Municipal Governance, Traditional Leadership, and Land Management (2000-2022):

Challenges and Lessons Learnt

Editors:
Paul Kariuki, P S Reddy, and Henry Wissin

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Foreword

The institution of traditional leadership, traditional communities and traditional councils are an important part of the fabric of social relations and human settlements in South Africa. The terrible legacy of apartheid is most noticeable in both the destruction and reconfiguration of traditional systems by apartheid and colonialism and the denial of basic human rights to black South Africans with their forced removal from residing permanently in less than 10% of the land area of South Africa.

As part of the process of reversing the legacy of South Africa's past, the principle of a cooperative relationship between local governments and traditional leaders is established in the Constitution, and legislation requires the participation of traditional leaders in government. The functions of traditional councils/sub-councils and Khoi-San councils/branches are also designed to complement municipal powers and functions.

However, a number of areas need resolution and implementation. These include the direct engagement with traditional councils before municipalities finalise decisions for these areas, capacity building of traditional leaders and their active participation not just in Municipal Councils but in council committees, representation on ward committees and in inter-governmental structures, involvement in the District Development Model processes, property rating of communal land, and the issue of planning and land development in communal areas.

Overall, however, there is a lack of scientific data or studies conducted about how this relationship works and on the population dynamics in areas under the Traditional Councils.

This book by Kariuki, Reddy and Wissink continues the extensive and excellent research previously done by them into municipal governance through examining the relationship between traditional systems and municipal government. They also provide a selection of studies and case studies where researchers describe and interrogate a wide variety of issues such as the historical roles and responsibilities of traditional systems, the evolution of the legislative and policy framework since 1994, land use management, the developmental role of municipalities, the challenges operating in traditional areas and the operations of traditional councils and municipalities in traditional areas, including gender relations.

The book provides a rich addition to the body of literature on the relationship between democratic local government and traditional systems of social relations.

Michael Sutcliffe

Former municipal manager of the eThekwini Metropolitan Municipality and the founding partner of City Insight (Pty) Ltd

Book Editors and Contributors

Editors

Paul Kariuki

Paul Kariuki holds a PhD in Administration from the University of KwaZulu Natal (UKZN). He is the Executive Director of the Democracy Development Programme (DDP). He is also an honorary research fellow at the School of Management, IT and Governance, UKZN. His research interests are public governance, public participation, citizenship, electronic governance, cybersecurity, monitoring and evaluation in the public sector. He has published extensively locally and international as well as co-edited eleven books. He is also an external reviewer of four international journals. He has featured frequnetly as a thought leader on South African print media as well as on radio providing insightful commentary on politics, good governance, active citizenship, public participation, migration, human rights, social cohesion, and democracy among other current affairs.

Purshottama Reddy

Purshottama Sivanarain Reddy is a Senior Professor in the School of Management, IT and Governance at the University of KwaZulu-Natal in South Africa. He is currently Vice-President: Programmes; Board of Management member and founding Project Director of the Working Group on Sub- national Governance and Development of the International Association of Schools and Institutes of Administration (IASIA). He is also currently the Chairperson of the Programme and Research Committee (PRAC) of the International Institute of Administrative Sciences (IIAS). He is a rated researcher with the National Research Foundation (NRF) and has published extensively nationally and internationally on local government. Prof. Reddy is the editor/co-editor of fifteen books and is presently on the editorial/advisory committee of seven journals in South Africa, India, Estonia, United Kingdom and Australia.

Henry Wissink

Henry Wissink is a Professor of Public Governance in the School of Management, IT and Governance at the University of KwaZulu-Natal (UKZN) in South Africa. He holds a PhD from the University of Stellenbosch, and is broadly educated and skilled in the fields of public governance, public policy analysis, development studies, organisation, and leadership development. He has published widely in national and international journals and books and served as visiting and teaching professor in several countries. He is also the Director of the Unit for Sustainable Urban Governance and Innovation (USUGAI) and Interim Project Manager of the Aerotropolis Institute Africa (AIA) at the UKZN, aimed at improving knowledge, technologies and skills needed for the development of smart, sustainable, resilient, and agile cities of the future, particularly in the developing world.

Chapter Contributors

Tyanai Masiya

Dr Tyanai Masiya is a Senior Lecturer at the University of Pretoria's School of Public Management and Administration (SPMA). His research focus is on public service delivery, citizenship and democracy as well as local government management. He has also written extensively on constitutionalism, democratisation, elections as well as transparency and accountability of the state.

Norah Hashim Msuya

Dr Msuya is an academician and practising lawyer. She has published and lectured widely on public International law, human rights, administrative law, and corporate law. Norah is also a coordinator and founder member of the Tanzania Legal Aid Organization for Women and Children, a non-governmental organisation that provides legal assistance and education to women and children in Tanzania. Her academic publications cover a wide range of subjects on violence against children and gender-based violence, including, Constitutionalism, Rule of Law and Judiciary in South Africa, Practices that Facilitate Trafficking of Children, and Child marriage as an obstacle to socio-economic development in Africa.

Sybert Mutereko

Sybert Mutereko is a Senior Lecturer and the current Academic Leader of Public Governance. He holds master's and doctoral degrees in Policy and Development Studies. Sybert's research interests are in public administration, local government, public policy, policy implementation and evaluation, education policy, education management and vocational education. His current research focuses on the supply and demand dynamics of the public sector labour market.

Oladejo Olufemi

Dr. Oladejo Olufemi Michael recently earned his PhD in Management Studies from the University of KwaZulu-Natal. His doctoral research delved into "Training and Development for Academic Staff in Public Universities in South-West Nigeria". Dr. Oladejo possesses a comprehensive skill set in both qualitative and quantitative research methodologies. Presently, he serves as a Postdoctoral Fellow at the University of KwaZulu-Natal, benefiting from the mentorship of Professor Sybert Mutereko. Driven by a strong sense of teamwork, an unwavering commitment to achieving goals, and an insatiable passion for continuous learning, Dr. Oladejo is dedicated to significantly contributing to the academic field.

Thokozani Ian Nzimakwe

Professor Nzimakwe is currently employed as an academic in the School of Management, IT and Governance at the University of KwaZulu-Natal, South Africa. He holds a doctoral degree in Public Administration and Management from the University of KwaZulu-Natal. Before joining academia, he was employed in the public service for 14 years. His research interests are in the areas of local governance, public sector accountability, public finance, ICT and public sector reforms. He has published widely in scholarly journals, contributed various book chapters, and has attended and delivered papers at both national and international conferences.

Isaac Khambule

Isaac Khambule is an Associate Professor of Political Economy at the Wits School of Governance, University of the Witwatersrand. His research interests are on the relationship between the state, institutions and development, focusing on the role of the state in

economic development. Isaac previously worked as a Senior Lecturer at the University of KwaZulu-Natal and as a Senior Research Fellow in the Department of Politics and International Relations at the University of Johannesburg. He recently spent time as a Visiting Professor at Erlangen University (Friedrich-Alexander-Universität, Erlangen-Nürnberg), Germany.

Zamantshali Dlamini

Dr. Zama Dlamini is a Lecturer at the University of KwaZulu-Natal in the Gender, Religion and Health Programme at the School of Religion, Philosophy and Classics (SRPC). She teaches courses on Gender Theory, Queer Politics and African Feminism. Her teaching and research interests lie at the intersection of gender, sexuality and religion. Prior to her appointment at the UKZN, Dr. Zama worked for the government as High School teacher and Education Specialist. She has also worked as a Lecturer at a Private College and most recently worked as an Assistant Researcher at the Ujamaa Centre a faith NGO within the School of Religion, Philosophy and Classics. She is a Gender Practitioner and gets invited to regularly speak on gender issues as part of capacity building.

Dolly Ngema

Ms Doli Maria Ngema is a Deputy Director in the Human Sciences Research Council's Inclusive Economic Development research division. She holds a Masters Degree in Public Administration from the University of KwaZulu-Natal. Her master's dissertation focused on Integrated Development Planning in Mtubatuba Local Municipality with a particular reference to the Somkhele Rural Area. Ms Ngema's deep-seated enthusiasm lies in local government affairs and enhancing the quality of life in rural communities.

Darlington Sibanda

Darlington Sibanda is associated with African Climate & Development Initiative (ACDI): University of Cape Town. His interests are related to the nexus between climate change, sustainable livelihoods and multidimensional poverty and inequality; Equitable climate change resilience; Land tenure governance; Water Services; Poverty & Inequality. He is currently working on a UKRI-funded project addressing how climate change actions can address human development challenges such as poverty and inequality. Before

joining the University of Cape Town, he worked for the Western Cape Education Department for close to 13 years, the Institute for Poverty, Land and Agrarian Studies (UWC) where he carried out research in the area of land tenure and water services.

Chapter 1

Municipal Government, Traditional Leadership and Land Management in South Africa: A Primer

Purshottama Reddy, Henry Wissink and Paul Kariuki

School of Management, IT and Governance, UKZN

Abstract

There is a direct link between municipal government, traditional leadership and land management in South Africa, as they are intrinsically intertwined, given the history of the continent and the country. The post-1994 local government dispensation has ushered in wall-to-wall nonracial and democratic municipalities, which have also incorporated rural areas and by implication traditional authorities and traditional leadership. The traditional leaders who were responsible for land allocation in the rural areas in previous dispensations are now part of the municipal jurisdictions and localities, and find themselves having to engage with democratically elected councillors from the different political parties. The traditional leaders can participate in council meetings, but may not necessarily have the vote. They are supposed to be involved in the allocation of land, but a major part of the land in KwaZulu-Natal is still under the trusteeship and tutelage of the Ingonyama Trust, which is a special entity created by the province in preparation for the post-1994 era. The municipalities also have a vested interest in the land as they need to charge for basic municipal services and also generate income to ensure that they are financially sustainable over the long term. As highlighted above, there is indeed a golden thread that links municipal government, traditional leadership and most importantly land management, as is demonstrated in the flow of the information from the chapters. This chapter will interrogate and demystify that positive linkage, highlighting the challenges, and more importantly proposing what needs to be done in the South African setting and context to address the gaps in local governance, traditional leadership and land management in terms of enhancing the quality of life, particularly of the rural populace as espoused in

the constitution. That interconnectedness and intersectoral linkage has to be developed further in terms of meeting the needs of the rural populace in particular.

Keywords: land management**;** municipalities**;** municipal governance; rural areas; traditional leadership

Introduction

The post-1994 political dispensation did not bring finality to the issue of traditional leadership in South Africa, despite the ushering in of a democratic state in 1994. A basic legislative and policy framework was developed for traditional leadership and governance, and it was believed that it would complement the comprehensive local government dispensation that was ushered in. The traditional leadership structures were theoretically supposed to work side-by-side and alongside the democratically elected local government structures and councillors (Ndlela, 2015:183). It was envisaged that local governance was hypothetically an evolving process in the broader context of cooperative governance envisioned in Chapter Three of the constitution. This has not happened in practice (Buthelezi, 2013; Klaas-Makolomakwe and Reddy, 2020:39) as tensions have been experienced in the local governance process, where it seems that democratically elected councillors have been foisted on the rural communities, in the process marginalising the traditional leaders in those municipal jurisdictions.

It is a given that a significant number of the traditional leaders in the country are not participating in local government and this is indeed a challenge, as it has a negative impact on service delivery, land management and in the final analysis local governance. This chapter will provide a summative overview of the background and context for traditional leadership and land management in the broader context of local governance in South Africa post-1994. It will also pinpoint some of the resultant governance challenges and this will be rejoined in the concluding chapter. A critique of the important trends, developments and advancements made relative to local governance, traditional leadership and development and land management nationally and continentally through a literature review constituted the basic research methodology for this chapter. Additionally, the key thematic issues highlighted in all the other chapters of the book constituted the core content of this chapter, in terms of interrogating and analysing these issues further and drawing important conclusions therefrom.

Municipal Governance, Traditional Leadership and Land Management: Background and the South African Case in Focus

Given their location in the South African governmental landscape, it is expected that municipalities will play a pivotal role in the discharge of basic services, development, and local democracy as espoused in the Republic of South Africa Constitution (1996). There is generally no acknowledgement in the overall assessment of local government prior to 1994 (and even before 2000), that there were significant parts of the country that did not have local government, or that there were no municipalities in existence. To date, post-1994, it seems that traditional leaders are viewed as the face of local government in the majority of rural and peri-urban areas of the country. However, it has to be pointed out that political dynamics at the municipal level have changed substantially post-1994 and since the ushering in of local democracy in South Africa. The changes are expected to gain more traction and momentum following the service delivery protests that have become a national norm, and the political pressure exerted on local government as the third governmental sphere to discharge its developmental and constitutional obligations (Reddy, 2015). Additionally, coalition governance in the local government sphere has made the situation much more complicated and even more difficult to resolve.

The land allocation issue, more specifically the usage and management thereof, remains unresolved, more specifically in those municipalities where traditional leadership is still the custodian of land, in accordance with customary law that has been in practice for several decades. Consequently, this has inevitably led to the advent of a land use management system (the state/governmental and traditional) existing analogously in parallel and next to each other. The presence and existence of the two analogous and parallel governance systems in the same locality and municipal jurisdiction hypothetically tends to fuel contestations and conflicts in the absence of a general agreement, consensus and cooperation on how the two systems should be operationalised and governed at the local level (Interviewees 1, 2, 3 and 4 in interviews held on 18, 22, 27 and 28 April 2023 respectively). Nzimakwe, in Chapter 5, points out that the Spatial Planning and Land Management Act of 2013 (SPLUMA) gives municipalities the requisite authority to resolve land use planning and management matters. The practical area of municipal planning has been given more sense and meaning through this legislation.

In fact, it was envisaged by the post-1994 government that the notion of cooperative governance as detailed in Chapter 2 of the Constitution (1996) would have facilitated that process at the local level, where the traditional authorities, municipalities and democratically elected councillors would work harmoniously to enhance the lifestyle of the local citizenry, particularly in the rural areas. However, that has not yet materialised and is impacting negatively on local governance and ultimately service delivery and an enhanced quality of life, especially for rural communities in South Africa. SALGA (2013) pointed out that municipalities raised matters relative to the lawfulness of their voting rights and participation, whether traditional leaders can, in fact, receive salaries, and the limited clarification on the exact roles/responsibilities of traditional leaders when they are contributing to debates and discussion in the Council.

Ndlela (2015:191) believes that the South African post-1994 democratic regime has to some extent been "captured" by the colonial and apartheid systems of government. which were key in closing down and frustrating the traditional proceedings of the Zulu Kingdom. She adds that the current regime, notwithstanding its virtuous intentions, seems to have settled for democracy as opposed to age-old traditions and customs that have been practised for several decades.

KwaZulu-Natal Province recently conducted research on the perceptions, attitudes and understanding of the implementation of section 81 of the Local Government: Municipal Structures Act 117 of 1998, which makes provision for participation of traditional leaders in local government. Some of the gaps and challenges highlighted included *inter alia*, that traditional leaders did not have a detailed understanding of their own roles and responsibilities; they felt inadequate in terms of the legislation relative to voting and representation; and they were of the view that their communities were not benefiting as they were not part of municipal decision-making process (Province of KwaZulu-Natal, 2015). The municipalities, on the other hand, had the requisite information, understanding and knowledge of Section 81 of the Act, but had adverse perceptions and attitudes to enable them to facilitate the process. It was recommended that provincial COGTA in KwaZulu-Natal co-ordinates and supports information sharing and capacity development; provides the required tools of trade to enable traditional leaders to participate in local governance, and last of all reimburses them for costs incurred in their engagements with the municipalities (Klaas–Makolomakwe & Reddy, 2020:39).

The policy/legislative framework for land use and management in South Africa, according to Msuya (Chapter 3) expressly transferred power and authority from provinces to municipalities over a fifteen-year period and is part of the devolution of authority; quite often resisted by the national and provincial governmental spheres. Sibanda (Chapter 8) recommended and in fact reinforced the concept of the reassignment of rural land governance and development to municipalities to ensure and secure land rights (including access and use) for the citizenry.

