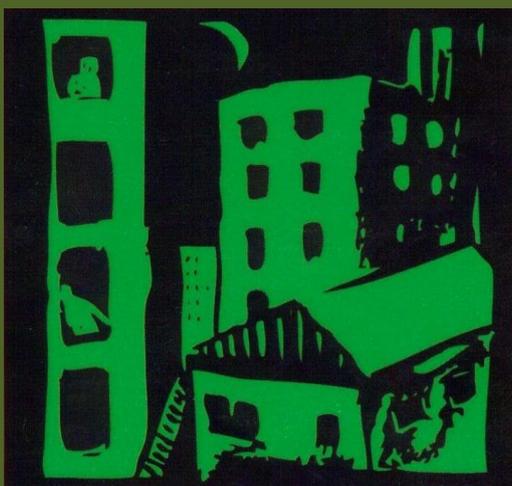


LAW
DEMOCRACY
& DEVELOPMENT



VOLUME 20 (2016)

DOI: <http://dx.doi.org/10.4314/ldd.v20i1.4>

ISSN: 2077-4907

The role of traditional leaders in Zimbabwe: are they still relevant?

TINASHE CHIGWATA

*Post-doctoral fellow, Dullah Omar
Institute for Constitutional Law,
Governance and Human Rights, Faculty
of Law, University of the Western Cape*

1 INTRODUCTION

Zimbabwe adopted a new Constitution in 2013 (Constitution of Zimbabwe) which, among other things recognises the role of the institution of traditional leadership which operates alongside modern state structures. While strengthening the role and status of the institution this new Constitution strictly regulates the conduct of traditional leaders. Despite this upliftment and strict regulation, the role and relevance of the institution of traditional leadership is under significant scrutiny. Traditional leaders are often in conflict with State structures, particularly rural local governments, which is largely attributed to competition for power, resources and legitimacy. It is the conduct of traditional leaders, however, that is cause for concern and raises constitutional questions. Their perceived alignment with the ruling Zimbabwe African National Unity-Patriotic Front (ZANU-PF) has brought

renewed criticism of their relevance in a modern-day society anchored on democratic values. Yet, traditional leaders still undertake important responsibilities especially in rural areas where 67 per cent of the population resides. Traditional leaders deliver various government responsibilities in some parts of Zimbabwe where the State has no or a limited presence. Their legitimacy, control and influence 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. All these controversies, conflicts and complexities raise questions about the role and relevance of the institution of traditional leadership in Zimbabwe which this article seeks to untangle.

The article is organised as follows. The first part of the article provides a brief contextual background to the role of the institution of traditional leadership in Zimbabwe. This is followed by an examination of the appointment and removal from office of traditional leaders. The remuneration of traditional leaders is then discussed before an examination of their powers and responsibilities is provided. The article then examines the relationship between traditional leaders and modern-day State institutions. The last part seeks to establish whether traditional leaders are complying with the required ethical conduct, which is now regulated by the Constitution. Concluding remarks then follows.

2 CONTEXTUAL BACKGROUND

As in many other parts of sub-Saharan Africa, the institution of traditional leadership has always been central to the governance of communities in Zimbabwe. Traditional authorities take various forms and shapes in many African countries including Zimbabwe. In Zimbabwe, for example, the structures and systems of the institution of leadership in *Ndebele*, *Shona*, *Kalanga*, *Tonga* and *Venda* ethnic communities have some remarkable differences even though they also depict certain similarities. Currently and generally, the institution of traditional leadership comprises chiefs, headmen and village heads- in order of hierarchy.¹ Village heads are physically the closest to the people and thus, have the most interactions with the citizens in rural areas. Prior to the colonisation of Zimbabwe, the institution of traditional leadership was the sole governance structure with legitimacy to govern derived from tradition and culture.² Traditional leaders had fused “governmental” powers and authority, ie judicial, administrative and political. Soon after colonisation in 1890 the colonial government dismantled, and in some cases replaced, traditional governance structures with “modern” State institutions as it sought to advance its interests and exercise firm control over the Black population.³ It embarked on a diversity of measures that corrupted the institution of traditional leadership. Some of the powers of traditional leaders, such as the power to allocate land,

¹ Musekiwa N “The role of local authorities in democratic transition” in Masunungure E & Sumba J (eds) *Democratic transition* (Harare: Weaver Press and IDAZIM 2012) at 242.

² Chigwata TC “Decentralization in Africa and the resilience of traditional authorities: evaluating Zimbabwe's track record” (2015) 25(5) *Regional and Federal Studies* 439 at 445.

³ Keulder C *Traditional leaders and local government in Africa: lessons for South Africa* (Pretoria: Human Sciences Research Council 1998) at 201.

were taken away or limited. Chiefs became salaried government officials accountable to the colonial government and some of them began to be appointed outside the relevant ruling clan or tribe.⁴ Thereafter, the role of the institution was under constant re-definition by the successive governments in the colonial century-long period.

The situation has not been different in the independent era where the majority-led government has in various ways (re-)modelled the role of the institution of traditional leadership depending on its interests. Due to urbanisation, the role of the institution is now most visible in the rural areas of Zimbabwe where it operates alongside modern State structures, particularly rural local governments. The country has a multi-level system of government with the government organised at the national, provincial and local levels.⁵ The provincial tier of government is composed of provincial and metropolitan councils which govern provinces and metropolitan provinces, respectively.⁶ The metropolitan provinces of Harare and Bulawayo are purely urban. The remaining eight provinces consist of rural and urban areas. The local tier of government is composed of urban local authorities (councils) and rural local authorities (rural district councils) established to manage and represent the affairs of people in urban and rural areas, respectively. Each of the rural provinces has between six and eight districts which are administered by local authorities under the supervision of a District Administrator (DA).⁷ The DA is appointed by and accountable to the national government through the Minister responsible for local government. This civil servant is the most senior representative of the national government at the local level charged with a variety of administrative functions including facilitating the appointment of traditional leaders.⁸ The DA chairs major decision making and resource allocating bodies at the local level, such as, the Rural District Development Committee⁹, the District Land Committee¹⁰ and the Disaster Management Committee.

The districts are administered by local authorities alongside the institution of traditional leadership comprising chiefs, headmen and village heads. The jurisdiction of traditional leaders does not correspond to the formal boundaries of these districts. Usually a district has more than one chieftainship with each led by a chief. The boundaries of jurisdictions of chiefs are a contested area as the traditional leaders seek to expand their geographical area of influence. There are around 272 chiefs nation-

⁴ Ndlovu M & Dube N “Analysis of the relevance of traditional leaders and the evolution of traditional leadership in Zimbabwe: a case study of amaNdebele” (2012) 7(1) *International Journal of African Renaissance Studies* 50 at 57.

⁵ See section 5 Constitution of Zimbabwe, Amendment No. 20 of 2013.

⁶ The provincial tier of government has not been established more than three years after the adoption of the new Constitution

⁷ Centre for Conflict Management and Transformation (CCMT) *Role and responsibilities in rural local governance in Zimbabwe: parallels, overlaps and conflict* (Harare: CCMT 2014) at 10.

⁸ CCMT (2014) at 10.

⁹ The Committee brings together councillors, chiefs and other relevant actors to undertake development planning, coordination and implementation. See section 60 Rural District Councils Act chapter 29:13 Act 8 of 1998.

