STATE OF TRANSITIONAL JUSTICE IN ZIMBABWE

2018 REPORT

NATIONAL TRANSITIONAL JUSTICE WORKING GROUP ZIMBABWE

STATE OF TRANSITIONAL JUSTICE IN ZIMBABWE

2018 REPORT

NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

Published by
The National Transitional Justice Working Group of Zimbabwe
Suite 4, Number 1 Raleigh Street
P. O. Box 9077, Harare, Zimbabwe
Tel: +263 242 772860
Email: info@ntjwg.org.zw
Website: www.ntjwg.org.zw

View Report

Scan to Download this report.

This publication maybe reproduced for non-commercial use in any form provided due credit is given to the publishers, and the work is presented without any distortion.

NATIONAL
TRANSITIONAL JUSTICE
WORKING GROUP
ZIMBABWE

ABOUT THE NATIONAL TRANSITIONAL JUSTICE WORKING GROUP, ZIMBABWE

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

VISION

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

MEMBERS

Mr. Alec Muchadehama:	Chairperson/Reparations
Mr. Paul Themba Nyathi	Deputy Chairperson
Rev. Dr. Fradereck Chiromba:	Promotion of Truth
Ms. Roselyn Hanzi:	Justice and Accountability
Rev. Dr. Ray Motsi:	Memorialization
Mr. Anthony Reeler:	Independent Expert / Institutional Reform
Mr. Otto Saki	Independent Expert
Ms. Samukeliso Khumalo	Independent Expert

CONTACT INFORMATION

Suite 4, Number 1 Raleigh Street, Harare. P.O Box 9077, Harare, Zimbabwe
Tel: +263 242 770177/8, 772860. Email: info@ntjwg.org.zw. Website: www.ntjwg.org.zw
Twitter: ntjwg Facebook: ntjwgzimbabwe

TABLE OF CONTENTS

Executive Summary **1**

1.0 Introduction **2**

2.0 Official Transitional Justice Process in Brief **2**

2.1 The National Peace and Reconciliation Commission (NPRC)..... 2

a. Operationalisation of the NPRC 2

b. Challenges facing the NPRC 2

c. Way Forward for the NPRC 3

d. Civil Society Interventions 3

2.2 The Independent Complaints Mechanism (ICM) 3

a. Establishment of the ICM 3

b. Violation of the Constitution 4

c. Interventions by Civil Society 4

2.3 The Ethics and Integrity Committee (EIC) 4

a. Establishment of the EIC 4

b. Interventions by Civil Society 5

3.0 Other Transitional Justice Processes **6**

3.1 The Commission of Inquiry into the 2018 Post Election Violence 6

a. Investigations by the Commission 6

b. Interventions by Civil Society 6

c. Way Forward after the Montlanthe Commission 6

3.2 The National Dialogue Process 7

a. Elusive Dialogue Process 7

b. Way Forward 7

3.3 The National Symposium on Transitional Justice Policy in Zimbabwe 7

3.4 African Union Adopts the Transitional Justice Policy Framework 8

4.0 The Role of Independent Commissions in Transitional Justice **9**

4.1 The Zimbabwe Human Rights Commission 9

4.2 The Zimbabwe Gender Commission 9

4.3 The Zimbabwe Media Commission 10

4.4 The National Peace and Reconciliation Commission 10

5.0 Conclusion **11**

EXECUTIVE SUMMARY

The 2018 State of Transitional Justice Report captures the key developments in Zimbabwe's key transitional justice processes since the last report published in January 2018. It highlights those developments relevant to the mandate of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. Building on the recommendations made by the United Nations Special Mechanisms in various reports, the United Nations Human Rights Council at the past Universal Periodic Review (UPR) sessions, this report highlights some action points in need of attention and opportunities for Zimbabwe to implement its transitional justice obligations under both domestic and international law.

The report documents the outstanding areas of implementation according to domestic law and international obligations. It documents deficits in fully operationalising the National Peace and Reconciliation Commission (NPRC), the Independent Complaints Mechanism (ICM), and the Ethics and Integrity Committee (EIC). The report documents other processes which include the Commission of Inquiry into August 1 post- election violence. It further documents interventions by civil society actors such as litigation for redress on behalf of victims and the mobilisation of stakeholders at the symposium towards a transitional justice policy.

