



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

GUIDING PRINCIPLES

for Transitional Justice Policy and Practice in Zimbabwe



SEPTEMBER 2015



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

GUIDING PRINCIPLES

for Transitional Justice Policy
and Practice in Zimbabwe

SEPTEMBER 2015

Published by
The National Transitional Justice Working Group, Zimbabwe
Suite 4, Number 1 Raleigh Street
P. O. Box. 9077, Harare, Zimbabwe

© National Transitional Justice Working Group, Zimbabwe, 2015

ISBN 978-0-7974-6684-5

This publication may be reproduced for non-commercial use in any form, provided due credit is given to NTJWG and the stakeholders cited, and the work is presented without any distortion.

NOT FOR SALE

www.ntjwg.org

Printed by Sable Press, Harare



About The National Transitional Justice Working Group

The National Transitional Justice Working Group (NTJWG) is a platform established by forty-six Zimbabwean 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 an 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: Professionalism, Commitment, Truth, Transparency, Diligence, Honesty, Confidentiality

Inclusivity: Involving everyone regardless of sex, race, ethnicity, age, sexuality, belief, ideology and geography

Impartiality: Non-partisanship, Independence, Objectivity

Thematic Areas

Reparations

Promotion of Truth

Justice and Accountability

Memorialization

Gender

Institutional Reform

Contact Details

Physical Address - Suite 4, Number 1 Raleigh Street, Harare P.O. Box 9077, Harare,
Tel - 04 – 770177/8, 772860 • Email – info@ntjwg.org • Website: www.ntjwg.org

**WORKING TO GUARANTEE NON-RECURRENCE OF GROSS VIOLATION
OF HUMAN RIGHTS. NEVER AGAIN!**

Contents

ACKNOWLEDGMENTS	5
FOREWORD	6
1.0 Justice and Accountability	9
2.0 Principles on Memorialisation	12
1. Purpose Related Principles	12
2. Process Related Principles	12
3.0 Women and Transitional Justice	15
4.0 Reparations	18
5.0 Promotion of Truth	20
6.0 Institutional Reform	23
Annexure 1: List of Organisations that Participated in the Development of the Principles	25

Acknowledgments

We would like to acknowledge the cooperation offered by many stakeholders within and outside the borders of Zimbabwe before, during and after the 23 July 2015 stakeholders conference. Prior to the conference, extensive consultation and intensive research was carried out. We acknowledge gratefully the guidance and leadership of Mr. Prosper Maguchu who was the Principal Researcher in this process. We acknowledge the assistance which the entire NTJWG Secretariat granted to the NTJWG. We are further grateful to the representatives of the

forty-eight organisations who dedicated their time and resources to go through the draft guiding principles. We make special mention of victims groups who joined the stakeholders conference and articulated their needs. NTJWG is grateful for the assistance offered by its funding partners who made the publication of this volume possible. Ultimately, this set of principles belongs to all who believe in a peaceful, just and accountable society and are ready to realise the noble goals which these principles stand for.

Foreword

This set of Guiding Principles for Transitional Justice Policy and Practice in Zimbabwe is an outcome of a long dialogue among transitional justice actors in Zimbabwe spanning into the past two decades. This dialogue led to the birth of the National Transitional Justice Working Group (NTJWG) which is now charged with providing an interface between transitional justice stakeholders and the official transitional justice processes in Zimbabwe.

In pursuit of a comprehensive and participatory transitional justice process in Zimbabwe, NTJWG has brought together over 48 organisations to deliberate and agree on these Guiding Principles. The details of these deliberations are captured in the report of the Stakeholders Conference on Transitional Justice Principles in Zimbabwe. The conference took place from 23 to 24 July 2015 in Nyanga.

48 organisations representing various transitional justice actors participated in the conference. The conference was structured along the six transitional justice themes: Institutional Reform, Reparations, Truth-telling, Gender, Justice and Accountability as well as Memorialisation. Delegates were divided into six respective committees. The list of the committees and members

is attached to this report.

