

STATE OF TRANSITIONAL JUSTICE IN ZIMBABWE

March 2017 REPORT



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NTJWG VISION

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

VISION

A peaceful, just, accountable and democratic society.

MISSION

To create inclusive space for the coordination of transitional justice stakeholders, share experiences; build synergies for comprehensive, accountable, victim-centred and participatory transitional justice processes in Zimbabwe.

VALUES

Integrity • Inclusivity • Impartiality

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1.0 About This Report

This report captures the key developments in Zimbabwe's key transitional justice processes to date. It highlights those developments relevant to the mandate of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. Building on the recommendations made by the United Nations Human Rights Council at the past Universal Periodic Review (UPR) sessions, the report highlights some action points in need of attention and opportunities for Zimbabwe to collaborate with UN mechanisms in ensuring that it meets its transitional justice obligations under both domestic and international law.

2.0 Key Transitional Justice Developments

Zimbabwe has struggled with a legacy of gross violation of human rights dating back to the colonial era. This legacy which continued into independent Zimbabwe in 1980 has seen many episodes of gross violence haunting the society to date. Through the efforts of civil society actors, the country has now inaugurated various legislative measures to deal with the past legacy.

2.1 The New Constitution for Zimbabwe

Top of these measures is the promulgation of a new Constitution in 2013. The new Constitution provides a number of measures meant to address the legacy of violence, deal with past violations and putting in place measures for accountability and the guaranteeing of non recurrence. These include:

- a. the establishment of the National Peace and Reconciliation Commission (NPRC) through section 252 to 252 of the Constitution,
- b. the consolidation of the Human Rights Commission,
- c. the Gender Commission through section

246 of the Constitution,

- d. the Independent Complaints Mechanism through section 210 of the Constitution,
- e. Establishment of the Land Commission through section 297 of the Constitution
- f. Establishment of the Integrity and Ethics Committee through section 287 of the Constitution

2.1 a. Operationalization of the National Peace and Reconciliation Commission

The National Peace and Reconciliation Commission (NPRC) is one of the five independent commissions established by Chapter 12 of the Constitution of Zimbabwe for the purpose of supporting and entrenching a culture of human rights and democracy, protecting sovereignty and interests of the people, promoting constitutionalism, transparency and accountability in public institutions, securing observance of democratic values and principles as well as ensuring that injustices are remedied. More specifically, the NPRC is established by section 251 to 252 of the Constitution with a life time of 10 vears from the 'effective date.' This means by the time this report was compiled, the NPRC has potentially lost over three years.

See the Constitution of Zimbabwe available on the link http://www.zimlii.org/zw/legislation/act/2013/amendment-no-20-constitution-zimbabwe



The functions of the NPRC are listed in section 252 of the Constitution. These are:

- to ensure **post-conflict justice**, **healing**, **reconciliation** and **reconciliation**;
- to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe;
- to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;
- to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations, and other groups, in order to prevent conflicts and disputes arising in the future;
- to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive

rehabilitative treatment and support;

- to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- to develop mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventive measures;
- to do anything incidental to the prevention of conflicts and the promotion of peace;
- to conciliate and mediate disputes among communities, organisations, groups and individuals; and
- to recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances.

2.1.a.i. Progress

- The Government of Zimbabwe has so far managed to appoint 8 commissioners to the NPRC.
- A Chairperson had also been appointed, Dr. Cyril Ndebele but he has since died and there is need for a replacement.
- The 2017 Budget has made provision for the NPRC which was allocated US\$1 123 000.
- The Government of Zimbabwe has further appointed some officers from the Office of the President and Cabinet to act as Secretariat for the NPRC.
- The Government has gazetted the National Peace and Reconciliation Commission Bill which seeks to provide a legislative framework for the operations of the NPRC. The current Bill is a revision of the previous Bill which was rejected by Parliament, the public as well as civil society actors.

