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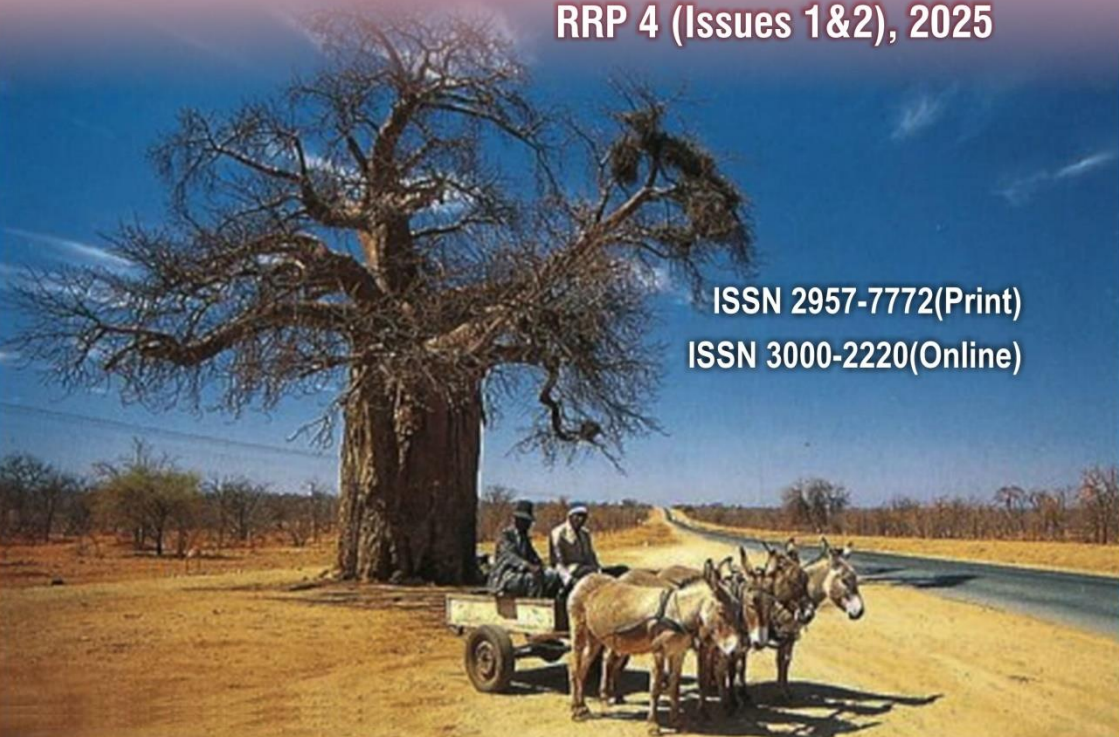
REVIEW OF Rural Resilience Praxis

RRP 4 (Issues 1&2), 2025

ISSN 2957-7772(Print)
ISSN 3000-2220(Online)



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Rural Resilience Praxis

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Published by the Zimbabwe Ezekiel Guti University Press
Stand No. 1901 Barrassie Rd,
Off Shamva Road
Box 350
Bindura, Zimbabwe

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About the Journal

JOURNAL PURPOSE

The purpose of the *Review of Rural Resilience Praxis is* to provide a forum for disaster risk mitigation, adaptation and preparedness.

CONTRIBUTION AND READERSHIP

Sociologists, demographers, psychologists, development experts, planners, social workers, social engineers, economists, among others whose focus is that of rural resilience.

JOURNAL SPECIFICATIONS

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ISSN 2957-7772(Print)
ISSN 3000-2220(Online)

SCOPE AND FOCUS

As much as the urban territory is increasing by each day, the rural economy, especially in many developing countries, still retains a great proportion of the extractive and accommodation industry. Retaining some space as rural remains critical given the sectors role in providing ecosystem services to both wildlife and humanity. In this light, rural resilience as practice beckons for critical studies especially in the face of the ever-threatening extreme weather events and climate change that then impact on the livelihoods and lifestyles of the rural communities. Review of Rural Resilience Praxis (RRRP) comes in as a platform for critical engagement by scholars, practitioners and leaders as they seek to debate and proffer solutions of the rural sector and trying to champion the philosophy of the right to be rural. The issue of conviviality between the different constituencies of the sectors, compiled with the competing challenges of improving rural spaces while also making the conservation and preservation debates matter is the hallmark of this platform of criticality. The journal is produced bi-annually.

