

RIGHTS AND TRADITIONS

TRADITIONAL LEADERSHIP, POLITICS AND
HUMAN RIGHTS IN ZIMBABWE



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Campaigners for Human Rights

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HUMAN RIGHTS IN ZIMBABWE

POLICY BRIEF

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Rights and Traditions: Traditional Leadership,
Politics and Human Rights in Zimbabwe
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TABLE OF CONTENTS

FOREWORD: THE GUARDIANS OF THE HUMAN RIGHTS CULTURE	7
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EXECUTIVE SUMMARY	4
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01. INTRODUCTION	8
1.1. BACKGROUND	8
1.2. ABOUT THIS POLICY BRIEF	10
1.3. LEGAL FRAMEWORK	11

02. THE FUNCTIONS OF TRADITIONAL LEADERS	13
2.1. GENERAL FUNCTIONS	13
2.2. ADMINISTRATIVE FUNCTIONS	13
2.3. LEGISLATIVE FUNCTIONS	13
2.4. DISPUTE RESOLUTION FUNCTIONS	13

03. STANDARDS GOVERNING THE CONDUCT OF TRADITIONAL LEADERS	14
3.1. ADHERENCE TO TRADITIONAL CUSTOMS	14
3.2. FIDELITY TO THE LAW	14
3.3. FAIRNESS AND NON-DISCRIMINATION	14

04. TRADITIONAL LEADERS AND POLITICS	15
4.1. THE POLITICAL NEUTRALITY REQUIREMENT	15
4.2. THE CONFLATION OF NEUTRALITY WITH OPPOSITION POLITICS	16

4.3. THE PARADOX FACED BY TRADITIONAL LEADERS IN PARLIAMENT	16
4.4. POLITICAL BIAS IN THE RHETORIC AND ACTIONS OF TRADITIONAL LEADERS	16
4.5. APPROACHES OF OTHER AFRICAN COUNTRIES	18

05. ENFORCEMENT AND PROTECTION MECHANISMS	21
5.1. THE PROBLEM OF ENFORCEMENT AND PROTECTION ..	21
5.2. INTEGRITY AND ETHICS COMMITTEE	22
5.3. NATIONAL COUNCIL AND PROVINCIAL ASSEMBLIES OF CHIEFS	22
5.4. INSTITUTIONAL INDEPENDENCE GUARANTEES	23
5.5. PERSONAL INDEPENDENCE GUARANTEES	24
5.6. SANCTIONS FOR INTERFERING WITH THE POLITICAL NEUTRALITY OF TRADITIONAL LEADERS	24

CONCLUSION	25
6.1. THE NEED FOR LEGISLATIVE REFORM	25
6.2. THE NEED FOR BEHAVIOURAL CHANGE	27
6.3. POTENTIAL CONTRIBUTIONS OF TRADITIONAL LEADERS TO FOSTERING DEMOCRACY IN ZIMBABWE	28

RECOMMENDATIONS	30
7.1. CIVIL SOCIETY	30
7.2. THE PARLIAMENT OF ZIMBABWE	31
7.3. TRADITIONAL LEADERS	32



FOREWORD: THE GUARDIANS OF THE HUMAN RIGHTS CULTURE

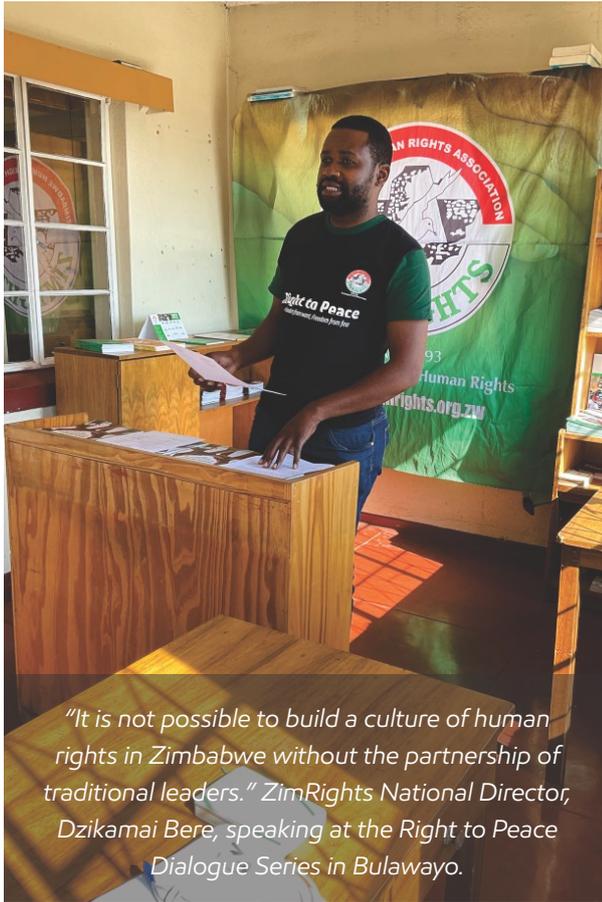
So true it is the wisdom of the royal elders in Honde Valley as expressed at a community meeting that I attended back in 2009 as part of a conversation on nation building. We are all royals in our own clan, they said to me, emphasising that I should not trivialise my own royalty among the royals. Human dignity is the royalty that they were bestowing on me and everyone who visited their sacred land. Because everyone comes from somewhere.

“

Mumwe
nemumwe
ndishe kudzinza
rekwake.

The institution of traditional leadership is so profound such that it is not possible to fully succeed in building a culture of human rights without traditional leaders as partners in that journey. In fact, traditional leaders according to the dictates of our culture, are supposed to be the guardians of the human rights culture. Indeed, many remain true to such a tradition, forbidding any violence in their communities. However, some have departed from this sacred duty.

On 23 June 2022, we launched the 2021 State of Peace Report in Bulawayo and Harare. One of our delegates at the Bulawayo launch was a well-respected traditional leader who expressed great appreciation for the report. One of the findings of the 2021



"It is not possible to build a culture of human rights in Zimbabwe without the partnership of traditional leaders." ZimRights National Director, Dzikamai Bere, speaking at the Right to Peace Dialogue Series in Bulawayo.

State of Peace Report captured the national sentiment as regards the role of traditional leaders in advancing peace in Zimbabwe. The report noted that in some communities, traditional leaders are seen advancing a partisan political agenda, a reality which now undermines the confidence of the people in the institution of traditional leadership. The report goes further to recommend the dialogue on the role of traditional leaders.

In response to this finding, traditional leaders have called on civil society to engage more on the subject and support traditional leaders in the noble quest to restore the people's confidence in the institution. Speaking at the

launch of the report, one of the leaders recommended civic education for traditional leaders.

The 2021 State of Peace Report was released at the time when Zimbabwe is preparing for the 2023 harmonised elections and there are fears of violence. ZimRights is inundated with reports of how some traditional leaders have already started advancing a partisan political agenda. One of the traditional leaders in Masvingo has gone on record promising one political party 5 million votes. Another leader has warned some citizens that they will lose their land if they do not support a certain political party. These sad developments vindicate the findings of the 2021 State of Peace Report.

