

The Relationship between Traditional Leaders and Rural Local Municipalities in South Africa: With Special Reference to Legislations Governing Local Government

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ABSTRACT The South African government has three spheres of governments which are national, provincial and local. National and provincial governments were constituted in 1994, whereas local government was constituted as transitional local councils (TLCs) in 1995. In the year 2000, transitional local councils were transformed into local governments (local municipalities). Every inch of South Africa, except national parks, is within the jurisdiction of a local government. In rural areas where traditional rule is still in existence, there are traditional councils who are born leaders as they are royalty. Additionally, in rural areas, there are municipalities with their own councils. With these two types of governance in rural areas, traditional governance and local governance, there is always contestation of power. This conceptual study examines ways of minimizing the constant power contestation between traditional leadership and local councils by emphasizing the importance of legislations that govern them.

INTRODUCTION

According to Tlhoale (2012) traditional leadership is an institution that has developed over many decades in Africa. Rugege (2014) explored that, during the last few years, a controversy has raged over the role of traditional leaders in governance, fuelled by the passing of legislation providing for a restructured local government system, the demarcation of municipalities and the 2000 municipal elections that ushered in the local government system. Throughout the history, traditional leadership has been the basis of local government. After the dawn of democracy in South Africa, traditional leaders felt as if their powers have been diminished, and the establishment of Local Councils/local governments made them feel undermined. Local Councils are demarcated along traditional leaders' jurisdiction of power as every inch of land in South Africa, except national parks, is within local council boundaries. In addition, Rugere (2014) states that the controversy arose because the municipalities cover the whole country including the rural areas under the jurisdiction of traditional leaders.

In rural areas municipalities have powers and functions that largely overlap with those that are supposed to be exercised by traditional authorities. Some of the leaders in the local councils assume that they are more powerful than traditional leaders, while traditional leaders feel

that they are born leaders and have royal blood and are therefore more powerful than local council leaders. Power between local councils and traditional leaders was and is still being contested in some areas. Cele (2013) realized that the introduction of democratic local government, and the establishment of municipalities across the entire country has allowed for the development of an equality-driven society, where political ideals and rights of all citizens have a legitimate voice and are guaranteed by the Constitution. Despite these advantages, there are, however, a number of issues which have stemmed from the democratization of the political system in South Africa. In particular, the role of traditional leadership in a democratic state has become a subject for debate and continues to present, what sometimes seem, insurmountable problems.

However, not all the stakeholders approve government's accommodation of traditional leaders. This is evidenced by the amount of discontent that has emerged from some quarters of civil society over what they see as government's susceptibility to being influenced by the traditional leadership advocates. One of the reasons behind the opposition to the recognition of traditional leaders is the perceived undemocratic nature of the institution of traditional leadership in its entirety, which is felt as not being conducive to notions of democracy, equality and gender parity in accordance with the dictates of the country's Constitution (Sithole et al. 2008).

Traditional leaders fear that local governments, since they are merely operational entities, may reach the end of their influence, and this may mean the end of traditional authorities (Rugere 2014). The source of conflict is perceived to be caused mainly by different perceptions on who holds power. The discussion below, therefore, will focus on the relevant legislations governing local government and implementation of such legislations so as to reflect how these two institutions can work together.

LEGISLATIVE PROCESSES

The following are legislations which parliament has promulgated, and these articulate the roles of traditional leadership in the entire system of government.