¹⁰ The Committee is responsible for the allocation and management of land in resettlement areas. Like the Rural District Development Committee, the District Land Committee draws its membership from representatives of the national government at the district level, officials from the relevant local authority and traditional leaders, among others.

wide.¹¹ Each district is divided into wards, with each ward represented on the council by an elected councillor. The ward consists of six or more villages. Section 18(1) of the Traditional Leaders Act¹² requires the establishment of a ward assembly for every ward under the jurisdiction of a rural local authority. The assembly is composed of the councillor, all headmen and village heads in the respective ward. It is chaired by a headman elected from amongst the membership of the ward assembly.¹³ Thus while the elected councillor represents the ward on the council, it is actually a traditional leader (headman) who provides leadership to the ward. The ward councillor chairs the ward development committee which is charged with providing technical assistance to the ward assembly including the formulation of a ward development plan for submission to the relevant local authority.¹⁴ There are about 452 headmen in the entire country with each of them having the status of a sub-chief.¹⁵ A headman reports to the chief of the relevant area.

The village is the lowest unit of organisation constituted by an average of 35 households.¹⁶ There are an estimated 25 000 village heads with each leading a village. The village head (*sabhuku*) chairs the village assembly (*dare* or *inkundla*) as well as the village development committee. The committee is the technical arm of the assembly responsible for participatory development planning and implementation. The village head reports to the relevant headman.¹⁷ It has been observed that rural local governance is characterised by three main distinct authority structures- the DA, local authority and institution of traditional leaders.¹⁸ Each of these actors draws on divergent sources of legitimacy and exercises power and responsibilities which overlap significantly.¹⁹ When competency and jurisdiction boundaries are not clear or are in dispute, conflicts among the three actors are bound to occur as they assert their legal and customary spaces. While the DA and local authorities play a crucial role in rural local government the discussion is primarily focused on the role of the traditional institution.

3 APPOINTMENT AND REMOVAL FROM OFFICE OF TRADITIONAL LEADERS

Generally, rural communities 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

¹¹ Musekiwa (2012) at 240-2.

¹² Chapter 29:17 Act 25 of 1998.

¹³ Section 18(2) Traditional Leaders Act 1998.

¹⁴ See section 59 Rural District Councils Act 1988.

¹⁵ Musekiwa (2012) at 242.

¹⁶ CCMT (2014) at 11.

¹⁷ Musekiwa (2012) at 242.

¹⁸ Other actors in rural local governance include non-governmental organisations, officials of government ministries and agencies and the police.

¹⁹ CCMT (2014) at 9. The office of DA is a deconcentrated body, therefore authority and power directly flow from the national government. The legitimacy of local authorities and their councillors originates from popular election whereas that of traditional leaders is derived from custom and tradition.

the relevant community and in accordance with the traditional norms of succession.²⁰ In some areas, the principles of succession were distorted by the colonial administration, putting a significant dent in the legitimacy of the relevant traditional leaders. Legislative enactments²¹ in the independent era have sought to revive these principles of succession. The 2013 Constitution built on these enactments by requiring the appointment of traditional leaders in accordance with the relevant traditional norms and practices. The Constitution directs Parliament to enact legislation providing for the appointment and removal from office of traditional leaders.²² Such legislation must make provision for the appointment of chiefs by the President on the recommendation of the relevant provincial assembly of chiefs through the National Council of Chiefs and the Minister responsible for traditional affairs (the Minister).²³ A similar procedure is applicable with respect to the removal, suspension and resolution of disputes relating to the appointment, removal and suspension, of chiefs. The Traditional Leaders Act makes provision for the appointment of headmen by the Minister from a list of persons nominated by the chief of the relevant area.²⁴ Village heads are appointed by the Secretary responsible for traditional affairs from a list of persons nominated by the relevant headmen with the approval of the chief.²⁵

Traditional leaders hold office for life unless removed from their respective positions for misconduct. While it was considered taboo in the past to appoint women as traditional leaders, more women than before are being appointed as traditional leaders showing the adaptability of the institution to the modern world.²⁶ For instance, since independence, no less than five women have been appointed as substantive chiefs while several others have been appointed as headmen and village heads.²⁷ Under the previous constitutional order, the appointment of chiefs solely by the President meant that chiefs were “controlled” and accountable to the national government and the ruling political party, in particular.²⁸ This claim may be supported by evidence from the colonial and post-colonial eras which suggests the alignment of chiefs to the government of the day. Makumbe suggests that to engender the accountability of chiefs to rural communities through the institution of traditional leadership, they should be appointed by the National Council of Chiefs in accordance with traditional practices.²⁹ While the new Constitution has not taken away these relevant powers from the President and bestowed them on the National Council of Chiefs, it has at least reduced

²⁰ Dodo O “Traditional leadership systems and gender recognition: Zimbabwe” (2013) 1(1) *International Journal of Gender and Women’s Studies* 29 at 30.

²¹ Chief and Headmen Act chapter 29: 01 Act 29 of 1982 and Traditional Leaders Act 1998.

²² Section 283 Constitution of Zimbabwe.

²³ Section 283(i) Constitution of Zimbabwe.

²⁴ Section 8(1) Traditional Leaders Act 1998.

²⁵ Section 11(1) Traditional Leaders Act 1998.

²⁶ See Ndlovu M & Dube N “Analysis of the relevance of traditional leaders and the evolution of traditional leadership in Zimbabwe: A case study of amaNdebele” (2010) 7(1) *International Journal of African Renaissance Studies* 50 at 63-64.

²⁷ Dodo (2013) at 36.

²⁸ Keulder (1998) at 179; Makumbe J (2010) “Local authorities and traditional leadership” in De Visser J, Steytler N & Machingauta N (eds) *Local government in Zimbabwe: a policy dialogue* (Bellville: Community Law Centre, University of the Western Cape 2010) at 93.

²⁹ Makumbe (2010) at 98. The role of the National Council of Chiefs will be discussed in detail below.

the appointment and disciplining of traditional leaders from being a completely political process determined by the President.³⁰ The President can only appoint individuals as chiefs upon the recommendation of the relevant provincial assembly of chiefs and the National Council of Chiefs.

There are further constitutional limitations on the exercise of the power to appoint chiefs besides the role of the relevant provincial assembly of chiefs and the National Council of Chiefs. The appointment of traditional leaders must be carried out in accordance with the prevailing culture, customs, traditions and practices of the communities concerned.³¹ Section 3(2) of the Traditional Leadership Act merely obliges the President to consider the prevailing customary principles of succession applicable to the community over which the chief is to preside.³² This provision of the Act suggests that the President has some discretion when appointing chiefs. This line of reasoning was confirmed by the High Court in *Moyo v Stephen Mkoba & Others*.³³ The Court declared that the President was only required to give “due consideration to the customary principles of succession”, not to follow them when appointing a chief. This followed an application brought before the court in which Golden Moyo (the applicant) was contesting the decision of the President to appoint Stephen Mkoba (the respondent) as Chief Bunina in 2006. The 2013 Constitution has changed this practice by obliging the President to carry out the appointment of chiefs in accordance with the prevailing culture, customs, traditions and practices of the communities concerned.³⁴ This entails that while the President may have the power to appoint chiefs, he or she is not at liberty to appoint anyone to the position of chief, headman or village head due to custom and tradition.³⁵ This also means that section 3(2) of the Traditional Leaders Act must be aligned with the new constitutional order.

