



DEMOCRATISATION OF RURAL LOCAL GOVERNMENT

Fani Ncapayi¹ and Boyce Tom - Trust for Community Outreach and Education

This paper addresses the question of democratisation of rural governance, as a critical condition to ensuring responsible and responsive governance. Its focus is on the existing dualism, and often conflicting roles, of democratically elected councillors and traditional leadership institutions in the former Bantustans of the Eastern Cape. Part of the problem is the overlap of roles and responsibilities of traditional leaders with those of rural municipalities (Khunou 2009).



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THE CONSTITUTION (1996) expects municipalities to provide administrative systems in the form of plans and budgets, giving priority to the basic needs of the communities (Section 153). The ultimate responsibility of municipalities is to promote socio-economic development of communities. Similarly, the National House of Traditional Leaders Act (No. 22 of 2009) stipulates that traditional leaders must promote, among others, socio-economic development and service delivery. The Traditional Leadership and Governance Framework Act (TLGFA)

(No. 41 of 2003) also instructs traditional leaders to play a role in land administration, art and culture, health, welfare, economic development, etc. of rural communities (Tlhoale 2009). Thus, there is a clear overlap in some roles and responsibilities of the two institutions (George and Binza 2011).

The coexistence of two governance institutions in rural areas creates confusion regarding their roles and accountabilities, thereby limiting the ability of rural communities to effectively articulate their developmental challenges. This, in turn, limits

the scope for communities to demand their rights to services, while also ensuring that government is responsive to their needs.

After outlining briefly the debates on traditional leadership in South Africa, presenting various views regarding the institution, the discussion turns to the dualism, overlaps and contradictions in the roles of the rural governance institutions. The challenges associated with this dualism are then identified and discussed, followed by a look at the impact of dualism and conflicting roles on responsible and responsive governance.

TRADITIONAL LEADERSHIP IN A DEMOCRATIC SOUTH AFRICA: FRAMING THE DEBATE

While scholars and commentators agree that the advent of South Africa's democracy in 1994 brought significant changes to the institution of traditional leadership, they disagree on the role of this institution in a democratic dispensation (Meer and Campbell 2007). The introduction of democracy had an impact on powers of traditional leaders (Houston and Somadoda 1996; Ntsebeza 2002; George and Binza 2011). Before democracy in South Africa, traditional leaders 'had far-reaching administrative and judicial powers in terms of the Bantu Authorities Act of 1951' (Houston and Somadoda 1996: 948). In earlier times, before colonial rule, traditional leaders had control over political functions, safety and security, governance and economic development (Ntsebeza 2002). However, major disagreements regarding the role of traditional leaders in a democracy have ignited lively debates in South Africa.

George and Binza (2011: 961) believe that traditional leaders have a role to play in a democracy, arguing that 'partnerships between local municipalities and traditional councils must be strengthened through legislative and other measures

to improve good governance, and development in rural areas'. Sklar (1994) also sees traditional leadership as being compatible with the democratic form of governance and capable of promoting democratic norms and practices in South Africa. This view is supported by Khunou (2009: 83).

'One of the remarkable features of the transformation of traditional leadership in South Africa is that gender equality has been progressively advanced. The inclusion of women in traditional government structures adds democratic value and credibility to the institution of traditional leadership, which for many years remained essentially male-dominated. The doctrine of transformative constitutionalism is well established in South Africa'.

However, Khunou takes the transformative nature of rural governance at face value, uncritically accepting the claimed advancement of gender equality, whereas TCOE's experience of working in rural areas shows that the situation is far from transformative and remains as male-dominated as before. This is perpetuated by the TLGFA, which prescribes that two-thirds of the 40% elected members of a traditional council must be women. This ensures that women remain the minority in traditional councils, which continue to be male-dominated.

The other side of the debate takes a negative view about the role of traditional leaders in a democratic order. Bank and Southall are sceptical that traditional leaders embrace non-sexism and gender equality, arguing that the 'African culture is pervaded by the principle of patriarchy ... the gender equality clause now threatens a thorough-going purge of customary law' (Bank and Southall 1996: 427). They conclude that the two institutions are incompatible, and that a fundamental transformation of the traditional leadership is required to be compatible with a democratic setup.

