



NATIONAL  
TRANSITIONAL JUSTICE  
WORKING GROUP  
ZIMBABWE



CSV  
The Centre for the Study of  
Violence and Reconciliation

## 2018 TRANSITIONAL JUSTICE SYMPOSIUM

Venue: Nesbitt Castle and Joshua Mqabuko Museum Bulawayo

[www.ntjwg.org.zw/symposium.html](http://www.ntjwg.org.zw/symposium.html)



### DAY 3: POLICY REFLECTIONS

## Day 3: Policy Reflections

*“One victim yesterday told us that she lost five members of her family including her son. Her son was killed and thrown into a river while handcuffed. After three days, she had to ask for communal men to help her retrieve the body from the river for burial. Out of fear that the soldiers may come back and ask for the handcuffs, she had to cut the corpse’s hands to remove the handcuffs and she returned them to the Gukurahundi soldiers” –Reverend Sibanda reflections*

Reverend Useni Sibanda opened the conference’s third day by assisting participants to reflect on first two days Symposium’s outputs drawing from various presentations and evidence by victims and survivors of the Gukurahundi atrocities. Below are some of the excerpt observations participants mentioned as relevant to the policy development process.

### Reflections

- **State involvement in TJ** -The state should be at the centre of TJ given its involvement and control of the infrastructures of violence and conflict
- **Zimbabwe’s History** - There are many narratives of the Zimbabwean history, hence the need to embark in a history project and documentation of various narratives including transforming the education curriculum. While there is no need to agree on the narratives, there is need to document all of them. “As it stands, ZIPRA’s narratives remain untold in full and it is not truly told in Zimbabwe’s history” –Retired Colonel Magwizi.
  - *How do we reconcile the history that is told in the family and the history that is learnt in school?*
  - *Symbolic meanings attached to the conflict that happened are diverse and should be valuably reconciled valued. For example Gukurahundi is seen as a tribal/ethnic conflict, an economic conflict, a political conflict between ZAPU and ZANU etc*
- **Collective memory** –in relation to the history project is the development of mechanisms to develop collective memory that tells the Zimbabwean stories of violence, conflict and development. Questions that should be answered include;
  - Who should facilitate memorialisation of history as it is part of national healing?
  - How can there be a collective national narrative?
- **Matabeleland story** - Most Zimbabweans do not know the Matabeleland story of Gukurahundi. The general populace was largely prevented from knowing what was happening in the region during the Gukurahundi era, hence the need to deliberately popularise the story to create awareness and understanding.
  - **New insight** –Gukurahundi was not a tribal /ethic conflict but a political conflict meant to destroy ZAPU’s military and political life.
  - **What is pertinent** is to alert the entire nation of what happened, the conflict took place when communication was blocked from the public (*Phathisa Nyathi*).
- **Victims Narratives** –there is need to ensure that victims narratives are extracted and documented for public consumption. The truth from primary and secondary victims must be considered valuable in truth telling and truth seeking
- **Financial resources** –there is need for the NPRC to have guaranteed financial support so that it will be able to provide key services to the affected communities
  - **Victims’ social welfare** – the government and the PRC should provide a victims support budget towards the victims’ welfare including psychosocial support.

