



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

STAKEHOLDERS CONFERENCE

on **TRANSITIONAL JUSTICE PRINCIPLES IN ZIMBABWE**

23-24 July 2015 **NYANGA**



CONFERENCE REPORT
AUGUST 2015

CONFERENCE
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inside





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CONFERENCE REPORT
AUGUST 2015



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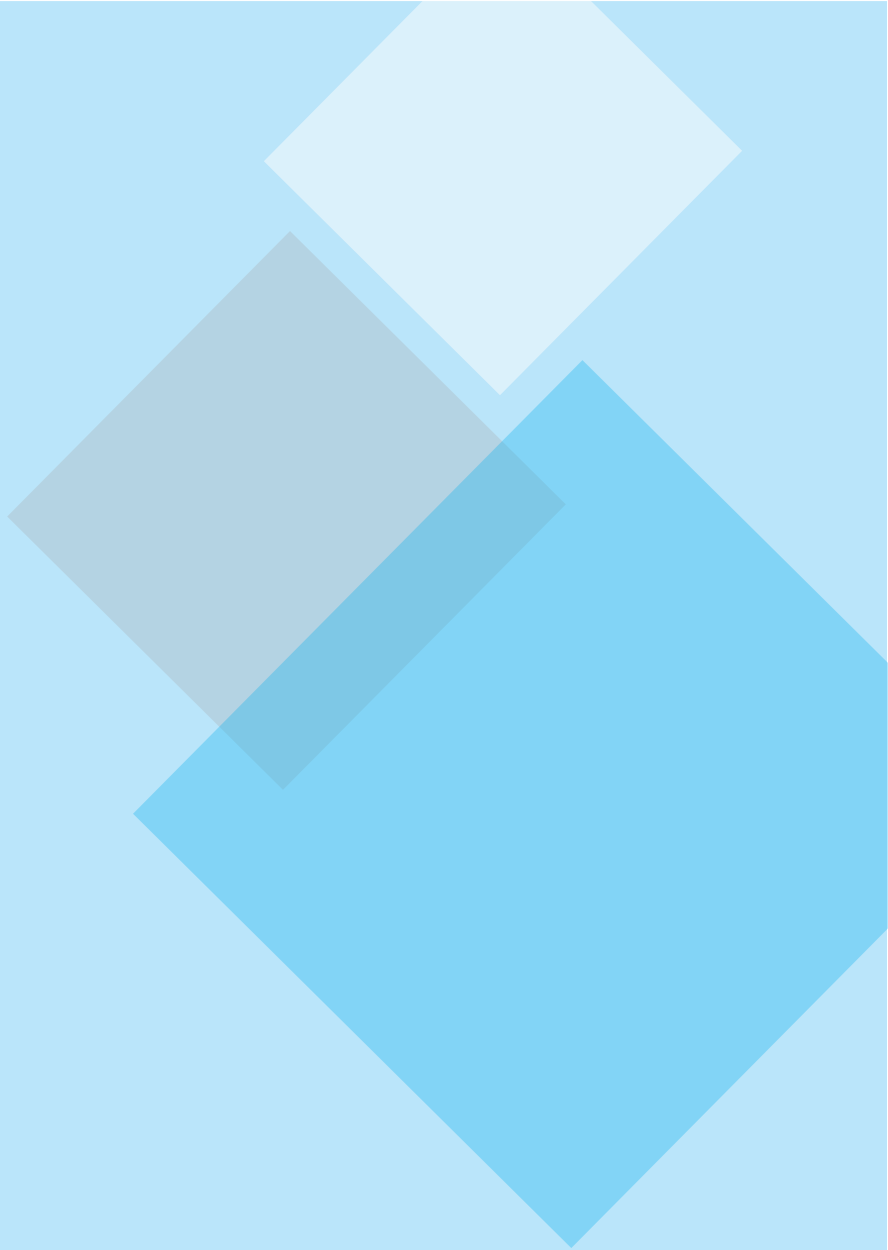
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**NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE**



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

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

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Executive Summary

This report captures the proceedings of the Stakeholders Conference on Transitional Justice Principles in Zimbabwe which was convened by the National Transitional Justice Working Group from 23 to 24 July 2015 in Nyanga. The conference discussed and produced the Guiding Principles for Transitional Justice Policy in Practice for Zimbabwe.

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 do 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.