For Ntsebeza (2006: 15–16), the inclusion of unelected and unaccountable traditional leaders in a democratic system ‘is inconsistent and contradictory’, and such an arrangement compromises the democratisation of rural governance:

‘After years of ambivalence and prevarication, the government passed through parliament two Bills, the 2003 Traditional Leadership and Governance Framework Bill and the 2003 Communal Land Rights Bill, which make concessions to traditional authorities, effectively resuscitating the powers they enjoyed under the notorious Bantu Authorities Act of 1951 which was introduced by the apartheid regime’ (2006: 14).

Giving powers to unelected and unaccountable traditional leaders, as the Bills do, implies that rural residents remain subjects. If the arrangement continues, ‘the (political) citizenship rights of rural people continue to be partial’ (Ntsebeza 2006: 299).

This latter view shows that rural residents hold very little power either to remove or to bring unelected leaders to book. These unelected leaders will rarely account to rural residents and so will not be responsive or responsible to the needs and aspirations of rural residents. This raises questions about the ability of the institution of traditional leadership to provide a responsible and responsive form of governance in rural areas.

Responsible and responsive governance institutions must be able to address issues and concerns of the residents (GGLN 2008; Mbaya 2014). Such institutions have to be able to ‘deliver the goods’. They are characterised by the extent to which the leaders are accessible to residents (Bratton 2010: 1), and the inclusivity of vulnerable groups to programmes pursued by the institutions (Hyden and Samuel 2011). This also relates to the acceptability of the actions of leaders to

the residents (Hyden and Samuel 2011). Yet the institution of traditional leadership is ill-equipped to be responsible and responsive. For instance, the TLGFA severely limits the participation of women, and so women will always be (and are) in the minority in traditional councils.

DUALISM AND THE CONFLICTING ROLES OF RURAL GOVERNANCE INSTITUTIONS

Rural areas fall under a dual form of governance. The Constitution enshrines ‘democratic principles in the Bill of Rights’ and recognises the principle of equality for all South African citizens, including those in rural areas (Ntsebeza 2006: 34). The whole of South Africa, including rural areas, is supposed to be under democratic governance, as the Constitution advocates a wall-to-wall system of municipalities, excluding no part of the South African soil, and municipalities are led by democratically elected political leaders.

However, in the same breath, the Constitution recognises unelected and unaccountable traditional leaders in rural areas. The institution of traditional leadership is considered legitimate and compatible with democratic institutions. Indeed, the preamble to the TLGFA states that ‘the State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa’. It further implores the state to recognise ‘the need to provide appropriate support and capacity building to the institution of traditional leadership’. Traditional leaders are also expected to play a role in respect of arts and culture; land administration; agriculture; health; welfare; the administration of justice; safety and security; the registration of births, deaths and customary marriages; the economy; environment; tourism; disaster management; the management of natural resources, etc.

As can be seen, the roles of traditional leaders overlap with those of municipalities, which are institutions of elected leaders. This creates the dualism in South Africa's rural areas, which are governed by two systems: a democratic system with elected leaders and an undemocratic system with unelected leaders.

Although the Constitution stipulates the need for cooperative governance, this dual system presents serious challenges for rural communities. The South African Government Association (SALGA) acknowledges these challenges, describing them as tensions that cause confusion and contradictory practices in rural governance (SALGA 2012). The following case studies reflect some of the challenges resulting from this dualism.

EVIDENCE OF THE CHALLENGES OF THE DUAL RURAL GOVERNANCE SYSTEM

The case studies show that dualism in rural governance creates confusion among rural residents over where to direct their energies in lobbying for the provision of services. Despite the Constitution's promotion of cooperative governance, turf contests between traditional authorities and municipalities often develop, creating confusion among rural communities. The imposition of unelected headmen on communities also presents legitimacy challenges, which in turn triggers resistance from residents to work through such headmen when accessing services.

Contests for jurisdiction between the municipal councillors and traditional leaders often develop,

with negative effects for rural residents. Two examples in Tsengiwe, a village in the Sakhisizwe Local Municipality, illustrate the jostling for influence (jurisdiction). The first instance occurred in 2007 and 2008, when the newly appointed headmen blocked the ward councillor from holding meetings in his area. The headman wanted the ward councillor to seek permission from him before holding the community meetings. However, the ward councillor refused to seek permission, feeling that his election gave him a mandate to operate in the area. The headman's stance was viewed as a demand for the councillor to account to the headman, an unelected leader. This led to a stand-off between the two leaders, until intervention at a higher political level. This stand-off negatively affected residents in the village who were not able to meet with the councillor to raise issues and to access municipal services, especially outside jurisdiction of traditional authorities.

