

The Unabated Power of South African Traditional Leaders on Service Delivery Enhancement

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Abstract: This paper evaluates the powers, functions, responsibilities and the potency of traditional leaders in relation to service delivery enhancement in the South African ambit. The concerted roles and responsibilities of traditional leaders has remained a controversial issue in the democratic dispensation. This paper posits and postulates that there is still a continuing dialectical and unequivocally clash between forces of modernity for development and governance in relation to the persistent strength of traditional leaders. Over and above, service delivery is still an alarming issue affecting almost all South African municipalities. Therefore, this paper habitually argues that the integration and unsurpassed concerted amid of traditional leaders can palpably ameliorate service delivery in their areas of jurisdiction. The latter is diametrically attributed to the fact that the Constitution of the Republic of South Africa, 1996 recognizes traditional leaders and made provision for them to deliberate on matters affecting the local government although that is not clearly defined. However, section 151 of the *Constitution* defines the powers and functions of elected councilors which largely overlaps with those exercised by traditional leaders. This paper is purely conceptual which relied heavily on documents and literature review to fortify the argument and accentuate the amid power of traditional leaders and service delivery enhancement. The conclusion that can be drawn from this paper is that there is a need for an amicable and collaborative exertion between the traditional leaders, communities and the local government for effective service delivery. As a remedy, the paper recommends that there is a need for central government to clarify the terms of reference for traditional leadership at local level.

Keywords: *Constitution*, Democracy, Developmental Local Government, Service Delivery

1. Introduction

The advent of the democracy and the first democratic non-racial local government election in 1994 brought about the new era of leadership at the local government places the traditional leaders as a form of local government in terms of indigenous law (Shabangu & Khalo, 2008). Traditional leaders seek recognition and their roles are more permissive in local government. However, the continued dialectical clash between the forces of modernity for development and persistent strength of traditional leaders is still an alarming issue in the country. The *Constitution of the Republic of South Africa* (1996) states the following objectives: the provision of services to communities in a sustainable manner, the promotion of social and economic development, as well as the involvement of communities and community organisations in the matters of local government. The quest for a better municipal service delivery cannot be achieved in isolation from the integration of traditional leaders into the South African Public Service (Selepe, 2009). The integration of traditional leaders into the South African Public Service is to ensure that municipal services are rendered equitably, efficiently and effectively.

The institution of traditional leadership has been in existence on the whole continent of Africa from the time of immemorial (Selepe, 2009). However, in the South African context, the institution of traditional leadership was undermined and eroded by forces of imperialism and colonialism

Political changes started in South Africa in 1992, with the Convention for a Democratic South Africa (CODESA) negotiations, which led to our new interim Constitution in 1993, and the completion of the final *Constitution of the Republic of South Africa* in 1996. The *Constitution* gives the background to what the institutions of traditional leadership and the municipalities in the rural areas are, and what they are supposed to do. However, since the establishment of local government in 1995/1996, it has still not become clear what part the traditional leadership should play in governance and development for the benefit of their communities.

2. Historical Antecedent of Traditional Leaders in South Africa

Early African nationalists correctly perceived traditional leaders and their institution as a tool at the

service of colonialists (Ntsebeza, 2005). In South Africa, with the advent of colonization and racial segregation period, the most important powers of traditional leaders were taken over by the colonial state and later by the racial separation state, thereby abating the role of traditional leaders in governing the African people Shabangu & Khalo cited (Rugege, 1998:13) in 2008. According to Mathenjwa and Makama (2016) African leaders were subordinate to the settler governments, and the central government of the settlers became the primary source of their powers. The authors further argued that the original powers of traditional leaders were eroded, although they continued to rule their subjects (Mathenjwa & Makama, 2016). Continually, after the arrival of colonization, conquest the powers of traditional leaders were taken away by the colonial state and it distorted the nature of traditional authority (Rugege, 2009).

Selepe (2009) argues that the conflicts and inconsistencies that beset traditional rulers under colonialism and apartheid were not solved in the *Constitution*. Selepe (2009) explicitly indicated that the existing leaders traded their political support for confirmation of them present position by the interim Constitution. Section 18 (1) of the *Constitution* provides that: A traditional authority which observes a system of indigenous law and is recognized by law immediately before the commencement of this *Constitution*, shall continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority. Furthermore, traditional leaders occupied a position almost similar to that of a governor, whose authority stretched from judicial functions to social welfare. In South Africa, as in other African countries, the system of traditional leadership is firmly entrenched. Historically, traditional leaders served as governors of their communities with authority over all aspects of life, ranging from social welfare to judicial functions. Many Africa countries retain a system of traditional leadership and several have gone a long way in incorporating traditional leaders into democratic forms of government.

