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**66 ON DEATH ROW** 

## UNITED FOR HUMAN RIGHTS

A ZIMBABWE HUMAN RIGHTS NGO FORUM NEWSLETTER VOL 6 JULY 2022



Duo back in court for tearing President Mnangagwa cap



## The law as a weapon

Sikhala, Sithole and 13 others spend two months in detention

### **INSIDE:**

Police invoke MOPA to curtail fundamental freedoms





### **Foreword**

#### I hope I find you well.

July was indeed a painful month. 15 opposition party members including MPs Job Sikhala and Godfrey Sithole arrested for allegedly inciting violence in Nyatsime, Chitungwiza during the memorial service for the late Moreblessing Ali on 14 June were all denied bail. By 31 July, Sikhala and Sithole had clocked 47 days in remand prison. On 25 July, the Forum issued a statement it raised concern weaponization of bail against perceived enemies of the State, particularly opposition Citizens Coalition of Change (CCC) supporters and human rights defenders. The politicisation of bail is now a trend as evinced by cases handled by the courts in the past two years.

Sikhala has reportedly been arrested 60 times in his political career but has never been convicted of any single offence. Neverthelss, he was denied bail on the grounds that he has the propensity to re-offend. Bail was denied to all the others on the basis that the offence is serious, and the accused may abscond. No ZANU-PF supporter, including Nyatsime ward 9 Councillor, Masimbi Masimbi, who publicly incited the violence, has been arrested in connection with the Nyatsime skirmishes.

Crisis in Zimbabwe Coalition Obert Masaraure, who is the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) president has also been languishing in remand prison over murder charges. Masaraure was first arrested on 14 June on accusations that he murdered his friend, Roy Issa, in 2016, although an inquest into Issa's death ruled out foul play. He was released on ZW\$60 000 bail on 29 June by the High Court but

was re-arrested a week later for inciting public violence after he allegedly posted on Twitter urging teachers to demand the release of his colleague, Robson Chere, who was in jail facing similar accusations of murdering Issa.

In its statement of 25 July, the Forum challenge the judiciary to enquire about the worrisome trend of denial of bail for political detainees which, in most cases, results in the overturning of the decisions by the High Court on appeal. We reiterated that bail is a constitutional right that every accused person should have access to regardless of their political affiliation. Section 50 (1)(d) of the 2013 Constitution asserts that any arrested person "must be released unconditionally or on reasonable conditions, pending charge or trial, unless there are compelling reasons justifying their continued detention." The burden of proof is on the prove the justifiability prosecution to continued detention. In all these instances, the state adduced no concrete evidence to this effect. We are of the view that the continued pretrial incarceration of the Nyatsime 15 constitutes a violation of basic fair trial rights and the fair administration of justice in general as well as the accused's rights under section 49 (1) of the Constitution to not be deprived of their liberty arbitrarily or without just cause.

On 26 July, the Minister of Public Service, Labour and Social Welfare presented in the National Assembly amendments to the Private Voluntary Organisations (PVO) Amendment Bill, 2021. As Civil Society Organisations (CSOs) operating in Zimbabwe, we have taken note of the extensive amendments to the PVO Amendment Bill as presented by the Minister and still believe that they only serve to further constrict civic and democratic space in the country. The amendments have no material effect on the original PVO Amendment Bill, 2021, essentially creating an entirely new repressive Bill.

The road ahead is bumpy and as we approach the 2023 elections, I urge civic organisations to brace for more politically motivated arrests and prosecutions as well as the continued closure of democratic space.

#### Thank you

Dr Musa Kika

## The law as a weapon

The Zimbabwe Human Rights victims of the political violence activists and human rights flagged the continuous denial supporters and human rights defenders by the courts, describing it as "weaponisation of the law and a worrisome trend".

In a statement released on 25 July, the Forum lamented the selective application of the law in the country's system.

The call by the Forum for an end to the politicisation of the law comes at a time some Citizen Coalition for Change MPs Job Sikhala and Godfrey Sithole have clocked 50 days in remand prison being denied bail.

The two were arrested on 14 **June** and charged for violence that took place in Nyatsime on the same day justice a party activist, Moreblessing Ali.

All 15, who include other opposition, transport operators and their drivers who were arrested connection with the violence are still in remand prison and denied bail.