With over 30 years of experience in working with communities, ZimRights knows that the regrettable conduct of a few traditional leaders does not reflect the nature of the entire institution. There are a lot of good traditional leaders who have continually under difficult times defended human rights. ZimRights has worked with such leaders and continues to support them in their important role. This policy brief is indeed a request by such leaders to initiate a dialogue process that can help the nation transform the institution of traditional leadership to embrace and protect our cultural values that protect human dignity.

ZimRights acknowledges that traditional leaders are important in the struggle for human rights. Our vision is to see communities

leading in creating and sustaining a culture of human rights. In this vision, we see the human rights struggle as a community's internal transformation journey. Without local leadership, the resultant culture no matter how good, can never be sustainable.

The World Bank estimates that about

67%

of the Zimbabwean population lives in the rural areas.

These are the majority of our population that live under the leadership and influence of traditional leaders. They practice the customs and practices of these communities. It is in these rural communities that we find many of our minority and marginalised communities and they are usually hard to reach.

We, therefore, cannot wage a struggle for human rights while ignoring 67% of our people. Neither can we do it successfully without partnering with their leaders who are also our leaders. This partnership cannot possibly work if the premise is that 'traditional leaders are the bad guys' and 'we are the good guys' trying to rescue society from the menace of traditional leaders. We must have a deep conversation based on mutual respect on how we as human rights defenders can support the institution of traditional leadership, which we know is also full of respected human

rights defenders, to advance the traditional values of human dignity in the face of an invasive political culture that threatens death for non-compliance. We must understand that this is the work of many institutions and not merely traditional leaders.

This is why we are speaking out in this brief, addressing many actors that have a role to play in this issue. In our investigations, we have discovered that the worst culprits in this matter are political leaders, so called honourable Members of Parliament who use these communities for their political agenda. Addressing the political threats that face the institution of traditional leadership is a collective obligation that calls for real work and not merely naming and blaming.

We have hope that this is a dialogue that will bear fruit. But we are not deluded. We know it will take more than just a report. It is cultural transformation. Transforming cultures may take generations. In this report, we share some ideas on how our generation can take the next step in supporting the institution of traditional leadership advance the values of human dignity and protection of a dignified life for all citizens.

We hope you find these suggestions worth trying in the various spheres of your influence.

Dzikamai Bere
National Director
Zimbabwe Human Rights Association
July 2022



Entrance Takaedza and Ishmael Mkandla facilitating one of the Right to Peace Dialogue Series in Bulawayo.

EXECUTIVE SUMMARY

This Policy Brief, titled “Rights and Traditions” is a product of ZimRights’ Right to Peace Campaign which seeks to empower communities to demand and claim peace as a right.

“

Traditional leaders are guided by the moral values, traditions and customs of their people.

This Policy Brief focuses on the role of traditional leaders in political affairs in Zimbabwe. It seeks, among other things, to ensure that policy makers are aware of the issues affecting citizens’ peace and social cohesion. It was born out of the ZimRights State of Peace Report 2021, a report compiled from targeted conversations by activists operating under the Right to Peace Action Zone. These conversations help the community understand the state of peace in the areas they live in.

One observation that came out of the report was that traditional leaders are many times forced to join politics on the side of the ruling party. As a result, they end up being conflicted and participating in manipulation of food aid and electoral processes. This is undermining confidence in the institution of traditional leadership which is supposed to be the sacred custodian of values and culture.



At the launch of the 2021 State of Peace Report in Bulawayo on 23 June 2022, one of the traditional leaders in attendance bemoaned the fact that some traditional leaders find themselves in violation of the country's supreme law and recommended that organisations like ZimRights make effort to support such traditional leaders to play their role as leaders without being entangled in partisan politics. This brief is a response to such a noble request by one of our respected traditional leaders. Beyond the leaders, it is also a response to the yearning of the citizens who wish to see leaders uphold human rights and not violate them in the name of politics.

SECTION 1

Section 1 of the brief therefore gives an introduction, background and legal framework surrounding the institution of traditional leadership in Zimbabwe. The section looks at main legal instruments that govern the conduct of traditional leaders in Zimbabwe which are the 2013 Constitution of Zimbabwe and the Traditional Leaders Act (Chapter 29:17). There are also other laws, which provide for specialized functions of traditional leaders such as:

- the Customary Law and Local Courts Act (Chapter 7:05),
- the Communal Land Act [Chapter 20:04] and
- the Domestic Violence Act [Chapter 5:16].

The chapter further interrogates traditional leaders perceived alignment with the ruling Zimbabwe African National Unity-Patriotic Front (ZANU PF) and how this has brought renewed criticism of their relevance in a modern-day society anchored on democratic values.

SECTION 2 AND 3

In Sections 2 and 3, it explores the functions of the traditional leaders as well as the standard that govern their conduct. Traditional Leaders in terms of the Constitution of Zimbabwe are recognized as the custodians of cultural values. The section also looks at how customary Law and Local Courts Act recognizes the mandate of traditional leaders to interpret, apply and enforce customary law. The chapter further scrutinise how traditional Leaders Act defines traditional leaders as Chiefs, Headmen and Village Heads.

SECTION 4

Section 4 of the Policy Brief looks at standards governing the conduct of traditional leaders and these includes adherence to traditional customs, fidelity of the law and fairness and non-discrimination. On traditional customs the paper argues that before the enactment of written laws that govern the institution of Traditional Leadership, traditional leaders did not act arbitrarily.

Traditional leaders were guided by the moral values, traditions and customs of their people. The paper postulates that, even though traditional leaders perform their duties in terms of customary law, they are still bound to comply with the general law. The Constitution of Zimbabwe makes it imperative for traditional leaders to act in compliance with the constitution and other laws of Zimbabwe.

SECTION 5

Section 5 delves into the enforcement and protection mechanisms to preserve the personal and institutional independence of Tradition Leadership in Zimbabwe. This section looks at traditional leaders and politics, political neutrality of traditional leaders, conflation of neutrality with opposition politics and the paradox faced by traditional leaders in parliament. The paper further argues that people in Zimbabwe have great respect for their traditional leaders and they treat them with considerable esteem. This respect is even more entrenched when the communities feel that their traditional leaders are appointed from relevant community and in accordance with the tradition of norms of succession. The paper further provides how traditional leaders in Zimbabwe can learn from their peers from South Africa, Ghana and Zambia on how they have conducted and distinguished themselves despite their political inclinations. The section concludes by looking at how traditional leaders in Zimbabwe should view elections as part of community development

and should play a facilitator role to mobilize citizens to freely participate in electoral processes.

SECTION 6

Section 6 concludes the Policy Brief through identifying grey areas in policy as well as how traditional leaders can support democracy and human rights in Zimbabwe. The paper tends to suggest a dominant view that traditional leaders have been co-opted into partisan politics in Zimbabwe, because of the problems associated with enforcing the political neutrality requirement stated in the Constitution of Zimbabwe. Politicians leading government, who are supposed to ensure that traditional leaders maintain their political neutrality, have benefitted from the political capture and manipulation of the institution of Traditional Leadership. This view casts traditional leaders as ‘willing collaborators’ deriving benefits from their political co-option. One of the primary ways in which traditional leaders have been co-opted into partisan politics has been through benefits awarded to them based on political patronage.