The second instance of turf contestation was at the beginning of 2015, when the same headman sought to block ESKOM from entering the village to fix electricity. The ward councillor invited ESKOM to fix poles damaged by lightning that had resulted in an electricity blackout in the village. The headman questioned who had given authority to the electricity supplier to come to his village and tried to summons the councillor to account for inviting ESKOM without his permission. This disagreement between the two leaders did not have a negative effect on the community, as the headman's actions came after the electricity had already been fixed. However, the contestation created confusion among the residents over where to demand services from and affected their ability to access government services.

These are not isolated cases. Similar cases have occurred in other parts of South Africa. For instance, in the Nkonkobe Local Municipality, disagreements between the Mgwala Traditional Council, the

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ward councillor and the ward committee member led to tensions developing. As a result of political differences between the two institutions, 'the ward committee member of the village, together with the councillor, refused to attend meetings held at Zibi Great Place' (George and Binza 2011: 961). The stand-off between the two governance institutions had negative effects on rural development.

The tensions highlighted above must be understood within the context of widespread concerns from traditional leaders about 'the perceived limitation by municipal councils of the powers of traditional leaders who were previously primarily responsible for the administration and development of their respective areas' (Knoetze undated: 161).² This is supported by SALGA, which points out that '[s]ince its fusion into the democratic local government system, the role and place of the institution of traditional leadership in municipalities has been fraught with tension, confusion and contradictory practices' (SALGA 2012: 1).

These examples illustrate how the contestation blurs the separation of powers between the two often competing institutions, leaving communities unclear about who to deal with in order to get their needs addressed.

Questions about the legitimacy of some headmen affect the ability of communities to articulate their needs. In Tsengiwe, the residents are currently divided, with one group refusing to recognise an unelected headman and contesting the process by which he came to power. For these residents, going to the headman for services is tantamount to accepting his legitimacy, and so they prefer to receive no services. However, the effect of taking such a position is that the headman is not taking into account the aspirations of a section of rural residents. This happened when the headman stopped the ward councillor from holding meetings in the area, unless

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he had given permission – but the ward councillor did not want to seek permission from the headman. As a result, the community could not participate in the municipal Integrated Development Plan (IDP), for which the councillor is responsible, and were unable to give input regarding the services they require.

Similarly, since 2013 the residents in Cala Reserve have been divided over the legitimacy of the headman.³ The KwaGcina Traditional Council imposed the headman on the residents, which caused a protracted struggle by the community, which wanted the right to elect their headman, rather than have one imposed.⁴ When traditional leaders refused to accede to this demand, divisions developed in the village. Residents opposed to the imposed headman have resolved to have nothing to do with him, have successfully challenged the imposition legally and boycot this meetings. The dilemma for the ward councillor is how to get all residents to attend his meetings: the pro-democracy group refuses to go the headman's place for meetings, whereas the residents who support the headman will only attend meetings at the headman's place. Once again, the ability of the community to express its needs is negatively affected by the divisions that result from dualism in rural governance.

Further confusion is caused by the fact that the municipal ward boundaries are not aligned to those of traditional authorities' jurisdictions, affecting rural residents' ability to access services. This lack of alignment often results in overlaps in the jurisdictions of the two institutions. The overlaps lead to delays

in the approval of projects that are supposed to be benefiting communities. For example, the delay in the housing application process of Roma. Roma is a sub-village of Cala Reserve where the headman is leader but falls within Ward 3 of the Sakhisizwe Local Municipality and not Ward 6 like the rest of Cala Reserve. The headman refused to sign housing application forms of villagers from Roma, until he had met with the Ward 3 committee member, but the ward committee member refused to meet with the headman. This caused delays in the signing of the housing application forms of these residents who were not sure which leader to lobby. It is another typical example of the challenge presented by the dual system of governance that places rural residents at the mercy of un-accountable traditional leaders.

Dualism in rural governance has raised issues about the legitimacy of traditional leaders in some communities. This in turn has led to some rural residents boycotting any form of association with such leaders. These factors affect the ability of rural residents to articulate their aspirations and thus limit the emergence of responsive and responsible local governance in rural areas.

CONCLUSION

The ability of rural residents to articulate their challenges is negatively affected by a dual system of governance. Tensions often erupt between municipal structures and traditional leadership because of

contests for jurisdictions, boycotts by residents of activities by headmen they consider to be illegitimate, while the lack of boundary alignment creates confusion. As a result, rural residents are confused about where to demand services from. Furthermore, if these tensions remain unresolved, 'it is most unlikely that local government will be able to deliver on rural development' (George and Binza 2011: 961). Indeed, rural residents are negatively affected by the tensions and differences between traditional leaders and municipal councillors.

