STATE OF TRANSITIONAL JUSTICE IN ZIMBABWE
2019 REPORT
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EXECUTIVE SUMMARY

Welcome to the 2019 Edition of the State of Transitional Justice in Zimbabwe Report. This report carries out an audit of Zimbabwe’s state of compliance with its transitional justice obligation, both domestic and international. These obligations emerge from primarily the Constitution of Zimbabwe, other statutes, reports and recommendations of independent commissions and other bodies mandated by law to carry out any inquiries or investigations into transitional justice issues. Obligations also arise from recommendations of United Nations bodies, special mandates and other soft law.

The report goes further to also track important transitional justice processes like the activities of the National Peace and Reconciliation Commission (NPRC), non-state actors and matters emerging from such processes. It highlights both the activities carried out by the National Transitional Justice Working Group (NTJWG), transitional justice stakeholders (CSOs and survivors) and the activities implemented by the National Peace and Reconciliation Commission (NPRC). The report documents the initiatives that have been made by official transitional justice actors and identifies the gaps and failures while recommending possible solutions. The objective of this report is to give account of the major transitional justice developments emanating from 2019 and make recommendations for the enhancement of transitional justice processes to make them more effective.

Key among the issues discussed herein are issues around the court ruling on the interpretation of the constitutional provision relating to the lifespan of the NPRC to 2028 as expressed in the case of Concilia Chinanzvavana v Ministry of Justice, Legal and Parliamentary Affairs;¹ the contentious issue of the exhumations of human remains in areas where mass human rights violations occurred in Zimbabwe, the highly contentious issue of national dialogue vis-à-vis the role of the NPRC and the need for the NPRC to be more active in ensuring government compensate victims of past human rights abuses such as victims of the 1st of August 2018 violence.

On the 13th of March 2019, Concilia Chinanzvavana, a survivor of political violence, represented by the Zimbabwe Lawyers for Human Rights (ZLHR) approached the High Court seeking clarity as to the interpretation of section 251 (1) of the Constitution which provides for the establishment of the NPRC and gives it a lifespan of ten years. Chinanzvavana specifically sought a ruling stating when the ten year lifespan of the NPRC had begun to run and when it would end. The NPRC was established by the Constitution in 2013 but the enabling Act was only enacted in January 2018 thus operationalizing the NPRC. As such Chinanzvavana argued that the NPRC’s tenure started running in 2018. This interpretation was accepted by Justice Mafusire sitting in the High Court in Masvingo and he ruled that the tenure of the NPRC expires in 2028. This ruling was a big victory for transitional justice in Zimbabwe in that it bought time for the NPRC. What the NPRC would do with that time is a separate story. This ruling was however appealed by the government and the case is currently pending before the courts. If the appeal is granted the lifespan of the NPRC will come to an end in 2023. If the judgement by Justice Mafusire is held upheld the NPRC’s lifespan will end in 2028.

¹ Concilia Chinanzvavana v Ministry of Justice, Legal and Parliamentary Affairs HC455/18. This case is currently pending in the Supreme Court under case number SC 187/19
In 2019, the NPRC made significant strides in operationalising its secretariat in line with its 2018 to 2022 Strategic Plan. These efforts were complemented by a staff training to build the capacity of both old staff recruited in 2018 and new staff recruited in 2019. However, one of the Commissioners Ms. Netty Musanhu who resigned is still to be replaced. There are concerns around the lack of funding for the NPRC and reports of divisions within the NPRC attributed to the lack of funding plagued the Commission in 2019. Adequate funding is necessary to enable the NPRC to fulfil its mandate especially considering that its lifespan is limited and will soon be over, the need for adequate funding therefore remains urgent. The issue of the reporting obligations of the NPRC was contentious in 2019 as the NPRC’s 2018 Annual Report remained outstanding.

Under section 323 of the Constitution, the NPRC is required to present an annual report to Parliament detailing its full operations and activities by no than the end of March of the year following the implementation of such activities. Accordingly, the NPRC’s 2018 Annual Report became due on the last day of March 2019. By 31 December 2019, the report had not been released putting the NPRC in breach of its statutory and constitutional obligations. One of the highlights of the NPRCs implementation of its activities in 2019 was the initiative it took to devolve its operations to Zimbabwe’s ten provinces by establishing Provincial Peace Committees (PPCs).

This was also part of the NPRC’s efforts to roll-out its five-year strategic plan. The purpose of the PPC is to promote peace, tolerance building and strategic advice on potential conflicts as well as raising awareness about conflict indicators within provinces. In as much as the decentralisation of the NPRC was welcomed, Heal Zimbabwe Trust (HZT), a National Transitional Working Group (NTJWG) stakeholder raised concern that survivor participation at the grassroots level could be stifled by the inclusion of perpetrators of human rights violations and government officials in the PPCs.

2019 came with an increase in engagement between the President and civil society organisations in Bulawayo and Matabeleland over how the issue of Gukurahundi can be tackled as a way of dealing with the past. Further to that engagement President Emmerson Mnangagwa pledged to facilitate the exhumation and reburial of Gukurahundi victims, provision of counselling and medical assistance to victims and survivors as well as issuance of identity documents to the affected. Subsequently the NPRC announced that it would soon be starting the process of exhumations of human remains in places where it was believed that mass human rights violations had occurred in parts of Matabeleland and the Midlands.

This process does indeed fall within the mandate of the NPRC and it is important for the survivors and their families to have their loved ones exhumed, identified and reburied in accordance with their culture. However, justice and accountability considerations demand that this be done within a policy framework. Exhumation is not only a cultural process. It is also scientific. In the context of human rights, it is in the purview of evidence requiring expertise and professionalism to ensure that the process is guided by best practices of recording and documenting the remains, ascertaining the causes of death and identifying the perpetrators. While the pronouncements by President Mnangagwa to begin to deal with the Gukurahundi are noted, justice for victims and survivors of past atrocities should be at the centre of this process which should be guided by a national policy that is

2. The Standard, Cracks Emerge in NPRC funding, 6 October 2019. https://www.thestandard.co.zw/2019/10/06/cracks-emerge-nprc-funding/
However, throughout 2019 no-one was arrested nor were any of the victims compensated. The lack of compliance of the Motlanthe Commission recommendations coupled with the long standing culture of not honouring court orders instructing the Government of Zimbabwe to pay compensation to victims of past human rights violations prompted the realisation that there is need for a reparations fund.

The African Union Transitional Justice policy framework produced a practical and actionable tool to promote transitional justice in Africa among member states and civil society organizations in the region (Brankovic, and Roht-Arriaza, 2013). The tool identifies the peculiar role of reparations in transitional justice as ‘the only transitional justice mechanism explicitly aimed at benefiting victims of gross human rights violations.’ (Brankovic and Roht-Arriaza, 2013, p.4).

NTJWG has stated time and again that there is an urgent need to establish a National Reparations Fund which should be managed by an independent board, made-up of high profile and respected Zimbabweans from the government, civil society and representatives of victims.

2019 was filled with reports of deadly violence that was unleashed by artisanal gold miners made up of gangs of young men in the Midlands area as well as other parts of Zimbabwe such as Mazowe and parts of Manicaland where gold and diamond mining still occurs, respectively.

While the issue of the predominance of violence in these areas has been a recurring national problem, the increased cases of violence in 2019 left many communities with widows and orphaned children as well as trauma from witnessing such brazen violence.
During the 32nd Ordinary Session of the Assembly of the African Union, the African Union (AU) adopted the AU Transitional Justice Policy.

The Policy is a continental guideline for AU Member States to achieve sustainable peace, justice, reconciliation, social cohesion and healing which calls for peaceful resolution of conflicts, respect for the sanctity of human life, and the condemnation and rejection of impunity. This is a big step for transitional justice in Africa, where many countries have been struggling with dealing with the past and moving towards reconciled, peaceful and just societies.
THE KEY FINDINGS OF THIS REPORT ARE AS FOLLOWS:

- There has been no traction in establishing outstanding constitutional transitional justice bodies like the Independent Complaints Mechanism.
- Recommendations made by the Motlanthe Commission have not been implemented especially recommendations relating to compensation for victims.
- The NPRC has failed to produce its 2018 annual report within the timeframe stipulated by law.
- Lack of funding has hampered the full implementation of the NPRC Strategy including establishing a competent Secretariat.
- Uncertainty continues regarding the longevity of the NPRC mandate after the government challenged the High Court ruling stating that the clock of life for the NPRC started ticking when the NPRC Act was promulgated in 2018.
- The security sector continued with serious violations of human rights without the perpetrators being held to account.
- There is still not comprehensive transitional justice policy for Zimbabwe to guide transitional justice processes such as institutional reforms, memorialisation, promotion of truth, reparations, justice and accountability.
- There is no formal inclusive national dialogue process ongoing, although there a number of fragmented informal dialogue processes.

Lack of funding has hampered the full implementation of the NPRC Strategy including establishing a competent Secretariat.
IN LINE WITH THE KEY FINDINGS, THE FOLLOWING RECOMMENDATIONS ARE THEREFORE MADE:

- Government should fully implement the recommendations made by the Motlanthe Commission of Inquiry;\(^3\)
- Government should increase funding and support for the NPRC;
- The question of the lifespan of the NPRC needs to be dealt with as a matter of urgency so as to diffuse confusion and uncertainty on when the Commission’s lifespan lapses;
- The Independent Complaints Mechanism (ICM) must be urgently established as provided for under section 210 of the Constitution;
- A comprehensive transitional justice policy must be developed to guide important processes such as institutional reforms, memorialisation, promotion of truth, reparations, justice and accountability for past human rights violations must be formulated and implemented to facilitate healing and reconciliation;
- Transitional justice processes must be implemented within a clear policy framework that is led by the constitutional mandated transitional justice bodies.
- A more credible national dialogue process that is inclusive of not only political actors but also non-state actors must be initiated as a matter of urgency.
- The NPRC must disengage from the POLAD and initiate a more inclusive and credible process without the POLAD stigma which is divisive.