- **Physical presence** –the NPRC requires physical presence at the lowest community levels to ensure that there is direct support to affected communities (Going beyond statute devolution dictates).
  - **Research funds** - there is need to invest effectively in research (boost documentation and memory narratives)
  - **NB: the NPRC funding allocations reflects and determines the extent of political will by the government and its stakeholders**
- **Advocacy** –there is need for multi-stakeholder engagements and advocacy particularly to parliamentarians in order to influence legislators towards the NPRC and the people’s agenda for TJ. Target should be on the Parliament and the relevant Parliamentary Committees.
  - **International best practices** –Zimbabwe should draw lessons from other jurisdictions including Kenya, Uganda and the AU transitional justice policing processes.
  - **Culture and Arts** –culture and arts should be part of TJ approaches as they reflect what affected communities relate with and value within their own settings.
  - **Psychosocial Support** –there is need to put in place psychosocial support mechanisms before embarking on outreach programmes that involve victims to avoid re-traumatisation
  - **Victims and Witness protection** – there is need to address victims and witness protection within the TJ process as this determines the extent to which they will be able to come out in the open to narrate their experiences and seek remedy.
    - **Putting victims at the centre** to allow them to speak and demand justice
    - **Gender sensitivity**, particularly on women affected by violence and conflict. Setting up committees that deals with specific abuses may be helpful.
    - **Faces of the Victims and Perpetrators** -there are victims who have become perpetrators or vice versa, how can they be treated and protected
  - **Victims expectations** – there is need to manage victims expectations to avoid re-traumatisation or mismanagement of their healing process.
  - **Inclusivity** - there is need to design mechanisms that encourages both victims and perpetrators to come out in the open to tell their stories
  - **Outreach interventions** - There is need to identify engagement constituency priorities such as the security services. This action will prepare them to become softer and helpful to the TJ process.
  - **Obligation to implement NPRC recommendations** – there is need to put clauses that oblige the government and authorities to implement the recommendations of the NPRC.
  - **NPRC reactions**
    - There is need to accept differently told narratives as traumatic levels and exposures were different with victims affected by different perpetrator motivations
    - The NPRC has established committees to deal with victims, gender and diversity issues and the Act puts victims, gender and diversity at the centre also.
    - There is need to facilitate healing for those who actually assist in TJ processes including church and community leaders and the NPRC itself to avoid sending the wounded to heal the wounded.
    - Stakeholders in TJ should consider understanding the NPRC Act in order to fully provide collaborative support and to answer specific TJ questions
    - The NPRC has also put in place specific mechanisms and plans to sensitize government institutions about handling victims’ cases and queries.

## **Reflections on Institutional Transformation: Strategies for Security Sector Transformation and Amnesties** (*Jeremy Brickhill and Mohamed Suma*)

Jeremy Brickhill and Mohamed Suma spoke about institutional reforms and the impact of amnesties in building sustainable peace. In Jeremy's presentation it was learnt that Zimbabwe inherited colonial institutions that were repressive, brutal and modelled to protect capitalists and the ruling elite. Further, the inherited system defines security in the context of traditional threats. As such Jeremy defined institutional reform within the context of security sector transformation towards advanced human security. Framing security sector transformation within the context of human security shift focus from the narrow definition of security which looks at state security agencies (army, police, central intelligence and prisons) into a broader definition that espouses human development (including education, health, poverty reduction, employment, water, climate change etc.). Key lessons learnt were that;

- Institutional transformation is about human security, hence the call for security sector transformation
- There is need to build strong institutions that act above party politics
- Security sector transformation should espouse key principles –knowledge-based professional implementation, transparency and political impartiality, inclusive dialogue with all stakeholders and should be consensus –based with national ownership
- Multiple stakeholders should (state and non-state actors should be part of the conversation (including the academics, faith based organisations, NGOs and CBOs, traditional leaders (Council of Chiefs), War veterans platforms, Parliament of Zimbabwe and the citizens.

