

Debunking the Myth of Independence of the NPRC Commissioners in Zimbabwe

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Abstract

Scholars have long been interested in understanding the functions and efficacy of Truth and Reconciliation Commissions (TRCs) in promoting post-conflict justice and reconciliation, particularly in countries emerging from violent conflict. However, less well understood is how issues of autonomy and independence of commissioners condition the efficacy of TRCs. In joining this debate, I contend that how and why certain people are selected to be commissioners of TRCs has an impact on the legitimacy and success or lack thereof of such bodies. The article unpicks how and why the social status of the commissioners, their level of professionalism, independence and their political leanings (neutrality) impact on the integrity, efficacy and legitimacy of TRCs. Drawing on the Zimbabwean case study, I show how loyalty, past and current allegiance, selection criteria (methods) or appointment and conduct of commissioners shape the efficacy of the National Peace and Reconciliation Commission (NPRC). Such an investigation is relevant in contributing to a deeper understanding of the inner workings and legitimacy of TRCs in Africa and beyond as they seek to promote justice and reconciliation in post-conflict contexts.

Keywords

Independence, legitimacy, TRCs, commissioners, NPRC, Zimbabwe

Introduction

In all contexts that have established or are grappling to set up truth and reconciliation commissions (TRCs), concerns continue to reverberate on the independence and autonomy of such bodies. This then gives rise to polemical debates on what constitutes independence, opening the debate to differing interpretations. The commonsensical explanation is that the social standing of the commissioners has a huge bearing on the efficacy and legitimacy of any TRC (González and Varney, 2013; Lanegran, 2015; National Transitional Justice Working Group (NTJWG), 2021). The Zimbabwean case study provides probably one of the best examples of how the incumbent can direct the operations as well as condition the autonomy of a TRC by staffing the commission with politically compromised commissioners. This is despite the facade of public interviews in selecting these commissioners. This trend raises concerns over the integrity of the entire commission as well as

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casting doubt on its independence and significance in seeking to promote post-conflict justice and national reconciliation after decades of human rights violations.

This article, thus, investigates the often taken for granted and overlooked dimension of independence of TRC commissioners dwelling on the Zimbabwean case study as exemplified in the nascent literature (see Heal Zimbabwe Trust, 2016; NTJWG, 2018). Here, it is pertinent to offer a working definition of a TRC. TRCs are conceived as ‘an independent, temporary commission of inquiry that investigates and reports on patterns of abuses of human rights or humanitarian law committed during determined periods of time’ (Public International Law and Policy Group, 2013: 1). While there is no major issue in the prevailing definitions of TRCs, what has been evident in the contemporary literature is that as to date, there is a lacuna in research on the autonomy of TRC commissioners, a gap that is evident in Zimbabwean scholarship except for a few strands of emerging literature (Heal Zimbabwe Trust, 2016; Mwonzora, 2021; NTJWG, 2018).

The article is motivated by the question of how independent the ‘independent’ commissioners of the National Peace and Reconciliation Commission (NPRC) are. Such a normative question is at the heart of understanding the role of the state in influencing and conditioning transitional justice (TJ) processes within post-conflict settings. The article contributes to the polemical debates regarding the efficacy of TRCs while taking a more critical view of the composition and selection of the commissioners. A subject that has received relatively little academic attention especially in the Zimbabwean context. Second, the enquiry advances research on the independence and autonomy of independent commissions as guaranteed in different jurisdictions (González and Varney, 2013; Lanegran, 2015).

In the truest sense of the word, independence entails being free from control, in whatever form, from any interested party. For purposes of this enquiry, I do not adopt a strict definition of independence and autonomy, given the fleeting definitional conundrums of the two. Save to say I conceive independence as the freedom to act without any form of coercion, influence, control, and direction by the powers that be – mostly the incumbent. The independence of the commission is guaranteed in sections 235 and 236 of the constitution (Government of Zimbabwe, 2013). From the onset, it is pertinent to outline the temporal framing of the article.

The enquiry focuses on two distinct periods stemming from February 2016, when the commissioners were first appointed in Harare by the now-late President Robert Mugabe (Bulawayo24 News, 2016). I also focus on the period from 2018, when the NPRC became operational, to 2021, when the tenure of the first cohort of commissioners lapsed. Thereafter, I gaze my analytic attention to the second set of commissioners sworn in on 7 May 2021, whose tenure runs for a 5-year period effective from the day of taking oath (*The Herald*, 2021). I, however, reiterate that some of the commissioners who worked in the first term of the NPRC – from 2016 to 2021 – voluntarily resigned to pursue other interests. In contrast, others sought ‘re-appointments’ unsuccessfully. One illustrative example of those who voluntarily quitted includes – Mrs Netty Musanhu, who left the commission in February 2020 (Tshili, 2020), and Reverend Charles Masunungure, who resigned in 2021 just before the expiration of his tenure (NTJWG, 2021). I do, however, ground my analysis on both terms (the first and second cohorts) of the commissioners. In the case of the latter, there was an injection of new blood, though not entirely independent – an argument I will turn to in my discussion.

The article is qualitative in nature. Data were collected in Zimbabwe between 2019 and 2021. The empirical data were gathered during fieldwork for an academic study focusing on TJ and reconciliation processes in Zimbabwe. I carried out key informant interviews with members of civil society, the NPRC commissioners and staff, the church, the main political parties, TJ experts, academia, and victims and survivors of the 2008 electoral violence. I also utilised secondary sources like Non-Governmental Organisation (NGO) reports, NPRC annual reports, the

Constitution of Zimbabwe, books, and newspapers. After delineating the parameters of this article, I outline the structure of the paper. The article is arranged as follows: In the section that follows, I provide a presentation of key debates in the literature on TRCs – underscoring the issue of autonomy and independence. This is followed by a contextual mapping of how the NPRC came into existence, the autonomy and independence of the NPRC, who to place in the TRC, the appointment of the chairperson and commissioners, the selection of commissioners' conduct, and the independence of commissioners before making concluding remarks.