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1.1 ABOUT THIS REPORT

This report details the state of transitional justice in the year 2019. This report focuses on presenting and analysing information regarding the key events that shaped the transitional justice discourse in 2019. The report gives an overview of and insight into official transitional justice process carried out in 2019. It documents and analyses the successes and failures of official transitional justice actors such as independent commissions and government entities. This report also recognises and discusses the efforts made by non-official transitional justice actors such as civil society organisations to further the transitional justice agenda. It also looks into regional and international developments that shaped the transitional justice sphere in 2019 paying particular attention to those developments that could influence the processes in Zimbabwe. Transitional justice issues that emerged in 2019 are also discussed in this report with a specific focus on their importance moving forward and the impact they may have on peace and reconciliation processes in Zimbabwe. Finally, this report makes recommendations for the future that will help to make transitional justice processes in Zimbabwe more effective and ensure lasting peace and reconciliation.

METHODOLOGY

This report is based on the transitional justice legal framework as contained in the Constitution of Zimbabwe, other statutes, international law, reports of independent commissions as well as any other relevant pronouncements. These are critiqued in the light of the NTJWG standards as outlined in various documents produced since 2014.
These include the Guiding Principles on Transitional Justice in Zimbabwe (2015) the Minimum Standards for an Effective NPRC (2014), the Code of Inclusion (2019), the NPRC Transitional Justice Quarterly Brief, the Executive Transitional Justice Brief, the NPRC Watch and other tools from NTJWG and stakeholders. From international law, the report makes use of the UN Guidelines on various aspects of transitional justice, the communications of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The report carries out a survey of the reports from stakeholders on transitional justice processes in Zimbabwe, as well as pronouncements by independent commissions. Media reports were scanned and analysed, to ensure that all material aspects of transitional justice that took place in 2019 are captured.

1.2 OVERVIEW

The year 2019 saw a further deterioration in the human rights situation. Building on the August 2018 post-election violence, 2019 saw an increase in state-sponsored violence. The fuel protests of January 2019 triggered the government clamp down on the citizenry and civil society. The economy defied the myths of any new dispensation and the open for business mantra failed to fool any investors as Zimbabwe became more and more close for business due to failure by the government to respect human rights. Corruption was the order of the day.

The report of the Motlanthe Commission was ignored. At least four protests organised by the opposition Movement for Democratic Change - Alliance (MDC-A) were ruthlessly crushed by the police who targeted mainly women including and especially those who were not participating the protests.

Over the years, civil society organisations have advocated the implementation of a transitional justice process in order to combat impunity, ensure justice, facilitate rehabilitation of victims, restoration of lost livelihoods and memorialisation of the past.

Following the enactment of a new Constitution in 2013, in January 2018, the NPRC was operationalised by the National Peace and Reconciliation Commission Act [Chapter 10:32]. In October 2018, the NPRC launched its five-year strategy. Given that the NPRC launched its strategy in October 2018, 2019 was the first full year in which the NPRC was implementing programs aimed at fulfilling its mandate in line with a strategy that stakeholders had access to and could use to form expectations and hold the NPRC accountable.

2019 saw the NPRC implementing a number of activities in pursuit of its mandate to facilitate peace and reconciliation. The NPRC’s most notable activities were activities in which it directly engaged with communities for example through its Women Safe Spaces Program which targeted women and created space for them to speak about their experiences of being violated in the past. Another notable initiative from 2019 was the setting-up of Provincial Peace Committees mandated to carry out peace building activities in their communities in a manner that responds to each province’s unique needs.

The NPRC however achieved much less than the targets set out in its strategy. This implementation of the strategy was affected by the lack of funding and late disbursements by the treasury of funds. This affected the recruitment process as well as the roll out of community engagements.

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The confusion surrounding the NPRC’s lifespan continued with the surprise appeal by the Attorney General’s Office against what was otherwise a progressive judgement by the High Court. The danger is that if the appeal is granted, that would mean the NPRC’s lifespan will end in 2023 just five years after its operationalization. The call for a longer lifespan for the NPRC only makes sense provided the NPRC is actually making good use of the little time it has and actually pursues its mandate and strategy. A Sierra Leonean expert, Mr. John Calker has since told NTJWG that calls for a longer lifespan must be backed by evidence that the longer lifespan is actually worth the taxpayers money and that currently, the Commission is actually doing what it ought to be doing. This appraisal can only be done if the Annual Reports of the NPRC are produced in time and stakeholders get an opportunity to critique them. In 2019, the NPRC has failed to produce the 2018 report.

In terms of non-official transitional justice processes the National Transitional Justice Working Group (NTJWG), its stakeholders and other transitional justice stakeholders continued in implementing programs aimed at furthering the transitional justice agenda in Zimbabwe. Through community dialogues carried out by the NTJWG and similar programs, survivors were conscientized about the NPRC, its mandate and how they can effectively participate in the processes.

Transitional justice stakeholders nationally continued lobbying the NPRC to be more strategically involved in its mandate. One example is on the issues of compensation of victims of violence, the contentious issue of exhumations of mass graves as well as the national dialogue. The efforts by the NPRC and other transitional justice stakeholders aided in the dissemination of information about the NPRC in 2019.

Regionally, the transitional justice agenda continued to gain momentum culminating in the adoption of the African Union Transitional Justice Policy at the 32nd Ordinary Session of the Assembly of the Union on 12 February 2019 in Addis Ababa, Ethiopia. This policy will serve as a blue print for transitional justice processes in African which takes into consideration the African context and tailor makes policy considerations that recognise the dire need for healing in African nations as a result of the legacy of violence.
2.1 AFRICAN UNIONadopts
THE AFRICAN UNION
TRANSITIONAL JUSTICE
POLICY

During the 32nd Ordinary Session of the Assembly of the African Union held on 12 February, 2019 in Addis Ababa, Ethiopia, the African Union (AU) adopted the AU Transitional Justice Policy (AUTJP). The policy is a continental guideline for AU member states to achieve sustainable peace, justice, reconciliation, social cohesion and healing in line with Article 4 (o) of the Constitutive Act of the African Union, which calls for respect for the sanctity of human life, condemnation and rejection of impunity. The AUTJP also echoes the key aspirations of African Union Agenda 2063 that envision a “peaceful and secured Africa” that embodies “good governance, democracy, and respect for human rights, justice and the rule of law”.

Speaking at the adoption of the policy framework, the Chairperson of the African Union Commission, his Excellency Mr. Moussa Mahamat Faki had the following to say,

This African Union (AU) TJ policy is a direct by-product of the 2006 AU Policy on Post-Conflict Reconstruction and Development. It is one of the indirect outputs of Agenda 2063. Although the process of developing the framework started long before the adoption of Agenda 2063, its realization became a reality with full commitment to implementing the above two Aspirations.

6. This policy can be accessed by visiting https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf
The AUTJP aims to ensure that transitional justice processes address root causes of conflicts, legacies of violence, governance deficits and developmental challenges in Africa. The policy presents an African transitional justice model policy with holistic parameters, benchmarks and practical strategic proposals for designing, implementing, monitoring and evaluating justice in AU member states based on key principles and specific indicative elements. This policy also resonates with the United Nations sustainable development goals that were adopted in 2015, specifically Goal 16 that seeks to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” The unanimous adoption of this policy is therefore of great importance to Africa as it provides a potentially game changing policy framework that may be used to resolve past violent conflicts, sustain peace and drive development in Africa.

The affirmative vote by the GoZ for the adoption of the AUTJP presents an opportunity for furthering the transitional justice agenda in Zimbabwe. The policy can be domesticated in Zimbabwe as part of national efforts to address the past and a legacy of violence which has rocked the nation for years. The GoZ can use the policy to inform and facilitate efforts by various transitional justice actors to address the root causes of conflict in the country, legacies of violence and governance deficits which are the traditional conflict lines which make Zimbabwe vulnerable to violence now and in the future.

While the adoption of the AUTJP was welcomed with excitement and enthusiasm by civil society, there was no matching enthusiasm from governments raising questions if the governments are even aware of what they were adopting. Processes are ongoing for the popularisation of the AUTJ. Three capacity building workshops were organised in 2019 to advance the AUTJ. 1 was convened by the Institute for Justice and Reconciliation (IJR) and the Centre for the Study of Violence and Reconciliation (CSVR) in Nov 2019 in Johannesburg. Another was convened by the African Union Commission and CSVR in Nairobi in December 2020. NTJWG participated in both workshops while the government of Zimbabwe participated in Nairobi.
2.2 LANDMARK REPARATIONS JUDGEMENT IN THE HAGUE

On 18 July 2019, the Appeals Chamber of the International Criminal Court (ICC) gave a landmark ruling when it upheld the decision by the Trial Chamber to hold Thomas Lubanga Dyilo for reparations of US$10,000,000.00 in the case of The Prosecutor v Thomas Lubanga Dyilo. The ruling was in respect of two appeals filed on the basis of article 82(4) of the Rome Statute of the ICC. The appeals challenged Trial Chamber II’s decision in setting the size of the reparations award for which Mr Dyilo was liable, which was issued on 15 December 2017. Mr Dyilo is the former President and Commander-in-Chief of the Patriotic Forces for the Liberation of Congo militia, the armed wing of the Union of Congolese Patriots in the Democratic Republic of Congo. He was convicted in 2012 for the crime of enlisting and conscripting children under the age of 15 and using them to actively participate in hostilities.

The Trial Chamber in considering the reparations for which Mr Dyilo was liable held that he was liable for reparations to the sum of US$10,000,000.00 in respect of 425 victims it found eligible for reparations and ‘any other victims who may be identified’. On 15 January 2018, the V01 group of victims and Mr Dyilo filed notices of appeal against that decision. The Appeals Chamber subsequently heard the appeals and handed down a unanimous judgment confirming the Trial Chamber’s ruling. Further the Appeals Chamber ruled that other victims who had initially been held to be ineligible for reparations could seek a new assessment of their eligibility by the Trust Fund for Victims. This will enable these victims to also benefit from the reparations awarded if found to be eligible by the Trust Fund for Victims subject to the approval of the Trial Chamber. The decision of the Appeals Chamber largely underscores that Trial Chambers retain discretion in devising reparations proceedings, and in selecting a method for calculating a reparations award.

Individual reparations such as those granted in this case are aimed at providing redress for past human rights violation suffered by individuals. As highlighted in the case of The Prosecutor v Thomas Lubanga Dyilo, individual reparations are not only awarded to direct victims but also to indirect victims which include the family and dependants of the direct victims. The confirmation of the reparations award with amendments as highlighted above is crucial for victims of violations as it is indicative of the recognition of their traumatic experiences. This judgement is a welcome addition to transitional justice jurisprudence as it demonstrates the importance of a victim centered approach to transitional justice and sets a precedent for how the courts can put victims at the centre of the process even after the accused has been convicted.