## **Amnesties in Zimbabwe: Mohamed Suma – International Centre for Transitional Justice**

The presentation on amnesties was made by Mr. Mohamed Suma of the International Centre for Transitional Justice. The key question for him was to answer the difficult question: “Do amnesties for or against peace”. The context for Zimbabwe is that different amnesties have been put in place to cover up different epochs of human rights violations. He outlined the different amnesties that have been legislated and implemented in Zimbabwe since 1975. Questions abound on the legality of the amnesties, whether Zimbabweans were consulted through parliament and other means. The presenter went on to discuss the international legal regime by conceptualising amnesty provisions and frameworks internationally. He noted that “amnesty” generally is not explicitly defined in international law and there is no treaty or international instrument on amnesty. The counter however is that here is international obligations for states to deliver justice for serious international crimes. Zimbabwe is party to several critical international instruments that quash amnesties issued for international crimes. The ICC is also one measure that has been put in place to deal with the scourge of amnesties across the world. In Africa, the AU Constitutive Act mandates states to protect victims’ rights to judicial protection need to have their cause heard. Mohamed issued a disclaimer that there are instances where it might not be possible to prosecute all crimes perpetrated against citizens and the alternative becomes a resort to selective prosecution at least for international crimes. Mohamed also presented the case of amnesties that were implemented after the Sierra Leone war, the Congolese war and South Africa. A blanket amnesty had been issued and it seemed it was the best option to cease the war between RUF and the Government forces. The effects of the amnesty were quite detrimental as human rights and war crimes continued unabated in Sierra Leone. Observers noted that the amnesty was perceived as having rewarded the war perpetrators. For the DRC, the amnesty law of 2009 had the effect of issuing a blanket reprieve for all international and serious crimes against humanity. To this day Eastern Congo remains a hotbed of international war crimes and serious human rights violations because among other

reasons the perpetrators still operate freely. In South Africa, the well - known amnesty law was successful in many ways as a lot of information and truths were availed which reportedly led to healing for some survivors. However, Mohamed in his presentation lamented that some of the perpetrators who had been given amnesty had committed serious international crimes and worse still for some who had been denied amnesty by the TRC, they managed to get Presidential pardons and were let go from prison.

Mohamed went on to discuss the ideal situation in which amnesties should be implemented and listed the following points as critical:

- Amnesty laws should be limited e.g. to specific geographical locations, specific human rights violations with a caveat that excludes international crimes such as genocide, crimes against humanity and war crimes
- Amnesty laws should be conditional e.g. requiring that perpetrators issue public apologies before they can be granted amnesty or that they need to reveal all the truth they know about certain human rights violations.

Mohamed grappled with the question of whether Zimbabwe's political context was in favour of amnesties. In his presentation he noted that the population including all stakeholders need to be consulted as the past amnesties were biased and more partisan oriented granted to protect partisan interests.

**Dilemma of Hard Truths ad Reconciliation: Truth Seeking and Preservation Strategies**  
(Tecla Namachanja –Former Commissioner with Kenyan Truth, Justice and Reconciliation Commission; and Elisabeth Baumgartner –Swisspeace Truth Seeking and Presentation Strategies)

**Truth Seeking strategies: Lessons from Kenya Tecla Namachanja – former Commissioner – Kenya TJRC**

The former Truth and Justice Commissioner from Kenya gave a narration of the Kenya atrocities from the 2007 elections and earlier efforts by then President Mwai Kibaki to establish truth, justice and reconciliation to deal with past injustices from Daniel Arap Moi's era. She narrated the journey that led to the establishment of the Kenya Truth Justice Reconciliation Commission. She noted that the Commission faced serious criticisms largely around its legitimacy, the suitability of a Chairperson who had been a serving member of the past regime who was called a "functionary of Moi dictatorship". The criticisms became worse and a section of the Commissioners stated criticising the Chair, Mr. Kiplagat from inside. Part of the criticism was published in a newspaper article written by the Vice Chair and another Commissioners and it went thus:

*We write to end our public silence ... A truth commission, like a court, requires that its members be free of any actual conflict of interest, and a perception of partiality that is reasonably based. In other words, given the evidence against Kiplagat, it is reasonable to believe that or Chairman may not be independent, neutral, or fair with respect to some or all of the matters within our mandate".*

The Commission could not work for a whole year because of these differences. The government made it worse and the Ministry of Justice started threatening the Commissioners.