"The Forum is concerned about the arrest of 15 opposition political party members of the Citizens Coalition for Change (CCC) in Nyatsime," part of the statement read.

"These include CCC members Precious Jeche, Misheck Guzha and Odius Makoma who are

NGO Forum (Forum) has red- that occurred in Nyatsime on 14 Iune 2022 and of bail to opposition Citizen arrested on 20 June 2022 after Coalition of Change (CCC) they were turned into accused persons by the Zimbabwe Republic Police (ZRP) who had summoned them to Marondera Central Police Station.

> charged with "They were public violence. This occurred after the three had gone to file police reports on the unlawful judicial destruction of their personal property at Beatrice Police Station on 16 June 2022 with assistance of Forum lawyers."

> > All the 15 are represented by the Forum. They have been denied bail on the grounds that they could either abscond or interfere with witnesses.

"In light of the above, the Forum accordingly incitement of violence over the recommends that the court as the highest custodian of upholds the during the memorial service of Constitution by safeguarding the right of every accused person to bail where they President qualify," the Forum further Mnangagwa. said.

> "The courts protect and enforce equal treatment before the law without discrimination based on political affiliation or social status.

"The Judiciary makes enquiry into the worrisome trend of However. detainees which, in most cases, results in the overturning of the decisions by the High granted Court on appeal."

Securing bail has remained a problem for opposition defenders.

Student activist Alan Movo spent 71 days in detention on allegations of inciting public violence after participating in an anti-corruption protest in 2020.

Journalist Hopewell Chin'ono spent 45 days in remand prison after he was arrested in July 2020 on allegations of to overthrow wanting constitutionally elected Government through a tweet. He spent a further 20 days in detention again in November 2020 for violating COVID-19 regulations.

Transform Zimbabwe leader Jacob **Ngarivhume** was detained for 45 days after he was arrested in July 2020 and charged with inciting public violence. Sikhala was arrested on 21 August 2020 allegedly posting videos on social media inciting the public to revolt against the Government of Zimbabwean **Emmerson** 

He was released on bail after 31 days in remand detention. Harare Mayor Jacob Mafume spent time at Harare Remand Prison on allegations which are vet to be taken to trial for more than two years on.

those linked denial of bail for political ZANU-PF have never struggled to secure bail. Former Health minister Obadiah Moyo was bail on his first appearance in court over a US\$60 million corruption deal.

### NYATSIME VIOLENCE DETAINEES' STATUS UPDATE

25 JULY 2022

On 14 June 2022, violence rocked Chitungwiza's Nyatsime suburb as members of the opposition party, Citizens Coalition for Change (CCC), and the ruling party, Zimbabwe African National Union-Patriotic Front (ZANU-PF), clashed over the death of a CCC activist, Moreblessing Ali. The violence resulted in the destruction of homes, business premises, vehicles and other household property. Following the events, the police have been carrying out investigations into the events that transpired resulting in the arrests of, so far, up to 15 suspects whose matters remain pending within the justice system. Worryingly, most of those arrested were victims of destruction of property, who were arrested upon attending to police stations to report this property destruction. The flow chart shows the details of each matter and its status. It is particularly notable that, as of the time of writing, none of the arrested suspects have been granted ball by the Courts. The Zimbabwe Human Rights NCO Forum is representing all the accused.



# CLICK HERE TO VIEW OUR FLIPBOOK ON NYATSIME TIMELINE

## Police invoke **MPOA** to curtail **fundamental** freedoms

Three Institute Women's Development the police for convening an meeting were set free spending two nights in detention following the intervention of the Zimbabwe Lawyers for Human Rights (ZLHR).

The three, Sandra Zenda, Kudakwashe Munemo and Onai Chitakunye were arrested by the police on 29 June 2022 and detained at Bindura Police Station facing charges of contravening section 7(1)(b) as read with section 5 of the Maintenance of Peace and Order Act (MOPA).

Zenda, Munemo and Chitakunye were represented by Idirashe Chikomba, Tinashe Chinopfukutwa and Blessing Nyamaropa of ZLHR.

They were accused of convening a meeting which was attended by 80 people on 29 June 2022 at Mayfair Lodge in Bindura, without giving notice in writing to Chief Superintendent Gladman Chiparaushe, the ZRP Officer Commanding Bindura District, for approval.