The committees deliberated through the discussion points presented by thematic leaders. The committee discussions and plenary sessions which followed produced the agreed principles for each thematic area.

Under Justice and Accountability, stakeholders agreed on sets of principles to guide criminal prosecutions, amnesties, application of the principle of universal jurisdiction, restorative justice, civil litigation and some cross-cutting general principles.

Under Memorialisation, the conference adopted two sets of principles; purpose related principles, as well as process related principles.

In a landmark decision, the conference decided to change the name of the thematic area on gender and renamed it 'Women and Transitional Justice.' Under the newly named theme, a number of principles were adopted, many which cut across different themes to ensure meaningful participation of women and accurate documentation of their contribution and representation of women's issues.

Under the reparations theme, delegates adopted eight key principles which mainly focused on restoration of the dignity of

victims and ensuring their participation in policy formulation.

Ten principles were adopted under Truth-telling with emphasis on comprehensiveness, inclusivity and victim participation.

On Institutional Reforms, seven principles were adopted covering vetting, oversight bodies, structural and legal reform, security sector reform, disarmament, demilitarisation and asset recovery.

After the adoption, stakeholders agreed to carry the adopted principles further to the broad stakeholder base and to continually refine the principles. It is in line of that recommendation that the NTJWG now presents this set of principles to the people of Zimbabwe. The main objective is that these principles become a point of further discussion on how Zimbabwe

must frame the policy on transitional justice. While some policy makers may use different terms to refer to measures with which our society tries to build sustainable peace, in substance, these principles outline the fundamental pillars upon which there is a general agreement that without such, our society cannot function justly, equitably and sustainably.

It is in the spirit of cooperation and dialogue that we present these principles to the people of Zimbabwe. It is everyone's duty to take up these principles to the next level – translating them to policy and practice. The NTJWG continue to make itself available as the inclusive space for continued dialogue among stakeholders, and willing partners for policy makers.

Alec Muchadehama (Mr.)

NTJWG CHAIRPERSON



1. Criminal Prosecutions

- a. Prosecutorial initiatives must be underpinned by a clear political commitment to accountability that understands the complex goals involved.
- b. Initiatives should have a clear strategy that addresses the challenges of a large universe of cases, many suspects, limited resources and competing demands.
- c. Initiatives should be endowed with the necessary capacity and technical ability to investigate and prosecute the crimes in question, understanding their complexity and the need for specialized approaches.
- d. Initiatives should pay particular attention to victims, ensuring (as far as possible) their meaningful participation, and provide adequate protection of witnesses.
- e. Initiatives should be executed with a clear understanding of the applicable law and an appreciation of trial management skills, as well as a strong commitment to due process.

2. Amnesties must have strict guidelines

- a. While acknowledging the role of amnesties in persuading perpetrators

to cooperate, these must not apply to perpetrators of international crimes, crimes against humanity, murders and sexually related crimes.

- b. Where recommendations are considered, extreme caution must be exercised. The process must not end up benefiting perpetrators at the expense of the victims.
- c. Past amnesties granted to perpetrators of serious violations must be subjected to judicial review.
- d. Whatever principles are adopted on amnesties must be acceptable to stakeholders especially the victims.

3. Universal Jurisdiction

- a. Universal jurisdiction must be applied solely to the nature of the crime, rather than the place of crime or nationality of the perpetrators;
- b. Universal jurisdiction must be considered as a basis for seeking the extradition of persons accused of committing serious international crimes;
- c. In the absence of national legislation, universal jurisdiction must be relied on.
- d. The state must uphold its obligation

to support accountability based on its duty to prosecute or extradite offenders;

- e. There must be no immunity to accused offenders of serious crimes;
- f. No statute of limitations must apply to serious crimes under international law;
- g. Amnesties are inconsistent with state's obligation to provide criminal accountability under international law;
- h. No double jeopardy;
- i. Where local mechanisms cannot be preferred, international mechanisms must used

4. Restorative Justice

- a. Justice processes should incorporate restorative approaches in both civil and criminal law and where necessary traditional justice methods.
- b. Traditional methods should not recreate courtroom processes and legal rigidities.
- c. Community approaches must be preferred where both sides are in agreement for minor violations

5. Civil Litigation

- a. National court processes must

cooperate with international legal mechanisms. Litigation must not only focus on the state actors or their agencies but must also push for accountability in non-state actors, individuals and corporations.