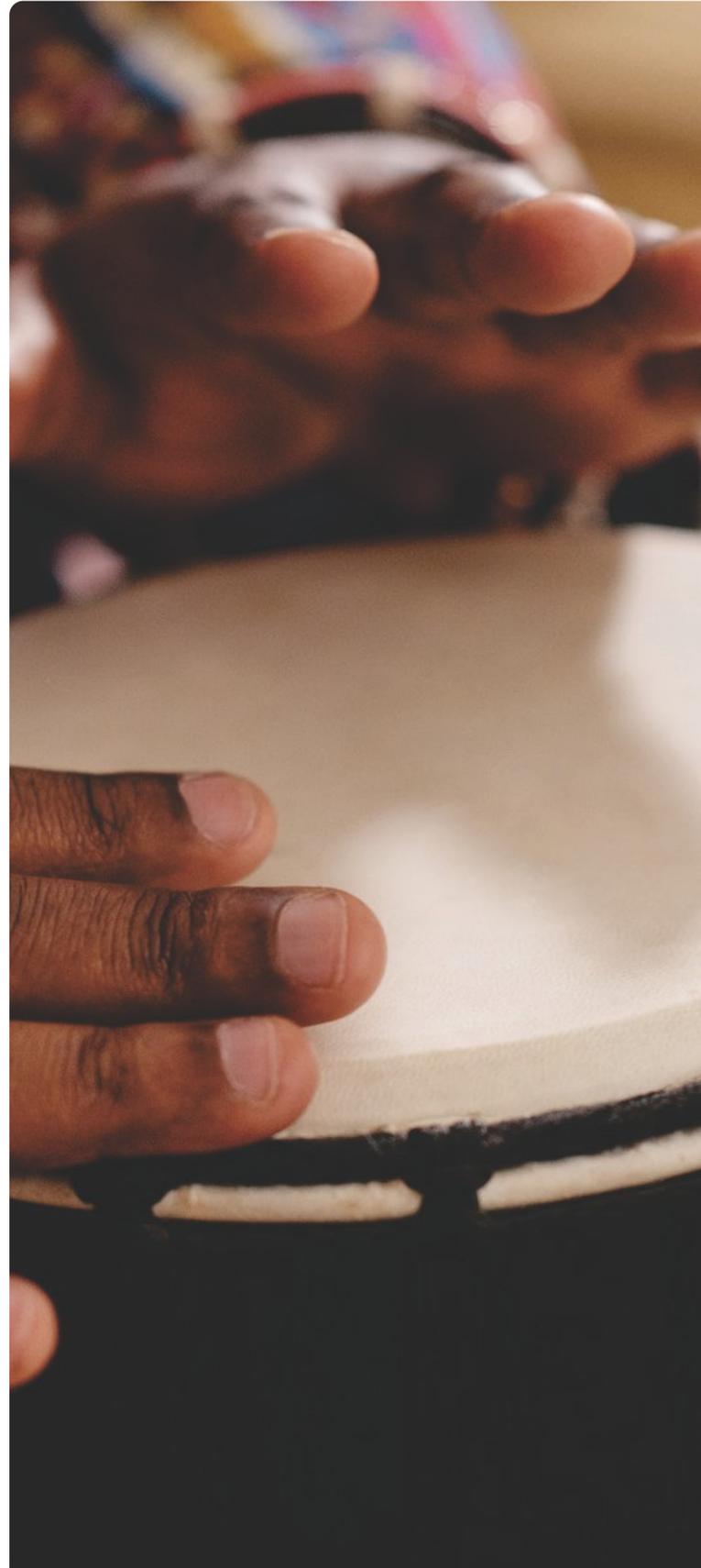
As a remedy, the constitution guards against this by requiring that an Act of Parliament must fix the remuneration and benefits of traditional leaders.

SECTION 7

The paper ends with Section 7 that provides a set of cross-sectional recommendations targeting broader civil society, Parliament of Zimbabwe as the legislative arm of the country and traditional leaders as a sacrosanct institution mandated with maintaining values and customs of the society.

On recommendations for the civil society, the paper encourages CSOs to implement the “training plus horizontal pressure” model, whereby training for traditional leaders is complemented by capacity building of community representatives who can hold traditional leaders accountable and report on their adherence to constitutional requirements. With regards to the parliament of Zimbabwe, the paper posits that parliament should put in place measures to discipline its members who are found to be involved in inducing or coercing traditional leaders to act in a partisan manner in violation of the constitution.

On traditional leaders, the paper recommends that traditional leaders should also demand that the government implement all the necessary legislative reforms to ensure that there is a Traditional Leaders Act which is consistent with the Constitution and that the Integrity and Ethics Committee (IEC) is established and operationalized.





01

INTRODUCTION

1.1. BACKGROUND

A. AN INSTITUTION UNDER SIEGE

A study of Zimbabwe's history reveals that the institution of Traditional Leadership has consistently been under siege. As community gatekeepers, traditional leaders since colonial times have been primary targets of political capture.

“

Historically, an onslaught to co-opt traditional leaders has always preceded the subjugation of communities in Zimbabwe

During the country's recent history, traditional leaders have often been characterised as 'willing enablers' of the ruling party. It has been alleged that the ruling party has captured the institution of Traditional Leadership in Zimbabwe. These allegations have arisen on the back of reports of traditional leaders committing and facilitating the perpetration of politically motivated violence and other electoral malpractices aimed at furthering the interests of ZANU PF.

Mounting reports of traditional leaders being actively involved in vote-buying, coercion and manipulation of the electorate through the partisan distribution of food aid and other malfeasances have cast aspersions on the institution of Traditional Leadership in Zimbabwe.

Consequently, the reputation of the institution of traditional leadership in Zimbabwe has been tainted, leading some to question its continued relevance in contemporary Zimbabwe.

B. RECLAIMING THE INSTITUTION OF TRADITIONAL LEADERSHIP

Local ownership of the institution of Traditional Leadership has been severely eroded, resulting in citizens and civil society organizations (CSOs) virtually surrendering traditional leaders over to the ruling party, normalizing the institution's function as an appendage of ZANU PF.

However, as noted by a recent survey conducted by Afrobarometer,

60%

of Zimbabweans still trust traditional leaders but

72%

are also adamant that traditional leaders should stay out of politics to retain public trust.

The institution of Traditional Leadership remains a national institution belonging to the people of Zimbabwe as a collective and not to any political party. Pre-existing the modern State, Traditional leaders are inextricable from the people's identity as Zimbabweans. Such is the centrality of traditional leaders in the society that the Constitution of Zimbabwe mandates all State and government agencies to respect the dignity of traditional institutions.

This paper transcends the challenges faced by the institution of Traditional Leadership in Zimbabwe to also highlight the critical role traditional leaders can play as a positive force to foster a conducive environment for the free and peaceful exercise of fundamental freedoms including political rights. The paper calls upon Zimbabwean citizens and broad civil society to reclaim ownership over the institution of Traditional Leadership and to guard it jealously against political capture.



Chief Mathema receiving the 2021 State of Peace Report from ZimRights Masvingo Regional Chairperson Ms. Joyce Mhungu.