Guidelines for Authors for the Review of Rural Resilience Praxis

Articles must be original contributions, not previously published and should not be under consideration for publishing elsewhere.

Manuscript Submission: Articles submitted to the *Review of Rural Resilience Praxis* are reviewed using the double-blind peer review system. The author's name(s) must not be included in the main text or running heads and footers.

A total number of words: 5000-7000 words and set in 12-point font size width with 1.5 line spacing.
Language: British/UK English
Title: must capture the gist and scope of the article
Names of authors: beginning with the first name and ending with the surname
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Abstract: must be 200 words
Keywords: must be five or six containing words that are not in the title
Body: Where the authors are more than three, use *et al.,*
Italicise *et al.*, *ibid.,* words that are not English, not names of people or organisations, etc. When you use several authors confirming the same point, state the point and bracket them in one bracket and in ascending order of dates and alphabetically separated by semi-colon e.g. (Falkenmark, 1989, 1990; Reddy, 2002; Dagdeviren and Robertson, 2011; Jacobsen *et al.,* 2012).

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Chiefs and Headman Courts in Zimbabwe: Some Administrative and Ethical Considerations for Improvement

ELISHA MUTIGWE[1] AND SIMBARASHE GANYA[2]

Abstract

The study critically examines chiefs' and headmen' courts in Zimbabwe and seeks to establish the administrative and ethical challenges they encounter, with a view to improving their approach to governance. Traditional chiefs and headmen are part of the African governance system that was in existence prior to the colonisation of Africa. These were weakened during colonial times, serving only at the behest of colonial governments. In the post-colonial era, chiefs and headmen were moved into the judiciary system and local government in Zimbabwe as their role was ceremonial during the colonial rule. The study problematises the ethical and administrative shortfalls of traditional courts in Zimbabwe with chiefs coming under scrutiny for human rights violations and unethical conduct. The study utilises a qualitative research methodology with a case study research design to understand the operation of traditional leaders in their courts. The study employs secondary information as the data collection method, using newspaper reports. The study further utilises the thematic data analysis method. The findings indicate that traditional courts have become shrines of re-victimisation and re-traumatisation of victims in Zimbabwe due to the use of social media without censorship. The study concludes that embracing technology in traditional courts has created challenges and ambiguities as they have led to disintegration of these courts into centres of vulgarity. The study recommends censorship of traditional court cases on social media.

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***Keywords**: colonisation, Africa, human rights, censorship, judiciary system, technology*

INTRODUCTION

Chieftaincy is a major heritage in most African communities and it is based on the lineage system, traced through patrilineal lines in some communities and matrilineal lines in others (Kouame, 2010; Samuel and Halidu, 2018). Chieftaincy and headmanship are an indigenous political arrangement by which leaders with good moral standing are selected and installed in line with the provisions of their native customs and laws (Nweke, 2012; Turay *et al.,* 2024). Busia (1968) maintains that procedures regarding the election, installation and destoolment of a chief are traditionally defined as the elders and the chief constitute the government and were jointly responsible for any decisions they make affecting the tribe. The chieftaincy and headman office in African communities has guidelines for administration and operations within the community. With the way of life of a people being the constitution, there were no written rules and laws.

The study problematises the ethical and administrative issues that arise within the traditional courts, indicating the need for training of traditional leaders within the parameters of the national judicial system. This article explores the use of decrees by traditional chiefs amidst the administrative and ethical issues that arise within the traditional judiciary system. The article looks at how traditional chiefs and headmen face administrative and ethical challenges in delivering customary justice. The study consists of an introduction that gives the background of the study, the conceptual framework, the literature review, the research design and methodology, the findings of the study, the discussion, and the conclusion and recommendations. It is against the backdrop of the scrutiny that traditional leaders have faced recently in Zimbabwe over the ethical and administrative standing of their ruling.

THEORIES UNDERPINNING THE STUDY

The study is premised on the Total Institution Theory, propounded by Goffman (1971) which explains the social world of the rural people and their idiosyncratic discernments of being under traditional leaders' rules. Ritzer (2007) describes the total institution as a place of residents or work that

houses people cut off from society, who together lead a formally administered orderly routine Ritzer (*ibid.*) gives the theory's main argument that it delineates the key topographies of totalitarian social systems.

