases and the need for them to establish facts surrounding the matters and no accountability has been publicised to this effect.</li> </ul>
• 2020	<ul style="list-style-type: none"> <li>In May, three women activists were abducted and tortured: Joannah Mamombe, Netsai Marowa and Cecillia Chimbiri.</li> <li>More than 70 people were abducted and tortured during 2020.</li> <li>The police violently dispersed protests in July, wherein 16 protesters were injured and a further 60 were arrested.<sup>28</sup></li> </ul>

**NB: These cases are not exhaustive. They are only a demonstration of prominent cases where the NPRC should have taken action to address the transitional justice needs of the victims but also ensure non-recurrence.**

There is no known rehabilitation, therapeutic, or support initiative that the NPRC established or carried out to promote reparations and rehabilitation of victims and survivors. The NPRC’s recovery programmes are of public interest, but its reports provide generic data that it referred its clients (victims and survivors) to other service providers without releasing full details. Besides, among several known victims, none have confirmed the NPRC’s interventions.

- f) **to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;** – according to the Commission’s 2019, 2020, 2021 and 2022 reports, it received a total of 3310 complaints and investigated some of them while also providing appropriate remedies. Major cases the Commission has recorded in its annual reports include land conflicts, sexual and gender-based violence, political violence and partisan aid distribution. A significant number of these cases were referred to other government agencies without a feedback mechanism to indicate how the cases would have been resolved. These cases are consequential to the broader national healing and reconciliation issues that the same Commission has failed to address.

<sup>26</sup> Human Rights Watch (2019). Zimbabwe: Excessive Force used against protestors: Investigate, Prosecute Responsible security forces. Available at: <https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters>

<sup>27</sup> Genocide Watch (2021). Genocide Country Report: Zimbabwe. Available at: <https://www.genocidewatch.com/single-post/genocide-watch-country-report-zimbabwe>

<sup>28</sup> Zimbabwe Lawyers for Human Rights (2020). Available at: <https://twitter.com/ZLHRLawyers/status/1289576988689043462>

Commenting on the Commission's activities, one interviewee argued that the Commission failed to substantively address issues of violence, conflict, and peacebuilding as most of its work is more on workshop hosting and not dispute resolution or initiating dialogue. This shows that the NPRC handled grievances that were not substantively related to transitional justice. Rather, the Commission dealt with general conflict situations that did not involve gross human rights violations arising from the country's dark past. This observation, for instance, explains why the NPRC was unable to address reburial and exhumation complaints as well as any cases related to enforced disappearances and political impunity, among other issues.

- g) **to develop mechanisms for early detection of areas of potential conflicts and disputes and to take appropriate preventive measures;** – the NPRC designed a conflict early warning and early response (CEWER) system with distinct early warning signs (described on pages 51 and 53 of its 2021 report). However, the CEWER system's impact has been virtually imperceptible within communities. Politically motivated violence and socioeconomic violations persisted under the NPRC's watch. For example, the Commission established an Election Violence Prevention Strategy for 2018, but it failed to prevent the post-election violence on the first of August 2018. It failed to investigate the violations until the Motlanthe Commission of Inquiry was appointed, and it failed to ensure that the inquiry's recommendations were implemented.
- h) **To do anything incidental to the prevention of conflict and the promotion of peace;** – since the operationalisation of the NPRC, Zimbabwe has experienced some of the worst human rights violations, including abductions, street shootings and inter-party violence, but at no point did the Commission facilitate the resolution of the conflicts and their root causes. Hence, it is difficult to point out specific instances where the NPRC has deliberately worked on conflict prevention. The violence experienced in Zimbabwe during the NPRC's tenure casts doubt on the institution's capacity to institute conflict early warning and early response system for the country.

Notably, however, the NPRC had instances where it issued peace messages and press statements imploring Zimbabweans to avoid violence and build a peaceful future. These actions were insignificant since violence and conflict continued with impunity. The statements and peace messages were not accompanied by strong measures such as investigations into the violence, dialogues among conflicting parties and holding the perpetrators accountable.

- i) **to conciliate and mediate disputes among communities, organisations, groups, and individuals;** – the Commission's reports indicate that it indeed mediated disputes within communities and organisations. However, these efforts are not corroborated by many citizens because the Commission was thinly spread and not explicitly visible at grassroots levels. A significant number of victims known to the NTJWG have not benefited from the Commission's mediation, among other dispute resolution mechanisms.