Scholarship on the independence of TRCs

A significant lacuna in the existing academic literature on TRCs is the absence of critical attention on the independence and operational autonomy of commissioners (González and Varney, 2013; Lanegran, 2015). This relates to the choice of the candidates and their neutrality, autonomy, and independence. Compared to the significant and considerable literature that has been dedicated to TRCs, the corpus dealing specifically with commissioners is relatively small (see González and Varney, 2013; Lanegran, 2015). In other words, a large and expanding corpus of literature has been largely restricted to the efficacy and work of the NPRC in Zimbabwe (Hofisi, 2020; Ndlovu-Gatsheni and Benyera, 2015; Zambara, 2019) without devoting much scholarly attention to the human resource aspect that makes such a body effective.

In this regard, it can be opined that much of the extant studies focus on institutional-level aspects instead of human resources (personnel) lens to understand the efficacy as well as challenges of TRCs in seeking to fulfil their mandates, especially in highly closed and securitised regimes as is the case in contemporary Zimbabwe (Murambadoro, 2019; Zambara, 2019). It is only recently that a handful of Zimbabwean studies, largely emanating from Civil Society Organisations (CSOs) and NGOs, have also shed some light on the intricacies of the NPRC, including the independence-autonomy dilemma of the commissioners. This literature is still sparse, embryonic, and dislocated (Heal Zimbabwe Trust, 2016; Mazambani and Tapfumaneyi, 2020; Mwonzora, 2021). As such, we still know relatively little about the independence and autonomy of the (wo-)men staffing the NPRC. The issue of independence of commissioners in the NPRC has not been systematically and comparatively researched.

A critical review of the existing literature shows that much of the extant global literature has paid attention to TRCs in general (see Hayner, 2011; Hirsch et al., 2012) without much focus on the role of the commissioners in the efficacy of commissions in countries that have established TRCs. As to the contemporary, there exist a number of comparative studies on TRCs (see Pathak, 2017; Wiebelhaus-Brahm, 2010), though they do not critically assess the role of the commissioners in facilitating and fulfilling the mandate of the commissions in post-conflict contexts. What has been at the centre of discussion is why TRCs are formed. A lion's share of the literature also focuses on the failure or success of TRCs in promoting post-conflict justice in societies emerging from violent conflicts such as genocide, ethnic wars, and electoral violence (see Gibson, 2005; Kubicek and Walker, 2020). In the global scholarship that discusses commissioners (only in passing), there lacks a critical analysis of their role in aiding the success of TRCs. Taking from countries that have had TRC we can see that the calibre and integrity of commissioners have a bearing on the process and outcomes. In this regard, if commissioners are partisan and not independent negative outcomes or lack of credibility of the commission can result. In light of these debates, we know relatively little regarding how the choice, the autonomy and independence of commissioners, impinge on the legitimacy and success (or lack thereof) of TRCs in different temporal and spatial settings (see Langer, 2018; Slye, 2018). It is this lacuna that I seek to address by examining the

Zimbabwean case, where the NPRC was established to promote post-conflict justice and reconciliation.

In a study on TRCs in Timor-Leste, Kenya, and Sierra Leone, Langer (2018) established the controversy and complexity that often characterise the choice and selection of commissioners in post-conflict situations. These range from- but are not limited to- choosing national or foreign commissioners and integrating a gender balance when selecting commissioners (Langer, 2018: 31). Notwithstanding the fact that such few strands of scholarship focus on the independence and the associated challenges in selecting commissioners, the subject has not yet elicited much academic interest and scrutiny. This is, however, not to deny the existence of some strands of literature that investigated the impact, selection, and best practices in selecting commissioners in countries that established TRCs (Bakiner, 2016; Lanegran, 2015). Lanegran's work is a prodigious study that specifically focuses on the appointment, selection, and importance of commissioners in the Kenyan TRC (Lanegran, 2015). The key insight of this literature is on illuminating the constraining role of political contexts in determining the choice and selection of commissioners and how this impacts the success or failure of TRCs. This enquiry is thus an addition to this body of literature, which is still sparse and dislocated.

Context on the formation of a TRC in Zimbabwe

This section provides a contextual mapping as to why the NPRC came into being. In an interview, an anonymous MDC Alliance activist noted that 'the NPRC came into being not out of ZANU-PF's well-meaning intentions, but it was part of a political settlement as agreed in the negotiations that birthed the inclusive government' (Interview, 2019). But before delving into this debate, it is necessary to contextualise my argument.

In March 2008, Zimbabwe went to the polls. However, this election, which was held under strict adherence of the Southern Africa Development Community (SADC) Principles and Guidelines Governing Democratic Elections adopted in Mauritius in 2004 (the SADC Guidelines¹) liberalised the political space to a greater extent. In this election, Mugabe of Zimbabwe's African National Union-Patriotic Front (ZANU-PF) managed to garner 43.2% of the votes, whereas Morgan Tsvangirai of the Movement for Democratic Change – Tsvangirai (MDC-T) got 47.9% (Badza, 2008). Regarding these elections, there was no outright winner. As per the country's electoral law and constitution, it meant that there was only one option left – to go for an election re-run. This re-run came in June 2008, but not without a heavy loss of human lives. In the lead-up to the elections, ZANU-PF reclined into its default mode of using state-sanctioned violence against the opposition. This era witnessed a high proportion of electoral violence, which is a record in the electoral history of the country (Masunungure, 2009).