Post-1994, the implementation of the new local government system has resulted in the intersection and connection of the role/responsibilities of traditional leadership in land use allocation, and the municipality's role in land use management and development, which has given rise to tensions at the local level (Interviewees 1, 2, 3 and 4 in interviews held on 18, 22, 27 and 28 April 2023 respectively). It is a given that the land allocation system has been a source of livelihood from time immemorial for the majority of the traditional leaders; the fees and income generated from the allocation of land are used to sustain their families, and possibly a significant percentage of the rural communities. Additionally, for traditional leaders, land allocation also implies control, and in the final analysis, power, which they have held for a considerable period. Given that land is a scarce commodity and a key resource that is imperative for the well-being and continued existence of a large number of rural communities nationally, it implies that traditional leaders have greater influence in their jurisdiction than the traditional ward councillors. Consequently, the land allocation system is a very influential tool and vehicle for traditional leaders, given that it provides them with a source of income and enables them to continue with their governance role/responsibilities in their respective municipal jurisdiction. Mutereko and Olufemi (Chapter 4) are of the view that the working of traditional leaders in land transformation and allocation is mired in delicate conflicts that may hinder and impede development in the rural areas, more specifically service delivery.

The Ingonyama Trust in KwaZulu-Natal Seen in Context

KwaZulu-Natal as a province is unique in that it houses the Ingonyama Trust, which is responsible for managing vast tracks of land; almost 3 million ha, particularly in the rural areas. The land extends over a huge area, from the Mozambique border to Transkei and inland west to the Okhambla Mountains. The Trust was created in terms of the KwaZulu

Ingonyama Trust Act of 1994, and it took over land belonging to the former KwaZulu homeland (Ingonyama Trust Board, 2019). The 1997 amendment to the Act made provision for the establishment of a Board to manage its affairs. This has resulted in the dual management of land in the province (Interviewee 1, interview held on 18 April 2023. The Trust is managed by a Board, and the King of KwaZulu-Natal is the sole trustee and Chairperson of the Board. It is a given that the King does not have the time to attend all the meetings of the Board and consequently appoints an internal or external person to represent him on a more permanent basis. The Board has sole responsibility for the management of all tenure rights and proclamations, which includes servitudes and waterworks, as well as having to deal with state-owned entities like ESKOM and SANRAL.

There has to be strong political will to respond to the challenges emanating from the role played by the Ingonyama Trust Board on the land issue in KwaZulu-Natal, as highlighted by Ngema and Reddy in Chapter 8. This impacts on communal land as well as on the implementation of local government structures, which has a bearing on the lives of local communities. All of this spills off into municipal wards and ultimately wall-to-wall municipalities established by the Municipal Demarcation Board. This implies that since traditional authority areas are part of municipalities, councillors are being imposed in those areas which have from time immemorial been managed by the traditional leaders. These areas have constituted the outer boundaries of R293 towns and consequently, no provision has been made for service provision, nor have they been properly demarcated for land usage or waste disposal.

There have been major challenges impacting on the operational efficiency of the Ingonyama Trust Board (ITB), and consequently land management in KwaZulu-Natal, and they can be summarised as follows: the finalisation of the appointment of the new King impacted on the appointment of the new Board Chairperson and members; the dual management of land by the traditional leaders and municipalities on a daily basis is proving to be an herculean task, test and trial; the process for land acquisition is a long drawn-out bureaucratic process, which has to be streamlined as it becomes a national problem; municipalities are charging rates in the traditional authority areas with no or limited services being provided, while the very same municipalities are approaching traditional authorities for burial sites and cemeteries; the introduction of wall-to-wall municipalities by the Municipal Demarcation Board (MDB) has meant that the traditional

areas are now part of municipalities and more specifically wards, and the resultant effect is that councillors have been imposed on traditional leaders (SALGA, 2013); the income generated by the Board is not being used for community development in the rural areas; the traditional leaders are not benefitting, and the ITB has to find some way of surviving as an entity, as it is not supported by the local communities and consequently has to be restructured and transformed (Interviewees 1, 2, 3 and 4, in interviews held virtually in 2023). Khambule (Chapter 6) points out that the Ingonyama Trust Board case study in the Province of KwaZulu-Natal reflects the complicated nature of land management and allocation in a constitutionally defined kingdom and traditional system.

Research Problems and Methodology, Structure, and Content

As indicated earlier, there is definitely a positive connection and linkage between these three critical concepts, in the African and South African contexts. Given the above-mentioned background and context, the critical question that has to be addressed is, how can these roles, i.e., municipal governance, traditional leadership, and local governance, be discharged in such a way that they demonstrate respect for each institution's authority relative to land, the local communities benefit in the broader local governance context, while resolving the resultant contestations currently being experienced on the ground in the different municipal jurisdictions countrywide? This book interrogates the above-mentioned issues and concerns, and other related aspects in considerable depth, the key aspects of which are highlighted in the summations below.

On a more general level, this book seeks to clarify, elucidate, explain and interpret the conceptual/theoretical, policy/legislative context for municipal governance, traditional leadership and development and land management, and the resultant positive linkages emanating therefrom in the South African context post-1994. Given the initial colonial and apartheid eras and the increasing levels of urbanisation in South Africa, this is a very new problematic issue in the country that needs to be addressed very dynamically, energetically and vigorously as all of it impacts the long-term development and sustainability of the country, and ultimately on the quality of life, especially in the rural communities who have been the most disadvantaged. It will also highlight and demystify some of the critical municipal governance issues, traditional leadership and land

management challenges, and more significantly indicate how they should be addressed in terms of moving forward and attaining the goals detailed in the Constitution (1996).

There is a considerable quantity of literature and official documentation in the South African context post-1994 on traditional leadership and governance in a municipal setting and land management; however, there is a dearth of literature responding to all three of these critical governance issues, seen jointly and relative to cooperative governance which has been constitutionalised (Chapter 3 of the Constitution, 1996). Given the above, it can be stated that this publication can be viewed as a significant and influential book, intent on developing an authoritative basis for knowledge on the critical areas under focus and discussion, which are still unresolved issues in South African local governance and development.

Some of the critical research questions emphasised above were addressed in several ways, by the diverse contributors to the book. The predominant research methodology used was qualitative, rooted in comprehensive paradigms of research practices that were unobtrusive, including *inter alia*, a conceptual/documented scrutiny of the key focus areas locally, nationally and continentally. Consequently, the critical thematic issues emerging from the literature review, and the case studies documented locally, provincially, nationally and to some extent continentally, directed the examination and the scrutiny of additional data, resulting in the key findings and recommendations in terms of mapping the way forward. That in totality constituted the foundational basis for this book, and in this regard, it can be viewed as a continuing contributor to the evolving information and knowledge base on traditional leadership, municipal governance and development and land management in the country. These issues are still high on the municipal agenda nationally in South Africa, and to some extent continentally.

In responding to the key objectives of the book, and the key research questions highlighted above, the individual contributions are summarised concisely below, thereby resulting in a more succinct synopsis of the publication and the primary content.

In Chapter 1, Purshottama Reddy and Henry Wissink interrogate the positive linkage between municipal government, traditional leadership and land management in a South African context post-1994. They point out that the local government dispensation post-1994 has ushered in wall-to-wall municipalities that have incorporated

traditional authorities, and by implication, the contribution of traditional leaders to local governance in their localities. The land appears to be the common denominator that binds the key role-players, namely municipalities, traditional leaders and councillors together. The land earmarked for rural communities in KwaZulu-Natal is held in trusteeship in the Ingonyama Trust by the King. The local communities need the land to ensure that they have security of tenure in the rural areas, while at the same time, the municipality requires land for development purposes. There are gaps in local governance that need to be addressed to ensure that each of the role-players discharge their roles and responsibilities effectively, to ensure that local needs and aspirations are met, and more importantly development is facilitated in the broader context of an enhanced quality of life for local communities.

In Chapter 2, Tanya Masiya provides an assessment of the role/ responsibilities of traditional leaders in local governance post-1994. Key to the debate is the conception of discordancy of this institution with local arrangements and structures of elected and autonomous governance. Subsequently, debates and disagreements affecting the role/responsibilities of traditional leaders have been and continue to be at the centre of local governance beyond the apartheid era. The decentralisation of administrative power to subordinate governmental structures, together with the establishment of district and local municipalities, has created additional challenges relative to the *modus operandi* of traditional leaders. The steering of state public policymaking and decision-making processes nearer to local communities as a democratisation exercise seems to be in all likelihood resulting in inconsistencies with the less democratic traditional leadership dispensation. Presently, the role/responsibilities of traditional leaders do seem partisan in daily municipal activities, resulting in unnecessary contestations of rules/powers, jurisdiction and accountability in local governance. It is quite apparent that to date, the government has not been successful in capacitating and empowering the institution of traditional leadership relative to local development, and their resultant roles and responsibilities. This chapter promotes the view that the traditional leadership institution is still substantial and significant as a trusted and important structure for local governance, and forwards significant proposals in terms of what can be done to enhance its operative participation. This chapter was reliant on a review of secondary data, and it used a qualitative systematic review approach. The methodical examination included an exploration of current qualitative research findings, utilising research designs such

as *inter alia*, longitudinal studies, survey interviews, focus groups, case studies and desktop research. Data was also retrieved from the Scopus and Social Sciences Research Network as main databases and additional data were sourced from other sites such as ResearchGate.

Norah Msuya, in Chapter 3, points out that the policy/legal framework for land use management in the country has been transformed in the past fifteen years in that power has been significantly transferred from the provinces to municipalities. This shift took years to materialise in the subnational sector space, as the national/provincial governmental spheres struggled with the devolution of authority. It was made possible by five Constitutional Court judgments where local government had to proclaim its authority. Consequently, it seems that for the first time, a solitary piece of national legislation, notably the Spatial Planning and Land Use Management Act (2013) was enacted (SPLUMA). Despite the fact that SPLUMA has elements that can be described as being advanced, the enactment of the legislation has been contentious and highly controversial. This can be attributed largely to the rules/powers that SPLUMA and its Regulations grant to traditional councils. SPLUMA developed a framework that can be viewed as all-encompassing for spatial planning, policy and land use management nationally, including settlements viewed as rural or informal. At the heart of this planning system are spatial plans connected to zoning schemes; however, as a land use management tool, zoning has been strongly disapproved of as being exclusionary and environmentally, socially and economically unsustainable. Additional challenges are the limited extent of communal land surveying, and the registration and transacting in property in urban areas, which have high costs. Assuming that the purpose of the legislation was to consolidate and facilitate equitable development and in the final analysis sustainability, this chapter briefly outlines legal considerations, including recognition of rights of land use, rights enforcement, mechanisms and instruments for recognition, rights restrictions, non-discrimination and in the final analysis equity and fairness. Two main questions are addressed: why is the legal context for land use management in the country not supportable and sustainable, and how does the South African legal framework manage the survey, registration and transaction of urban communal land? Reviewing the strengths of some of the alternative legal contexts for land use, proposals and suggestions have been made for a more apposite legal framework for the land use management structure and system in South Africa, which has also proved relevant for other countries with similar colonial histories.

Sybert Mutereko and Oladejo Olufemi, in Chapter 4, demonstrate that traditional leadership in South Africa has always played a key role in local communities socio-economically. One crucial role they played was in land use for diverse purposes. However, colonialism, apartheid and urbanisation caused dramatic paradigm shifts in land usage and the position of traditional leadership. Land demarcation into urban and communal areas has also added another layer to complicated land governance. The designation of some parts of South Africa into homelands during the apartheid era took away the power from traditional leaders in urban areas, while giving them more authority over land in the communal areas. In South Africa, chiefs and headmen have singular and substantial power in land allocation, which entrenches their roles and responsibilities in the local government space. The chiefs lack the authority and resources to ensure land rights and to police land abuse. Additionally, their power is further reduced and challenged by the existence of democratically elected politicians and ward councillors. Urban encroachment and expansion into communal areas have recently been exerting pressure on land resources such as rangelands, riverbanks, and fragile landscapes. There is limited description of the role of traditional leaders in land usage in the Local Government: Municipal Structures Act of 2000, complicating this task and giving rise to a lack of clarity, which has in turn led to conflicts between traditional leaders and municipalities. The Spatial Planning and Land Use Management Act of 2013 seems to have resolved the linkage issue between municipal and traditional governance, although its actual implementation has not been smooth, as conflicts still persist. This will in the final analysis have a major impact on service delivery and development. This chapter interrogates the roles/responsibilities of traditional leaders in land use management in the country, and also highlights areas where traditional leadership and municipal governance interconnect in matters of land management and allocation.

Ian Nzimakwe, in Chapter 5, points out that municipalities have played a crucial role in promoting local democracy, facilitating development and enhancing service delivery. There should be a general acknowledgement in the overall assessment of local government that prior to 1994, there were large parts of the country where there were no municipalities. More specifically, in the rural parts of the country, the traditional leaders continued to be the face of local government. In this regard, the Spatial Planning and Land Use Management Act 16 of 2013 confirmed municipalities as the apposite and relevant structures to take decisions on aspects relating to land use planning

and management. Consequently, this has been done essentially by giving more meaning and effect to the practical area of 'municipal planning'. This Act is applicable to the entire country, including, *inter alia*, rural areas that fall under the jurisdiction of traditional leaders. The residents in the rural areas have been allocated land by traditional leaders. However, in rural areas, there is still in existence a land allocation and land use system managed by traditional leaders in accordance with customary law, and this has been in existence from time immemorial. The resultant effect is the advancement of two parallel systems of land use management. The two systems in the same area existing side-by-side provides a recipe for possible contestations/conflicts unless there is consensus and cooperation on the operalisation of both systems. The land allocation system is critical to the traditional leadership institution. Traditional leaders in the rural areas generally use land as a source of income to sustain themselves. Data collection for the chapter was secondary, utilising desktop research/literature from the policy/legislative framework of the government, as well as academic journals. The chapter seeks to interrogate and explore where traditional leadership and municipal governance intersect relative to the allocation and management of land. The political dynamics that influence and impact the connection and relationship between traditional and municipal leadership, how challenges are managed and possible conflicts eased and mitigated, thereby ensuring harmonious co-governing of municipalities under the traditional leaders' oversight, are also critically analysed.

According to Isaac Khambule, in Chapter 6, municipalities have increasingly played a crucial role in the socio-economic development of the country. This is evident in the role played by municipalities in delivering basic social services and economic development resources due to their proximity to communities. Of late, the key role of municipalities has emerged through the local government sphere acting as a key player in land use management and allocation through a participatory approach enshrined in the Constitution. The various stakeholders involved in land management and allocation include community leaders, ward councillors and traditional leaders. This presents opportunities for the country to address the historical land dispossession and inequities in land ownership. However, the involvement of the various stakeholders also presents grounds for contestations in land use management and allocation due to the diverse interests and constituents' needs. Against this backdrop, this chapter explores the role of local stakeholders in land management and allocation in municipalities. Methodologically, the paper utilised

secondary materials on two contested municipal and traditional land case studies in KwaZulu-Natal and Eastern Cape. It further explored the underlying and emerging contestations in land management and allocation as informed by the divergent needs of the various stakeholders. The chapter contributes to an in-depth understanding of the complexities facing strategic stakeholders in land management and allocation.

In South Africa, land access has generated accounts and stories of restrictions and discrimination that explain and also border on human rights violations, according to Zamantshali Dlamini (Chapter 7). South African history depicts a racially divided past, but more specifically has seen marginalisation in terms of gender. Many women have suffered as a result of ideologues, patriarchal-deemed structures and systemic frameworks, and have remained excluded in issues relating to land redistribution and ownership, where there is a domination of male power, privilege and participation. For a considerable period, customary law marriages were a mesh that sought to be a legal basis, determining how women could become players in this landscape. Post-1994, the ushering in of democracy relative to local government and review of land issues implied major revisions through the elimination of structural gender inequalities, while enforcing equal participation for men and women in the economy. Additionally, this created space for traditional leadership to be recognised and acknowledged in managing issues. The introduction of a lawmaking framework that was gender responsive in 1994 has sought to respond to issues of access/ empowerment of women who were disadvantaged. The land matter is a critical issue that unlocks openings for economic development, growth and security. There is a possibility for creating independence through gender equity, and restoring the dignity of women, whilst inculcating a sense of well-being that should be enjoyed by every citizen as a beneficiary. The issue that this chapter sought to address was, how South African municipal governance reinforces enabling frameworks where women's rights are amplified when it comes to land access and participation thereof. How are women presently coping in terms of enjoying these rights? This chapter emphasises the role/contribution of women in land use and management in the country, utilising the desktop research methodology. The intersection of traditional leadership and municipal governance is also highlighted, taking cognisance of the participation of women in matters relating to land allocation and management.