Victor Morrison, who had also

Young been arrested together with the (IYWD) trio, was released on 30 June team members who were arrested 2022 after he paid a fine for allegedly allegedly failing to unsanctioned registration number plates on a after vehicle.

> Morrison was also charged with contravening section 7(1)(b) of MOPA. He was advised by the police that he would summoned to appear in court if the State intends to proceed with prosecuting him.

> July 2022, Bindura On Magistrate Ruramai Chitumbura set the trio free on ZWL10 000 bail each. As part of the bail conditions, they were ordered to continue residing at their given residential addresses and not to interfere with witnesses until the matter is finalised.

> Zenda, Munemo, Chitakunye and Morrison join dozens of people, who in recent years have been targeted by the police while exercising their freedom association and assembly and accused of contravening MOPA, a reincarnation of the Public Order and Security Act (POSA) which itself repealed the Law-and-Order Maintenance Act [Chapter 11:07] (LOMA), a draconian colonial law.

MPOA is a reincarnation of the **Public Order and** Security Act (POSA) which itself repealed the Law-and-Order **Maintenance Act** [Chapter 11:07] (LOMA) and is vet another Draconian law



## **PVO Bill: Zimbabwe** stares hunger



severe droughts that have left experts millions people insecure, forcing many farmers condemned international organisations for food.

The country has suffered from numerous serious climate change droughts in the past decade, with the most recent drought stretching from 2018 through 2020 leaving more than half of the country's population in need of food aid.

However, while the droughts have created a significant need Zimbabwean aid. the government is currently in the process of amending Voluntary Private (PVO) Organisations amendments which, if adopted, would make it harder for Non-Governmental Organisations (NGOs) to operate in country.

The impact of Zimbabwe's PVO complement

and human rights food activists have roundly **PVO** the to depend on both local and Amendment Bill, amid fears philanthropic that, if passed into law, the Bill would, among others, restrict the provision of food aid to millions of starving Zimbabweans.

> 'This Bill is not only disastrous to both the citizens and civil society workers; this is clearly anti-people piece legislation,' David Mutambirwa, executive director and founder Mhakwe Heritage Foundation Trust told Alliance magazine.

Mhakwe Heritage Foundation Trust is a Zimbabwe-based Act; foundation advocating heritage and culture preservation through research and documentation.

> Mutambirwa said NGOs their nature seek government

Zimbabwe is grappling with bill. Local and international efforts in providing services to the people, particularly vulnerable.

> "And any form of tampering with them [NGOs] will create a resulting in government becoming [more] unpopular. This may lead to an own goal if the Bill is passed into law," he said.

> Tendai Ruben Mbofana, Zimbabwean social justice activist, writer and political commentator told Alliance magazine that against backdrop of millions of people in the country food insecure, the logical thing for government was to make it easier for the NGOs to get funding and help as people as they can.

> "But the government is doing exactly the opposite; they are limiting that funding," Mbofana said. 'These NGOs are a critical organ of this country."

## Zim stares hunger

Tendai Biti, a prominent human rights lawyer, also weighed in and said the PVO Bill was one of the worst bills ever concocted in independent Zimbabwe



Tendai Biti. prominent A rights human lawyer, also weighed in and said the PVO Bill was one of the worst bills ever concocted in independent Zimbabwe.

"It is a gross abuse of human argued rights, an attack on vulnerable communities and an absolute embarrassment to its sponsors. It must be resisted by all," said Biti who is an opposition party Citizens Coalition for Change legislator.

government the But maintained that the Private Voluntary Organisation Amendment Bill was meant to curb financial terrorism and money laundering by non-profit organisations.

In April this year, Zimbabwe's **Justice** Minister. Zivambi Ziyambi told the National Assembly that the Financial Action Taskforce revealed that unfettered some charitable trusts were being used as conduits of financial terrorism and money Private laundering.

global trend shrinking the space for civil to freedom of association. society

Institute -an policy research organisationthat among other things Civil Society Organisations (CSOs) were globally recognised as credible of innovations sites and leadership development.

"Locally, innovations such as Pfumvudza and rainwater has harvesting were first developed and piloted by NGOs before being adopted by the government," reads part of the report.