1.0 Introduction

1.1 Background to the Stakeholders Conference on Transitional Justice Principles

Zimbabwean transitional justice stakeholders have worked tirelessly for the past three decades in search of justice for victims of past violations. These efforts included a diligent search for truth regarding past grave breaches of human rights. In this area we find such efforts by the Catholic Commission for Justice and Peace in Zimbabwe (CCJPZ) and the Legal Resources Foundation (LRF) in *Breaking the Silence* (Archive.org, 2015) regarding the Gukurahundi Massacres. Others have been involved in litigating on behalf of victims against perpetrators who in many cases are the state or its proxies. These are such organisations as Zimbabwe Human Rights NGO Forum, Zimbabwe Lawyers for Human Rights, CCJPZ, Amnesty International, Legal Resources Foundation, Abammeli Human Rights Lawyers, Zimbabwe Women Lawyers Association among many other brave advocates of justice from the private sector. In litigating against powerful perpetrators, stakeholders have in the process won compensation for victims in some cases, giving a sense of justice to affected families and individuals. Human Rights Defenders themselves have been subjected to unlawful arrests, threats and harassment as the perpetrators try to criminalise the struggle for accountability. Criminalisation has become a force of habit for some of the state actors. (Petras, 2015)

Other stakeholders have worked closely with victims in providing psycho-social support in times of trauma. In this area, such organisations as Nokuthula Trust, Grace to Heal, Counseling Services Unit, Masakhaneni Projects, Tree of Life, Masvingo Counseling Trust and many others have provided accompaniment to victims struggling to come to terms with their reality and trying to regain their dignity. These efforts are in line with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which state that

victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. (OHCHR, 2015)

Many other actors have, with unrivalled courage, attended to the just needs of women affected by violence at all levels from domestic level to institutional levels. It is in this area that such organisations as Musasa Project, Women of Zimbabwe Arise, Zimbabwe Women Lawyers Association, the Women's Coalition and the Women's Trust have been outstanding. The work of defending the rights of sexual minorities has been critical in this journey. In this area, actors like the Sexual Rights Centre, Gays and Lesbians of Zimbabwe as well as Zimbabwe Lawyers for Human Rights and Human Rights NGO Forum have been very helpful to affected groups. All these efforts, guided by a deep commitment to the respect for the dignity of the human person, are in harmony with the values in our Constitution as well as rooted in international law.

Equally important is the civil education that comes with doing the protective work on the dignity of the human person. This work has helped to expand the human rights dialogue across the social, political and religious divide. It is in this area that organisations like the Zimbabwe Civic Education Trust, Bulawayo Agenda and its partners across the country; the Civic and Education Network Trust, Institute of Peace Leadership and Governance, Radio Dialogue, activists and researchers in the media like Media Monitoring Project Zimbabwe, Media Institute for Southern Africa as well as private media actors, have been very active.

The role of the church, as the moral voice of the society, has not lagged behind dating back into the colonial era and stretching into the post-colonial era. Through the Catholic Commission for Justice and Peace, Zimbabwe Catholic Bishops Conference has not shied away from reminding the government of Zimbabwe that 'there can

never be sustainable peace unless people are willing and prepared to face their old wounds to heal them.' (Jescom, 2015) In a joint statement of Christian Denominations in Zimbabwe, church leaders in 2005 stated that Zimbabwe has become a 'house of fear' with her people 'frozen in a war mode with the language and practices of a command structure'. For certain crimes, the church leaders regretted, people will not seek redress from the law because they know they will not receive it. The vision of Zimbabwe as a free nation is stifled. It was concluded, "All this we have lived each day, prisoners in a concentration camp from the Zambezi to the Limpopo." (Afcast.org.zw, 2015)

Confronting this pervasive fear have been brave stakeholders engaging in some memorialisation projects to honour the memory of victims of past violations. Notable among these is the work of artists like Owen Maseko, organisations like the Zimbabwe Human Rights NGO Forum and Zimbabwe Human Rights Association (ZimRights) in championing the commemorations of the 26 June International Day in Solidarity with Victims of Torture; Research and Advocacy Unit (RAU) in giving a voice to women victims of sexual violence; Ibhethu LikaZulu in preserving the memory of the many victims of Gukurahundi, as well as Heal Zimbabwe Trust in assisting many families, carry out healing ceremonies within the confines of their culture. Grace to Heal and Ukuthula Trust have also accompanied many victims in processing and healing the memories of trauma.

In policy analysis, documentation of serious violations and analysis of the patterns has been a critical aspect of these efforts. In this area, competent actors like the Zimbabwe Peace Project (ZPP), Transparency International Zimbabwe (TIZ), Student Solidarity Trust, the Research and Advocacy Unit (RAU), Progressive Teachers Union of Zimbabwe (PTUZ), Veritas, Media Monitoring Project (MMPZ), the Zimbabwe Association of Doctors for Human Rights (ZADHR), Zimbabwe Association for Crime Prevention and Rehabilitation of

the Offender (ZACRO) and Musasa Project have worked diligently to ensure that the stories of victims do not remain hidden from the light.