In Chapter 8, Dolly Ngema and Purshottama Reddy point out that the Ingonyama Trust is a special entity that was created in 1994 in South Africa to hold all the land that the Zulu people have historically possessed, in trust. The chapter explores the role of the Ingonyama Trust in local governance, traditional leadership, and land management in KwaZulu-Natal (KZN). The Ingonyama Trust has on the one hand been instrumental in safeguarding the Zulu people's traditional legacy and offering social assistance to locals who live on its property. Conversely, it has been criticised for impairing national efforts to implement land reform and for violating the rights of locals. The Ingonyama Trust has preserved the Zulu monarch's dominance and legacy provincially by promoting customs/traditions, managing disputes/conflicts, fostering cooperation, and preserving stability by serving as a mediator between residents and local government authorities. The Trust should change its emphasis from conventional leadership to modern governance structures, as it is outdated. A system of leases and occupational rent is used to administer the roughly 3 million hectares of land that the Ingonyama Trust owns in KZN, and using the funds generated from occupational rent, it has built schools, clinics, and other facilities. The impression created is that the Trust is a tool for traditional leaders to enrich themselves at the expense of their communities, and has been one of the main obstacles to development. The lack of accountability and transparency in the Trust's activities has been another challenge that has made it difficult for the Trust to build confidence with its beneficiaries, and with other stakeholders like the government and civil society organisations. Greater accountability and openness, such as the release of annual reports and audits; ensuring that the beneficiaries are informed about its operations and have a voice in its decision-making processes; greater interaction between the Trust and its beneficiaries; and greater oversight/regulation of its operations by the government institutions to ensure that it is fulfilling its mandate fairly and equitably, could be potential solutions to these challenges.

Sibanda Darlington poses a critical question in Chapter 9; namely, are the current functions of traditional authorities consistent with democratic principles in South Africa and do current laws provide traditional authorities with unilateral decision-making powers over communal land? These are some of the major questions which continue to be key to the land question in South Africa, almost thirty years after the inaugural democratic elections and ushering in of the post-1994 political dispensation. This chapter unpacks some of the key arguments around traditional leadership, rural land governance, and the implications around land reform, allocation, and management. The

main objective of this chapter is to provide critical insight into how land administration provided traditional leadership with critical power and influence for both gaining political leverage and using the patronage system in rural communities under the communal land tenure system. The chapter uses the South African Province of Eastern Cape as a local case study, and unpacks how the survival and resurgence of traditional authorities hinges on land allocation, resulting in ambiguities and contradictions with democratic principles as envisioned in the 1996 Constitution of South Africa. Overall, the chapter contends that the entanglement of political elites and traditional authorities, and the ambivalence displayed by the ANC-led government subverted democratic principles as detailed in the constitution. This resulted in a 'bifurcated' state and increasing inequality, including failure to protect vulnerable groups such as women, and entrenching existing unequal power relations and patriarchal hegemony in areas under the control of traditional leadership. This chapter recommends the reassignment of rural land governance and management to municipalities to ensure that land rights (including access and use) of all citizens are attained.

Henry Wissink and Purshottama Reddy (Chapter 10) are of the view that resolving land tenure and management in South Africa requires a balanced and inclusive approach that recognises the potential of traditional leader land trusts. These trusts can address challenges, promote equity, and ensure robust governance structures, thereby achieving land tenure security, sustainable development, and cultural preservation. Strategic collaboration between traditional leaders, communities, government agencies, and civil society organisations is crucial to unlock the potential of traditional leader land trusts and create a brighter future for all South Africans. This final chapter explores the complex and challenging issue of resolving land tenure and management within the context of traditional leader land trusts in South Africa, considering historical context, philosophical perspectives on land ownership, the current state of land ownership and tenure, and the need for sustainable and equitable land management. It highlights the opportunities and benefits of traditional leader land trusts, such as preserving cultural heritage, empowering communities, and promoting sustainable land management. It also addresses the challenges and concerns, including democratic principles, land rights conflicts, and capacity building. The potential outcomes of the successful implementation of traditional leader land trusts include increased land tenure security, sustainable development and economic opportunities, and social cohesion and reconciliation. The chapter summarises salient issues raised in the

previous chapters, and also describes the importance of reconciling the differences between formal local authorities and traditional leader structures for effective land management. It suggests steps to foster collaboration and dialogue between these entities. Additionally, it makes recommendations to manage and fast-track these solutions within the provisions of SPLUMA, to grant municipalities the authority to oversee land utilisation within their jurisdiction, and guarantee compliance with zoning regulations and authorised construction blueprints.

There is a strong view that traditional leadership should add value to the local governance of the country and that they should work collaboratively with democratically elected councillors in wards and localities. Non-governmental organisations and to a certain extent the private sector have also understood and acknowledged that if they intend responding to critical social issues in the community, such as HIV/AIDS, gender equality, violence and crime, specifically in the rural areas, or even business opportunities, they have to use traditional leaders and traditional authorities as points of access and entry. Mashumba and Mindzie, cited in Muterekos and Olufemi (Chapter 4) believe that there are numerous areas where local government and local traditional chiefs can collaborate and work harmoniously together to promote operative land usage and resourceful governance. They add that these could include producing a land use plan, community involvement and participation, and public project design and execution. There is a contemporary view that rural land governance should be reallocated to municipalities, thereby embedding the notion of land rights, and ensuring greater access to land and its usage by the local citizenry

Ndlela (2015:190) points out that KZN is a case in point, where by and large traditional leadership seems to be working harmoniously and collaboratively with the democratic structures at the local sphere of government. In this context, there are a significant number of municipalities executing section 81 of the Local Government: Municipal Structures Act 117 of 1998 and Local Government Municipal: Structures Amendment Act 51 of 2002, relative to participation of traditional leaders in local government. It should be noted that the active participation of the traditional leaders in the local governance process has facilitated development in the rural areas.

Conclusion

In South Africa, in 1994, a democratic state was ushered in, and an all-compassing legislative and policy framework was introduced as part of the post-1994 local government dispensation. It was then a major political challenge to address the issue of traditional leadership, and even the land question, which was a bone of contention. More specifically, the long timeframe required, and the uncertainty in terms of political negotiations, meant that both these issues had to be put on hold in favour of prioritising the ushering in of the new democratic state, and more importantly the post-1994 local government dispensation. However, despite some progress made with the introduction of new policy and legislative frameworks for both of these critical issues, they have remained largely unresolved. It would appear that traditional leaders, despite being critical role-players in the local governance process in the country, have not been adequately empowered and capacitated for their respective roles and responsibilities in the different localities and municipal jurisdictions. Additionally, with the ushering in of wall-to-wall municipalities in South Africa, they have to a certain extent been marginalised over a period of time. It does seem that the democratically elected politicians and ward councillors have usurped their role and they have to some extent been sidelined.

However, the current situation in many municipal jurisdictions, in particular KZN, demonstrates that the traditional leadership institution can co-exist with democratically elected structures, and the local communities are ultimately the beneficiaries in this regard. This requires strong political and management will, and firm and decisive action from both parties, i.e., the executive municipal functionaries and the traditional leaders.

There is a strong view that the Ingonyama Trust in KZN has to be restructured and transformed so that it becomes more relevant, responsive and reflective of the needs of the local populace in the province. There should be the required political and management will at the national, provincial and local levels to ensure that traditional leadership is an integral part of all municipal decision-making and local governance in all localities, and that they be empowered and capacitated for their distinct participation and role in this regard.

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Chapter 2

Traditional Leaders in the Democratic South Africa – Opportunities, Controversies and Implications for Local Governance

Tyanai Masiya

University of Pretoria, South Africa.

Abstract

This chapter provides an appraisal of traditional leaders as role-players in local governance. Furthermore, it specifically reveals the relationship between traditional leaders and democratic administrative structures at local levels; potential benefits of this relationship; as well as challenges. The impact of traditional leadership is also examined with a view to establishing its relevance to modern-day local governance. An extensive survey of secondary sources was conducted to gather data. A qualitative systematic review approach is adopted, which involves a search of existing qualitative research findings conducted through, for example, longitudinal studies, survey interviews, focus groups, case studies, and desk research designs. Data is retrieved from the two following primary sources: Scopus and Social Sciences Research Network, including ResearchGate for further information. The decentralisation of administrative power to lower structures of government, together with the establishment of local municipalities, has created challenges for the proper functioning of traditional leaders. The cascading of governmental decision-making processes closer to local communities to enhance democratisation appears to be creating multiple contradictions, especially with the limited democratic traditional leadership discourse. However, this chapter contends that traditional leadership remains an important institution for local governance, and is trusted by local communities. The chapter makes significant proposals of what can be done to enhance participation effectively.

Keywords: Community development; Democracy; Local communities; Local governance; Reforms; Powers; South Africa; Traditional leadership

Introduction

This chapter provides an appraisal of traditional leaders as role-players in local governance in South Africa, and underscores opportunities, controversies and implications. The term 'traditional leader' is utilised to denote "any person who in terms of the customary law of the traditional community concerned holds a traditional leadership position" (Traditional Leadership and Governance Framework Act 41 (TLGF) (RSA, 2003: 11). The Act also stipulates that leadership relates to the procedures of governance practised by traditional communities.

According to Koenane (2017), the traditional leadership institution in Africa existed prior to the colonial era and was the primary system of governing indigenous people. Traditional leaders are still perceived as:

> "the true representatives of their people, accessible, respected, and legitimate, and therefore still essential to politics on the continent" (Logan, 2008:3).

Furthermore, Honig (2019) holds that traditional leaders play a significant role in the lives of citizens at community level.

However, both colonialism and apartheid in South Africa are known to have abolished the most important powers of traditional leaders and thereby weakened their functions in local governance (Shabangu & Khalo, 2008). Although the traditional institutions were retained under these two systems of governance, with attenuated powers, the community in general, especially those in pro-democracy movements, believed that traditional leaders colluded with the colonial and apartheid regimes at the expense of political change.

Following the advent of democratic rule in 1994, a number of reforms have been constituted to accommodate the traditional institutions within the context of a Western-oriented democratic society, as well as create opportunities for collaborative governance with administrative units of government. These strides have been commended by a number of authorities. Although these reforms have endeavoured to integrate the traditional leadership, these have

been plagued by contradictions with Western administrative forms of governance in rural areas.

With regard to opportunities that traditional leadership presents, and controversies and implications for local governance, this chapter responds to the following questions:

- What opportunities are presented by the inclusion of traditional leadership governance in rural areas?
- What controversies have been experienced with regard to the functions of traditional leaders in rural local governance?
- What efforts can be made to harmonise traditional leadership and administrative systems at the local sphere of government?

This chapter seeks to contribute towards a more cordial and stronger collaboration of traditional structures and government administrative systems at local level, specifically rural communities because the latter experiences a significant lack of services, even after more than two decades of democratisation.

This chapter is structured as follows. The introduction provides an overview of the purpose of the topic of this chapter, its significance, and how the discussion on traditional leadership and local governance is structured. The second section presents the background and context of traditional leadership with specific reference to how the institution of traditional leadership has evolved from the colonial and apartheid period, through to the post-1994 democratic dispensation. Measures taken to reform the ways in which traditional leadership is recognised and integrated into local democratic systems of governance in post-1994 South Africa are also discussed. The third section explains the adopted research methodology. The findings of the research are categorised into four main sections, which focus on opportunities and controversies presented by traditional leadership, its impact, and implications for local governance. The last section is the conclusion which summarises the chapter.

Background and Context

Tsoko (2014:17) posits that in the first half of the 20th century, "the powers of chiefs were reduced when the state instituted a hierarchy of elected advisory councils alongside the colonial bureaucracy of magistrates and civil servants depriving the chiefs of important administrative functions". This resulted in the reduction of the powers of traditional leaders by the colonial and apartheid regimes.

However, the Black Administration Act (SA, 1927) later acknowledged traditional leadership structures in their communities under the tribal authorities. Furthermore, the powers that traditional leaders had been granted under the Black Administration Act were later arrogated by the president of South Africa in 1961, and the homelands when these were granted independence. Jurisdictions outside the homelands still fell under the purview of the then president of apartheid South Africa, who assumed the prime responsibility for appointing traditional leaders (Rugege, 2003).

During the colonial and apartheid eras, traditional leaders' responsibilities focused primarily on controlling the black population in rural areas. For example, functions included presiding over traditional courts whereby traditional leaders had the power to fine community members who had been found guilty (e.g., impose fines such as cows) or administer corporal punishment with the objective of rehabilitating wrong-doers. The system also:

> "allowed the community to use their native languages and also allowed the community to practice their culture and customs" (Phindi, 2020:1).

However, authorities, for example, Rugege (2009) posited that despite this recognition, local government was not operational in rural areas. Pursuant to majority rule in 1994, a number of legislative provisions were promulgated to integrate traditional leadership into the country's local government system.

Chapter 12 of the Constitution (South Africa, 1996) acknowledges the institution, status and role of traditional leadership.

Furthermore, the constitutional provisions, multiple statutes and policy documents also spell out and acknowledge the role of traditional leaders in local government. The Traditional Leadership and Governance Framework (TLGF) and the TLGF Amendment Act (2009) strengthened the institution of traditional leadership in South Africa by providing the following:

> "recognising traditional communities; establishing and recognition of traditional councils; provision of a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders. In addition,

the statute also provides for houses of traditional leaders; the functions and roles of traditional leaders as well as issues relating to the resolution of dispute and the establishment of the Commission on Traditional Leadership Disputes and Claims" (Parliamentary Monitoring Group, 2014:1).

The Act also stipulates a very important aspect, that is, the code of conduct for traditional leadership. The TLGF is by and large an 'operators manual' for the institution of traditional leadership in South Africa.

The White Paper on Local Government (1998:2) prescribes the roles that traditional leaders can play in the development of their local communities as follows:

· recommend land allocation, settle land disputes as well as lobby development of areas under its jurisdiction;
· promote community participation under its jurisdiction in decisions relating to local development; and
· consider and recommend trading licences in their areas.

In 2003, the government promulgated the White Paper on Traditional Leadership and Governance (2003). The White Paper encourages traditional leaders to instil a conducive working relationship with other spheres of government, including municipalities with a view to enhancing local development. Furthermore, the White Paper enables traditional leaders to promote local development throughout all rural areas. In the context of local community development, the White Paper on Traditional Leadership and Governance (2003:18) prescribes that traditional leaders should:

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

The Local Government: Municipal Structures Act (RSA, 1997) expounds on how traditional councils ought to participate through their leaders in municipal councils. In terms of section 81(1), the Act stipulates that traditional authorities in their municipal areas can contribute through their leaders towards council proceedings of their respective municipalities. The participation of traditional leaders in

this regard extends their participation in local governance. This also signals authorities to acknowledge the significance of traditional leadership as representatives of the local communities. Inclusion in council decision-making processes enables the traditional leaders to provide input related to the determination of community needs and thereby permit the municipal council to enhance its structuring for the provision of relevant services. Schedule six of the Local Government: Municipal Structures Act (RSA, 1997) outlines how traditional leader representatives be selected to participate in municipal council meetings.

Therefore, the purpose of including traditional leaders in elective democratic systems is to complement them to enhance the quality of the rural communities. This conforms with meeting the objective stipulated in section 212 of the constitution (SA, 2011:6). Section 212(1) states that:

> "national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities" (Smith, 2000:1).

Methodology

Research methodology is the approach adopted by a researcher to conduct a study which also dictates the tools that are selected for the purpose (Leedy & Ormrod, 2010). This section provides a brief overview of the adopted research methodology for this chapter, namely: qualitative. Creswell (2014:4) in Almalki (2016) posits that qualitative research is an analysis of the sense individuals or groups attribute towards a social phenomenon. The gathered data through qualitative methods is easily comprehensible because it is detailed, descriptive, and easy to draw conclusions from. This chapter is based on secondary sources of data with specific reference to traditional leadership, local governance and rural development. Analysing secondary data is convenient and cost-effective because the information is available and expedites the status of the study. Moreover, certain research steps can be excluded (Johnston, 2014). Existing qualitative research findings were searched through various research designs. The core collection databases included Web of Science (WoS), Scopus, Social Sciences Research Network (SSRN) and ResearchGate. The following key terms: 'local government', 'traditional leaders', and 'South Africa' were utilised during the search. These concepts were identified from titles,

keywords and abstracts. Furthermore, the research findings were included or excluded based on the country's context; South Africa; as well as subject areas.

Thematic analysis was used to analyse the data. According to Cruzes and Dyba (2011:8):

> "thematic analysis as an approach used with qualitative data requires the identification of themes for analysis and reporting".

Kiger and Varpio (2020) describe thematic analysis as a technique to analyse data that involves an examination of information across all sources to identify, analyse, and report frequent patterns. This method is also utilised to describe data which entails the interpretation and selection of codes including the formation of themes (Kiger & Varpio, 2020:2). Creswell's (2015) guidelines were used for the thematic analysis process, which included the identification of the related statements, division of the appropriate information into clusters, arranging the statements into meaningful units, seeking divergent perspectives, and constructing a composite. The purpose was to identify recurring themes, which were analysed so as to draw conclusions.