Constitution of the Republic of South Africa (Act No. 108, 1996)

Traditional leadership existed before and continued to exist under the apartheid system. The need for recognition, formalization and legitimisation of traditional leaders in the democratic system of government is an acknowledgment that the institution had been significantly undermined and manipulated by the previous colonial and apartheid administration. To this end, the 1996 Constitution of the Republic of South Africa set the tone for the recognition of traditional leaders in a democratic dispensation. In terms of Sections 211-212 of the Constitution of the Republic of South Africa on Recognition and Role of traditional leaders, the following have been stated:

Recognition (Section 211)

In terms of Section 211 of the Constitution of the Republic of South Africa, the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs. The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

Role of Traditional Leaders States the Following (Section 212)

Section 212 of the Constitution of the Republic of South Africa states that national legislation may provide for a role for traditional leadership as an institution, at local level, on matters affecting local communities. The section goes further to state that to deal with matters relating to traditional leadership, the roles of traditional leaders, customary law and the customs of communities observing a system of customary law are that:

- ♦ national or provincial legislation may provide for the establishment of houses of traditional leaders; and
- ♦ national legislation may establish a council of traditional leaders.

Municipal Structures Act (Act No. 117, 1998)

According to the Municipal Structures Act of 1998, participation of traditional leaders in municipal councils, in terms of Section 81(1); (2) (a)-(c); (3); (4) (a)-(c) is as follows:

Section 81(1) of Municipal Systems Act of 2000 states that the traditional authorities that traditionally observe a system of customary law in the area of a municipality may participate through their leaders, who have been identified in terms of subsection (2) in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.

In terms of Section 81(2)(a)-(c) of the Municipal Structures Act of 1998, the Member of Executive Council (MEC) for local government in a province, in accordance with Schedule 6 and by notice in the *Provincial Gazette*, must identify the traditional leaders who, in terms of subsection (1), may participate in the proceedings of a municipal council. The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 10 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may so participate. If the number of traditional leaders identified in a municipality's area of jurisdiction exceeds 10 per cent of the total number of councillors, the MEC for local government in the province may determine a system for the rotation of those traditional leaders. Before a municipal council takes a

decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter.

In terms of Section 81(4)(a)-(b) of Municipal Structures Act the MEC for local government in a province, after consulting the Provincial House of Traditional Leaders, may, through notice in the *Provincial Gazette*:

regulate the participation of traditional leaders in the proceedings of a municipal council; and prescribe a role for traditional leaders in the affairs of a municipality.

In terms of Section 81(5) of the Municipal Structures Act, when participating in the proceedings of a municipal council, a traditional leader is subject to the appropriate provisions of the Code of Conduct.

Traditional Leadership and Governance Framework Amendment (Act No. 41, 2003)

The foreword of the Traditional Leadership and Governance Framework Amendment (Act No. 41, 2003) by the former Minister Mufamadi of the Department of Cooperative Governance and Traditional Affairs (Provincial and Local Government) states that: it is the Department's considered view that the institution (traditional leadership) has a place in our democracy, and has a potential to transform and contribute enormously towards the restoration of the moral fiber of our society and in the reconstruction and development of the country, especially in rural areas. It is also important that conditions for democratic governance and stability in rural areas are created so that accelerated service delivery and sustainable development can be achieved. This will only be possible if measures are taken to ensure that people in rural areas shape the character and form of the institution of traditional leadership at a local level, inform how it operates and hold it accountable. In terms of Section 4 of the Traditional Leadership and Governance Framework Amendment (Act No. 41, 2003) the following are functions of traditional leadership:

- ♦ Administering the affairs of the traditional community in accordance with customs and tradition; assisting, supporting and guiding traditional leaders in the performance of their functions;

- ♦ Supporting municipalities in the identification of community needs;
- ♦ Facilitating the involvement of the traditional community in the development or amendment of the integrated development plan (IDP) of a municipality in whose area that community resides;
- ♦ Recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
- ♦ Participating in the development of policy and legislation at local level;
- ♦ Participating in development programmes of municipalities and of the provincial and national spheres of government;
- ♦ Promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- ♦ Promoting indigenous knowledge systems for sustainable development and disaster management;
- ♦ Alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction;
- ♦ Sharing information and cooperating with other traditional councils;
- ♦ Performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.

