

THE ROLE OF TRADITIONAL LEADERS IN SOUTH AFRICA - A RELIC OF THE PAST, OR A CONTEMPORARY REALITY?

Lulamile Ntonzima
Senior Lecturer Department of Public Administration
Cape Peninsula University of Technology

AND

Dr Mohamed Sayeed Bayat
Director of Management College of Southern Africa (MANCOSA) &
Adjunct Professor: Faculty of Commerce & Management
University of Fort Hare
Alice

ABSTRACT

The role of traditional leaders has been viewed as an anomaly in the post-apartheid democratic political dispensation. Their presence cannot be denied. A large percentage of particularly rural communities accept their existence and their authority within the context of tribal traditional government and justice.

Initiatives have been launched to integrate their existence and continued influence into the current political system.

A point of departure has been their description in chapter 12 of the South African Constitution (Act 108 of 1996). Various political and community leaders have expressed their support for the system of traditional leaders as a binding factor in preserving the traditions of the various indigenous peoples of South Africa.

INTRODUCTION AND BACKGROUND

According to the White Paper on Traditional Leadership and Governance (2003), South Africa's transformation from undemocratic, unrepresentative and unaccountable systems of government necessitated that all values, practices, institutions and structures of governance, be reviewed in the light of the new order.

Chapter 12 of the Constitution (SA Constitution: 1996) envisaged that this broad transformation of society would include the institution of traditional leadership,

precisely because this institution has a critical role to play, especially in rural areas. It is the vision of government, therefore, to transform and support the institution of traditional leadership in accordance with the constitutional principles of democracy and equality and that it may represent customary interests of communities, play a role in socio-economic development and contribute to nation building, and be accountable.

The existence of traditional leadership and South Africa's present democratic dispensation are not mutually exclusive. Traditional leadership has to function in a manner that embraces democracy and contributes to the entrenchment of a democratic culture, thus enhancing its own status and legitimacy amongst the people. To this end, the critical challenge facing both government and traditional leadership is to ensure that custom, as it relates to the institution, is transformed in accordance with the Constitution and the Bill of Rights. Such a transformation exercise must ensure that the institution:

- responds and adapts to change;
- is in harmony with the Constitution and the Bill of Rights, and promotes democratic governance and the values of an open and democratic society;
- promotes freedom, human dignity and the achievement of equality and non-sexism;
- derives its mandate and primary authority from applicable customary laws and practices;
- strives to enhance tradition and culture;
- respects the spirit of communality;
- promotes unity and peace amongst people;
- promotes and facilitates a sound relationship between the institution and the different spheres of government - in particular the local government sphere;
- mobilises rural people to participate in rural local governance so as to achieve the Reconstruction and Development Programme (RDP) goals and local economic development initiatives, and advances the human potential of

people living in rural areas;

- manages an efficient, effective and fair dispute resolution system through customary law courts for traditional local communities; and acts in partnership with municipalities to contribute to, and creates co-operative and supportive relationships in, service delivery, and
- secure and safe rural areas.

The task of building a democratic State requires that what is envisioned above is shared by all. The task of strengthening and consolidating democracy requires the participation of all of our leaders, traditional, religious and elected. Traditional leaders must constitute part of the cadre of leadership that is leading and transforming South Africa towards a better life for all (White Paper on Traditional Leadership and Governance: 2003).

As traditional local authorities have been closely associated with the programmes of apartheid, there have been calls for their abolition. Experiences of states throughout the African continent, and indeed within South Africa itself, suggests that traditional leadership structures are resilient and adaptive and that they are deeply rooted in the social fabric of African communities. The influence of traditional leaders is extensive, particularly among most rural communities (White Paper on Traditional Leadership and Governance:2003).

Just as the system of co-operative government was developed in acknowledgement of the diversity of the needs and concerns of the population of South Africa, so the Constitution established the right of communities living under traditional law and custom to influence the way in which the country is run (White Paper on Traditional Leadership and Governance:2003).