Perhaps the biggest achievement so far in transitional justice in Africa is the adoption of the policy by AU member states which is an important step for a continent affected by a plethora of conflicts.

This report calls for support from the international community in ensuring that Zimbabwe is among the first countries to implement the AU TJ Policy framework.

1.0 Introduction

Zimbabwe has struggled with a legacy of gross violations of human rights dating back to the colonial era. This legacy which continued into independent Zimbabwe in 1980 has seen many episodes of gross violence haunting the society to date. Through the efforts of civil society actors, the country has now inaugurated various legislative measures to deal with the past legacy. The recent developments include the 2013 Constitution of Zimbabwe Amendment (No.20) Act 2013 (the Constitution) which introduced a number of transitional justice measures to help the nation deal with past violations. These processes have taken off with limited government cooperation.

2.0 Official Transitional Justice Process in Brief

Zimbabwe's Constitution introduces a number of transitional justice measures. These include the National Peace and Reconciliation Commission (NPRC), the Independent Complaints Mechanism (ICM), and the Ethics and Integrity Committee (EIC) among others. Following the 1 August 2018 Post-Election Violence, the President constituted a commission of inquiry to investigate the violence.

2.1 The National Peace and Reconciliation Commission (NPRC)

a. Operationalisation of the NPRC

The National Peace and Reconciliation Commission (NPRC) is one of the 5 independent commissions established by the Constitution of Zimbabwe to entrench a culture of human rights and democracy. Section 251 of the Constitution established the NPRC. Section 252 outlines the ten functions of the NPRC which include ensuring post-conflict justice, healing and reconciliation. (For more information about this commission, see A Guide to Understanding the NPRC, published by the NTJWG (2018) the guide is available on www.ntjwg.org.zw/nprc.html.

During the reporting period, the Parliament has passed the National Peace and Reconciliation Commission Act which was signed into law in January 2018 effectively operationalising the NPRC. Since then, the

Commission has gone on an outreach collecting public views and has since developed a 5-year strategic plan.

Before the 2018 Elections, the NPRC facilitated the signing of the Peace Pledge which brought together presidential candidates to commit to peaceful elections.

b. Challenges facing the NPRC

i. ***Resource Starvation*** - The NPRC has continued to face a number of challenges. Since the NPRC Act became law, the NPRC still struggles to roll out an effective programme of action because of resource starvation. The government has continued to deprive the NPRC of resources to enable it to roll out its operations. This has hampered recruitment of staff, acquisition of offices and running of operations. This state of affairs seems to be the government's deliberate attempt to paralyse the operations of the commission.

ii. Lack of independence - Section 234 of the Constitution gives the NPRC power to hire and fire its own Secretariat. This means that the Commission must develop its own recruitment policy, draft its own needs, job descriptions, advertise and hire competent staff without being directed by anyone. Section 14 of the NPRC Act provides that the Commission shall, in consultation with the Minister (responsible for national healing) and the Minister responsible for Finance, create the Commission's staff. This process has opened the process to government interference in the recruitment process. Some stakeholders expressed the fears that the NPRC may be forced to hire people who are too close to the President's Office, a matter that has the potential to jeopardise the credibility of the Secretariat. Many victim groups regard the President's Office as instrumental in serious human rights violations.

iii. Running out of time – Almost 6 years since the Constitution became operational, apart from the Executive Secretary, the NPRC has not been able to put together the full complement of its secretariat. This has resulted in the NPRC failing to deliver on its mandate. With a life span of 10 years, it is taking the NPRC almost 6 years to simply put together its structures. This failure is attributable to resource starvation by the government of Zimbabwe. The Zimbabwe Lawyers for Human Rights (ZLHR) has since approached the courts seeking for a declaration on the life span of the Commission.

c. Way Forward for the NPRC

Commissions like the NPRC depend not only on legal legitimacy, but on the confidence of the people especially victim groups. The NPRC must be encouraged to carry out its operations in a manner that clearly shows that it is independent of Government. Doing this will require the NPRC to hire a truly independent Secretariat. The Government of Zimbabwe must be encouraged to ensure that the NPRC has enough resources to carry out its mandate. The Commission must be encouraged to stand on principle and avoid any conduct that may seem to suggest that its independence is compromised.

d. Civil Society Interventions

On 4 November 2018, the National Transitional Justice Working Group (NTJWG) issued a briefing note on the recruitment process, warning that… *'It will be a violation of the NPRC's constitutional independence for any organ of the state or another body to try to influence who will serve the Secretariat of*

NPRC.' The NTJWG further encouraged the Government to ensure that there is adequate funding for the NPRC.