- b. During trials, victims must be prepared adequately before trial. International best practices must be used in working with victims.
- c. There must be no prescription for civil claims in grave human rights violation cases.

6. General

- a. In both criminal and civil cases, justice and accountability processes must take into account the issue of command responsibility;
- b. The needs of communities affected by past violations must be addressed given past inequalities;
- c. Where applicable, traditional justice systems and alternative dispute resolution methods must be promoted; and,
- d. The language of justice must be decoded to speak to the needs of affected communities taking into account the context and needs of the communities including issues of social justice



2.0 Memorialisation

1. Purpose Related Principles

- a. Memorialisation initiatives must seek to achieve historical clarification supporting local memorialisation initiatives.
- b. Memorialisation initiatives must be treated as a tool for building of a collective memory.
- c. Memorialisation initiatives must teach history to the contemporary and future generations while promoting multiple narratives. In teaching history, memorialisation projects must also ensure its preservation.
- d. Memorialisation projects must pursue truth-based reconciliation. By undertaking memorialisation initiatives based on a history that embraces the collective memory of the society, memorialisation accomplishes a critical principle of transitional justice – acknowledgement of the past as well as reconciliation.
- e. Memorialisation initiatives must assist in the development of people's identity
- b. Memorialisation projects must be implemented with great attention to the context. This must be aligned at different levels – whether they are family projects, community projects, and national projects, regional or international initiatives
- c. Memorialisation initiatives must involve the participation of stakeholders and the grassroots. Local communities and all stakeholders must be involved from conception, design, development and implementation of the memorialisation initiatives.
- d. A memorialisation initiative must explicitly show acknowledgment for past wrongs but should be sensitive to the context.
- e. In designing memorialisation projects, survivors and victims must play a leading role, and their best interests must take priority. This is linked to the principle of stakeholder participation but goes on to focus on victims and their varied needs.
- f. Memorialisation projects must be carried out with extreme caution, and experts must be involved especially experts from the affected groups who share and understand the

2. Process Related Principles

- a. Sensitive to context, location and the target audience

- circumstances of affected communities. In areas like exhumations that require international expertise, such experts must be brought into the matter. In private matters affecting victims, governments must try to assist the families meet the costs without determining the agenda.
- g. All actors at all levels must respect the customs, practices and beliefs of the affected people. At the national level, a body charged with considering memorialisation projects must take into consideration these stated principles and consult with stakeholders especially victims on how they wish the process to move on.
 - h. Memorialisation initiatives must be implemented as part of a holistic approach to dealing with the past.
 - i. Memory should leave room for social debate and dialogue. Different groups must be permitted to undertake initiatives that are unique to their culture and experiences without being forced into to an artificial unity with the dominant groups.
 - j. Designing memorialisation initiatives must be well timed and well sequenced. Actors must ensure that the set goals are precisely aligned with the actions.
 - k. There is a need for a legal framework that allows for stakeholders and affected communities to be involved in the memorialisation processes and ensure non-partisan management of memorialisation projects and institutions.