It was in the wake of such levels of violence that Tsvangirai decided to boycott the election. In a show of his intransigence, Mugabe went ahead with the election. In other words, he ran the election unopposed. It was because of this sham election that Mugabe's pyrrhic victory was short-lived as regional and global pressure piled up. In an act of capitulation and owing to his legitimacy crisis coupled with a failing economy, Mugabe succumbed to pressure from the then South African President Thabo Mbeki, who had been mandated by the regional body SADC to mediate in resolving the 'Zimbabwean crisis' (Raftopoulos, 2013). As part of breaking the political logjam, Mbeki managed to initiate dialogue among the then three main political parties, comprising ZANU-PF, MDC-T, and MDC-N (later referred to as MDC-Mutambara). All of that having been said, the negotiations culminated in the signing of the Global Political Agreement in 2009 with a view of forming an Inclusive Government (IG) (Aeby, 2018). The GPA provided for a tentative clause to resolve past injustices and facilitate national healing in Zimbabwe. In accordance with Article VII

of the GPA, the political actors established the Organ for National Healing and Reconciliation (ONHRI) in 2009. The ONHRI was represented by three ministers from the three main political parties. The ONHRI was, however, a failed attempt since it failed to introduce a meaningful national healing process during the GNU period.

As part of the deal that ushered in the inclusive government, parties agreed to a range of reform packages, chief among these being the crafting of a new people-driven constitution (Aeby, 2015). It was through inter-party elite negotiations and public consultations during the constitution-making process that the parties agreed on the need to establish a TRC. However, owing to the rigidity of ZANU-PF, the naming of the TRC became a highly contentious issue, save to say eventually, the involved parties resolved to have the National Peace and Reconciliation Commission (NPRC). This fact was buttressed by one interviewee, who argued that ‘by vociferously fighting to exclude the truth in the naming of the commission, it became clear that ZANU-PF was non-committal to a genuine TRC that would seek truth-telling, historical accountability, and justice’ (Interview with Mr Douglas Mwonzora, MDC-T senator 2020). As a result, Zimbabwe got a constitution with watered-down clauses on post-conflict justice and reconciliation, specifically with an NPRC enshrined under Section 25 of the constitution (Government of Zimbabwe, 2013). Section 235 specifically provides for constitutional provisions on the commission’s independence, as outlined in the legal phrasing below:

The independent commissions:

- (a) are independent and are not subject to the direction or control of anyone;
- (b) must act in accordance with this constitution.

Autonomy and independence of the NPRC: ‘not all good things go together’

In my discussion, I posit that context is important in the establishment of any TRC. This is mainly because prevailing contextual factors may negatively or positively shape any TJ process (Lanegran, 2015; Pillay, 2009). This also relates to the Zimbabwean case study in how commissioners are selected and how they operate – that is, whether they enjoy operational autonomy (NTJWG, 2018).

In examining the efficacy of TRCs, the aspect of public perception becomes an avenue through which we can understand the reservations, hesitations, fears and misgivings of the broader society. In the Zimbabwean case, the situation has not been helped by the fact that the public generally has misgivings about the social standing of the men and women appointed to head the commission (*Newsday*, 2021). The fact that some of the commissioners have a political leaning or history has engendered fears that they are compromised. Commenting on the independence of the NPRC, the director of the Research and Advocacy Unit, Mr Njeru, had this to say:

We always find that the NPRC is captured by the state. Right deep in the pocket of the state. In the belly of the Leviathan. So, operating from the belly of the leviathan, you don’t have anything else than to do what the leviathan dictates that you do. The NPRC should keep itself out of the belly of the leviathan and understand that it is an independent commission. But they seem to have forgotten what an independent commission means (Interview, 2019).

Such public perceptions also fuel negativity in terms of how the public views the work of the commission, its integrity, sincerity, neutrality, or impartiality. However, the issue of impartiality is not a simple or easy one to navigate. To borrow from Lanegran (2015: 43) ‘there is no comparative

evidence yet that demonstrates that impartial commissioners are actually best; and there is no consensus concerning what skills or experiences make a person a capable commissioner'. This then complicates the whole debate on capability and impartiality.

Even considering such polemic debates, I still argue that, surrounded by such a cloud of legitimacy crisis, any TRC will be bound to be dismissed as a sugar-coating method that will not deliver on its mandate. As shown elsewhere in countries that have established TRCs, several standard norms and values are integral in maintaining the autonomy, integrity and independence of such critical and important bodies (Lanegran, 2015; Pillay, 2009). This relates to the best practices benchmarked in, for example, the tenets encapsulated in the Paris Principles (OHCHR, 1993). I find myself in agreement with TJ policymakers who hold the view that:

[t]he manner in which the TRC's personnel are selected commonly influences both the public perceptions of the commission as well as the commission's ultimate findings. Factors to consider include the desired demographic and political backgrounds for the commissioners and staff, the inclusion of international members, and the types of expertise required (Public International Law and Policy Group, 2013: 11).

But in countries emerging from deep-seated conflict and in contexts where the society has been subjected to prolonged periods of authoritarianism (as is the context in Zimbabwe), it might also be difficult to find unconflicted commissioners. It is sufficing to state that in such contexts, most, though not all, public officials tend to be conflicted, especially in support of the incumbent. This, however, impacts on the functioning of a TRC. By making such an argument, I do not wholly suggest that such countries are in short supply of men and women of integrity who can superintend over national reconciliation processes.