More substantively here is that the NPRC claims to have carried out several mediation cases, but it does not document the factual cases where mediation took place. If the NPRC were proud of its mediation cases, if they were material to transitional justice, it would have documented them to show its milestones and to help support information dissemination and education to other actors.

- j) **to recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics, or other circumstances** – According to the

Commission's reports to Parliament, various pieces of legislation and policies are sent to the Zimbabwean Parliament for consideration. Among the mentioned laws are the Births and Deaths Registration Act, the Customary Marriages Act, the Marriage Act, the Defence Act, the Police Act, the Prisons Act, the Education Act, the Electoral Act, the Provincial Councils and Administration Act, and the Traditional Leaders Act. It also suggested the passage of a law prohibiting abductions, enforced disappearances, and torture. However, these suggested laws were unaligned by the end of August 2023.

### 6.3 International Transitional Justice Policy, Practice and Processes

The NPRC failed miserably to fulfil the litmus test of worldwide best practices in transitional justice. International legal standards underpinning transitional justice pillars require that truth-telling, justice, reparations, institutional reforms, and reparations be carried out as part of confronting situations of past large-scale human rights violations and humanitarian abuses.<sup>29</sup> Besides international laws and conventions guiding transitional justice, valuable, important sources of these international standards for transitional justice include the United Nations Secretary General's Guidance Note on Transitional Justice<sup>30</sup> and the African Union Transitional Justice Policy (AUTJP).<sup>31</sup> Both documents outline crucial practices and actions that advance sustainable peace and democracy.

These efforts prevent future gross human rights violations, ensure the non-recurrence of similar crimes against humanity and help to build sustainable peace. Governments will foster sustainable peace and democracy while ending impunity, a culture of violence, and establishing the rule of law. The acknowledgement of victims and survivors, civic trust building, reconciliation, and democratisation are at the heart of standard transitional justice practices. Hence, in addition to its constitutional mandate, the NPRC's performance can be judged against these international criteria.

#### (i). Truth-Telling

Victims have a *right to know*, which is fulfilled by a truth-telling process. In transitional justice processes, truth-telling is meant to expose what actually happened to victims and survivors of past conflict and violence. In accordance with Section 252(c) of the Constitution, the NPRC was obligated to support truth-telling, but it never did so formally. Initiatives for truth recovery may have been carried out, for example, by organising public hearings across the nation, after which the Commission will record the testimonies of the victims and witnesses and grant accused perpetrators the right to reply to the allegations. However, the 2019 and 2020 reports from the NPRC clearly indicate that public hearings never took place, which implies that there have never been official truth recovery initiatives.

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<sup>29</sup> Gissel, L. E. (2022). The standardisation of transitional justice. *European Journal of International Relations*, 28(4), 859–884.

<sup>30</sup> United Nations Secretary-General. (2010). *Guidance note of the Secretary General: United Nations approach to transitional justice*. United Nations.

<sup>31</sup> Dersso, S (2021). *The African Union Transitional Justice Policy: Expanding the frontiers of transitional justice*. Policy Brief. CSV.

The notion of encouraging truth-telling is based on the legal and moral perspectives that victims have a right to know what occurred during the violations, who committed the violations, and how they were carried out. Truth-telling empowers victims, and the entire process works to put an end to impunity while fostering genuine healing and reconciliation.

The NPRC, however, provided a few women with platforms through *women's safe spaces* activities, where they were given the chance to narrate their lived experiences during various conflict episodes in Zimbabwe. This initiative could have been an appropriate springboard for truth-telling initiatives if it had been implemented in accordance with the letter and spirit of transitional justice.

### ***(ii). Institutional Reforms***

The reform of public institutions in transitional justice is intended to transform public institutions in their broad definition (particularly those of the security sector) from being instruments of oppression into becoming instruments of public service and integrity. When public institutions are reformed, there will be some guarantee that abuse, violence, and any other forms of human rights violations will not occur again. Instead of facilitating institutional reforms, Zimbabwe's national institutions have contributed to the entrenchment of authoritarianism and the worsening of gross human rights violations. For example, in the country's election history, unarmed civilians were shot to death by members of the armed forces in 2018. Despite the availability of a Commission of Inquiry Report detailing the violations, the NPRC failed to take any action towards holding the perpetrators accountable and ensuring that remedies to the victims were proffered.