On 15 February 2019, the Zimbabwe Lawyers for Human Rights (ZLHR) approached the High Court of Zimbabwe on behalf of one of the victims of violence, seeking to extend the lifespan of the NPRC so that it operates for 10 years as envisaged by the relevant Constitutional provision. The judgment had not yet been handed down by the time this report was compiled.

2.2 The Independent Complaints Mechanism (ICM)

a. Establishment of the ICM

Section 210 of the Constitution provides for the establishment of an Independent Complaints Mechanism (ICM) for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct. Almost six years since the Constitution came into operation; this section has not been implemented.

b. Violation of the Constitution

Section 324 of the Constitution states that all constitutional obligations must be performed diligently and without delay. By not bringing to Parliament the Independent Complaints Mechanism Bill, government is in breach of section 324 of the Constitution. Implementing Section 210 will go a long way towards dismantling impunity and holding perpetrators to account. This has been made more urgent by the continued violations of human rights by security forces. On 1 August 2018, the Zimbabwe National Army (ZNA) opened live ammunition on unarmed civilians killing at least 6 people and injuring hundreds. Between 14 January and 5 March 2019, ZNA and the Zimbabwe Republic Police (ZRP) again shot and killed unarmed civilians. The Zimbabwe Human Rights NGO Forum (the Forum) reported that 17 people lost their lives in the violence. It is this continued violation of human rights by the security forces which makes it urgent for the establishment of the ICM.

c. Interventions by Civil Society

In the absence of an official mechanism to deal with violations of human rights by security services, civil society is stepping into the gap. Members of the public have been part of this push for accountability by reporting all violations of human rights by the security forces.

During the shutdown, the Forum received dozens of reports against the security forces. By the time of this update, the Forum has since issued at least thirty (30) Notices of Intention to sue the State for the unlawful actions of the military and police during August 1 2018 post-election violence and the stay away which took place from the 14th of January 2019. The notices have been issued in terms of Section 6 of the State Liabilities Act (Chapter 8:14).

All the thirty (30) legal suits have raised various misdemeanours, including wrongful deaths, torture and other forms of cruel, inhuman and degrading treatment, assault, deprivation of liberty and alleged theft by the police and army. Several of these victims sustained injuries to the body and suffered damages in the form of loss of support and medical expenses.

While members of the security forces appeared to be acting within the course and scope of their employment when they

committed the misdemeanours stated above, we reiterate that individual security officers will have to account fully for their illegal actions as it is an indisputable fact that international criminal law has narrowed the scope of the defence of superior orders. Domestic practices also show that manifestly illegal orders should not be obeyed.

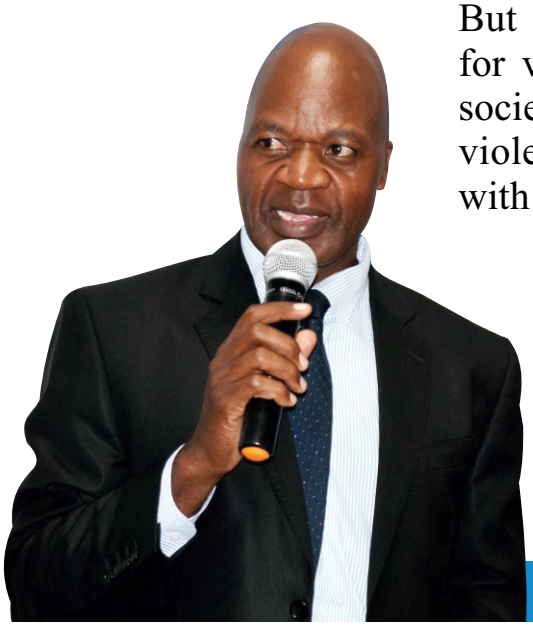
2.3 The Ethics and Integrity Committee (EIC)