This brings us to the question of whether appointed commissioners can draw the line when receiving orders from political quarters. If so, what does it take for one to muster the courage to stand up and defy instructions from the political establishment. In the context of some of the 'best case examples', for instance, in South Africa, the TRC had men and women of unquestionable integrity as commissioners. The venerated Archbishop Desmond Tutu is one such example. Commenting on the issue of autonomy in 2019, Dr Makwerere stressed that:

the commission should not be remote controlled by the executive. I do not know why the commission is accountable to the vice president Kembo Mohadi's office. The powerholders should give the commission its independence. In fact, the NPRC should be demanding independence because it's explicitly stated in chapter 12 of the Zimbabwe constitution.

These sentiments were also echoed by a Rotary peace fellow, Patience Rusare, who argued that:

The effectiveness of the NPRC is determined by the government in power. There is no way this commission can fully realise issues of acknowledgement, accountability, issues of reparation, and truth-telling without implicating these political leaders, and from a power perspective, I do not think the current dispensation will give the NPRC the leeway to operate independently (Interview, 2020).

Who to place in the TRC – peering into the appointment process of commissioners in Zimbabwe

The parliament played an important role in the selection and interviewing of both cohorts of commissioners (first batch), whose tenure lapsed in 2021, and the subsequent batch commencing thereafter. However, the final decision rested with the President (*The Herald*, 2021). We should,

however, not read much into the parliament's involvement in the process, as it does not have much influence on the final decisions. Also, within the parliament itself, there are several inter-party dynamics. It should be borne in mind that most parliaments, especially in developing countries, comprise a supermajority from the ruling party (Opalo, 2019). At the risk of stating the obvious, this entails that parliamentary spaces become spheres to rubber stamp and pursue the interests of the incumbent, with the opposition failing to effectively play their oversight role due to their minority. But in the Zimbabwean case, the opposition is also guilty as charged for not flagging out issues of shortlisting 'compromised' candidates who appeared before the interview panel, the Parliamentary Committee on Standing Rules and Orders (CSRO).

The appointment of commissioners in Zimbabwe occurred under two different regimes: that of Mugabe and the successive administration of President Mnangagwa. Though I use different here, I again use it guardedly, considering that there might be no clear demarcation (in terms of conduct and bureaucracy) between the two as the Mnangagwa regime is a continuation of the former. The point, however, is that the two leaders played a role in deciding who should be included and excluded in the NPRC. First, the commissioners of the NPRC were sworn in by the late President Mugabe in 2016. Besides the appointment of commissioners in 2016, the Parliament delayed enacting an enabling law to operationalise the work of the NPRC (Mazambani and Tapfumaneyi, 2020).

Due to such sluggish approach, the NPRC delayed in coming up with a secretariat to fully commence the task at hand. As such, the commission only commenced its operation in 2018. This was following the signing of the NPRC Bill by the new president, Mnangagwa on 5 January 2018 (Machivenyika, 2018). Following such developments at the lapse of the tenure of the first cohort of commissioners, President Mnangagwa appointed the new commissioners on 7 May 2021 (*The Herald*, 2021).

This was following the advertisement of the positions of commissioners by the Parliament's CSRO. To clarify the appointment of commissioners and the chairperson, the NTJWG mentioned that:

The procedure for the appointment of other eight Commissioners is different. The Parliament, through the CSRO, is supposed to advertise the call for members of the public to make nominations. When nominations are received, the CSRO will shortlist candidates who will be interviewed publicly. From the public interviews, the CSRO will select and present to the President, not less than twelve names of likely Commissioners. From these names, the President will appoint only eight (NTJWG, 2018: 33).

This selection, however, needs to be situated at law. The Zimbabwean constitution stipulates that the chairperson of the commission is appointed by the president after consultation with the Committee on Standing Rules and Orders and the Judicial Service Commission (Government of Zimbabwe, 2013). However, besides the public nomination by the CSRO, it is clear that the president can appoint commissioners of his or her choice. This may include those of ZANU-PF's political orientation with the intention of concealing the truth and protecting the perpetrators from facing the wheels of justice. The appointment of commissioners like Obert Gutu, who has explicitly shown his allegiance and support to ZANU-PF clearly demonstrates how compromised the commission is.

In addition to the above, the politically compromised commissioner Gutu was appointed as the NPRC's spokesperson (Muponde, 2021). This, however, is not isolated to the Zimbabwean case, as it has happened elsewhere. To further illustrate this point, the case of Yugoslavia, where 'Vojislav Koštunica and Uganda's Yoweri Museveni took the opportunity to appoint allies so as to enable government manipulation and suppression of the truth-seeking processes' quickly comes to mind (see Lanegran, 2015: 47). Returning to the Zimbabwean case study, the appointment of commissioners is provided at law in the constitution and is embedded in the NPRC Act as outlined below.

Appointment of the chairperson and the commissioners

Section (251) states that:

1. For a period of 10 years after the effective date, there is a commission to be known as the National Peace and Reconciliation Commission consisting of:
 - (a) a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and
 - (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.

Section (236) of the constitution affirms that members of independent commissions should not act or execute their duties in a partisan manner:

1. Members of the independent Commissions must not, in the exercise of their functions—
 - (a) act in a partisan manner;
 - (b) further the interests of any political party or cause (Government of Zimbabwe, 2018).

