



POSITION PAPER

Role of Traditional Leaders in Elections and Electoral Processes in Zimbabwe

Executive summary

This paper on the role of traditional leaders in elections and electoral processes in Zimbabwe depicts a picture of a traditional authority whose existence is held in tension between the citizen expectations for it to be a neutral vanguard of the traditions, customs and community development on the one hand and, the ruling elite's demands for it to be loyal and serve the interest of the incumbent party. Despite this, and notwithstanding the political polarisation prevailing in Zimbabwe, the paper shows that there is a consensus in the literature on the institution of traditional leaders regarding its centrality to development at the local government level.

In sharp contrast, there is a general opposition to the involvement of traditional leaders in elections and electoral processes. The Constitution is used as the point of reference and authority in this regard owing to its unequivocal provisions that bar traditional leaders from playing any role in elections.

The fault lines in the traditional leaders' interference in elections and electoral processes despite the constitution and subsidiary laws prohibiting it are to be found in the history-long relationship between the traditional leaders and political elite both during colonial period and in the post-independence era. The colonial powers used to manipulate traditional institutions and using an indirect rule system, they interfered with traditional institution rewarding obedience while also severely punishing dissent.

For instance, colonial masters created very powerful parallel chiefdoms undermining the legitimate ones who were not complying with their plan to rule over the African population. Through these parallel chiefly structures, the colonialists had a solid powerbase on which their authority rested. Similarly, the post-independence political elite have dependent on traditional leaders for mobilisation of electoral support.

In Zimbabwe traditional leaders have been accused of influencing communities under their rule to vote for the ruling party. These accusations were substantiated by a call by the highest traditional leaders' structure, the Chiefs Council declaration of support to the ruling ZANU PF and its presidential candidate ahead of the 2018 harmonised elections (mail and Guardian 2018).

Just like in colonial times, evidence points to the fact that in Zimbabwe dissent has been punished therefore compelling traditional leaders to toe the line. As a result, there is a perception that the entire traditional institution is pro-the ruling party.

This paper introduces the notion of "competing principals dilemma" where the institution of traditional leaders is unable to resist its co-option points ending up having to simultaneously serve the interests of the political authority and on the other hand to of the people.

Using the example of the traditional leaders in South Africa, the paper has highlighted a lesson that Zimbabwe could extract which is that during elections, their job is to support the electoral process as a national programme that is not an end in and of itself but a means to a developmental end. They must make their areas of jurisdiction accessible to all aspirant parties and candidates.

The paper concludes that the constitutional and institutional frameworks in Zimbabwe make sufficient provisions that clearly prohibit traditional leaders from partaking in elections and electoral processes to advance the interest of any political party or candidate.

They must make their areas of jurisdiction accessible to all aspirant parties and candidates.

What is problematic is enforcement because the political elite who are supposed to ensure enforcement are beneficiaries of the status quo. On the other hand, traditional leaders are willing collaborators because they benefit from the political patronage. In order to address some of the challenges regarding the involvement of traditional leaders in elections and electoral processes, the paper ends with the following recommendations:

- Traditional leaders must promote social cohesion and refrain from getting involved in their capacities in any active role in elections and electoral processes;
- Traditional leaders must not accept any directive that demands them to unduly influence citizens under their jurisdiction to exercise their constitutional right to election leaders of their choice;

- Related to the above recommendation, it is recommended that Section 49 of the Traditional Leaders Act 1998 be accordingly amended to prevent possible political abuse;
- The Electoral Act 2018 must be amended to ensure that it makes explicit provisions on the role of traditional leaders and the Code of Conduct in the Act has to be revised to have specific clauses on prohibited conduct pertaining to traditional leaders;
- Parliament and Government of Zimbabwe must ensure that all citizens enjoy fundamental freedoms and human rights, including freedom of association, assembly and expression in line with the SADC Principles Guiding Democratic Elections;

Introduction

The traditional institutions in Africa have been a subject of academic scrutiny regarding their role and influence in elections and electoral processes. To understand why traditional leaders are often closer to controversy surrounding electoral competition, a flashback on how they have evolved and endured the colonial and post-colonial dispensations is critical. Literature shows that traditional institutions have evolved over time and encountered colonialism, military and post-independence regimes that have not only manipulated but at times coerced the institutions to support their ends (von Trotha 1996:90; Economic Commission for Africa 2009:152).

