

Traditional Leadership and Governance in Contemporary South Africa

Phindi Patronella Tlou*

Tshwane University of Technology, Pretoria, South Africa.

ABSTRACT

Traditional leaders in South Africa are self-sufficient to enhance the lives of their communities. The aim of the study was to highlight the work that traditional leaders have been performing before colonization, apartheid and in the new democracy. The collection of data was secondary using desktop research and literature from South African government legislation and academic journals. The key finding of the study was that government need traditional leaders to perform certain functions were public sector is unable execute. Traditional Leaders in South Africa are capable of uplifting lives of ordinary rural communities this was demonstrated clearly in the study

Keywords: Colonization; Legislation; Traditional leaders; Governance

INTRODUCTION

It is important to understand the co-existence of the modern system of governance and traditional leadership in intergovernmental relations in achieving service delivery in South Africa before the democracy. Traditional leaders in South Africa they are assisting their communities to achieve basic services. Such as providing food for the needy by planting in community fields and ensuring that there is food security.

BACKGROUND AND HISTORY OF TRADITIONAL LEADERS DURING COLONIZATION AND APARTHEID IN SOUTH AFRICA

Traditional leaders during the colonial and apartheid regime used to perform certain functions for the community. Functions such as, judging in traditional courts whereby communities that were found to be guilty in the traditional courts were fined cows or corporal punishment was used to rehabilitate a community member. However, the functions in which traditional leaders performed on courts issues were stipulated in the Black Administrative Act 192 Section 12 and Section 20. The Act required traditional leaders to work on minor cases in the courts as stipulated in Section 12. Furthermore, the Act allowed the Minister of Justice to deal with cases relating to criminal matters.

The two system of governance traditional leaders and government worked in harmony without any challenges. The traditional leader's work was formalized and paid for the services rendered, and the role of leaders in government was understood. The government did not only allow the leaders to take charge in traditional courts.

However, the system allowed the community to use their native languages and also allowed the community to practice their culture and customs. Thus, many South Africans today are able to converse in different native languages and enjoy the cultural diversity in the country.

LEGISLATION GOVERNING TRADITIONAL LEADERS IN SOUTH AFRICA

When South Africa gained its independence in 1994 one of the important issues that were tabled for discussion was the role and status of traditional leaders and traditional leadership institutions in governance. The agreements reached in this regard were legislated upon Chapter 11 of the 1993 interim Constitution. All other outstanding issues were left to the processes which led to the adoption of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

The 1996 Constitution of South Africa Chapter 12 Section 211 recognizes the institution of traditional leaders. In addition, the Constitution acknowledges the role of traditional leadership and that the body should observe the customary law practices legislated. The Constitution also provides for the creation of National House of Traditional Leaders at both provincial and national levels. The houses have advisory powers on issues pertaining to traditional leadership, such as custom and culture. Chapter 12 of the Constitution further states that National government and Provincial governments need to prescribe the role of traditional leaders in government.

In 1998 the National government promulgated a White Paper on Local Government. Section 4 of the White paper laid the basis for

*Correspondence to: Phindi Patronella Tlou, Tshwane University of Technology in Pretoria, South Africa. E-mail:makhu.12@gmail.com

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transforming local government. Key issues addressed in the White Paper relate primarily to the place and role of the institution of traditional leadership in the new system of governance. It sets out a broad policy framework that lays the basis for the drafting of national framework legislation. This legislation's aim was to set norms and standards that will inform the drafting of provincial legislation necessary to deal with peculiarities prevailing in various provinces. Mechanisms were put in place to ensure consistency with national framework legislation. The White Paper's main objective was to move towards restoring the dignity of the institution of traditional leadership and ensure that it would occupy its pride of place within the democratic system of governance.