It is generally accepted that “politics is ubiquitous” as it permeates all corners of society. Certainly, the appointment of traditional leaders may be no exception. While acknowledging this fact, the 2013 Constitution seeks to protect the appointment of chiefs from being based purely on political grounds. The Constitution directs Parliament to enact legislation to ensure that the appointment, suspension, succession and removal of traditional leaders is carried out fairly and without regard to political considerations.³⁶ Further, the relevant Act should also provide measures to safeguard the integrity of traditional institutions and their independence from political interference.³⁷ It is, however, important to mention that the independence of the institution of traditional leadership is not likely to be guaranteed by only formal legislative insulation. The commitment by all the relevant parties, including the government, to respect the independence of the institution of traditional leadership is

³⁰ See Sachikonye L, Chawata S, Mangongera C & Ngoro S *Consolidating democratic governance in Southern Africa: Zimbabwe* EISA Research Report No 30 (Johannesburg: EISA Johannesburg 2007) at 88. See also, Keulder (1998) at 179.

³¹ Section 283 Constitution of Zimbabwe.

³² Section 3(2) Traditional Leaders Act 1998.

³³ *Moyo v Stephen Mkoba & Others* [2012] ZWBHC 7 (19 January 2012).

³⁴ Section 283 Constitution of Zimbabwe.

³⁵ Chigwata (2015) at 442.

³⁶ Section 283(iii) Constitution of Zimbabwe.

³⁷ Section 283(iv) Constitution of Zimbabwe.

equally important. As will be observed below, evidence in Zimbabwe suggests that the institution is not independent despite the legislative insulation.

4 REMUNERATION OF TRADITIONAL LEADERS

Under the previous constitutional order, traditional leaders received salaries and/or allowances from the government in appreciation of the services they provide to their respective communities and the nation at large. This practice of providing some form of remuneration to traditional leaders has its origins in the colonial period where chiefs were salaried officials just like public servants of the colonial government. Such remuneration entailed that chiefs were accountable to the government. The 2013 Constitution acknowledges the need for the government to provide some form of remuneration to traditional leaders. It requires the remuneration and benefits of chiefs to be determined by the Minister responsible for finance after consultation with the Minister responsible for traditional affairs.³⁸ Headmen and village heads also receive monthly allowances although they are insignificant compared to those of chiefs. While the respective Ministers for finance and traditional affairs have a role to play in the determination of the salaries and benefits of traditional leaders, it is ultimately the President who has the final decision making authority in relation to the nature and extent of the remuneration of traditional authorities.³⁹ As in the case of judicial officials, the Constitution provides that the remuneration of chiefs may not be reduced whilst they are occupying their respective positions.⁴⁰ Ideally, this requirement enhances the financial security of position holders and reduces their vulnerability to considerations of monetary gain when carrying out their duties. In practice, as discussed below, some traditional leaders have solicited bribes despite the certain measure of financial security they have.

In addition to the monthly salaries to which chiefs are entitled, there is a cultural practice whereby chiefs are allowed to keep for their own use fines imposed on offenders who are brought before traditional courts. Chiefs also keep court appearance fees. People appearing before the traditional court are required to pay US\$5 for their case to be heard.⁴¹ Proceeds from the fines and court appearance fees are used at the discretion of the chief to support the activities of the institution of traditional leadership in the relevant chieftainship area. There is nothing that prevents the chiefs from using the proceeds for his or her own welfare given that there is little distinction, if any, between the chief as a person and the chief as the traditional leader. This is contrary to the democratic norm of accountability that requires such proceeds (public resources) to be expended only for the benefit of the public and never for personal gain. Chiefs also benefit from government programmes designed to uplift their living standards, such as,

³⁸ Section 284(1) Constitution of Zimbabwe. The remuneration of traditional leaders is paid out of the Consolidated Revenue Fund: see section 284(2) Constitution of Zimbabwe.

³⁹ Section 284(1) Constitution of Zimbabwe.

⁴⁰ Section 284(3) Constitution of Zimbabwe.

⁴¹ "Chiefs demand same treatment at judges" *Newsday 2 October 2014* Available at <https://www.newsday.co.zw/2014/10/02/chiefs-demand-treatment-judges/> (accessed 2 October 2014).

subsidised vehicle purchasing schemes, electrification programmes, and housing schemes. In 2014, chiefs were receiving a monthly salary or allowance of US\$ 300 per month and those in the National Council of Chiefs received an additional US\$ 30.⁴² Despite earning such an amount of money, chiefs, are not satisfied with the remuneration package they receive from the government. It is reported that chiefs are advocating for remuneration packages that match those of judges.⁴³ Thus chiefs are unhappy that judges are remunerated better even though they carry out equally important functions which go beyond the judicial role of judges, as discussed in detail below. If all benefits are taken together chiefs have a fairly good remuneration package. Yet, some traditional leaders have been accused of accepting bribes, among other corrupt tendencies, despite the fact that they receive an allowance and other benefits from the government.⁴⁴ Such corrupt activities tend to be common around areas involving resource allocation whether it be the allocation of land or farming inputs, among others. This shows that traditional leaders, like any other political leaders, are not immune to being corrupted. Remarkably, such corrupt behaviour has not adversely impacted on the influence of the institution of traditional leadership thus far.

5 POWERS AND RESPONSIBILITIES OF TRADITIONAL LEADERS

Historically, and unlike modern state structures, traditional leaders drew their authority and legitimacy from an unwritten body of local customary law and practice.⁴⁵ As highlighted above, successive colonial governments in driving their colonial interests modified (either limited or enhanced) their role and influence at various stages.⁴⁶ Similarly, soon after independence, the Zimbabwe African National Unity (ZANU)-led government,⁴⁷ through the Chiefs and Headmen of 1982, limited the role and influence of the institution of traditional leadership by taking away some of its powers and responsibilities. The Act did not recognise the role of village heads despite the fact that their role was widely accepted and had local legitimacy.⁴⁸ The weakening of the institution of traditional leadership is considered as some form of retribution as the institution was “considered to have supported the exploitation of black Africans by collaborating with the colonial government”.⁴⁹ Moreover, the ZANU-PF led government perceived “the existence of traditional authorities as a direct competition for legitimacy,

⁴² *Newsday* 2 October 2014. Headmen and village heads were earning US\$ 140 and US\$ 25 per month, respectively.

⁴³ *Newsday* 2 October 2014.

⁴⁴ Rukuni T, Machingambi Z, Musingafi M & Kaseke K “The role of traditional leadership in conflict resolution and peace building in Zimbabwean rural communities: The case of Bikita District” (2015) 5(3) *Public Policy and Administration Research* 75 at 78.

⁴⁵ CCMT (2014) at 9.

⁴⁶ See Chigwata (2015) at 442.

⁴⁷ In 1987, and under an agreement called the Unity Accord, ZANU merged with the Patriotic Front-Zimbabwe African People’s Unity (PF-ZAPU) political party to form the ZANU-PF.

⁴⁸ CCMT (2014) at 13. Despite this lack of formal recognition, village heads exerted considerable influence and were significantly involved in the lives of the rural populace.

⁴⁹ Chigwata (2015) at 448. See also Dodo (2013) at 31.

leadership and support”.⁵⁰ Traditional leaders were also considered to be incompatible with the modern imperatives of democracy and development.