Institutional reforms broadly include reforming the manner in which the public sector works in terms of the recruitment of government workers, service delivery, and public allocation of resources to improve the protection of human rights and advance healing and reconciliation. To advance these reforms, the NPRC could have developed national frameworks for civil servants' vetting and lustration, as well as taking stock of constitutional and legal reforms. None of these were proposed; hence, it is appropriate to suggest that there are no identifiable institutional reforms that were progressively implemented by the government as a result of the NPRC's work.

### ***(iii). Justice and Accountability***

The NPRC does not have any known cases where it facilitated criminal accountability of those who caused gross human rights violations in the past, yet international law obliges states to investigate and prosecute perpetrators of crimes against humanity. In any national healing and reconciliation process, justice is fundamental because it evokes the criminal responsibility of violence entrepreneurs and perpetrators. Countries that went through transitional justice processes, such as Rwanda, Sierra Leone, Chile, Colombia, Argentina, and Yugoslavia, once implemented criminal justice initiatives, including establishing international tribunals and domestic courts to prosecute perpetrators for gross human rights violations. The perpetrators were held accountable and punished for their crimes. Hence, if the NPRC had successfully facilitated criminal accountability, electoral and politically motivated violence experienced in 2018, 2019 and 2023 would have been avoided. Prosecutions are an effective deterrent measure against would-be offenders and potential acts of private revenge; they prevent impunity and discourage further violations. Prosecutions of perpetrators also fulfil a moral obligation to the victims and provide a guarantee that those who had committed human rights crimes would not retain positions of power in government systems.

#### (iv). *Reparations and Rehabilitation*

The NPRC is not known to have implemented any reparations and rehabilitation initiatives. Carrying out reparations and rehabilitation programmes for victims helps to repair the material and moral damages caused by past abuses. Reparations typically comprise a mix of material and symbolic benefits. Financial payments are examples of material benefits, whereas apologies, memorials, and commemorations are examples of symbolic reparations. Countries such as Chile, Argentina, and Brazil established reparation programmes to deal with their governments' prior military dictatorships' atrocities.<sup>32</sup> A review of the NPRC's annual reports to Parliament does not show any government actions taken towards assisting victims through these rehabilitation and reparation activities. This omission essentially demonstrates that the NPRC was far from being a victim-centred institution.

Reparations are an international standard practice established in the United Nations *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. The principles were adopted by the UN General Assembly through Resolution 60/147 of 16 December 2005. Other international laws that protect and provide remedies for victims include the Rome Statute of the International Criminal Court<sup>33</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>34</sup> Hence, the NPRC's failure to provide remedies to victims of past gross human rights violations falls short of both Zimbabwe's Constitutional expectations and the country's international law obligations.

#### (v). *Reconciliation*

Reconciliation seeks to restore relations, peace and coexistence among victims and perpetrators. It entails finding ways to balance issues such as truth and justice so that former opponents can gradually change their behaviours, attitudes and emotions towards each other. In an attempt to promote political reconciliation, the government established the Political Actors Dialogue (POLAD) forum, which was chaired by the NPRC. Except for *Peace Pledges*, which were mainly one-time activities performed during election campaigns, the NPRC itself failed to establish avenues for national healing and reconciliation. The Commission's initiatives were largely futile since they were unable to combat impunity and acute violence, which continued unabated under the Commission's watch. Beyond the pitiful POLAD and elitist Peace Pledges, there were never any significant initiatives undertaken to promote reconciliation.

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<sup>32</sup> Binda, A. (2007). *Masodja: The history of the Rhodesian African Rifles and its forerunner the Rhodesia Native Regiment*. Johannesburg: South Publishers.

<sup>33</sup> The Rome Statute of the International Criminal Court is a body of law that establishes the International Criminal Court which has the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions.

<sup>34</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

Reconciliation exists when divided communities display the capacity to acknowledge their experiences and mutually disagree without engaging in violence or conflict while ensuring that unity prevails beyond such differences. It involves five steps, which include:

- Developing a shared vision of an interdependent and fair society;
- Acknowledging and dealing with the past;
- Building positive relationships;
- Facilitating significant cultural and attitudinal change; and
- Enabling substantial social, economic, and political change.