Indeed, in countries such as Uganda traditional institutions such as the Baganda were abolished for not complying with the demands of the political elite (Mutibwa 2008:85). The manipulation and the strict legal and extra-legal controls of the traditional institutions continue in most African Countries today in areas of development and electoral processes. This has in most cases pitted the institutions against the people especially those who are on the opposing site of the political divide. Traditional leaders have as a result borne the brunt of people's frustrations and are at times accused of being the extensions of the ruling elite or collaborators. Zimbabwe is no exception to this reality where electoral politics and politics of development have led to questions being raised about relevance of traditional institutions to democracy.

The fixation of scholars on this question in the context of Africa needs more analysis which is beyond the scope of this paper. Safe to concur with Lipset and Diamond (1995:748) who aptly note that this is an irony of comparative politics because contrary to popular perception that traditional institutions are archaic and undemocratic,

the European experience has shown us that some of the world's longest-standing democracies are monarchies.

The literature on traditional institutions in Zimbabwe is in unison regarding the importance of the institutions in community development and local governance. Similarly, the literature is critical on the perceived sympathetic posture of the traditional institution towards the ruling party (See: Sachikonye et al 2007; Sachikonye 2012; Augustine 2016; Chiwata 2016; Happwell Musarandega, Wisemen Chingombe, Rajendran Pillay 2018). This is more so regarding the involvement of the traditional institution in arguably the most ferocious power-jostling between the ruling Zimbabwe African Union Patriotic Front (ZANU-PF) and the opposition Movement for Democratic Change from the early to the late 2000's.

This paper looks at the role of traditional institutions in electoral processes in Zimbabwe. For purposes of this paper, traditional institutions are defined as indigenous institutions of governance including chieftaincies and kingships. Therefore, the depth and breath of this paper assumes that the traditional institutions are a critical part of the governance institutions in modern Zimbabwe.

They must perform the coordinative, developmental and other functions as stipulated in the constitution and subsidiary laws and should never allow itself to serve a mobilisation function for any political party programme especially during elections. The paper is organised into six sections. This introductory is followed by the statement on the problem that the paper is addressing. The third section is the legal framework followed by key considerations from other contexts. The fifth section extracts lessons for Zimbabwe before the conclusion and recommendations sections.

Statement of the Problem

There have been questions raised on the role of traditional leaders in electoral processes in Zimbabwe. A preponderant view is that they covertly and overtly mobilise the voters in support of ZANU PF and at times intimidating their subjects who are known or suspected to support opposition parties. The SADC Electoral Observation Mission (SEOM) noted in its preliminary statement during the 2018 elections that while the constitution of Zimbabwe prohibits traditional leaders from furthering the interests of any political party, some stakeholders cited traditional leaders as "...using their influence to intimidate or coerce the rural population into supporting the ruling party"¹.

They told the COG that "their support of political parties is issue-based and non-partisan."

The Zimbabwe Human Rights Commission (ZHRC) has also reported that it received a total of 46 complaints from Marange, Bocha, Mutasa, Chipinge, Zaka, Bikita, Gutu, Gokwe, Buhera, Marondera and Glen View on allegations of forced collection and recording of voter registration slip serial numbers. The Commission reports that:

Investigations were conducted in these areas and findings confirmed that citizens were forced to supply serial numbers of their voter registration slips. The perpetrators were identified as Zimbabwe African National Union - Patriotic Front (ZANU PF) political party members and Traditional Leaders (ZHRC 2018:21).

The ZHRC further reported an incident where a Chief from Ward 19, Rushinga Constituency in Mashonaland Central distributed Presidential inputs based on a beneficiary list that was skewed in favour of the ruling party because the beneficiaries were people wearing ZANU-PF regalia. The ZHRC reported the matter to the police for further investigations and provides no further update on the matter except that the police had averred that the concerned chief is difficult to deal with as similar accusations have been made against him in the past but he defies orders. The ZHRC concludes that the allegations against the traditional leaders during the run up to the 2018 harmonised elections are of a magnitude that warrants their removal because they are in contravention of Section 281 (c) (i) of the Constitution.