The government stance towards the institution of traditional leadership changed in the second decade of independence. Dodo claims that the ruling political leaders wanted to gain political mileage out of the influence of and respect for, the institution and use it for political expedience.⁵¹ The legitimacy of ZANU-PF was being significantly questioned due to the declining political and economic situation. Thus the ruling party could not afford to have the institution of traditional leaders, with its support and legitimacy, on its “wrong” side.⁵² On the other hand, traditional leaders continued to lobby the government for the restoration of their powers. Most of the powers of the institution were restored through the Traditional Leadership Act 1998 which replaced the Chiefs and Headmen Act 1982.⁵³ Thus the role and influence of the institution of traditional leadership have been under constant (re-)shaping since the colonial period and mostly through legislative enactments. Of late, the role of the institution has been shaped not only by ordinary legislation but also by constitutional enactments. Like its predecessor, the 2013 Constitution recognises and formalises the authority and legitimacy of the institutions. The Constitution explicitly lists a variety of powers and responsibilities of traditional leaders. Such recognition is significant in that the powers and responsibilities may not be taken away from traditional leaders without amending the Constitution. Thus, the institution of traditional leadership now has a high level of assurance with respect to their powers and responsibilities. The Constitution requires Traditional leaders in their areas of jurisdiction:

- a) to promote and uphold cultural values of their communities and, in particular, to promote sound family values;
- b) to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines;
- c) to facilitate development;
- d) in accordance with an Act of Parliament, to administer Communal Land and to protect the environment;
- e) to resolve disputes amongst people in their communities in accordance with customary law; and
- f) to exercise any other functions conferred or imposed on them by Act of Parliament.⁵⁴

The Constitution further provides that, “except as provided in an Act of Parliament, traditional leaders have authority, jurisdiction and control over the Communal Land or other areas for which they have been appointed, and over persons within those

⁵⁰ Chigwata (2015) at 440. See also Ndlovu and Dube (2012) at 57-58.

⁵¹ Dodo (2013) at 30.

⁵² See Matondi HMG (2010) “Traditional authority and fast track land reform: Empirical evidence from Mazowe District” *Zimbabwe Livelihoods after land reform in Zimbabwe Working Paper* (Bellville: Institute for Poverty, Land and Agrarian Studies, University of Western Cape 2010) at 2.

⁵³ The Traditional Leadership Act for the first time in the independent era formally recognises the role of village heads.

⁵⁴ Section 282(1) Constitution of Zimbabwe.

Communal Lands or areas”.⁵⁵ The Traditional Leaders Act also assigns to chiefs the responsibility to supervise headmen and village heads; oversee the collection of levies, taxes, rates and charges payable to rural local authorities and conserve the environment and natural resources.⁵⁶ Further, chiefs have the responsibility to notify rural local governments about the occurrence of natural disasters and the outbreak of epidemic diseases; publish public orders, directions or notices; protect public property; and promote the maintenance of good standards of health and education.

The Traditional Leaders Act assigns similar functions to headmen and village heads with the primary role of these appointed officials being to support the chief at their respective levels.⁵⁷ The supportive role is made possible by the fact that a chief may delegate all or any of his or her powers and responsibilities to a headman who may, in turn, delegate them to a village head.⁵⁸ This essentially means that there are little, if any, powers and responsibilities of a chief which may not be delegated to lower levels. Any delegation, however, does not divest the chief or headman of that function, who may at any time revoke any order given by a headman or village head, respectively, in the exercise of that function. This right of chiefs and headmen only serves to limit the autonomy of the lower level traditional institutions.⁵⁹ The Constitution states that when performing their functions “traditional leaders are not subject to the direction or control of any person, except as may be prescribed in an Act of Parliament”.⁶⁰ Practice suggests that this constitutional requirement is not always respected by various agencies of the government as well as by certain political formations. The Traditional Leaders Act provides that in the exercise of his or her functions, a chief has the powers of a justice of the peace in terms of any law.⁶¹ The roles of traditional leaders can be broadly categorised into cultural, administrative, developmental, co-ordinative and judicial functions.

5.1 Cultural, customary and traditional matters

Traditional leaders have provided “spiritual” and cultural leadership to their respective communities over a multi-generational period.⁶² They are the custodians of culture, customs and traditions as a result of their fair appreciation of the culture and tradition of their respective communities. Dodo states that “culturally speaking it is believed that [traditional leaders] are the only agencies who can convince the ancestral spirits to accept or adopt any new concepts or ideology in the area”.⁶³ The importance of this cultural leadership role is signified by its constitutional recognition. The 2013

⁵⁵ Section 282(2) Constitution of Zimbabwe.

⁵⁶ See section 5(1) Traditional Leaders Act 1998. Chiefs liaise and assist development committees of rural local authorities and maintain registers of names of villages and their inhabitants and of land certificates

⁵⁷ See section 12(1) and section 9(1) Traditional Leadership Act 1998.

⁵⁸ Section 6(1) Traditional Leaders Act 1998.

⁵⁹ Sachikonye (2007) at 88.

⁶⁰ Section 282(3) Constitution of Zimbabwe.

⁶¹ Section 5(2) Traditional Leaders Act 1998.

⁶² Centre for Peace Initiatives in Africa (CPIA) *Zimbabwe the next 25 years* (Harare: Benady Printing and Publishing 2005) at 23; Ndlovu & Dube (2012) at 58; the Zimbabwe Institute *Local government policy review*, (Cape Town 2005) at 13.

⁶³ Dodo (2013) at 32.

Constitution provides that traditional leaders are responsible for promoting and upholding the cultural values, traditions and heritage of their communities.⁶⁴ As the head of the community, traditional leaders perform a number of functions linked to culture, customs and traditions. For example, traditional leaders usually lead delegations in African *rain-making* ceremonies. They officiate at other ceremonies, funerals and other public events where adherence to traditional practices is a requirement. Traditional leaders are expected to ensure that traditional values are observed with respect to burial arrangements, marriage and sacred shrines. Thus, the role of traditional leaders as custodians of the values of society is widely recognised in Zimbabwe.

The widely recognised role of traditional leaders as cultural leaders is slowly being undermined by the conduct of some traditional leaders which goes against the traditional values and customs they are supposed to protect. Some traditional leaders are involved in corrupt activities especially in relation to the allocation of scarce resources, such as, land, farming inputs and food. For instance, Chief Negomo of Mashonaland Central Province was hauled before the courts accused of defrauding Mvurwi Grain Marketing Board of farming inputs (fertilisers) meant to benefit peasant farmers under the Presidential Summer Crop Season Programme.⁶⁵ Instead of allocating the farming inputs to the intended beneficiaries, the Chief is alleged to have converted them for his personal use, including selling some of the inputs at the market price to members of the public. Such unethical conduct has brought into question the role of traditional leaders as spiritual and cultural leaders. Globalisation and modernisation, which have partially caused the dilution or merging of cultures across the globe, are also a significant threat to the cultural role of traditional leaders. Urbanisation is already reducing the traditional areas of influence of traditional leaders. How far will this cultural leadership role of traditional leaders last given these various threats? Only time will tell.

5.2 Land matters

Traditional leaders in most parts of Africa always played a role in the allocation and management of communal land for residential, agricultural and grazing purposes.⁶⁶ In Zimbabwe, for example, traditional leaders are generally regarded as the custodians of the land and other natural resources in their respective jurisdictions.⁶⁷ This role has been recognised in the 2013 Constitution of Zimbabwe. The Constitution allocates the power to administer communal land to traditional leaders to be exercised subject to legislation.⁶⁸ The Traditional Leaders Act provides that chiefs have the responsibility to prevent any unauthorised settlement or use of communal land and to approve the

⁶⁴ See section 282(1) (a)(b) Constitution of Zimbabwe. See also section 5(1)(a)(b) Traditional Leadership Act 1998.

