



NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE



2018 TRANSITIONAL JUSTICE SYMPOSIUM

Venue: Nesbitt Castle, Bulawayo

Day I

(21 November 2018)

www.ntjwg.org.zw/symposium.html

Welcome and Opening Remarks

The conference commenced with welcome remarks from Reverend Dr Ray Motsi (the NTJWG Thematic Leader on Memorialisation). Dr Motsi introduced the work of the NTJWG since 2012 when it was established and its different thematic committees which include; the Justice and Accountability Committee, Institutional Reforms Committee, the Gender Committee, Memorialisation Committee, Truth and Reparations Committees. Dr. Mosi also noted that as Zimbabweans, the people in the Symposium can find solutions to the transitional justice questions in Zimbabwe.

Paul Themba Nyathi, the NTJWG Deputy Chairperson standing in for the working group's Chairperson, Aleck Muchadehama, reiterated the importance of the symposium and its uniqueness in the current prevailing Zimbabwean environment. He pointed out that the platform is a national symposium represented by people across Zimbabwe and it is meant to produce a people driven Transitional Justice Policy. Nyathi echoed that the NTJWG is fully aware that the Constitution of Zimbabwe established the NPRC. He noted that this was a recognition of past human rights violations and that its key agenda is to address gross human rights violations perpetrated in different conflict episodes. *"It is a recognition that we did not deal with the past adequately including issues of Murambatsvina, electoral violence, poverty,"* he noted. And, therefore, *"we are here to ask ourselves on the way forward rather than asking who committed what violations"*. Among some of the key issues noted by Nyathi were that *"at times people are dead set against transitions because they are not sure what they will transition are transitioning to"*. He reiterated the often mentioned point that violence is humiliating to victims as it denies victims their dignity but is equally detrimental because it contaminates the values of the perpetrators. With regards the diversity in the representation of all sectors in Zimbabwe he acknowledged participants that had attended from Harare, Nyanga, Binga, Mtoko, Gwanda and other places noting that this signified the richness of Zimbabwe's cultural values. Mr Nyathi lamented several issues:

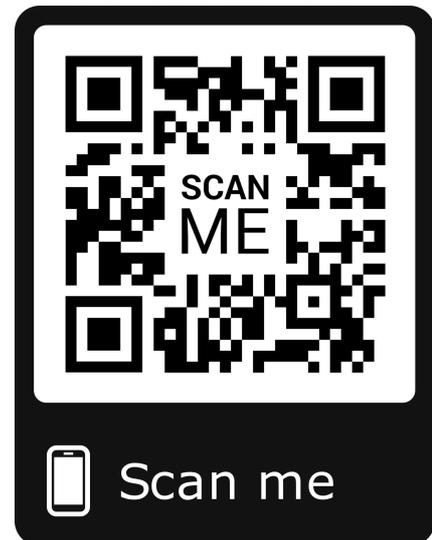
- that there was no justification for the 3million Zimbabweans who were in the diaspora;
- that those who were entrusted with the task of leading should lead with honour;
- that there was need to strengthen the urgency of ordinary people to question the accountability of leaders.
- That 75% of our people cannot continue to live in abject poverty and the situation is treated as normal

Mr Nyathi closed by urging participants to seriously consider standing up and actively participating in national processes to hold leaders accountable and to benefit from contributions to national processes ultimately leading to a place where Zimbabweans with one voice can say “NEVER AGAIN”.

Nomfundo Mogapi, the Executive Director for the Centre for the Study of Violence and Reconciliation (CSVR) in her remarks congratulated the people of Zimbabwe for taking steps towards national healing and reconciliation as reflected by the enactment of the NPRC Act and the work of different civic organisations and government including the NPRC. She pointed out that among other issues what she called the “paradox of transitional justice in Africa”. She noted that:

- There is a history of poor transitional justice policy implementation in Africa, hence the need to draw lessons from various actors, jurisdictions and experiences to ensure that the Zimbabwean TJ process is successful.
- It is a concern that fault lines on democracy are depleting on the African continent as interparty conflicts are increasing.
- The distinction between victims and perpetrators is sometimes difficult to identify (as their faces are sometimes similar), hence the need to craft inclusive policies that provide holistic solutions.
- Many institutions (family level for instance) that should protect victims are wounded and are not adequately capacitated to support those who needing protection hence the need to pay attention to invest in building strong institutions for effective psychosocial support services
- Psychosocial support services are a critical gap in most TJ processes particularly on families affected by violence.
- Failure to invest in healing will create intergenerational trauma and perpetual violence.