C. RETHINKING THE ROLE OF TRADITIONAL LEADERSHIP AND POLITICS

Much of what has been written concerning the role of traditional leaders in political processes in Zimbabwe has been based on a problem-solving approach. Tradition leaders are often cast as drivers of political repression and as a problem, which needs fixing. This paper shifts from an accusatory tone, to a reformatory approach to the institution of Traditional Leadership in Zimbabwe.

This does not mean ignoring the role some traditional leaders have played in suppressing the exercise of fundamental freedoms and political rights over the years. Rather, the reformatory approach adopted in this paper starts by acknowledging that traditional leaders are not a homogenous group. In as much as there are some traditional leaders responsible for and complicit in violating human rights as well as fuelling political repression, there are also some who have resisted political capture, fostered political tolerance and engendered peace in their communities.

The realization that traditional leaders in Zimbabwe cannot be painted with the same brush, points to the need to not only discuss how to ensure the discipline of recalcitrant traditional leaders but also how to protect the integrity and independence of the institution of Traditional Leadership and its personnel from abuse. This Policy Brief goes beyond viewing the institution of Traditional Leadership as a problem to be solved, to also integrate traditional leaders as part of the solution to strengthen democracy in Zimbabwe.

1.2. ABOUT THIS

POLICY BRIEF

This Policy Brief focuses on the role of traditional leaders in political affairs in Zimbabwe. It outlines the legal framework that governs Traditional Leadership in Zimbabwe before unpacking the main functions of traditional leaders recognized in terms of the law. Subsequent sections of the paper zero-in on the legal standards that regulate the conduct of traditional leaders with a specific focus on the political neutrality requirement enshrined in the constitution.

A comparative study is also included in this Policy Brief to juxtapose the legal regime that governs the conduct of traditional leaders concerning partisan politics in Zimbabwe with the approach adopted in Zambia, Ghana and South Africa. After highlighting the lessons that can be gleaned from these comparative case studies, the paper discusses the problems associated with the enforcement of ethical standards and protecting traditional leaders from abuse.

Moving beyond exclusively examining the disincentives that dissuade traditional leaders from behaving in a manner that is contrary to the law, the paper also explores the protective measures available to preserve the personal and institutional independence of Tradition Leadership in Zimbabwe. Ultimately, this Policy Brief concludes by identifying areas for policy reform, discussing the contributions traditional leaders can make to support democracy in Zimbabwe and providing a set of multi-stakeholder recommendations.



The main aim of this Policy Brief is to stimulate the formulation of strategies aimed at safeguarding the institution of Traditional Leadership, which is currently under siege. The archetypal image of a traditional leader, which this Policy Brief envisions is captured aptly in the description provided below:

“(He/She) surprised all by keeping aloof and yet (he/she) was close to the people (he/she) led. (He/She) had no friends but loved everybody. (He/she) always worked with respected kraal heads and headmen who formed (his/her) chieftaincy committee, yet this was the very committee that always stood against (his/her) excesses and always ensured that (he/she) acted within the bounds of sanity.”

1.3. LEGAL FRAMEWORK

The main legal instruments that govern the conduct of traditional leaders in Zimbabwe are the 2013 Constitution of Zimbabwe and the Traditional Leaders Act (Chapter 29:17).

There are also other laws, which provide for specialized functions of traditional leaders such as:

- the Customary Law and Local Courts Act (Chapter 7:05),
- Communal Land Act [Chapter 20:04] and
- the Domestic Violence Act [Chapter 5:16].

A. THE CONSTITUTION OF ZIMBABWE

The general law does not create the institution of Traditional Leadership. Instead, it is borne out of customary law, which is the unwritten law drawn from the indigenous customs and practises of the peoples of Zimbabwe. Accordingly, the Constitution of Zimbabwe does not establish the institution of Traditional Leadership but it legally recognizes its existence under customary law.

Chapter 15 of the Constitution of Zimbabwe provides the cardinal legal standards, which govern the role of the institution of Traditional Leadership. Consequently, any other provisions found in subsidiary legislation or policies that are related to traditional leaders, which are contrary to what is stated in Chapter 15 of the Constitution of Zimbabwe are invalid. It is therefore important to note that since the Traditional Leaders Act was enacted before the adoption of the 2013 Constitution of Zimbabwe there is a need to align its

provisions with Chapter 15 of the Constitution of Zimbabwe.

B. THE TRADITIONAL LEADERS ACT

The Traditional Leaders Act defines traditional leaders as Chiefs, Headmen and Village Heads. It provides for the appointment and removal of traditional leaders as well as all other matters related to the functions of traditional leaders in Zimbabwe. As highlighted above, the provisions of the Traditional Leaders Act should be read in a manner consistent with the Constitution of Zimbabwe and provisions in the Act, which violate the Constitution, are invalid and should be amended or repealed accordingly.

C. THE CUSTOMARY LAW AND LOCAL COURTS ACT

The Customary Law and Local Courts Act recognizes the mandate of traditional leaders to interpret, apply and enforce customary law. It also establishes local courts, which are comprised of community courts presided over by chiefs and primary courts presided over by headmen.

This Act also gives authority to traditional leaders to preside over civil cases in which customary law is applicable and outlines the specific factors that need to be in place for the local courts to have jurisdiction to hear a matter.



The main legal instruments that govern the conduct of traditional leaders in Zimbabwe are the 2013 Constitution of Zimbabwe and the Traditional Leaders Act (Chapter 29:17).

02

THE FUNCTIONS OF TRADITIONAL LEADERS

2.1. GENERAL FUNCTIONS

Traditional Leaders in terms of the Constitution of Zimbabwe are recognized as the custodians of cultural values. Accordingly, they are required to promote and uphold traditional and sound family values. Traditional leaders are also mandated to ensure the preservation of historical and cultural heritage sites in their domain. Additionally, traditional leaders also bear the responsibility to facilitate development in their communities.

2.2. ADMINISTRATIVE FUNCTIONS

The Constitution of Zimbabwe also empowers traditional leaders to administer communal land, designated as such in terms of the Communal Land Act. The role of traditional leaders concerning the administration of communal land includes overseeing the lawful occupation and use of the land in an environmentally-friendly manner.

2.3. LEGISLATIVE FUNCTIONS

Traditional leaders are represented in the legislature. The Constitution of Zimbabwe provides that sixteen Chiefs as well as the President and Deputy President of the National Council of Chiefs should be part of the Senate. Consequently, chiefs who are appointed to the Senate contribute to the law-making process by voting for or against Bills introduced for consideration by Parliament.

2.4. DISPUTE RESOLUTION FUNCTIONS

The Constitution of Zimbabwe creates a broad mandate for traditional leaders to resolve disputes in their communities following customary law. Traditional Leaders discharge part of their dispute resolution functions through the local courts provided for in the Customary Law and Local Courts Act. However, beyond adjudicating disputes through local courts, traditional leaders can also play a mediatory role to settle disputes.



03

STANDARDS GOVERNING THE CONDUCT OF TRADITIONAL LEADERS

3.1. ADHERENCE TO TRADITIONAL CUSTOMS

It is a fundamental requirement that traditional leaders should conduct themselves in a manner consistent with traditional customs and values. The normative value of traditional customs as a set of standards that regulate the conduct of traditional leaders, though obvious, is usually underappreciated. Before the enactment of written laws that govern the institution of Traditional Leadership, traditional leaders did not act arbitrarily. Traditional leaders were guided by the moral values, traditions and customs of their people. Therefore, it is worth empathizing that in as much as legal standards are important in regulating how traditional leaders discharge their duties, local customs, which underscore such values as 'hunhu' or 'ubuntu', are also critical in preserving the dignity of the institution of Traditional Leadership.