a. Establishment of the EIC

Section 287 of the Constitution provides for an Act of Parliament that must establish the Integrity and Ethics Committee for the purpose of developing and enforcing integrity and ethical conduct on the part of traditional leaders; resolving disputes between traditional leaders and dealing with complaints against traditional leaders. Traditional leaders have, since the colonial era, been associated with unethical political activity. The Forum has on several times litigated against named traditional leaders implicated in gross violation of human rights. Traditional leaders have further been implicated in electoral fraud matters.

b. Interventions by Civil Society

In the absence of the EIC, civil society has resorted to litigating against traditional leaders implicated in violations of the human rights including hate speech, electoral fraud and intimidation. There is a High Court Judgment in a matter filed by the Election Resources Centre against Chief Charumbira who is the President of the Chief's Council in which the court ruled that his statements in support of the ruling party are in violation of the constitution.



"Commissions have a major role to play in ensuring justice for victims. But beyond individual remedies for victims, we have a duty as a society to say, "Never Again!" to violence and stand in solidarity with those affected by violence."

Source - Newsday, 15 November 2018

Alec Muchadehama
NTJWG Chairperson

NATIONAL TRANSITIONAL JUSTICE WORKING GROUP ZIMBABWE

#NeverAgainZW

2018 TRANSITIONAL JUSTICE POLICY SYMPOSIUM

3.0 Other Transitional Justice Processes

3.1 The Commission of Inquiry into the 2018 Post Election Violence

a. Investigations by the Commission

Zimbabwe held its national elections on the 30th of July 2018. On 26 July 2018, NTJWG issued an alert regarding a number of factors which indicated hate speech, involvement of the military in politics, failure by the election management body to resolve disputes amicably among other issues. NTJWG warned that if these issues were not resolved, they would lead to bloodshed. On 1 August 2018, protests broke out in Harare with protestors demanding the release of presidential election results. The military responded by opening live ammunition on unarmed civilians killing at least 6 people. Following these incidents, the President Emmerson Mnangagwa, appointed a Commission of Inquiry (COI) in terms of section 2(1) of the **Commissions of Inquiry Act** [Chapter 10:07] through Proclamation Number 6 of 2018 published in Statutory Instrument 181 of 2018. In December 2018, the COI which was chaired by former South African President Kgalema Montlanthe released its report finding that the Zimbabwe National Army (ZNA) officers had killed innocent people and recommended an investigation. The Government did not carry out any investigation. Instead, on January 14, the ZNA and ZRP officers once again opened fire on unarmed civilians killing an estimated 17 people and injuring over 87 people. The Government has refused to acknowledge the killings despite post-mortem reports showing that the deceased died from gunshot wounds. This is evidence of impunity and a total disregard for the recommendations of the Commission of Inquiry.

b. Interventions by Civil Society

The Zimbabwe Human Rights NGO Forum (the Forum) has compiled dossiers from the victims of the shooting and their families. A video report has since been published. Several cases have since been filed with the High Court seeking compensation for the pain and suffering experienced because of the actions of the police.

Watch video

c. Way Forward after the Montlanthe Commission

- Following the release of the Commission of Inquiry's report, the Government of Zimbabwe must be urged to seriously consider the report and findings and to implement the recommendations by the Commission of Inquiry.
- The Government must investigate in an open and transparent manner

- the actual perpetrators of the shootings, including those who gave the command and hold them accountable.
- The Government must quickly establish a National Reparations Fund specifically for victims of human rights violations as a permanent Fund to cater for the victims of August 1 shootings and all the other victims whom the Government has refused to compensate over the years.
- The Government must initiate the process of security sector reform to ensure that the security services operate within the confines of the law according to the principles outlined in the Constitution with greater attention to the respect for human rights.
- The Zimbabwe Human Rights Commission (ZHRC) must be encouraged to be seized immediately with the recommendations of the Montlanthe Commission and take over from where it left.