9. ICC-01/04-01/06 A7 A8
10. The Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06
A victim-centered approach is vital when dealing with the past as it minimises the risk of re-victimisation of victims by ensuring that transitional justice processes are responsive to their needs. This ruling by the ICC is particularly relevant for countries such as Zimbabwe who are now starting to grapple with the realities of dealing with the past which may see more victims of past human rights violations approaching the courts for determination of similar matters. This ruling will therefore provide much needed guidance to local courts on how to deal with the question of reparations in cases of past human rights violations.

2.3 CONVICTION AT THE HAGUE

On the 8th of July 2019, the ICC Trial Chamber VI handed down its ruling in the case of The Prosecutor v. Bosco Ntaganda. The notorious Congolese rebel commander, Bosco Ntaganda known as “The Terminator” was convicted of eighteen counts of crimes against humanity and war crimes including murder, rape and sexual slavery for his role in atrocities in a bloody ethnic conflict in Ituri, a mineral-rich province of the Democratic Republic of Congo in between 2002 and 2003. This is the highest number of counts an individual has been convicted for by the court based in The Hague.

The Trial Chamber ruled that Mr Ntaganda was a direct perpetrator of three crimes being murder as a crime against humanity and a war crime, and persecution as a crime against humanity. In addition to these three crimes for which Mr Ntaganda bears responsibility as a director perpetrator he was also convicted as an indirect perpetrator of fifteen crimes. This conviction marks the first instance in which the International Criminal Court has convicted an accused person over various sexual crimes.

Mr. Ntaganda was the deputy chief of staff of the Patriotic Forces for the Liberation of Congo (PFLC) militia, the armed wing of the Union of Congolese Patriots (UPC) during 2002 and 2003. It was during that time that he committed crimes for which he was convicted on the 18th of July 2019. Some of the crimes include sexual slavery and rape, including of child soldiers who served within the FPLC. The trial commenced on September 2, 2015 and received evidence from 80 prosecution witnesses and 19 defence witnesses. Evidence from the prosecution included testimonies by a former insider in the FPLC who testified that militia commanders raped female recruits.

Another prosecution witness testified that female fighters were not in a position to turn down sexual advances from their UCP superiors. According to the prosecution, rape by the group’s soldiers was “encouraged, promised, and envisaged” as the FPLC considered women to be “spoils of war.” The prosecution also argued that Mr. Ntaganda himself sexually exploited women. As part of his defense, Mr. Ntaganda denied direct culpability for all the crimes and claimed that he was not aware of the sexual crimes being perpetrated by those under his command. This defense was rejected by the court which found that the evidence from the prosecution rebutted the defense.

The guilty verdict in this case came after major setbacks in recent years for the Office of the Prosecutor which included the June 2018 acquittal of Jean-Pierre Bemba and the January 2019 acquittal of former Ivorian President Laurent Gbagbo. Jean-Pierre Bemba was the President and Commander-in-chief of the Mouvement de  

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12. The Prosecutor v. Bosco Ntaganda ICC-01/04-02/06
libération du Congo (Movement for the Liberation of Congo) (MLC). The MLC was a rebel group operating in the Democratic Republic of Congo (DRC) that fought the government throughout the Second Congo War.

Mr Bemba was charged with two counts of crimes against humanity namely murder and rape and three counts of war crimes namely murder, rape, and pillaging committed in the Central African Republic between October 2002 and March 2003. The crimes were committed by the MLC troops under Mr Bemba’s command when they went into the Central African Republic to give military assistance to the President, Ange-Félix Patassé, who was eventually ousted. Mr Bemba was charged as a person effectively acting as a military commander with effective authority and control over the forces that committed the crimes as such he was charged on the basis of criminal responsibility of commanders pursuant to article 28 (a) of the ICC Rome Statute.

Another acquittal was in favour of Laurent Gbagbo who was charged with crimes against humanity being murder, rape, and other inhumane acts or—in the alternative—attempted murder, and persecution allegedly committed in the context of post-electoral violence in Côte d’Ivoire between 16 December 2010 and 12 April 2011. In those acquittals, the judges criticize the prosecution’s framing of charges and inability to adduce sufficient evidence. This verdict gave relief to the victims who had to wait in excess of a decade for justice. The conviction of perpetrators of past human rights violations is key for victims of past atrocities as it serves as evidence of justice being served and the perpetrators being held accountable for their actions. Convictions such as these are also crucial for transitional justice processes regionally as they are evidence that nobody is above the law and have a deterrent effect while also putting other perpetrators on notice that they too may face the same fate.

ICC processes are important for Zimbabwe to keep a tag on. There has been debate on the possibility of bringing Zimbabwean cases to the ICC for prosecution. It is important to note that Zimbabwe is not a part to the Rome Statute.

The ICC will only assume jurisdiction on Zimbabwe if the Security Council, acting under Chapter VII of the United Nations Charter, refers a situation to the Office of the Prosecutor. Alternatively, if Zimbabwe agrees to submit itself to the jurisdiction of the ICC. This is unlikely, unless there is a change of government or in leadership. Such an investigation however will only include any alleged crimes committed after the entry into force of the Rome Statute on 1 July 2002. That means cases like Gukurahundi will not be able to be investigated by the ICC even if the Security Council was to pass a resolution. It is important to note that there is ample evidence of crimes against humanity in Zimbabwe committed after 1 July 2002. While an ICC investigation is unlikely in the current circumstances, it is not unthinkable and is indeed not impossible.

Mr Bemba was charged with two counts of crimes against humanity namely murder and rape and three counts of war crimes namely murder, rape, and pillaging committed in the Central African Republic.
3.1 THE NPRC IN ACTION

By 2019, the NPRC will be fully discharging its mandate as a functional institution with the requisite human capital, partnerships, efficient systems and processes, and adequate infrastructure. In addition, a partnership framework will be in place to provide feedback on results and impact of key programmatic areas, share best practices as stories of change for the peace architecture and translate these into actionable or measurable outcomes. The national capacities for sustaining peace, healing and reconciliation will be enhanced through a fully functional would directly and indirectly provide capacity building support to other national actors.

Throughout the year 2019, the NPRC was involved in several activities to fulfil its mandate as outlined under sections 253 of the Zimbabwe Constitution as well as the NPRC Act (Chapter 10:32) which is the operationalising statute. Issues such as the lack of visibility, inclusion of survivors in the Provincial Peace Committees (PPCs), the publication of the 2018 NPRC report, exhumations, and compensation kept on being raised by stakeholders. In the absence of reports from the NPRC, NTJWG became an important source of information for the TJ stakeholders. Tracking of the work of the NPRC remained a priority for the NTJWG in 2019 to ensure that there is a break with a past of non-accountability.

Key events are highlighted below, but for a detailed outline of the NPRC’s activities one can visit the NPRC website at www.nprc.org.zw
3.1.1 THE NPRC’S SECRETARIAT

Given the huge task which lies ahead, the NTJWG was closely following the recruitment of the NPRC’s Secretariat. In its Briefing on 4 November 2018, NTJWG called on the NPRC to ensure independent, competent and well-resourced secretariat for the NPRC. The NTJWG views the Secretariat of the NPRC as central to the NPRC processes and key to the integrity of the NPRC itself.

In November 2014, NTJWG published the Minimum Standards for an Effective National Peace and Reconciliation Commission. In these Standards, NTJWG noted the question of who will serve as the Secretariat of the NPRC is very critical. We noted that it is critical to ensure that the people who will serve in the Secretariat are not accused persons, potential suspects, witnesses, or individuals with a possible blemish in respect of past violations.

The Minimum Standards further state that; For the NPRC to function well, it requires to have adequate resources, including human resources who drive the mandate of the Commission. To ensure that NPRC functions and implements its 5-year strategy with efficiency, the Commission needs a strong, dedicated and functional Secretariat. The Commission’s Secretariat is provided for in the NPRC Act (Chapter 10:32).

In its 2018 to 2022 Strategic Plan, the NPRC identified shared values and guiding principles for its work. The values are: confidentiality, inclusivity, ubuntu, transparency, and victim-centredness. The guiding principles are the following:

- Independence of the NPRC
- Inclusiveness, diversity and totality
- Constitutionalism
- Local ownership and do no harm
- Strategic partnerships and linkages

The NPRC Strategy further identifies goals, outcomes and specific interventions. This report uses these commitments to document and analyse the NPRC interventions for 2020.

IN GENERAL

NTJWG stakeholders have applauded the presence of the NPRC in the communities in 2019. The question of independence which is the first guiding principles was severely assaulted by the NPRC role in the POLAD. Before POLAD, the NPRC had started consultations for an inclusive national dialogue framework. Upon being called to be part of the POLAD, no traction has been seen on the NPRC led process. On the issues raised are issues of inclusivity and constitutionalism as POLAD has continued to operate outside the Constitutional Framework while draining the fiscus with Parliamentary approval.
The NPRC made significant strides in building its Secretariat in 2019. Information on the staff complement was not readily available at the compilation of the report but NTJWG was reliably informed that this process was being hampered by lack of funding. Some members of staff who had been recruited to support the NPRC left before they commenced. Some left soon after they began. The NPRC was unable to open any regional offices hence its work continue to be centralised in Harare. This means the NPRC has failed to meet its 2019 target as set out in the Strategic Plan - “the NPRC will be fully discharging its mandate as a functional institution with the requisite human capital, partnerships, efficient systems and processes, and adequate infrastructure.”

NTJWG encourages the NPRC to make public information relating to staff turn-over to help improve accountability on the stability of the institution and its capacity to build a competent Secretariat according to the NPRC Act.

However, despite the challenges, staff training was done to build and improve the capacity of both old staff recruited in 2018 and new staff recruited in 2019. However, there remain concerns around the lack of funding for the NPRC, failure by the Commission to recruit its full staff complement and the absence of regional offices through which survivors at regional levels can access the Commission. Stakeholders implored the government to increase the funding of the NPRC and provide all the funds that are needed to keep the Commission afloat and in a position enabling the effective discharge of duties and functions. Stakeholders also called upon the NPRC to ensure accountability of public funds by releasing reports in time.