The system of governance in rural areas needs to be aligned with the broad democratisation project that the South African government has embarked on since 1994. Rural areas cannot lag in that process. While the institution of traditional leadership cannot be scrapped entirely, as it is protected by the Constitution, at the very least ward and traditional jurisdiction boundaries need to be aligned, to avoid confusion and the impact on rural development projects. Failure to align these boundaries severely hampers the ability of rural communities to express their aspirations, rendering them voiceless and at the receiving end of contested power struggle. Furthermore, this situation has a huge potential of setting poor residents against each other, with those that are loyal to the system of tradition leadership on one side and advocates for democratic system on the other side.

REFERENCES

- Bank L and Southall R (1996) Traditional leaders in South Africa's new democracy. *Journal of Legal Pluralism* 28 (37-38): 407–430.
- Bratton M (2010) Citizen Perceptions of Local Government Responsiveness in Sub-Saharan Africa. Afrobarometer Working Papers No. 119.
- George K and Binza MS (2011) The role of traditional leadership in promoting governance and development in rural South Africa: A case study of the Mgwalana Traditional Authority. *Journal of Administration* 46(2): 947–962.
- GGLN (2008) *Local Democracy in Action. A Civil Society Perspective on Local Governance in South Africa*. <http://ggln.org.za/publications/state-of-local-governance-research-project/Local%20Democracy%20in%20Action.pdf> (accessed 24 May 2015).
- Houston GH and Somadoda FP (1996) Constitutional development and the issue of traditional leadership in rural local government in South Africa. Paper presented at the International Conference on the new South African Constitution at the Holiday Inn, Umtata, 25-26 April, 1996.
- Hyden G and Samuel J (2011) Making the state responsive: Experience with democratic governance assessments. New York: UNDP
- Khunou F (2009) Traditional leadership and independent Bantustans of South Africa: Some milestones of transformative constitutionalism beyond apartheid. *PER* 12(4) <http://www.scielo.org.za/pdf/pej/v12n4/a05v12n4.pdf> (accessed 17 May 2015).
- Knoetze E (undated) Legislative Regulations of the Developmental Functions of Traditional Leadership – In Conflict or Cohesion with Municipal Councils? www.speculumjuris.co.za/files/pdf/SJ3114_1.pdf (accessed 17 May 2015).
- Mbaya S (2014) Land investments in Africa: It's all about responsible governance. Land Policy Initiative. *Future Agricultures*. <http://www.future-agricultures.org/blog/entry/land-investments-in-africa-its-all-about-responsible-governance-#UxSs2M7wrEw> (accessed 24 May 2015).
- Meer T and Campbell C (2007) *Traditional Leadership in Democratic South Africa*. <http://ddp.org.za/information-material/articles/Traditional%20Leadership%20in%20Democratic%20South%20Africa.pdf>. (accessed 20 May 2015).
- Ntsebeza L (2002) Structures and Struggles of Rural Local Government in South Africa: The Case of Traditional Authorities in the Eastern Cape. PhD Thesis, Rhodes University.
- Ntsebeza L (2006) Democracy Compromised. Chiefs and the Politics of Land in South Africa. Cape Town: Human Sciences Research Council.
- SALGA (2012) *Challenges Regarding the Participation of Traditional Leaders in Municipal Councils*. Local Government Briefs 8/2012. www.salga.org.za (accessed 17 May 2015).
- Sklar R (1994) The significance of mixed government in southern African studies: a preliminary assessment. Paper delivered to History Workshop on Democracy: Popular Precedents, Popular Practice and Popular Culture, University of the Witwatersrand (13–15 July).
- Tihoaele CT (2012) The Interface between Traditional Leadership in Shared Rural Local Governance. Master's degree, University of Johannesburg

NOTES

- ¹ Fani Ncapayi is an Honorary Research Associate of the Centre for African Studies at the University of Cape Town. He is also a regional manager of CALUSA, one of the affiliates of the Trust for Community Outreach and Education (TCOE). Boyce Tom is a researcher in the National Office of the TCOE.
- ² See www.speculumjuris.co.za/files/pdf/SJ1314_1.pdf (accessed 17 May 2015).
- ³ Ncapayi F (2014) Rural South Africans not part of new democracy, *Daily Dispatch*, 2 July 2014.
- ⁴ Ncapayi F (2015) Seize the opportunity and claim your rights. *Daily Dispatch*, 5 May 2015.