Opportunities presented by Traditional Leadership

The Local Government: Municipal Structures Act (RSA, 1998 and the White Paper on Local Government) provides for traditional authorities to play a consultative role, especially in local development-related issues. Furthermore, Tsoko (2014) observes that the TLGF Act (No. 41 of 2003) solidifies the role of traditional leaders in local development together with their counterparts, the democratically elected councillors. For example, traditional institutions are expected to facilitate community participation in the development or amendment of a municipality's integrated development plan (IDP). In this regard, traditional leadership promotes cooperation of the three spheres of government, community participation in development planning, and sustainable development. Traditional leaders and councillors cooperate mutually to promote service delivery for the communities which they serve. Specifically, the functions of councillors in which traditional leadership can be useful, include close consultation to identify the community's relevant development needs, ensuring successful implementation of service delivery programmes, and promoting local economic development.

Traditional leaders and councillors have joint responsibility to promote safety, security, peace and unity in rural communities and to encourage cooperation of all stakeholders to meet the needs of the community. It is much easier for elected councils and traditional leaders:

> "to operate in a co-operative manner with ward councillors since they (the institutions involved in local governance) all have common goal of developing rural traditional communities" (Mhlanga, 2012:38).

Thus, pursuant to democratic transformation endeavours followed by the post-1994 political dispensation, government provided for the participation of traditional leadership in developmental local government in rural areas where such structures had not existed in the past. Ngcobo (2016) posits that there is mutual cognisance of institutional existence between democratically elected structures and traditional leadership. Phindi (2020) and Beall et al. (2004) provide a lucid example of cooperative government between elected councils and traditional leadership by observing that they are government-sponsored traditional development centres ("traditional" because they are established under the guidance of local chieftaincies). These development centres:

> "provide 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" (Beall et al., 2004:8).

Furthermore, the development centres reflect the integration of traditional leadership in local governance to ensure accessible service delivery to rural communities.

Such programmes pursued in a collaborative context are imperative in rural communities because often, the state is unable to reach remote rural areas. Moreover, communities have an affinity for traditional rulership. For example, "when people talk to the chief, something will happen; when they talk to the municipal council, they know nothing will happen" (Phindi, 2020:3). Thus, the institution of traditional leadership remains a trusted institution for governance by most rural communities (Mawere et al., 2021).

Chigwata (2016) further argues that traditional leaders are more accessible to their subjects compared to elected local government. Consequently, the traditional leadership institution is a central role-player at the local governance level in rural areas. Kurebwa (2018) argues that allegiance and respect for traditional leadership by rural communities enhances their popularity. Thus, any government institution that fails to recognise traditional leaders in decision-making will experience grave policy implementation challenges. The reason is that traditional leaders are still respected and supported by local communities, and are considered legitimate institutions that perform key governance functions at community level, where the modern state is often lacking. Subsequently, traditional leaders often serve as a primary link between local government and the citizens.

Impact of Traditional Leadership on Local Development

Extant research reveals that traditional leadership plays an important role in advocacy activities, community representation and community development activities. They succeed herein because of their proximity to communities, as well as their role in religious and cultural traditional leadership. A study conducted by Tshitangoni and Francis (2015) revealed the effectiveness of traditional leaders in community engagement in development matters within the areas that fall under their jurisdiction. They,

> "reach thousands of people in their communities through "*imbizos/lekgotlas*" or community dialogues; they advise government on traditional affairs and influence policy making that affects the lives of millions of people in mostly rural populations" (Teffo-Menziwa et al., 2010:8).

According to Khumalo (2011), traditional leaders act as community spokespeople and in this regard are utilised for many community social mobilisation initiatives and upliftment programmes. The author further asserts that traditional leaders have a greater and stronger capability to mobilise local communities. For example, traditional leaders participate in health promotion programmes and the communities are easily mobilised with their help. According to Ntonzima and Bayat (2012), traditional leaders report contagious or infectious disease outbreaks in the community or in animals, as well as unusual passing of community members.

Traditional leaders promote civil society participation in local affairs and as such, communities can perform their civic duties diligently. Poswa (2019) asserts that in South African rural areas, traditional leaders represent local government. Singh (2017) concurs and argues that they are the saviours of the locals. They ensure that poor people have shelter and food even when the government is in absentia. Nzimande (2021) also established that traditional leaders played a coordinating role in the development of the community by ensuring equal or fair distribution of services to all its members. The services include issues related to water distribution, employment and the needs of the poor. According to Honig (2019), they thus represent local communities in government affairs and influence local economic development by coordinating local programmes.

Traditional leaders are also custodians of traditional religion and culture. In this regard, they have been promoting cultural tourism, which

"covers a region's culture, specifically the lifestyle of the people in those geographical areas, the history of those people, their art, architecture, religion(s) and other elements that helped shape their way of life" (Ringo, 2019:86).

For example, "in KwaZulu-Natal, the ancient San artworks at the Rock Art Centre, the Zulu reed dance, KwaZulu Cultural Museum near Ulundi, which exhibits famous icons of Zulu culture, form part of the culture heritage" (Mabuza, 2022:1). The traditional leaders have helped to promote this heritage. The legendary King of amaNdebele, Silamba, is known to have played a meaningful role in preserving the culture and heritage of the Ndebele nation (Sigcau, 2023). A study by Mnguni (2014) revealed that the chief of Emathulini tribal (Umzumbe local municipality) indicated that he was promoting a number of tourism projects in his area.

In rural areas, communal tenure remains predominant under the administration of traditional councils. The traditional leaders allocate land to the people (Hull et al., 2016). Traditional leaders are still entrusted with the allocation of land as stipulated in the Communal Land Rights Act (RSA, 2004). They allocate land to residents or prospective residents in the rural areas. Allocated land can be utilised for various purposes, including building a homestead or erecting a kraal for livestock.

Traditional leaders are also involved in project coordination and guidance. Tshitangoni and Francis (2015) highlighted that traditional leaders have been approving development projects that require land in rural areas. A study by Dlamini (2017) revealed that faith in traditional leadership in KwaZulu-Natal is resilient. The latter is entrusted with decisions related to land administration, rural community development, and infrastructure development.

Traditional leaders also coordinate the arrival of contractors who perform work in the community and introduce themselves as a means of sensitisation. If the government provides services through the use of contractors, the latter occasionally seeks permission from the traditional leaders to store their belongings on site. Furthermore, they request the traditional leaders concerned to nominate persons to look after their belongings. Everything commences at the traditional leader's abode when contractors arrive. Nothing can be done without consulting the traditional leaders of that tribe. When the contract is awarded, the headman is required to explain to the community the work the construction company would be undertaking, and which areas the community should avoid.

Traditional leaders are also responsible for resolving disputes over land-related issues in the communities of their jurisdiction. A study by Mboh (2021) on the involvement of traditional leaders in resolving conflict in Mahikeng rural communities revealed that the latter played a significant role in conflict resolution, mediation and negotiation, which promoted peace and unity in communities.

Mboh (2021) further highlighted that traditional authorities maintain law and order because they perform crime prevention responsibilities as well as security functions, and foster social cohesion. With regard to law and order, Shembe (2014) and Zenzile (2022) highlighted that they adjudicate over selected matters within their jurisdiction.

According to Buthelezi (2021), crime prevention protects likely victims from criminals who may seek to attack them by anticipating possible attacks, and eradicating or minimising prospects for crime as well as personal harm or loss of property. Tshehla (2005:15) posits that,

> "although traditional leaders contribute to several spheres of governance, their role in crime prevention and the administration of justice is more pronounced".

Tshehla (2005), in a study conducted on the crime prevention role of traditional leaders, revealed that even the South African Police Services in Limpopo confirmed that traditional leaders were critical in fighting crime in rural communities. The police attributed this to their influence in communities under their jurisdiction. A member of the Seshego crime prevention unit stated that "without traditional leaders, it would be impossible to deal with crime in the rural areas" (Tshehla, 2005:17). Furthermore, Ntonzima and Bayat (2012:16) noted that traditional leaders "report wrongdoing; suspicious presence of non-locals; unauthorised occupation or cultivation of land; the presence of criminal trespassers; unlawful ownership of arms, ammunition, alcohol, unsafe or habit-farming drugs, and the unauthorised collection of benefits, etc".

Chiefs, members of council and headmen in rural communities have ensured communication and connection between government and the rural community (Ncube, 2017). This argument is also confirmed by Zamisa and Mutereko (2019) who postulated that traditional leaders were a channel between the community and the councillors. They are a reliable system for communicating with traditional communities based on traditional modes of communication. Thus, traditional leaders make ensure that all council decisions are communicated with the community. For example, they ensure that district plans are crafted in line with the real needs of the communities under their jurisdiction. In that regard, traditional leaders serve as development intermediaries (between government and citizenry), and influence the prioritisation of local needs and the allocation of government services and resources significantly.

Controversies of Traditional Leadership

Despite the benefits of traditional leadership institutions and the plethora of legislation and policies to encourage a productive working relationship between traditional leadership authorities and elected council officials, controversies regarding the role of traditional leaders in local governance continue to exist. According to Poswa (2019:1),

> "when the system of local government was entrenched in the 1996 Constitution and given the mandate, in 2000, to deliver major public services and drive development throughout South Africa, tensions and contestations between municipalities and traditional leaders began to emerge".

Baloyi (2016) posits that in many cases traditional leaders may be unwilling to recognise councillors and behave aggressively towards them. They resent the lack of consultation that often occurs at local government level. Councils do not always consult traditional authorities. Service delivery or infrastructure provision by councils without traditional leader participation tends to undermine their roles as custodians of traditional communities. In particular,

> "traditional leaders believe that municipal councils encroach on their traditional affairs by implementing developmental plans in their areas, without their consultation" (Kanyane, 2007:319).

Ngcobo (2016) posits that this exclusion is initiated by the fact that traditional leaders are assumed to be apolitical and do not vote in municipal structures.

Traditional leaders also perceive councillors who only tend to consult them when they experience local community resistance and require their intervention. This creates tension and affects service delivery. In selected wards, projects may be stalled, which affects the government's effectiveness. Disregarding consultation and participation of traditional leaders when initiating and implementing certain projects is contrary to the laws of the country, which compel municipalities to consult communities regularly on any community project to be implemented. Consultation should be prioritised in decisions that affect the lives of those under traditional authorities.

However, Atkinson and Reitzes (1998) also observed that traditional authorities often allocate land in selected areas without involving ward councillors. This results in conflict between the two institutions of local governance. According to Poswa (2019:1), the reason for the latter is that:

> "in rural areas, there still exists a land use and land allocation system which is administered by traditional leaders in terms of customary law which has led to the emergence of two systems of land use management existing parallel to each other. The existence of the two systems in the same area causes conflicts and contestations between traditional and council authorities".

Overall, the two institutions occasionally claim different kinds of legitimacy with overlapping functions and compete for recognition within the same communities. The development of local government

is often affected by municipal and traditional authorities which do not always agree. The two often view each other with distrust (Kanyane, 2007).

Furthermore, Mhlanga (2012) posits that traditional leaders are often unhappy with the local councils because the councillors are considered to have the primary responsibility to lead in the local development process. Furthermore, funding local projects is undertaken by local government, and not traditional leaders, who do not have access to funding. Consequently, the traditional leaders state that power and status is held only by the councillors, which further affects the relationship between them. Although traditional leaders attend council meetings, they are not permitted to vote because they are not council members. Furthermore, traditional leaders do not form part of a council quorum for such meetings. In sum, the role of traditional leaders in municipal council proceedings is merely ceremonial because they do not have a vote. Mathenjwa and Makama (2017) postulated that participation without a vote limits the traditional leaders' influence on decisions taken by the council. On the other hand, Ngcobo (2016) observed that often, councillors do not attend traditional authorities' meetings, which further alienates the two structures.

There is continued reference to differences and scepticism over the lack of capacity by both the local councillors and the traditional leaders. This results in the two institutions undermining each other, and weakens their working relationship. Moreover, each considers him-/herself superior to the other.

During land demarcation procedures to restructure local government, traditional leaders were not consulted. The traditional leaders did not agree with the demarcations in most areas. In certain instances, one traditional authority straddled two wards, resulting in an overlap of authority and conflict with the councils. For example, Nxumalo and Whittal (2013) reported that the Ndengeza community's traditional leaders argued that they were not consulted during the demarcation process. Consequently, the land was split between the Great Giyani Municipality and the Makhado Municipality. When the Ndengeza Traditional Authority lodged a grievance with the Municipal Demarcation Board requesting re-demarcation, the Makhado Municipality rejected the proposal. The Municipality argued that demarcation would result in it losing voters as well as government grants if its area was degraded.

In general,

> "the legitimacy of traditional leaders has been challenged by civic organisations, political parties and others, who argue that any system of inherited rule by traditional leaders is illegitimate, undemocratic, feudal and unnecessary" (Baloyi, 2016:32).

Nyathi (2022) writes that activists are calling for the curtailment of traditional leaders' power to sell land. This call has been exacerbated because traditional leaders have in many communities dispossessed land from community members, and sold it without their consent. The issue of administration of land also appears to generate conflict between the traditional authorities and the councils, which impacts negatively on economic development (Mhlanga, 2012).

Ngcobo (2016) states that the use of political parties' alignment by political parties to control traditional leadership has been a basis for conflict in rural municipalities. Traditional leaders, who are expected to be neutral, have in selected instances also publicly shown preference for certain political parties. The latter is substantiated by de Visser, Steytler and Chigwata (n.d.) who state that,

> "traditional leaders are the bearers of culture and tradition, and this role is more effectively exercised if they are politically neutral. However, many traditional leaders openly advance the cause of certain political parties, particularly ruling parties of the day. Like their colonial predecessors, ruling regimes also do not hesitate to corrupt and use traditional leaderships for political ends".

Mamdani's (1996) "theory of citizen and subject" reveals that the South African state is divided between the excluded population of rural subjects governed through "decentralised despotism" and the urban citizens who are administered through modern democratic systems. In that regard, traditional leadership presides over subjects while the constitution governs the citizenry in cities and towns. Weeks (2012) perceives this situation as a problem because the traditional leadership system projects ordinary rural people not as citizens of South Africa but rather as subjects of the former homelands, which creates conflict. It is in this context that Chigwata (2016) points out that conflicting roles between traditional leaders and councils create contested spaces

in rural municipalities, which affect development. Matshabaphala (2017:1) argues that:

> "the institution of traditional leaders also relies on closed systems of leadership and practices of authoritarianism, traditionalism, centralism and other attendant closed systems approaches and styles of leadership".

These are not in alignment with systems of accountability or of good governance.

Implications for Local Governance

Localised conflict between elected officials and traditional leaders affects local development initiatives in rural areas. There is a need for deliberate initiatives that centre on promoting harmony and shared knowledge, for example, community workshops for all institutions involved in local governance. Such initiatives will work to eliminate confusion amongst local authorities and members of the rural community over the role of elected officials and traditional authorities in rural development and other related matters.

Eberbach et al. (2017:13) posit that:

> "traditional leadership has to be recognised, empowered and provided with an enabling environment for discharging its duties equitably".

Currently, traditional leaders are neither always privy to development processes nor certain of how to engage with them. At the moment, municipalities do not provide a conducive environment for traditional leaders to function effectively.

Effective service delivery depends on a unified approach by a multiplicity of actors at the local level. Failure by elected officials to recognise traditional leadership has often affected service delivery success. Traditional leadership is essential for elected officials to function effectively. Effective development and successful delivery of services at the community level depend on a sound working relationship between elected officials, the people and their traditional leaders (Dipholo et al., 2014).

According to Tsoko (2014), conflict between traditional leadership and elected/appointed political office affects the effective utilisation of traditional leadership at the local level. The government needs to formulate policies that cultivate a relationship between the two forms of local governance institutions so that they can interact and build trust in each other, as they are key in local development. Moreover, traditional leaders can continue to contribute significantly towards social change, even today. The resilience of the traditional leadership system, its strength and the rural people's loyalty are adequate for the modern state to leverage its existence to foster development and democracy (Chigwata, 2016). Traditional leadership must inculcate sound working relations with municipal councils to ensure sustainable local development.

Traditional leadership in rural areas is the unit closest to the people, and is often approached first by the community. Improved local governance will depend on the recognition of the role played by traditional leaders.