⁶⁵ “Chief Negomo in Trouble Over Presidential Farming Inputs” *Herald*, 24 May 2016. Available at <http://www.herald.co.zw/chief-negomo-in-trouble-over-presidential-inputs/> (accessed 1 June 2016)

⁶⁶ See Rugege S “Traditional leadership and its future role in local governance” (2009) *Law Democracy and Development* 171 at 172.

⁶⁷ Matondi (2010) at 1, 3; Dodo (2013) at 32.

⁶⁸ See section 282(1)(d) Constitution of Zimbabwe.

settlement of any new settlers in their areas.⁶⁹ In terms of the Communal Land Act,⁷⁰ communal land may be occupied or used for agricultural or residential purposes only with the consent of the elected rural local government established for the area concerned.⁷¹ When granting consent to the occupation and use of communal land rural local governments are required to consider customary law relating to the allocation, occupation and use of land in the area concerned.⁷² Further, these elected bodies must also “consult and co-operate” with the relevant chief appointed to preside over the community concerned.⁷³

The legal regime around communal land management creates a high degree of ambiguity and potential for overlap of roles between traditional and State institutions. While the Communal Lands Act suggests that rural local governments are the custodians of land within their respective jurisdictions, the Traditional Leaders Act seems to allocate to chiefs some power over the allocation and management of communal land. In practice and due to custom and tradition, traditional leaders allocate and manage land blurring the competency boundaries with rural local governments.⁷⁴ As a result, conflicts and power struggles between traditional and elected structures with respect to the allocation and management of communal land are common.⁷⁵ In some cases, traditional leaders have acted like parallel governments in rural areas by allocating land which would have been already allocated by the government to other beneficiaries. This challenge of “double allocation” is common in the new resettlement areas created after the fast-track land reform programme of early 2000. In these areas there tends to be acute contestation between government actors and traditional leaders over who has the power to register land rights, allocate and administer land, as well as resolve land disputes.⁷⁶ For instance, in Chirumhanzu district of Midlands province Chief Nhema allegedly “illegally allocated” over 300 families on a piece of land in the resettlement areas without consulting the District Land Committee representing the government. The piece of land in dispute had been set aside by the relevant District Land Committee for grazing purposes. The over 300 families faced the threat of being evicted.⁷⁷ While chiefs still have influence over land matters in communal areas, they feel relegated with respect to land allocation and management in resettlement areas. In these areas it is the relevant District Land Committee, representing the government, which has the power to allocate and manage land. Even though chiefs are part of the membership of the Committee they have limited influence over decision making partly because the committee is dominated by government technocrats with the DA undertaking the leading role. As a result, some chiefs have over the years boycotted meetings of the Committee in protest.⁷⁸ Such protest action does not have any

⁶⁹ See section 5(1)(h)(i) Traditional Leaders Act 1998.

⁷⁰ Chapter 20:04 Act 20 of 1982.

⁷¹ Section 8(1) Communal Lands Act 1982.

⁷² Section 8 (2)(a) Communal Lands Act 1982.

⁷³ Section 8(2)(a1) Communal Lands Act 1982.

⁷⁴ Matondi (2010) at 4.

⁷⁵ See Zimbabwe Institute (2005) at 13.

⁷⁶ Matodi (2010) at 5.

⁷⁷ CCMT (2014) at 233.

⁷⁸ Matodi (2010) at 10.

meaningful basis given that the resettlement areas were formerly under the control of white farmers and thus fell outside the jurisdiction of traditional authorities. Some traditional leaders, however, have contested this line of reasoning. They argue that the areas were once under the control of their forefathers before colonisation.⁷⁹ Thus, their jurisdiction over these areas should be restored. For effective governance in these areas, there is a need to explore ways in which the DA, traditional leaders and rural local governments can work together in land related matters for the benefit of the communities. Local authorities can be assigned exclusive powers over communal land which they exercise subject to consultation with the relevant traditional leader.

5.3 Environmental and natural resources matters

The 2013 Constitution does not assign explicit powers over the environment to traditional leaders. It however provides that traditional leaders may exercise any other functions that may be assigned to them or imposed on them by an Act of Parliament.⁸⁰ The Traditional Leaders Act requires traditional leaders to ensure that land and its natural resources are used and exploited in terms of the law.⁸¹ Recently the government began to involve chiefs in determining beneficiation from the exploitation of natural resources through Community Share Ownership Trusts (CSOTs). The CSOTs are part of the government's indigenisation policy designed to empower Black Zimbabweans by ensuring that communities benefit from the exploitation of natural resources in their respective areas. Under CSOTs, various communities represented by their chief were given shares in companies exploiting natural resources in their respective areas, particularly mineral resources. In practice, communities have not yet benefitted from these CSOTs due to a number of factors including corruption and the fact that the CSOTs, like the broader indigenisation policy, were doomed to fail from the onset due to their design.

The Traditional Leaders Act requires traditional leaders to control over-cultivation, overgrazing, and the indiscriminate destruction of flora and fauna.⁸² This role is significant given that traditional leaders are better placed to promote environmental conservation measures in their jurisdictions as they are physically closer to the people than the government. The Rural District Councils Act assigns to rural local governments competency over a number of functional areas, including conservation of natural resources, clearing of land, cultivation and farming, fisheries, trees and bush fires.⁸³ This suggests that both rural local governments and traditional leaders have competency over the preservation of the environment in communal areas. There is an absence of clear division of responsibilities with respect to environmental matters which often leads to conflict between elected and traditional structures.⁸⁴ A clearer

⁷⁹ See CCMT (2014), Matodi (2010).

⁸⁰ See section 282(1)(f) Constitution of Zimbabwe.

⁸¹ Section 5(1) Traditional leaders Act 1998. Traditional leaders are also required to protect and prevent damage to or misuse of public property, including roads, bridges, dip tanks, animal health centres, clinics and schools.

⁸² Section 5(1)(l) Traditional leaders Act 1998.

⁸³ See First Schedule, Rural District Councils Act 1988.

⁸⁴ See Zimbabwe Institute (2005) at 13.

delineation of competency between rural local authorities and traditional leaders with respect to the competency of environmental conservation is therefore required. It should be informed by the need to respect the institution of traditional leadership while promoting democracy through elected rural local governments.

5.4 Developmental and co-ordinative role

Traditional leaders are charged with the facilitation of development in their respective jurisdictions through structures, such as the ward and village assemblies.⁸⁵ They are expected to provide an advisory and supportive role to various ministries and agencies of the government particularly those operating at the local level.⁸⁶ For example, traditional leaders supervise village heads in the collection of taxes, levies, rates and charges due to rural local governments.⁸⁷ They also act as communication mediums of government policies, notices and directives in their respective jurisdictions. Traditional leaders are required to promote the maintenance of good standards of health and education in their respective jurisdictions.⁸⁸ Chiefs are expected to liaise and assist development committees of rural local governments in all matters relating to the planning and implementation of local development programmes.⁸⁹ The rural population seeks the guidance of traditional leaders on a variety of issues affecting their wellbeing, more often than that of the democratically elected officials.⁹⁰ Over the years traditional leaders have been active in mobilising people in their respective areas to support development projects, such as, the provision of health services, water, sanitation and roads.⁹¹

The government has increasingly relied on the institution of traditional leadership for the management of natural disasters and containment of epidemic diseases in rural areas.⁹² For example, traditional leaders are often assigned the responsibility to distribute food during droughts and the general co-ordination of relief programmes. They also distribute farming inputs to rural farmers on behalf of the government and other organisations. Non-State actors, such as non-governmental organisations, also work in collaboration with traditional leaders when implementing most of their projects in rural areas. In most cases, both State and non-State actors seek the permission of or at least notify, the traditional leader of the concerned area before they implement a development project in that area.⁹³ Thus traditional leaders play an important developmental and co-ordinative role in their respective areas by among other means, serving as intermediaries between both State and non-State actors and the rural populace.