There are many efforts cutting across the thematic areas of transitional justice. This work did not start in May 2014 when the NTJWG was established. It has been the struggle of many actors reaching far back into the colonial era.

In May 2014, following the recommendations of the First and Second International Conferences on Transitional Justice in Zimbabwe in 2012 and 2013, stakeholders decided to put in place a platform for coordinating transitional justice strategy across the six thematic areas. This was born of the realisation that despite many brave efforts of different stakeholders, there is a need to build a stronger coalition for truth, justice and accountability from the combined efforts of all stakeholders. As such, the NTJWG was given as precise mandate: 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.

From this mandate, the NTJWG's eight members worked on a ten-year strategic plan along six focus goals in the six thematic areas. (National Transitional Justice Working Group Zimbabwe, 2014) The goals are the following:

- To promote the principles and processes of national truth-seeking
- To promote the principles and processes of national accountability and justice
- To catalyse the development and implementation of a victim-centred reparations policy in Zimbabwe
- To contribute to the development of a national narrative and commemorations of our past

- To promote national transitional justice principles and processes that prioritise gender narratives
- To catalyse key institutional reform processes that lead to guarantees of non-recurrence of human rights violations

With these strategic goals, NTJWG got down to business. A thorough study was done of Zimbabwe's human rights terrain, the practices and experiences of stakeholders, the pronouncements and positions of civil society on different areas of transitional justice; the different recommendations by stakeholder groups, the expectations of citizens captured in various reports, the recommendations from other jurisdictions that have dealt with transitional justice issues in the past, as well as the best international practices as articulated by such bodies as the United Nations and the African Commission on Human and Peoples' Rights. Such information was packaged into detailed discussion documents proposing specific transitional justice principles for each of the six thematic areas for Zimbabwe. An accompanying simplified summary was developed. These became the founding documents for the stakeholders conference on transitional justice principles.

The NTJWG then issued an invitation to stakeholders to meet for two days to study the discussion papers and extract key principles that they want to adopt as the Guiding Principles for Transitional Justice Policy and Practice in Zimbabwe. 48 organisations responded to the call and met from 23 to 24 July 2015 in Nyanga to deliberate over the principles.



NTJWG Chairperson, Alec Muchadehama addressing conference delegates

2.0 Conference Objectives

2.2 Primary Objective

To facilitate consensus among stakeholders on the key transitional justice principles that must guide transitional justice policy and processes in Zimbabwe

2.3 Specific Objectives

- To provide stakeholders with a platform to build synergies and synchronise transitional justice implementation strategies
- To discuss the guiding transitional justice principles unique to Zimbabwe
- To adopt the guiding principles for transitional justice processes in Zimbabwe

2.4 Why Principles?

There are many principles in the world. There are international principles that are sometimes referred to by actors as norms. But for a truly Zimbabwean process we have to develop principles based on our unique experiences and expectations. Developing and adopting guiding principles helps transitional justice actors to build synergies and synchronise their efforts in building a more just society. It provides minimum benchmarks upon which we can measure our progress or regression. It also provides the government with a credible reference point for all transitional justice processes on such issues as the National Peace and Reconciliation Commission (NPRC), the Gender Commission, the Independent Complaints Mechanism as well as the Ethics and Integrity Committee. When the NPRC is eventually operationalised, and it has to address truth-telling issues, the Guiding Principles on Truth Telling will show them exactly what stakeholders in that area expect.

2.5 Target Group

There were stakeholders working in especially the six areas that guide the mandate of the NTJWG. These included organisations working with victims of human rights violations in areas of justice and accountability – trying to have access to justice through the court processes; organisations seeking compensation for those whose rights were violated, organisations working on gender; institutions providing counselling, psycho-social support and trauma healing to victims; others working on memorialisation and others on truth telling processes. These stakeholders were invited to take part in the conversation.

2.6 Expected Outcomes

The conference aimed at producing the following outputs:

- An agreed set of principles to guide a justice and accountability policy for Zimbabwe
- An agreed set of principles to guide reparations policy for Zimbabwe
- An agreed set of principles to guide a memorialisation policy for Zimbabwe
- An agreed set of principles to guide reform of institutions in Zimbabwe
- An agreed set of principles to guide gender and transitional justice in Zimbabwe
- An agreed set of principles to guide truth telling in Zimbabwe

These principles precisely give the stakeholders precise positions and expectations regarding different areas of transitional justice.

Different actors can make use of the principles in their fields of work. They can be used to measure if national transitional justice processes like the establishment of the National Peace and Reconciliation Commission are in line with the agreed principles.