Houses of Traditional Leaders have been established at national level and in some provinces to carry out an advisory role in government. There are provincial Houses of Traditional Leaders in six provinces - Eastern Cape, Free State,

KwaZulu-Natal, Limpopo Province, Mpumalanga and North West (White Paper on Traditional Leadership and Governance:2003).

Each provincial House nominates three members to the National House of Traditional Leaders, which elects its own office-bearers. The National House advises the national government on the role of traditional leaders and on customary law. It may also conduct its own investigations and advise the President on request (White Paper on Traditional Leadership and Governance: 2003).

HISTORICAL BACKGROUND

According to Botha and Tandy (1992:12), in original African tradition, leadership is hereditary. It is not subject to the electoral process (Botha et al 1992: 12). Although this may seem to remove from within the institution any semblance of democracy, power was traditionally exercised only through council, thus negating absolutism.

Bekker (1989:237) states that, structurally, councillors were drawn from the ranks of headman, sub-headman and prominent elders in the community acknowledged for their skills and leadership qualities. Significantly, the hereditary process is fundamentally primogeniture and by nature excludes women (Bekker 1989: 237).

Only in exceptional circumstances would women qualify to assume traditional leadership. By virtue of their gender, women do not qualify to inherit "chieftainship". In exceptional cases where there is no available heir and /or the heir-elect is too young, a woman, usually the mother of the heir-elect, would be appointed as regent (Bekker 1989: 237).

Traditionally, the chief was the most important figure in the central tribal government. He was the eldest son of his father's principal wife; he held a

hereditary position and was therefore generally the most senior member of the most senior lineage within the tribe. Although he was qualified by birth to succeed his father, he had to be formally designated, trained and inaugurated as chief (Hartman et al 1993: 15).

According to Ayittey (1991:43), the first man to settle on unoccupied land with his followers was the chief and ultimately primary ancestor of the group. Although the situation above was generally applied, it was not automatic. The chief's eldest son could be blocked from succession if he were found to be unfit or mentally incompetent to govern. Other considerations included his past conduct, his mannerism, his capacity to lead, his valour, and his popularity. He had to have insight and selfless commitment to the ideals of the community (Ayittey 1991: 43).

In pre-colonial times, traditional leaders were not as autocratic and tyrannical as is often suggested. Chiefs in Xhosa-speaking societies, for example, did not wield absolute and unchallenged power and their influence was mediated by the community at large in effect, by civil society (Hammond-Tooke 1975: 17).

Decisions affecting a tribe were generally made by traditional leaders in consultation with their councillors who broadly speaking, represented the interests of different sectors of the community (Hammond-Tooke 1975: 17).

Every tribal chief was seen as an authority on all aspects of life in the community he served. He had to lead military expeditions, initiate and perform a variety of ceremonies to promote the well-being of the tribe, maintain peace and order, as well as allocate and regulate tribal land (Hammond-Tooke 1975: 17).

THE TRIBAL SITUATION

A tribe is a socio-political group, usually within a definite demarcated area, with its own dialect, culture and unifying social organisation. It may include several sub-groups. A tribe ordinarily has a leader and may have a common ancestor. The families or small communities making up a tribe are linked through economic, social, religious family or blood ties (Winnick 1972: 344).

A large percentage of the tribal population now lives in urban areas. These urban dwellers do not always share the same value systems and authority structures as those living in rural areas.

The rural areas accommodate the bulk of the poor, who often form part of the tribal communities. There are about 11 million people below the minimum wage level in these areas, and the majority of them are women. Other features of the rural areas are the lack of land, limited economic viability, lack of infrastructure and substandard service provision (INLOGOV: 1993).

In 1951, the Bantu Authorities Act (No 68 of 1951) attempted to address the indigenous tribal council and its responsibilities. This Act established tribal authorities and regional authorities where a tribal authority was established for a recognised tribe (as per Black Administration Act 38 of 1927) and a regional authority could be established for two or more tribal authorities.