Navigating reconciliation through the TJRC, the presenter noted that there are three elements underpinning reconciliation and these are:

- Relationship building
- Encountering past injustices and not allowing them to hide moving forward

- Acknowledgment of past human rights violations is critical

### **Truth Seeking and Preservation Strategies (*Elisabeth Baumgartner –Swisspeace*)**

Participants also learnt the importance of archiving and preserving data for TJ purposes. Archives are living documents which the government and CSOs working in TJ should consider crucial. They provide evidence to assist in truth recovery and memory preservation. In most countries, archiving has not been seriously done due to lack of resources, knowledge and sheer ignorance in some instances. However, for effective truth recovery and memory preservation, there is need to develop proper documentation and storage facilities with repositories. Management of archival systems and access to the archives are crucial to avoid 'deliberate' loss and destruction. Elizabeth's presentation on archival and truth recovery revealed that;

- Archiving is not a question of the past issues but the future responsibilities that should be carried by the government and stakeholders
- Archives support the right to know, the right to justice and the right to reparations.
- It is important to consider the content, context and structure of the information under consideration for archiving

### **Gender Inclusion, Diversity and Policy Options: Panel Discussion**

*(Nonhlahla Sibanda-Moyo, Nikiwe Ncube and Virginia Muwanigwa)*

In a bid to understand the impact of gender dynamics on women in transitional justice processes a panel discussion was held. Gender goes beyond the two binaries of men and women or boys and girls by taking into consideration social constructs, systems and structures that perpetuate patriarchy within societies. The panellists underscored that while men are the usually the target of violence during wars and conflicts, women end up bearing the brunt of violence given their social roles in homesteads. For instance, women are used as sex objects and political baits in times of conflict and violence (war wives and sex slaves). On the other hand women are portrayed as victims mostly yet they are also the brave people who face the real challenges in times of conflict. The presentations underscored that TJ processes in Zimbabwe should;

- Create spaces for women to talk about their experiences without fear. However, there is also need to ensure that the create spaces may not end up making women's narratives invisible in the TJ processes. In South Africa, it was learnt, about 60% of women reported their cases to the TRC, but o 43% of them reported the cases as direct victims of the violations.
- Consider sexual violations as a special category in the NPRC processes and also ensuring that gender justice is integrated in all TJ processes.
- Ensure that there is both gender equality and equity considerations in TJ processes

#### ***It was also noted that;***

- Integrating gender justice in all TJ processes should be achieved strongly by taking advantage of the constitution which affirms gender equality, provides for specific human rights and also establishes a Zimbabwe Gender Commission.
- Women who participated in the liberation struggle have not been honoured enough ( they were neither compensated nor have their experiences documented in the country's history adequately).
- There is need for a Victims and Witness Protection Act to guarantee protection and safety.

### **Thematic Committees Reflections (*Policy Development and Implementation*)**

## 1. Institutional Transformation

*Institutional transformation is anchored on security sector transformation. And it should consider low hanging fruits framed in the context of human security (human development).*

- **Issues** - partisan government institutions, party-state conflation, mistrust between government and the citizenry, weak national institutions that cannot act above party politics and corruption
- **Processes** – inclusive, non-partisan, national ownership and knowledge-based professional implementation.
- **Roles and Responsibilities** – inclusive the following stakeholders; the academics, faith based organisations, NGOs and CBOs, war veterans, traditional leaders, Parliament of Zimbabwe and the Citizens.

## 2. Truth Telling

- **Issues**; Define the truth, How do we get the truth, What truth, Whose truth, Where is the truth being told, Types / forms of truth, Conducive conditions for truth telling, Who has the right to hear the truth. Challenges with freedom before, during and after telling the truth, Availability of platforms for telling the truth and sources of the truth scarcity, Various forms of truth telling: - factual, forensic, public, private, women only, Sensitivity to culture, Sensitivity to gender, Victim / offender orientated, Accessibility of truths are held in government records, Protecting the truth from deliberate untruth, Equal opportunity to express the truth
- **Process** – set minimum basics for truth seeking, prioritise truth telling, establish early warning systems, define determination of starting point, period, geographical and facilitate consultation with communities, classification of conflicts, establish what is to be done beyond the Commission
- **Roles and responsibilities** – NPRC and its stakeholders' roles in setting priorities, establish transparency mechanisms,