> And David Code, Advocacy and Campaigns Lead for CIVICUS told Alliance magazine that if passed into law, the Private Voluntary Organisations Amendment Bill would provide powers the government to interfere in the governance and operations of Voluntary **Organisations** (PVOs) and

toward seriously undermine the right

"It [Bill is passed into law] In a recent report, the Sivio would require PVOs to seek independent and receive approval from the government for any 'material change', including changes to their management and internal constitution. It empowers the authorities to designate any PVO as 'high risk' or vulnerable to 'terrorism abuse' and, in effect, cancel the registration of such PVOs or replace their leadership," Code said.

> He said it also bans PVOs from engaging in political activities broadly defined.

> "The impact of this is that the authorities can use the PVO to target civil society organisations working issues considered sensitive by the government or those who raise concerns over the state's actions or who are critical of human rights violations," he said.

#### CONTINUED NEXT PAGE

## Zim stares hunger



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The authorities, Code said, may also use the vague provisions of the law, including those described to be 'high risk', 'vulnerable to terrorism abuse', or those engaging in 'political activities' to target civil society groups that are critical to the government's response to protests around socio-economic challenges or humanitarian crises.

"Because the authorities will be empowered through the law to impose disproportionate penalties, including imprisonment or bans for administrative offences, the law's implementation may force NGOs to resort to selfcensorship to avoid reprisals from the state," he said.

Code said they had seen similar laws' wilful use and implementation to target civil society in other countries.

"In Algeria, for example, the Law on Associations 12-06-2012 empowers authorities to reject or cancel the registration of civil society organisations using vague provisions and restrict freedom of association using burdensome administrative requirements. The authorities have used the law to ban and close civil society groups and delay or prolong the registration of others, making them susceptible to state action and interference," he said.

In Equatorial Guinea, he added, Law no 1/1999 on the Regime of NGOs is used by the state to restrict freedom of association.

"The law provides for burdensome registration requirements making it hard for many human rights organisations to register formally. It targets human rights defenders affiliated with some civil society groups," he said.

And in Rwanda, Law No 04/12 is used by the state to interfere in the governance and administration of civil society organisations and prevent organisations working on human rights, governance, and corruption from registering and operating in Rwanda on the grounds that they threaten the public order, Code said.

Andrew Mambondiyani is a freelance journalist who has written for BBC, VICE News, The Daily Beast, YES Magazine and ZAM Magazine among others.

Alliance magazine's climate change coverage is supported by Fondation de France

### Victims challenge police impunity

Victims of police brutality constitutional challenging the constitutionality of restrictive and discriminatory provisions of the Police Act, unfairly impede which litigants from seeking redress violation their of fundamental rights and freedoms.

Brian Choba and **Justice** Chiutsi, who were both shot in February 2018 by some officers police have approached the High Court. Harare High Court Judge Siyabona Musithu Justice heard the matter on 27 July. He is still to deliver his judgement.

The duo argued that limiting privilege within time aggrieved parties are allowed who to sue the Zimbabwe Republic receiving terms of the provisions of freedoms would have been nullifies Section 70 of the Police Act is violated. Choba and Chiutsi right of access to the courts. violation

rights have filed a court application provided in section 56 of the Constitution and section 69 of some the Constitution.

> Section 56 of the Constitution guarantees the right to equal protection of the law and benefit of the law while Section 69 provides for the right to a fair hearing.

Choba and Chiutsi, who are represented  $\mathbf{b}\mathbf{v}$ Tonderai Bhatasara who is instructed by the Zimbabwe Lawyers for Human Rights (ZLHR), argued that there is no justification for giving the ZRP preferential treatment by limiting the period it can be sued to only eight months. According to removing duo. will help which advancing the rights of those would be on the end of police their want the High Court

as declare section 70 of **Police** Act to be unconstitutional and with inconsistent section 56(1) of the Constitution and sections 69(2) and (3) of the Constitution.

> Choba and Chiutsi sued ZRP Affairs and Home and Cultural Heritage Minister Kazembe Kazembe in 2018 and petitioned the High Court after the law enforcement agency sought to have its lawsuit filed four years ago dismissed on the basis that civil proceedings instituted against it should have been commenced within eight months after the cause of action had arisen.