A territorial authority could be established for two or more regional authorities. Section 3 of the Black Authorities Act No 68 of 1951, which deals with the constitution of these authorities allowed for the recognition of an existing tribal authority if it was functioning according to the laws and customs of the tribe. The State President had the power to replace this authority if he saw fit.

Section 5 of the above Act authorised the regional authority to make by-laws, but they had to be approved by the State President before their enforcement. If the authority did not make the by-laws, the minister could do so.

Proclamation 110 of 1957 (Sections 7 and 30) and (Sections 12 and 20) of Act 38 of 1927 provided legislation regarding the exercise of functions in tribal authorities. The responsibility of carrying out state functions lay with the chief as he was the only legally accountable person at tribal level (Section 9, 10 and 11 of Proclamation 110 of 1957.)

FUNCTIONS OF TRIBAL AUTHORITIES

A number of councils assisted the tribal leader in his duties. The local affairs of sub-regions were administered by a small local council or committee. These local political units had to report to the tribal leaders about activities in their regions. The governing of the tribe was the responsibility of the tribal leader, while social and other political affairs, powers and functions were delegated to lower political units (Thornhill 1993: 30).

Traditionally, the duties of the tribal leader focused on religious, political, economic, military and judicial activities. In religious matters, the high priest of the tribe (tribal leader) led the initiation ceremonies and played an important role at wedding ceremonies. In economic matters, he was the holder of all land. He was responsible for the division of land, allocation of land to his subjects and the imposition of taxes and levies (Hartman **et al.** 1993: 3).

Traditional leaders assume responsibility for prevention, detection and punishment of crime, efficient use of labour resources in his area, eradication of noxious weeds; preservation of fauna and flora; use of water supplies; protection of public property; monuments and other historical objects; rehabilitation of land; prevention of soil erosion and overstocking (Hartman *et al.* 1993: 24-25).

Traditional leaders report the occurrence of contagious or infectious diseases among people or livestock, unnatural deaths of people and crime; unauthorised

presence of foreigners; unauthorised occupation or cultivation of land; the presence of fugitive trespassers; illicit possession of arms, ammunition, liquor, dangerous or habit forming drugs, publications and pamphlets; the unauthorised collection of pensions, levies or other benefits (Hartman *et al.* 1993: 26).

Although it appears that no specific administrative duties are imposed on tribal authorities, their functions can be deduced from the above (Hartman *et al.* 1993: 26).

ROAD TO DEMOCRACY

At the transitional talks at the World Trade Centre in Kempton Park, Johannesburg, political parties put forward their positions on the role of traditional leaders. There was consensus that traditional leaders should be recognised and this was included in the then Interim Constitution of South Africa (Interim Constitution Act No 200 of 1993).

A Transitional Local Government Act was formulated, but it lacked mention of rural local government restructuring. Eventually, an amendment to the Local Government Act was made (Proclamation R65, 1995) which set a framework for the restructuring of rural local government by providing each provincial local government minister with a range of options. According to the Local Government Act 209 of 1993, traditional leaders would be *ex officio* members of a local council.

The Constitution of South Africa Act 108 of 1996 sets out clearly the role of Traditional Leaders and authorities at this sphere of Government in its Chapter 12, (par 211) states that “the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution” (SA Constitution: 1996).

It is generally accepted that if traditional leaders are elected to any government structure (local or provincial), they should give up their traditional positions since traditional leaders should be above party politics.

In the above context, Chief Patekile Holomisa (1994: 23) stated in Imvo Zabantsundu (1995), that there is an attempt to remove service delivery functions from traditional leaders. This institution is often blamed for the lack of development in rural areas where they function; the common belief being that the traditional leaders were in government in the Bantustans and therefore should have done something for their natural "constituencies" in terms of development (Holomisa, 1994:23).

This line of reasoning fails to recognise the fact that all structures of government; locally, provincially and nationally were used, not for the purpose of developing the people they were supposed to serve, but in order to ensure the continued subjugation, division and impoverishment of the blacks. The policies of the apartheid regime created town councils for the perpetuation of racism and the underdevelopment of black urban residents.