3.1.2 NPRC SETS-UP PROVINCIAL PEACE COMMITTEES (PPCS)

Decentralisation of NPRC offices is one of the key elements which enables survivors to access the Commission and lodge their complaints with ease. While the NPRC failed to open regional offices as reported above, on 29 May 2019, the NPRC announced that it would be devolving its operations to Zimbabwe’s ten provinces by establishing Provincial Peace Committees (PPCs) beginning 31 May 2019 ending on 28 June 2019 (NewsDay, 2019). This was also part of the NPRC’s efforts to cascade down its 5-year strategic plan to provincial and district levels.

The NPRC announced that the PPCs would be mandated to solve conflicts in their areas because “a one size fits all” approach had proved impractical. As the NPRC noted, the establishment and purpose of the PPC was to promote peace, tolerance building and strategic advice on potential conflicts as well as raising awareness about conflict indicators within the Provinces (Newsday, 2019).

The PPCs were composed of twenty-five to thirty members drawn from diverse backgrounds and organisations, including government, survivors, civil society, and traditional leaders. Each Provincial Peace Committee is led by a Chairperson who must be an NPRC Commissioner assigned to a specific Province. The two deputy Chairpersons for each PPC are elected from among the Provincial Peace Committee members. The Secretary of each Provincial Peace Committee was picked from Secretariat of the NPRC. The rest of the Provincial Peace Committee members were nominated from the general membership or organisations represented.

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15. See page 33 of the 2018 to 2022 Strategic Plan of the NPRC
THE CURRENT LEADERSHIP IN THE PROVINCIAL PEACE COMMITTEES IS AS FOLLOWS:

<table>
<thead>
<tr>
<th>Responsible Person</th>
<th>Province</th>
<th>Email Address</th>
<th>Cell Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retired Justice Selo Nare (Chairperson)</td>
<td>Bulawayo and Matabeleland North</td>
<td><a href="mailto:smasolenare@nprc.co.zw">smasolenare@nprc.co.zw</a></td>
<td>0776 095 047</td>
</tr>
<tr>
<td>Commissioner Mr. Leslie Ncube</td>
<td>Matabeleland South</td>
<td><a href="mailto:leslie.ncube752@nprc.co.zw">leslie.ncube752@nprc.co.zw</a></td>
<td>0777 845 325</td>
</tr>
<tr>
<td>Commissioner Mrs. Lillian Chigwedere (Deputy Chairperson)</td>
<td>Harare</td>
<td><a href="mailto:lchigwedere7@nprc.co.zw">lchigwedere7@nprc.co.zw</a></td>
<td>0772 353 251</td>
</tr>
<tr>
<td>Commissioner Dr. Geoffrey Chada</td>
<td>Mashonaland East</td>
<td><a href="mailto:gtzchada@nprc.co.zw">gtzchada@nprc.co.zw</a></td>
<td>0712 874 828</td>
</tr>
<tr>
<td>Commissioner Dr. Golden Chekenyere</td>
<td>Masvingo</td>
<td><a href="mailto:gchekeneyere@nprc.co.zw">gchekeneyere@nprc.co.zw</a></td>
<td>0775 916 823</td>
</tr>
<tr>
<td>Commissioner Ms. Patience Chiradza</td>
<td>Manicaland</td>
<td><a href="mailto:pchiradza@nprc.co.zw">pchiradza@nprc.co.zw</a></td>
<td>0772 393 926</td>
</tr>
<tr>
<td>Commissioner Reverend Charles Masunungure</td>
<td>Mashonaland Central</td>
<td><a href="mailto:cmasunungure@nprc.co.zw">cmasunungure@nprc.co.zw</a></td>
<td>0772 393 926</td>
</tr>
<tr>
<td>Commissioner Mr. Leslie Ncube</td>
<td>Midlands</td>
<td><a href="mailto:leslie.ncube752@nprc.co.zw">leslie.ncube752@nprc.co.zw</a></td>
<td>0777 845 325</td>
</tr>
<tr>
<td>Commissioner Ms. Choice Ndoro</td>
<td>Mashonaland West</td>
<td><a href="mailto:choicendoro@nprc.co.zw">choicendoro@nprc.co.zw</a></td>
<td>0778 767 519</td>
</tr>
</tbody>
</table>
While the NTJWG noted the implementation of the NPRC’s strategy through the PPC initiative, Heal Zimbabwe Trust (HZT), a stakeholder group of the NTJWG, raised similar concerns with the NTJWG noting that there were still hurdles to be addressed. For example, HZT pointed-out that citizen participation at the grassroots level could be stifled by the inclusion of high level people and government officials in the Provincial Peace Committees. Given the role politicians and security sector agents have played in past atrocities, both survivors and stakeholders at provincial levels could be intimidated to air their views and concerns in relation to dealing with the past in Zimbabwe. Key among notable individuals were officials such as the Minister of State for the province and senior police and army officers.

Secondly, HZT raised concern on whether the Provincial Peace Committees screened members. This was supposed to be done to ensure that there were no perpetrators who would be constituted in the committees. Such people could easily become gatekeepers watching over those who would be actively participating in the meetings, intimidate participants, and possibly put them under surveillance. The NTJWG observed that in a PPC meeting held from 27 to 28 June 2019 in the Midlands Province, one ZANU-PF party member and a Government of Zimbabwe security services member were elected as the co-vice chairpersons of the Midlands PPC. HZT also lamented the fact that there was no explicit mentioning of the involvement of victims’ groups in the Provincial Peace Committees. HZT recommended that the development of a monitoring tool is essential to ensure that the Provincial Peace Committees’ work was victim centred.

According to the NTJWG (2015: 20) it is important for victims’ safety concerns and dignity to be catered for in bodies such as the Provincial Peace Committees.

According to the NTJWG (2015: 20) it is important for victims’ safety concerns and dignity to be catered for in bodies such as the Provincial Peace Committees. Key among the criticisms from the NTJWG in one of its reports released on 2 September 2019 were the issues around the need for victims to play a key role in the Provincial Peace Committees. The NPRC was encouraged by stakeholders to take time to pay attention to the concerns of victims and survivors on the ground.

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3.1.3 NPRC PREPARES TO SET-UP A CONFLICT EARLY WARNING AND RESPONSE SYSTEM

On 12 November 2019, the NPRC announced that it was enhancing the knowledge and capacity of Commissioners and other staff members on Conflict Early Warning and Response System in preparation of the setting up of the national conflict response system. Early response refers to "any initiative that occurs as soon as the threat of potential violent conflict is identified and that aims to manage, resolve, or prevent that violent conflict" (World Bank, 2019). An effective Early Warning and Response System supports three main functions:

- risk analysis, monitoring and warning,
- dissemination and communication
- a response capability in relation to conflict management and mitigation.

An effective Early Warning and Response System includes coordinating between conflict actors such as the NPRC, and decision makers who can act on proposed policy options, identifying other relevant actors or institutions to respond to a particular conflict. This includes mobilizing the necessary capacity and resources to provide a timely response.

In light of the 1 August 2018 violence and shootings in Harare, the NPRC and other actors were not prepared, resourced, and capacitated to respond to the conflict. And such unpreparedness should not plague the NPRC in the future as Zimbabwe is on the verge of a violent conflict. Hence, the urgent need for an effective Early Warning and Response System in Zimbabwe.

For example, in Kenya, the Uwiano (cohesion) platform was launched ahead of the 2010 referendum by several Kenyan and international institutions as an Early Warning and Response System. The Uwiano platform organized a system to collect up-to-date information on tensions, hate speech, incitement, threats and violence throughout the country. This was then relayed to security institutions and local peace committees best positioned to undertake the appropriate actions, including mediation (International Peace Institute, 2012). In comparison to the previous elections, the 2010 referendum was not too violent due to the level of preparedness by Kenyan authorities.

This is a system Zimbabwe can consider because of the violence which usually characterises elections, particularly in the semi-urban, and rural areas.

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3.1.4 NPRC ROLLS-OUT AND ANNOUNCES ITS THEMATIC COMMITTEES

According to the NPRC’s 2018 – 2022 Strategic Plan, outcome number 4, the NPRC aimed for enhanced national capacities for sustaining peace, healing and reconciliation through the setting up of thematic committees which would focus on specific matters such as justice, complaints handling and conflict prevention. In November, the NPRC introduced the following committees:

- **Committee on Prevention and Conflict Prevention, Management, Resolution and Transformation Committee**, which is consistently scoping the environment and coming-up with strategies to mitigate conflict;
- **Complaints Handling and Investigation Committee** which receives and investigates any complaints from the public,
- **Victim Support, Gender and Diversity Committee** which implements programs which ensure the welfare of victims and survivors of human rights violations.

These committees serve as multi-stakeholder platforms for the Commission providing advisory support to the NPRC in accordance with the Commission’s Act and Regulations.

**COMMISSIONERS AND THE COMMITTEES THEY ARE OVERSEEING:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner Patience Chiradza</td>
<td>Conflict Prevention and Non-Recurrence, Healing and Reconciliation</td>
</tr>
<tr>
<td>Commissioner Choice Ndoro</td>
<td>Research and Knowledge Management</td>
</tr>
<tr>
<td>Commissioner Lilian Chigwedere</td>
<td>Victim Support, Gender and Diversity</td>
</tr>
<tr>
<td>Commissioner Leslie Ncube</td>
<td>Healing, Reconciliation and Rehabilitation</td>
</tr>
</tbody>
</table>
cannot be disputed. The program created an opportunity for women affected by violence in the past to air their concerns and for them to be addressed. The women involved in the dialogues managed to open up and talk about issues that had plagued them for a long time. The first step to healing and reconciliation and ultimately peace is this dialogue that gave the women an opportunity for truth-telling. Heal Zimbabwe Trust, a stakeholder organisation with the NTJWG commended the initiative but in a commentary entitled “NPRC, Women Safe Space: Delivering Justice for Women?” observed that the NPRC might have to do more and change strategies to engage the women. For example, Heal Zimbabwe Trust argued that women do not necessarily need to have safe spaces created for them, but instead safe spaces can be created by the women themselves and they can be capacitated to run such platforms. The NPRC must take note of the sexual violations occurring in Zimbabwe and ensure that justice be delivered promptly to all those in need of it without fear or favour.

3.1.5 NATIONWIDE OUTREACH PROGRAMS

In April 2019, the NPRC announced that it would embark on a twenty-one days countrywide outreach program seeking, among other things, to share and raise awareness on mechanisms and approaches it was going to utilize in implementing its mandate. Ten meetings were held across the country’s ten provinces.