Despite the NPRC's existence for five years, these criteria for reconciliation do not exist in Zimbabwe. Given the NPRC's shortcomings, Zimbabwe remains unreconciled, which suggests the need for appropriate measures to foster reconciliation in pursuit of sustainable peace.

## 7. THE SITUATION OF VICTIMS

The victim's and survivors' situation has not improved since the NPRC was established and put into operation in 2018. This is in contrast to the perspective that every transitional justice program must be victim-centred and focus on the interests of victims. A victim-centred approach puts the rights and dignity of victims at the forefront of all efforts to prevent and respond to legacies of gross human rights violations. The NPRC can be described as having been contemptuous of victims because it left them in a worse-off position, with all expectations for the truth, justice, reparations, and reconciliation unfulfilled. Victims are in a predicament of living together with their perpetrators, who remain unrepentant and criminal. In order to be considered successful during the course of its existence, the NPRC should have assisted victims by attending to their material, monetary, emotional, and social needs. The credibility and legitimacy of the NPRC's transitional justice work can only be judged by the extent to which victims and survivors oppose or support its work and the degree to which the victims were able to participate in and benefit from the Commission.

At present, without justice and accountability, victims will continue experiencing trauma and violent cycles in their lives. This is because victims are living among their abusers, and they will always be afraid of recurrence. For instance, it is undeniable that the Gukurahundi victims and victims of various political and electoral violence are living together with their abusers, who are unremorseful and still boast of being untouchable. When past human rights violations are not addressed, victims feel powerless and have their dignity stripped as they watch their perpetrators walking scot-free, with some being awarded positions in the government. If the NPRC had excelled in promoting the rights of victims, it would have ensured accountability and justice for victims, thereby protecting them from cyclical violence and abuse.

Victims are entitled to know the truth as well as an official narrative of what occurred to them during the conflict. However, no serious efforts have been made throughout the NPRC's existence to ensure that this right is enjoyed and guaranteed. If the NPRC had not denied victims their right to know, their situation concerning healing and reconciliation would have improved.

It is important to recognise that all victims in Zimbabwe are suffering from poverty, primarily because they lost their livelihoods and support systems. Victims are shielded from stigmatisation, discrimination, reprisal, and re-traumatization when they are empowered through reparations. Hence, the NPRC should have promoted access to reparations, including compensation, rehabilitation, and restitution, in order to cushion victims, thereby setting them on a recovery path.

## 8. OPERATIONAL AND STRUCTURAL GAPS AND CHALLENGES

The NPRC experienced multiple challenges, including administrative, structural, and operational encounters. In accordance with the Constitution, the NPRC was expected to operate as an independent institution with the capacity to create policies and frameworks at national and local levels to address historical human rights violations and facilitate healing and reconciliation processes while acting as an early warning and early response system to prevent future conflicts and disputes. However, several obstacles, including a lack of sufficient financial resources, a lack of political will, weak institutional ability, and infrastructure, among other things, prevented the Commission from fulfilling these aspirations. The NPRC's work was also hampered by political polarisation and public mistrust of the Commission. Positive engagement is impossible without faith in national institutions like the NPRC. Competition among organisations and institutions working in the space of peacebuilding and poor representation of minority and disadvantaged groups are two other difficulties that had an impact on the Commission's work.<sup>35</sup> Below are detailed issues exploring major challenges experienced by the NPRC.

- **Political will:** The Commission failed to meet its expectations due to a lack of political will in two folds. Firstly, there was no political will to set up the NPRC as a transitional justice vehicle, hence its delayed establishment by five years. Secondly, when the NPRC commenced its operations, responsible state institutions did not cooperate with the Commission. For example, in setting up the CEWER system, most “participants from the roundtables were mainly from civil society and the state actors who are key in providing response were not on the table. This weakened the effectiveness of the platform”.<sup>36</sup> In Zimbabwe, the state is a more significant participant because it is the one that enforces political accountability (and accountability to citizens) and ensures political will. Hence, its unwillingness to cooperate with the NPRC and civil society towards ensuring an effective national healing and reconciliation architecture was an enormous impediment.
- **Financial resources:** The Commission reported insufficient financial resource allocation during its operation (2018-2022). Its institutional structure and field operations were influenced by its funding base, which was generally lesser than other Chapter 12 Commissions. The Commission's mobility and other logistical functions were adversely impacted by the lack of institutional vehicles such that at some point, Commissioners were forced to use their own vehicles to attend NPRC business. By way of example, the Commission reports that during the 2018 elections, it did not have adequate vehicles, which forced Commissioners to use their personal cars.
- **Human Resources Inadequacies:** The Commission was unable to hire sufficient human resources due to insufficient budgetary resources until 2021 when it was able to hire a total

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<sup>35</sup> NPRC (2019) Annual Report – January – December 2019, page ix.