Conclusion

Since the advent of democratic rule in 1994, a number of reforms have been constituted to accommodate traditional institutions within the context of elected institutions of local governance, as well as the creation of opportunities for collaborative governance with administrative units of government. Although these reforms have endeavoured to integrate traditional leadership, these have been plagued by controversies pertinent to the role of traditional leadership in local governance in rural areas. Localised conflict between elected officials and traditional leaders affects local development initiatives in rural areas. The two institutions of local governance serve to create two governance systems in one country; that is, the constitution governs the urban people who are citizens, while the institution of traditional leaders rules its subjects. This has resulted in conflicting roles, which affect local development initiatives. However, traditional leadership in rural areas is the unit closest to the people. Enhanced local governance in rural areas will depend on the recognition of the role played by traditional leaders.

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Chapter 3

The Legal Framework for Land Use Management in South Africa

Norah Hashim Msuya

Mzumbe University

Abstract

In South Africa, the legal and policy framework for land use and management has significantly transferred power from provinces to local governments. This shift took over fifteen years to materialise, as national and provincial governments resisted the devolution of authority. It was ultimately made inevitable by five Constitutional Court judgments in which local government asserted its authority. Consequently, for the first time, a single national piece of legislation, the Spatial Planning and Land Use Management Act of 2013, was enacted (SPLUMA). Although SPLUMA has progressive elements, the coming into effect of the law has been subject to much controversy and debate. This is mainly due to the powers that SPLUMA and its Regulations grant to traditional councils. The SPLUMA provides a comprehensive framework for spatial planning, policy and land use management in South Africa, covering both rural and informal settlements. However, the use of zoning as a land use management tool has been widely criticised for being unsustainable and exclusionary. Further problems are the lack of surveying of communal land and the high costs associated with the registration and transaction of urban property. Given that the purpose of the consolidated legislation is to create equitable and sustainable development, this chapter briefly aims to outline a legal consideration, including recognition of rights to use land enforcement of rights, equity and non-discrimination. The chapter uses the analysis of literature and law as its methodology, focusing on two main questions: Why is the legal framework for land use and management in South Africa not sustainable? How does South Africa's legal framework manage the survey, registration and transaction of urban communal land? Drawing on the strengths of some of the alternative legal frameworks for land use, proposals are made for a more suitable legal framework in the land use management

system for South Africa, that is applicable in other countries with a similar colonial history.

Keywords: Land use, legal framework, land management and South Africa.

Introduction

Land use and management are fundamental to the role of municipalities and cities in shaping the future of societies. The legal framework which governs this role is similarly significant. This includes the planning laws, which regulate which structures are lawful and which are not (Berrisford, 2013). The planning legal framework gives birth to planning instruments that shape economies and influence the social and political life in metropolises and towns (Ramantsina, 2022). They are adopted and implemented to mediate a range of different objectives. The legal framework for land use and management in South Africa underwent a major transformation when control over land use planning and management was transferred from provinces to local governments. This transfer took more than fifteen years to be finalised due to national and provincial governments opposing the decentralisation of authority. Although the South African Constitution embarked on this reform in 1997 when the Constitution became operative, the reform took a long time to materialise.

It became inevitable following five rulings by the Constitutional Court, where local government asserted its jurisdiction. Prior to the significant changes brought about by the new Constitution in 1994, the regulation of municipal planning, commonly known as town planning, was governed by provincial laws known as Ordinances and primarily implemented at the local government level. With the 1996 Constitution, municipalities were granted executive authority and the responsibility to administer the "functional area" of municipal planning, which was also recognised as a "functional area" subject to concurrent legislative competence at the national and provincial levels (Kidd, 2013). After 1996, the government's primary objective was to uplift sectors of the population that had been inadequately provided for in terms of infrastructure, housing, and services.

The issue of municipal planning and the authority responsible for its implementation has been a significant matter brought before the courts in multiple cases. The rulings in these cases concluded that decisions regarding individual town planning can only be made

by municipalities. However, in certain provinces, town planning decisions are still made based on pre-Constitutional Provincial Ordinances. These matters were at the core of the Reconstruction and Development Programme (RDP), which was enacted through the Development Facilitation Act (DFA) Act 67 of 1995. This legislation aimed to expedite decision-making for development projects aligned with RDP objectives, such as affordable housing, water infrastructure, and roads.

Subsequently, it was discovered that the provisions of the DFA were not limited to RDP-related developments but applied to all physical development, including high-end housing estates and golf courses, which could also be authorised through DFA procedures. As a result, many municipal planning processes were approved by provincial Development Tribunals established by the DFA, bypassing the approval procedures of municipalities. Developers favoured the faster and more cost-effective routes offered under the DFA (Kidd, 2013). Despite the initial goals of the DFA and policies like the Urban Development Framework (1997), it was not until 2015 that the Spatial Planning and Land Use Management Act, also known as SPLUMA, came into effect. SPLUMA repealed the DFA and primarily aimed to replace the processes and decision-making bodies established by the previous act.

SPLUMA is the first legislation that establishes a comprehensive spatial planning and land use management system applicable to the entire country and all levels of government. Previously, each province had its own set of acts governing land use within its boundaries. SPLUMA unified these provinces under a single national legislation. Additionally, SPLUMA replaced several other acts, including the Removal of Restrictions Act 84 of 1967, the Physical Planning Act 88 of 1967, the Less Formal Township Establishment Act 113 of 1991, the Physical Planning Act 125 of 1991, and the Development Facilitations Act 67 of 1995. In 2015, the Minister of Rural Development and Land Reform, under section 54 of SPLUMA, issued the SPLUMA Regulations.

In contrast to legislation during the apartheid era, SPLUMA takes a clear normative stance. It prioritises redress, social justice, equity, inclusion, community participation and transparent decision-making, and recognises the role of property, housing, and environmental management in creating functional, efficient, and humane settlements (Van Wyk & Oranje, 2014). These objectives are reflected in the development principles of spatial justice, spatial sustainability, spatial resilience, efficiency, and good administration.

SPLUMA establishes a spatial planning system that integrates policy, spatial planning, and land use management, particularly at the local government level. Land use management is seen as the mechanism for implementing spatial plans and policies, and realising the principles in practice. While SPLUMA brings various improvements to land management in the country, it has also been the subject of controversy and debate (Ramantsina, 2022). This is primarily due to the powers granted to traditional councils by SPLUMA and its Regulations. Additionally, SPLUMA provides an overarching framework for spatial planning, policy, and land use management, encompassing rural and informal settlements. The central focus of this planning system is spatial plans connected to zoning schemes. However, zoning as a land use management tool has faced intense criticism for its exclusivity and perceived social, economic, and environmental unsustainability. Other challenges include the lack of surveying communal land and the high costs associated with the registration and transaction of urban property.

In light of the intention to promote equitable and sustainable development through the consolidated legislation, this chapter aims to provide a brief legal analysis, including the recognition of land use rights, enforcement mechanisms, mechanisms for recognition, restrictions on rights, equity, and non-discrimination. It uses the analysis of literature and law as its methodology. After reviewing the literature on the legal and policy framework for land use and management, the chapter delves into the challenges faced by South Africa's land use management system, specifically addressing two main questions: Why is the current legal framework for land use and management in South Africa deemed unsustainable? How does the legal framework handle the survey, registration, and transaction of urban communal land? Furthermore, the chapter outlines the judiciary's role in transferring land management powers to local government. Following that, it assesses the progress made thus far in implementing the new legal framework and proposes recommendations for a more suitable land use management system in South Africa.

Background of South African Local Government

South Africa has only 278 municipalities, despite having a large population. According to Worldmeter elaboration of the 2023 United Nations data, the current population of South Africa is 61,422,442. The country has a land area of 1,220,813 square kilometres. With

that population and area, South Africa is considered to be the home of the world's largest local governments. Before South Africa gained true independence from the majority of the country in 1994, the local government was implementing apartheid, where the democratic rights of the majority of black people were denied (Williams-Wynn, 2021). The municipalities occupied by whites were self-centred entities with full power to collect taxes from well-resourced properties and investment centres, with zero responsibility to utilise the revenue to develop the black settlement areas, known as townships (Williams-Wynn, 2021). The municipalities occupied by blacks were undemocratic, with neither income nor authority, so they ended up being the subject of large-scale service boycotts in the 1980s (Steytler & De Visser, 2007). The local government was given recognition by the Interim Constitution of 1993, and some of the local government institutions were combined (De Visser, 2016).

A more significant reform was incorporated in the 1996 Constitution, where the role of local government was extended and implemented in 2000, encompassing fairly elected political governance with constitutional secured authority over functional areas (Nil, 2015). Among these areas is "municipal planning" under Schedule 4 Part B of the Constitution, where the executive reserves authority over "municipal planning" for municipalities. Further, Section 229 of the Constitution ensures certain essential financial issues remain under local government authority. This section authorises municipalities to charge service fees and to levy property rates. Section 214 entitles local government to an "equitable" share of countrywide generated revenue. Considering the damaging role previously played by local government, the current Constitution under section 152 conceives local government as a sector of government that is in charge of essential developmental affairs, including promoting a safe and healthy environment, providing services to communities in a sustainable manner, and promoting social and economic development.

Furthermore, as per Section 153 of the constitution, municipalities are mandated to give priority to essential societal needs, such as water and sanitation, municipal roads, refuse removal, electricity distribution, environmental health services, and the aforementioned planning authority. Additionally, they are responsible for the development and upkeep of parks, recreational facilities, markets, and local transportation infrastructure. Apart from these constitutionally guaranteed functions, municipalities often undertake additional responsibilities, including housing delivery, primary healthcare, and

community services like libraries and museums. Collectively, these functions position local government at the heart of the much-needed development in the country.

South Africa's constitutional and statutory framework is watertight, and the development made so far is remarkable. Nevertheless, municipalities are struggling with enormous service delivery backlogs because of a precarious financial position. They have poor communication and accountability relationships with communities. Many municipalities encounter internal management crises, fraud and corruption (De Visser, 2016). Lack of financial control has led them to receive bad audit opinions from the Auditor-General. A major part of these faults is due to a disabling shortage of skills in key fields of engineering, planning and financial management (Abrahams & Berrisford, 2012).

The Role of the Judiciary in the Process of Transfer of Land Management to Local Government

The transfer of land management powers from provinces to local government in South Africa has been a complex process, with the judiciary playing a critical role in ensuring that it is carried out fairly and equitably. The judiciary has been responsible for interpreting and enforcing these provisions, ensuring that land transfer processes are transparent and that the rights of all parties involved are protected (Williams-Wynn, 2021). The national government was confronted with no fewer than five Constitutional Court decisions within a decay uncertainty that established a firm and consistent trend on municipal powers. This part discusses step-by-step how this transformation was managed. The matter was finally settled in June 2010 by a Constitutional Court judgment, and in the following years, four more Constitutional Court judgments delivered additional clarity on the dissection of power between national, provincial and local governments.

The initial ruling resulted from the City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (9) BCLR 859 (CC) case. This case involved two entities established under the interim law, namely the Development Facilitation Act No. 67 of 1995. The City of Johannesburg and the Gauteng Development Tribunal, which represented the Province of Gauteng, were parties to the case. The City of Johannesburg contended that it possessed the authority, as conferred by the provincial ordinance, to make decisions regarding land use management within its jurisdiction.

Consequently, the City of Johannesburg took legal action against the Gauteng Development Tribunal for making land use management decisions in its designated area of authority. The City of Johannesburg contended that this compromised its effort to "effectively plan for city infrastructure and service delivery", and argued that the powers are within the "City's constitutional power over municipal planning" and that "Provincial governments should not be doing the same as municipalities". The Court agreed with the City of Johannesburg and invalidated the provision of the Development Facilitation Act, which gave rights to the provincial tribunals to take land use management decisions. This offered a path to the delayed law reform efforts, was a success for municipal autonomy, and created doubt over the sound task previously done by provinces in land use planning matters. The Court went further and ordered reformation of the said law to take place within two years.

In 2012, the Constitution Court decided the second case, which was based on the precedent set by the City of Johannesburg judgment. Another case involved the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province, and the Minister for Mineral Resources and Swart and Municipality and Others vs Maccsand (Pty) Ltd and The City of Cape Town and Others [2012]. The case was presented in the City of Cape Town by a mining company called Maccsands which received a "mining license from the national government" to excavate sand in a residential area on the borders of Cape Town. The issue before the court was whether that mining license removed the requirement of approval from the City of Cape Town to amend the authorised use of the site. Maccsands, supported by the national Minister of Minerals and Energy, maintained that the "granting of a mining license trumps municipal authority over municipal planning", otherwise the national government's exclusive authority over mining would be commandeered by the municipality. The Court rejected these grounds and found that holding a national mining license does not summarily remove town planning approvals. Here, the judgment was in favour of municipal autonomy again, and it became remarkable precedence in the growth of the planning framework.

The third case involved the Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoon Bay Lifestyle Estate (Pty) Ltd and Others, 2014 (2) BCLR 182 (CC); the issue involved a development in George Municipality, Western Cape. The planned development encompassed a fenced housing community, two golf courses, a resort, and a reserved park.

The development was contentious, and its impact stretched far beyond the boundaries of George. The Court had to determine who determines land use management applications involving rezoning and subdivision, when huge developments that are larger than the municipality are involved; whether the provincial government has the mandate to reject the municipal decision, and can the municipality still decide independently or not? The Constitutional Court's verdict was that the municipality will always be the decision-maker when it comes to applications for rezoning and subdivision, without considering how significant the development is, or what the impacts are around municipal boundaries. This marked the third time in a row that the Constitutional Court positively declared municipal power over planning authority.

The fourth in a series of Constitutional Court judgments regarding municipal powers in land use planning is the Habitat Council and Another v Provincial Minister of Local Government, Environmental Affairs and Development Planning, Western Cape and Others [2013] ZAWCHC 112 case. This case concerned the ability of provincial governments to overturn municipal planning decisions on appeal. Under the four provincial ordinances in question, "persons aggrieved by a land use control decision taken by a municipality may appeal to the provincial executive", which could then strike down the decision and replace it with a provincial decision. The provincial governments viewed this as a necessary check on irresponsible municipal decision-making and as a form of guidance for cities. However, the Court sided with the cities and ruled that the appeal system was unconstitutional, as it infringed upon the autonomy of municipalities. The Court rejected the provincial government's arguments that they should have appeal power in cases where the development had effects beyond the municipality's boundary, insisting that provinces should use their powers to prevent unwelcome developments rather than relying on authority to override municipal decisions no matter how large the development may be.

The Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others [2016] ZACC 1 case is the fifth in a series of Constitutional Court decisions regarding provincial appeals in land use planning. This case was based on the Habitat Council precedent and dealt specifically with the appeals process in KwaZulu-Natal, which was governed by a provincial law allowing for appeals against municipal decisions. However, the appeal body was not the provincial executive, but a quasi-independent body staffed by

experts and free of provincial control. KwaZulu-Natal argued that this independence should insulate the appeal process from the accusation of provincial interference. However, the Constitutional Court disagreed and ruled that the provincial tribunals' alleged independence did not prevent them from being unconstitutional.

The pushback against national and provincial interference in municipal planning powers did not come from small, unconventional towns with overconfident political leaders. Instead, it was led by the country's largest cities, governing the country's rapidly growing economy and whose political leaders understood the risks of challenging national and provincial governments. Despite these risks, they chose to assert their constitutional powers and emerged victorious in four consecutive cases. The Gauteng Development Tribunal ruling served as a warning to the national government to finalise the national planning legislation. The other four rulings reinforced that this legislation needed to prioritise local governments and that the provincial government's dominance over land use management powers had come to an end.

Although none of the above judgments considered the local governments' capability to exercise the given powers, the Constitution under Sections 154 (1) and 155(6) stipulates that national and provincial governments must supervise, support, and strengthen local government. Furthermore, the five cases brought to the court were all by large cities, which were relatively well-functioning, while struggling rural municipalities may not have the necessary governance capabilities to make adequate decisions. The Constitutional Court's decisions not only shaped but also accelerated devolution, but it remains unclear whether this was the best mechanism for introducing change. Despite its limitations, the intervention of the court was necessary and ended an impasse caused by the national government's inability to address the issue of land use planning. However, it remains to be seen what would have happened if the government had acted earlier to reform the sector with new laws.

Other countries, including Tunisia and Zimbabwe, have been adopting decentralisation policies and even enshrining the role of local governments in their constitutions; it is likely that courts in these countries will have to deal with issues related to decentralisation (Nel, 2015). The experience of South Africa in devolving planning powers shows that when constitutional provisions demand devolution, national governments should avoid delaying their implementation. This is because once disputes over the location of constitutional powers

are brought before the court, legal considerations become paramount, and the government may lose opportunities to manage the devolution process in a careful and well-considered manner that considers all the interests involved.