Delegates from 48 organisations follow the conference proceedings

3.0 Conference Proceedings

Day One-23 July 2015

3.1 Opening Session

The Stakeholders Conference opened at 0830 hours with an opening prayer from Rev. Dr. Motsi. Mr. Alec Muchadehama, co-chairing with Rev. Motsi asked delegates to do self-introductions. 63 delegates represented forty-eight (48) organisations. In his capacity as the Chairperson of the National Transitional Justice Working Group (NTJWG), Mr. Muchadehama welcomed delegates to the conference. He acknowledged the presence of representatives from the Human Rights Commission, Law Society of Zimbabwe, Churches, civil society leadership, victim groups, women's groups, and development partners. He went on to outline the mission of NTJWG and the objectives of the conference.

His welcome remarks combined with a presentation on 'Laying the Foundations for Transitional Justice Processes' in which he outlined the role of NTJWG, its strategy, the conceptual framework for Zimbabwe, the NTJWG Approach to transitional justice processes and why Zimbabwe needs transitional justice principles. The highlight of this presentation was its emphasis on the importance of developing the principles for Zimbabwe. He said developing and adopting guiding principles helps transitional justice actors to build synergies and synchronise their efforts in the construction of a more just society. He said it also provides minimum benchmarks upon which the Zimbabwean society can measure its progress or regression. It also provides the government with a credible reference point for all transitional justice processes on such issues as the National Peace and Reconciliation Commission (NPRC). He also emphasised that transitional justice processes must involve both victims and perpetrators at the centre. He further said that all transitional justice processes that seek to ensure non-recurrence cannot avoid working with offenders to achieve conflict

transformation, reconciliation, healing, reintegration and reconciliation.

3.2 Presentations on the Draft Guiding Principles

3.2.1 Presentation on Draft Principles for Institutional Reforms

Following the opening session, Mr. Tony Reeler made a presentation on the draft principles on institutional reforms. He emphasised that the processes Zimbabwe is engaging is unprecedented, never seen anywhere else in the world because the country is not in a state of transition. The state, he said, is still a predatory state hence the need for tact in tackling transitional justice issues. He went through some principles that may be considered in guiding institutional reforms.

Plenary Discussion

The issue of adversarial relationship versus cooperation was raised and it was noted that even though political settlements have been made since 1980 and it was important to address the issues as they bore a mutual benefit for both potential partners of engagement and the perpetrators. It was also suggested that an agreed national vision could be the basis from which transitional justice processes could depart. Further questions were raised on making the Parliament more democratic and empowering it effectively play its oversight role in the face of a powerful executive. Delegates emphasised the need to activate public participation in trying to ensure Parliament become more accountable.

There was a call to ensure the judiciary plays a more useful role in human rights protection. There was a call for reform of the partisan judiciary. It was recommended to concentrate on dealing with the past without discrimination. The plenary asked how well Zimbabwe could address gender issues within an institutional reform framework. Gender was made a cross-cutting theme in all transitional justice issues. It was decided that there was need to have an accurate documentation of the history of what happened in place of the existing narrow narrative.

3.2.2 Presentation on Draft Principles for Reparations

Mr. Alec Muchadehama made the presentation on reparations. He highlighted that reparations are not just monetary but include a whole range of measures meant to restore the victims as much as possible to their original position together with the compensation for the consequences of the violations. He talked about some principles that must guide a reparations policy, making reference to the War Victims Compensation Fund. He said the reparations must be proportionate to the harm suffered.

Plenary Discussion

In the plenary that followed the presentation, participants discussed among other things the question of funding for reparations. There were also questions on how to promote victim-centredness. In response to this, was the principle that victim inclusivity was a cross-cutting issue in all thematic areas. Further, the existence of victims' organisations that were already involved from the onset included Manicaland and Matabeleland victims groups and that they were in the process of developing a comprehensive policy. More so, there is need to educate the public to correct the myth that reparations are confined to monetary payments. It was understood that reparations refer to restoration of the victim to their original position.

3.2.3 Presentation of Draft Principles for Promotion of Truth

Fr. Chiromba gave a presentation on Promotion of Truth. In his introduction, he said that different people believe in different truths. Some believe in truth from the perspective of a spirit medium and others from the standpoint of a prophet. He said there was a need to engage in a comprehensive process of truth recovery to initiate healing and other justice processes—all on the foundation of truth. He outlined some principles that must guide truth telling processes.

Plenary Discussions

In the plenary that followed, questions like whether truth must be traded for amnesty arose, and it was agreed that there must be

subjected to wide-consultation, especially with the victims. It was also noted that since there was a possibility of some future activities of the truth commissions to duplicate work that was already being done by the HRC, there was need to engage already existing commissions more and the conference was part of the process for greater involvement.