This theory is applicable to rural lives as the traditional leaders govern what they farm. All this scrutiny makes the rural communities total institutions that disempower the residents who have no power or authority to have a say against the traditional leader. Schemes that make rural communities total institutions include weakening the individuality of the residents, disregarding their dignity and exposing them to a regimented form of life that has little to do with their wishes, as some are being forced to abandon growing certain grains, especially in Hurungwe in Mashonaland West Province of Zimbabwe (Relief Web, 2020). However, Clark and Bowling (1990) observe that total institutions are not homogeneous as Goffman portrays them, because they differ depending on the history of the area. Clark and Bowling (*ibid.*) argue that the concept of total institutions has a tight definition that cannot be stretched with impunity, as not all institutions are domineering and as constraining to individuals as Goffman (1971) suggests. The Total Institution Theory is applicable to this study as it shows traditional institutions as domineering and overpowering.

LITERATURE REVIEW

This section presents the literature review of the study as the article builds on the literature from past researches available in the scholarship canon with a view to crafting the thrust of the article and situate the scholarship within the historical and contextual framework. The study reviews literature along the theme of traditional governance in Africa, in general and traditional governance in Zimbabwe, in particular.

THE TRADITIONAL GOVERNANCE IN AFRICA

From the 1870s, through the 1900s, the African continent saw a period characterised by European imperialist aggressiveness, diplomatic pressures, military invasion and subsequent subjugation and colonisation (Okoth and Owak, 2023). European presence in Africa was primarily motivated by three key factors: economic, political and social considerations (Okoth, 2006). The collapse of the profitable slave trade, along with its abolition and suppression,

coincided with the expansion of the European capitalists Industrial Revolution (Spear, 2017). This period saw the emergence of imperatives related to capitalist industrialisation, such as the need for raw materials access to markets and profitable investment opportunities (Acemaglu *et al.,* 2013; Klug, 2023).

Marfo (2019) highlights that the traditional chieftaincy remains the backbone of traditional leadership in African communities, with most of them working with their headmen to maintain customary order within their communities. Traditional leaders remain the custodians of culture and tradition within the rural areas. All matters of conflict from the local to the state levels, traditionally were resolved through customary arbitration by the chief, aided by his elders (Brobbey, 2008). However, with the advent of modern political systems of governance, the institution of chieftaincy, including its authority and power, have largely been eroded by the state (Crowder, 1971; Nweke, 2012). The indirect rule created weak traditional leadership as the state controlled them indirectly with traditional leaders as proxies.

The traditional leadership and courts in Africa were weakened by the arrival of the European colonisers who created indirect rule, with African leaders used as proxies. The African customary courts lost their role of giving the law and adjudicating on serious matters as the colonial government instituted laws which limited the power of the African traditional leadership (Alexander, 2018). In conclusion, at this juncture, crossroads between the African traditional courts administrative and ethical dilemmas involved in the customary courts, must be understood.

THE TRADITIONAL GOVERNANCE IN ZIMBABWE

Zimbabwe is a developing country with the majority of its people living in rural community setups, with agriculture as the chief livelihood practice and contributes up to 70% of the country's revenue (Shoko and Shoko, 2018). Governance refers to processes, structures and organisational traditions which determine how power is exercised (Musarandega *et al.,* 2018). In Zimbabwe, traditional authorities are empowered by an Act of Parliament to ensure traditional conservation of the environment, while abolishing environmental threats (*ibid.*). The Traditional Leaders Act [Chapter 29:17], sections 5, 9 and

12 spell out the duties of traditional leaders different levels to ensure that their subjects are protected from natural disasters, local governance and protection of cultural values (Marango *et al.,* 2018). The government enacted the Traditional Leaders Act which has promoted traditional leadership in Zimbabwe, empowering them to move towards community resilience-building.

Local traditional authorities (LTA) in Zimbabwe fall under the Ministry of Local Government, Public Works and National Housing (Baldwin and Muyengwa, 2017). It is the ministry's responsibility to administer all Acts of Parliament and regulatory instruments designed to govern the operations of LTAs (Musarandega *et al.*, 2018). Traditional leadership is hierarchical, involving three levels (Baldwin and Muyengwa, 2017). The highest level is that of a chief (*mambo*), followed by headman (*sadunhu*) and a village head (*sabhuku*) at the lowest level of the rank (Musarandega *et al.,* 2018). Chiefs are appointed by the President of the country (Makumbe, 2010). Succession with regard to traditional leadership is on hereditary basis as opposed to elected local government structures which are instituted on the basis of Acts of Parliament (Musarandega *et al.*, 2018). Traditional leaders are recognised as strategic agents of change at the community level (Baldwin and Muyengwa, 2014).