National Legal Framework for Planning and Land Use Management.

SPLUMA was enacted by the national government in 2013 to establish a national framework for spatial planning and land use management. SPLUMA establishes a hierarchy of planning mechanisms and procedures under Section 5, with those at the top being derived from SPLUMA and the more detailed decision-making processes being derived from both SPLUMA and provincial legislation. This clarifies the scope of planning functions of different levels of government, including municipal planning, provincial planning, and national planning. The Constitution Court has previously grappled with defining "municipal planning" compared to other planning functional areas under provincial jurisdiction. SPLUMA attempts to provide clarity by defining the elements of each category of spatial planning and outlining the competencies of each level of government. However, there may still be some controversy around where the jurisdiction of municipal planning ends and the mandate of provincial or national planning begins. This distinction may require administrative decision-makers to draw a line between land use that does or does not affect the provincial planning mandate or national interest, and this may ultimately be reviewed by the courts.

Chapter 2 of the Act concerns development principles and standards. The principles are outlined in section 7 and are grouped under five overarching categories: spatial justice, spatial sustainability, efficiency, spatial resilience, and good administration. The principle of spatial justice is particularly important as it aims to address the impact of past discrimination and imbalances. This principle includes the provision that decision-makers cannot be prevented from exercising their discretion solely based on the fact that the outcome may affect the value of land or property. The principles of "spatial sustainability" are centred around the "triple bottom line" of economic, environmental, and social considerations.

This includes protecting agricultural land and limiting urban sprawl. "Efficiency" involves optimising resources and infrastructure while minimising negative impacts on finances, society, the economy,

and the environment. "Spatial resilience" requires flexible spatial plans and policies that can adapt to economic and environmental shocks to ensure sustainable livelihoods in vulnerable communities (Section 7). "Good administration" aims to integrate land use management approaches, involve the public in decision-making, and ensure timely decision-making. These principles serve a similar role to the national environmental management principles outlined in Section 2 of the National Environmental Management Act No. Act 107 (NEMA) in that they apply to all state organs and authorities responsible for land use regulation and guides decisions and functions related to land use planning laws.

The Minister responsible has been given the power to establish norms and standards in consultation with relevant government entities across all levels of government. These norms and standards are required not only to reflect the principles of sustainable land use but also to include an analysis of existing land use patterns, a framework for desired land use patterns, existing and future land use plans, programmes and projects relative to key sectors of the economy, and mechanisms for identifying strategically located vacant or under-utilised land and providing access to it.

Chapter 3 of the Act covers "Intergovernmental support", which primarily involves "national support and monitoring" of provinces and municipalities, as well as provincial support and monitoring. The Minister responsible for monitoring the implementation of the Act is required under Section 9 of SPLUMA to include the capacity of provinces and municipalities to implement it. Given that municipal and provincial powers in land use planning have been contentious areas in the courts, this part of the Act will likely be important in defining the relevant powers for support and monitoring. It is important to note that municipal capacity is often lacking, and there are responsibilities for both provincial and national governments to enhance this capacity.

National and provincial government support and monitoring of municipalities are supposed to take into account each municipality's unique circumstances, as outlined in the Act. This is crucial to avoid a one-size-fits-all approach, which would fail to recognise differences between metropolitan and rural municipalities, such as variations in planning capacity and experience. For example, the Gauteng Development Tribunal case demonstrated that metropolitan municipalities like Johannesburg and Ethekwini had been effective in carrying out municipal planning, while poorly resourced rural municipalities may lack experience and capacity.

Chapter 4 of the Act establishes a hierarchical system of spatial development frameworks (SDFs). The national government, provincial governments, and municipalities are obliged to adopt their own spatial development frameworks, with a vision for each level. The adoption of these planning documents is the responsibility of the executive authority in each respective sphere. The Act mandates that all three levels of government prepare SDFs that align with the development principles outlined in Section 12. These principles aim to promote coherent and forward-thinking spatial development planning that prioritises sustainable land use. SDFs are intended to guide and inform all decisions related to land use and development made by the relevant government entity. The national SDF is expected to align with national development policies and plans, integrate policies and plans from various national government sectors, and may also include a regional SDF. Meanwhile, a provincial SDF is required to align with provincial development policy, integrate policies and plans from the provincial and national levels of government, and apply to a specific geographic area scale of the province.

Although the law encourages collaboration between the different levels of government, it prohibits interference with the contents of another's SDF. The Act also puts the municipalities in charge of receiving, considering, and deciding on all land development applications. To support this, each municipality is required to establish a Municipal Planning Tribunal (MPT) made up of both municipal officials and outside experts, to act as the authority of first instance for all land use development applications. Municipal executives, such as mayors or executive committees, are responsible for overseeing appeals against decisions made by the MPT. In exceptional cases, the law allows the national government to play a role in decision-making regarding specific land development applications, but this should be in addition to the municipal role rather than instead of it.

The municipal SDF must assist in harmonising development policies and plans from various government sectors in the municipal area. The Act provides for the preparation process and content of the national SDF and requires it to coordinate and integrate with provincial and municipal SDFs. It is unclear whether the national SDF takes precedence over others or if the coordination and integration process happens with existing SDFs. Provisions for preparing and maintaining provincial SDFs are similar and require all provincial development plans to be consistent with the provincial SDF. The provincial SDF cannot grant the right to use or develop land unless approved under the

Act, relevant provincial legislation, or municipal land use scheme. The regional SDF is for a designated geographic area. The municipal SDF is a component of the integrated development plan at the municipal level and has its content described in section 21. An MPT or any other authority making land development decisions cannot go against the municipal SDF, but they may depart from it if site-specific conditions require. If a provincial SDF conflicts with a municipal SDF, the Premier must take necessary measures, including technical support, to ensure consistency.

The law does not address what happens when there is a conflict between the national or regional SDF and other SDFs. Chapter 5 of the Act covers land use management and requires municipalities to adopt a single land use scheme for their entire area within five years of the commencement of the law. The scheme must include zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme, should consider relevant environmental management instruments, and introduce land use management and regulation in areas under traditional leadership, such as rural areas, informal settlements, slums and areas not previously subject to a land use scheme. Section 24(3) stipulates that the municipal SDF may include provisions relating to the use and development of land with the municipality's written consent and certain variations of conditions of a land use scheme. Local municipalities may request a district municipality to prepare a land use scheme applicable to the municipal area of the district's constituent local municipalities (section 24 (4)).

The land use scheme is obliged to give effect to and be consistent with the municipal SDF and determine the use and development of land within the municipal area. It must include scheme regulations, a map indicating the zoning of the municipal area into land use zones, and a register of all amendments to the land use scheme (Section 26 (1) a). After a land use scheme is adopted and approved, it becomes legally binding and applies to all landowners and users within the municipal area, including municipalities, state-owned enterprises, and organs of the state (Section 21(1)b). It replaces any existing schemes and grants land use and development rights. The process of adopting a land use scheme may take up to five years and is regulated by Section 26 and Schedule 2. The Act allows for changes, amendments, and mandatory reviews of the scheme every five years. Section 30 provides for the alignment of authorisations required under other laws. Section 32 outlines the enforcement provisions of the scheme, including the

power of municipalities to pass by-laws and apply for court orders. Inspectors and their powers are also provided for.

Chapter 6 of the Act, titled "Land development management", deals with the decision-making processes related to land use. The Act requires each municipality to establish an MPT within its area to determine land use and development applications. Alternatively, a municipality may authorise certain applications to be decided by a municipal official (Section 35). The composition of the MPT must include a combination of municipal officials and individuals appointed by the municipal council who have knowledge and experience in spatial planning, land use management, land development, or relevant law (Section 36).

Section 40 of the SPLUMA outlines the decision-making process of the MPT, while Section 42 sets out the relevant factors to consider, including compliance with environmental legislation and the development principles of the SPLUMA. According to Section 45, land development applications may only be submitted by the landowner, their agent, a person granted the land for development by an organ of the state, or a service provider responsible for infrastructure or utilities. This provision seems to include non-owners holding mineral rights over land. Interested persons may participate in the process, but the Act does not provide specific guidelines on how to establish one's status as an interested person. In cases where the national interest is affected, the Minister must be consulted.

If a person's rights are affected by an MPT decision, Section 51(6) provides room for an appeal to the executive authority of the municipality or an authorised body outside of the municipality, as regulated by provincial legislation. The Act appears to envision a scenario where provincial appeal bodies are only authorised by municipalities rather than being the default option. The SPLUMA contains general provisions, including regulations and penalties, and also transitional provisions that are crucial in the immediate future. These provisions primarily deal with the arrangements for transitioning from the repealed DFA to the new Act, whereby decisions made under the DFA will be deemed as decisions made in terms of the SPLUMA. Undoubtedly, this change in the land use planning framework represents a significant shift and necessitates a significant devolution initiative. Municipalities nowadays take the lead in land use planning, resulting in new duties and obstacles that they must address.

Challenges to Implementation of the Legal Framework for Land Use and Management

The legal framework for spatial planning and land use management in South Africa is still influenced by the apartheid legacy, as provincial legislation is diverse and often based on old ordinances and "Bantustan laws" (Harrison & Todes, 2015). SPLUMA was intended to provide a framework for provincial legislation to fill in the details, but most provinces have yet to revise their laws to align with SPLUMA. Municipalities have adopted draft bylaws to manage land use, but there is variation between municipalities and provinces, leading to spatial fragmentation and exclusion in settlements (Neil, 2015). Land use management is enforced in higher-income areas but neglected in low-income areas such as townships and informal settlements, where regulations are often not applicable (Neil, 2015). SPLUMA requires the introduction of land use management in informal settlements, but there are challenges with the informality of such areas and the safety concerns of municipal officials. The City of Johannesburg has attempted to establish some security of tenure and order in informal settlements through a layout plan process, which determines permitted activities and allows for deviations with permission from residents (Dubezane, 2015).

Previously, land use management was not applied to areas that are under traditional authority, which is important in South African indigenous cultures, where land is considered sacred, and the allocation of land is a core role of traditional authority (Neil, 2015). Therefore, traditional leaders have been challenging the imposition of land use management schemes and decisions by the municipality as mandated by SPLUMA. They see it as an intrusion on their authority. The strongest opposition voices come mostly from traditional councils in the Eastern Cape and KwaZulu-Natal (Sowetanlive, 2015).

Planning regulations are often disregarded in South Africa, as enforcement is inconsistent and local authorities cannot inspect and prosecute illegal land uses. Courts also view contraventions of bylaws and land use regulations as minor, which can lead to a lack of enforcement (Sekonyela, 2014). Only the City of Tshwane has instituted a special court to address this problem (Neil, 2015). The capacity for land use management is unevenly distributed throughout South Africa, with metropolitan municipalities generally well-resourced but smaller municipalities lacking technical and professional skills (Oranje, 2014). There is also a shortage of qualified and experienced individuals in

the administration and evaluation of land development applications (Neil, 2015). This poses significant challenges to an effective land use management system in local municipalities.

Land Use Management Tools of Zoning

SPLUMA uses land use schemes based on zoning as the primary tool for managing land. Land use zoning has the advantage of being simple and easy to apply. A proposed development or activity that complies with the land use scheme is allowed, while those that do not comply are not permitted and are, therefore illegal (Wilkinson, 2012). However, zoning has been heavily criticised for being inflexible, discriminatory, and segregating both people and land uses, which goes against SPLUMA's objectives and the principles of the constitution.

The problem with zoning is that limiting nearby land uses to the same or similar purposes can eliminate the risk of industrial or other activities that might decrease property values. Prohibitions on using homes for business also restrict the ability of lower-income residents to supplement their income (Talen, 2013). Rules like minimum property sizes and unit limits exclude affordable multifamily housing for the poor (Neil, 2015). Zoning determines who can and cannot live in a particular area, which conflicts with the principle of spatial justice. Land use zoning often creates areas that serve only one function, resulting in South African townships and modern suburban areas lacking character or creativity. Zoning prioritises individual users over their interactions with one another, and is insensitive to aesthetics and design. Development controls like building setbacks and parking requirements lead to homogeneity in residential environments and separation between residential and non-residential uses. Single-use zoning not only produces bland suburbs and townships but also necessitates travelling from residential zone to business zone and costly infrastructure, which contradicts sustainability principles by putting pressure on resources (Coyle, 2011). The disadvantages of suburbs and "townships" through low-density zoning represent the opposite of sustainability as they place a high demand on resources, such as fuel for commuting, inefficient use of water, and costly service reticulation (Swilling, 2011). Zoning, therefore, produces suburbs that contradict the SPLUMA principles of spatial sustainability and efficiency.

Lack of Surveying of Communal Land

The viability of implementing the fit-for-purpose land administration approach in South Africa is being questioned, despite the presence of a high-quality cadastre that covers most of the country. This is because a significant portion of the population resides in areas that are not covered by the secure land tenure system, such as communal land, informal settlements, resettled communities, off-register housing schemes, farms, and labour tenancy (Ramantsina, 2022). Based on estimates, it is believed that over 5 million land occupations exist outside of the formal land tenure and administration systems (Williams-Wynn, 2021). Nevertheless, its uncritical subscription to Western land titling approaches is reiterated in SPLUMA, which remains very European in its approach and fails to incorporate existing tenure systems on "communal land" that predate the colonial era (Winkler, 2019). SPLUMA assumes a taken-for-granted norm that land is owned and bounded following Western conceptualisations of property.

The initial inquiries in any planning application concerning land ownership should be "Who owns the land?" and "Where are the boundaries"? However, unfortunately, in South Africa's "communal land" areas there are no meaningful responses to these two essential questions. Therefore, one cannot make a planning application if one is on "communal land". SPLUMA simply excludes "communal" land rights holders, and Schedule 2 of SPLUMA, which refers to land use categories, completely ignores what is happening on "communal land" and boundary location, which cannot be addressed in the case of "communal land." As a result, it is impossible to submit a planning application in such situations. "Communal land" rights holders are left out by SPLUMA, and Schedule 2 of SPLUMA does not consider the activities taking place on "communal land". (Winkler, 2019). The fundamental beliefs about complete land ownership continue unchallenged, and "communal land administration" is still considered a controversial subject when viewed through the lens of development control because there are discrepancies between customary "communal" land tenure practices and the expectations of SPLUMA. SPLUMA appears to be primarily focused on urban planning and overlooks the requirements of rural development. Its applicability in rural areas is uncertain, unlike its widespread recognition in urban contexts.

It is evident that the application of universal solutions, as exemplified by Section 3 of SPLUMA and its overarching goal of

establishing a "uniform and comprehensive system of planning across South Africa" faces challenges in the country. The complexities of historical forces and ever-changing political dynamics continue to shape South Africa's diverse geopolitical regions (Winkler, 2019). In essence, it is not feasible to adopt a uniform approach that applies to the entire country, as each region possesses distinct characteristics (Winkler, 2019). There is no one-size-fits-all solution. This issue of universal solutions applies to both traditional leaders and communal land. The uniform application of a traditional leadership system throughout the country, as attempted by the State, encounters difficulties. Certain regions, like the former Ciskei, require the functioning of traditional authorities. The British conquest of Xhosa Ciskei chieftaincies in 1879 resulted in the absence of chiefly authority until the apartheid government reintroduced a "tribal" authority system in the 1950s. Thus, it is incorrect to consider Ciskei as similar to the Transkei, where many chieftaincies remained intact during colonisation and apartheid. In specific regions of the former Transkei, the dismissal of chieftaincies cannot be disregarded.

High Costs in Registration and Transaction of Urban Land

The attempts to transform informal land into formalised tenure have inadvertently resulted in a different form of informality. It has been reported that many new landowners faced obstacles during the transfer process due to administrative complexities, difficulties in finding suitable professionals to assist them, and the high costs associated with ensuring a successful transfer. The transfer of land to the current owners proved challenging for various reasons. Historical extra-legal transfers, transfer costs, outstanding water bills (as per municipal regulations requiring utilities to be paid before initiating any land transfer), the legal procedures involved in confirming inheritance rights, and misconceptions about who holds responsibility for transfers, all contributed to the difficulties. Additionally, most individuals involved in the process sought some form of security for extra-legal transfers, ranging from signed affidavits to the trust placed in family meetings. However, despite these measures, a secure and definitive tenure status has not been achieved. In other words, the widely supported path of formalising tenure has unintentionally created a new kind of informality.