The victims of police brutality argue that the eight months period prescribed in Police Act is inadequate in a Police to eight months in brutality or whose rights and practical sense such that it the fundamental

### **Police bar** more CCC activities

The Zimbabwe Republic Police continue to deny the opposition CCC permission to hold its rallies. In July, the police declined to a CCC by-elections celebration party in Glen Norah Harare claiming the application did not comply with the Maintenance of Peace Order and Peace Act (MOPA).

The ban came a week after the police also refused to sanction a Zimbabwe Coalition Crisis in protest of peaceful the deteriorating human rights situation in the country that was slated for 22 June.

During the by-elections for the 26 March 2022 by-elections, police banned four CCC rallies citing violation of MOPA or human resources constraints. Most of the CCC rallies were later sanctioned by the courts but police still blocked them in contempt of the court.

The police in June also refused to sanction a gathering in honour of the late Dr Alex Magaisa, citing MOPA.

ZANU-PF gathering has however been banned.

# Back in court for tearing Mnangagwa branded cap

Benjamin Mangomeke and Stewart Kamaka, residents of Rushinga who were arrested on 19 May for allegedly tearing a cap inscribed "ED Pfee" said to be valued at US\$3 during a scuffle with a ZANU-PF supporter over inflation, have appeared in court to answer charges of disorderly conduct. The defence closed its case at the Mt Darwin Magistrates' Court and the duo will be back in court on 17 August for judgement. Mangomeke and Kamaka were arrested on 19 May after a ZANU-PF member reported them to the police for blaming President Emmerson Mnangagwa's government for high inflation in the country. The Rushinga police refused to handle the case, referring it to the province claiming it was beyond their capacity. The duo was later made to appear in court in Mt Darwin, represented by Nyasha Machirori of the Zimbabwe Human Rights NGO Forum who successfully their release on bail. represented them during trial on 27 July. the same day, Machirori also represented James Kamwaza who is accused of unlawful entry in aggravating circumstances after he exposed the corrupt distribution of presidential inputs. Kamwaza, from Rushinga, confiscated presidential input scheme inputs that had been corruptly given to a ZANU-PF councillor by an agricultural extension officer intending to hand them over to a village head for redistribution. He took the inputs as a way of fighting against the distribution partisan of presidential agricultural inputs and handed them back to the agriculture extension worker to be distributed transparently to community members.Judgement in the Kamwaza case will be delivered on 10 August.



# Anti-corruption lobby group capacitates the police

Transparency International Zimbabwe (TIZ) has convened a capacity strengthening meeting on gendered forms of corruption with the Zimbabwe Republic Police (ZRP) officers.

During the meeting held on 6 July, ZRP indicated that they have zero tolerance for corruption and have set up a specific section responsible for dealing with corruption, the Police Anti-Corruption Unit.

The National Prosecuting Authority of Zimbabwe also shared and presented on investigating and gathering evidence on corruption or capacity-strengthening.

On 11 July, TIZ also joined the African continent in commemorating African Anticorruption Day.

The day was celebrated under the theme, "Strategies and Mechanisms for the Transparent Management of Covid-19 Funds".

In commemoration of the day, TIZ in partnership with the Zimbabwe Anti-Corruption Commission (ZACC) convened a community dialogue.

At the dialogue, ZACC Commissioner, John Makamure, emphasized the importance for stakeholders in the anti-corruption chain to reflect on the broader fight against corruption.

## 66 people on death sentence as calls for abolition of the law grow louder



Zimbabwe has 66 people on death sentence for various offences across the country as of December 2021.

This was disclosed by Amnesty International Zimbabwe (AIZ) on 5 July 2022 in Harare during the launch of its report, Death Sentences and Executions.

AIZ said the death penalty has caused a lot of stress on people that are on death row and should be abolished. The death penalty is provided for under section 12 of the Zimbabwe Constitution.

Speaking at the launch of a report, Amnesty International Zimbabwe executive director Lucia Masuka implored lawmakers to scrap the death penalty.

"We have always advocated for the abolishment of the death penalty," Masuka said.

"In Zimbabwe, in terms of our Constitution, we have a provision that states that a law may be passed, which approves the use of the death penalty as a sentence.

"Due to this many people have committed murder under aggravating circumstances, and we are saying we need to move to a position where the death penalty is removed from our statutes."

Masuka added: "We have legislators who are supportive of the abolishment of the death penalty. We have the institution of the traditional leadership supportive of this move, saying the death penalty causes more harm than good."