⁸⁵ See section 282(1)(c) Constitution of Zimbabwe.

⁸⁶ See Rugege (2009) at 185.

⁸⁷ See section 5(1)(f) Traditional Leaders Act 1998.

⁸⁸ See section 5(1)(u) Traditional Leaders Act 1998.

⁸⁹ See section 5(1)(q) Traditional Leaders Act 1998.

⁹⁰ CCMT (2014) at 27.

⁹¹ CCMT (2014) at 35.

⁹² See section 5(1)(o) Traditional Leaders Act 1998.

⁹³ See Dodo (2013) at 32.

5.5 Judicial role

Traditional leaders play an important role in resolving disputes and conflicts in communal and resettlement areas. A study carried out by Matondi between 2004 and 2007 in Mazowe District⁹⁴ revealed that the dispute resolution role takes up about 55 per cent of the official time of the chiefs in the district.⁹⁵ This dispute resolution role is widely acknowledged and dates back prior to the colonisation era.⁹⁶ The 2013 Constitution recognises this role by giving traditional leaders the power to resolve disputes amongst people in their communities in accordance with customary law.⁹⁷ The Customary Law and Local Courts Act⁹⁸ enacted under the previous constitutional order assigns judicial powers to traditional courts.⁹⁹ Jurisdiction of these courts is limited to civil cases involving parties who reside within the area of the court's authority, and the content of the case has to be suited to trial by customary law.¹⁰⁰ Thus traditional courts do not have the power to adjudicate on cases of a criminal nature, such as murder or rape. However and flowing from tradition, in some cases, traditional leaders do resolve disputes involving criminal matters of a less serious nature such as theft and assault. Serious cases of a criminal nature are referred to the police for investigation. In districts such as Mazowe, the chief presides over two courts, one in communal areas and another one in resettled areas, in a bid to reduce the distance travelled by people attending court sessions.¹⁰¹ A chief may impose sanctions¹⁰² if an accused person is found guilty of certain offences or transgressing certain customs and traditions.

Traditional courts are more accessible to and cheap for rural communities than modern courts. When trying cases or resolving disputes, traditional leaders are assisted by advisors who are usually from the family of the ruling tribe. They tend to emphasise reconciliation rather than retribution to ensure harmony among neighbours, relatives and communities in rural areas.¹⁰³ This is partially the reason why rural communities prefer traditional to modern courts. Associated with this dispute resolution role, chiefs have wide-ranging law enforcement powers, including the power of search without a warrant, arresting powers, and detention of suspects.¹⁰⁴ They may also impose penalties on offenders with a focus on restitution so as to restore the status quo rather than as punishment.¹⁰⁵ Traditional leaders may order confiscation of assets, such as, livestock if a suspect fails to appear before the court or abide by their orders. The dispute resolution role of traditional leaders is widely accepted by the government and rural population. This role, however, is slowly being questioned in the light of a number

⁹⁴ Mazowe District is one of the seven districts which make up Mashonaland Central Province.

⁹⁵ Matondi (2010) at 5. There are three chiefs in the district, namely: Negomo, Makope and Chiweshe; one headman, Nyachuru; and several village heads.

⁹⁶ Dodo (2013) at 32; CCMT (2014) at 27; Matondi (2010) 3.

⁹⁷ See section 282(1)(e) Constitution of Zimbabwe.

⁹⁸ Customary Law and Local Courts Act chapter 7:05 Act 2 of 1990.

⁹⁹ See section 5(1)(e) Traditional Leaders Act 1998.

¹⁰⁰ Section 15 read together with section 16 Customary Law and Local Courts Act 1990.

¹⁰¹ Matodi (2010) at 5.

¹⁰² Sanctions may take the form of payments by means of livestock, crops and money.

¹⁰³ Keudler (1998) at 173; Rukuni (2015) at 75.

¹⁰⁴ See Rugege (2009) at 176.

¹⁰⁵ Rukuni *et al* (2015) at 77.

of factors, including unethical and criminal conduct by some traditional leaders. In *S v Manenji & Another*¹⁰⁶ a village head was found guilty of murder with actual intent.¹⁰⁷ This case indicates that some traditional leaders are involved in some grave acts of criminal conduct. The low educational levels of most traditional leaders and their inability to apply a consistent doctrine of precedent have also raised doubts about their competence and credibility as judicial officials.¹⁰⁸ A study carried out by Rukuni and others also revealed that some traditional leaders are failing to exercise impartiality when adjudicating cases, particularly with respect to politically sensitive matters and in cases where they have an interest, such as, boundary disputes or where relatives are involved.¹⁰⁹ However, it still remains a fact that traditional leaders play an important role as a dispute resolution mechanism in rural areas, thereby complementing the modern judicial system given its limited reach.

6 RELATIONS BETWEEN TRADITIONAL LEADERS AND GOVERNMENT STRUCTURES

The existence of two parallel governance structures in rural areas requires mechanisms to promote co-operation and co-ordination between them. In the colonial era, provision was made for the establishment of a body, the Council of Chiefs, representing chiefs and charged with engaging the government on matters affecting traditional communities. Similar structures have been created and strengthened in the post-colonial era. Traditional leaders have representation in a number of government forums at national, provincial and local levels of government. An examination of the representation of chiefs in Parliament, provincial councils and rural local governments will be undertaken in this part. The role of the National Council of Chiefs and provincial assemblies of chiefs will also be discussed.

6.1 Representation in Parliament and provincial councils

Zimbabwe has a bi-cameral Parliament constituted by the Senate and the National Assembly. Traditional leaders are represented in the Senate by a total of 16 chiefs.¹¹⁰ Each provincial assembly of chiefs in the eight non-metropolitan provinces appoints two chiefs to the Senate.¹¹¹ The President and Deputy President of the National Council of Chiefs are automatically members of the Senate.¹¹² The two chiefs appointed by each provincial assembly of chiefs, as members of the Senate, are also members of the

¹⁰⁶ *S v Manenji & Another* (CRB 30-31/13) [2013] ZWBHC 31 (8 February 2013).

¹⁰⁷ In this case, the accused, Ezra Manenji, was a village head who was embroiled in a land dispute with one of his subjects, Tendai Machokoto. The dispute culminated in the village head spearing to death Molly Sibanda, a relative of Tendai Machokoto.

¹⁰⁸ See Keudler (1998) at 174.

¹⁰⁹ Rukuni (2015) at 77.

¹¹⁰ Section 120(1)(b) Constitution of Zimbabwe.

¹¹¹ Provision is not made for the election of chiefs from the metropolitan provinces of Harare and Bulawayo as there are no chiefs resident in these wholly urban provinces.