3.2 The National Dialogue Process

a. Elusive Dialogue Process

Following the military coup of November 2017, Zimbabwe has been rocked by a series of crises which have now led to a growing chorus for national dialogue. The NPRC has commenced consultation processes towards the establishment of a framework for national dialogue. President Emerson Mnangagwa started his own process, ignoring the NPRC process. The initial dialogue session was held on 6 February 2019, which the main opposition ignored. On 7 February the Zimbabwe Council of Churches held a National Leaders Prayer Breakfast. President Mnangagwa did not attend. The hide and seek has continued between the ruling party and the main opposition.

b. Way Forward

The international community can help Zimbabwean political leaders in realising the magnitude of the challenges Zimbabwe is facing and support the commencement of a national dialogue that goes beyond political parties.

3.3 The National Symposium on Transitional Justice Policy in Zimbabwe

From 21 to 23 November 2018, over 118 delegates converged in Bulawayo for the 2018 Transitional Justice Policy Symposium which was jointly convened by the National Transitional Justice Working Group (NTJWG) and the Centre for the Study of Violence and Reconciliation (CSVR). The theme of the symposium was, 'Never Again: Setting the Transitional Justice Agenda for Zimbabwe.' The symposium was designed to give Zimbabweans an opportunity to reflect on the most urgent transitional justice needs of the country and contribute to the development of a proposal for a transitional justice policy for Zimbabwe. A transitional justice policy for Zimbabwe allows the country to join the continent in putting in place measures to ensure that past atrocities are dealt with, victims find redress and closure. It further ensures that mechanisms are put in place to spur and drive national commitment to say *'Never Again'* to violence.

Symposium

Scan to watch the video

The Symposium put on the table a cocktail of measures including security sector reform, approaches to truth recovery that focus on documentation, archival and preservation; gender justice and approaches to knowledge management that ensure that the legacy of the organisations working with victims is accurately captured and preserved.

Across the different thematic policy reflections, the symposium emphasised the critical role of independent commissions in ensuring the success of the transitional justice policy for Zimbabwe.

The symposium tasked the NTJWG with decoding the rich content generated in the three days to develop a policy document that would help make a reality the vision painted by the delegates. In closing the symposium, NTJWG Chairperson Mr. Alec Muchadehama said that the goal of a transitional justice policy for Zimbabwe is to build a national architecture for compassion. *"A transitional justice policy means we want a value system that says 'the wounded must be healed' to be Government's way of doing business."*

3.4 African Union Adopts the Transitional Justice Policy Framework

Before the ink dried on the recommendations of the 2018 Policy Symposium, the African Union in February 2019 adopted the Transitional Justice Policy Framework for Africa, a great leap forward for a continent struggling to rid itself of cyclic violence. Speaking at the adoption of the policy framework, the Chairperson of the African Union Commission, his Excellency Mr. Moussa Mahamat Faki had the following to say,

> *This African Union (AU) TJ policy is a direct by-product of the 2006 AU Policy on Post-Conflict Reconstruction and Development. It is one of the indirect outputs of Agenda 2063. Although the process of developing the framework started long before the adoption of Agenda 2063, its realization became a reality with full commitment to implementing the above two Aspirations.*

The adoption of the AUTJ Policy framework comes at the heels of the resolution by stakeholders at the NTJWG Symposium to begin championing to push for a policy for Zimbabwe, creating an opportunity Zimbabwe to deal with the many issues facing it with the support of the African Union.

4.0 The Role of Independent Commissions in Transitional Justice

The past few months have witnessed moments of great tragedy in Zimbabwe with attacks against civilian population increasing. It is for times like these that independent commission are expected to show active solidarity with victims under siege. The commissions that are key to this issue are the Zimbabwe Human Rights Commission (ZHRC), the Zimbabwe Gender Commission (ZGC), the Zimbabwe Media Commission (ZMC) and the National Peace and Reconciliation Commission (NPRC).