Chief Nechombo of Mashonaland East province who attended the event also said the death penalty was a violation of the African culture.

"Within our African culture, the death penalty has never been an option to us. In our cultural context, we strongly believe we can sit, talk, and resolve issues without passing a death sentence. We must come up with restoration policies. The death sentence is very harsh in our African context."

During the Universal Periodical Review process on Zimbabwe on 26 January 2022, United Nation member states urged Zimbabwe to scrap the death penalty. Zimbabwe president Emmerson Mnangagwa in 2018 expressed his view on the death penalty stressing that it was an affront to human dignity.

"I wholeheartedly agree," he tweet quoted by the European Union, EU, Zimbabwe which read: "The death penalty is an affront to human dignity. It constitutes cruel, inhuman and degrading treatment and is contrary to life," right to said Mnangagwa report by africanews.com Despite his dislike for the penalty, his administration has not considered abolition the penalty.

# 'PVO Bill to threaten business viability



#### By Phillip Fungurai

Business leaders have said the Private Voluntary Organisation (PVO) Amendment Bill being pushed by President Emmerson Mnangagwa's government will threaten the viability of businesses that directly and indirectly depend on civic society organisations (CSOs).

The Bill has already passed the reading second Stage in Parliament without any objections after opposition Citizens Coalition for Change legislators (CCC) skipped sessions attending the court in solidarity with incarcerated MPs Job Sikhala and Godfrey Sithole.

Speaking during a CSOs engagement meeting with business leaders held in Bulawayo on 28 July, business leaders said the viability of businesses that mainly rely on CSOs will be choked.

Business leaders from Bulawayo made an undertaking to engage President Mnangagwa's government and highlight their concerns against the Bill. They will do this through an economic technical advisory opinion.

The business leaders also

made an undertaking to collectively engage with their local duty bearers, councillors and MPs to lobby them to be vocal and push against the passing of the Bill in its present state.

Speaking during the meeting, Advocate Wilbert Mandinde, the Forum programmes coordinator shared an analysis of the nexus between business and human rights contextualizing the same to the PVO Amendment Bill.

He said the new amendments further increased the consolidation of power in the Registrar's office, a development which he said will affect the effective functioning and independence of the CSOs.

Advocate Mandinde presented the nexus between business and human rights.

He highlighted that the two are indispensable to each other, particularly the hospitality industry which he said is heavily dependent on the work of CSOs.

Advocate Mandinde also highlighted the economic impact of the PVO Bill on the economy citing a report published by the Forum titled "Economic Impact of the PVO

Bill: Punching holes into a fragile economy."

The report, which was produced with the help of the Southern African Human Rights Defenders Network and Accountability Lab points out that, "any disruptions in NGO activities and financing will likely worsen the poverty situation and threaten the development gains that have been made."

A distraught member of the Vendors Initiative for Social and Economic Transformation said the PVO Bill will not only affect large-scale businesses and industries but also small to medium enterprises including sole traders.

The Bill, he said, has a trickle-down effect on all forms of businesses and transactions that has a negative impact on the country's Gross Domestic Product.

Nosimilo Chanaiwa, senior projects lawyer with Zimbabwe Lawyers for Human Rights unpacked the PVO Amendment Bill, reiterating on government's tendencies towards the weaponization of the law to shrink civic space.

#### **ABOUT US**



The Zimbabwe Human Rights NGO Forum is a coalition of 22 human rights organisations that was formed in 1998 as a mechanism to react to the many human rights violations that arose from the food riots. The coalition over the years has become a strong network with organisations working in different human rights fields all to promote the human rights agenda in Zimbabwe. It liaises closely with its colleagues and peers such as the National Association of Non-Governmental Organisation (NANGO), the Crisis in Zimbabwe Coalition, the National Constitutional Assembly (NCA) and the Zimbabwe Congress of Trade Unions (ZCTU). Membership of the Forum is open to any organisation which is based in Zimbabwe, and which is bona fide concerned with human rights, with the elimination of organised violence and torture. After realising that Zimbabwe's legacy of violence goes beyond the daily violations and goes to the roots that hold the pillars of social trust, the Forum, in 2008, launched the transitional justice advocacy programme to motivate more comprehensive redress of the root causes of violence.

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