3. Conceptual Clarification of Traditional Leaders in the South African Ambit

The concept of traditional leadership is depended of different scholarship perspectives and understood

to refer to rural leadership activities undertaken by tribal leaders in rural areas with hereditary lineages to previous chiefs and kings. A Traditional leader is conceptualised as a tribal ruler who grasps authority in the native systems of African governance (Nekhahambe, 2014). Traditional leadership has been the center of local government in most of Africa; these traditional leaders served as political, military, spiritual and cultural leaders and were regarded as custodians of the values of society (Rugege, 2009). The Congress of Traditional Leaders of South Africa (hereafter referred to as CONTRALESA) believes that provision should be made for effective participation of traditional leaders at all spheres of government (Tutu, 2008). The institution of Traditional leadership is the sole and authentic voice of the overwhelming majority of the people of South Africa leaving in traditional communities (CONTRALESA, 2006). The above statement shows that traditional leaders are representative of thousands of people residing in rural areas. As the ruler of the tribe traditional leaders had the power to apportion land; the land was notionally his property which he detained as the executor for the people (Tutu, 2008). South Africa has proficient and active traditional leadership structure that enthusiastically participates and involves itself in municipal IDP processes that might be of great value for the communities they represent, predominantly in terms of service delivery and community development (Brynard & Musitha, 2011). The effective participation of traditional leaders in service delivery places them at a central location.

4. The Roles of Traditional Leaders in Service Delivery Enhancement: A South African Context

The development literature edifies that the role of traditional leaders in service delivery are found to be permissive in the auspices of Back to Basics approach launched by the government in 2014. The approach explicitly operationalizes the role and functions of traditional leader in relation to service delivery. The Department of Traditional Affairs has developed a comprehensive Framework for the Participation of Traditional Leaders in Municipal Councils to harmonize relations between traditional structures and municipalities. The roles of traditional leaders in municipal affairs include their role to facilitate the participation of traditional communities in any municipal activities that allow for public participation (CoGTA, 2014). In keeping

with the Back to Basics approach, municipal and traditional structures should establish strong collaborative working relationships to create decent living conditions and improve delivery of services to rural traditional communities. This collaboration must result in the following actions:

- Traditional structures must participate in municipal council sittings;
- Traditional leaders must participate in Integrated Development Plans of municipalities and related community consultation processes;
- Traditional Leaders must facilitate access and release of land for development purposes;
- Traditional leaders must align release of land with spatial development plans of municipalities (e.g. demarcation of plots); and
- Municipalities must involve traditional structures in programmes impacting on traditional communities.

Furthermore, the *Constitution of the Republic of South Africa of 1996* section 152, assigned the primary delivery of services to local municipalities precisely because of being the delivery arm of state and in close contact with the service delivery beneficiaries. The roles of traditional leaders to certain magnitude they are not being exercised properly because of lack of policy guidelines and pronouncement in the legislation. The provision of the role of traditional leaders in the *Constitution of the Republic of South Africa, 1996* especially section 212 is nebulous, due to the fact that it does not outline the role of traditional leaders as is the case of elected local government councilors as they are executing the objectives of the municipalities in the jurisdiction of traditional leaders (Shabangu & Khalo, 2008).

Thus section 212 of the *Constitution*, 1996 gives traditional leaders a role of observing a system of customary law of which it prevails a lack of agreement or contradiction on section 152 and 212 as customary law adjusts to shifting social and economic status quo and the customary role of guaranteeing the well-being undertaken by elected municipal councilors. Albeit the *Constitution* recognizes the traditional leaders yet, it anticipates national legislation that will regulate the issue of the roles of the traditional leaders as pertained in

section 212 (Mathenjwa & Makama, 2016). *Municipal Structures Act 117 of 1998* gives traditional leaders a role of participating in deliberations of municipal councils and it does not allow them to vote on raised matters as such it limits the powers of traditional leaders. The South African *Constitution* and other legislation recognize the relevance of traditional leaders in many spheres of governance. Traditional leaders are at the centre of development in rural areas (George & Binza, 2011).

5. Legal Frameworks Pertaining to the Governance of Traditional Leaders in South Africa

5.1 Municipal Structures Act 32 of 2000

The Municipal Structure Act 32 of 2000 is biased towards the councilors due to the fact that it allows traditional leaders, who should not constitute more than 10 per cent of the members of the municipal council and who are also identified by the Member of Executive Council (MEC) for local government to attend and participate in the deliberations of a municipal council and does not give traditional leaders the power to vote or influence the decisions of the municipal council as it state that traditional leaders are not full members of the municipal council. It places municipalities at the central location of development and governance in the fraternity of traditional leaders. Traditional leaders, that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, 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. The MEC for local government in a province, in accordance with by notice in the *Provincial Gazette*, must identify the traditional leaders who may participate in the proceedings of a municipal council.