Partnerships between Municipalities and Traditional Councils

In terms of Section 5(1), (2)(a)-b), and (3) of the Traditional Leadership and Governance Framework Amendment (Act No.41, 2003) the national government and all provincial governments must promote partnerships between municipalities and traditional councils through legislative or other measures. Thus, any partnership between a municipality and a traditional council must be based on the principles of mutual respect and recognition of the status; and be guided by and based on the principles of co-operative governance.

A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal

Systems Act 2000 (Act No. 32 of 2000), and any other applicable legislation.

LOCAL GOVERNMENT, TRADITIONAL LEADERSHIP AND DEMOCRACY

Cele (2013) states that the Constitution places a burden on local government to govern according to democratic norms and values. This principle of good governance is inextricably linked to the values of openness, responsiveness, transparency and accountability. The question is, whether the institution of hereditary rulers and chiefs can serve the interests of the people as a whole in conformity with the democratic principles embodied in the Constitution.

According to Oomen in (Cele 2013), the debate about traditional leaders and democracy is 'cast in dichotomies: African and western, rural and urban, modern and traditional. This, she continues, causes traditional authority either to be trivialised or romanticised. In a political context, those who trivialise the traditional leadership system may be viewed as modernist who give high regard to the principles of accountable, democratic government and see no governmental role for traditional leaders.

What Are Areas of Conflict at a Local Government Level?

Cele (2013) indicated that it is critical to highlight the Constitutional mandate of local government and to clearly identify possible areas of conflict between this form of governance and the traditional leadership system. The sphere of local government in South Africa is largely concerned with development challenges which necessitate the need for a proper alignment of the two spheres and an integrated development plan. There is an increasing pressure for local government to excel in meeting the demands of service delivery made extremely urgent by constant service delivery protests; to deliver on local economic development aimed at both competitiveness and poverty alleviation; to engage in more open, transparent and mutual government-citizens relations, and to forge new and reformed inter-governmental relationships.

Cele (2013) further stated that these significant roles are being added to the existing and extensive functions performed by local government, and there are increasingly higher expecta-

tions being placed on Municipal Councillors to perform efficiently and creatively in this environment. The question is, whether it is possible for municipal councillors to work cooperatively with traditional leaders in executing their duties without either undermining their Constitutional mandate or compromising the democratic values upon which the sphere of local government was established. It is possible for the traditional leaders to work co-operatively with the democratically-elected councillors. To answer the question "how", Cele (2013) starts by pointing out at the areas of conflict that these key stakeholders are facing at the local level:

- ♦ The perception that the fundamental cultural rights and roles of traditional leaders within rural communities are unfairly compromised by the democratic laws and the Constitution;
- ♦ The question of whether the traditional leaders must have a 'political voice' and be included in the participatory structures of government;
- ♦ Whether land administration should be left in the hands of traditional leaders or it should be a government function;
- ♦ The principle of gender equality (in particular the role of women in a traditional leadership system);
- ♦ The question of accountability as a democratic principle (whereas in a democracy, power lies with the people, democratically elected leaders would, therefore, be expected to account to the people; when it comes to traditional leadership, the question of accountability is not very clear);
- ♦ The perception that traditional leadership undermines the commitment towards achieving an accountable and efficient form of democratic governance in South Africa (Cele 2013).

AREAS OF COOPERATION AT A LOCAL GOVERNMENT LEVEL

Cele (2013) stated that apart from addressing the areas of conflict in order to achieve cooperation, there is also a need for these stakeholders (traditional leaders and municipal Councillors) to plan together. Planning can no longer be regarded as an activity separate from traditional leaders, but should be seen as an integral part that must inform equal commitment from

traditional leaders and councillors to deliver services and prioritize development. In the case of land administration, it is important that the integrated development plans (IDPs) of municipalities must involve a wide process that incorporates projects initiated or led by traditional leaders. The prioritization, which is implicit in this process, will inevitably impact on the planning and participatory structures within municipalities. Other specific areas of cooperation would include:

- ♦ participation of traditional leaders in the national and or provincial legislative process through the national or provincial house of traditional leaders (whether in the National Council of Provinces (NCOP) or in the Provincial legislature);
- ♦ Participation in executive inter-governmental structures such as inter-governmental forums and various Minister and Members of Executive Committees (MINMECS);
- ♦ Participations through the Houses of Traditional Leaders in the budgetary and financial resource allocation process (across the spheres);
- ♦ Capacity development for traditional leaders in order for them to meaningfully participate in all these structures;
- ♦ At a municipal level, traditional leaders must work with ward councillors, especially by participation in structures such as ward committees, IDP Forums, Community Police Forums, school governing bodies and all the local participatory structures will give them an opportunity to influence processes;

Service delivery and economic development through land use and agriculture is crucial to improving the lives of rural communities within the context of nationally-defined priorities of social transformation. It is imperative that local government and traditional leaders should relate to each other in forging a meaningful partnership, thereby, promoting transformational imperatives, notable development, transparency and accountability (Cele 2013).

GOOD PRACTICE MODEL FOR WORKING WITH TRADITIONAL LEADERS

Sithole et al. (2008) stated that Koelble's working research paper entitled 'Democracy,

Traditional Leadership and International economy of South Africa' summarises a dominant approach in the analysis of traditional leadership in South Africa. When one reads this paper, it is clear that Koelble purports to be articulating what he sees as two different approaches in explaining what he invariably describes as 'the resurgence of traditional leadership' in South Africa. However, on close analysis, these approaches are a variation of the same paradigm of analysis on traditional leadership. Koelble's core arguments outlining this paradigm are that:

- ♦ traditional leadership as a system that allows for inheritance of leadership is incompatible with democracy;
- ♦ traditional leadership should become extinct, but it continues to thrive both because the institutional local governance changes in rural areas are lagging behind and because government is mistakenly supporting this system despite that it contradicts democracy;
- ♦ an infiltration of the democratic values and economic models propounded by the global discourse will help the local establishment of democracy that will eventually displace the undemocratic forms of governance such as traditional leadership; and
- ♦ despite the cultural relativism of those who support traditional leadership, the objective and rational principles of democracy demand that the state ensures access to democracy as a commodity to which all humans are entitled (Sithole et al. 2008).

CAPACITY BUILDING STRATEGY OF TRADITIONAL LEADERS

Understanding and interpretation of legislations is not required only by traditional leaders, but councilors and Ward committee members and senior municipal administrators also need capacity-building in interpretation and understanding of legislations. The paragraphs above have indicated the role of traditional leaders in local government as legislated, and these demonstrate clearly that the role of local councils and that of traditional leadership is supposed to be cooperative.

As with all constitutional issues, South African local government is on the threshold of having to manage several complex matters on a large scale. The need for proactive management at

the municipal level has been further stressed by the passing of the Local Government Transitional Act, (Act 209 of 1993). The Act emphasizes the necessity for disjointed urban communities and even rural communities, to combine their efforts in forming non-racial local government institutions which can effectively cope with the diverse needs and aspirations of all citizens at the grassroots level (Hilliard 1996).

Traditional leaders must understand the functions of municipalities according to Municipal Structures Act (Act No. 117, 1998), which are: electricity delivery, water for household use, Sewage and sanitation, storm water systems, refuse removal, firefighting services, municipal health services, decisions around land use, municipal roads, municipal public transport, street trading; abattoirs and fresh food markets, arks and recreational areas, libraries and other facilities, and local tourism.

Ward Committees on Working with Traditional Leaders

In terms of Section 72 of Municipal Structures Act (Act No. 117, 1998), ward committees are set up in municipalities where the ward committee model is being used. The purpose of a ward committee is:

- ♦ to get better participation from the community to inform council decisions;
- ♦ to make sure that there is more effective communication between the council and the community; and
- ♦ to assist the ward councillor with consultation and report-backs to the community.