<sup>36</sup> NPRC (2018) Annual Report – January – December 2019.

of 105 staff members. The Executive Secretary and 31 other staff members were hired in October of 2018 when the national Treasury gave its approval, giving the Commission its first Secretariat. Out of the necessary 104 employees, the Commission only had 34 as of December 2019. By December 2020, the Commission was still only using about half its employees. By December 2021, with 105 persons on the approved staff, the full staff complement had been reached.

- **Public political polarisation and mistrust of the Commission:** The Commission was impacted by political polarisation, especially during its public engagements. Polarity motivated intolerance and lack of cooperation, especially by political parties, during the Commission's engagements with members of the public. The Public's limited trust in the Commission directly impacted citizens' participation in the Commission's work towards delivering peace, healing, and reconciliation in the country. Based on the Commission's reports, citizens also mistrusted traditional leaders whom the NPRC was attempting to work with. As a result, the Commission had to invest in traditional leaders' engagements.
- **Poor Parliamentary Oversight on Transitional Justice:** The Parliament failed to fulfil its responsibility by ensuring that transitional justice is carried out as envisaged by the Constitution. Firstly, there was poor or no Parliamentary supervision of the NPRC. The Commission's reports demonstrate that there was very little interaction between the NPRC and the Parliamentary Committees responsible for providing oversight to the Commission. Without oversight from lawmakers, the NPRC remained vulnerable to political control and interference by the government and political parties, hence losing its operational independence flavour. Secondly, the Parliament failed by disregarding recommendations from the NPRC. For example, in 2019, the Commission recommended that the Prescription Act<sup>37</sup> must be amended to extend the prescription period from three years to five years or more, but this was not done. Other NPRC recommendations to Parliament that were not taken into consideration included the enactment of laws to protect victims and witnesses, creating legal and policy frameworks to handle exhumations and reburials of victims of past conflicts and promulgating laws that promote language diversity across the country, lobbying for the registration of political parties and an Act of Parliament to regulate the conduct of such political parties.<sup>38</sup>

In 2020, the Commission further recommended the alignment of several laws to the Constitution, including the Births and Deaths Registration Act, Customary Marriages Act, Marriage Act, Defence Act, Police Act, Prisons Act, Education Act, Electoral Act, Provincial Councils and Administration Act and the Traditional Leaders Act, among others. It also proposed the enactment of the Law against Abductions, Enforced Disappearance and Torture. Many of these laws are yet to be aligned, and the Parliament's failure to do so timely worked against the pursuit of national healing and reconciliation in the country.

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<sup>37</sup> The Prescription Act gives legal recognition to rights (and titles) that have been (de facto) long enjoyed, even if the enjoyment of that such right or the title was illegal or morally wrong at the time of its establishment. The law uses to consider it expedient to not to disturb such kind of enjoyment. In other words, the Act provides for the acquisition of ownership of things by prescription, the acquisition and extinction of servitudes by prescription and the extinction of debts by prescription; and to make provision for matters connected therewith. See: <https://www.law.co.zw/download/prescription-act-chapter-811/>

<sup>38</sup> NPRC (2019) Annual Report – January – December 2019, page ix.



- **NPRC Institutional Independence:** The NPRC actions were perceptually biased towards protecting perpetrators and leaving victims without protection. This perception emerged and eroded public trust because some of the Commissioners were openly sympathetic to the ruling party. For example, Commissioner Obert Gutu, the NPRC's Spokesperson, openly declared his support of the ruling party severally. This was contrary to the expected conduct of a Commissioner in the NPRC. Secondly, the Commissioners were unwilling to investigate and (publicly) report their findings on past gross human rights violations and could not publicly condemn perpetrators of political violence and gross human rights violations.<sup>39</sup> Hence, it can be argued that the NPRC's institutional independence and eroded public trust contributed to its failure to deliver victims and the public expectations.