2.1.a.ii. Challenges

- There is no legislative framework for the NPRC to commence work.
- The current Bill is very defective in that it takes away the independence granted to the Commission by the Constitution, ignores survivors and victims, ignores gender and makes provision for amnesty without key safeguards against abuse. See Annex 1 for the Bill and Annex 2 for the analysis.

Section 233 of the Constitution

Much will depend upon the interpretation of the "effective date". Is it the signing into being of the Constitution in 2013, the appointment of the Commissioners, or the signing of the NPRC Bill?

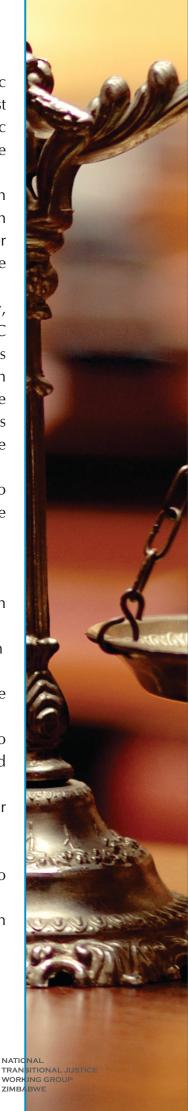


- The government is rushing the Bill through without sufficient public participation. Gazetted on 10 February 2017, the Bill is scheduled for first reading in Parliament for 13 March 2017 and on the same day for public hearings around the country without the Parliamentary Legal Committee having scrutinized the Bill in line with the law.
- The Executive has tried to undermine the constitutional provision 234 which gives independent Commissions power to hire their own staff. This has been done through attempts in the NPRC Bill to give the Minister responsible for healing and reconciliation a say in the establishment of the Secretariat of the NPRC.
- Inline with the above, the Executive has already, without any force of law, seconded staff from the President's Office to act as Secretariat of the NPRC which in itself undermines the independence of the Commission and threatens its integrity because the Office of the President in Zimbabwe has always been accused of playing a role in human rights violations. This will undermine public confidence in the NPRC as there is a real possibility that the President's Office will interfere with the NPRC's operational independence contrary to the UN Principles.
- The President and the Committee on Standing Rules and Orders are still to initiate the process of appointing the Chairman of the NPRC to succeed the late Dr. Cyril Ndebele.

2.1 b. Strengthening the Zimbabwe Gender Commission

Section 246 of the Constitution establishes the Zimbabwe Gender Commission with the following functions:

- a. To monitor issues concerning gender equality as provided in the Constitution
- b. To investigate possible violations of rights relating to gender;c. To receive and consider complaints from the public and to take appropriate
- c. To receive and consider complaints from the public and to take appropriate action;
- d. To conduct research into issues relating to gender and social justice, and to recommend changes to laws and practices which lead to discrimination based on gender;
- e. To advise public and private institutions on steps to be taken to ensure gender equality;
- f. To recommend affirmative action programmes to achieve gender equality;
- g. To recommend prosecution for criminal violations of rights relating to gender;
- h. To secure appropriate redress where rights relating to gender have been violated; and
- i. To do everything necessary to promote gender equality.



2017 National Budget Statement, available on http://www.zimtreasury.gov.zw/

2.1.b.i The progress made so far

- The GoZ appointed the Commissioners to the ZGC on 30 June 2015 which is composed of 8 members plus 1 Chairperson
- In 2015, the Parliament passed the Zimbabwe Gender Commission Act [Ch 10:31] to operationalise the ZGC
- The ZGC received a budget of US\$1 087 000 in the 2017 National Budget.

2.1.bii Challenges

- The appointment of Commissioners without the enabling law slowed its take off
- The government appointed into the Commission people with no expertise in the area of gender
- The resources given to the Commission are way too little for its mandate
- The enabling legislation makes the Commission effectively a sub-department of the Ministry of Women's Affairs.

2.1 c. Establishing the Independent Complaints Mechanism

Section 210 provides for an Act of Parliament to establish an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct. This provision reflects the critical problem of the involvement of the security sector in human rights violations. According to the Forum's Organised Violence and Torture reports for 2016, 68% of the violations in Zimbabwe were committed by the members of the security forces including Municipal Police.