3.2. FIDELITY TO THE LAW

Even though traditional leaders perform their duties in terms of customary law, they are still bound to comply with the general law. The Constitution of Zimbabwe makes it imperative for traditional leaders to act in compliance with the constitution and other laws of Zimbabwe. Therefore, traditional leaders are also required to uphold all the rights guaranteed in Chapter 4 of the Constitution of Zimbabwe and desist from violating fundamental rights and freedoms.

3.3. FAIRNESS AND NON-DISCRIMINATION

In the discharge of all their duties, traditional leaders are required to "treat all persons within their areas equally and fairly." The Constitution of Zimbabwe sets the standard for the equal treatment of all persons by guaranteeing equality before the law and proscribing discrimination on the grounds of "nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock." Consequently, traditional leaders are required to abide by these standards of fairness and non-discrimination set by the constitution.



04

TRADITIONAL LEADERS AND POLITICS

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Traditional leaders should be governed by the principle of political neutrality.

4.1. THE POLITICAL NEUTRALITY REQUIREMENT

The Constitution of Zimbabwe underscores that traditional leaders should be governed by the principle of political neutrality. The requirement that traditional leaders should be apolitical relates to the very nature of their office and extends to how traditional leaders conduct their work. Chiefs, Headmen and Village Heads are all non-elected officials appointed in line with the prevailing culture, customs, traditions and practices of their communities. Therefore, traditional leaders are not politicians.

Even though the Traditional Leaders Act recognizes that traditional leaders have a right to vote in any national or local government election or referendum, it prohibits them from holding any political office. The Constitution of Zimbabwe also affirms that traditional leaders cannot be members of any political party and are barred by the law from participating in any political party activities.

In addition, traditional leaders are mandated to conduct themselves in a nonpartisan manner and are prohibited from carrying out activities aimed at furthering the interests of any political party. Traditional leaders are required by law to perform their administrative, dispute resolution and legislative functions in a nonpartisan way.

4.2. THE CONFLATION OF NEUTRALITY WITH OPPOSITION POLITICS

In as much as traditional leaders who are co-opted by the ruling party are castigated, there is a tendency to praise those that opt to collaborate with opposition political parties. This conflation of working with opposition political parties and being nonpartisan is counter-progressive. The standards set by the Constitution of Zimbabwe are unequivocal. Traditional leaders are not only barred from being ruling party functionaries but are prohibited from acting in a partisan manner, including serving as members or officials of opposition political parties. However, this does not mean that traditional leaders are gagged from expressing their views concerning developments in their domain. The Constitution and the Traditional Leaders Act empower traditional leaders to facilitate and oversee development in their localities. Therefore, traditional leaders can play a role in advocating for improvements in service delivery in their areas without assuming the role of opposition political party activists in violation of the political neutrality requirement.

4.3. THE PARADOX FACED BY TRADITIONAL LEADERS IN PARLIAMENT

Traditional leaders appointed to join the Parliament as Senators face a paradox. The law requires them to be politically neutral and to desist from acting to advance the interests of any political party. Yet, they are part of the Parliament, a political body, populated by elected political party representatives. Consequently, when Senator-Chiefs “vote alongside a certain political party, [for a Bill in Parliament] they will be effectively breaching the requirement of political neutrality,” This is one of the fault lines that needs to be addressed to ensure that traditional leaders can fully comply with the political neutrality requirement stated in the Constitution of Zimbabwe. One way to resolve this paradox and reconcile section 120 of the Constitution, which includes traditional leaders as part of the Senate, with section 281(2), which requires them to be apolitical, is to make Chiefs ex officio members of the Senate without voting rights.

4.4. POLITICAL BIAS IN THE RHETORIC AND ACTIONS OF TRADITIONAL LEADERS

During the Annual Conference of the Council of Chiefs held on 13 January 2018 and another occasion on the 28th of October 2017, Chief Charumbira, the President of the National Council of Chief, made remarks to the effect that traditional leaders had always supported and should continue to support

ZANU (PF) in the 2018 elections. The High Court ruled that Chief Charumbira’s remarks were in contravention of the political neutrality requirement stated in section 281(2) of the Constitution of Zimbabwe and sections 45 and 46 of the Traditional Leaders Act. Despite the High Court's order for Chief Charumbira to retract his statements, he has not done so.

The Zimbabwe Human Rights Commission (ZHRC) has also reported on cases of traditional leaders, particularly Village Heads spearheading the partisan distribution of food aid, and serving as ruling party functionaries to mobilise people for ZANU PF meetings and rallies. There also seems to be a consistent practice that predates the 2013 Constitution of co-opting village heads to serve simultaneously as Chairpersons of “Cells”, which are the basic structural unit of the ruling party.

The cases sampled above, all seem to point to the political capture of the institution of traditional leadership in Zimbabwe. It has been reported that ruling party officials have on several occasions threatened traditional leaders to desist from criticizing the government and instructed them to campaign for ZANU PF.

Attempts to be apolitical or to criticize the government has attracted the wrath of the ruling party, which through government structures has instigated the removal of chiefs deemed to be disloyal to the ruling party. Faced with ever-mounting political pressure, the institution of Traditional Leadership in Zimbabwe is under siege.



Traditional leaders are not only barred from being ruling party functionaries but are prohibited from acting in a partisan manner, including serving as members or officials of opposition political parties.

4.5. APPROACHES OF OTHER AFRICAN COUNTRIES



A. ZAMBIA

Article 168 of the Constitution of Zambia provides that a chief can hold public office but in order to participate as a candidate in elections or assume any political roles, such a chief has to vacate their office as a traditional leader. By interpretation, chiefs are effectively prohibited from joining or participating in partisan politics in Zambia. The Electoral Code of Conduct in Zambia also bars traditional leaders from employing means of “threats, violence or sanction, [to] coerce or intimidate another person during campaigns, public debates or elections.” It also mandates the Electoral Commission of Zambia to monitor and ensure that traditional leaders do not “exert undue influence on their subjects to support a particular political party or candidate.”

The Zimbabwe Electoral Commission (ZEC) should learn from the Electoral Commission of Zambia, which has taken it upon itself to ensure that traditional leaders do not abuse their office to coerce and intimidate the electorate.



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Chiefs are effectively prohibited from joining or participating in partisan politics in Zambia.

B. GHANA

Article 276 (1) of the Constitution of Ghana also bars traditional leaders from active party politics. However, it allows chiefs to be appointed to other public offices, which are not necessarily political. A traditional leader who decides to enter into the political arena in Ghana is required to abdicate their position. Notwithstanding, it has been observed that traditional leaders in Ghana have meddled in politics by making political endorsements of party candidates, a practice that violates the spirit of the Constitution of Ghana. Concerns have been raised that this practice damages the reputation of traditional leaders and ultimately hampers their ability to properly discharge their duties.