## 9. CONCLUSION

The NPRC's constitutional mandate has come to an end without any meaningful progress on transitional justice. Instead of carrying out fundamental duties that facilitate truth-telling, justice and accountability, reparations and institutional reforms, the Commission's work was consigned to peripheral administrative and internal capacity-building activities that fell far short of meeting any transitional justice benchmarks. The erosion of public trust in the Commission dented its peace-making, peacebuilding and violence prevention opportunities. Lack of institutional independence and conflict transformation skills made it problematic for the Commission to depolarise the country's political communities. The central government principally failed the Commission's work by withdrawing political will and starving the institution of financial resources. The lack of political will essentially made the NPRC a white elephant whose work was limited to workshops and strategic engagements with elite government institutions without any public traction. The NPRC should have implemented programmes and activities that contribute directly to its mandate and provisions in section 252 (a-j) because a review of its past five years' operations shows no specific interventions that contribute directly to post-conflict justice, healing, and reconciliation, hence a failed institution. A recalibrated transitional justice system is, therefore, necessary.

## 10. RECOMMENDATIONS FOR FUTURE TRANSITIONAL JUSTICE EFFORTS

There are three major actions that are required to ensure that transitional justice takes place in Zimbabwe and that all victims receive justice and reparations. Political will is an essential asset to an effective transitional justice process. Below are the recommended actions on the way forward.

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<sup>39</sup> Nyamanhindi, Ched (2021). "Building Peace in the Shadows of a Predator State: Unpacking the Work of the National Peace and Reconciliation Commission (NPRC) in Zimbabwe." *International Journal of Scientific and Research Publications* 11, no. 1 and National Transitional Justice Working Group (2019) 'Not Alone' The Role of Independent Commissions in Times of Crisis. NPRC Watch. Available at: <https://ntjwg.org.zw/wp-content/uploads/2021/02/NPRC-WATCH-NOT-ALONE.pdf>

### 10.1. The Government of Zimbabwe

Beyond the NPRC's constitutional lifespan, it is essential for the government to re-establish a transitional justice system that enables a genuine national healing and reconciliation process to take place. This can be done by establishing a more transparent and independent body that mirrors the functions of the NPRC, albeit with more resources and institutional powers to facilitate dialogue among political actors, receive complaints and conduct thorough investigations without undue interference.

Lack of political will was one of the major impediments in the NPRC operations. In establishing a recalibrated transitional justice mechanism, the government must, therefore, put in place substantive mechanisms to promote political will and dialogue among various conflicting parties. A strategic focus on building political willingness among political parties and government agencies is essential to unlocking resistance and fostering transformational attitudes and behaviours among government agencies and political parties.

It is instructive that the government must inspire public confidence to secure maximum cooperation and support towards promoting peace, healing, and reconciliation in the country. At present, some citizens' perceptions of the NPRC and the government reinforce political polarisation, mistrust in national institutions and, ultimately, lack of cooperation and openness, especially by victims. Public confidence can be rebuilt by establishing the rule of law, aligning all human rights infringing laws with the constitution and creating spaces for civic engagement.

### 10.2. Civil Society Organisations

The end of the NPRC's tenure signals a huge gap in transitional justice processes. To avoid intervention gaps and a further regression of communities into violence, the civic society must accelerate its work on transitional justice, peacebuilding and early warning and early response. To expand the frontiers of transitional justice information dissemination, awareness raising and human rights protection, civic society organisations should also begin building synergies and engagements with other existing independent commissions such as the Zimbabwe Human Rights Commission, the Zimbabwe Media Commission and the Zimbabwe Gender Commission.

### 10.3. Citizens, Victims and Survivors

Transitional justice is about recognising victims' and survivors' needs and fulfilling them with justice and reparations. Hence, it is imperative that victims and survivors collectively raise their voices towards establishing a mindful government system that promotes justice, healing, and reconciliation. The lack of victim participation makes transitional justice ineffective and meaningless. To support victims and survivors and the general pursuit of a socially cohesive society, Zimbabwean citizens must also actively participate in peacebuilding processes in a way that creates collaborative demand for transitional justice initiatives.