3.1.6 SAFE SPACES INITIATIVE FOR WOMEN

In September 2019, the NPRC set-up ‘Safe Spaces’ for women across the country to discuss issues of national healing, justice and reconciliation. Violence and violations experienced by women need community voice platforms and spaces on which women feel safe to share their experiences and where they are free from retribution. If women share their experiences in an environment on which men are also present, perpetrators might intimidate and prevent women from speaking out or re-victimise them after the gathering. In times of conflict in Zimbabwe and elsewhere women and girls have and continue to experience unique violations that are peculiar to them hence the need for a space they feel safe and can open up in.

For example, seventeen women were raped and sexually assaulted by security sector personnel in Bulawayo and Harare in the aftermath of the 14 January protests (NGO Forum, 2019). These are the same challenges women face in most conflict zones. That the same violations will require different forms of engagement through the creation of safe spaces where women and girls are not judged or subjected to further traumatization:

3.1.7 FOLLOW-UP ON THE 2018 ELECTIONS OBSERVATION RECOMMENDATIONS

On 31 July 2019, the NPRC represented by the Commission’s Vice Chairperson Lilian Chigwedere and Commissioner Patience Chiradza met the Zimbabwe Election Observer Mission led by Ambassador Carson from the European Union. The objective of the meeting included following up on recommendations made in Observer Mission’s 2018 elections report given the electoral and institutional reforms recommended in light of the 1 August 2018 shootings in Harare. The NPRC Commissioners informed the Observer Mission that countrywide consultations on the national dialogue were underway.

The consultations were meant to establish how and why dialogue among parties which contested in the July 2018 elections was critical and a matter of urgency. The consultations were being done in the context of the Motlanthe Commission Recommendations which called for a dialogue among political parties. The NPRC embarked on national consultations in 2019, but abandoned them when the President formed another dialogue platform called POLAD. Nothing much has been achieved since. The NTJWG made calls on the NPRC to recuperate the national consultations to no avail. The NPRC Chairperson has since been appointed as one of the co-conveners of the POLAD. Stakeholders have noted that POLAD is exclusive to political actors hence does not meet the principle of inclusivity which the NPRC has committed to promote in its work.

In August 2019, NTJWG Published a Special Report, Envisioning Zimbabwe’s National Dialogue: Guiding Values, Principles and Virtues on National Dialogue in Zimbabwe. In this report, NTJWG states, “Dialogue that is politically driven is narrow and mainly involves political parties and politically motivated persons with little room for public participation. If the aim is to realise national healing, then the process must be inclusive.” The POLAD process thus fails the inclusivity test. By failing to go beyond the POLAD, the NPRC has failed in its mandate as outlined in Outcome 1 of its 2018 – 2022 National Strategy which targets inclusive healing and reconciliation processes for addressing legacies of violent conflicts.26

The consultations were meant to establish how and why dialogue among parties which contested in the July 2018 elections was critical and a matter of urgency.

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26. See page 29 of the NPRC Strategy
3.1.8 NPRC TRAINS THE ZIMBABWE REPUBLIC POLICE ON CONSENSUS BUILDING, CONFLICT PREVENTION AND RESOLUTION IN ZIMBABWE

On 20 November 2019, the NPRC carried-out a consensus-building and capacity enhancement workshop for the high and middle ranking Zimbabwe Republic Police (ZRP) officers in Harare. Conflict management skills are critical for police officers to enable them to effectively deal with protestors without violating their rights and also enable them to be professional and non-partisan in their approaches. The NPRC took time to explain its mandate as well as engage the police on areas of collaboration to maintain law and order, conflict prevention as well as the resolution of conflict in the country.

However, the NTJWG is yet to see the impact of this training given that human rights violations at the hands of the police are still on the rise. The police continued to commit human rights violations in the aftermath of the 14 January 2019 protest, about two months after the release of Motlanthe Commission Recommendations. Throughout 2019, human rights and political activists were still being arbitrarily arrested, and tortured at the hands of the police.

3.2 CHALLENGES FACING THE NPRC

3.2.1 FUNDING CHALLENGES

As late as October 2019, reports were awash in the private media that the NPRC was facing a funding crisis. Constitutional bodies are by law entitled to receive government financial support for their operations. According to section 322 of the Constitution, Parliament must ensure that sufficient funds are appropriated to the Commissions to enable them to exercise their functions effectively, and without undue control. If Commissions do not receive enough funding, they are bound to be controlled by the State and co-opted in government activities which compromises the Commission’s independence. Resource starvation is one of the strategies employed by governments to control independent commissions. History from other countries has shown us that under-funded Commission are incapacitated to implement their mandate, and bound to fail.

In 2019, according to press reports, “the NPRC received a budget vote of ZWLS2, 4 million against its ZWLS4, 7 million bid which was inadequate to support the full extent of the Commission’s work. In December 2019, the NPRC appeared before the Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs and the Senate Thematic Committee on Human Rights and pleaded incapacitation as a result of inadequate funding from the Treasury.”27 At the beginning of 2019, the NPRC announced its plan to hold public meetings and establish offices in the major cities of the country. Without adequate resources it is difficult to see how the work it envisaged to carry-out would have been possible.

3.3 GOVERNMENT TRANSITIONAL JUSTICE INITIATIVES IN 2019

On 21 March 2019, President Emmerson Mnangagwa and civil society groups in Bulawayo under the banner of Matabeleland Collective, announced a number of transitional justice measures to assist victims of Gukurahundi.

A matrix on issues affecting Matabeleland Province and part of the Midlands Province was developed which included decriminalization of Gukurahundi, exhumations and reburials (families of Gukurahundi victims should be allowed to exhume and rebury their loved ones in order for them to find healing and closure), access to documentation for families of Gukurahundi victims who should be assisted with death certificates, compensatory development, and devolution were discussed (Women’s Institute for Leadership Development (Women’s Institute for Leadership Development (WILD), 2019).

By the time of the compilation of this report, a number of meetings and consultations had been initiated in the Matabeleland region by the Matabeleland Collective. The opening-up of space by enabling dialogue and initiating processes on dealing with the past allowed for much needed dialogue on transitional justice to flourish. The outcomes of consultations also inform other stakeholders the position government has taken, and how the process intends to include other stakeholders such as the NTJWG. However, this process has been criticised as an attempt by the government to hijack the process and side-line the NPRC.

Furthermore, under section 16 (7) of the NPRC Act, the Commission is obliged to publish every report laid before Parliament thirty days after the Minister is expected to have laid such report in terms of subsection (5). Failure to do this by the NPRC does not place it in good standing with its statutory obligations, and Zimbabweans at large because the Commission will be withholding from the public the work it has done, and how it has spent the taxpayers’ money. Failure to release the report prevents people from holding the NPRC to account.

28. Emphasis is added. This means that even if the Minister does not present the report, the NPRC must publish its report in accordance with the expected timeline.
On 11 December 2019, NTJWG issued a statement in which it bemoaned the pursuit of transitional justice measures outside policy framework. One of the issues stated in the statement is that there is need for a clear legal framework within which measures like re-burials and exhumations need to be carried out within a legal framework developed in consultation with transitional justice stakeholders.

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

NTJWG noted that in 2011, an organisation called Fallen Heroes Trust started a series of exhumations around the country claiming to be exhuming remains of freedom fighters. The process faced criticism from many experts who claimed that such a process requires an expert approach within a national policy framework. Ultimately, the Fallen Heroes Trust initiative was stopped by the High Court following an application by the ZPRA Veterans Trust, which successfully argued that the process was meant to interfere with evidence of post-independence atrocities and that some of the people being exhumed were part of its own membership massacred during Gukurahundi.

In a judgment delivered by Justice Mathonsi in April 2011, the court directed the government to “come up with a legal process, after consultation with all stakeholders and interested parties countrywide, which shall be the framework for any exhumation of the remains or persons who died or disappeared during the pre-independence or post-independence military or political hostilities in Zimbabwe.” (See ZPRA Veterans Trust v Fallen Heroes Trust and Others (Case No. HC 880/11) [2011] ZWBHC 61).
3.4 FAILURE TO ESTABLISH THE INDEPENDENT COMPLAINTS MECHANISM

Section 210 of the Constitution provides for the establishment of an Independent Complaints Mechanism (ICM) 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. In the year 2019, that provision entered year 7 without the state making any attempt implementing it. Section 324 of the Constitution states that all constitutional obligations must be performed diligently and without delay. By not bringing to Parliament the Independent Complaints Mechanism Bill, government continues to be in breach of section 324 of the Constitution.

Implementing Section 210 will go a long way towards dismantling impunity and holding perpetrators to account. This has been made more urgent by the continued violations of human rights by security forces that was witnessed in 2019. On 1 August 2018, the Zimbabwe National Army (ZNA) opened live ammunition on unarmed civilians killing at least 6 people and injuring hundreds. Between 14 January and 5 March 2019, ZNA and the Zimbabwe Republic Police (ZRP) again shot and killed unarmed civilians. The Zimbabwe Human Rights NGO Forum (the Forum) reported that 17 people lost their lives in the violence. It is this continued violation of human rights by the security forces which makes it urgent for the establishment of the ICM.

In the absence of an official mechanism to deal with violations of human rights by security services, civil society is stepping into the gap. Members of the public have been part of this push for accountability by reporting all violations of human rights by the security forces.

During the past years, the Forum received dozens of reports against the security forces. By the time of this update, the Forum has since issued at least thirty (30) Notices of Intention to sue the State for the unlawful actions of the military and police during August 1 2018 post-election violence and the stay away which took place from the 14th of January 2019. The notices have been issued in terms of Section 6 of the State Liabilities Act (Chapter 8:14).

All the thirty (30) legal suits have raised various misdemeanours, including wrongful deaths, torture and other forms of cruel, inhuman and degrading treatment, assault, deprivation of liberty and alleged theft by the police and army. Several of these victims sustained injuries to the body and suffered damages in the form of loss of support and medical expenses.

While members of the security forces appeared to be acting within the course and scope of their employment when they committed the misdemeanours stated above, we reiterate that individual security officers will have to account fully for their illegal actions as it is an indisputable fact that international criminal law has narrowed the scope of the defence of superior orders. Domestic practices also show that manifestly illegal orders should not be obeyed.