However, despite the excellent phrasing in the constitution, the evidence on the ground indicates otherwise. That the newly appointed NPRC commissioners were paraded at the State House is not an issue. However, it only becomes an issue in the court of public opinion. This is considering that in contexts where citizens have trust deficit with state-appointed institutions the visuals of supposedly independent commissioners with a head of the party implicated in human rights abuse raise doubt on the prospects and integrity of the commission. On 7 May 2021, the newly appointed commissioners (the second set) were sworn in at the State House (official state residence) of the President (*The Herald*, 2021). This is not at all inspiring, considering fears around the ‘capture’ of the commissioners, which have always resurfaced since the birth of the NPRC (Centre for Innovation and Technology, 2021). A plausible interpretation of such actions is that the incumbent is determined to display who is in control of the NPRC. Again, painting such a vignette, especially for the victims of election violence and other conflicts including the *Gukurahundi* massacres, is worrying and negatively impacts on the legitimacy of the NPRC. This is considering that these victims are still struggling and yearning for justice and closure. To confirm this claim, Mr Sekayi Gombe, a survivor of the 2008 electoral violence, had this to say:

I think a lot of work is needed to improve the legitimacy of the NPRC. This is so because the public view the commission as an arm of ZANU-PF. Honestly, the victims and survivors do not have faith in the NPRC. I have been working with victims since 2008. They have always been complaining that the NPRC is taking time to engage them, yet it was established to resolve their concerns. The NPRC is interested in talking about violence that happened during the war and beyond while neglecting post-colonial violence (Interview, 2020).

There is a general public sentiment that the involvement of the incumbent in the appointment and selection of the commissioners stains the whole process. This is against the axiom in the literature (Lanegran, 2015) paired with a groundswell of feelings among the public that TRC commissioners should not only be seen as neutral and apolitical but should be neutral as expressed in words and deeds.

That the President’s response to the outcry over the potential bias of the commissioners has been tone-deaf speaks of several issues. First, it signals the dearth of commitment to having a legitimate NPRC (Interview with an anonymous pastor, 2019). Second, he is comfortable having politically

compromised men and women who will aid in toning down the reconciliation discourses and the demand for justice by victims and survivors of past human rights violations. Third, it may also show that the President is only concerned in window dressing serious issues of TJ by presenting a symbolic act or gesture.

However, the fact that the president has the power to make a final decision on the choice of the commissioners of the NPRC should not be entirely blamed on the overbearing power of the president. Rather, the blame lies in the constitution, which gives such powers to the president (Government of Zimbabwe, 2013). Such concerns have been raised by interviewees from the civil society and academia. It is the conduct of the president, given such powers, that is worrisome. For instance, considering that ZANU-PF officials, members, and supporters are the ones most implicated in human rights transgressions in Zimbabwe, the question that follows is whether the incumbent can appoint commissioners who will implicate his party in the historical crimes that the commission is set to address (Interview with Mr Tony Reeler, 2019). The answer lies in the sincerity and political will of the incumbent to see a successful and genuine TRC. But in the Zimbabwean context evidence points to the pursuit of a hollowed-out version of reconciliation rather than having a genuine and effective TRC, as exemplified in the conduct of the state and in the appointment of some compromised personalities as commissioners (Mwonzora, 2021; Mwonzora and Helliker, 2022).

Selection of commissioners

In the literature, scholars underscore the need for a wide consultative process and the input of different stakeholders, including victims, in the selection process of commissioners (Public International Law and Policy Group, 2013). This claim finds echo in the scholarly writings of González and Varney who observe that:

commissioners should be selected through a transparent and preferably consultative appointment process, with input from different sectors of society, especially from victims and other marginalized groups. In some commissions, the selection process starts with nominations from the public and the formation of a panel to review nominations, interview finalists, undergo public scrutiny, and recommend a shortlist of candidates to an appointing authority (2013: 17).

In the case of Zimbabwe, the parliament, through the Parliamentary CSRO, plays an important role in the selection of potential interviewees nominated by the public.

Scholarship on TRCs also contends that the selection of commissioners is paramount when establishing a TRC, as the selection method will spell out their conduct and legitimacy of the final report. Significant to note is that there exists a vast array of considerations that must be foregrounded in the selection of commissioners. These range from: 'fair representation, human rights record, neutrality, gender, full-time commitment, expertise' (González and Varney, 2013: 18). However, this is not to suggest that even if a country abides by all these aspects, it will yield an impartial and competent TRC that can establish the truth, address the concerns of victims, and nurture national reconciliation. I argue that bar the consideration of all these factors, political context plays a role in shaping the integrity and legitimacy of the TRC (Interview with Mr Njeru). This argument strongly resonates and finds an echo in the Zimbabwean context, where the NPRC is hamstrung and conditioned by the political establishment (NTJWG, 2021; Interview with Mr Reeler).

It is against such contexts where the state has a domineering influence or in cases where countries just decide to start off on a right footing that considerations of 'hybrid commissions' have also featured. This entails the inclusion of reputable personalities in the TRCs; they may well be regional

and international commissioners (Interview with Mr Reeler). Examples exist in countries such as the Solomon Islands, Guatemala, and Sierra Leone (González and Varney, 2013: 19). Significant to underscore is that the issue of suitability touches on a wide range of issues, including one's standing in society, past associations, political leaning, and other considerations that may impinge on one's capacity and credibility to deliver on the mandate of any TRC (Lanegran, 2015; see also for an elaborate explanation on the Kenyan TRC, 2013²). It is against this backdrop that some regimes, for example, Liberia, engaged in thorough and comprehensive national vetting processes followed by legislative confirmation before the recruitment of commissioners (see Government of Liberia, 2005). I assert that the public vetting process helps instil public confidence. However, in the Zimbabwean context, this was not the case in the appointment of the first and second cohorts of commissioners. Without any shadow of doubt, the commissioners would all pass-through security vetting by the security establishment, but this does not amount to public vetting and scrutiny.