The institution of chieftaincy forms part of the existing social institutions and has an impact on the lives and activities of the rural people at local level. Failure on the part of democratic government to devise a dispensation for the participation of chiefs at this level will affect the acceptability of any administrative authority that can be installed in areas where traditional values and customs rule supreme (Skweyiya 1993: 4)

CONFLICT BETWEEN TRADITIONAL LEADERS AND ELECTED REPRESENTATIVES

According to Venson and Pelonomi (1996: 25), in rural districts in the Free State, Limpopo, North West Province and the Eastern Cape, after local government elections, the elected local government representatives discovered that there

were no administrative structures to enable them to perform their duties and that community mobilisation depended largely on the co-operation of the traditional leaders. Traditional leaders expressed a willingness to play a role in the development activities of the councils (Venson, Pelonomi ed 1996: 25).

Conflict emerged around the following questions; who had the right to consult the community on development; who had the right to convene community meetings; who will manage the development funds; and finally, whose responsibility it was to ensure that the desired development took place (Venson, Pelonomi ed 1996: 25).

Venson, Pelonomi (1996:25) explains that during a number of workshops held in the abovementioned provinces between traditional leaders and the elected councillors, their roles were discussed and agreed upon. In these workshops it was agreed that councillors were the representatives of central government and in that capacity they had to, *inter alia*, accept responsibility for development delivery. The workshops concluded that traditional leaders were best placed to mobilise the community and facilitate development consultations (Venson, Pelonomi ed 1996: 25).

What makes the task of the traditional leaders to be a difficult one is that the sovereignty over the land was transferred from the chief to the government. Authorities were limited as far as their powers to allocate and distribute land were concerned. The tribal leaders were no longer tribal leaders in the traditional sense - as holders of land - but were regarded as agents of the government administration. They became government appointees, paid to implement that government's policies (Palmer 1986: 88).

A significant number of the rural population remained loyal to the indigenous institutions, but the indigenous system of law and justice that mirrored the norms and values of traditional society was now manipulated to serve the interests of

the rulers. Chiefs were seen merely as representatives of the inhabitants of the proclaimed tribal areas. In contrast with their traditional position as political and judicial entities, the chief and his councillors became embedded in the administrative system (Hartman *et al*, 1993: 28).

The first step towards democratisation of the institution of chieftainship was to cleanse it of all negative attributes that apartheid had cast upon it. This, in turn, would remove the major cause for viewing chiefs with suspicion and hostility and restore the institution to the legitimacy it previously had (Palmer 1986: 86).

CONSTITUTIONAL ROLE OF TRADITIONAL LEADERS

Chapter 12 Section 112 of the Constitution of the Republic of South Africa, 1996 Act 108 of 1996 states that, “The institution, status and role of traditional leadership, according to customary law, is recognised, subject to the Constitution (SA Constitution: 1996).

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 (SA Constitution: 1996).

The courts must apply customary law when that also is applicable, subject to the Constitution and any legislation that specifically deals with customary law” (SA Constitution: 1996).

Section 212 of the Constitution directs about the role of traditional leaders as follows:

- “National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

- To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law.
- National or provincial legislation may provide for the establishment of houses or traditional leaders; and
- National legislation may establish a council of traditional leaders . . . ” (South Africa Constitution Act 108 of 1996).

According to the position paper of Eastern Cape Traditional Leaders (May 1998: 4,5), they objected to the Constitution on the basis that it was not consistent with the Constitutional principles adopted at the Constitutional talks held at the World Trade Centre (Eastern Cape Traditional Leaders: May 1998).

The paper further elucidates that they were part of the delegation of Traditional Leaders of South Africa that gathered at the Union Building in Pretoria on 28 October 1995, wherein they delivered their memorandum to the President clearly setting out their concerns concerning the role of leadership in this country (Eastern Cape Traditional Leaders: May 1998).

The above paper also states that “The Constitutional provisions, as they stand, do not guarantee the role of traditional leadership at a local government sphere (Eastern Cape Traditional Leaders: May 1998).