Traditional leaders in Zimbabwe should learn from the Ghanaian case study that it is imperative for them not only to avoid joining political parties but also to avoid making political pronouncements to endorse candidates of political parties. Traditional leaders are allowed by the constitution to vote during elections but they should not openly disclose their political preferences and desist from campaigning in support of political parties through political endorsements and other means.

C. SOUTH AFRICA

South Africa has a different approach to the role of traditional leaders in political affairs, which seems to be a departure from the political neutrality requirement that prevails in Zimbabwe, Zambia and Ghana. Chapter 12 of the Constitution of South Africa, which recognises the institution of Traditional Leadership in South Africa, is silent concerning the participation of traditional leaders in partisan politics. Similarly, the Code of Conduct for Traditional Leaders provided in the Traditional Leadership and Governance Framework Amendment Act does not limit their participation in active politics. However, the law



A traditional leader who decides to enter into the political arena in Ghana is required to abdicate their position.



prohibits the use of the Traditional Council and National House of Traditional Leaders as well as the resources of these two bodies from being used to promote or prejudice the interest of any political party. Since traditional leaders in South Africa are not barred from engaging in partisan politics, some of them serve concurrently as Members of Parliament and hold substantive positions in political parties. Traditional leaders in South Africa have also openly expressed their political preferences and divulged their political affiliations. However, it has been noted that despite being involved in partisan politics, traditional leaders in South Africa have still managed to allow different political parties access to their areas and mobilized the electorate to vote freely during elections.

Despite the impression created that, traditional leaders in South Africa have managed to balance their political affiliations with their constitutional mandate to treat all persons fairly and without discrimination; the South African model has its flaws. Research has demonstrated that most traditional leaders in South Africa tend to be more aligned with the ruling party, the African National Congress (ANC) than with the opposition. Therefore, allowing traditional leaders to be openly politically active can lead to collusive behaviour, with traditional leaders being co-opted to serve as agents of the ruling regime.

The approach adopted in South Africa is incompatible with the political neutrality requirement enshrined in the Constitution of Zimbabwe. Accordingly, traditional leaders in Zimbabwe cannot emulate their South African counterparts by openly holding political positions. Nonetheless, traditional leaders in Zimbabwe can learn from how their peers in South Africa, despite their political inclinations allow all political parties to campaign freely in their areas. Traditional leaders in Zimbabwe should view elections as part of community development and should play a facilitator role to mobilize citizens to freely participate in electoral processes.



Chapter 12 of the Constitution of South Africa is silent concerning the Traditional Leadership in partisan politics.



05

ENFORCEMENT AND PROTECTION MECHANISMS

5.1. THE PROBLEM OF ENFORCEMENT AND PROTECTION



Politicians leading government, have benefitted from the political captures and manipulation of the institution of Traditional Leadership.

The dominant view is that traditional leaders have been co-opted into partisan politics in Zimbabwe, because of the problems associated with enforcing the political neutrality requirement stated in the Constitution of Zimbabwe. Politicians leading government, who are supposed to ensure that traditional leaders maintain their political neutrality, have benefitted from the political capture and manipulation of the institution of Traditional Leadership. This view casts traditional leaders as ‘willing collaborators’ deriving benefits from their political co-optation. Reports of Chiefs receiving benefits such as brand-new off-road vehicles have reinforced this perspective of traditional leaders as ‘willing collaborators’ and beneficiaries of this system of political patronage.

However, the problem of enforcement alone presents a partial and oversimplified explanation of why so many

traditional leaders have been captured to further the political interests of the ruling party. Accompanying the rewards given, as 'carrots' to compliant traditional leaders are threats of removal from office and withdrawal of benefits, which serve as 'sticks' to whip traditional leaders into line. Therefore, to generalize that traditional leaders in Zimbabwe are voluntary appendages of the ruling party is not only wrong but also defeatist. There is a need for enforcement measures to ensure that traditional leaders who violate the political neutrality requirement are held accountable. To complement this, protective measures are required to shield traditional leaders from the pressures placed on them by politicians through duress, inducement, intimidation and other forms of pressure.

5.2. INTEGRITY AND ETHICS COMMITTEE

The main mechanism provided by the Constitution of Zimbabwe to ensure that traditional leaders abide by their ethical standards, including the political neutrality requirement, is the Integrity and Ethics Committee (IEC). The mandate of the IEC entails resolving disputes between traditional leaders and addressing complaints brought to it against traditional leaders. More details concerning the operations of the IEC have to be articulated through an Act of Parliament. However, it is apparent from the constitutional provisions that the IEC has to have an individual complaint handling procedure, which allows citizens to register complaints

concerning the conduct of traditional leaders. Furthermore, the Act that will establish the IEC needs to equip it with all necessary powers to investigate, discipline offending traditional leaders and provide adequate redress to aggrieved citizens. The Act which establishes the IEC has not yet been enacted by parliament.

5.3. NATIONAL COUNCIL AND PROVINCIAL ASSEMBLIES OF CHIEFS

The National Council and Provincial Assemblies of Chiefs are two distinct bodies provided in the Constitution of Zimbabwe, which primarily represent the interests of traditional leaders at the provincial and national levels. However, the Constitution also mandates the National Council of Chiefs and Provincial Assemblies of Chiefs to "define and enforce correct and ethical conduct on the part of traditional leaders."

The National Council of Chiefs and Provincial Assemblies of Chiefs also play an instrumental role in the appointment, removal and suspension of Chiefs by recommending to the President appropriate action to be taken. Consequently, the immense powers given to the National Council of Chiefs and Provincial Assemblies of Chiefs make these two bodies critical in enforcing political neutrality among its members.

The main caveat is that for these bodies to enforce compliance with the political neutrality requirement, they also need to be a political.



The Constitution provides that an Act of Parliament should provide measures to protect traditional institutions.

5.4. INSTITUTIONAL INDEPENDENCE GUARANTEES

The Traditional Leaders Act in its current state does not conform to the parameters set for the National Council of Chiefs and Provincial Assemblies of Chiefs in the Constitution of Zimbabwe. The constitution is cognizant of the centrality of the National Council of Chiefs and Provincial Assemblies of Chiefs in regulating the conduct of traditional leaders, and the risk posed by the political capture of these two bodies.

Accordingly, the Constitution provides that an Act of Parliament should provide measures to protect traditional institutions, which include the IEC, the National Council of Chiefs and Provincial Assemblies of Chiefs from political interference. It also takes away the discretion granted to the Minister responsible for the affairs of traditional leaders by the Traditional Leaders Act, to determine the number of Chiefs each province can elect to the National Council of Chiefs. Instead, the constitution guarantees that each province should be equally represented in the National Council of Chiefs.

Furthermore, the Constitution also introduces some measures to guide against political interference in the appointment of Chiefs to the National Council of Chiefs by requiring the Zimbabwe Electoral Commission (ZEC) to conduct the elections for the President, Deputy President and members of the National Council of Chiefs. The assumption is that ZEC will abide by its constitutional mandate to be politically neutral and conduct these elections in an apolitical and fair manner.

5.5. PERSONAL INDEPENDENCE GUARANTEES

As discussed above, one of the primary ways in which traditional leaders have been co-opted into partisan politics has been through benefits awarded to them based on political patronage. The constitution guards against this by requiring that an Act of Parliament must fix the remuneration and benefits of traditional leaders. This is meant to ensure that wages and benefits are given uniformly to all traditional leaders and that they are not manipulated to serve as political tools to reward compliance and punish resistance to the whims of political actors in government.