**All the thirty (30) legal suits have raised various misdemeanours**

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3.5 ETHICS AND INTEGRITY COMMITTEE

Section 287 of the Constitution provides for an Act of Parliament that must establish the Integrity and Ethics Committee for the purpose of developing and enforcing integrity and ethical conduct on the part of traditional leaders; resolving disputes between traditional leaders and dealing with complaints against traditional leaders. Traditional leaders have, since the colonial era, been associated with unethical political activity. The civil society has on several times litigated against named traditional leaders implicated in gross violation of human rights. Traditional leaders have further been implicated in electoral fraud matters.

In the absence of the EIC, civil society has resorted to litigating against traditional leaders implicated in violations of the human rights including hate speech, electoral fraud and intimidation. There is a High Court Judgment in a matter filed by the Election Resources Centre against Chief Charumbira who is the President of the Chief’s Council in which the court ruled that his statements in support of the ruling party are in violation of the constitution.

Again there has been no traction in implementing section 287 of the Constitution as more and more human rights violations continue to be reported against traditional leaders.
4.1 NTJWG IN ACTION

4.1.1 NTJWG COMMEMORATES THE INTERNATIONAL DAY OF TRUTH

The NTJWG’s fifth anniversary coincided with commemorations of the International Day for the Right to the Truth Concerning Gross Violations of Human Rights which is observed worldwide on 24 March annually. Several events were held by the NTJWG, including briefing the international community in Zimbabwe on the work of the NTJWG on 28 March 2019. On the same evening, the NTJWG in partnership with Human Rights Watch hosted a movie night where it screened a documentary entitled “The Uncondemned” at Ster-Kinekor in Harare. Truth-seeking and truth-telling are an important pillar in transitional justice processes because it gives people an opportunity to talk about the past, deliberations which inform what needs to be done to deal with the past, and also make recommendations of gross human rights violations in Zimbabwe.

The documentary was shown in light of reports of women who were reportedly raped in Zimbabwe in the aftermath of the shutdown protests in January 2019. The movie was followed by a panel discussion on the role of archives in truth-seeking and reconciliation. Panellists were Shari Eppel, who is an expert on exhumations of the victims of Gukurahundi and Director of Ukuthula Trust based in Bulawayo, the late Dr. Patson Dzamara, a human rights activist whose brother Itai Dzamara has been missing since March 2015, and Roselyn Hanzi, the Director of the Zimbabwe Lawyers for Human Rights (ZLHR).

You can read more about the film and watch the trailer here: http://www.theuncondemned.com/
4.1.2 NTJWG MEETS WITH THE GOVERNMENT AND NPRC

Meeting with the NPRC: On 10 April 2019, the NTJWG met with the NPRC in Harare for the first briefing of the year. The briefings provide a platform for the NTJWG to meet the NPRC and convey issues raised by its constituency in relation to the work of the NPRC. Several issues were discussed at the meeting which included the NPRC’s failure to report to Parliament, questions around the NPRC’s failure to carry-out activities because of lack of funding, as well as the issue of the lifespan of the NPRC.

It is commendable that after recommendations from the NTJWG, a legal case was taken up by the ZLHR and the case for the NPRC’s lifespan to be extended to 2028 was won. However, the Office of the Attorney General appealed against this ruling. This means that if the Attorney General office’s appeal is granted, the decision of Justice Mafusire will be overturned, and the lifespan of the NPRC will only be up to 2023.

The NTJWG appreciated the participation of the NPRC and the sterling role it played at the November 2018 Transitional Justice Symposium held in Bulawayo. In the same meeting, the NTJWG Chairperson Mr. Alec Muchadehama presented The Code of Inclusion to the NPRC. This document contains seventeen concise and clear, simple and easy to understand principles on inclusion of other stakeholders such victims, survivors, and People with Disabilities (PWDs) in national justice and reconciliation processes such as setting-up committees, conferences, outreach programs, NPRC documents, and other activities in relation to dealing with the past in Zimbabwe. The document informs official justice processes of the importance of an inclusive approach to dealing with the past in the country. These details are a rich distillation of

33. Minister of Justice, Legal & Parliamentary Affairs & 3 Others vs Concilia Chinanzavavana & Another, SC 187/19.
over two decades worth of work with survivors of past violence, experiences of over hundred organizations that hold public consultations with marginalized people and groups, the experiences of the NTJWG in reaching out to over 3,000 families in Zimbabwe and the diaspora as well as lessons drawn from consultations with Parliament and civil society in transitional justice policy making.

**Meeting with the NPRC:**
On 17 October 2019, the Chairperson of the NTJWG, Mr. Alec Muchadehama met with the Chairperson and Commissioners of the NPRC for the second time to present the NPRC briefing. The briefing raised the issue of the outstanding NPRC reports to Parliament, the NPRC’s role in national dialogue processes and the issue of including survivors in Provincial Peace Committees.

The NPRC committed to work on the annual report and submit it according to the provisions of the Constitution and NPRC Act, to resume the national consultations on the national dialogue, and to include survivors in all its activities, and interventions.

**Meeting with the Executive:**
On 20 June 2019, the NTJWG presented its Executive Briefing to the Permanent Secretary in the Vice President’s Office.

The briefing appraised Reverend Damasani on the concerns of stakeholders with regards the involvement of the security forces in civilian affairs, the delays in the implementation of the Motlanthe Commission of Inquiry recommendations, establishment of the Independent Complaints Mechanism, Observance and mandate of the NPRC, funding of the NPRC and advocacy for the adoption of the African Union Transitional Justice Policy by Zimbabwe.

**4.1.3 NTJWG SETS-UP ARCHIVAL PROJECT**
The NTJWG has since 2018 been working on developing a digital human rights archive which will enable all human rights stakeholders and survivors to readily access and upload data on human rights, transitional justice, and conflict in Zimbabwe. The portal was designed to develop one central place for Zimbabwe’s Human rights stories. The archive was created to promote the use of a centralized, publicly accessible digital human rights information centre for Zimbabwe. The portal takes stock of human rights documents since 1980 to date. The NTJWG continued in its quest to build the capacity of its stakeholders. On 18 March 2019, the NTJWG held a training session for twelve participants from Harare, Masvingo, Mutare, Bulawayo, Gweru and Chinhoyi in Harare.

**4.1.4 COMMUNITY DIALOGUES**
Between 24 September and 5 December 2019, the NTJWG convened 11 community dialogues with victims based in Tsholotsho, Nyanga North, Murehwa, Bikita, Gwanda, Zvishavane, and Marange, bringing together four hundred and eighty three victims and survivors of past atrocities. Two hundred and fifty-nine were female, and two hundred and twenty-four were male. The community dialogues were mostly implemented by survivors.

The thrust of the community dialogues was to disseminate information in relation to the mandate of the NPRC which communities could use to engage the NPRC in dealing with the past in their own contexts. The community dialogues created platforms for sustainable dialogue among survivors of past atrocities. Discussions on dealing with the past at community level initiated dialogue to address the needs and expectations of survivors in dealing with the past in Zimbabwe.
Additionally, the community dialogues shifted the focus of the NTJWG’s engagements with the traditional survivors with whom the National Transitional Justice Working Group (NTJWG) had been working with in the past. Engaging communities which have been affected by conflict and are doing transitional justice work on their own, including but not limited to victims of political violence, forced evictions, resource conflicts, Gukurahundi and operation Murambatsvina, among others meant that the NTJWG also included more survivors in its work to make its interventions more victim-centric, and address their needs, and expectations.

Cross-cutting issues which emerged throughout the dialogues were the yearning by survivors for apologies from perpetrators, compensation of victims, the lack of visibility of the Commission at community levels, the extension of the term of the NPRC so that it completes its work, and achieves its mandate, and the call for the inclusion of perpetrators in the community dialogues.

4.1.5 REGIONAL PROCESS MONITORING MEETINGS

The NTJWG carried-out regional process monitoring meetings in Mutare and Gweru with regional stakeholder organisations on the 5th and 15th of November 2019, respectively. The meetings were important as they assisted the NTJWG to carry-out scoping exercises in the Manicaland and Midlands regions to understand who was doing what kind of work on transitional justice in the regions. The NTJWG took this opportunity to get feedback on how it could improve its communication strategy, and involve stakeholders in its work.

35. A series of massacres of Ndebele civilians carried out by the Zimbabwe National Army from early 1982 to late 1987. It derives from a Shona language term which loosely translates to “the early rain which washes away the chaff before the spring rains”.

36. Operation Murambatsvina (move the rubbish), also officially known as Operation Restore Order, was a large-scale Zimbabwean government campaign to forcibly clear slum areas across the country.
4.1.6 NTJWG ON THE AIRWAVES

The NTJWG hosted radio programs in Mutare, Bulawayo, and Masvingo between October and November 2019 to enhance the NPRC’s awareness on the victim’s needs and expectations. After community dialogues, the NTJWG expected the NPRC would interface with survivors and listeners to interrogate issues such as reparations, rehabilitation, exhumations and memorialisation. In turn, the NPRC would communicate what it is intending to do to resolve the survivors’ needs and expectations.

4.1.6.1 PROMOTING A VICTIM-CENTRED APPROACH IN TRANSITIONAL JUSTICE PROCESSES IN ZIMBABWE

On the 17th of October 2019, the NTJWG hosted a radio program in Bulawayo on Skyz Metro-FM themed “Promoting victim-centred approach in transitional justice processes in Zimbabwe”. On the panel were Mr. Wellington Nkau who is the Survivors’ Representative in the NTJWG, Ms. Shari Eppel, Director of Ukuthula Trust and the NPRC Commissioner Mrs. Netty Musanhu.