3.2.4 Presentation on Draft Principles for Memorialisation

In his presentation on Memorialisation Rev Motsi said it is a process in which people as a nation try to remember their past in a manner that allows to building a better future and achieve healing. He said memorialisation is an opportunity to rewrite history and at the same time to process traumatised memory otherwise it may result in another conflict. He said memorialisation was both an objective and subjective process. It must never be made a private project. He went on to outline some principles that are fundamental to memorialisation.

Plenary Discussions

In the plenary, there was an emphasis on the transitional justice journey being a long one even though Zimbabwe is just at the beginning. Therefore there was a need for a strong legal grounding, and the Zimbabwean constitution provides that grounding. It was also noted through the discussions that creating a sense of identity for memorialisation was important through government involvement in National Memorialisation projects. It was agreed that the memorialisation initiative must be implemented as part of a holistic approach to dealing with the past. There was also need to have alternative histories and support of local memorialisation initiatives. Further, there was a call for balance in the multiple narratives, and the politicians are guarded against using memorialisation to re-victimise the victims. There was also need to document memorialisation to avoid distortion or falsification of information by perpetrators that easily transform themselves to be victims by pulling the race or ethnicity card.

3.2.5 Presentation on Draft Principles for Women and Transitional Justice

Ms. Memory Kachambwa presented on the draft principles on women and transitional justice. She said the participation of women is many times underplayed, and there is a need to develop for legal reform to catalyse women participation in transitional justice processes. She said there is need to remove barriers to participation and ensure that gender becomes a cross-cutting theme across all the thematic areas.

Plenary Discussion

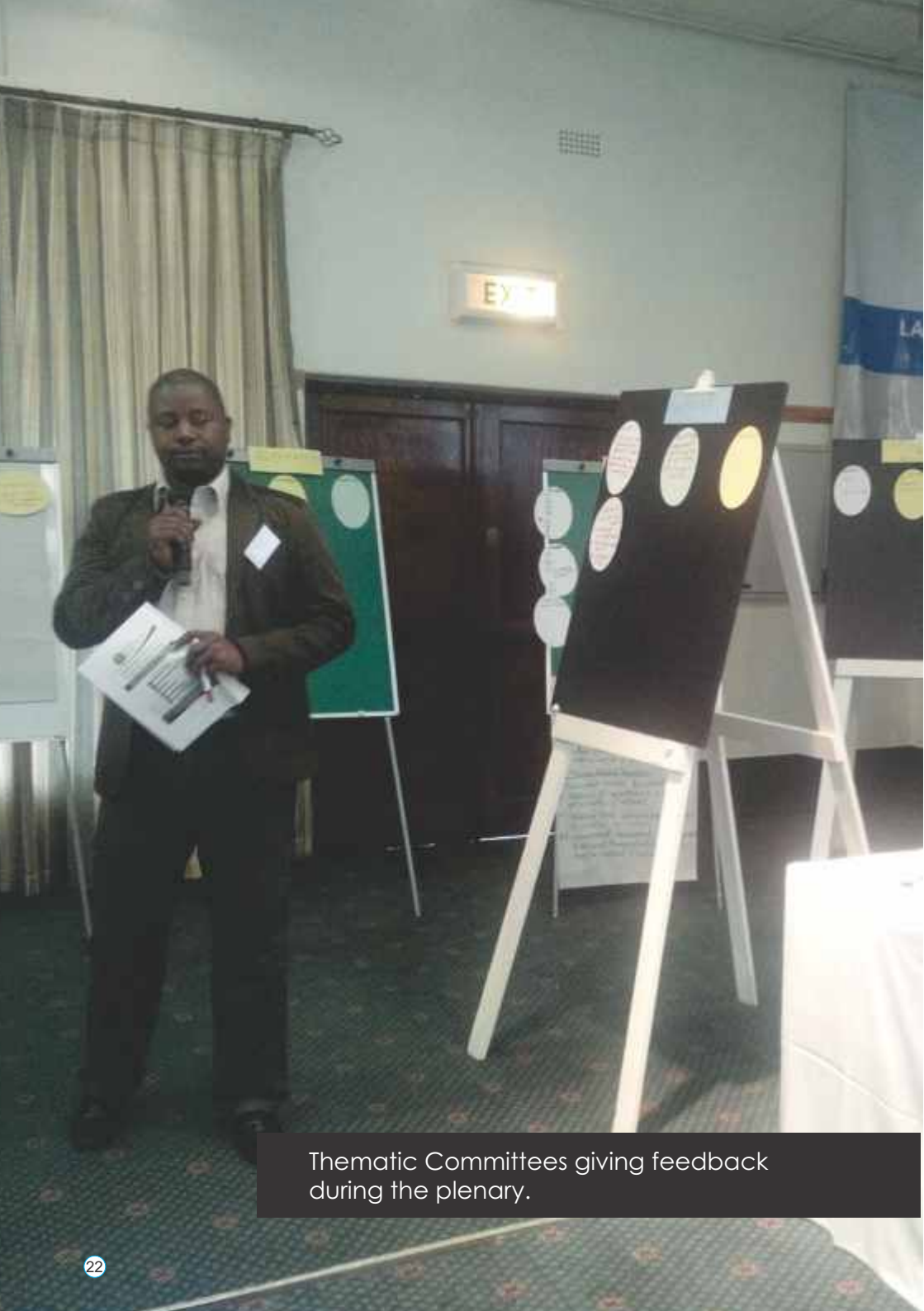
There was a unanimous decision to incorporate gender as a cross-cutting issue in all thematic areas as a way of dealing with patriarchy in the present day society. The point of departure proposed had a dialogue with parliamentarians and constituencies. More so men needed specific interventions that help them go through healing to overcome issues around ego. Hence, there was a call to target both men and women and dismantle the architecture that says “you cannot talk about what happened to you as a man”.