In the absence of a revised Traditional Leaders Act, which complies with the Constitution of Zimbabwe, disbursement of such benefits as motor vehicles to Chiefs has become highly politicized. Objections raised by civil society organisations (CSOs), opposition political parties and other commentators to what they deem to be extravagant spending on chiefs, have only reinforced the perception that these benefits are being given out of the benevolence of the President. In return, traditional leaders are faced with the compulsion to demonstrate loyalty to their benefactor by furthering the interests of the ruling party.

In addition, the Constitution of Zimbabwe utilizes the National Council of Chiefs and Provincial Assemblies of Chiefs as safeguards to limit the seemingly unfettered powers given to the President and the Minister in the

Traditional Leaders Act to decide on the suspension and removal of traditional leaders. Not only is the President required to act on recommendations made by the National Council of Chiefs and Provincial Assemblies of Chiefs but the Constitution explicitly mandates parliament to include measures aimed at ensuring that all decisions concerning the appointment, removal and suspension of traditional leaders are made fairly and not based on political considerations.

5.6. SANCTIONS FOR INTERFERING WITH THE POLITICAL NEUTRALITY OF TRADITIONAL LEADERS

The current Traditional Leaders Act, states that it is a criminal offence for any person to obstruct, hinder or interfere with traditional leaders in the discharge of their duties. In line with the constitutional requirement that parliament should enact a law which protects traditional leaders from political manipulation, it is imperative to broaden the interpretation of this criminal offence. Interference with the work of traditional leaders should also be construed to include threats, intimidation, blackmail and inducement aimed at making traditional leaders act in a partisan manner in contravention of the political neutrality requirement provided in the Constitution of Zimbabwe. The Zimbabwe Republic Police (ZRP) should enforce this law and stiff penalties ought to be meted on offenders to dissuade politicians from exerting undue pressure on traditional leaders.



06

CONCLUSION

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Constitutional provisions alone are inadequate in regulating the daily operations of traditional leaders.

6.1. THE NEED FOR LEGISLATIVE REFORM

The Constitution of Zimbabwe entrenches the requirement that traditional leaders should be politically neutral, provides for measures to guarantee the institutional and personal independence of traditional leaders and establishes enforcement and protective mechanisms such as the IEC, National Council of Chiefs and Provincial Assemblies of Chiefs.

However, constitutional provisions alone are inadequate in regulating the daily operations of traditional leaders. Accordingly, the Parliament of Zimbabwe should discharge its mandate as required by the Constitution to enact a law that gives effect to all the constitutional provisions relating to traditional leaders. Some of the legislative reforms required to give effect to Chapter 15 of the Constitution of Zimbabwe include the following:

- Section 281 of the constitution requires the Traditional Leaders Act to be repealed and be replaced by a new Traditional Leaders Act, which encompasses principles in section 281.

- Section 282 of the constitution requires the Communal Lands Act to be amended and to specifically confer jurisdiction to traditional leaders to administer communal land. The Act should provide for obligations of traditional leaders to protect the environment.

- Section 283 of the constitution requires an Act of parliament to provide for appointment of traditional leaders. Revise Minister's role and president's role in the appointment traditional leaders. The new Act has to deal with all matters directed by section 283.

- Section 284 of the constitution requires the Traditional Leaders Act to provide for conditions of service of Traditional leaders, provision for pensions of dependants, survivors and spouses of traditional leaders.

- Section 285 of the constitution requires an Act to provide for the structure of National Chiefs Council. Electoral Act to be amended to include election of chiefs representatives. Act to deal with remunerations election of the Chief's Council. Section 285 establishes functions and powers of provincial Assembly and these must all be in the new Act.

- Section 287 of the constitution requires an Act to Provide for the establishment of the Integrity and Ethics Committee of Chiefs. Section 287 establishes powers and structure of an Integrity and Ethics Committee to be in the new Act. There is need for rules of procedure for this committee.

6.2. THE NEED FOR BEHAVIOURAL CHANGE

The problem of traditional leaders being co-opted into partisan politics is not only due to policy deficiencies but also because of the normalization of the affinity of traditional leaders to ZANU PF. CSOs, though well-intentioned, have in most cases been content with conceding that the institution of Traditional Leadership in Zimbabwe has been captured by the ruling party.

Ruling party officials in government have through their rhetoric demonstrated a sense of entitlement that traditional leaders are mandated to further their party's interests. By conflating national interests with political party interests, patriotism with loyalty to ZANU PF, the National Council of Chiefs and Provincial Assemblies of Chiefs, bodies meant to represent the interests of traditional leaders, have instead enforced compliance of traditional leaders with the dictates of the ruling party.

Accordingly, behavioural change is needed to complement the wholesale legislative reform required to align the Traditional Leaders Act with the Constitution of Zimbabwe. CSOs should foster national ownership of the institution of Traditional Leadership and mobilize citizens to demand that traditional leaders play their role and discharge their functions as stated in the Constitution of Zimbabwe.

All political parties must respect the integrity of the institution of Traditional Leadership as required by the constitution and desist from co-opting traditional leaders into their ranks. Traditional leaders should recognize that their institution is under siege. Their continued existence and relevance is at stake. They should individually and as a collective work towards preserving their political neutrality, which is a quintessential aspect of the integrity of their institution.



"Traditional Leaders have an important role to play in building sustainable peace in Zimbabwe." ZimRights Vice National Chairperson Mr. Themba Chiveya addressing the Right to Peace Dialogue Series in Bulawayo.

6.3. POTENTIAL CONTRIBUTIONS OF TRADITIONAL LEADERS TO FOSTERING DEMOCRACY IN ZIMBABWE



A. FOSTERING A CONDUCTIVE ENVIRONMENT FOR THE FREE EXERCISE OF POLITICAL RIGHTS

Traditional leaders in Zimbabwe can play a vital role in promoting social cohesion and political tolerance in their communities. By being politically neutral and by treating every person in their communities equally and fairly as required by the constitution, traditional leaders can generate and retain the trust and respect of their people. As highly esteemed community leaders, Chiefs, Headmen and Village Heads can therefore engender peace and promote the peaceful and free exercise of fundamental freedoms. The potential of traditional leaders to serve as arbiters of justice and peace is lost if civic trust is eroded due to partisan conduct or bias.

B. RESOLVING POLITICAL DISPUTES AND FACILITATING NATIONAL HEALING

The dispute resolution functions of traditional leaders are recognized by the constitution. The neutrality of traditional leaders potentially allows them to assume a mediatory role to assist in resolving political disputes both at the local and national levels. Therefore, there is potential for the institution of Traditional Leadership to assist the National Peace and Reconciliation Commission (NPRC) in its work to facilitate dialogue among political parties aimed at preventing or resolving political conflicts.

The NPRC also affirms that traditional ceremonies are a form of remedial action aimed at facilitating national healing. Therefore, traditional leaders as custodians of the people's traditions and customs are also integral to the NPRC's efforts to facilitate national healing and reconciliation in the aftermath of political conflicts.