To advance the pride of traditional leadership, the government introduced the National House of Traditional Act 22 of 2009. Houses of traditional leaders in South Africa are divided into three the National House, Provincial House and Local House. The National House of Traditional Leaders (NHTL) is at a national level and the work of the NHTL is to promote the role of Traditional Leadership within the Constitutional dispensation. It is also the responsibility of the House to oversee nation building, allow peace and cohesiveness of communities to prevail and also advise the national government on matters relating to culture and tradition. Provincial Houses of Traditional Leaders are established to advise the district municipality on matters pertaining to customary law and the traditional communities within the district municipality. Moreover, the provincial house assists in developing plans that impact on traditional communities. Local Houses of Traditional Leaders are established at the district level in accordance with provincial legislation for the area of jurisdiction of a metropolitan municipality, where more than one senior traditional leadership exists in that metropolitan municipality. The number of members of a local house of traditional leaders may not be less than five and may not be more than 10, or such other higher number not exceeding 20 as may be determined by the Minister. The members of a local house of traditional leaders are elected by an electoral college consisting of all kings or queens, or their representatives, and senior traditional leaders residing within the metropolitan municipality in question.

The Electoral College must seek to elect a sufficient number of women to make the local house of traditional leader's representative of the leaders within the area of jurisdiction in question. The roles of a local house of traditional leaders are to advise the metropolitan municipality in question on issues relating to customary law, customs, traditional leadership and the traditional communities within the metropolitan municipality; the development of planning frameworks that impact on traditional communities; and the development of by-laws that impact on traditional communities.

Traditional Councils at the local and ward level are mainly for the promotion of unity and the development of an understanding of the role of traditional leaders in a municipality. Furthermore, the council enhances co-operation between the council and various Houses with a view of addressing the issues of common interest. The Government also introduced the Traditional Leadership Governance Framework Amendment Act 23 of 2009 and the Nhlapo Commission to investigate amongst other issues traditional leadership where the title or right of an incumbent is contested. The Commission received 1322 submissions with problematic investigations that led to unresolved claims at the end of its five-year term [1].

National government felt the need to specify the role of traditional leaders in governance as it was not clear in all other pieces of legislation and so introduced the Traditional Leaders Framework Act 41 of (2003). Section 19 and Section 20 of the Act require government departments to allocate roles and functions for traditional leaders. Currently traditional leaders are performing functions for other government departments such as registering birth and deaths in rural communities. When a community member passes away the traditional leader will sign documents relating to the name of the deceased and the area in which a person was residing. The said function is a competency of the Department of Home Affairs and the traditional leader is performing the function voluntarily without any service level agreement or payment from the department concerned. In South Africa the roles of traditional leadership have been debated lengthily by researchers as such leaders potentially represent a holistic form of leadership that attends to a community's issues as they come.

ROLES OF TRADITIONAL LEADERS IN THE NEW THE NEW DEMOCRACY

Traditional Leaders play an important role in their communities in dealing with epidemic diseases such as, for example HIV/AIDS. They assist in lobbying to influence service delivery prioritization. In addition, they have a unique role in traditional courts; their role is to repair relationships between the wrong doers and the community. Furthermore, the traditional leaders in courts ensure that the defendant and aggrieved come to terms with the ills they have committed. Traditional leaders are also responsible for advising the government and legislators on issues pertaining to tradition and customs. However, the leaders do not have powers to reject or amend legislation [2].

Advocates of traditional leaders have made it possible for Christianity to develop in their areas. However, those who retain a more traditional moral scheme have not been made to feel out of place in traditional communities [3].

Cousins and Claassen argue [4] that through traditional leader's lobby groups traditional leaders have powers in the administration of land and the leaders are the owners of land and the communities.

Moreover, traditional leaders are required to mobilize resources such as building schools and clinics at local level to compensate for a lack of adequate support from the government, there is the discussion whether the mixture of local government and traditional leadership is possible in order to enable local government to implement developmental outcomes [1].

It is also important to have co-existence of traditional leadership and the rural local government structure on the base of potential needs, paying special attention to the circumstances that ensure that the traditional leaders are not exploiting communities. However, communities under these dual systems of power, the as democratic and traditional, do not draw any serious attention to the difference between hereditary chiefs and elected local government officials as most analysts would assume that allegiance to traditional rulers is not undermining common commitment to democracy. However, it must be mentioned that the roles which the two authorities play in the community are different compared to what they used to be in the old regime [5].