According to Sithole et al. (2008) ward committees are elected by the communities that they serve. A ward committee may not have more than 10 members, and women should be well represented. The ward councillor also serves on the ward committee and should act as the chairperson. Ward committees have no formal powers but can advise the ward councillor or make submissions directly to council. The ward committee should also participate in drawing up the integrated development plan (IDP) of the area. Ward committees are composed of community members in the ward. This paper argues that traditional council members should also be part of the ward committees.

Capacity building should be inclusive so that all stakeholders should have same understanding of what is expected of them. Full communication, participation, cooperation, and coordination by traditional leaders in governance of local government will also enhance service delivery, which is the core of local government (Sithole et al. 2008).

THE IMPLEMENTATION PLAN

In the researchers' view, courses and workshops for traditional leaders, Ward Councillors, Ward Committee members should be introduced. Suggested courses/modules should include the following:

- ♦ Local government legislative framework;
- ♦ Community development;
- ♦ Citizen participation in local government; and
- ♦ Public ethics.

As stated above, inclusive training will enhance full participation of all stakeholders required to deliver services to all communities. Training can take place at universities and Territorial or Tribal Councils.

However, as stated by Sithole and Mbele (2008), the issue of training and empowerment through education and information on policy, legislation and various models of democracy is very important, as indicated by development practitioners, some academics and by traditional leaders themselves. However, care should be taken not to confuse training and education as implying a need for a 'civilizing process' on the part of traditional leaders; traditional leaders are not 'upgrades' towards bureaucratically oriented politicians, but leaders in their own right.

CONCLUSION

In view of the different legislations which parliament has promulgated, the researchers find that it is impossible to avoid the role of traditional leadership within the third sphere of government which is local government. The Constitution stipulates that there should be laws which must protect traditional leadership. The Department of Cooperative Governance and Traditional Affairs also states that it is the Department's considered view that the institution (traditional

leadership) has a place in the South African democracy, and has a potential to transform and contribute enormously towards the restoration of the moral fiber of society and in the reconstruction and development of the country, especially in rural areas.

Following what has been discussed above, it is the researchers' view that local councils should hold workshops for traditional council members.

RECOMMENDATIONS

The Department of Co-operative Governance and Traditional Affairs should introduce similar training for local government councillors and traditional leaders council members on the legislations that govern local government elections. With regards to training and building harmony between these two entities, the following: local government legislative framework, community development, citizen participation in local government, and public ethics should be emphasized.

REFERENCES

- Cele SB 2013. A Closer Look at the Relations between the Traditional Leaders and Local Government Councilors. Discussion Paper On The Role Of Traditional Leaders In A Democratic South Africa. From <www.kwanaloga.gov.za> (Retrieved 5 October 2013).
- Hilliard VG 1996. Understanding contemporary local government. In: K Bekker (Eds.): *Citizen Participation in Local Government*. Pretoria: Van Schaik.
- Rugere S. 2014. Traditional Leadership and its Future Role in Local Governance. From <<http://www.saflii.org/ajournals/LDD>> (Retrieved on 2 December 2014).
- Sithole P, Mbele T 2008. *Fifteen Year Review on Traditional Leadership A Research Paper*. Cato Manor. HSRC.
- South Africa. 1996. *Constitution of the Republic of South Africa (Act No. 108)*. Pretoria: Government Printers.
- South Africa 1998. *Municipal Structures (Act No. 117 of 1998)*. Pretoria: Government Printers.
- South Africa 2000. *Municipal Systems (Act No. 32 of 2000)*. Pretoria: Government Printers.
- South Africa 2003. *Traditional Leadership and Governance Framework Amendment Act. No.41*. Pretoria: Government Printers.
- Tlhaolele CT 2012. *The Interface between Traditional Leadership in Shared Rural Local Government*. Master of Arts Dissertation. Unpublished. Johannesburg: University of Johannesburg