The ZHRC however suggests in the same report that traditional leaders are between a rock and a hard place noting that there is a problem of inadequate protection of traditional Leaders from political parties' manipulation. The problem of traditional leaders' involvement in elections and electoral processes cannot be understood from an ahistorical perspective. The provenance of the patron-client relations between traditional leaders and the political authorities goes back to the times when colonial powers used to manipulate traditional institutions.

For instance, McClendon (2004:339) tells us that in the early to mid-1800s in South Africa, Theophilus Shepstone created very powerful parallel chiefdoms in Natal undermining the legitimate ones who were not complying with his ambitious plan to rule over a section of the African population as a chief alongside the Natal authority. As Marsh (2003:15) also reminds us, in Mozambique, the Portuguese colonial authority set up new chieftaincy structures ("regulos") over and above the existing structures. Lambert (1995:275) aptly notes that with this support, the colonial authorities took full advantages throughout Africa. Without a chieftaincy powerbase, their authority rested on the support of the administration rather than that of the people of their chiefdoms. Therefore, their dependence and usefulness were accordingly far greater making them an important basis of support throughout the colonies.

A similar case can be made in the post-independence Zimbabwe where chiefs are found closely linked to the political elite and serving the interests of the latter. This is more so where there is also a shared liberation history between the traditional leaders and those holding political power. For some majority of traditional leaders in Zimbabwe, elections are a new form of struggle and it is hard to fathom why they get immersed in it alongside their "comrades". The case where the President of the Chiefs Council was charged and convicted of violating the constitution by calling on traditional leaders to support the ruling ZANU PF and its presidential candidate (Court Ruling HH 270-18, HC 1718/18) [2018] ZWHHC 270 (23 May 2018) substantiates this point. In defence of their position, the president of the Chiefs Council told the Commonwealth Observer Group (COG) in July 2018 that they believe that good governance dictates that they be involved in voter education and public awareness about the need to vote.

They told the COG that "their support of political parties is issue-based and non-partisan."

¹ See SADC Electoral Observation Mission 2018 report.

They informed the Group, however, that the perception of their alignment with the governing party is because of that party's position in relation to the re-acquisition of land, which is the pillar of existence of their people, and they would support any party that supports the re-acquisition of land as part of their campaign platform".

The position taken by the Chiefs Council is part of the problem because the President of the Chiefs Council has not explained exactly how this support would be rendered. And, given that there is no one party that has the monopoly over the land question, it is now clear what the exact measure is used by the Chiefs Council to determine which of the parties that make pronouncements on land in their manifestos deserve their support. This is more so because not all traditional leaders are necessarily at liberty to support any other political party as the Chiefs Council claimed in their brief to the COG. As was the case during colonialism, the traditional leaders who display resistance to the domination of the

political authority are severely punished. The ongoing tension between Chief Nhlamhlayamangwe Ndiweni of Ntabazinduna over land distribution is a case in point². If the Council of Chiefs alleged support to political parties based on issues holds water, it would be expected that if any political party seemed to interfere with the interests of traditional leaders especially on land as it turns out to be in the case of Chief Ndiweni, then the same Council of Chiefs would speak in one voice to ensure that this does not happen.

Therefore, the problem being underscored by this paper is that the traditional institution's inability to resist their co-option points the fact that they are caught in a competing principals dilemma. On the one hand they owe their allegiance to the political authority and on the other hand to the people that reside under their jurisdictions. This has and continues to put a huge dent on Zimbabwe's electoral democracy and on the legitimacy of the institution of traditional leaders.

Legal Framework

The legal framework provides for the co-existence of the traditional and modern institutions in Zimbabwe. In line with Article 35 of the African Charter on Democracy, Elections and Governance (ACDEG) which calls on State Parties to strive to find appropriate ways and means to increase the integration and effectiveness of traditional institutions within the larger democratic system, Section 16 (3) of the Constitution of Zimbabwe 2013 provides that "The State and all institutions and agencies of government at every level must take measures to ensure due respect for the dignity of traditional institutions".

The constitution sets clear terms on the appointment and removal of traditional leaders. An important provision in this regard is that although the prerogative of the President, such appointment must in terms of Section 283 (c) be carried out in accordance with the prevailing culture, customs, traditions and practices of the communities concerned.

Therefore, the President is not at liberty to appoint traditional leaders based on any other considerations outside of those informed by the culture and customs. This is a progressive improvement in the constitution which has hitherto the 2013 not existed.