On the other hand, opponents of traditional leadership further argue that the traditional leadership is a system that allows for inheritance of management that is incompatible with democracy.

The leadership is becoming extinct, but it continues to thrive because the services of local government in rural areas are not adequate and therefore, communities trust traditional leader's more than municipal councils. However, in the Eastern Cape Provincial House Traditional leadership have different views about local government. For example, there is only one Provincial House established in Eastern Cape.

Relationship between traditional leaders and municipal councilors

The Eastern Cape Province has provincial legislation that was enacted and implemented in 1995. Traditional Leaders and the province worked together and created new offices for traditional leaders; these include the chambers and offices for members. This was regarded as an important achievement because leaders had an opportunity to meet in a common area.

The province could also confirm full time status of additional members of the Executive Committee. Furthermore, the Traditional Leaders in the province have a good working relationship with the Eastern Cape government and the legislature in the province (Status Quo Report, 2009).

Sithole and Mbele pointed out that the infiltration of democratic values and economic models propounded by the global discourse might assist South Africa to achieve full democracy so that everyone is entitled to it and eventually displace the undemocratic forms of government such as traditional leadership institutions.

The Municipal Structures Act 117 of 1998 and the White Paper on Local Government had built in a consultative role for traditional authorities at the local level, especially on development issues. However, this did not constitute a direct role in decision-making for traditional leaders. Nevertheless, in Durban the emphasis on a developmental role remained, the statement by the City manager reflected a more serious commitment towards involving the Traditional Leaders of eThekweni more actively and substantively in representation and the decision-making process, in many ways prefiguring the national level Traditional Leadership and Governance Framework Act [6].

In terms of administrative decentralization, the government has sought to involve traditional councils in developmental local government, particularly in rural areas where there were no alternative structures in the past. For instance, being added to existing traditional councils and tribal courts are new government-sponsored traditional deployment centers, dubbed "traditional"

because they are set up under the aegis of local chieftaincies and in coordination with traditional structures of governance.

Some of these are already underway and are functioning as one-stop shops, serving as pension pay-out points, satellite offices for the Department of Home Affairs, sites for mobile clinics, and providers of HIV/AIDS awareness services and small business development advice. At the launch of the Mpumzu Traditional Development Centre, in KwaZulu Natal, the Provincial Traditional Affairs Member of the Executive Committee Inkosi Nyanga Ngubane said that the traditional development centers represented a shift in the way traditional communities related to local government and transformation of local governance structures so that they were more accessible to a greater number of people in the deep rural areas [6].

It is important for governments to maintain constant dialogue with their stakeholders as such interaction can foster effective participation. In the same way, the stakeholders would understand the importance of consultation. For instance, in the past the public sector used provision of information as a mechanism to deliberate on the government's activities in the community. This interaction was sufficient in the sense that the government was able to plan for resources and time for a community to adequately deliberate on issues. (Figures 1-4)Stage 5 - this is the final stage whereby the community and decision-making body consult and process the deliberations. This stage is important in the sense that evaluations are conducted to check whether the outcomes are addressing the desired objectives. This interaction is also used for accepting any alternatives or modifications to the goals and there is also a possibility of discontinuing the projects if they are not viable.

As LiPuma and Koelble argue [7] that traditional leaders can do so partially because the state is unable to reach into these rural hinterlands. For example, when people talk to the chief, something will happen; when they talk to the municipal council, they know nothing will happen. The 'failure' of the state to bring effective local government to these rural hinterlands is part of a cascade of limits and constraints placed upon the South African state by its external environment.

CONCLUSION

The relationship between traditional leaders and modern system of government is possible only if the functions of traditional leaders and of municipal councils are outlined and understood by both parties in South Africa. For instance, where traditional leaders could make an impact in ordinary lives of rural communities, the leaders need to continue to provide the services required without any constraints and share the ideas with their municipal councils.