Ms Mogapi ended by urging Zimbabweans that “the world is watching, Africa is watching, Zimbabweans are watching, SADC is watching and would like to learn from Zimbabwe’s processes. *Never Again* must echo in your hearts and in the hearts of your leaders to avoid sabotage”



Scan the code to watch the video.

Key Remarks by the Chairperson of the National Peace and Reconciliation Commission, Retired Justice Selo Nare

The Chairperson of the NPRC, Retired Justice Selo Nare gave his key note speech by describing the functions of the NPRC and narrowing his discussion to three key issues which are (i) Healing (ii) Reconciliation and (iii) Forgiveness. Justice Nare asked whether;

- Healing* is the final product of forgiveness. This means forgiveness is a precondition for healing
- Forgiveness* entails memory of what happened and developing empathy on the circumstances of the perpetrator and a shared future (freedom from revengeful actions).

iii. *Reconciliation* requires acknowledgement of the injury by the aggressor, it entails restoring relations that are free from yesterday's hurt, healing the past and forgiving the perpetrator. It is about developing a new relationship and new attitudes. He also described reconciliation as the meeting point between the past pains and the future.

- He also noted that in JT policing, victims should be central, and victims have a right to fair remedy. He however, mentioned that servant leadership (a humble leadership) is a necessary condition for restorative justice
- In closing, Justice Nare highlighted that the condition for healing is truth, forgiveness and reconciliation and that there is a disjunction between forgiveness and reconciliation which is a quest for state craft and political practice reconstruction. **Scan Code to watch the video**



Zimbabwe's Transitional Justice Journey –Taking Stock, Progress, Challenges, Opportunities, Lessons (presented by Tony Reeler –NTJWG and Commissioner Ms. Choice Ndoro – NPRC)

Both Tony Reeler and Commissioner Choice Ndoro observed that Zimbabwe and its people have experienced different conflict episodes that warrant a TJ process. They both indicated that the pre-colonial, colonial and post-colonial conflict episodes deserve attention as the TJ process commences.

Tony Reeler's presentation and highlights;

- Zimbabwe's 1980 reconciliation policy (at independence) was rendered useless by perpetual violence against citizens as was the case with Gukurahundi and various electoral episodes.
- Civic Society Organisations contributed immensely towards the protection of victims, ending impunity and advancing rule of law through documenting human rights violations and providing psychosocial support services to victims of violence such as legal services, food and other services
- CSOs also played a big role in advocating for social justice locally and regionally (at the African Union Human Rights Commission, SADC Tribunal and at UN levels)
- There is already a truth telling instrument by CSOs in the form of documented human rights violations
- Zimbabwean CSOs played their part before the transitional period and the country now has a new constitution (The 2013 Constitution) and has systems that could help TJ to take place.



Commissioner Choice Ndoro's presentation and highlights;

Commissioner Ndoro's presentation highlighted the NPRC's journey from the appointment of the Commissioners in 2015, their swearing in 2016 and the enactment of the enabling Act in 2017. In her presentation, she highlighted that;

- Between 2016 and 2017, while waiting for the enabling Act for the NPRC, the institution engaged in a capacity building process including the development of an incremental strategic plan. They also developed 16 organisational policies including the conceptualisation of the NPRC mandate.
- The NPRC public consultations and review of literature revealed that there are long and deep-seated conflict issues dating back to the pre-colonial era which cannot be ignored
- Structural violence, unresolved racial and ethnic conflicts as well as unequal resource distribution have historical traces from the colonial period, hence the need for a holistic and inclusive approach to the transitional justice process.
- To become proactive, the Commission established early warning and early response systems ahead of the 2018 elections. The Commission also campaigned for peace through National Peace Pledges and Peace Caravans.

In closing, Commissioner Ndoro informed participants that the NPRC has established internal and external committees which could effectively help the body to achieve its objectives. She however, mentioned that the NPRC will need to work on building trust among citizens and stakeholders if it is to achieve better results.