This does not however mean that the political authority has not used bellicose threats and side-lined the traditional institution in Zimbabwe. Using the case study of the traditional leaders in the Makoni District in Manicaland Province, Lotti Nkomo (2015:4) tells us

that in the late 1980s and early 1990s government adopted a carrot-and-stick approach in dealing with chiefs to exert dominance over them. He opines that coercion was inflicted on chiefs deemed disloyal to ZANU PF while on the other hand improved government monetary allowances and government-sponsored cars and farms were given to traditional leaders who responded positively to the government demands.

The functions of traditional leadership and the boundaries for their conduct are clearly spelled out in the constitution. Section 281(1) of the constitution states that traditional leaders must:-

- a. act in accordance with this Constitution and the laws of Zimbabwe
- b. observe the customs pertaining to traditional leadership and exercise their functions for the purposes for which the institution of traditional leadership is recognised by this Constitution; and
- c. treat all persons within their areas equally and fairly.

Sub-section 2 goes on to state that traditional leaders must not:-

- a. be members of any political party or in any way participate in partisan politics;
- b. act in a partisan manner;
- c. further the interests of any political party or cause; or
- d. violate the fundamental rights and freedoms of any person.

² For details on the matter see for instance the *The Chronicle*, 24 July 2019; *All Africa*, 19 May 2019 and *Herald*, 24 July 2019)

The Traditional Leaders Act 1998 further details on the appointment of different chieftaincy tiers namely; village heads, headmen and chiefs. It also provides for their code of conduct and prescribes measures to be taken against those who violate the Act. The Act also provides for the establishment of a Council of Chiefs and village, ward and provincial assemblies and defines their functions.

There is not provision in this Act that suggests that traditional leaders could be involved in the preparation for or running of elections. However, Section 49 (1) states that the Minister responsible for the administration of the Traditional Leaders Act may:

...by written notice, give to the chiefs, headmen and village heads such directions of a general character as to the policy they must observe in the exercise of their functions as appear to the Minister necessary in the national interest.

Section 49 (2) obliges Chiefs, headmen and village heads to comply with any direction given in terms of the above-mentioned sub-section (1) of the Act. While the role of traditional leaders is clearly spelled out throughout the Traditional Leaders Act, open ended provisions such as section 49 may be liberally interpreted by some politicians and traditional leaders.

As a result, they may be abused especially where political contests are rife and where there is a deliberate conflation of the party and the state. Ruling parties are no strangers to taking advantage of the administrative digressions presented by the ambiguities in the laws to either constrict or devolve power to local authorities including traditional leaders.

Whereas the Constitution and the Traditional Leaders Act make no mention of the role of traditional leaders in political and electoral activities, the Electoral Act 2018 suggests that traditional leaders are either formally or informally involved (Section 191). In the code of conduct contained in this Act, the traditional leaders are expressly cited as part of the actors bound by the code of conduct.

Yet, the code of conduct does not have specific prohibited conduct pertaining to traditional leaders as it does with the other actors in political and electoral processes. Part 5 of the code of conduct only makes generic prohibitions to political parties and what it refers to "other stakeholders" whom it obliges not to:

(a) use violence, or threaten violence or incite or encourage the use of violence, against anyone on account of his or her political opinions or membership or support of a political party or participation in the election;

(b) intimidate, or incite or encourage the intimidation, of anyone on account of his or her political opinions or membership or support of a political party; or act in a way that may provoke violence or intimidation;

(c) use violence or threats or illegal pressure to force a voter to refrain from voting or to vote for a candidate or political party against his or her will;

(d) force a voter to reveal the identity of the candidate voted for or take reprisals against a person because of the way in which he or she has voted or is believed to have voted.

The weakness of the electoral law is that it tiptoes around what exactly it is that traditional leaders are supposed to do or not supposed to do regarding elections and electoral processes. A similar observation was recently made by the President of the Chiefs Council during the multi-stakeholder review of the 2018 harmonised elections organised by the Zimbabwe Electoral Commission (ZEC) in April 2018.

He lamented that traditional leaders are the only governance institution that is excluded in capacity building activities for elections even though traditional leaders reside among the communities that are to be mobilised for the elections.