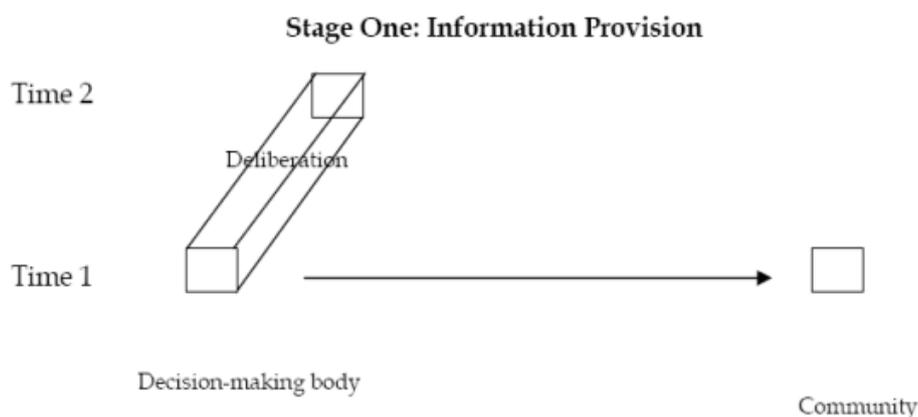


Figure 1: The decision making body collects information from the community for review.

Stage Three: Single-Stage Consultation

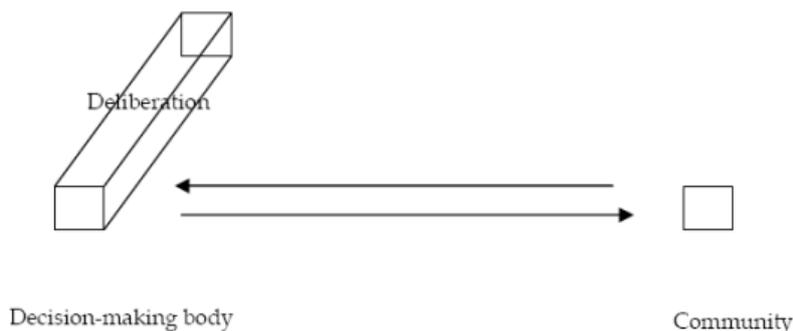


Figure 2: The decision-making body and the community meet to discuss the issues. This stage often happens one point in time.

Stage Four: Multi-Stage Consultation

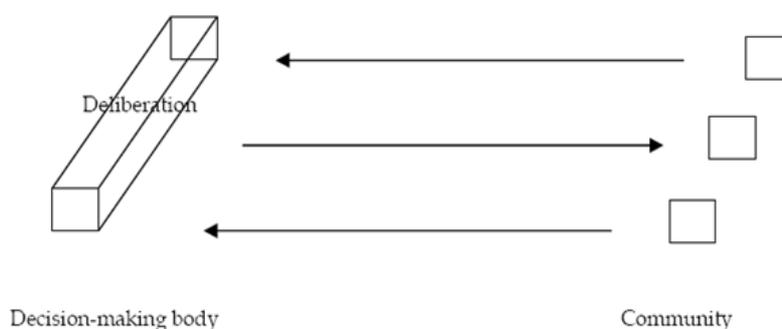


Figure 3: This stage is a multi-stage in the sense that the decision making body provide the information, there is also information collected from the community and the report on the outcomes of the decisions.

Stage Five: Dialogue Process

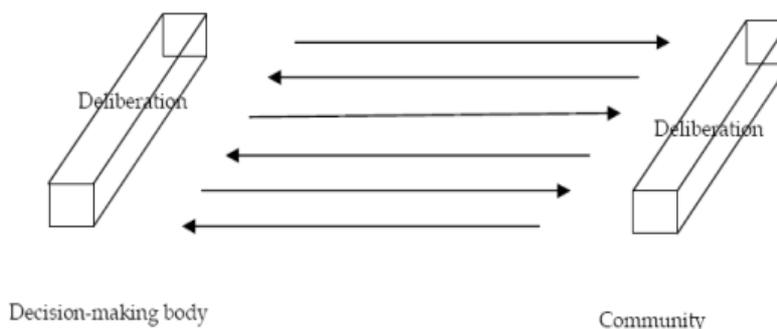


Figure 4: This is the final stage whereby the community and decision-making body consult and process the deliberations.

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