Because the final Constitution does not spell out the role of traditional leaders in detail, the leaders felt that a number of issues affecting them are not contained in the Constitution. These issues remain unresolved - especially in KwaZulu Natal, for instance, where the issue of payment of traditional leaders is viewed by the Inkatha Freedom Party (IFP) as a provincial competence. Congress of Traditional Leaders of South Africa (Contralesa) and the ANC view it as a national competence that should be with the office of the State Presidents (Eastern Cape Traditional Leaders: May 1998).

The memorandum delivered by the traditional leaders to the president as mentioned above, lead to the formation of the Steyn Commission. This commission made some observations.

OBSERVATIONS FROM THE STEYN COMMISSION

According to the position paper of the Eastern Cape House of Traditional Leaders dated (May 1998: 14-18), the Steyn Commission currently set out the role of Traditional Leaders as follows:

“He/she shall seek to promote the interests of the tribe or community and shall support and actively encourage and initiate measures for the material, moral and social well being of his/her people;

He/she shall maintain law and order.

He/she shall enjoy the privilege and status conferred upon him/her by the recognised customs and usage of the tribe or community, but shall not at any time, extort, or by the use of compulsion or arbitrary means, obtain from any person any tribute, respect and obedience.

He/she shall in accordance with the provisions of any law or the recognised custom of his/her tribe or community exercise his/her powers, functions and duties in consultation with his/her tribal or community council;

He/she shall carry out all lawful orders as may from time to time be given to him/her by the government;

He/she shall ensure the enforcement within his/her area of all laws and all orders, instructions and requirements of the government;

He/she shall bring to the notice of his/her tribe or community all new laws, orders, instructions or requirements of the government and shall ensure strict compliance therewith;

He/she shall report the occurrences of any of the following matters in his/her area - outbreak of contagious or infectious diseases amongst persons, outbreak of diseases amongst stock, death of person from violence, etc;

He/she shall prevent the sale of noxious or poisonous substances;

He/she shall not manifest any partisanship in the activities of any religious body, in church or in school matters;

He/she shall convene meetings of his/her tribe or community, attend such meetings personally and endeavour to secure the attendance of as many as possible of the members of the tribe or community. ”

The Commission has found that the traditional leader is remunerated for such services and tasks rendered, and in terms of his status and the privileges linked to that position.

The Commission further found that, according to custom, traditional leaders have, inter alia, the following privileges:

Succession to office typically remains kinship-based within the royal clan;

Chieftainship is ritualised, i.e. the chief, as the most senior member of the royal family is the centre of all rituals;

He is the mediator between the living and the dead and is also responsible for rituals directed towards the well-being of the chiefdom;

Accordingly principles of kinship, religion, politics and economics are reconciled and integrated into the office of the chief.”

In terms of indigenous laws and as circumscribed by various pieces of legislation, traditional leaders exercise criminal and civil jurisdiction.

An examination of the above outline of the role of the institution confirms the following findings of the Commission, some of which findings the House agrees with:

“That these leaders have a political influence in the democratic dispensation is self-evident;

It is clear that certainly in some parts of the country their status and role in rural areas can be significant;

To understand the significance of their status and role would be ill-advised and not in the interests of stability, especially in such rural areas where there is still respect for the institution and benefit derived by communities from their activities.

Colonial designs, pre-union and post-union developments, the grand design of “ separate development” and the present political requirements have all left their mark on traditional leadership structures, its powers and on its legitimacy and credibility;

The absence of a clearly articulated policy framework, as to what the democratically elected government sees as the future of these institutions and how they are to be integrated into an efficient, accountable part of a South African system of government, compounds the problems created by previous regimes” (Eastern Cape House of Traditional Leaders: May1998: 14-18, Steyn Commission).

RECOMMENDATIONS

The research has shown that pertaining to development programmes, most communities in rural areas still rely on traditional leaders and their headmen down to sub-headmen. For developmental programmes, it remains necessary for government to establish strong communication links with the traditional leadership component of society. This is often problematic due to poor administrative machinery.

