

POSITION PAPER ON SECTION 56 OF THE CONSTITUTION OF ZIMBABWE: A CASE OF BINGA

i. About the Zimbabwe Peace Project

Zimbabwe Peace Project (ZPP) is a registered non- governmental organisation that works to document politically motivated human rights violations. ZPP's co-operating member organisations include, Zimbabwe Council of Churches (ZCC), Catholic Commission for Justice and Peace in Zimbabwe (CCJPZ), Evangelical Fellowship of Zimbabwe (EFZ), Counselling Services Unit (CSU), Zimbabwe Civic Education Trust (ZIMCET), the Zimbabwe Human Rights Association (ZIMRIGHTS), Civic Education Network Trust (CIVNET) and Women's Coalition of Zimbabwe (WCoZ). ZPP is an active member of some of the country's networks that include Zimbabwe Election Support Network (ZESN), the Zimbabwe Human Rights NGO Forum and the Peace Building Network of Zimbabwe. ZPP has a national presence in its programme implementation and operates through a network of community-based monitors in all the 210 constituencies.

The organisation is guided by the following:

ii. Goal

To advance sustainable peace in Zimbabwe

iii. Objectives

1. To strengthen the respect for human rights at all levels in the country
2. To enhance observance of constitutional provisions

iv. Values

Respect, Integrity, Solidarity, Excellence

v. VISION

A Zimbabwe where there is Peace, Justice, Dignity and Development for all.

vi. MISSION

To work for sustainable peace through monitoring, documentation, advocacy and community peace building interventions with our members and partners.

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1. INTRODUCTION

In the period between May 2019 and June 2019, ZPP undertook a series of Human Rights Community Dialogues in the Districts of Binga, Chiredzi and Mutoko. These created platforms for discussions on topical human rights issues in these communities. The dialogues were convened following community assessments that ZPP had conducted in these districts to ascertain the availability of platforms for community members to freely deliberate on human rights issues affecting their communities. These communities all comprise of minority groups (Tonga in Binga, Shangaani in Chiredzi and Buja in Mutoko) who face distinct human rights violations. The districts are also geo-politically marginalised and impoverished. According to the Zimstat 2017 Poverty Report¹, Binga is the second highest impoverished district at 38.4%-51.2% prevalence; 50.1% of the households are extremely poor. Their health is also compromised, with 74% of the households having no access to ablution facilities. Chiredzi and Mutoko were standing at 25.6%-38.4% poverty prevalence. This paper focuses on Binga district due to the emphatic beliefs vociferously expressed by the community consistently on human rights violations that manifest in the form of systematic marginalisation in all spheres.

The Binga Context and the Problem

Binga boasts of vast waters of the Zambezi River and forests rich in wildlife. There are National parks and hotel tourism resorts which contribute immensely to the Gross Domestic Product (GDP) of the nation. In 2018, tourism contributed 6.3% to Zimbabwe's GDP². The poverty levels in the district however do not reflect these rich resources. The Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) initiative introduced by central government in 1989 has yielded few development results as communities in Binga remain very poor and there is low infrastructure development. CAMPFIRE is essentially a business transaction between the Rural District Councils (RDCs) and the private Safari operating industry by which RDCs allow operators to exploit wildlife resources in their district for 5-15% of the profits³. This has however not translated to any positive change in the livelihood of communities. In addition, the locals' access to the Zambezi River is tightly controlled through licenses that they have to pay to the local authority; which strips the BaTonga of their water rights. From the community dialogues it emerged that the setting of fishing fees by the local authority is done without wide consultation. There are also no exceptions for locals who want to venture into commercial fishing. The Parks and Wildlife Management Authority (Tariff of Fees) by-laws, 2019 Statutory Instrument 108/2019 pegs an annual commercial fishing license at US\$3 200,00 for Binga Rural District Council. This is a steep requirement for most locals who in the end resort to

¹ http://www.zimstat.co.zw/sites/default/files/img/publications/Prices/Poverty_Report_2017.pdf

² <https://knoema.com/atlas/Zimbabwe/topics/Tourism/Travel-and-Tourism-Total-Contribution-to-GDP/Contribution-of-travel-and-tourism-to-GDP-percent-of-GDP>

³ The Commonwealth Forestry Review

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fishing illegally, as fishing is their main source of livelihood; risking arrest. Besides, the commercial licenses can only be obtained from Harare, which is 874 km away. Often individuals and companies from wealthier districts are able to pay for these licenses and benefit from the Zambezi River. The above demonstrate the institutional marginalization of local communities in policy formulation and implementation.