Zimbabwe's local government system now has three formal hierarchies existing side by side spanning from the grassroots, that is, a decentralised local government system encompassing provincial development committees, rural district development committees, ward development committees (WADCOs) and village development committees encompassing chiefs, headmen and village heads and a multi-sectoral hierarchy of government ministries, all fanning out at the local level into several administrative, developmental, social, political and other bodies (Mandondo, 2000). The aforementioned local administration has shown confusion in much of their roles in rural governance (Ncube, 2011). Nyambara (2003) observes that much of the administrative conflict, particularly between traditional authority and elected leadership, can be traced back to the combined effect of the Communal Land Act of 1982 that divested the chiefs of the land allocation powers vested in them by the Rhodesia Front regime in the 1960s, and the

earlier Customary Law and Primary Courts Act of 1981 that transferred the determination of customary law from the chiefs' courts to new local bodies appointed by the Minister of Justice (Government of Zimbabwe, 1992).

The lack of clarity on the roles and functions of various institutions at the local administrative levels, particularly over issues of land, precipitated a crisis of communal leadership in the communal areas of Zimbabwe, whereby elected rural institutions had little real legitimacy, while traditional leaders were not always acknowledged or respected by the formal state modernisation initiatives (Mukamuri and Mavedzenge, 2000). Although the Chiefs and Headmen Act of 1988 excluded traditional leaders in land administration, the inhabitants of communal areas still referred most land matters and requests to traditional leaders (Ncube, 2011). All these processes were done to disempower traditional leaders and leave them with nothing but a spiritual position.

Traditional leadership in Zimbabwe has come a long way from pre-colonial, colonial to post-colonial eras, which has seen the leadership changing through time. The creation of the local administrative levels in Zimbabwe has seen the role of traditional leadership limited in rural areas. Various legislations in Zimbabwe have provided for the legitimisation of traditional leadership even though they are having their power limited they still play an important role.

RESEARCH METHODOLOGY

The study utilises the qualitative research approach with a case study research design.Oranga and Matere (2023) observe that the appeal of qualitative research approach is that it is flexible and spontaneous, as it allows the adaptation of various methods as the study progresses, gives a deeper understanding and does not require a large sample. The allure of the qualitative research with a case study research design is that it allows the researcher to understand various cases from a subjective point of view, rather than being objective on lived experiences. The study uses secondary information as the source of data in this study. The FAO (2020) argues that the leverage of secondary data is that it attempts to answer a new research question or examine an alternative perspective. The study uses secondary data to understand the chiefs and headman courts in Zimbabwe, researching the

administrative and ethical challenges with considerations for improvement. The study uses news reports from local newspapers as the ethical and administrative challenges in traditional courts have not been researched before in Zimbabwe. The inclusion criteria for the secondary sources in this study was the phrases 'traditional courts', 'ethical and administrative challenges.

FINDINGS

Traditional leadership has come under scrutiny in Zimbabwe, with some advocating for keen observation on the ethical and administrative dilemma that the conduct of the traditional leaders presents. *The Zimbabwe Independent* (December 18, 2023) reports that traditional leaders are responsible for nearly half of Zimbabwe's human rights violations in rural areas as they have abandoned their role of leading development in their communities instead of focusing on abuse of their office. *The Zimbabwe Independent* (*ibid.*) notes that the Traditional Leaders Act must be amended to make clearer on the conduct of traditional leaders and add punitive criminal sanctions on traditional leaders who violate the Constitution and trash human rights. There has been growing human rights violation by traditional leaders as the aforementioned shows. *Newsday Zimbabwe* (March 4, 2024) carries a story on traditional leaders being the most corrupt arm of government in Zimbabwe, as they violate human and communities' rights, some even violated along partisan lines. Alexander (2018) notes that traditional leaders in Zimbabwe have been said to be corrupt and abusing their power in rural areas, especially during the sharing of the Presidential Inputs Scheme. They are failing to provide administrative justice to the communities they preside over. This has created a problem for the institution of traditional leadership as communities consider the traditional courts corrupt and failing to deliver justice and equality.