3.0

Women and Transitional Justice

1. There is need to prioritise and ensure, the meaningful and effective participation of women in all aspects and at all levels of the transitional justice process.
2. Gender must be a cross-cutting issue across all transitional justice areas.
3. Laws must be developed to institutionalise the implementation of gender justice mechanisms. The State, all institutions and agencies of government as well as non-state actors must create conditions that ensure gender balance in transitional justice processes.
4. There must be equal representation of women in all transitional justice processes. In the recruitment policy for commissioners and staff, it is crucial to incorporate gender-based criteria with factors such as class, ethnicity and religion in appointment and recruitment of commissioners and staff
5. There must be special efforts at investigating and analyzing gender specific crimes and the necessary consequent responses. It must be noted that crimes against women are not limited to sexual offences, and sex crimes are not restricted to women. There must be a multidimensional analysis of gender-related crimes and other dimensions of gender-sensitive experiences.
6. In pursuing prosecution or accountability matters in gender-related crimes, the rules of superior responsibility and vicarious liability must be applied.
7. A gender-responsive and victim friendly mechanism must be put in place to ensure the needs of the victims are met and to avoid re-victimisation.
8. Adequate steps should be taken to address challenges and obstacles that women may face in accessing and participating in transitional justice processes.
9. There is a need to ensure the memorialisation of the full scope of past atrocities against women. The role of women in conflict as combatants, activists and victims must be fully documented and acknowledged.
10. Gender principles must be incorporated into reparations programmes. There must be special

- programmes to ensure rehabilitation and restitution for women and children through counselling, education, psychosocial support, economic empowerment and adequate compensation in their right.
11. Truth-telling initiatives must uncover and document women's narratives and experiences of conflict.
 12. The role of women in the community in advancing transitional justice and healing processes must be acknowledged.
 13. There must be meaningful involvement of men at all levels in promoting gender equality, uplifting and amplifying the role of women in transitional justice and healing process.



4.0 Reparations

1. The victim must be restored to their prior situation. The reparations must also compensate for all the consequences of the violation, and indemnification for material and non-material damages, including emotional harm. This principle must take into consideration the time-frame, and the perpetrators should contribute to reparations.
2. 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.
3. There must be a causal connection between the reparations, the violation found and the harm cause. The primary responsibility for reparations lies with the state.
4. Since harm is multidimensional, and can lead to mental and psychological suffering beyond the primary victim, there is need to consider the next of kin of direct victims of human rights violations, their dependents and persons who have suffered harm in intervening to assist them or to prevent victimisation, as victims in their own right. Hence, there should be a multi-disciplinary assessment.
5. The rules of evidence in reparations claims must be relaxed in favour of victims. Due to many factors, it may be hard for the victims to prove all the nitty-gritty details of their violations by strict rules of procedure. Therefore, victims need to enjoy relaxed rules of a procedure such as being allowed to rely on circumstantial evidence or presumptions.
6. Victims should be informed of their role and the scope, timing and progress of the proceedings and the disposition of their cases, especially where serious crimes are involved.
7. Victims should be treated with humanity and respect for their dignity and human rights. Appropriate measures must be adopted to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.
8. Reparations programmes must be implemented without discrimination on any of the grounds recognized by international law. There must be no particular preference to any time-frames.



5.0 Promotion of Truth

1. **Comprehensiveness** - Truth-telling processes must combine different measures. In that same measure, no single approach to truth-seeking is adequate on its own if finding the root causes and understanding the conflict is the goal. The process must embrace multiple narratives.
2. **Human Rights Based** - Truth seeking initiatives in transitional justice must be grounded in universal norms of human dignity such as the right to know and the right to speedy remedy or access to justice. Truth recovery processes must seek to fulfil individual and family rights, as well as the collective rights of societies.
3. **Victim-Centric** - Placing victims at the centre of this work also requires ensuring that victim's rights and views are fully respected in the implementation of the transitional justice process. This includes the use of victim-sensitive procedures that guarantee victims' safety and dignity, and the development of specific capacities to assist, support and protect victims and witnesses (UN 2010:6).
4. **Inclusivity** – Truth seeking must be based on consultations and effective participation of all stakeholders.
5. **Genuine independence** - Truth seeking processes must be based on a comprehensive, inclusive, consultative involvement of all stakeholders, particularly victims. This enables truth commissions to function well.
6. **Cooperation** - There must be cooperation between non-state and state actors. The mechanism must get cooperation from all institutions with a view to arriving at the truth. Local institutions such as state security agents as well as key state and non-state actors must be obliged to support and cooperate with the commission or any other truth-seeking mechanism.
7. **Firm and Appropriate Legal Framework**
 - a. **Adequate Support Structure** - A truth seeking mechanism must get cooperation from all institutions that may possess the information required to arrive at the truth. Local institutions like the military, the police, national archives, the judiciary and other key