Marginalisation was a topical and emotive human rights issue in each of the numerous engagements which ZPP carried out in Binga district, Siansundu and Manjolo areas. This discrimination and inequality is revealed in pre and post-independence systematic economic and political marginalization as evidenced by the poor road, education and communication infrastructure across Binga district. The sentiments expressed by all levels and sectors of the community during the community dialogues was the belief and lived experience that Binga district, particularly the BaTonga and Nambya people are excluded from the greater Zimbabwean social discourse and identity. For example they were concerned that their education infrastructure had not been upgraded in years. This has resulted in poor performance of children with the Zimbabwe Schools Examination Council recording a mere 30.4% Grade seven pass rate in 2018⁴. The Tonga language was introduced to be taught in schools up to Grade Seven only in 2011, 31 years after Zimbabwe gained independence. The community also bemoaned the poor communication network in their district which negatively impacts on their day to day communication and development. According to Rahman (2008), ICTs create important development opportunities as they are capable to override barriers of social, economic and geographical isolation by increasing access to information and support the rural people to participate in decisions that affect their life.

In the dialogues, Binga community members often expressed being disempowered to participate in some decision making processes especially those involving setting up of fishing and hunting licenses by the Binga Rural District Council and Zimbabwe National Parks and Wildlife Management Authority, with quotes such as the following being common:

“We have no voice “

*“What we can **contribute** doesn’t matter to those at the top”*

“Our participation doesn’t change anything”

Issues of identity were also central to the human rights discussions where the community expressed that they were regarded as second class citizens. The Matabeleland Institute for Human Rights in 2018 highlighted that the Tonga people have been marginalized and discriminated at all levels⁵. This followed Honourable Joseph Chinotimba’s utterances in Parliament on 13 March 2018

⁴ <http://www.zbc.co.zw/mat-north-appeals-for-more-schools/>

⁵ <https://matabelelandinstituteforhumanrights.org/2018/03/14/in-binga-there-are-murderers-m-p-chinotimba/>

that soldiers must stay put in Binga as there are murderers in Binga; giving an impression of a barbaric and primitive community. Such careless statements from political leaders serve to further divide communities. The continued marginalisation of the Binga community in education, infrastructure and derogatory comments is an assault to the right to human dignity as stated in Section 51 of the Zimbabwe Constitution. The Constitution also provides for equality and non-discrimination in Section 56(3) where it states:

“Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock”. Section 56(6) lays out the responsibility of the state in this regard as follows: “The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and-
(a) such measures must be taken to redress circumstances of genuine need;
(b) no such measure is to be regarded as unfair for the purposes of subsection (3)⁶”

These constitutional provisions clearly demonstrate the obligation of the state to ensure that **ALL** citizens of Zimbabwe are treated without partiality, including in governance issues.

2. THE POSITION

If the district administrative structures and citizens had more effective input into the resource allocation and distribution via devolution, ZPP believes that the infringement of economic and social rights of the people of Binga and their marginalisation could be easily addressed.

Devolution is a form of decentralization which encompasses political, fiscal and administrative reforms that create elected sub-national structures, establish autonomous bureaucratic units of decision making and service provision and redistribute fiscal powers between central Government and sub-national entities.⁷ The Zimbabwe Constitution Amendment (No. 20) Act of 2013 provides the framework for devolution of governmental powers and responsibilities in Section 264.

However, six years after adoption of the Constitution, Zimbabwe is still using the Village Development Committees (VIDCOs) and Ward Development Committees (WADCOS) citizen participation model which is token participation as these are regulated by the Rural District Councils Act (Chapter

⁶ The Constitution of Zimbabwe Amendment (No. 20) Act 2013

⁷ Riedl and Dickovick 2014

29:13)⁸. These platforms have been known as infamously ineffective in advancing citizen participation.