Traditional leaders, such as chiefs and headmen , have been the cornerstone of Zimbabwe's justice system, providing a vital link between communities and the formal legal justice system. *The Herald* (November 28, 2024) narrated that some traditional leaders have taken to social media. While this may seem like a progressive, move it raises concern as it presents chances of sensationalism and ratings over the delivery of justice. Traditional leaders risk undermining the foundation of their courts. *The Herald* (*ibid.*) further observes that the live

broadcast of sensitive cases, such as rape with victims being paraded without protecting their identity, further stigmatises and traumatises on the victims, breaching the privacy and dignity of the victims. This is specifically breaking section 11 (1) of the Data Protection Act Chapter 12:07 of 2021, which provides that "No data controller shall process sensitive data unless the data subject has given consent in writing for such processing…." (Constitution of Zimbabwe, 2013). This information shows the ethical oversight of traditional courts in Zimbabwe, leading to the breach of the victims' privacy. *Zimbabwe Situation* (December 2, 2024) carries a story noting that chiefs are in the spotlight for abusing traditional courts, as they are being filmed harassing and infringing their subjects' rights, contrary to their historical role of providing platforms for fair dispute resolution. This presents an administrative challenge that requires improvement as chiefs and headmen in rural areas should provide the protection of their subjects, providing a platform to present social and political justice to their subjects, not to abuse further.

Traditional courts have become centres of abuse of privacy as a YouTube Channel of Manass-Chibanda (21 May, 2024) shows Chief Bushu presiding over a case of infidelity without removing the identity of the allegedly promiscuous wife and boyfriend, thereby humiliating the victim, that is the husband of the wife. Cases that formerly had privacy have now been broadcast on social media without considering the families involved. ZTN PRIME Channel on YouTube (November ,1 2024) presents a video ona case in the court of Chief Negomo. It presents an adultery case in which vulgar language is used and showing the faces and names of the adultery parties involved without filtering, as the people involved are heard describing the sexual acts they indulged in, in details. This presents a challenge to the people involved in these court cases and also their children as it can have traumatic impacts on all of them. BUSTOP TV Channel on YouTube (March 3, 2025) presents a video from Chief Chundu Village court of brothers involved in a case of adultery, where one man who had slept with his brother's wife, ia=s forced to narrate graphically what the sexual encounter. This has ethical considerations as the privacy and identity of the wife, her husband and his brother will be permanently on social media for years to come.

In some cases, traditional leadership has over-stretched its power in the rural communities, using traditional myths and beliefs. Reliefweb (2020) observes that in Mashonaland West under Chief Chundu, the traditional leadership has been overlapping its power going against government advocacy for the adoption of small grains as a way to mitigate climate change, whereas traditional leaders are banishing people farming pearl millet because the founding chief died of food with pearl millet. *Newsday* (March 20, 2020) reports that traditional chiefs sometimes go against government policy in their decrees and traditions just as Chief Chundu outlawed the government small grain policy, this leading to failure of government policies of rural development. This also has some administrative impact as the traditional justice system, as part of the local governance arm, is going against government policies.

The study findings indicate that traditional leadership presents an intricate arena for communities as there has been contravention of the constitutional rights of the rural communities with ethical considerations such as identity, anonymity and privacy of people being violated in pursuit of ratings, this against the core foundation of the rural justice system which seeks to provide justice to communities. It is against the backdrop of traditional courts misconstruction of the roles of traditional leaders that the study findings conclude that there is need for the training of traditional leaders to integrate their understanding on the data privacy and permanence of court sessions aired on social media considering the damage it can cause to the family of the victims.

DISCUSSION

The aim of the study is to understand the ethical and administrative considerations needed for the improvement of the chiefs' and headmen's courts in Zimbabwe. Traditional leadership in Zimbabwe is the beacon of hope for the preservation of culture and justice outside the judiciary system. The study findings indicate that traditional leaders in Zimbabwe have deviated from the core foundation of their responsibility; that is, preserving the culture and delivering justice in their jurisdictions. They have been alleged to be human rights violators, infringing the ethics of their duties as they have lost respect for their subjects. These leaders have become partisan instead of being