[Para. (b) amended by s. 5 of Municipal Systems Act 32 of 2000.]

(c) If the number of traditional leaders identified in a municipality's area of jurisdiction, exceeds 20 per cent of the total number of councilors the MEC for local government in the province may determine a system for the rotation of those traditional leaders. [Para. (c) amended by s. 5 of MSA 32 of 2000.] 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.

5.2 The Constitution of the Republic of South Africa 1996

The *Constitution of the Republic of South Africa, 1996* assigned the traditional leaders a role to deal with matters relating to provision customary law and customs of communities observing a system of customary law:

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

The abovementioned clearly confuse the traditional leaders as the role are not defined and stated as in the case of elected local government councilors in terms of service delivery. Although the constitution does not spell out a specific role for traditional leaders it gives power to the national legislature to pass legislation to provide for a role for traditional leadership as an institution at local level on matters affecting local communities (Rugege, 2003). In this 1996 *Constitution*, the recognition of the presence of traditional leadership is also made in Section 211(1). However, this recognition poses a challenge since there is no fundamental provision concerning what and how traditional leaders should function in South Africa, post-1994 (Phago & Netswara, 2011).

5.3 Traditional Leadership and Governance Framework Amendment Act 41 of 2003

Traditional Leadership and Governance Framework Amendment Act 41 of 2003 was undertaken. In this regard, the main provision underpinning the functioning of traditional leadership is in Section 1(1)(b) which provides a definition of who should be regarded as a traditional leader. The Traditional Leadership and Governance Framework Amendment Act 23 of 2009 defines traditional leadership as customary institutions or structures, or customary systems or procedures of governance, recognized, utilized or practiced by traditional communities. The Traditional Leadership and Governance Framework Act 41 of 2003 underscores this approach by providing the context within which local municipalities and traditional leaders

can operate. The Act, in sum, recognizes the role of both institutions. Moreover, it goes further than any of the Acts that preceded it by obliging the state to protect the institution of traditional leadership. In the quest to deal with the issue of traditional leadership, parliament passed the Traditional Leadership and Governance Framework Act 41 of 2003. Unfortunately, the Act was passed nine years after the first democratic elections in 1994, with the unintended consequence of increasing the uncertainty regarding traditional leaders and their roles. The Act is arguably the most significant document that deals with traditional leadership after 1994.

5.4 White Paper on Traditional Leadership in Governance and Development (2003)

According to the *White Paper on Traditional Leadership in Governance and Development* (2003) the institution of traditional leadership is vested with the following duties or roles to uphold in order to machinate service delivery efficiently and effectively, thus the following are some of the roles that the institution can play:

- Promote socio-economic development;
- Promote service delivery;
- Contribute to nation building;
- Promote peace and stability amongst the community members;
- Promote social cohesiveness of communities;
- Promote the preservation of the moral fibre and regeneration of society;
- Promote and preserve the culture and tradition of communities; and
- Promote the social well-being and welfare of communities.

The latter mentioned legal framework shows that traditional leaders are assigned with duties of enhancing service delivery effectively as they are located in rural areas with their subjects. Here traditional leaders are placed at the center of development and governance of communities. White Paper on Traditional Leadership in Governance and Development is the only framework that outlines clearly and precisely the roles of traditional leaders.

5.5 The National House of Traditional Leaders Bill (1997)

The purpose of the *National House of Traditional Leaders Bill*, 2008 is to repeal the NHTL Act, 1997 (Act 10 of 1997) and replace it with a new Act. The Bill fully overhauls the current Act and amendments to it, and replaces it with a new law which is fully in line with the Constitution and the White Paper on Traditional leadership and Governance of 2003. The Bill mainly focuses on the establishment and the functions of the NHTL. It is laid down that the House should be composed of three representatives from each province, and the representatives must be senior traditional leaders. A provision has been made for a special representation of provinces which have traditional leaders without provincial Houses. This situation is applicable to Gauteng and Northern Cape Provinces in particular. Furthermore, the Bill provides a criterion for the qualification of members to serve in the House, and the exclusion of certain persons from participating in the House. It is stipulated that no person is eligible to become a member of the House if that person is a full-time member of a Municipal Council, a Member of a Provincial Legislature (MPL), or a Member of Parliament (MP). It is further stipulated that the administrative seat of the House is to be 51 located at the same place where the head office of the Department of Co-operative Governance and Traditional Affairs is located, and ordinary sittings of the House may take place either in the administrative seat or at the seat of Parliament.