## 3. Archival

- **Issues** -Archives – opportunity, repository and place to keep records, incidences of conflicts, memories, ownership of information , Ethical considerations, Diversity of narratives
- **Processes**: Mapping of data questions, Security of data
- **Roles and responsibilities** - NGOs, Government agencies, academics

## 4. Knowledge Management

- **Issues** - Verification, validation and filtration of data, Collection and collation -research, Challenging restrictive laws (AIPPA and POSA), Security of actors sources and the information, Knowledge quality, Information storage
- **Processes** - Training, formation (understanding protocols and structures), Motivation of critical sources information, Analysis of information and situation, Ethical considerations, Stakeholder mapping, Understanding the politics of knowledge management, Dissemination and publishing of knowledge
- **Roles and Responsibilities** – NGOs, Government agencies, academics

## Closing Ceremony

## **Otto Saki – member of the NTJWG**

Otto summarised the events of the day and appreciated the work done by the teams and NGOs from Matabeleland. He observed that the work before the NPRC and the civil society organisations would not be able to bring back the dead in any way but would certainly help in remembering them and putting closure for survivors and victims. He also noted that the organisations should not see the work on transitional justice as part of an everyday project with log frames and project proposals but as a national duty that should be done for the sake of the people of Zimbabwe.

## **Alec Muchadehama – Chairperson of the NTJWG**

In his closing statement, NTJWG Chairperson, Mr. Muchadehama chronicled the journey that set into motion the plan to convene the transitional justice symposium. He spoke out the February 7, 2018 consultative meeting that resolved to begin the process of developing a transitional justice policy for Zimbabwe. This was out of the realisation that the needs of Zimbabwe required national convergence which transcends a single institution. He said the goal of a transitional justice policy was to build a national architecture for compassion, to enable Zimbabwe at the official level to deploy means to heal the wounds, reform the institutions towards human security and put in place measures for non-recurrence. Transitional justice cannot be adhoc, said Muchadehama. It must become the government's way of doing business. He thanked the delegates for accepting the invitation to a dialogue and made a commitment that NTJWG would follow up on the resolutions of the conference. He called on the government to be open to this dialogue as these policy proposals would soon find their way into government's offices. Only government can implement policy. He concluded by thanking all partners who had committed themselves to the cause of transitional justice.

## **Closing Remarks**

### **Paul Themba Nyathi – Deputy Chair**

The Deputy Chair of the NTJWG spoke after the Chairperson of the NTJWG, Mr. Alec Muchadehama and noted that Zimbabweans needed to change the way they perceive human life so that intra political party fights do not become national issues that negatively affect the way Zimbabweans live, resources are allocated to them and the manner they are treated by the government of the day. He gave examples of his work during the liberation struggle with the likes of Joshua Nkomo, and other liberation stalwarts from ZAPU. He also lamented the fact that Matabeleland has remained underdeveloped with poor roads, poor schools and a general economic malaise. He gave an example that this was deliberate on the part of the ZANU PF because besides just marginalising Matabeleland they also did not want the area to be accessible who could then see what happened during the Gukurahundi. Poor roads mean people can't visit the areas and uneducated children mean they can never rise to fight for their birth right. He mentioned that David Coltart and him were currently working on a project that helps young girls who get pregnant when they are less than 14-year-old and who were looking after their siblings to go back to school. He noted that it was unfortunate that Matabeleland in 2017 had about 40 schools that had zero percentage pass rate at Grade 7 end of year examinations but the government was busy concentrating on other peripheral things. He lamented that when a government stops paying attention to the things that matter, healing, restoration and peace will be difficult to prevail.