Concluding Remarks

To achieve effective planning outcomes, alternative and context-specific solutions need to be considered instead of universal solutions. An area-based approach to planning is suggested, where community property associations are used in some communal landholdings, while traditional leadership structures are explored in other contexts. The approach needs to be inclusive of all role-players during the planning process, giving them equal decision-making powers. If traditional leadership structures are involved, planners must respect established and negotiated processes of local land administration and development.

Planners should consider alternative ways of thinking about land ownership and tenure practices on communal landholdings that recognise long-established and embedded rights rather than focus on absolute ownership. This includes asking questions about who should have power and control over specific aspects of the land, and for what purpose and duration. Current planning systems tend to oversimplify the distinctions between urban and rural, and modern and traditional, and do not fully address the complexities of planning on communal land. As a result, Western ideas and practices continue to dominate planning in South Africa, and the challenges of planning on communal land remain unresolved.

To avoid ineffective planning outcomes, an alternative approach is needed that is inclusive of all role-players. An area-based approach, which allows planners to focus on local-scale priorities and integrate them into regional-scale frameworks, is suggested. This approach can provide detailed plans for local areas and allow for independently generated funds to be allocated to local development needs.

A simplified zoning system that involves a few zones, including mixed uses, may be practicable. The system can be combined with the transect approach, which differentiates and grades a continuum from natural conservation areas to urban cores with varying levels of control. Small towns may only require limited control for high nuisance value or environmental impact activities, while larger settlements would require more detailed control. The proposed system aligns with the principles of spatial justice, resilience, sustainability, and efficiency while promoting integration, inclusion, and local livelihoods. It explicitly includes protection for natural, heritage, and agricultural resources and links development intensity to infrastructure capacity. If the processes adhere to transparency and align with the principles of

administrative justice, the proposed land use management system will also adhere to the principle of good administration.

Other land use management tools applicable around the world should be considered, since it has been established that zoning cannot meet the objectives of SPLUMA. Certain aspects that were considered include the relevance of customary law. In other countries, land situated within regions under traditional authority has been and continues to be governed by customary law. In these instances, traditional leaders, such as chiefs and headmen, allocate land to individuals and facilitate conflict resolution. Additionally, in certain areas, modern town planning principles are applied in conjunction with customary practices. Although these practices may have been effective in the past in low-density, mainly agricultural regions, there is limited research on their suitability in the current circumstances of high-density, economically deprived areas.

Another land use management tool that may suit the South African context is "Master Plans for Land Use Control". Early British planning used the master plan as the equivalent of a zoning scheme, while in Germany and some Nordic countries, both general and detailed local plans were used for land use control (Nel, 2015). The Land Use Planning Ordinance (15 of 1985) of the former Cape Province is also based on the master plan approach. A multi-tiered land use management system that combines strategic and more detailed local plans prepared in consultation with communities can be useful. SPLUMA mandates comprehensive spatial development frameworks as the foundation for the land use scheme, which may have drawbacks if directly transcribed into a land use scheme.

Overall, the legal framework for land use management in South Africa is an essential tool for guiding land-related decision-making, promoting responsible development, and safeguarding the interests of various stakeholders. It serves as a foundation for achieving a balanced and sustainable land use system that supports the country's social, economic, and environmental objectives.

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Chapter 4

The Nexus between Traditional Leadership and Municipal Governance: An Examination of Land Use in South Africa

Sybert Mutereko and Oladejo Olufemi

School of Management, IT and Governance,
College of Law and Management Studies
University of KwaZulu-Natal, Durban, South Africa

Abstract

History shows that local chiefs have always played an essential role in the socio-economic life of the people. One critical role they played was in the use of land for different purposes. However, colonialism, apartheid and urbanisation caused dramatic paradigm shifts in the use of land and the position of traditional leadership. Land demarcation into urban and communal areas has also added another layer to complicated land governance. The designation of some parts of South Africa as homelands during apartheid removed the power from traditional leaders. According to Bennett et al. (2013), chiefs and headmen in South Africa still solely enjoy considerable power in the allocation of land, which entrenches their position. However, such chiefs lack the authority and resources to ensure land rights and to police the abuse of the land. Their power is further diminished and contested by the existence of democratically elected political leaders such as ward councillors. Recently, urban encroachment and expansion into communal areas have been putting pressure on land resources such as rangelands, riverbanks, and fragile landscapes. This conflict has significant ramifications on the delivery of services and development. In the context of the broader aim of the book, this chapter explores the role of local chiefs in land use. It will also reflect where traditional leadership and municipal governance intersect in matters of land administration and allocation. The chapter argues that the function of traditional chiefs in land reforms and allocation is clouded by subtle conflicts that may hinder development and service delivery.

The chapter concludes by pointing out possible areas of cooperation between municipalities and traditional chiefs.

Keywords: traditional leaders, land use, land governance, land tenure.

Introduction

There has been a recent resurgence of interest in leadership and municipal governance scholarship. The institution of traditional leaders has a unique history. Hence, understanding its uniqueness requires assessing the political history, the apartheid era and the post-apartheid period (Makhoba, 2020).

Before colonialism, local chiefs were the sole source of authority and decision-making in the rural "communities because they were led by kings and queens who were assisted by chiefs and family heads" (Mathonsi & Sithole, 2017:35). This era witnessed the total domination of subjects by the local traditional chiefs. Local traditional chiefs controlled every aspect of their subordinates' lives (Baloyi, 2016). Also, during this era, the local traditional chiefs exercised absolute control over everything under their authority (Bikam & Chakwizira, 2014). They performed the function of custodians of the customs and culture, mediating among the people in dispute resolution and land allocation (Makhoba, 2020).

However, the advent of British rule witnessed a tactical change in leadership where all the powers of the local traditional chiefs were taken away. Instead, the local traditional chiefs were 'used' as a link to the people (Bikam & Chakwizira, 2014; Baloyi, 2016). One study showed that 'indirect rule' was the tactic deployed by the colonial masters where the traditional institution was deliberately weakened (Ngcobo, 2016). The local traditional chiefs became a tool of oppression and slavery in the hands of the colonial masters, leading to the apartheid regime (Baloyi, 2016). The strategy of indirect rule was first implemented in the Natal Colony by Sir Theophilus Shepstone. This strategy ensured that the people were subject to the local traditional chiefs who were imposed and deposed at will, especially if they did not promote the interest of the colonial masters. Also, "different Governor Generals were installed as 'Supreme Chiefs' to establish indirect rule" (Ngcobo, 2016:16). The colonial master also had legal frameworks in place that limited the function and authority of the local traditional chiefs to gain access to the people and their resources (Makhoba, 2020).

The apartheid regime in the South was a system of institutionalised racial segregation and discrimination from 1948 to 1994. It was based on the premise that the country's white minority was superior to the black majority. Therefore, it segregated the population and limited the black population's political and economic rights (Ngcobo, 2016:16). This apartheid regime was ended through negotiations between the ruling National Party and the opposition African National Congress. A new constitution was adopted in 1994 that enshrined equality for all citizens (Makhoba, 2020). The local traditional chiefs were side-lined during the negotiations on important matters such as developmental projects and planning. However, they were later included in the integrated development plan (IDP) and Spatial Development Planning (Makhoba, 2020). Local traditional chiefs have been recognised in the current dispensation in several ways.

Unfortunately, the functions of local traditional chiefs in the use of land and governance have not been analysed adequately. Literature has often tended to focus more on the function of local and national government structures in land governance. To that end, this chapter explores the function of local traditional chiefs in the use and management of land. It will also describe where local traditional chiefship and local government administration intersect in land management and allocation.

The chapter utilised a seven-step comprehensive literature review (CLR) conducted through desktop research to collect relevant data. The first step was to examine the theories and traditions underpinning local chiefs and local government administration in South Africa. In the second step, local traditional chiefs and local government administration of land literature potential databases were identified using critical key terms. After that, the identified literature sources were used to extract relevant information stored for further analysis and use. In the fourth step, the CLR further selected more relevant information and deselected sources that were peripheral to the issues of local traditional chiefs and local government administration of land. Then, in the fifth step, the CLR expanded the traditional leadership scholarly search to media, observation, experts, documents and secondary data sources. The sixth and seventh steps analysed and synthesised literature on local traditional chiefs and local government administration. This interpretive process culminated in analysing, evaluating, and interpreting selected local traditional chiefs and local government administration of land in South African sources, leading to meta-inferences.

Following the introduction, the second section describes the characteristics of local traditional chiefs in South Africa to position them in the broader context of land management. The third section explores the function of local traditional chiefs in land use, illustrating the changes that have taken place since the demise of apartheid. In the fourth section, the policy and legal context is provided and land tenure is analysed before exploring the nexus between local chiefs and local municipalities in the fifth section. In the sixth and seventh sections, several conflicts and challenges faced by local traditional chiefs in the use of land and local government administration are illustrated, after which certain areas of collaboration between local traditional chiefs and local municipalities are proposed.

Characteristics of Local Traditional Chiefs in South Africa

South Africa is a nation with a rich and diverse history. Its complex history has formed a unique identity and culture, reflected in South Africa's local traditional chiefs. Local traditional chiefs are individuals from various ethnic groups or backgrounds who wield significant influence and power in their communities (Bizana-Tutu, 2008). Local traditional chiefs are known for maintaining order and peace and enforcing laws and customs. Previously, local traditional chiefs were held in high regard because they were seen as sources of wisdom and guidance and because of the experiences and traits that distinguished them from the commoners. More importantly, local traditional chiefs' legitimacy is rooted in culture, history, morals, and social values (Bizana-Tutu, 2008).

In South Africa, local traditional chiefs play a central role in the nation's political and social life. Hence, the involvement of local traditional chiefs' institutions in the political process (Ntonzima & Bayat, 2012). Due to their vast knowledge of cultural history and beliefs, local and national governments often consult local traditional chiefs on a wide range of issues. Consequently, they can influence governments' decisions. This consultation is done frequently to uphold traditional values and customs and promote social cohesion and community participation in the political process. Several characteristics distinguish local traditional chiefs in South Africa. These include the versatility of customs and traditions of the community. Essentially, local traditional chiefs must know the people's history and cultural practices. Similarly, they must seek the people's interest and be fair and impartial in decision-making. Furthermore, local traditional

chiefs maintain peace in the community and judiciously use resources (Ntonzima & Bayat, 2012).

In line with these characteristics, the government used the traditional institution in 1951 through the Black Authority Act of 1951, where a new structure was built on the existing local traditional chiefs' structure (Bizana-Tutu, 2008). According to Bizana-Tutu, local traditional chiefs were responsible for peace and order in various communities. This system later became the Homeland system. Furthermore, the Black Homelands Constitution ensured the creation of a legislative assembly under the Black Authority for every area with territorial authority. As a result, "Transkei was granted independence, and followed by Bophuthatswana, Venda, and Ciskei" (Bizana-Tutu, 2008:9).

Drawing from Lutz and Linder (2004), Nkosi (2016) posits that because the primary function of local traditional chiefs involves mediating the affairs of the community, its integration into current local government administration seeks to address the imbalances and injustice in land distribution and planning. More importantly, one of the municipality's functions is land redistribution, community reintegration, and regulations. These can be easily accomplished by involving traditional leaders, as the traditional leadership institution is known for mediating between the people and the government.

The Local Traditional Chiefs and the Use of Land in South Africa

A growing body of evidence suggests that local traditional chiefs play an important role in local government administration (Mathonsi & Sithole, 2017; Dubazane & Nel, 2016; Makhoba, 2020). Drawing from Linder (2004), Dubazane and Nel (2016:226) describe local traditional chiefs as "an institution that includes political, socio-political and politico-religious structures rooted in the pre-colonial period and the formation of colonial and post-colonial states". The institution of local chiefs has always been relevant and very important in people's lives, especially at the community level (Mthandeni, 2012; Makhoba, 2020). Hence, it is difficult to separate or overlook their function. Local chiefs significantly impact municipal administration, especially in land matters.

Over time, there have been several disagreements on the function of local traditional chiefs in the use of land and local government

administration (Ngcobo, 2016; Dubazane & Nel, 2016). While some scholars believe that chiefs are critical players in the municipal government and have the power to be involved in land matters, others believe they lack the executive power to do so and only exist as customary agents (Mthandeni, 2012). Moreover, the relevance of local chiefs in a democratic setting has also been questioned. According to Dubazane and Nel (2016), there has yet to be a consensus on the relevance of local chiefs in a democratic dispensation. While a few studies have proven the relevance of local traditional chiefs in democratic governance, others have submitted that they were only useful during the pre-colonial era. However, it must be pointed out that local chiefs are the custodians of the customs and culture, including land matters. They ensure that lands are appropriated and used according to traditions and customs. Secondly, they provide historical context and significant insight into land matters in various communities. As such, they can guide decisions about the use of land, development, infrastructure, and other land projects affecting their communities.

Furthermore, local chiefs are closer to the people and, as such, consult with the people on decisions about the use of land. While the argument on local traditional chiefs lingers, the local chiefs believe that the current democratic dispensation diminishes and limits their authority. Magagane (2021) argues that the final South African Constitution (1996) limits traditional chiefs' powers compared to the interim Constitution of 1993, where every drafted legislation was to pass through the NHTL before being passed into law. Hence, the local traditional chiefs' complaints of marginalisation in public matters, particularly those related to their areas of authority. Unfortunately, the function of local chiefs in planning and project development is unclear (Bikam & Chakwizira, 2014).

Since the emergence of the democratic government in 1994, several administrative attempts have been made to accommodate local traditional chiefs in land use matters. For instance, the *Municipal Structures Act 117 of 1998* stressed the need for municipal officials and local traditional chiefs to collaborate in municipal administration (Bikam & Chakwizira, 2014). This provision recognised local traditional chiefs' constructive and positive roles in communities. As a result, their involvement in land use brings easy access to the people. Drawing from Sindare (2001), Bikam and Chakwizira (2014) posit that the most welcoming amendment is the *Municipal Structures Amendment Act (No 33 of 1998),* where the emphasis is on community involvement in the use of land and development. Therefore, local traditional chiefs are

expected to participate actively in land matters. Unfortunately, the ambiguity and the need for greater clarity in recent acts and laws have given rise to the tension between the municipalities and the traditional rulers. However, to a certain extent, the lack of voting rights—despite participation—clarifies that local traditional chiefs only play an advisory role in local government administration (Mthandeni, 2012; Mathonsi & Sithole, 2017).

The Use and Ownership of Land in South Africa

Land ownership and use have been a global subject of many classic studies. It entails the concept based on land rights (Chigbu et al., 2019). It shows the relationship between people, communities, individuals and land (Kalabamu, 2019). The land use and land tenure systems are as complex as their history. Several factors have been flagged as responsible for the complexity of the natural land use and tenure in this country. These factors include the apartheid history, the exclusion of certain groups of people from land ownership, and the current effort to redress the imbalances in land matters. For instance, in the apartheid era, land was allocated based on race and ethnicity, leading to most of the land being held by the white minority (Lidzhegu & Palamuleni, 2012). In this era, only a few white farmers owned about 80% of the agricultural land (Zamichia, 2008; Lipuma & Koelble, 2011). Although the emergence of democracy has changed this narrative, discrimination remains as certain groups of people are still excluded from owning land.

Historically, the land was controlled by local traditional chiefs who shared the land among community members according to their needs. This system is known as communal tenure, giving the local traditional chiefs authority and control (Bennett et al. 2012). A communal tenure system means common ownership. It is a process where the allocation of properties, land, and other resources is based on the membership of the group (Cousins & Claassens, 2004; Zamichia, 2008). Unfortunately, this system has not been without its shortcomings. One of the disadvantages was that in communal areas, there were inadequate tenure reforms to secure land rights to reduce conflict and increase agricultural development (Bennett et al. 2012). However, the arrival of the Europeans in the 1600s saw the end of communal tenure, which was replaced by private ownership. This change enabled the Europeans to buy or lease lands from the local people. This form of tenure, known as private tenure, gave rise to the

Europeans taking control of the lands, displacing the indigenes from their ancestral land.

The Land Act of 1913, together with the Beaumont Commission, gave birth to the idea of the "native areas", which covered only 7% of the land in the country. Meanwhile, the Africans occupied much larger land areas (Cousins & Claassens, 2004: 141). However, the 20th century witnessed the return of communal tenure in South Africa. The system again brought the opportunity of using lands for communal purposes such as farming and livestock rearing. Known as "land reform"', it allowed Africans to repossess their ancestral lands (Lidzhegu & Palamuleni, 2012). Similarly, the Constitution addresses land reform in Section 25. The Constitution reversed the injustice perpetrated during the apartheid "through three components of its land reform: restitution, redistribution, and tenure reform" (Kepe & Tessaro, 2014:267).