apolitical in the execution of their duties, creating administrative aberrations that need to be adjusted. Contrary to the findings of the study is Zhou (2023) who alludes that in Zimbabwe, traditional leaders' courts provide the fair justice and are custodians of cultural values, by directing people towards morals and values of societies under these leaders' jurisdictions. This study's findings are inconsistent with the findings of Motlhanke (2023) whi posits that traditional leaders in South Africa are adjudicators delivering justice to their subjects without favour as it is their judicial service. In support of the study findings is the theoretical framework by Goffman (1971) which observes that total institutions and traditional courts are disempowering the rural people as chiefs are insulting their subjects. The traditional leaders are imposing strict rules on people on cases outside their administrative power and, in some cases, violating the rights of their subjects by sometimes insulting their people, as shown by the case of the banning of small grains in Chundu. These ethical and administrative challenges within the traditional courts have implications on the broader society's trust in justice delivery by traditional leaders as people are afraid of reporting their cases to traditional courts for fear of a possible backlash of human rights and ethical abuses from these courts.

With the advent of social media, traditional leaders have embraced technology by allowing the broadcast of their court sessions, a move that aims for transparency and fairness. However, there are ethical and administrative issues that arise therefrom. The study findings indicate that traditional courts have become centres of abuse and unethical behaviours. The courts use of unfiltered language and exactitude of the description with vulgar language without censorship is an operational challenge that infringes on ethical and human rights, such as anonymity and right to privacy. The broadcasting of cases such as rape in traditional courts re-victimises the concerned parties as they have to relive the traumatic experiences when explaining to the headman's court and again at the chief's court. This issue raises ethical and administrative issues as chiefs are moving beyond the cases they are supposed to adjudicate. Similar to the study findings are Pickering *et al.* (2021) who observe that in face of increasing abuse of chiefly power by traditional leaders, there is need to improve the operation of traditional courts by training

traditional leaders within the formal judicial system so as to improve their understanding of the ethics and administrative rights upon their shoulders. The lack of censorship of cases in traditional courts poses a greater danger to the moral uprightness of societies as younger generations now have access to technology and social media where these cases involving vulgarity are presented. The traditional courts need to be improved in terms of case censorship to protect the relatives of the people involved in sensitive cases.

The study findings show that traditional courts in Zimbabwe have moved beyond their duty by encroaching into government policies, thereby creating legal discord between traditional courts and government policies. The study indicates that traditional leaders in some parts of Zimbabwe have moved to stop the growing of traditional grains due to local beliefs. These directives go against the government policy of Climate-Smart Agriculture which encourages farmers to grow small grains. Inconsistent with these findings are the findings of Zikhali (2019) who stresses that traditional leaders have become part of the community policing and crime prevention, working with the government in upholding government policies. This presents an administrative aberration between government policies and local government directives, indicating the need for the creation of a system that limits the administrative powers of the traditional chiefs as they end up operating against government's developmental policies. The findings indicate that traditional leaders in Zimbabwe are operating outside the parameters of their powers, indicating the need for training of the traditional chiefs to increase their understanding of government policies and how they can help the government, rather than hindering government development plans.

It can be understood that traditional courts have become areas of contention and are in need of ethical and administrative adjustment to create functional communities that are empowering rather than disempowering. The integration of social media into the traditional courts has created an array of human rights abuse and unethical behaviours in these courts. Ithe long run, this can create problems for the government as traditional courts are moving beyond civil cases to adjudicating in criminal cases which require the judiciary system.

CONCLUSION AND RECOMMENDATIONS

The aim of the study is to unearth the ethical and administrative issues arising within the traditional courts and navigating the remedies to these ethical and administrative challenges. In conclusion, the ethical and administrative challenges that arise within the traditional courts of Zimbabwe show a leadership disarray within the traditional courts as evidenced by the erosion of dignity and disrespect for subjects by these leaders. The study concludes that there is need to train traditional leaders on legal and ethical standards so that, as judicial officers, they treat litigants with respect and dignity. In a nutshell, the administrative and ethical concerns that arise between the customary and common law systems has created a void for development in Zimbabwe, with most of the people challenging the decisions of the chiefs' courts.

The study recommends that future studies should probe the treatment of criminal cases in traditional courts to identify areas that need to be removed from being presented to traditional courts. The research suggests future studies look into the use of social media in traditional courts without censorship of the identities of litigants. Future studies must focus on the discord between customary law and common law systems. The research recommends the creation of a council to put in places checks and balances between traditional decrees and government policies of rural development. It is alsorecommended that there should be censorship and respect of anonymity of litigants in the traditional court cases streaming on social media as it can traumatise and stigmatise victims.

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