The Case for Transitional Justice Policy for Zimbabwe (Otto Saki NTJWG Expert)

Mr Otto Saki presented on key issues that should be considered when developing a TJ policy Framework in the context of Zimbabwe. He first noted that there are divergent views among Zimbabweans on whether the country is ready for reconciliation or not given that there has been a change of leadership, but the alleged wrongdoers are still in positions of power. He raised a point on the need for creative expertise in crafting a realistic policy for TJ in the prevailing Zimbabwean context. Saki underscored that;

- The TJ policy should be clear on what remedies will be provided to victims of past human rights violations.
- There should be a shared understanding of what justice means by putting the victims at the centre while cognisant of the rights of the perpetrators too.
- There should be synergy between the NPRC and different government departments. Hence the TJ policy should clearly outline different anticipated linkages. For example, the role of the Social Welfare department in facilitating rehabilitation.
- The policy should clearly outline how the TJ process will be funded as it is costly to address the past as it is when addressing the future. The Ministry of Finance, for instance, should be cognisant of the need for national healing and reconciliation and therefore, must allocate resources commensurate with the work as expected.
- There is need to include economic justice in the TJ policy. Most TJ policies tend to consider political violations mainly.

Mr. Saki, in closing emphasized that the intended policy framework is not meant to displace the NPRC but to complement the work of the commission as well as creating enabling pointers towards a holistic TJ process.

Plenary Lessons and comments raised

- Zimbabwe's transitional attempts are failing because there are people who benefit from the country's perpetual violence (**violence entrepreneurs**)
- Zimbabwe **inherited infrastructures** and instruments of violence at independence at the expense of a meaningful transition

- Zimbabwe's conflicts **are embedded in the fight for resources**
- **The NPRC's lifespan (10 - year count) remains unclear.** The government is yet to determine the period in which the Commission starts counting its lifespan. Should the 10 - year life span be from the time the Commission was sworn in (2013 – 2023) or from 2018 – 2028.
- There is need for **shadow policies and commissions** to mirror government appointed Commissions.
- There is need to **include victims** in both the process and content of TJ policies development
- The relationship between perpetrators and victims today is that of **enemies with intergenerational hate.**

Second Session

Panel Discussion: From Policy to Practice –Introducing the Dealing with the Past Framework and the African Union Model Policy (*Annah Moyo CSV, Kloat Aleer –African Union Commission Department of Political Affairs and Jackson Odong – Makerere Law Centre*)

To borrow lessons from regional and international experiences relating to transitional justice policy development and implementation, there was a panel discussion focusing on the African Union TJ policy. The AU transitional justice policy is a non-binding continental mechanism guiding AU members states emerging from violent conflicts and dealing with addressing past legacies of violence.

- Ms Moyo highlighted that in developing the AU transitional justice policy, five observable crucial components included; enough involvement of members states and citizens, developing collective ownership, drafting the policy in the language understood by target audiences, publicizing the draft policies as much as possible and ensuring that connections and networks developed during the drafting process are utilised when implementing the policy. The presenter shared that there is need to talk about implementation of the policy from the beginning and ensuring constant popularisation of the draft policies to legislators and other different stakeholders

Another presenter, Kloat Aleer also noted that the AU transitional justice policy seeks to address governance deficits and developmental challenges with a view to **advancing the goals of Agenda 2063**, the Africa we Want.

- There are countries such as Mali and South Sudan that are already using the AU transitional justice policy to shape their own national processes which Zimbabwe could also draw lessons from
- The AU policy on TJ also takes into consideration traditional mechanisms and the involvement of non-state actors
- There is need to include monitoring and resource mobilisation mechanisms in the policy document to avoid operational challenges.
- The AU policy also provides different mechanisms for transitional justice which member states can contextualise to suit their own needs.
- There are themes that are cross cutting such as gender and women.
- Knowledge management and advocacy form key components of the AU policy.
- Monitoring and Evaluation is a strong feature of the policy.

Lessons from Uganda were also drawn from Jackson Odong's presentation. Jackson indicated that Uganda's TJ policy was crafted with competency, albeit that it took a long time to be finalised. However, the country's implementation process of the TJ policy leaves a lot to be desired. There is need to always consider implementation questions during the policy design process to avoid operational shortcomings. Odong pointed out that for a TJ policy to succeed, fundamental questions must be asked, and this was: "Will the policy proposed be able to resolve the following:



- Order
- Human dignity
- Human rights culture
- Nurture democracy

A key feature that was present in the Ugandan model was the development of a Compendium on Conflicts.

Odong also noted that Zimbabwe civil society needs to be wary of the fact that oftentimes governments hide behind TJ processes that seek to rehabilitate and develop victims. Thus, to avoid TJ at times governments push for developments hiding the truth and perpetuating impunity in the process.

Plenary Lessons and comments raised

- The AU transitional justice policy took about 9 years to develop due to multiple levels of consultations and the need to build political will among members states
- Member states are not obliged to adopt the AU policy, but they can contextualise their needs using the guidelines provided in the policy
- There is a positive interaction between the AU TJ policy and other bodies such as the AU Court of Justice.
- How does the African Union policy on TJ interact with other African justice mechanisms such as the African Court and the African Commission?