2.1.c.i. Progress

No progress has been made at all. Civil society has commenced litigation to force the GoZ to implement this provision of the Constitution.

2.1 d. Establishing the Integrity and Ethics Committee

Section 287 of the Constitution provides for an Act of Parliament that must establish the Integrity and Ethics Committee of Chief 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 Forum 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. As Zimbabwe draws close to another watershed election, establishing a mechanism to monitor the behaviour of traditional leaders is critical.

2.1.d.i. Progress

There has been no progress.

The ZGC Act can be found on the link http://www.zimlii.org/zw/legislation/act/2015/72015 Matyzak, D. A (2015), The (E)masculation of Zimbabwe's Gender Commission. August 2015. Harare: Research & Advocacy Unit



2.2. Transitional Justice Related UPR Recommendations

A number of transitional justice related recommendations were made at the UPR sessions in October 2011 as well as November 2016.

2.2. a First Review of Zimbabwe - 2011

The review of Zimbabwe's first UPR was held at the 12th session of the UPR Working Group, on 10 October 2011. Zimbabwe at that time was led by the Government of National Unity based on the Global Political Agreement.

The peer review had resulted in numerous recommendations to the GoZ of which Zimbabwe accepted the most.

Accepted Recommendations

- Pursue relentlessly the implementation of the national priorities, initiatives and commitments, especially the national process of healing and reconciliation as well as the creation of a Human Rights Commission (Democratic Republic of the Congo).
- Ensure adequate conditions for human rights institutions, including the Human Rights Commission, to fulfil their functions with sufficient legal, political and financial independence (Denmark).
- Preserve the national process of appeasement and reconciliation (Algeria).
- Ensure the Organ for National Healing, Reconciliation and Integration is able to fully implement its mandates based on truth, reconciliation and forward-looking approaches (Indonesia).
- Cooperate further with the Special Procedures and with all the human rights mechanisms (Burkina Faso).

- Continue its efforts to ensure the rule of law in its national development (Singapore).
- Issue a standing invitation to Special Rapporteurs (Brazil).
- Enact the statute of the Human Rights Commission whose mandates are in line with the Paris Principles and draw up a comprehensive national human rights plan of action (Indonesia)
- Issue standing invitations to United Nations Special Procedures mandates holders, and facilitate and welcome fact-finding missions to Zimbabwe (Norway);
- Extend invitations to all United Nations Special Rapporteur mandate holders, in particular the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture (Ireland)
- Cooperate with the United Nations Special Procedures (Switzerland).
- Extend an open and standing invitation to all Special Procedures and avoid delays in the submission of reports to treaty bodies that has been occurring since 2000 (Spain).
- Exert utmost efforts towards preventing all forms of torture and inhuman or degrading treatment, while ensuring full accountability of perpetrators as well as redress and rehabilitation to victims (Slovakia).

Report source: UN Doc: A/HRC/19/14

More information about the GPA available here https://akcampaign.files.wordpress.com/2012/02/what-is-the-gpa.pdf Assessment of the GPA by the Research and Advocacy Unit available here http://archive.kubatana.net/docs/demgg/rau_gpa_audit_%20final_110408.pdf



Rejected Recommendations

- Undertake impartial, independent and comprehensive investigations into the 2008 election-related violence, including cases of rape, with guarantees of protection for witnesses, survivors and their families, and prosecute the alleged perpetrators (Canada).
- Establish an independent civilian authority charged with receiving complaints and investigating allegations of crimes committed by members of the Zimbabwe Republic Police, military and armed forces (Austria).
- Expedite the investigation of all human rights allegations with a view towards bringing the perpetrators to justice (Thailand).
- Strengthen its efforts in the fight against impunity (Slovenia).
- Take the necessary measures so that all allegations of human rights violations are duly investigated and that the perpetrators are brought to justice (Switzerland).
- Embark on a reform of the judiciary to ensure its independence and impartiality (Spain).

2.2. b Second Review, 2011

Zimbabwe was reviewed for the second time on November 2, 2016. In total 260 recommendations were made and 142 were accepted.