institutions must give clear indication that they will support and cooperate with the commission or any other truth-seeking mechanism in operation.

- b. Legal Foundation- A truth seeking mechanism must be grounded on firm, enforceable legal grounding, with adequate powers.
8. **Cultural sensitivity** – A truth seeking mechanism must respect the beliefs

and practices of the local people.

9. **Transparency and Openness** – Transparency and openness should characterise the whole process of truth recovery. The consent of the victims, public hearings, consultations and related activities must be broadcast live.
10. **Legal Protection for State records and archives** – There must a law criminalising the destruction of state records and archives.



1. Vetting

- a. Public employees who are personally responsible for gross human rights violations or serious crimes under international law must be excluded from public service to reestablish public trust and re-legitimise public institutions.
 - b. Vetting must not be solely on the basis of group or party affiliation as this tends to cast the net too wide and to remove public employees of integrity who bear no individual responsibility for past abuses.
 - c. In vetting, there is need for a strategic approach targeting critical areas.
- c. Oversight bodies must be accessible to the people, with offices throughout the country, at least in every district.

2. Oversight

- a. Oversight bodies must be established to maintain a check on institutions that may have a bearing on the enjoyment of rights.
- b. Such agencies should be given as broad a mandate as possible, which must be clearly outlined in the Constitution or any other legislative text. In principle, there must be measures that guarantee such bodies of independence and pluralism, methods of operation and additional principles of their semi-judicial competence.

3. Structural and Legal Reform

- a. There is need for comprehensive reform of all state institutions and agencies.
- b. There is a need to use legal standards that are compliant to existing international and regional human rights mechanisms. This makes sure that the systems that govern civil and criminal law live up to the international norms, e.g. Laws relating to torture and restitution.

4. Security Sector Reform

- a. The security sector “should be subject to the same standards of efficiency, equity and accountability as any other [public] service”.

5. Disarmament, Demobilization and Reintegration Strategies

- a. There is need to put in place DDR to deal with previously armed or militia groups.

6. Demilitarisation

- a. A comprehensive process must be undertaken to demilitarize civilian institutions like the Ministry

of justice, the judiciary, and parastatals.

- b. There must be full access to all documents held by the state and state agencies.

7. Asset Recovery

- a. There must consideration of ways to deal with odious debt.
- b. There must be a thorough process of tracking and recovering all assets.

Annexure 1:

List of Organisations that Participated in the Development of the Principles

Institutional Reform Committee

1. Research and Advocacy Unit
2. Progressive Teachers' Union Zimbabwe
3. Zimbabwe Elections Support Network
4. Abammeli Lawyers for Human Rights
5. Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender
6. Veritas
7. Transparency International Zimbabwe

Reparations Committee

1. Counselling Services Unit
2. Masakhaneni Projects
3. Women's Coalition
4. Masvingo Counselling Trust
5. Mutasa Youth Forum
6. Zimbabwe Association of Doctors for Human Rights
7. Victims Association for Mat. South
8. Centre for Conflict Management and Transformation

Promotion of Truth Committee

1. Zimbabwe Catholic Bishops Conference
2. Zimbabwe Peace Project
3. Legal Resources Foundation
4. Zimbabwe Congress of Trade Unions
5. Bulawayo Agenda
6. Media Institute of Southern Africa
7. Radio Dialogue
8. Manicaland Victims Group
9. Silveira House
10. Zimbabwe Civic Education Trust