In a more ambitious and commendable move, in Liberia, the panel that appointed the commissioners was comprised of multi-party and civil society stakeholders, as well as members from the Economic Community of West African States (ECOWAS) (see Public International Law and Policy Group, 2013: 11). The case of the Liberian TRC under the stewardship of former civil society and human rights activist Jerome Verdier is an encouraging example (Pillay, 2009: 92), and that of East Timor, present-day Timor Leste (Laakso, 2003). In the case of Verdier, other scholars opine that judging his moral probity and political clout was somewhat difficult considering that he was still a young lawyer in his early career stages (Gberie, 2008). Nonetheless, this put him in a strong position to carry out his duties with distinction and without any notable moral or political blemishes. This brings us to the point of whether commissioners need to be eminent members of society or whether non-eminent persons can also be a perfect fit. This is considering one's track record in human rights, TJ, and peacebuilding issues. But harking back to our Zimbabwean case, the issue of integrity among the commissioners has been a subject of intense debate among the generality of the Zimbabwean populace and CSOs working on peacebuilding (Heal Zimbabwe Trust, 2016).

But as pointed out above, the contested issue of the composition of the commissioners of TRCs is not only a thorny issue in Zimbabwe but also in other contexts, including in Burundi (Vandeginste, 2012). It is well established in the TRC scholarship that the composition of any such body, coupled with contextual factors, heavily impacts the mandate, powers, and functioning (or lack thereof) of the body (Public International Law and Policy Group, 2013). As is the trend in other contexts, namely, Burundi, Zimbabwe has also followed suit by including few members from civil society, the church, and other professional bodies. This has been noted by a survivor of the 2008 electoral violence:

I think the NPRC is a noble idea. But my worry is that it is not properly constituted of relevant stakeholders like victims' survivors and opposition members. If you read the biographies of the commissioners, you would link them to ZANU-PF and not to CSOs. I think the former commissioner, Netty Musanhu, who had a background of working with CSOs, was forced to resign because she was too sympathetic to victims. (Interview with Mr Sekayi Gombe, 2020).

This being the case, it serves to show how political influence determines the selection and composition, if not – functioning, as well as the neutrality and independence of TRCs.

Conduct and independence of commissioners

As argued earlier in the case of Zimbabwe, most of the current commissioners still need to dissociate themselves from political attachments and affiliations. Some of these associations are expressed, while some are not. In a manner that demonstrates the compromised nature of some of the

commissioners, since aligning with ‘ZANU-PF’ Gutu has been singing praises of Mnangagwa and castigating the opposition MDC Alliance’ (Muponde, 2021). One could argue this clearly demonstrates the compromised nature of some of the men in charge of the Zimbabwean TRC who are expected to be neutral, independent and not politically affiliated. The net effect is that these current and past associations engender an erosion of public trust in the work of the commission. These associations then raise suspicions about whether the NPRC in Zimbabwe will be able to usher in a genuine national reconciliation process embedded in tenets articulated in global TRC best practices. Asked about how the NPRC can improve its work a peace activist, Ms Dorcus Chishumba had this to say:

The first step is that the NPRC should be a really independent commission. It should be comprised of commissioners who are really qualified and energetic enough. The government should depoliticize the appointment of the NPRC commissioners. We need people who are open-minded and politically clean in the commission (Interview, 2020).

Contrary to the gloomy picture painted in Zimbabwe, there are some encouraging and notable cases of TRCs that were at least ‘independent’ judging by their actions in Africa and elsewhere (South African TRC Report, 1998³). Such cases are dissimilar to the Kenyan case which was plagued by trust deficit emanating from its chairperson- Ambassador Bethuel Kiplagat- who through the erosion of public trust coupled with his ‘tainted history’ and pressure, was ultimately forced to step down during the later phases of data collection and hearings (Lanegran, 2015: 42; *BBC News*, 2010). The Kenyan case has a striking resonance with the Zimbabwean case. In this regard, I opine that the issue of suitability continues to resonate in other contexts beyond Africa. This underscores the relevance of the issue across various spatial locations. For instance, in the literature, we are reminded of how in Brazil, members of the International Center for Transitional Justice (ICTJ, 2011) in 2011 lobbied then-President Dilma Rousseff ‘to select members of the commission on the basis of careful, transparent consultation with civil society, ensuring all commissioners are widely respected and regarded as politically independent, capable and impartial’ (Lanegran, 2015: 43).

However, we should not paint an all-gloomy picture when looking at the independence of TRCs. In the literature, some scholars provide the case study of South Africa as a shining example of how the selection criteria and political context provide an enabling environment for an independent TRC. Here it is pertinent to quote Hayner at length, who observed that:

The South African Commission was the first to design a process based on an independent selection panel and public interviews of finalists. The empowering legislation indicated only that the commissioners should be ‘fit and proper persons who are impartial and who do not have a high political profile’. A selection panel, including representatives of human rights organizations, called for nominations from the public. It received three hundred nominations, which it then trimmed to fifty people for interviews, which took place in public session and were closely followed by the press. It then forwarded a list of twenty-five to President Nelson Mandela for the final appointment of seventeen. To provide geographic and political balance, Mandela included two members who did not go through the full screening process (2011: 212).

The issue of autonomy was also emphasised in the Liberian TRC. It is argued that ‘from the outset, the Commission adopted a fiercely independent position and decried international ‘interference’ in its operations’ (Pillay, 2009: 93). While such shining examples are few and wide, nonetheless, they underscore the fact that it is possible to have TRCs that may assert their autonomy and independence in a whole range of areas.