5.6 The National House of Traditional Leaders Act of 1997

The National House of Traditional Leaders Act, 1997 (Act 10 of 1997) repealed the Council of Traditional Leaders Act of 1994. *The National House of Traditional Leaders Act*, 1997 (Act 10 of 1997) provides for the establishment of a National House of Traditional Leaders as well as stating the objectives and functions of this body. Section 2 of this Act provides for the establishment of the National House of Traditional Leaders, and it is stipulated that the National House shall consist of members nominated as provided for in Section 4 of the Act. Section 3 deals with the duration and dissolution of the National House of Traditional Leaders, and it is specified that the National House shall continue for five years after it has been constituted. The President shall have the power to summon the

National House to an extra-ordinary meeting for the dispatch of urgent business during the period following its dissolution.

6. The Conflictual Dichotomy Between Traditional Leaders and Municipal Council in Service Delivery

According to Mathonsi and Sithole (2017) there is an overlap between their role and that of Section 56 managers (Local Government: *Municipal Systems Act*, 32 of 2000) as well as sectional heads, and this generates a conflict between traditional leadership institutions and local government. The traditional leaders believe they have little influence over the decisions of the municipal council, as they have no voting rights (Dubazane & Nel, 2016). The traditional leaders do not assume themselves as rivals of the municipal council, but their anxieties and frustrations trunk from the antagonistic power scuffles amid them and the ward councilors (Phago & Netswera, 2011). According to Mathonsi and Sithole (2017), the disagreement that policies do not logically specify the roles of traditional leaders which generates conflicts in municipalities, it is intensely detained that the other basis of conflict is of a legislative in nature since the Local Government: *Municipal Structures Act*, 117 of 1998 gives powers to municipal officials to take decisions on matters pertaining to land use planning and development projects in municipalities without uttering how traditional leaders should be involved. Traditional leaders dreaded that the authority they applied over their subjects would be taken away from them by municipal authorities (Nekhavambe, 2014).

Municipalities perform all the roles and functions with less or no participation of traditional leaders at all. This is the case because traditional leaders might not allow municipalities to service areas under their (traditional leaders') authority before it is clear what role they will play in this new system (Nekhavambe, 2014). The rancor is attributed to councilors not consulting with the traditional leaders when most decisions affecting community are undertaken. A part of the problem is the technical jargon used by planners and officials that obscures the municipality's intentions, and leaves traditional leaders perplexed (Dubazane & Nel, 2016). Traditional leaders themselves feel left out and abandoned by the democratic government in South Africa (Sithole & Mathonsi, 2017) cited in Meer and Campbell (2007). Philosophies of multi-party democracy and

decentralization are in straight denial to the operations of traditional leaders (Ntsebeza, 2005).

The variances between the local government in exact, and traditional leaders are depriving community members of the services that they ought to acquire from their relevant municipalities (Nekhahambe, 2014). The conflict between traditional leaders and councilors breaks the vital line of communication and at the end services delivery will not be provided effectively. Absence of consultation by the municipality with the traditional leaders when development activities are undertaken is a recipe for conflict. Some of the conflict between traditional leaders and councilors are created by legislation and policy not concurring to one another. As such, traditional leaders do not accept municipalities, as they understand this system as a way of excluding them from participating in local governance (Nekhahambe, 2014).

7. Conclusion

It can be deduced from the paper that the continued conflict between traditional leaders and the municipal council breaks the vital line of communication and as such services delivery will not be provided effectively to communities. It can further be said that the conflicting claims to legitimacy and uneasy co-existence between traditional and elected leadership can be tied to the perpetual and long-standing patterns of service delivery backlogs. Traditional leadership and local government officials occasionally trade accusations of abuse of power, non-compliance with laws; customs and traditions, especially regarding planning and implementation of various municipal programmes, management and allocation of local resources such as land. Continually, the legislation does provide a framework for cooperation between the two local spheres of governance. The challenge is for traditional leaders and municipalities to make sure that the spirit of the Act prevails. This could be done through joint initiatives that identify priority areas in local service delivery. It is also clear that both traditional leaders and elected councilors should acknowledge their mutual dependence in the rural areas, and that tensions between the two institutions do their followers and constituencies no favor. The other challenge facing the incorporation of traditional leaders include the relationship between municipalities and traditional leaders, perceptions about who is responsible for service delivery in a jurisdictional area.

8. Recommendations

It can be recommended from the development literature that there is a need for the clarification of terms of reference for traditional leadership at local level by the central government. It is further recommended that the traditional leaders be treated as part of the local government regime and as such their roles within the local government structures must be explicitly articulated and specified in the relevant legislation. Partnerships amongst local municipalities and institutions of traditional leaderships should be strengthened over legislative and further measures to advance good governance, and development in rural areas. There is a need for the promotion of cooperation and coordination of the government and the traditional leadership, and that the institution of traditional leaders should be involved in decision-making; it should not be that they only participate by sharing their views on matters discussed. The institution of traditional leaders and councilors should work together on service delivery matters because the two institutions serve the same communities.

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