What was good from the past need to be adopted to the present and then amalgamated into both the past and the present in order to bring about structures that will be able to withstand the challenges of the future.

A study done by Thakathi (1996), revealed that the new system of local government has caused concern for many traditional leaders who feel that their position, power and status is threatened. The study also showed that traditional leaders lack knowledge about the new system of local government and their place therein.

According to Thakathi (1996),

Thakathi (1996) holds that there should be regular communication among all community structures. Currently, traditional leaders perceive that they have not been satisfactorily consulted on changes and issues that involve them directly.

According to Thakathi (1996), the government needs to begin facilitating proper communication networks among the traditional leaders to enable them to be part of decision-making processes towards government policies and programmes in order to respond to the needs of the community.

Clarke (1996) points out that traditional authorities should encourage the building of a civil society that contributes to the collective identity of the community as a tribe in a “constructive and positive manner”. Clarke (1996) further notes that moral communities are characterised by a number of interest groups which give expression to diverse activities, many of which are self-organised. These groups should be encouraged, supported and seen to have proper linkages with the traditional authority structure (Clarke: 1996).

The dependence of large rural communities on traditional leaders, concomitant to communication problems, has a negative effect on development programmes. In

this context, a number of recommendations are proposed as contributions towards solving existing problems with the relationship between the government of the day and traditional leaders. The recommendations follow in the paragraphs below.

Recommendation 1

Establishment of mobile offices for headmen and sub-headmen to facilitate development, data capturing of socially-related government programmes and information dissemination.

Recommendation 2

Employment of village administrative officers to assist the function of headmen and sub-headmen.

Recommendation 3

Establishment of village-to-village development committees with headmen or sub-headmen as the chairpersons while the Local Economic Development (LED) managers from the respective local municipalities oversee the functioning of such committees. Both the LED manager and headmen should continuously brief the mayor and chief linked to the area.

Recommendation 5

Training of headman and sub-headman to serve as part of government development and service delivery agents towards strengthening the Local Economic Development (LED) initiatives.

Recommendation 6

Harmonisation of traditional leaders and elected representatives' structural relations to bring about the introduction of horizontal structural operational relation between local government and traditional leaders.

Recommendation 7

Traditional leaders need education on issues concerning:

- Constitutional change and development
- Local government administration
- Traditional leadership and law
- Leadership
- General management and administration
- Change management
- Constitutional rights
- Community development
- Democracy
- Governance
- Civil society
- Political systems (Thakati: 1996).

The above recommendations could serve towards achieving positive transformation of the traditional operations by traditional leaders that are in many respects still associated with the pre-1994 era. Integrating the traditional leaders' ways of functioning to benefit the South African agenda for economic growth and development will impact positively on efforts towards the upliftment of poor rural standards of living.

CONCLUSION

Currently, no clear framework exists of how traditional leaders operate in the new dispensation. To recognise their presence and status without allowing them to practice is akin to repeating history.

Simultaneously to the above, the historical experiences of the peoples of South Africa should be taken cognisance of in order to be able appreciate why there is so much concern for democracy.

South Africa as a country still needs development and the prescription is that it should be people-driven. In order to access the funding for development a form of adoption has to take place. Currently, there is room for the elected component of traditional local authority to co-exist together with the main stream political and governmental dispensation. If, on the other hand, the regional councils, as constituted through representation, are not as representative as they purport to be, then the current difficulties will be perpetuated. For example, there are tribal areas that are not represented in the regional councils because their political party representatives are low down on the party list, while others are over-represented, thus causing a political imbalance which is not conducive to achieving, maintaining and enhancing the general welfare of society.

To achieve full political democracy, it would be appropriate to take cognisance of the traditional system of government where people could openly discuss issues. The government carries the responsibility to create a climate of political tolerance so that political differences do not get in the way of democracy. At this stage, traditional leaders should not be expected to manage municipalities. Such expectation is premature and may eventually result in the demise of the traditional leader system.

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