Devolution of power is one of the founding values and principles enshrined in the Constitution of Zimbabwe. The Constitutional objectives of devolution are provided for in Section 264(2) as follows:

(a) To give powers of local governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them;

(b) To promote democratic, effective, transparent, accountable and coherent government of Zimbabwe as a whole;

(c) To preserve and foster the peace, national unity and indivisibility of Zimbabwe;

(d) To recognize the right of communities to manage their own affairs and to further their development;

(e) To ensure the equitable sharing of local and national resources; and

(f) To transfer responsibilities and resources from the national government in order to establish a sound financial base for each provincial and metropolitan council and local authority.

In accordance with the above constitutional devolution vision, political power, policy making decisions, resource raising and distribution, as well as administrative and governance responsibilities are meant to be devolved through three tiers of government. These include:

(1) The national government;

(2) Provincial and metropolitan councils; and

(3) Local authorities (which include urban councils and rural councils).

This potentially provides an avenue for local citizens to access their political representatives thereby enabling their voice to be heard in decision making that affects their local service delivery and local development⁹.

In the 2019 National Budget under the Transitional Stabilisation Programme government allocated ZWL\$310 million for the process of devolution. However it was unclear on how those funds would be distributed and citizens are yet to see the framework of the proposed devolution Bill. For devolution to be a reality, it is important for there to be a clear legal framework and accountability of the funds allocated in the National Budget. The lack of a clear framework on

⁸ <https://pdfs.semanticscholar.org/508f/eee9d792d7265c5a6b16cf5449574b0f2aad.pdf>

⁹ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072014000100014

the role out of devolution and the setting up of provincial councils is an indication of lack of political will. As long as the process is stalled, the socio-economic rights of the people of Binga will continue to be infringed and they will remain marginalized.

It is desirable for local citizens to be the primary beneficiaries of the natural resources endowed in their communities as they are the custodians of such resources. A centralised governance system limits the autonomy of local communities as resources are managed at a central level. In addition, local communities have historically not benefited from foreign currency that is brought in by tourism. All foreign currency is directed to the national coffers and then shared from that central point, often not benefiting the source communities where that foreign currency was generated. Devolution of governmental powers however will enable local communities to have ownership and control of their resources. ZPP is of the position that for Binga to develop and fully benefit from its resources, local leadership, which has administrative, fiscal, political, executive, legislative and market control must be able to make decisions on exploitation of resources, in consultation with the local communities. Devolution therefore seeks to promote greater citizen participation and engagement in the policy and decision-making process¹⁰. It brings input of communities into policy- making closer.

The Auditor General has published successive negative reports in the past ten years of gross maladministration, corruption and impunity in central government that has severely impacted on the socio-economic rights of citizens, particularly those in marginalised communities. For example, mismanagement reported in Zimbabwe National Roads Administration (ZINARA) impacts on road infrastructural development in Binga. Had provincial councils been in place, it would have strengthened the mechanisms of allocation and distribution of resources for development of roads, which could have improved the Binga road infrastructure.

3. CONCLUSION

Devolution of power is the ideal administrative framework for the people of Binga to fully benefit from their resources and thrive. It is therefore important for there to be political will to allow for formulation of corresponding regulations on devolution that cut across the political, administrative and fiscal aspects of decentralisation. ZPP continues to record human rights violations that include socio-economic rights, the right to non-discrimination and equality and the right to human dignity based on the systematic marginalisation of the Binga district. This is in conflict with Section 3 of the Constitution that clearly lays out the founding values and principles that include devolution and decentralisation of governmental power and functions.

¹⁰ Chikerema, 2013. Citizen Participation and Local Democracy in Zimbabwean Local Government System; W. Ncube. 1991.

4. RECOMMENDATIONS

ZPP makes the following recommendations that can contribute to the respect, promotion and protection of human rights for the Binga community:

1. Formulation of a Devolution Bill that is in line with Section 264 of the Constitution to allow for the rolling out of the devolution process.
2. National public consultation on the proposed devolution framework.
3. Capacity strengthening of local institutions to promote the active participation of communities in decision making processes.
4. Government should fully adhere to provisions of the Constitution that seek to promote equality among citizens, particularly Section 54.