3.2.6 Presentation of Draft Principles for Justice and Accountability

Ms. Roselyn Hanzi made a briefing on the principles of justice and accountability. She outlined the key principles that must guide criminal prosecutions and civil litigation. She addressed the issue of amnesties and indicated this was a contentious issue to be discussed by delegates. She highlighted that under international law, it is not possible to grant amnesty on certain crimes and that doing so promotes impunity.

Plenary Discussion

The discussions highlighted the need to be proactive in a predatory state, think about timing issues when sanctioning perpetrators. There was also need to look into illegal amnesties pronounced in the past. Additional questions were also raised on how these principles could be translated into policy in a non-transitional state and it was also noted that bringing about justice and accountability is a matter of timing and strategy.



Thematic Committees giving feedback during the plenary.

4.0 Thematic Committees

4.1 Committee Deliberations

After presentations on principles, the delegates examined the principles in six thematic committees. After the deliberations, the delegates returned to give their reports. On Day One four committees gave their reports. These were; Gender, Reparations, Justice and Accountability and Memorialisation. The four thematic areas presented on the principles they agreed, the principles they contested and the additions they made to the principles. The accepted principles as amended are included in this report as Annexure 4. The meeting closed with a prayer from Fr. Chiromba at 1800 hours.

Day Two-24 July 2015

The second and last day of the conference commenced with a prayer from Rev Maengamhuru at 0815 hours. This was followed by a recap of day one by Ms Dorothy Mudavanhu (Rapporteur). The two remaining thematic committees on Promotion of truth and Institutional Reform made presentations on accepted principles. They took note of contested issues, and the additions they made on the principles. These were incorporated in the final document on draft Principles.

4.2 Contested Issues

Before wrapping the meeting, the disputed principles from all six thematic committees were ironed out, and changes were included in the final draft principles.

4.2.1 From Gender to Women

The most significantly outstanding issue was changing the name of the Gender and Transitional Justice Committee to Women and Transitional Justice. This led to the thematic area being renamed to Women and Transitional Justice. The rationale was that women's issue must not be lumped under technical terms like gender. Some delegates felt that calling the theme 'Women and Transitional Justice' would alienate gender questions that were not really about

women. This is like the sexual abuse of boys. The matter was put to a vote. 16 delegates voted in favour of the thematic committee to remain as Gender and transitional justice. 11 abstained. 18 voted for the change from Gender to Women and Transitional Justice.

4.2.1 Amnesties

There were fears in the conference that amnesties can be open to abuse. There was, however, an acknowledgment that the world-over amnesties have been used constructively. The meeting agreed to that amnesties need to be under strict guidelines. Perpetrators of serious international crimes like crimes against humanity, sexual offences and murders must not qualify for amnesties. Suggestions were made that collaborators, perpetrators of minor crimes as well as children can be made eligible for amnesty.

Machin
Zongaya
Mawumbi
Lloyd Mungoma
Sam Sibanda
FR. F. CHROMBA
A. I. Resler
A. Mubadzhame
ZC
MUTSA
MINT N.V.G.
ZCBC
RAU
NTA

Edward MAPA
CHARLES MUBVANDARIKI
SAMUEL SIBANDA
HESTER ZAMBARA
Goodhope Ruswa
Rashid Mubvumba
FIDELIS CHIMA
Leone RUSA
Mungwaru

Organizatsiya
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GUIDING PRINCIPLES

for Transitional Justice

Original document signed by delegates

5.0 Adoption of the Final Draft

After the compilation of the final draft principles, Chairperson of the NTJWG tabled the final version of the conference report and asked if there were any further changes that needed to be made. There being no changes, Fr. Fradereck Chiromba moved a motion for the adoption of the Draft Principles as the Final Draft of Principles for Transitional Justice Policy and Practice in Zimbabwe. The motion was supported by Mr. Edward Chihota from ZACRO. The entire house was in support. Father Chiromba declared the draft adopted by the conference.