Memorialisation Committee

1. Grace to Heal
2. Tree of life
3. Heal Zimbabwe Trust
4. Institute of Peace, Leadership and Governance
5. Nhimbe Trust
6. Media Monitoring Project of Zimbabwe
7. Hwange Community Radio Station
8. Evangelical Fellowship of Zimbabwe
9. Institute for Justice and Reconciliation
10. Ukuthula Trust

Gender Committee

1. Musasa Project
2. Non-Violent Action and Strategies for Social Change
3. Students Solidarity Trust
4. Centre for Community Development Zimbabwe
5. Zimbabwe Human Rights Commission
6. Women of Zimbabwe Arise
7. Progressive Teachers Union of Zimbabwe

Justice & Accountability Committee

1. Zimbabwe Lawyers for Human Rights
2. Zimbabwe Human Rights Association
3. Amnesty International
4. Law Society of Zimbabwe
5. Justice for Children
6. Youth Empowerment and Transformation Trust
7. Ecumenical Church Leadership Forum
8. Counseling Services Unit
9. Zimbabwe Human Rights NGO Forum

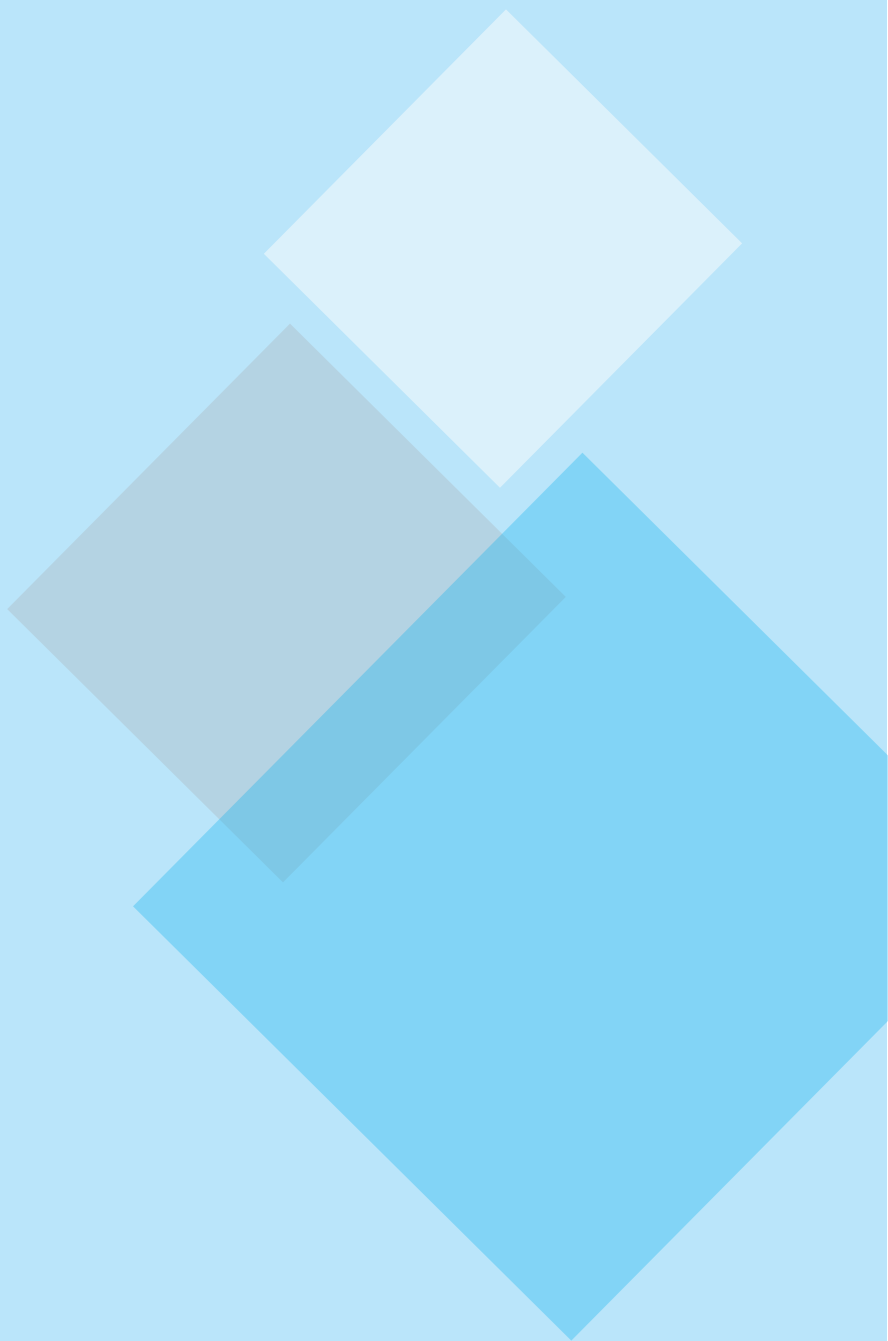
Minimum Standards for an Effective National Peace and Reconciliation Commission and Guidelines for Gender Mainstreaming, 2014