Group Observations and Reflections

The right to Know (Chaired by Prof. Tobias Guzura –Zimbabwe Open University)

The group observed that the right to know is crucial because it is enshrined in the constitution of Zimbabwe (section 62). As such the truth is a necessity for all victims. The right is also crucial for education and knowledge generation. **The right should be enjoyed at individual, community and national levels.** Lastly, the group note that the right to know should be enjoyed at specific times and spaces desired by the victims.

“The Right to Know doctrine should be informed by the right to speak and the right to be freedom after speaking”.

Right to Justice (Chaired by Hon. Innocent Gonese)

The group noted that the right to justice is about having all people being treated before the law. The right to justice should not only involve retributive justice, but also restorative justice. The group also noted that state institutions should be stronger and impartial to discharge their duties effectively. It was also noted that in pursuing the right to justice, there is need to enhance administrative justice in terms of processes and procedures that should be respected. It is critical to deal with the culture of impunity. It was noted that there must be political will. The protection of eyewitnesses was pointed out as a key issue. The right to a fair trial was also outlined as one key issue under the right to justice.

Guarantees of non-recurrence (Chaired by Rev. Useni Sibanda)

The group observed that the perpetrators of the violence are still in power and it makes it difficult for them to be accountable. This makes guarantee of non-recurrence a challenge in Zimbabwe. The group learnt that at independence, Zimbabwe did not transform, but it inherited the colonial structures of violence. therefore, there is need to start working with the grassroots to understand what communities want to promote sustainable peace. In pursuing a realistic TJ process, there is need to promote the Spirit of Ubuntu and addressing social and economic injustices (including unemployment). There is also need promote the role of traditional leaders as custodians of societies, building resilience, facilitating history writing projects and developing a variety of complementary human security policies.

Right to Reparations (Chaired by Ms. Rutendo Zinyemba)

The group observed that the right to reparations should be viewed in three lenses including **restitution, compensation and rehabilitation**. For the right to be enjoyed, there is need to develop a guiding policy on reparations. However, challenges are likely faced in monetising the injuries caused. Communal developmental reparations may also be undertaken besides monetary payments. The group also agreed that the War Victims Compensation Fund is an example of a reparations policy framework. In addition, there is need to consider what justice means to victims to be accurate on the kind of reparations expected by the victims in different contexts. The group advocated for communal reparations in certain instances. It was also agreed that Zimbabwe should maximise on promoting the right to reparations by using available documented evidence.

Critical Reflections on the Hard Choices for Zimbabwe (Otto Saki)

Reflections by Otto Saki detailed various issues that should be taken into consideration when developing a TJ policy for Zimbabwe. The details centred on what should be included in the intended TJ Framework. Some of the reflections critical to the policy were that;

- Remedies are affected by different time and horizons. Therefore, remedies suggested or prescribed must be sensitive to time and spaces. What are the parameters of the policy on TJ?
- Funding questions must address whether it will be coming from domestic or international sources. In case of international sources, the discussion could be a foreign policy discourse drawing from the colonial violations
- There must be a careful sequencing of events and remedies (what comes first and following)?

- Selective actions or remedies depending on contexts in cases of prosecutions should be considered. For example, prosecutions may not be strategic when the perpetrators are still in power.
 - There is need for perpetrators versions of the truth –that information must be curated and put in place.
 - Institutional synergies and their roles in TJ must be clearly spelt out in the policy.
 - Amnesties should be debated whether they should be conditional or blanket. For instance, should amnestied be based on truth telling or they can be blanket).
 - People must interrogate whether there is an appetite to have TJ at government level or it is only about having the NPRC.
 - People should also ask whether there is need for a Peace and Reconciliation Policy and a TJ policy (or we need both). The discourse must focus on policies beyond the TJ also.
 - Healing cannot be confined to the lifespan of the NPRC because some people may be ready to talk after the NPRC is gone. Therefore, there must be space for them to talk in the future.
 - The level of disclosure and willingness to participate will be determined by the success or failure of the NPRC (confidence and trust deficit), hence the need to ensure that the PRC processes succeed.
 - There is need to consider how TJ issues will go beyond the State level processes into including non-state actors to participate in TJ processes with ease (e.g. church, CSOs etc.).
 - Religion and African traditional justice mechanisms are fundamental in TJ e.g. the church leaders and Traditional leaders have also been affected by the same violence and they bore the same brunt of violence. Therefore, the assumption that the leaders are strong enough to address the problems should be reviewed.
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