The program was aimed at sensitizing the public on transitional justice processes by initiating conversation on victim centeredness, what it looks like in practice and the role it plays in catalysing peace and reconciliation in Zimbabwe. 37

37. The radio program is accessible here: https://soundcloud.com/ntjwgzimbabwe/promoting-a-victim-centred-approach-in-tj-processes-in-zimbabwe
4.1.6.2 PUSHING FOR NON-RECURRENCE OF POLITICAL VIOLENCE

On 24 October, the NTJWG hosted a radio program on Hevoi-FM in Masvingo. This program provided a platform for the Masvingo community to engage in transitional justice issues affecting the region. Commissioner Mrs. Patience Chiradza, Mr. Golden Maunganidze from TelZim and Mr. Wellington Nkau, the Survivors’ Representative in the NTJWG, participated in the radio show.\(^{38}\)

4.1.6.3 TRANSITIONAL JUSTICE AND NATURAL RESOURCES IN ZIMBABWE

The NTJWG hosted a radio program on Diamond-FM in Mutare on the 1st of November 2019 under the Theme "Sustainable Natural Resources Governance and Building Partnerships for Development". The radio program provided a platform for the Marange community and Manicaland region at large to critically engage in natural resources management, and violence as a transitional justice issue. When people flocked to Marange in 2008 to extract diamonds, the State responded by unleashing lethal force on illegal panners. Many lost their lives, and no justice has been realised for victims to date. The ensuing murders of a lot of Zimbabweans during Operation Hakudzokwi between 2008 and 2009 was a gross violation of human rights in Zimbabwe which need to be dealt with. Issues which came-up were the expansion of illegal gold fields into the communities which would spark conflict between rural dwellers and artisanal miners.\(^{39}\)

4.1.6.4 RUNAWAY VIOLENCE IN THE MIDLANDS PROVINCE

The Midlands Province of Zimbabwe experienced violence perpetrated by the criminal elements known as Mashurugwi\(^{40}\) (a moniker relating to the area from which these people came from in Shurugwi, a small mining town in the Midlands Province). The battle in Midlands is largely about resources because of the decentralization of gold mining through small scale miners who have become a law unto themselves and brazenly engaging in violence whose extent needs to be dealt with at state level.

Survivors of this violence, especially widows and orphans, men and women who experienced the violence need urgent psycho-social support and the government, through the NPRC and security agencies, needs to intervene to first halt the violence and then provide psycho-social support.

In response to the violence, the NTJWG hosted a radio program under the theme "Affirmative Action against Organized Violence in the Midlands Province."

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\(^{38}\) The radio program is accessible here: https://soundcloud.com/ntjwgzimbabwe/establishing-structures-for-non-recurrence-of-gross-human-rights-violations-in-masingo

\(^{39}\) The radio program is accessible here: https://soundcloud.com/ntjwgzimbabwe/revisiting-the-resource-curse-in-Manicaland

\(^{40}\) Machete wielding artisanal miners who are based in the Midlands region, most from Shurugwi.
Ms Sindiso Nxumalo, a survivor from Bulawayo, was the guest on radio. Listeners raised interesting issues such as the need for an urgent intervention by the government, arrest of the perpetrators and highlighted cases of corruption associated with the handling of reported cases.

4.2 STAKEHOLDERS IN ACTION

Members of the NTJWG across the country were involved in several key activities to propel transitional justice work in Zimbabwe amidst constricting civic space. Some of their activities are highlighted below:

4.2.1 DOCUMENTING AND REMEMBERING THE JANUARY 2019 PROTESTS CLAMPDOWN

CITE, a local media organization based in Bulawayo launched a documentary on the 12th of June 2019 entitled “January Shutdown Protests”41 at the Rainbow Hotel to document as well as remember the brutal attacks on civilians and the general populace by members of the police, army and intelligence after the riots broke out over the hike in fuel prices.

4.2.2 PRAYERS FOR PEACE AND JUSTICE IN ZIMBABWE

Under the banner of the Church Convergence, churches through their apex bodies such as the Zimbabwe Council of Churches, Zimbabwe Christian Alliance, Zimbabwe Divine Destiny and the Evangelical Fellowship of Zimbabwe met at the Regency Hotel in Gweru on 27 August 2019 to pray for peace in Zimbabwe. Part of the discussions at the prayer meeting focused on Gukurahundi, resolving land disputes, natural resources governance, and how those problems can be resolved through an inclusive dialogue.

4.2.3 DEALING WITH GUKURAHUNDI

On 9 July 2019 Ukuthula Trust, an organisation focusing on survivor support, trauma healing, and exhumations of Gukurahundi victims, hosted a workshop in Bulawayo to unpack the ethics of handling of Gukurahundi trauma survivors. The issues covered include sexual violence in conflict, children of conflict and the need for post conflict counselling and rehabilitation.

The outcomes of the event were the identification of problems encountered by Gukurahundi victims, the solutions to the problems, and the conception of a platform for victims to share their issues and develop the capacity of participants to co-create the way forward.

41. Gukurahundi: 36 years later documentary: https://youtu.be/Q2b5iVGCDs0
5.1 EMERGING ISSUES FOR TRANSITIONAL JUSTICE IN ZIMBABWE IN 2019

5.1.1 THE NEED FOR A NATIONAL REPARATIONS FUND

Since 2018, nothing much has been done by the Government of Zimbabwe (GoZ) to abide by the Motlanthe Commission recommendations to pay compensation to victims of 1 August 2018. Of major concern were the violations perpetrated by the State or where private citizens acted with the tacit and often times express approval of the State. The Government of Zimbabwe ill-advisedly continued to hide behind the State Liabilities Act [Chapter 8:14] arguing that the normal process of attachment of property does not apply to State property. According to section 6 (1) Subject to this Act, no legal proceedings in respect of any claim will be made against the State, President, Vice president, Minister, or any officer or employee of the State in his official capacity. This provision implies that the victim(s) should only identify the perpetrator(s) in their individual capacity to be compensated, which is very difficult because the perpetrators are usually not easily identifiable.

In 2019, notable cases of police and military brutality were documented when the state started accusing human rights and political activists of subversion. The experiences of Dr. Peter Magombeyi, the former Acting President of the Zimbabwe Hospital Doctors Association as well as comedian Samantha Kureya, popularly known as Gonyeti are cases in point of activists who were abducted and tortured.

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The former was brutalised for threatening to call on Doctors to embark on industrial action due to poor salaries and poor working conditions, and the latter for using satire to ridicule police brutality in Zimbabwe.

There is an urgent need to establish a National Reparations Fund to compensate survivors for their losses such as property, restore their dignity, and cater for their welfare and social amenities such as health. The fund should be managed by an independent board, made-up of high profile, honest, and respected Zimbabweans from the government, civil society and representatives of victims’ bodies. The Fund should be managed, and disbursed by people who will not seek to benefit, and self-aggrandise at the expense of survivors. According to the NTJWG Guiding Principles for Transitional Justice Policy and Practice in Zimbabwe (2015) “reparations should be proportional to the gravity of the violations and the harm suffered. It must also uphold and promote accepted religious, individual, community and traditional transitional justice mechanisms.”

5.1.2 EXHUME TO DESTROY OR EXHUME TO REMEMBER

On 9 April 2019 President Emmerson Mnangagwa met with Matabeleland civil society organisations and pledged to facilitate exhumations and the proper reburials of Gukurahundi victims as well as the provision of counselling and medical assistance to victims and survivors and the issuance of identity documents to those who lost them during the upheavals. In July 2019, The NPRC announced that part of its efforts as a result of the “presidential proclamation” would be directed at the exhumation of human remains in places where it was believed that mass human rights violations had occurred in parts of Matabeleland and the Midlands. While this was a welcome move, the nation expected a better and more strategic intervention that was inclusive of all stakeholders and took into consideration the needs of survivors and families as well as the interests of justice itself. For the past two decades, civil society and the survivors of the Gukurahundi massacres have been calling for a comprehensive process of transitional justice which involves all stakeholders, and addresses outstanding issues such as exhumations, institutional reforms, promotion of truth,

The NPRC announced that part of its efforts would be directed at the exhumation of human remains in places where it was believed that mass human rights violations has occurred in parts of Matabeleland and the Midlands

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reparations, justice and accountability within the provisions of a transitional justice policy.

While it is important for the survivors and their families to have their loved ones exhumed, identified and reburied so that their remains can peacefully rest, justice also demands that a professional process of exhumations guided by best practices of recording and documenting the bodies found, the causes of death and safeguarding the remains be instituted. While the pronouncements by President Mnangagwa to begin to deal with the Gukurahundi are noted, justice for victims and survivors of past atrocities should be at the centre of this policy. The NTJWG has, among its stakeholders, experts who have carried-out similar processes in other countries. The common understanding is that Zimbabwe has not yet adopted a national policy and is not adhering to international standards on exhumations.

It is necessary for the NPRC to pay due attention to a court judgment that was passed by High Court in April 2011 in the matter of ZPRA Veterans Trust v Fallen Heroes Trust and Others (Case No. HC 8801/11) (2011) ZWBHC 61). In its findings, the Court indicated that the exhumations were done clandestinely, in the absence of forensic experts which was tantamount to interfering with crime-scene evidence of crimes against humanity. The Court gave an interim order barring the Fallen Heroes Trust from continuing the exhumations. The court’s decision implies that no exhumations should be carried-out in the absence of experts as proceeding with the exhumations would be in contempt of court and a flagrant contravention of the April 2011 judgement. At the same time, there is the risk of destruction and concealment of evidence on how the victims were killed which can be used for justice and accountability processes in the future.

The dangers that lie ahead if exhumations are not done properly include the possible destruction of evidence due to inexperienced people attending to the exhumations. Additionally, if there is no information on how the human remains will be preserved, the causes of death and any other stories that the bones might and will be able to tell will be lost. The government owes it to its people to be able to guarantee that professionalism, empathy and justice will be the bedrock on which the policy of exhumation and reburials will be hinged on.
5.1.3 ELUSIVE NATIONAL DIALOGUE -
WHO WILL WATCH OVER THE
POLITICAL PLAYERS

Since the disputed 2018 general elections in
Zimbabwe, the country has been at pains to find
common ground on the national development
trajectory that the country is supposed to take.
The main opposition party in the country, the
MDC-Alliance, disputed the election results and
protests on 1 August 2018 led to the shooting of at
least six innocent people by the army in Harare (NGO Forum, 2018). Several public demonstrations
on the deteriorating economy and increasing
commodity prices have occurred since then
resulting in more brutalization and State
sponsored violence against the masses, one
incident in particular being the 14 January 2019
protest which left approximately seventeen
people dead (NGO Forum, 2019). The NPRC,
noting that the situation had potential to further
deteriorate, initiated nationwide consultations for
a national dialogue among political parties which
contested in the 2018 election, led by its
Chairperson Retired Justice Selo Nare.