¹¹² Section 120(1)(c) Constitution of Zimbabwe.

provincial council in their respective provinces.¹¹³ At the time of writing (August 2016), provincial councils have not been established yet for a number of reasons, including the absence of the operationalizing legislation. The same applies to the President and Deputy President of the National Council of Chiefs in their respective provinces.¹¹⁴ The membership of chiefs in Parliament and provincial councils is designed to ensure the representation of the interests of traditional leaders and those of their communities in major decision making bodies. It is claimed that chiefs in Parliament have always voted in support of ZANU-PF regardless of the merits or demerits of the issue.¹¹⁵ For instance, all chiefs in the Senate voted in support of the “controversial” Local Government Bill of 2016¹¹⁶ along with ZANU-PF senators. This supports the argument that chiefs seem to be aligned to the ruling ZANU-PF, which is expanded upon below. In addition to the representation of traditional leaders in Parliament and provincial councils, the President and the national Minister responsible for traditional affairs usually attend the annual conference of chiefs which discusses and seeks to bring to the government’s attention the concerns and interests of traditional leaders.

6.2 Representation in councils of rural local authorities

The Rural District Councils Act which primarily govern the activities of rural local government does not provide for the role of chiefs in the proceedings of a council of rural local authorities. However, there is a culture in rural local government which developed prior to independence where chiefs are treated as *ex officio* members of councils with no voting powers.¹¹⁷ Chiefs are given a platform to address a council, especially on issues which concern their powers and responsibilities or the customs and traditions of people living in their respective jurisdictions. This is commendable given that chiefs and rural local governments administer the same jurisdiction. The absence of voting powers, however, significantly reduces the status and influence of chiefs in rural municipal councils.¹¹⁸ The current practice is that the Minister of Local Government nominates a total of three chiefs, on a rotational basis, for representation on a council.

There may be rationality in legally recognising the culture of chiefs serving as *ex officio* members of councils. Such recognition has the advantage of providing greater clarity as to the nomination of chiefs to and their role in, the council.¹¹⁹ However, not more than three chiefs should be appointed as representatives on the council so that non-elected elements do not dominate democratically elected councils.¹²⁰ Such legislation should also require each council of a local authority to give the relevant chief the opportunity to express a view on the matter before taking a decision on any matter

¹¹³ Section 268(1)(c) Constitution of Zimbabwe.

¹¹⁴ Section 268(1)(d) Constitution of Zimbabwe.

¹¹⁵ Makumbe (2010) at 93; Ndlovu & Dube (2012) at 68.

¹¹⁶ The Bill (which has since been passed into law) sought to provide for disciplinary mechanisms relating to locally elected officials: mayors, chairpersons and councillors.

¹¹⁷ Makumbe (2010) at 90.

¹¹⁸ See Rugege (2009) at 180.

¹¹⁹ See s 81 of South Africa’s Local Government: Municipal Structures Act 117 of 1998.

¹²⁰ See Rugege (2009) at 180.

directly affecting the area of the relevant traditional authority.¹²¹ This will allow traditional leaders, including those who would not have been nominated to sit on the council the opportunity to express their views on any matter before the council which affect their respective jurisdictions. In light of fairness, traditional leaders who participate in the proceedings of the municipal council should be given an allowance to cover out-of-pocket expenses. Further, the participation of any traditional leader in the proceedings of the council should be governed by the rules and procedures of the council, including an applicable code of conduct.

While the legislative and institutional framework seems to provide an enabling platform for the integration of modern state structures and traditional institutions, the relations between the two structures is cause for concern in practice. The relations between traditional leaders and councillors have not always been cordial since significant governance powers and remuneration packages were restored to traditional leaders in 2002.¹²² This has been attributed to a number of reasons. First, the existence of the institution of traditional leadership parallel with elected rural local governments has created “conflicting claims to legitimacy and uneasy co-existence”.¹²³ There is mistrust between chiefs and councillors which makes it difficult to build constructive relations. Ndoro argues that “to traditional leaders, councillors are a challenge to their hegemony, prestige and authority”.¹²⁴ She further asserts that, given the option, traditional leaders would prefer to be the sole local government structure in communal areas.¹²⁵ This is evidenced by the fact that chiefs and councillors often trade accusations of abuse of power and non-compliance with laws, customs and traditions.¹²⁶ The Centre for Conflict Management and Transformation (CCMT) cited one case in which the chief boycotted ward development committee (WADCO) meetings and further directed village heads to report village development committee proceedings directly to him and not to the ward councillor who chairs the WADCO, as highlighted above.¹²⁷ Such conflicts created by the establishment of parallel structures undermine development activities by creating divisions among the rural populace.

There is also perceived unfair remuneration between chiefs and councillors. Chiefs are paid better allowances and receive a number of benefits in comparison to councillors. As highlighted above, chiefs are also allowed to keep court appearance fees and fines imposed on offenders in their traditional courts. Furthermore, chiefs benefit from subsidised vehicle purchasing, electrification and house construction schemes. These benefits have somehow commercialised the institution of traditional leadership by making the positions of chief, headman and village head vehicles for access to income and resources.¹²⁸ This desire for personal gain tends to create conflict between traditional leaders and their respective communities. It is thus not surprising that

¹²¹ See s (81)(3) Local Government: Municipal Structures Act 1998.

¹²² CPIA (2005) at 23; Matodi (2010) at 8.

¹²³ Zimbabwe Institute (2005) at 13.

¹²⁴ Ndoro (2010) at 323.

¹²⁵ Ndoro (2010) at 323.

¹²⁶ Zimbabwe Institute (2005) at 13.

¹²⁷ CCMT (2014) at 30.

¹²⁸ Ndlovu & Dube (2012) at 59; Dodo (2013) at 36.

disputes surrounding the appointment of traditional leaders are on the rise. On the other hand, councillors do not have all these benefits but only have 'small' sitting and travelling allowances. The huge differences in remuneration packages between these officials is a source of growing tension as councillors feel side lined, lowered in status and discriminated against relative to chiefs. At the same time, chiefs tend to command more respect from rural communities than do councillors and even Members of Parliament, in some cases.¹²⁹ As a result, councillors are overshadowed by chiefs in rural local government, and in the process raising tensions. The tension which exists between chiefs and councillors has the potential to destabilise rural local government by undermining the respective roles of these two institutions. Hence, there is a need to redefine the relationships between chiefs and councillors. Such redefinition should focus on division of responsibilities between chiefs and rural local authorities (councillors) and the improvement of remuneration packages of councillors, among other issues.¹³⁰

6.3 The National Council of Chiefs and Provincial Assemblies of Chiefs

The National Council of Chiefs and provincial assemblies of chiefs are not government structures *per se* but constitutional bodies established to promote and protect the interests of traditional leaders. Section 285(1) of the Constitution provides that "there is a National Council of Chiefs constituted in accordance with an Act of Parliament, to represent all Chiefs in Zimbabwe". The Traditional Leaders Act provides that the National Council of Chiefs consists of chiefs nominated by the provincial assemblies of chiefs. The Act gives the Minister responsible for traditional affairs full discretion to determine the total number of chiefs which each provincial assembly is entitled to elect for representation on the Council. It is submitted that the Minister no longer has such discretion as the 2013 Constitution requires equitable representation of chiefs from each province on the Council. The Constitution further provides that "an Act of Parliament must establish for each province, other than the metropolitan provinces, a provincial assembly of Chiefs consisting of the chiefs in that province".¹³¹ The Constitution lists the functions of the National Council and provincial assemblies of chiefs as follows:

- a) to protect, promote and develop Zimbabwe's culture and traditions;
- b) to represent the views of traditional leaders and to maintain the integrity and status of traditional institutions;
- c) to protect and promote and advance the interests of traditional leaders;
- d) to consider representations and complaints made to it by traditional leaders;
- e) to define and enforce correct and ethical conduct on the part of traditional leaders and to develop their capacity for leadership;

¹²⁹ See CPIA (2005) at 24.