This paper submits that if traditional leaders are worthy of a mention under the electoral code of conduct within the Electoral Act, then the Electoral Act must for the purposes of enforcement be unambiguity provide a clause or clauses on prohibited conduct specific to traditional leaders. Without this, part 5 of the code of conduct does not serve much purpose and it is a totally misplaced if not orphaned provision.

...by written notice, give to the chiefs, headmen and village heads such directions of a general character as to the policy they must observe in the exercise of their functions as appear to the Minister necessary in the national interest.

Key considerations from other contexts

The extent to which traditional leaders may or may not be involved in political and electoral processes is dependent on the historical, political and social factors. Therefore, what may appear to be unacceptable in the Zimbabwean context may not be a matter of concern in other contexts or vice versa. For example, South Africa which has several cultural similarities as well as political struggle for freedom with Zimbabwe does not bar chiefs from making their political preferences known.

Currently, there are chiefs such as Chief Sango Patekile Holomisa of amaHegebe in Mqanduli and Chief Zwelivelile Mandla Mandela of the Mvezo Traditional Council who are Members of Parliament (MPs) and part of the African National Congress (ANC) led Executive. On the other hand, Abathembu King, Buyelekhaya Dalindyabo who had been known to be the ANC supporter joined the Democratic Alliance (DA) which is the second largest party in South Africa in July 2013.

Having been led by the chief, Albert Luthuli, the ANC has not had an issue with chiefs openly supporting political parties.

Therefore, the issue in South Africa is not whether chiefs can be involved in political processes but whether they can strike a balance between this and their statutory mandate which is to serve all citizens regardless of their political party affiliations.

Therefore, despite being free to express their political preferences, chiefs in South Africa are a critical stakeholder in the mobilisation of people to partake in electoral processes.

Hence, in February 2019 when addressing the annual meeting of the National House of Traditional Leaders in Parliament, the South African President, Cyril Ramaphosa called on traditional leaders to encourage citizens in rural areas to register for the 2019 National and Provincial elections.

The president also appealed to the traditional leaders to help promote free and fair campaigning and ensure that all voters are given an opportunity to participate in the elections as their democratic right.

In a symbolic gesture demonstrating that political parties are free to campaign in their jurisdictions, Kings in South Africa often host different political party leaders ahead of elections. Such visits are also an affirmation of the traditional leaders being for everyone.

In contrast with the South African considerations above, in Zimbabwe some opposition political parties are not welcome in certain chieftaincies while ZANU-PF gets unfettered access to the same areas. Hence Sachikonye et al (2007) observe that:

...with the polarisation of Zimbabwean politics since the introduction of a formidable opposition in 2000, traditional leaders have been largely viewed as being sympathetic to the ruling party and in some cases championing the cause of the ruling party with great zeal. Most of the traditional leaders are perceived as being pro-ZANU- PF and more accountable to government than to the local people.

Consequently, traditional leaders have borne the brunt of people's frustrations and this has in part led to questions being raised by academics and electoral stakeholders alike on their commitment to democracy and therefore their relevance.

Lessons for Zimbabwe

One of the major lessons for Zimbabwe is that the fact that traditional institutions are supposed complement modern institutions of governance does not mean that the traditional institution, although an authority in its own right, is necessarily a competitor for state power like political parties.

It is instead a source of moral authority which can be used by the political authority in to maintain civic morale and social order during the many challenges that go with the democratic transitions.

Hence, their South African counterparts actively promote citizen participation in a democratic process instead of coercing them to participate for the benefit of one of the political contenders.

To use Richard Sklar's (2005:16-18) mixed government notion, "...the traditional kings are not powers behind the throne; they are the thrones behind the power of the sovereign state, which they help to legitimate....". (Sklar 2005:16-18). This is an important distinction that must be made by traditional leaders in Zimbabwe.

In terms of elections, the job of traditional leaders is to support the electoral process as a national programme that is not an end in and of itself but a means to a developmental end.

They must therefore be committed to being neutral and open their areas of jurisdiction to be accessible to all aspirant political parties and candidates.

Conclusion and Recommendations

The constitutional and institutional frameworks in Zimbabwe provide for the co-existence of traditional and modern institutions and is adequately detailed on complementarity between the two regarding development agenda at the local authority level. The constitution is also clearly prohibiting traditional leaders from partaking in elections and electoral processes to advance the interest of any political party or candidate.

