



LRF PRESS STATEMENT ON

CUSTOMARY COURTS IN ZIMBABWE

Harare: The Legal Resources Foundation (LRF) is concerned with utterances in media reports which were attributed to the executive to the effect that Chiefs' judgements should not be subject to appeals or reviews. This position, if enforced, will result in miscarriage of justice as it will mean that a person who is aggrieved by the decision of the traditional courts cannot seek redress anywhere else. There is no process which can become absolute in a democracy, thus the political statements are an attack on the right to access to justice for those who use the courts.

Section 162 of the Constitution of Zimbabwe states that judicial authority is vested in the courts, which include the customary law courts. In terms of the Customary Law and Local Courts Act [Chapter 7:05], customary law courts (comprising community courts presided over by a Chief and primary courts presided over by a Headman) have authority primarily in the application of customary law.

Traditional leaders (Chiefs and Headmen) are therefore part of the justice system and are subject to the appeal and review system. The Customary Law and Local Courts Act provides that any person who is dissatisfied with any decision of a primary court may appeal against such decision to the community court within whose area of jurisdiction the primary court is situated. Any person who is dissatisfied with any decision of a community court may appeal against such decision to a magistrate for the province within which the community court is situated.

It is important to note that the overturning of judgments is not peculiar to the traditional courts; a person who is not satisfied with the decision of a magistrate has the right to appeal to the High Court, with the decision of the High Court subject to an appeal or review process to the Supreme Court and, on Constitutional matters, to the Constitutional Court. The purpose of the appeal and review process is not necessarily to usurp authority of the lower court but to promote justice and the rule of law. The process ensures that individuals receive fair and transparent treatment at the hands of the authority to which they have been subjected, and consequently enjoy justice.

The Legal Resources Foundation is currently working with traditional leaders across the country to promote access to justice through capacity building of traditional leaders on the law and procedures in the local courts. Progress had been made in fostering understanding among the Chiefs and Headmen on the importance of appeals and reviews. The Chiefs and Headmen have demonstrated their commitment to promoting access to justice through our work with them. The statements made in the media may reverse the progress to date and may result in miscarriage of justice as community members may find it difficult to appeal against Chiefs' judgments. The rural population use traditional courts due to the simple procedure used in them. Their right to appeal against judgments made in such courts should be upheld and respected.

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