Accepted Recommendations

- Ensure that the Zimbabwe Human Rights Commission (ZHRC) and National Peace and Reconciliation Commission (NPRC) are adequately resourced to enable them to fully and effectively fulfill their mandates. (Germany)
- Accelerate efforts to ensure the full operationalisation of the Zimbabwe Gender Commission (ZGC) (South Africa and Sweden).
- Take legislative measures to guarantee the independence of the NPRC and to ensure it is provided with the necessary powers and resources to effectively fulfil its constitutional mandate. (Switzerland)
- Further enhance the role of the NPRC. (Tunisia)
- Adopt measures to prevent and eliminate all abuses of sexual violence against girls and women, ensuring that perpetrators are effectively held to account, including with the full coordination of the ZGC. (Turkey)
- Ensure victims of sexual and gender-based violence have access to social and legal support, and that perpetrators are brought to justice. (Canada).
- Provide training for judges and prosecutors. (Timor-Leste)

Pending

• Extend a standing invitation to UN Special Procedures (Portugal, Turkey, Congo, Ghana, Rwanda)

This report was compiled before the final adoption of the report hence the statistics referred here may differ from the final record.



• Cooperate with special procedures mandate holders by responding positively to their requests for visits. (Sierra Leone)

Rejected

• Consider ratifying the Rome Statute (Italy, Timor-Leste, France, Sweden, Guatemala, Armenia)

2.2. c. Brief Analysis of the Accepted Recommendations

At the first review, Zimbabwe accepted recommendations regarding the need to implement policies to ensure national healing and reconciliation. It also accepted the recommendations to strengthen national human rights institutions to ensure that they are in line with the Paris Principles. Almost similar recommendations were accepted at the second circle. In general, the GoZ has acknowledged the need to commence the process of transitional justice. The GoZ also accepted the recommendation to issue a standing invitation to United Nations Special Procedures. In practice however, the GoZ has been very slow. For example, Zimbabwe adopted a new Constitution in 2013 after the first review with a number of transitional justice measures, the NPRC being one of them. But the process of implementing these measures has been very slow. Commissioners to the ZGC and the NPRC were only appointed in 2015, two years down the line. They were appointed into a Commission that had no enabling law. To date, the NPRC does not have an enabling law. The GoZ has also not issued any invitations to special procedures. The Human Rights Commission was operationalized but with no resources to carry out its mandate. In practice, this defeats the spirit of the UPR.

2.2. d Brief Analysis of the Pending Recommendations

Of the 260 recommendation made by members states on Zimbabwe, over 25 of them are focused on encouraging the government to ratify the Convention Against Torture. These recommendations are pending on the second review despite same recommendation being accepted at the first review. This gives the impression that the GoZ is backtracking on its commitments. Government commitment to eliminating torture is critical because torture has been supported by the culture of impunity since the colonial era. Failure to eradicate torture and rehabilitate the victims is to bless such practice hence cementing impunity and recidivism.

2.2.e Brief Analysis of the Rejected Recommendations

The GoZ has refused to ratify the Rome Statute and the Convention on the non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Considering that the government agreed to recommendations regarding the operationalisation of the National Peace and Reconciliation Commission (NPRC) and strengthening accountability mechanisms, it is not convincing why they would reject to ratify conventions and treaties that assist in combating war crimes and crimes against humanity.

2.3 Initiatives by Non-State Actors

2.3 a. The National Transitional Justice Working Group (NTJWG)

There were some major developments on transitional justice outside the official processes but without great impact on the official processes. Following the adoption of the new Constitution in 2013, the Zimbabwe Human Rights NGO Forum convened the International Conference on Transitional Justice on Zimbabwe to discuss the way forward. The conference agreed to form the NTJWG as a platform to provide interface between transitional justice stakeholders and the official mechanism. 46 organisations (now 64) became part of the initiative which ultimately saw the creation of the NTJWG headed by a Committee of 8 transitional justice experts. Since then, the NTJWG has coordinated civil society interventions in the process. Some key milestones are the following:

- i. Development of the Guiding Principles on Transitional Justice Policy and Practice in Zimbabwe
- ii. Issuing of the Minimum Standards for an Effective National Peace and Reconciliation Commission for Zimbabwe
- iii. Timely Analyses of two NPRC Draft Bills
- iv. Mobilising and educating citizens to be involved in the process
- v. Holding transitional justice public meetings to raise awareness on the key transitional justice issues
- vi. Training for Parliamentarians on Transitional Justice

2.3. b The Peace Building Network of Zimbabwe (PBNZ)

Another platform also initiated by civil society in Zimbabwe is the Peace Building Network of Zimbabwe (PBNZ). The network is composed of a network of 19 local non-governmental organisations (NGOs) that are involved in community peace-building activities across the country. In 2014, the Network produced a Community Healing Manual which was designed to standardise and strengthen community healing processes in Zimbabwe. The manual was produced to enhance the capacity of members of the PBNZ in their peace-building work by way of a bottom-up approach that also seeks to complement the role that will be played by the National Peace and Reconciliation Commission (NPRC) and other local and national processes.

2.3.c Other Activities

A number of actors continue to work with victims in different areas. Since 1998, the Zimbabwe Human Rights NGO Forum has processed over 7 000 requests for litigation by victims seeking justice. The Counselling Services Unit received around 100 cases every month from victims in need of psycho-social support. Around 19 peacebuilding organisations carry out training in conflict transformation in some of Zimbabwe's most violent spots. Most of the country's Universities have now introduced peace education in their programmes, training students and political leadership in peace building dynamic. It is still to be seen to what extent these initiatives will find their way into the official process as the NPRC prepares for work.

3.0 Possible Support by the UN Special Rapporteur

Despite GoZ's reluctance to fully embrace transitional justice, it is clear from the developments noted above that there is a lot of progress. The sections 251 to 252 of the Constitution offer the most explicit acknowledgement by a people that there is a legacy of violence that must be addressed, and leaves open the time period for such violence to be considered, thus allowing the possibility of even considering the colonial legacy, as was argued by civil society in its 2004 Symposium. This report therefore urges the office of the Special Rapporteur to engage with the Zimbabwean process in order to make a positive contribution. The following are some of the suggestion which the SR can consider:

- 3.1. Initiating a study on Zimbabwe and including report on Zimbabwe in the SR's report to the Council.
- 3.2. Providing immediate technical support to the GoZ in designing the NPRC law to be in line with UN standards as contained in the several Rule of Law Tools for Post-Conflict States.
- 3.3 The SR is encouraged to request a country visit to Zimbabwe and engage the official and non-state actors to ensure that the NPRC Bill is compliant with the UN standards.

4.0 Key Recommendations for the Government of Zimbabwe

- 4.1 The government of Zimbabwe is urged to embrace the support offered by the international community and issue a standing invitation to the SR so that he visits the country before the Bill is adopted into law.
- 4.2 The GoZ must give clear indication that the Commission will be allowed to operate without interference in terms of its mandate, operations and finances, and ensure that the enabling law gives the required safeguards for the Commission.
- 4.3 In line with 4.2, the GoZ must allow the Commission to develop its own recruitment procedures and to independently establish its own Secretariat without interference of the Executive.
- 4.4 The GoZ must be encouraged to accept and implement all transitional justice related recommendations made at the two reviews.

5.0 Conclusion

NTJWG knows that transitional justice is and has been part of the United Nations' agenda as it assists ensuring the building of sustainable peace and dismantling of impunity. The processes in Zimbabwe and the people of Zimbabwe will benefit greatly from the support of the Office of the SR. NTJWG remains a willing partner in support of government's transitional justice processes without compromise on principle.

UN [1997], The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political), revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, United Nations. Economic and Social Council. Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1997/20/Rev.1.



6.0 Annexes

Annex A: National Peace and Reconciliation Bill, HB2, 2017 (NPRC Bill)

Annex B: NTJWG Analysis of the NPRC Bill