4.1 The Zimbabwe Human Rights Commission

Many victims are greatly indebted to the work of the ZHRC in these atrocities. Ahead of the Montlanthe Commission, the ZHRC received complaints of the state violence against civilians. The ZHRC responded, investigated the violations and issued a statement against the violations of human rights. Following the atrocities related to the shutdown, the ZHRC carried out an investigation and found that armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police instigated systematic torture. The torture was organized, said the ZHRC. It also found that the method of arrest and detention that was used by the police and soldiers amounted to arbitrary arrests and detention, a crackdown as opposed to law enforcement. The Government dismissed the report as biased and offside on what really transpired. The ZHRC did play its role effectively in exposing the fallacy of state denial of the atrocities. As noted in the Zimbabwe Human Rights NGO Forum report, *On the Days of Darkness in Zimbabwe*, the atrocities are still on-going by the time of the compilation of this report. The Constitution in section 243 (1) (f) and (g) gives the ZHRC power to investigate any authority or person alleged to have violated human rights. This will help in ensuring the right to truth for victims. The ZHRC has power to also secure redress for the victims. These Constitutional powers mean that the ZHRC can take it upon itself to pursue the issues complained of by the victims against the State and make sure that perpetrators are brought before the courts.

4.2 The Zimbabwe Gender Commission

Serious allegations have surfaced against the military for up to 16 cases of sexual violence including 15 cases of rape against women. The Zimbabwe Gender Commission (ZGC) is mandated by section 246 of the Constitution to investigate cases of human rights violations relating to

gender and pursue appropriate remedy for the victims. The deafening silence of the ZGC regarding the issues of sexual violence reported during the shutdown is disappointing. The ZGC needs to be seized with issues of organised violence against women. To the consolation of victims, a number of voluntary organisations have stepped forward to assist the victims and made strong statements against organised sexual violence against women.

4.3 The Zimbabwe Media Commission

The Zimbabwe Media Commission (ZMC) is established by the Constitution to uphold, promote and develop freedom of the media. During the Shutdown, there were a lot of complaints received regarding the violation of fundamental freedoms as they relate to the media as well as the attacks on journalists doing their work. The silence of the Commission in this area is shocking to say the least and throws into question its independence. The State media's role in encouraging State violence has been outstanding. The ZMC has an obligation under section 249 (b) to enforce good practices and ethics in the media. In fact, the ZMC has not stepped into its role in all the functions stipulated in the Constitution.

4.4 The National Peace and Reconciliation Commission

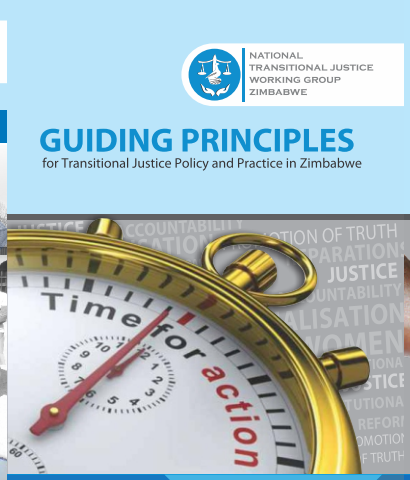
Following the August 1 2018 killings, the NPRC indicated that they would not interfere with the work of the Montlanthe Commission but would wait to interact with its findings. It is still to be seen what course the NPRC wishes to take now that the report of the Montlanthe Commission is now public. On 14 January 2019, following the outbreak of violence in Harare, the NPRC called for a press conference which it cancelled 40 minutes later without making any pronouncement. On 31 January 2019, the NPRC convened a consultative meeting with a few selected stakeholders to develop a framework for comprehensive dialogue. However, the process was hijacked by the Office of the President which started its own consultations leading to the meeting of political parties on 6 February 2019. This again has exposed the Government's tendency of undermining the work of constitutional commissions. Not much has emerged from the NPRC regarding attending to the needs of the victims after the violence or playing a prominent leadership role on pushing for national dialogue. That role has been played more effectively by the Zimbabwe Council of Churches which on 7 February 2019 successfully convened the National Leaders Breakfast Meeting. The reason why the NPRC is struggling for space in an area that it is constitutionally mandated may be because of questions regarding its capacity, its secretariat and its independence. In a survey conducted by the NTJWG in November 2018 with victims of organised violence, 72.3% believe that the NPRC is not independent and is beholden to government and political influence. These fears have been confirmed by a statement in the *Zimbabwe Independent* of 8 February 2019, where the Chairperson of the NPRC Justice Nare is quoted as saying, *"...we are directly answerable to Vice President Kembo Mohadi."* This is wrong and worrying for the many victims who expect the NPRC to be truly independent.