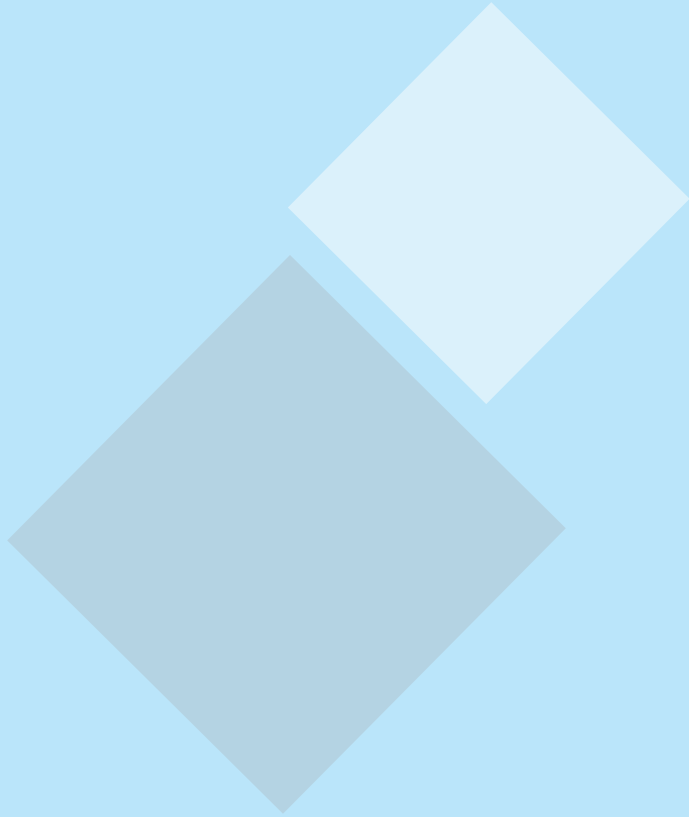
Guiding Principles for Transitional Justice Policy and Practice in Zimbabwe, 2015

National Peace and Reconciliation Commission Monitoring Report, 2015, Ongoing

Stakeholders Conference on Transitional Justice Principles in Zimbabwe - Conference report, 2015

These publications are available on www.ntjwg.org or for a hard copy, visit our offices.





Contact Details

Physical Address - Suite 4

Number 1 Raleigh Street

Harare, P.O Box 9077, Harare.

Tel - 04 - 770177/8

Email - info@ntjwg.org

Website: www.ntjwg.org

NPRC Watch Online - www.ntjwg.org/nprcwatch