Therefore, a conclusion can be made that there is sufficient legal provision regarding what traditional leaders may and may not do as far as elections are concerned. What is problematic is enforcement and both the politicians and some traditional leaders do not appear to be committed to ensuring that the constitutional provisions are adhered to. Therefore, the following recommendations are proffered to mitigate the problem.

- Traditional leaders must promote social cohesion and refrain from getting involved in their capacities in any active role in elections and electoral processes; A Pledge similar to the one drawn for political party leaders ahead of the 2018 elections has to be developed for traditional leaders so that they can

- Traditional leaders must not accept any directive that demands them to unduly influence citizens under their jurisdiction to exercise their constitutional right to election leaders of their choice;
- Related to the above recommendation, it is recommended that Section 49 of the Traditional Leaders Act 1998 be accordingly amended to prevent possible political abuse;
- The Electoral Act 2018 must be amended to ensure that it makes explicit provisions on the role of traditional leaders. Similarly, the Code of Conduct in the Act must be aligned with the amended accordingly to have specific clauses on prohibited conduct pertaining to traditional leaders;
- Parliament and Government of Zimbabwe have must ensure that all citizens enjoy fundamental freedoms and human rights, including freedom of association, assembly and expression in line with the SADC Principles Guiding Democratic Elections;

References

1. Augustine, M. 2016 The Role of Traditional Leaders in Post-Independence Countries, Botswana, Ghana and Zimbabwe. On Line at: <https://hsf.org.za/publications/hsf-briefs/the-role-of-traditional-leaders-in-post-independence-countries-botswana-ghana-and-zimbabwe>. Accessed on 19 July 2019
Chiwata, T. 2016 The role of traditional leaders in Zimbabwe: are they still relevant? *Law, Democracy and Development Journal* -Online: Vol. 20. Available at: <http://dx.doi.org/10.4314/idd.v20i1.4>
Election resource Centre v Charumbira & 2 Others (HH 270-18, HC 1718/18) [2018] ZWHHC 270 (23 May 2018);
2. Happwell, M., W. Chingombe and R. Pillay 2018 Harnessing Local Traditional Authorities as a Potential Strategy to Combat the Vagaries of Climate Change in Zimbabwe. *Journal of Disaster Risk Studies* 10 (1). On line at: <https://jamba.org.za/index.php/jamba/article/view/651>
Accessed on 19 July 2019
Mail and Guardian July 2018. Traditional leaders in Zimbabwe must toe the ruling party line - or else. Online at: <https://mg.co.za/article/2018-07-25-00-traditional-leaders-in-zimbabwe-must-toe-the-ruling-party-line-or-else>
Mutibwa, M 2008 *The Buganda Factor in Uganda Politics*. Kampala: Fountain Publishers
3. Nkomo, L. 2015 *Chiefs and Government in Post-Colonial Zimbabwe: The Case of Makoni District, 1980-2014*.
4. SABC Online. 2019 Ramaphosa calls on traditional leaders to urge citizens to vote 20 February 2019. Available at: <http://www.sabcnews.com/sabcnews/ramaphosa-calls-on-traditional-leaders-to-urge-citizens-to-vote/> Accessed on 20 July 2019. 6:26
5. Sachikonye et al 2007. *Consolidating Democratic Governance in Southern Africa Zimbabwe*. EISA Research Report No.30. Johannesburg: EISA
6. Sachikonye, L. 2012 *Zimbabwe's Lost Decade: Politics Development and Society*. Harare: Weaver Press
Sklar, R.L 2005. *The Premise of Mixed Government*. In O. Vaughan (ed). *Tradition and Politics: Indigenous Political Structures and Governance in Africa*. Trenton, NJ and Asmara: Africa World Press.
Von Trotha, T. 1996. *From Administrative to Civil Chieftaincy: Some Problems and Prospects of African chieftaincy*. *Journal of Legal Pluralism and Unofficial Law*, 37&38 (Special double issue), 79-107.
7. Zimbabwe Human Rights Commission 2018. *ZHRC Final Report on Zimbabwe 2018 Harmonised Elections*
8. Legal frameworks
Constitution of Zimbabwe 2013
Electoral Act 2018
Traditional Leaders Act 1998