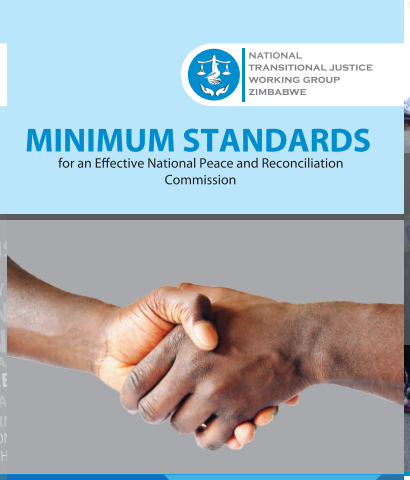
Trust for any independent commission is important. And it must be earned, it cannot be demanded. The NPRC needs to step into its leadership position and gain the trust of the stakeholders especially the victims if it is to play a positive role in the developments in our

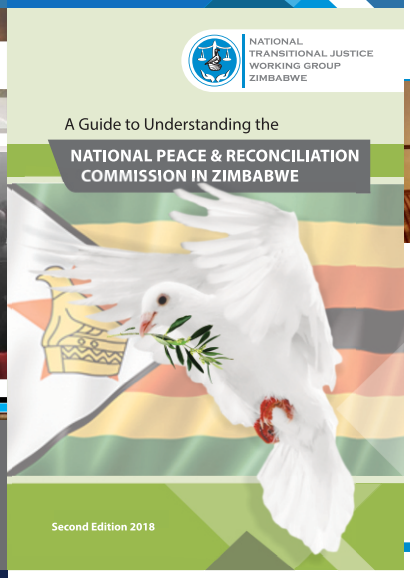
country otherwise it risks being ignored and its role will be taken over by more credible entities. In our Minimum Standards for an Effective NPRC, we have stated clearly that 'the legitimacy of the NPRC does not end with its constitutionality, but perpetuates in the manner in which it is going to conduct its work'. (NTJWG, 2015)

5.0 Conclusion

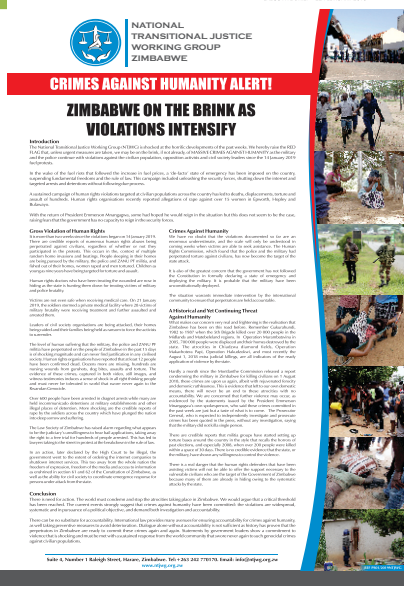
Transitional justice is about prevention. Saying *'Never Again'* to atrocities. The developments of 2018 have paved way for a potentially progressive 2019 as regards transitional justice processes in Zimbabwe. With the bold steps taken by stakeholders at the symposium, calls for national dialogue gathering momentum in Zimbabwe and the adoption of the transitional justice policy framework by the African Union, there is a fertile ground for the implementation of transitional justice in Zimbabwe. Both official and non-official processes, state and non-state actors can complement each other in driving transitional justice in Zimbabwe. The international community is encouraged to support Zimbabwean stakeholders in ensuring that the current momentum in the push for transitional justice is not lost.







Scan to see other NTJWG Publications



NATIONAL TRANSITIONAL JUSTICE WORKING GROUP ZIMBABWE

Suite 4, Number 1 Raleigh Street, Harare. P.O Box 9077, Harare, Zimbabwe

Tel: +263 242 770177/8, 772860. Email: info@ntjwg.org.zw. Website: www.ntjwg.org.zw

Twitter: ntjwg Facebook: ntjwgzimbabwe