Gazing into the Zimbabwean case, it is worrying in the sense that some of the current commissioners hail from the police and security background; an example is (former deputy police commissioner-general crime) – Josephine Shambare (*The Herald*, 2021). That compromised individuals are given positions within the commission also raises eyebrows regarding the effectiveness of the supposedly independent commissions in discharging their duties in a neutral manner. This concern is not without basis. In the previous years, appointed commissioners in some Zimbabwean ‘independent’ commissions, notably the Human Rights Commission and the Electoral Commission, did resign. They bemoaned the compromised nature, heavy interference and influence of the state in their work and in the operations of the commissions. Percipient examples include Prof. Reginald Austin (*Newsday*, 2012) and Former Judge Simpson Mutambanengwe (*The Chronicle*, 2012). Such examples accord with the argument that the state has a domineering role and influence in the work and operations of independent commissions in Zimbabwe.

Conclusion

The article underscored the importance of impartiality, independence, and professionalism in preserving any TRC’s legitimacy and integrity. In doing so, I utilised the case of the NPRC in Zimbabwe to show how the political climate and forces condition the selection and appointment of commissioners. This, I argued, has a negative impact on their discharge of duties as well as the functioning and inner workings of the NPRC. In the context of the NPRC commissioners in Zimbabwe, I conclude that it is difficult to maintain their independence, if any. This is considering that the commission itself falls under Justice Minister Ziyambi Ziyambi and Permanent Secretary Virginia Mabiza in the Ministry of Justice, Legal, and Parliamentary Affairs, which is now responsible for National Healing and Reconciliation after the resignation of Vice President Kembo Mohadi, who all along was the official responsible for National Reconciliation. Even the fact that such an important TJ body fell under the supervision and wings of the Vice-Presidency’s office did not inspire confidence regarding the autonomy and independence of the commission, let alone its integrity.

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Notes

1. For a detailed review see the Guidelines available at: <http://www.idea.int/africa/southern/upload/The-SADC-Principles-and-Guidelines-Governing-Democratic-Elections.pdf>
2. Kenya Truth, Justice, and Reconciliation Commission, ‘Final Report – TJRC Report Volume I’ (2013).
3. Truth and Reconciliation Commission of South Africa Report (Cape Town: Truth and Reconciliation Commission, 1998).

References

- Aeby M (2015) *Zimbabwe's gruelling transition: Interim power-sharing and conflict management in Southern Africa*. PhD Thesis, Universitat Basel, Basel.
- Aeby (2018) Inside the inclusive government: Interparty dynamics in Zimbabwe's power-sharing executive. *Journal of Southern African Studies* 44(5): 855–877.
- Badza S (2008) Zimbabwe's 2008 elections and their implications for Africa. *African Security Studies* 17(4): 1–16.
- Bakiner O (2016) *Truth Commissions: Memory, Power, and Legitimacy*. Philadelphia, PA: University of Pennsylvania Press.
- BBC News (2010) Kenya truth commission chief Kiplagat steps aside. *BBC News*, 2 November. Available at: <https://www.bbc.com/news/world-africa-11678835>
- Bulawayo24 News (2016) Mugabe swears in National Peace and Reconciliation Commission. *Bulawayo24 News*, 24 February. Available at: <https://bulawayo24.com/index-id-news-sc-national-byo-83236.html>
- Centre for Innovation and Technology (CITE) (2021) Compromised NPRC cannot resolve Gukurahundi. Available at: <https://kubatana.net/2021/03/15/compromised-nprc-cannot-resolve-gukurahundi/>
- Machivenyika F (2018) Peace, reconciliation bill signed into law. *The Herald*, 9 January. Available at: <https://www.herald.co.zw/peace-reconciliation-bill-signed-into-law/>
- Gberie L (2008) Truth and justice on trial in Liberia. *African Affairs* 107(428): 455–465.
- Gibson JL (2005) The truth about truth and reconciliation in South Africa. *International Political Science Review* 26(4): 341–361.
- González E and Varney H (2013) *Truth Seeking: Elements of Creating an Effective Truth Commission*. New York: International Center for Transitional Justice.
- Government of Zimbabwe (2013) *Constitution of Zimbabwe*. Harare: Government Printers.
- Government of Zimbabwe (2018) *National Peace and Reconciliation Commission Act [CHAPTER 10:32]*. Harare: Government Printers.
- Government of Liberia (2005) *Final Report of the Truth and Reconciliation Commission of Liberia (TRC). Vol. I. Findings and Determinations*. Available at: <https://www.trcofliberia.org/resources/reports/final/trc-final-report-volume-1-full.pdf>
- Hayner P (2011) *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. New York: Routledge.
- Heal Zimbabwe Trust (2016) *An Analysis of the Zimbabwean National Peace and Reconciliation Bill (NPRC Bill)*. Harare: Heal Zimbabwe Policy and Research Department.
- Hirsch MBJ, MacKenzie M and Sesay M (2012) 'Measuring the impacts of truth and reconciliation commissions': Placing the global 'success' of TRCs in local perspective. *Cooperation and Conflict* 47(3): 386–403.
- Hofisi S (2020) *Towards transitional justice in Zimbabwe: The role of the National Peace and Reconciliation Commission and Zimbabwe Human Rights Commission*. PhD Thesis, University of Pretoria, Pretoria, South Africa.
- International Center for Transitional Justice (ICTJ) (2011) Brazil: Six critical steps for truth commission success. New York: International Center for Transitional Justice.
- Kubicek P and Walker C (2020) Do truth and reconciliation committees improve human rights? Evidence from Africa. *The Journal of the Middle East and Africa* 11(3): 295–310.
- Laakso J (2003) In pursuit of truth, justice and reconciliation: The Truth Commissions of East Timor and South Africa. *Social Alternatives* 22(2): 48–54.
- Lanegran K (2015) The Kenyan truth, justice and reconciliation commission: The importance of commissioners and their appointment process. *Transitional Justice Review* 1(3): 3.
- Langer J (2018) *Get the Truth Out of Truth Commissions Lessons Learned from Five Case Studies*. Bogotá: Editorial Bonaventuriana.
- Masunungure EV (2009) A militarized election. The 27 June Presidential run-off. In: Masunungure EV (ed.) *Defying the Winds of Change: Zimbabwe's 2008 Elections*. Harare: Weaver Press, pp.79–97.