The process did not go very far before President
Emmerson Mnangagwa came up with his own
Political Actors Dialogue (POLAD) platform which
in essence brought together all the political
parties that had contested the Presidential
elections in 2018, with the exception of the MDC-
Alliance led by Nelson Chamisa who abstained
due to the legitimacy question which he levelled
against the President. The foregoing saw the NPRC
ceasing its consultations and shifting its attention
to the POLAD. Differences emerged over the
process, expected results and the exclusion of civil
society actors in the POLAD. Zimbabweans are
doubtful that a process that excludes major civil
society actors will be able to come up with a
comprehensive framework and solutions on what
the country needs to do so as to attain national
cohesion. The Chairperson of the NPRC was
appointed by the President as the co-facilitator or
convener of the POLAD process, along with the
Chairperson of the Zimbabwe Gender
Commission which did not sit well with most
Zimbabweans and other stakeholders because
this led to the abandonment of the NPRC’s
independent consultations, and its involvement in
a political processes which compromised the
Commission’s independence.

There are arguments that the NPRC was already in
a dialogue process of its own and that the
Chairperson’s involvement in the POLAD process
would just be an extension of their original
process. There are also sentiments among the
public and within the civil society that the NPRC
should have continued with its original process of
going around the country gathering the views of
Zimbabweans on the subject. The engagement of
political parties and politicians would have formed
one of the components of the NPRC’s national
dialogue process. The process also has the
potential of relegating the views of Zimbabweans
to the periphery especially on matters of peace,
national reconciliation and healing.

While there have been arguments that the
Chairperson of the NPRC could be acting in his
personal capacity in POLAD, concerns remain that
he is not a political player and that he has a
constitutional mandate that of being Chairperson
of the NPRC and as such he must stick to his role in
the Commission. The NPRC must assert its
independence and avoid acting in any manner
that may create a perception that the Commission
is not independent and is failing to implement its
mandate.  

5.1.4 THE GOVERNMENT PAYS LIP-SERVICE TO ENDING IMPUNITY - MOTLANTHE RECOMMENDATIONS REMAIN UNIMPLEMENTED

After the 1st of August 2018 killings of seven civilians as a result of live gunfire discharged at unarmed civilians by the military, the government set-up a Commission of Inquiry led by former South Africa President Kgalema Motlanthe. The Commission, after conducting several consultations across the country, came-up with findings and recommendations to be implemented by the Government of Zimbabwe. The key recommendations included reforming Zimbabwe’s legislation on law and order, freedom and liberalisation of the media and electoral reforms and prosecuting the members of the security forces responsible for the killing of six civilians during the protests (Motlanthe Commission of Inquiry Report, 2018).47

The NTJWG notes the apparent lack of significant action from the government with regards to holding the perpetrators of violence from the military accountable, thus far. To date, no-one has been arrested, and none of the victims have been compensated. The Government of Zimbabwe should fully implement the recommendations of the Commission. Moreover, the NTJWG demands that Zimbabwe’s security forces, especially the military remain in their barracks and not get involved in civic demonstrations or engage in the disruption of political gatherings. More importantly, the government should initiate the process of security sector reform to ensure that the security services operate within the confines of the law according to the principles outlined under section 212 of the Constitution, paying greater attention to protection of citizens and the respect for human rights.

5.1.5 YOUTH, MINING AND MACHETE GANGS: THE RISE OF NEW TYPES OF ORGANIZED VIOLENCE IN ZIMBABWE

There have been reports of deadly violence that was unleashed by artisanal gold miners made-up of gangs of young men in the Midlands area as well as other parts of Zimbabwe such as Mazowe and parts of Manicaland where gold and diamond mining still occurs, respectively. For some time, the country has witnessed rural and urban communities being traumatized by machete wielding youths who fight for the control of disused mines in search for gold, its markets as well as practicing outright violence to control the trade. The violence has not occurred in secret and the Government of Zimbabwe is well aware of it.

Communities have been left with widows and orphaned children as well as trauma from witnessing such brazen violence. The Government of Zimbabwe should have a clear and well conceptualised plan to empower youths. This can be done through the strategic utilization of the abundant natural resources in Zimbabwe such as gold and diamonds. The government also needs to have clear security policies to ensure that criminals masquerading as machete wielding gangs do not take advantage of the vacuum that the security forces have created in such areas.

The NPRC will need to take an active role in this area to ensure that there is healing and trauma management for those affected.

6.1 KEY FINDINGS AND RECOMMENDATIONS

6.1.1 KEY FINDINGS

- Recommendations contained in the Motlanthe Commission of Inquiry Report are yet to be implemented. Justice delayed is justice denied. The delays by government to pay compensation to victims as stipulated by the Commission is re-victimising the victim by prolonging the suffering, and dehumanisation of survivors.
- The lack of adequate funding is preventing the Commission from achieving its mandate as money is a very important resource in the implementation of the work of the NPRC.
- The issue of the lifespan of the NPRC remains a bone of contention and is causing confusion and uncertainty due to lack of clarity on when its mandate lapses. It is important that the term of the NPRC is made clear so that stakeholders can plan on how to engage the Commission for as long as it exists.
- In 2019, human rights violations continued at the hands of the security sector, perpetuating violence with impunity against citizens of Zimbabwe. There is need to initiate security sector transformation.
- There are no policies in Zimbabwe to guide important processes such as institutional reforms, memorialisation, and the promotion of truth, reparations, justice and accountability.
- The national dialogue process remains elusive and not inclusive. There are many issues to be spoken about, yet there is reluctance on the part of political principals to initiate this important process.
**6.2 RECOMMENDATIONS**

**6.2.1 THESE WERE DONE IN TANDEM WITH THE KEY FINDINGS**

- Government should expedite the implementation of the recommendations contained in the Motlanthe Commission of Inquiry Report such as reforming Zimbabwe’s legislation on law and order, freedom and liberalisation of the media and electoral reforms and prosecuting the members of the security forces responsible for the killing of six civilians during the protests, (Motlanthe Commission of Inquiry Report, 2018). Implementing the latter will set in motion the delivery of justice and accountability, non-recurrence of gross human rights violations and result in boost of confidence in State institutions.

- Government should increase funding and support for the NPRC given the huge task on dealing with the past lying ahead. Any national healing and reconciliation process requires a large pool of financial resources. Government should look for assistance beyond its traditional donors who have a reputation is supporting transitional justice processes, worldwide.

- On its turn, the NPRC must account for the resources it receives through meeting its reporting obligations.

- The issue of the lifespan of the NPRC needs to be dealt with as a matter of urgency so as to diffuse confusion and uncertainty on when the Commission’s mandate lapses. It is important that the term of the NPRC is made clear so that stakeholders can plan on how to engage the Commission whilst it still exists as well as plan for a time when it ceases to exist.

- Due to increasing human rights violations at the hands of the security sector, there is need to initiate security sector transformation beginning with the establishment of the Independent Complaints Mechanism (ICM) as provided for under section 210 of the Constitution. As human rights abuses are escalating, it is high time that victims of violence have access to a mechanism where they can report misconduct of the security services without fear of retribution.

- There is need for the formulation and implementation of policies in Zimbabwe which guide important processes such as institutional reforms, memorialisation, and promotion of truth, reparations, justice and accountability as raised during the National Transitional Justice Symposium held in Bulawayo in November 2018.

- The NPRC should therefore put in place an effective Early Warning System preferably with all these functions to ensure that potential conflicts in Zimbabwe are detected, reported and responded to in a way that maintains peace or manages conflict.

- In line with the reconstitution of Provincial Peace Committees, the NPRC should disband the Provincial Peace Committee in the Midlands Province, and have fresh elections to elect neutral people for the positions of Vice Chairpersons. This is critical in ensuring the full participation of survivors and other stakeholders in the activities of the PPC without fear of retribution.

- As the socio-economic and political situation in Zimbabwe continues to deteriorate, the national dialogue process should be initiated as a matter of urgency, with the NPRC resuming its consultations which it abandoned in 2019. There are many issues to be spoken about, and transitional justice must be one of them.
CONCLUSION

2019 was both difficult and promising in equal measure for transitional justice in Zimbabwe. It is commendable that despite the limited budget received by the NPRC from the Government, the Commission continues to stay afloat implementing some of the activities outlined in their 5 year Strategic Plan. Notable gaps remain between the strategy and what is on the ground. Some initiatives like truth-telling and national dialogue consultations where abandoned without an explanation as soon as they had started. The NTJWG urges the Government of Zimbabwe to prioritize the adequate funding of the Independent Commissions to ensure the effective discharge of their mandates.

The NTJWG hopes that the NPRC will be able to maintain transparency by ensuring that the staff in their employ is known to the public. In terms of the work of the NPRC, the NTJWG is encouraged by the initiatives undertaken by the NPRC such as the decentralization of their work through the Provincial Peace Committees. While the establishment of the latter is welcome, the NPRC is reminded to take the concerns of civil society groups as well as victims and survivors who have called for the PPCs not to be infiltrated by political party activists and Government security officials.

A major issue that continued to hog the limelight is that of the exhumation of human remains in Matabeleland and the Midlands provinces proposed by the President of Zimbabwe. While this would be a noble idea, the NPRC is reminded that such activities must be carried out by experienced professionals with a view to achieving justice through documentation and the possible prosecution of perpetrators.
The unearthing of human remains without a clear plan to achieve memorialization, justice and the preservation is an exercise in futility. This must be done within the framework of a transitional justice policy.

The NPRC had started 2019 on a positive note calling for dialogue among Zimbabweans on how to end the political impasse and divisions in the country. This, however, did not go very far as the Chairperson was co-opted into the POLAD process. The NTJWG recommends that the Chairperson of the NPRC should step down from this position and focus more on implementing the urgent mandate of the Commission in national peace and reconciliation processes.

The adoption of the AUTJP by the African Union is an important framework for the transitional justice landscape in Africa. Zimbabwe needs to take this policy and domesticate it so that the country is informed and directed by such informative tools in future which draw lessons and best practices from Africa and abroad.

The NTJWG continues to make calls for the Government of Zimbabwe to fund the compensation of victims of politically motivated and state sponsored violence. Hiding behind the State Liabilities Act or force through its security personnel will not yield any positive results. The establishment of a Compensation Fund is long overdue.

The government should also expedite the implementation of the recommendations contained in the Motlanthe Commission of Inquiry Report, increase funding and support for the NPRC as well as resolve the issue of the lifespan of the NPRC. It is also imperative for government to facilitate the establishment of the Independent Complaints Mechanism (ICM), formulate and implement policies in Zimbabwe which guide important processes such as institutional reforms, memorialisation, and the promotion of truth, reparations, justice and accountability.