¹³⁰ See Makumbe (2010) at 97-98.

¹³¹ Section 285(2) Constitution of Zimbabwe.

- f) to facilitate the settlement of disputes between and concerning traditional leaders; and
- g) to perform any other functions that may be conferred or imposed on it by an Act of Parliament.¹³²

The implementation of the 2013 Constitution requires the amendment of sections 36 and 39 of the Traditional Leaders Act so as to provide for the additional functions which the National Council of Chiefs and provincial assemblies of chiefs have under the new constitutional order. Parliament is directed to enact legislation to ensure that they are able to “carry out their functions independently and efficiently” as well as ensuring that employees of these bodies carry out their duties “conscientiously and impartially”.¹³³ It is important to note that the National Council of Chiefs and provincial assemblies of chiefs do not make any laws, nor do they engage in the provision of public services. These are platforms where traditional leaders engage among themselves as well as with the government on issues affecting the institution of traditional leadership and rural governance, in general. These issues include mining in rural areas, proposed infrastructural projects, relocation of people to make way for businesses activities, distribution of farming inputs to peasant farmers, and the operation of ministries and agencies in rural areas. Thus far, there is little evidence to suggest that deliberation in these institutions have had a significant impact on public policy at any level of government.

7 CONDUCT OF TRADITIONAL LEADERS

Traditional leaders are required to act in accordance with the Constitution and the laws of Zimbabwe.¹³⁴ They must observe the customs pertaining to traditional leadership and exercise their functions for the purposes for which the institution of traditional leadership has been recognised.¹³⁵ When carrying out their duties, the Constitution requires chiefs to treat all persons equally and fairly.¹³⁶ It further provides that chiefs may not be members of any political party or in any way participate in partisan politics, including furthering the interests of any political party.¹³⁷ The Traditional Leaders Act states that when carrying out their duties traditional leaders should not be “influenced by any considerations of race, tribe, place of origin, creed, gender or political affiliation”.¹³⁸ For example, when adjudicating disputes a chief should not give favourable decisions based on whether the person before the court is a woman or man or belongs to the ruling or opposition political party. This implies that whenever chiefs discharge their responsibilities they must be neutral.

¹³² Section 286(1) Constitution of Zimbabwe.

¹³³ See section 286(2) Constitution of Zimbabwe.

¹³⁴ Section 281(1)(a) Constitution of Zimbabwe. See also section 46(2) Traditional Leaders Act 1998.

¹³⁵ Section 281(1)(b) Constitution of Zimbabwe.

¹³⁶ Section 281(1)(c) Constitution of Zimbabwe.

¹³⁷ Section 281(2) Constitution of Zimbabwe.

¹³⁸ Section 46(1) Traditional Leaders Act 1998.

The political neutrality of chiefs may be weakened by the conflicting legal demands imposed on traditional leaders by the Constitution and Traditional Leaders Act. As observed above, a total of 18 chiefs form part of the composition of the Senate, a political forum.¹³⁹ These chiefs who are appointed as Senators deliberate fully on all matters before the Senate, in the same way as elected Senators. This essentially means that these traditional leaders become politicians the moment they are appointed as Senator-Chiefs. When these Chiefs vote alongside a certain political party, they will be effectively breaching the requirement of political neutrality. Thus, there are conflicting legal demands imposed on chiefs. This perhaps indicates the tension between traditional governance systems and the requirements of modern day societies anchored on democratic values, such as, multiparty democracy. To address this tension there may be rationality in keeping the representation of traditional leaders in the Senate but withdraw their voting rights.

Section 287 of the Constitution directs Parliament to enact a law providing for the establishment and role of an Integrity and Ethics Committee of Chiefs to ensure that traditional leaders abide by the required code of conduct and take corrective action, if necessary. The relevant Committee had not been established at the time of writing, meaning that any unscrupulous behaviour on the part of traditional leaders may be going unpunished, as proven in practice. While traditional leaders are required to be apolitical, they are perceived by many to be aligned with ruling the ZANU-PF and furthering its ideologies and interests.¹⁴⁰ A study undertaken by Rukuni and others in the Bikita District established that 94 per cent of traditional leaders in the district are politically aligned to the ruling ZANU-PF and have used their positions to “punish those who belong to opposition political parties”.¹⁴¹ Like the successive colonial governments, ZANU-PF appears to use both “carrot” and “stick” methods to acquire the allegiance of chiefs. Makumbe claims that prior to general elections State agencies often direct chiefs to support ZANU-PF and prevent the Movement for Democratic Change (MDC) political party from mobilising political support in their jurisdictions.¹⁴² He further argues that chiefs who fail to follow these directives are allegedly threatened with harassment leaving them without a choice but to comply.¹⁴³

The ZANU-PF led government also uses the “carrot” method, with which benefits are offered to acquire the allegiance of chiefs.¹⁴⁴ Some of the benefits which are offered include a monthly allowance, a subsidised vehicle purchasing scheme, a monthly fuel allocation, drilling of boreholes and electrification of the homes of chiefs. As a result, most traditional leaders openly support the political agenda of the ruling party and restrict political mobilisation by opposition political parties. As stated above, the 2013 Constitution prohibits chiefs from aligning themselves with a certain political party whilst they are occupying the position of a chief, a requirement with which most chiefs

¹³⁹ See section 120(1)(b)(c) Constitution of Zimbabwe.

¹⁴⁰ Sachikonye (2007) at 91; CPIA (2005) at 23.

¹⁴¹ Rukuni (2015) at 78.

¹⁴² Makumbe (2010) at 92-94. See also CPIA (2005) at 23.

¹⁴³ Makumbe (2010) at 93, 98. See also Dodo (2013) at 36.

¹⁴⁴ See Ndlovu & Dube (2012) at 67; Matondi (2010) at 2.

are not complying. Surprisingly, the open alignment of chiefs with ZANU-PF does not appear to damage the legitimacy of traditional leadership among rural citizens although there seem to be growing mistrust of, and disrespect towards, traditional leaders.¹⁴⁵ Hence, like the successive colonial governments, the independence government of ZANU-PF has at various stages tampered with the institution of traditional leadership in driving its interests and ultimately to ensure its political survival.

8 CONCLUSION

The 2013 Constitution has recognised the important role which the institution of traditional leadership plays in Zimbabwe, especially in rural governance. Traditional leaders are generally regarded and accepted as the custodians of customs and traditions entrusted to them to provide traditional guidance to their respective communities. They have a diversity of functions ranging from mere administrative functions to much more extensive judicial and development duties. Thus the role of the institution of traditional leadership is largely still relevant to modern day society. However, the existence of the institution parallel to modern state structures has in some cases resulted in conflicts and duplication of duties. The mechanisms established to ensure a certain measure of integration and co-operation between the two institutions sometimes do not always bring the desired result. It is the political alignment of traditional leaders with the ruling party, however, which raises significant conflicts of interest. Most traditional leaders openly align themselves with the ruling ZANU-PF in contradiction of the Constitution which requires their non-involvement in politically related activities. Despite such controversy, traditional leaders remain the most accessible and immediate form of local governance in rural areas. They may be better positioned to identify the needs and preferences of rural communities because of their physical proximity to the people. Over the years they have demonstrated remarkable resilience, a strength which the modern state should seek to capitalise on in a bid to foster development, democracy and peace.

¹⁴⁵ See Musekiwa (2012) at 242; Ndlovu & Dube (2012) at 62.