6.0 Way Forward

Delegates agreed that the Final draft would be shared with thematic committees who have a duty to take it to the grass roots. After further refining, the ultimate principles would then become a policy standard and advocacy tool for all stakeholders.

7.0 In Closing


Following the adoption, NTJWG Secretary, Mr. Abel Chikomo addressed the conference and congratulated NTWG for the work leading to the draft principles. He emphasised the fact that NTJWG is not an organisation but a platform for organising and strategizing. Ms Roselyn Hanzi, a thematic leader on Justice and Accountability, gave the vote of thanks. The meeting ended with a closing prayer from Rev Maengamhuru at 1130hrs. Delegates filled in evaluation forms. The conference adjourned for a group picture, lunch and departure.

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and the Southern African
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Civil Society and Justice in Zimbabwe

CONCILIATION COMMISSIONS

International Conference
Transitional Justice in Zimbabwe
9 - 11 October 2013
Johannesburg, South Africa
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SIERRA LEONE
SOUTH AFRICA
 IJR
The Hague Institute
for Global Justice

THE LEGAL RESOURCES FOUNDATION
COMMISSION FOR JUSTICE
ZIMBABWE
... the Disturbances
... True Peace
... the Silence

ZIMBABWE
CONSTITUTION OF ZIMBABWE
AMENDMENT (No. 20) ACT 2013

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NATIONAL
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WORKING GROUP
ZIMBABWE

Conference Agenda
23 - 24 July
Troutbeck, Nyanga

Stakeholders Conference on Transitional Justice Principles



Prepared by the National Transitional Justice Working Group
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04 770771/8

Annexure 1 Conference Agenda

Conference Agenda

23 - 24 July 2015

SESSION 1: WELCOME, INTRODUCTIONS AND BACKGROUND CHAIRING – MR. ALEC MUCHADEHAMA & REV. DR. RAY MOTSI

- 0820 - 0835 **Welcome**
Welcome, Outline of the Programme and
Objectives of the Conference,
Alec Muchadehama, NTJWG Chairperson
- 0835 - 0845 **TJ Principles: Laying the Foundation for T J
Processes in Zimbabwe**
The NTJWG Role, Strategy and Action Plan, The
Transitional Justice Conceptual Framework for
Zimbabwe, Why the Principles? NTJWG Approach
to TJ Processes
Alec Muchadehama, NTJWG Chairperson

SESSION 2: PRESENTATIONS ON PRINCIPLES CHAIRING – MR. ALEC MUCHADEHAMA & REV. DR. RAY MOTSI

- 0845 – 0910 **Principles of Institutional Reform**
*Tony Reeler, Thematic Leader on Institutional
Reform.*
- 0910 – 0920 Plenary
- 0920 – 0945 **Principles on Reparations**
*Alec Muchadehama, Thematic Leader on
Reparations*
- 0945 – 0955 Plenary
- 0955 – 1020 **Principles on Promotion of Truth**
*Fr. Fradereck Chiromba, Thematic Leader on
Promotion of Truth*
- 1020 – 1030 Plenary
- 1030 - 1100 **Tea Break**

SESSION 3: PRINCIPLES PRESENTATIONS CONTINUED
CHAIRING – MR. TONY REELER & MS. ROSELYN HANZI

- 1100 – 1125 **Principles on Memorialisation**
Dr. Rev. Ray Motsi, Thematic Leader on Memorialisation
- 1125 – 1135 Plenary
- 1135 – 1200 **Principles on Gender**
Memory Kachambwa, Thematic Leader on Gender
- 1200 – 1210 Plenary
- 1210 – 1235 **Principles of Justice and Accountability**
Roselyn Hanzi, Thematic Leader on Justice and Accountability
- 1235 – 1245 Plenary
- 1245 – 1345 **Lunch Break**

SESSION 4: THEMATIC COMMITTEE DISCUSSIONS
CHAIRING – MR. TONY REELER & MS. ROSELYN HANZI

- 1345 – 1400 **Arrangement of Thematic Committees**
Rapporteurs
- 1400 – 1500 **Thematic Committee Discussions**
- 1500 – 1530 **Tea Break**
- 1530 – 1600 **Feedback from the Committee on Justice and Accountability**
- 1600 - 1615 Plenary
- 1615 – 1645 **Feedback from the Committee on Reparations**