- Mazambani D and Tapfumaneyi N (2020) Vehicle for peacebuilding or cloak of impunity? The Zimbabwe National Peace and Reconciliation Commission. *African Human Rights Yearbook (AHR)* 4: 277–297.
- Murambadoro R (2019) *One Year after: Has the National Peace and Reconciliation Commission Act Failed Zimbabweans?* Brooklyn, NY: Kujenga Amani.
- Mwonzora G and Helliker K (2022) Truce and reconciliation in Zimbabwe: From Mugabe to Mnangagwa. *Critical African Studies* 14: 124–137.
- Mwonzora K (2021) *Reconciliation and transitional justice processes in Zimbabwe since 2008: The role of the National Peace and Reconciliation Commission (NPRC)*. PhD Thesis, North-West University, Potchefstroom.
- Ndlovu-Gatsheni SJ and Benyera E (2015) Towards a framework for resolving the justice and reconciliation question in Zimbabwe. *African Journal on Conflict Resolution* 15(2): 9–33.
- Newsday (2012) Lawyers slam govt after Rights Commission boss quits. *Newsday*, 30 December. Available at: <https://www.newsday.co.zw/2012/12/lawyers-slam-govt-after-rights-commission-boss-quits/>
- Tshili N (2021) NPRC parts ways with Musanhu. *The Chronicle*, 21 February. Available at: <https://www.chronicle.co.zw/nprc-parts-ways-with-musanhu/>
- National Transitional Justice Working Group (NTJWG) (2018) *A Guide to Understanding the National Peace and Reconciliation Commission in Zimbabwe Second Edition 2018*. Harare: NTJWG.
- NTJWG (2021) Reflections on the expiry of the first term of office of the national peace and reconciliation commissioners and going forward 17 March 2021 Harare. Available at: <https://kubatana.net/wp-content/uploads/2021/03/Reflection-on-the-tenure-of-the-NPRC.pdf>
- OHCHR (1993) *Principles relating to the Status of National Institutions (The Paris principles)*. General assembly resolution 48/134, 20 December. Geneva: United Nations.
- Opalo KO (2019) Constrained presidential power in Africa? Legislative independence and executive rule-making in Kenya, 1963–2013. *British Journal of Political Science* 50: 1341–1358.
- Pathak B (2017) A comparative study of world's truth commissions – From madness to hope. *World Journal of Social Science Research* 4(3): 192–230.
- Pillay A (2009) Views from the field: Truth seeking and gender: The Liberian experience. *African Journal on Conflict Resolution* 9(2): 91–99.
- Public International Law and Policy Group (2013) Truth and reconciliation commissions: Core elements. Available at: <https://syriaaccountability.org/truth-reconciliation-commissions-core-elements/>
- Raftopoulos B (2013) (ed.). *The Hard Road to Reform: The Politics of Zimbabwe's Global Political Agreement*. Harare: Weaver Press.
- Muponde R (2021) Zanu PF rewards Gutu with NPRC post. *Newsday*, 8 May. Available at: <https://www.newsday.co.zw/2021/05/zanu-pf-rewards-gutu-with-nprc-post/>
- Slye R (2018) *The Kenyan TJRC: An Outsider's View from the Inside*. Cambridge: Cambridge University Press.
- The Chronicle* (2012) ZEC chairperson resigns. *The Chronicle*, 13 February. Available at: <https://www.chronicle.co.zw/zec-chairperson-resigns/>
- The Herald* (2018) Peace, reconciliation bill signed into law. *The Herald*, 9 January. Available at: <https://www.herald.co.zw/peace-reconciliation-bill-signed-into-law/>
- The Herald* (2021) President swears in NPRC commissioners. *The Herald*, 8 May. Available at: <https://www.herald.co.zw/president-swears-in-nprc-commissioners/>
- Vandeginste S (2012) Burundi's truth and reconciliation commission: How to shed light on the past while standing in the dark shadow of politics? *International Journal of Transitional Justice* 6(2): 355–365.
- Wiebelhaus-Brahm E (2010) *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*. Abingdon: Routledge, 1–223.
- Zambara W (2019) *The Prospects for Social Cohesion, Healing and Reconciliation in Zimbabwe: Putting the NPRC to Task* Cape Town, South Africa: Institute for Justice and Reconciliation.

Interviews

Interview with Mr Njeru, Director of the Research and Advocacy Unit (2019).

Interview with Mr Sekayi Gombe, Founder Zimbabwe Political Victims Foundation and a survivor of 2008 electoral violence (2020).

Interview with Ms Dorcus Chishumba Peace Activist (2020).

Interview with Mr Douglas Mwonzora, MDC-T senator (2020).

Interview with Mr Tony Reeler senior researcher Research and Advocacy Unit (2019).

Interview with anonymous Pastor of the Renewal Fellowship of Zimbabwe (2019).

Interview with Dr Makwerere lecturer at Bindura University in the Department of Peace and Governance (2019)

Interview with Patience Rusare Rotary peace fellow (2020).

Interview with an anonymous MDC Alliance activist (2019).

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