C. PROMOTING SOCIAL ACCOUNTABILITY

Traditional leaders do not need to be co-opted into opposition political parties for them to be critical of the government. Instead, drawing upon their constitutional mandate to facilitate development in their areas, traditional leaders have the potential to promote social accountability in their communities by demanding improvements in service delivery and holding government authorities accountable concerning the provision of socio-economic amenities.

D. BUILDING COMMUNITY RESILIENCE AGAINST POLITICALLY MOTIVATED VIOLENCE

Traditional leaders are fundamental to efforts to build the capacity of communities to be able to resist instigators of politically motivated violence. Research has shown that areas in which the traditional leaders had been politically captured experienced high levels of electoral violence. Contrarily, communities that managed to withstand attempts by political parties to foment violence had traditional leaders who refused to be co-opted into partisan politics.

Accordingly, by remaining politically neutral, traditional leaders can mobilize their communities to participate in political processes peacefully and to resist political polarization that culminates in violence.



Traditional leaders as custodians of the people's traditions and customs are also integral to the NPRC's efforts to facilitate national healing and reconciliation in the aftermath of political conflicts.

07

RECOMMENDATIONS

7.1. CIVIL SOCIETY

i. CSOs should motivate citizens to reclaim the institution of Traditional Leadership and to hold it accountable by conducting awareness-raising campaigns aimed at informing citizens of the constitutional mandate of traditional leaders.

ii. CSOs should train traditional leaders on their mandate, duties and the constitutional principles that govern their conduct as well as the available avenues through which traditional leaders can register complaints against political interference in their work.

iii. CSOs should implement the “training plus horizontal pressure” model, whereby training for traditional leaders is complemented by capacity building of community representatives who can hold traditional leaders accountable and report on their adherence to constitutional requirements.

iv. CSOs must amplify efforts to name and shame traditional leaders complicit in the violation of political rights and involved in partisan politics, including those who assume roles in opposition political parties.

v. CSOs should continue to agitate through the various lobby and advocacy channels, including litigation, for the Parliament of Zimbabwe to repeal the current Traditional Leaders Act and enact a new Act to govern traditional leaders that fully complies with and gives effect to the spirit and letter of Chapter 15 of the Constitution of Zimbabwe.

vi. CSOs should advocate for the establishment and operationalization of the Integrity and Ethics Committee (IEC).



vii. CSOs should create civil society-led case handling and referral networks to receive complaints from citizens concerning the conduct of traditional leaders and litigate to challenge any rhetoric or actions that violate constitutional standards.

viii. CSOs also need to establish safe channels through which traditional leaders can confidentially inform civil society reaction teams of threats, intimidation, inducement and any other forms of political coercion.

ix. CSOs should engage with the Zimbabwe Electoral Commission (ZEC) to ensure that a clause is introduced in the Electoral Code of Conduct for Political Parties and Candidates that bars political parties from recruiting traditional leaders as party officials and traditional leaders from organizing or implementing any partisan activities.

x. CSOs must put pressure on the Zimbabwe Republic Police to arrest and bring before the courts individuals accused of interfering with the work of traditional leaders including politicians who threaten and intimidate traditional leaders.

xi. CSOs can lobby the National Council of Chiefs to develop Rules of Conduct in terms of section 286(1)(e) of the Constitution of Zimbabwe and enforce these internal rules as a means of ensuring that traditional leaders do not violate the standards set in the constitution.

7.2. THE PARLIAMENT OF ZIMBABWE

i. Parliament must draft and enact a new Traditional Leaders Act or introduce a Bill to amend the current one to align it with the provisions of Chapter 15 of the Constitution.

ii. Parliament should also amend all other laws that relate to traditional leaders such as the Customary Law Courts Act, Communal Lands Act and Electoral Act to ensure they are all consistent with the constitution.

iii. Parliament should also exercise oversight over the remuneration and benefits awarded to traditional leaders and ensure that these are fixed by law and are not unilaterally determined and dispensed by the President or Minister responsible for the affairs of traditional leaders.

iv. Parliament must also ensure that the process of distributing benefits to traditional leaders is not politicized but is undertaken as a matter of law, uniformly and in an apolitical manner.

v. Parliament should put in place measures to discipline its members who are found to be involved in inducing or coercing traditional leaders to act in a partisan manner in violation of the constitution.



7.3. TRADITIONAL LEADERS

i. Traditional leaders must comply with the standards set in Chapter 15 of the Constitution and desist from making oral statements that may be construed as partisan, participating in political rallies and events as well as conducting their work in a manner that is based on any form of bias or discrimination.

ii. Traditional leaders should push for reforms in the National Council of Chiefs and provincial assemblies of Chiefs to ensure that these bodies adequately represent the interests of traditional leaders and protects the institution of Traditional Leadership from political capture.

iii. Traditional leaders must report to the police, publicize and expose all cases of intimidation

or coercion aimed at subverting their political neutrality.

iv. Senators-Chiefs should not vote in parliament along partisan lines but be guided by their constitutional mandate to facilitate development in their communities and the nation.

v. Traditional leaders should also demand that the government implement all the necessary legislative reforms to ensure that there is a Traditional Leaders Act which is consistent with the constitution and that the Integrity and Ethics Committee (IEC) is established and operationalized.

The legitimacy, control and influence of traditional leaders especially in rural areas remain widespread demonstrating remarkable resilience, despite facing various threats. Successive governments in both colonial and independent Zimbabwe have sought to maximise this strength for their respective narrow political interests.

Traditional leaders in Zimbabwe have been always willing enablers to the ruling party in all aspects, by design, default and coercion. While the Constitution of Zimbabwe 2013 made a distinct departure in making clear provisions as to their role, practice has continued to be opposite and defiant.

All these controversies, conflicts and complexities raise questions about the role and relevance of the institution of traditional leadership in Zimbabwe which this paper has vociferously explained. In principle, traditional leaders should not be drawn into party politics and their role should remain one of the neutral leadership.



Traditional leaders should push for reforms in the National Council of Chiefs and provincial assemblies of Chiefs to ensure that these bodies adequately represent the interests of traditional leaders and protects the institution of Traditional Leadership from political capture.



ABOUT THIS POLICY BRIEF

This Policy Brief focuses on the role of traditional leaders in political affairs in Zimbabwe. It outlines the legal framework that governs Traditional Leadership in Zimbabwe before unpacking the main functions of traditional leaders recognized in terms of the law. Subsequent sections of the paper zero-in on the legal standards that regulate the conduct of traditional leaders with a specific focus on the political neutrality requirement enshrined in the constitution.

A comparative study is also included in this Policy Brief to juxtapose the legal regime that governs the conduct of traditional leaders concerning partisan politics in Zimbabwe with the approach adopted in Zambia, Ghana and South Africa. After highlighting the lessons that can be gleaned from these comparative case studies, the paper discusses the problems associated with the enforcement of ethical standards and protecting traditional leaders from abuse.

ABOUT ZIMRIGHTS

The Zimbabwe Human Rights Association (ZimRights) is an indigenous non-profit, non-governmental organisation registered under the Private Voluntary Organisation Act. It was formed in 1992 and registered in 1993 for the sole purpose of insuring that Zimbabweans are ensured of their rights as citizens and are equipped and empowered with the knowledge to defend their rights.



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