1645 – 1700 Plenary

1700 – 1730 **Feedback from the Committee on Promotion of Truth**

1730 – 1745 Plenary

END OF DAY ONE

SESSION 5: THEMATIC COMMITTEE DISCUSSIONS CONTINUED CHAIRING: MS. ROSELYN HANZI & REV. DR. RAY MOTSI

24 July 2015

0815 – 0815 **Recap**
Rapporteurs

0815 – 0845 **Feedback from the Committee on Memorialisation**

0845 - 0900 Plenary

0900 – 0930 **Feedback from the Committee on Gender**

0930 – 0915 Plenary

0915 – 0945 **Feedback from the Committee on Institutional Reform**

0945 – 1000 Plenary

1000 – 1030 **Tea Break**

SESSION 6: ADOPTION
CHAIRING: REV. DR. RAY MOTSI & FR. FRADERECK CHIROMBA

- 1030 – 1100 **Presentation of the Final Set of Principles**
Mr. Alec Muchadehama and Dr. Pamela Machakanja
- 1100 – 1130 **Motion for Adoption**
To be proposed and seconded by delegates
- 1130 – 1145 **Closing Remarks**
Ms. Memory Kachambwa & Dr. Ray Motsi
- 1200 – 1300 **Lunch & Departure**
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Annexure 2 List of Participating Organisations

Participating Organisations

1. Abammeli Human Rights Lawyers
2. Amnesty International
3. Bulawayo Agenda
4. Centre for Community Development Zimbabwe
5. Centre for Conflict Management and Transformation
6. Counselling Services Unit
7. Ecumenical Church Leadership Forum Zimbabwe
8. Evangelical Fellowship Zimbabwe
9. Grace to Heal
10. Heal Zimbabwe
11. Hwange Community Radio Station
12. Institute for Justice and Reconciliation
13. Institute of Peace Leadership Governance
14. Justice for Children
15. Law Society of Zimbabwe
16. Legal Resources Foundation
17. Manicaland Victims Group
18. Masakhaneni Projects
19. Masvingo Counselling Trust
20. Matabeleland South Victims Group
21. Media Institute of Southern Africa
22. Media Monitoring Project Zimbabwe
23. Musasa Project
24. Mutasa Youth Forum
25. National Association of Youth Organisations
26. Nhimbe Trust
27. NOVASC
28. Progressive Teachers Union of Zimbabwe
29. Radio Dialogue
30. Research and Advocacy Unit

31. Silveira House
32. Student Solidarity Trust
33. Transparency International Zimbabwe
34. Tree of Life
35. Ukuthula Trust
36. Veritas
37. Women of Zimbabwe Arise
38. Women's Coalition
39. Youth Empowerment and Transformation Trust
40. Zimbabwe Association Doctors for Human Rights
41. Zimbabwe Association of Crime Prevention Rehabilitation of the Offender
42. Zimbabwe Catholic Bishops Conference
43. Zimbabwe Civic Education Trust
44. Zimbabwe Election Support Network
45. Zimbabwe Human Rights Commission
46. Zimbabwe Human Rights NGO Forum
47. Zimbabwe Lawyers for Human Rights
48. Zimbabwe Peace Project

Annexure 3 Thematic Committees

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

Guiding Principle for Transitional Justice Policy and Practice in Zimbabwe

1.0 Justice and Accountability

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 benefitting 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 be 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 Principles on Memorialisation

a. Purpose Related Principles

- i. Memorialisation initiatives must seek to achieve historical clarification supporting local memorialisation initiatives.
- ii. Memorialisation initiatives must be treated as a tool for building of a collective memory.
- iii. 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.
- iv. 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.

- v. Memorialisation initiatives must assist in the development of people's identity

b. Process Related Principles

- i. Sensitive to context, location and the target audience
- ii. 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
- iii. 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.
- iv. A memorialisation initiative must explicitly show acknowledgment for past wrongs but should be sensitive to the context.
- v. 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.
- vi. 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 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.

- vii. 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.
- viii. Memorialisation initiatives must be implemented as part of a holistic approach to dealing with the past.
- ix. 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.
- x. Designing memorialisation initiatives must be well timed and well sequenced. Actors must ensure that the set goals are precisely aligned with the actions.
- xi. 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 level 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 by 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

- a. **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
- b. **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 collective rights of societies.
- c. **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).
- d. **Inclusivity** – Truth seeking must be based on consultations and effective participation of all stakeholders.
- e. **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.
- f. **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

g. 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

h. Cultural sensitivity – A truth seeking mechanism must respect the beliefs and practices of the local people.

i. 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

j. Legal Protection for State records and archives – There must a law to criminalise the destruction of state records and archives

6.0 Institutional Reform

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

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.
- c. Oversight bodies must be accessible to the people, with offices throughout the country at least in every district

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 non-military institutions like the Ministry of justice, 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

NTJWG Publications

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.





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