South Africa is a mix of private and communal tenure systems. Private tenure is still practised in most urban areas, while communal tenure is common in rural areas. The government has also introduced the Communal Land Act, allowing communal landowners the right to own land. This system is best practised in the rural eras, where the rural communities have control over their lands and resources. In addition, the government has tried to redress the imbalances in land matters. For instance, it has implemented several land reforms, such as the Land Restitution Programme (LRP), which provided financial compensation to those dispossessed of their land.

Land use in South Africa is dominated by agriculture, which is a major source of income for many citizens. The decolonisation aims of the government to redistribute land through the Proactive Land Acquisition Strategy—where the state is the landowner—has lost its objective (Kepe & Hall, 2018). According to Kepe and Hall, the strategy has drifted from the aim of "social justice to recolonisation". While private ownership of land is allowed, it is limited to those who can prove their legitimate claim to the land.

Consequently, this shows that land use and tenure in South Africa is still evolving. The influence of the communal system, which makes the local traditional chiefs relevant, still plays a major role. Hence, the function of the local traditional chiefs in the use of land is further examined.

The Function of Local Traditional Chiefs in the Use of Land Reforms and Allocation

Before the land use reforms were enacted, the land allocation was neither transparent nor followed due process. More so, there were many controversies surrounding land issues in that era. For instance, it was believed that having land access or allocation depended on "who knows who", social status, or family background. This system denied the women, the youth, and the common masses access to land allocations (Eberbach et al. 2008:194). As a result, one of the most critical events in 1990 in South Africa was the land tenure reform policy in 1997. The policy, published in 1997 as a White Paper, focused on three major areas of South African land policies: land redistribution, restitution, and tenure. The redistributing was to ensure that white-owned farmlands were redistributed to blacks to redress the inequality in land ownership during the apartheid era. Secondly, the reform focused on land restitution, where lands were to be restored to those disposed of due to racial discrimination. The third focus was addressing the land tenure problem to strengthen the ownership rights of those occupying the former homelands, mostly white-owned farmlands (Eberbach et al. 2008).

During the period of colonialism, land ownership, allocation and administration were transferred to the colonial masters, which were linked to Bantustans, in which efforts were made to reverse and right the wrong through reforms and bills. However, the local traditional chiefs still controlled major lands in South Africa during this era. Hence, local traditional chiefs influenced land matters (Eberbach et al. 2008:191). Land reform programmes were implemented to address this. However, major land reforms in South Africa primarily focus on land restitution (Khunou, 2009). Regrettably, "many of these reforms still result in group tenure rights secured under the authority and administration of traditional councils" (Eberbach et al. 2008: 191).

In addition, Section 21 (2) of the Communal Land Right Act 11 of 2004 gives the traditional councils administrative power over community land. However, despite the administrative power wielded by the local traditional chiefs, studies have shown that the provision of the SPLUMA Act 16 of 2013 reserved the right of final approval on the use of land to the local municipality (Dubazane & Nel, 2016; Magagane, 2021).

Drawing from Wyk (2015), Magagane (2021) describes the SPLUMA Act 16 of 2013 as a new conceptual framework for land

regulations and planning. Also, it is seen as a tool for effective spatial transformation. The legislation was enacted to aid effective land use. Hence, its focus is on judicious land use. Section 24 of SPLUMA stipulates the need for municipalities to harmonise the various land use activities into a single scheme for uniformity in all municipal areas, including those under traditional authority. In Sections 36 and 38, the responsibilities for land use decision-making rest on the MPT.

The Relationship between Local Traditional Chiefs and Local Government Administration

Previous research has established different angles to the debate on the dichotomy of the local traditional chiefs and the local government administration, as evidence has shown several intersections in the history of South Africa (Lipuma & Koelble, 2011). According to Lipuma and Koelble, (2011:3), the contention regarding "the nexus between the local traditional chiefs and the local governance in South Africa has been dealt with by Section 81" of the Municipal Structures Act. The *Municipal Structures Act 117 of 1998*, Section 81, reinstates the constitutional recognition of the local chiefs in South Africa. However, there are limitations regarding decision-making powers. Although the local traditional chiefs embraced inclusion in municipal affairs, they frown at the restrictions on power (Ndlovu, 2021). According to Mathonsi and Sithole (2017), the legislation provided 20% representation of the local traditional chiefs in the municipal council. However, they are not executive members as they do not have the legislative powers to vote in municipal council meetings for decision-making, but are only to observe the proceedings and participate in debates.

In another study, Lipuma and Koelble (2011) argue that the relevance of local traditional chiefs in local government administration was borne out of the inability of the state to extend its grip politically and economically in the rural hinterlands, thereby allowing a traditional leader to mediate on behalf of a community. Many rural communities in South Africa have little, if anything, to show for the state's presence in providing basic amenities and developmental programmes for the people. As a result, local traditional chiefs use the opportunity to interface with the state and make decisions for the communities (Lipuma & Koelble, 2011). Also, local traditional chiefs are believed to be involved in local government administration, having weathered the storm over the years through resilience, tenacity, and

doggedness, and have now infiltrated the political space (Mathonsi & Sithole, 2017).

Two schools of thought have made cases for and against the involvement and relevance of local traditional chiefs in local government administration (Mthandeni, 2012). First is the modernist approach, which contends that the institution of local traditional chiefs is considered irrelevant unless it aligns with contemporary requirements, such as being democratic and non-discriminatory, non-sexist and non-racial, thereby transcending male-centredness. On the other hand, the traditionalist approach contends that the institution of local traditional chiefs is the core and centre of the people's governance, especially at the grassroots level. Hence, it remains popular and relevant (Mthandeni, 2012). The traditionalist school of thought argues that leaders maintain peace among the people, ensure unity, preserve culture and customs, resolve conflicts, and allocate land according to customary laws and culture. However, despite the divergent views, the two schools agree that the institution of local traditional chiefs still plays a vital role in people's lives, even in the democratic dispensation (Mthandeni, 2012).

Beyond the arguments for and against the involvement of local traditional chiefs in local government administration, the *Traditional Governance Framework Act 41 of 2003* emphatically expresses the level of participation of local traditional chiefs. Section 5 of the Act states that local traditional chiefs are to support the municipalities by identifying the community's pressing needs. They are to facilitate the participation of the community in the Integrated Development Plans (IDP) and ensure community participation in other developmental programmes (Mathonsi & Sithole, 2017).

Conflicts and Challenges Faced by Local Traditional Chiefs in the Use of Land and Local Government Administration

Conflicts between these two authorities are becoming increasingly common as local governments attempt to assert authority over traditional authorities. Local traditional chiefs previously in charge of communities are often unwilling to relinquish power to the municipality. This resistance often results in conflict. Similarly, local traditional chiefs often face land use and local government administration challenges, including the lack of political power, ideological differences, taxation and resource control, and legal access. These are further examined.

- Lack of political power: This can be viewed in various ways. For instance, a lack of representation at the local or national level could amount to a lack of political power. Ntonzima and Bayat (2012) explain that it was agreed that any traditional leader seeking political office must give up their traditional position. Similarly, the lack of political power could also result in a lack of control, such as financial control over community projects. Also, it could be a lack of access to resources. Lack of political power makes it difficult for local traditional chiefs to defend their community and ancestral land in decision-making, or it makes it difficult for their voice to be heard on matters of utmost concern to their people. In addition, local traditional chiefs are often viewed as authoritative. As a result, it creates conflict with other stakeholders, such as local government and the private sector, regarding trust and accountability (Mashumba & Mindzie, 2009). More importantly, the Local Government Act 1018 of 1996 recognises local traditional chiefs as *ex officio*, limiting political power (Ntonzima & Bayat, 2012).
- Ideological differences: Given the historical terrain of South Africa concerning political struggles and the experiences during the apartheid era, the current political structure is believed to have its roots in the 'Western-European Model', which is different from South African values and ideology (Meer & Campbell, 2007). According to the author, before the colonial era, the political structure was based on traditionalism, where the administrative focus was hierarchical, and the local traditional chiefs were in control. In this dispensation, the local traditional chiefs intervened in conflict management, regulated all affairs and provided political and economic leadership. Consequently, the relevance of local traditional chiefs, which was based on tradition and culture, did not resonate with the present contemporary era of globalisation and political liberation. Hence, the disparity and conflict between the ideology of the local traditional chiefs and the current municipal structure concerning the use and administration of land (Meer & Campbell, 2007).
- Taxation and resource control: There are several areas of conflicting interest between local traditional chiefs and the municipality. These include taxation and resource control. Regarding taxation, prior to this dispensation, local traditional chiefs collected taxes from their communities to cater for their needs. However, now the municipalities collect taxes from the people to execute projects and services promised. The contention of who has the

right to collect taxes remains a bone of contention between local traditional chiefs and municipalities (Claassens, 2011). Another cause of conflict—the most common—is the control over land and resources. Traditionally, local traditional chiefs controlled their communities' lands and resources, holding authority over these matters. Consequently, ceding this authority to the municipality proves challenging. Conversely, the municipality aims to regulate and ensure the sustainable and judicious use of land and resources, thus desiring control. This often leads to conflicts and tensions between local traditional chiefs and the municipality regarding decision-making rights on land matters (Cousins & Claassens, 2004).

· Limited legal right: Prior to the colonial era, local traditional chiefs, as the traditional authority, upheld the traditional morals and values of the people and were in control of their day-to-day lives (Khunou, 2009). Unfortunately, the colonial administration restructured the political terrain, breaking the monopoly of the local traditional chiefs. The post-colonial era tried to restore these powers by enacting several legislative measures, such as the "Black Administration Act". Although both the colonial and post-colonial eras recognised local traditional chiefs' importance and role, their political structure and authority were curtailed (Khunou, 2009). The *Traditional Leadership and Governance Act 41 of 2003* culminated from the White Paper on Traditional Leadership and Governance. The White Paper resulted from a long process of determining the role and place of the local traditional chiefs in the contemporary and democratic dispensation in South Africa (Khunou, 2009). The key aim of this White Paper and other acts, such as the *Communal Land Right Act* and the *House of Traditional Leaders Act,* was to reposition and revamp the institution of local traditional chiefs. Unfortunately, the foundation upon which the local traditional chiefs and their authority was built has eroded, despite this Act.

Areas of Collaboration between Local Traditional Chiefs and Local Municipalities

Although previous studies have focused more on conflicts and discord between local traditional chiefs and local municipalities—especially on land use and governance— there are areas of collaboration for the development and progress of the people and their communities for both authorities. There are several areas where local government and local

traditional chiefs can work together for effective land use and efficient governance. These include creating a land use plan, community participation, and community project design and implementation (Mashumba & Mindzie, 2009).

· Creating a land use plan: Local traditional chiefs better understand the local environment and community needs. As such, they can provide valuable insight into how land resources can be better utilised. Conversely, the municipality can provide the resources and expertise needed to create a legally enforceable master plan for sustainable land use. While the local traditional chiefs provide cultural insight, the municipality provides the legal resources needed (Sithole & Mbele, 2008).

· Community participation: Local traditional chiefs are influencers and opinion moulders in their communities. As such, the people listen to them as they have built trust and relationships over the years (Sithole & Mbele, 2008). Local government can use this relationship to enhance community participation in local government projects. To strengthen democratic governance, all hands must be "on deck". Hence, sustaining and enjoying the dividends of democracy depends on the participation of the government, the leaders, and the subordinates (Ntonzima & Bayat, 2012). Consequently, all resources must be harnessed. As the government plays their part, other stakeholders, such as local traditional chiefs, must be encouraged to do likewise.

· Community project design and implementation: Local traditional chiefs and local government can collaborate in designing and implementing community projects. As members of the community, local traditional chiefs possess a deep understanding of the needs and aspirations of the community. Their insights can assist the local government in directing resources toward addressing the community's basic needs (Mashumba & Mindzie, 2009). Moreover, involving local traditional chiefs in project implementation fosters a sense of belonging and ownership in the community. This involvement, in turn, ensures the project's protection and support from the people.

Overall, the collaboration between local traditional chiefs and the local government on land use and governance can be a powerful tool to ensure responsible, judicious, and sustainable land management. By working together, resources can be effectively managed for the benefit of the community.

Conclusion

The main objective of this chapter was to explore local traditional chiefs' roles in land use and local government administration. Based on this investigation, the chapter revealed that local traditional chiefs are critical in local government administration. First, this chapter illustrates the dominance of leaders before the democratic dispensation in South Africa. Secondly, the chapter has shown that local traditional chiefs in South Africa represent the people in terms of decision-making and preserving the customs, cultures and beliefs. In addition, despite various criticisms and challenges, traditional leadership is still very relevant and essential in people's lives.

A significant revelation of this chapter is the examination of the function of local traditional chiefs in land use matters. While previous studies have often concluded that there was no clear statement regarding the function of local traditional chiefs in land issues, this chapter successfully established that local traditional chiefs primarily hold an advisory role in land planning and allocation. The SPLUMA Act 16 of 2013 confirms that the final approval right for land use lies with the local municipality. Additionally, the MPT oversees land allocations and planning, excluding local traditional chiefs from direct participation. Nevertheless, local traditional chiefs can still exert influence through their advisory status.

The position of traditional leaders regarding municipal governance is also revealed in this chapter. The research has revealed that traditional leaders are members of the municipal council. However, despite being members, they lack the executive power to make decisions. Moreover, it also revealed that they do not have voting rights. As such, they only play an advisory role.

Overall, this research strengthens the view that despite the specification of the function of local traditional chiefs in land use and local government administration, there is room for collaboration. The local government can take advantage of the richness of the traditional knowledge to its advantage. The two parties can collaborate to ensure effective land management and efficient governance.

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Chapter 5

Municipal Governance and Land Allocation: Addressing Political Dynamics and Policy Changes in South Africa

Ian Nzimakwe

School of Management, IT and Governance, UKZN

Abstract

Municipalities play a critical role in service delivery, development, and democracy. What is often forgotten in the local government assessment is that, before 1994, there were important parts of the country where no local authorities existed. These include the rural areas of South Africa, where traditional leaders continue to be the face of local government. The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) confirms municipalities as the appropriate authority to decide on land use planning and management matters. It gives effect and meaning to the functional area of "municipal planning". The Act applies to the entire Republic, including rural areas, under the authority of traditional leaders. Traditional leaders allocate land to residents in rural areas. In rural areas, a land use and land allocation system still exists, administered by traditional leaders in terms of customary law, which has been the case for centuries. This system has led to the emergence of two systems of land use management existing parallel to each other. The existence of the two systems in the same area potentially serves as a recipe for conflict and contestation unless there is agreement and cooperation on how both systems must operate. The land allocation system is pivotal to the institution of traditional leaders. It is a source of livelihood for many traditional leaders in rural areas. In this chapter, the author aims to explore and analyse where traditional leadership and municipal governance intersect in land management and allocation. Data collection was secondary, using desktop research and literature from South African government legislation and academic journals. A desk research methodology and approach discovered data from existing documents and previous research, while secondary data were collected on a particular topic.

Consideration will be given to the political dynamic that influences the relationship between traditional and municipal leadership, and how challenges are handled, consequently mitigating potential conflict to ensure the peaceful co-governing of municipalities and jurisdictions under the oversight of traditional leaders.

Keywords: Local government, municipal governance, traditional leadership, land allocation, political dynamics, policy framework, Constitution.

Introduction

Land administration and constitutional recognition of the institution of traditional leadership continue to stamp their relevance on democratic South Africa, especially in rural areas. Land administration is currently the responsibility of traditional leaders in areas under their jurisdiction. The municipalities have confirmed that land allocation is solely the responsibility of traditional leaders, and the municipality does not interfere.

In this chapter, the author will outline land governance and the cooperative relationship between traditional leaders and democratic local structures on land administration and allocation. Policies and legislative frameworks on traditional leadership will be analysed to give a sense of how traditional leadership should be incorporated into the democratic regime in South Africa in land administration and allocation. Furthermore, the influence of these legislative and policy frameworks on municipal governance and land allocation in modern South Africa will be analysed and explored.

Background

Land allocation and administration is a crucial role for traditional leaders because it has remained one of the few *de facto* powers and sources of influence still available to them in their areas of jurisdiction. Traditional leaders have played this role from time immemorial. Furthermore, the Constitution of the Republic of South Africa of 1996 recognises the existence of traditional leaders. Moreover, the Constitution seeks to integrate the institution of traditional leadership by expecting national legislation to be put in place so that the roles of traditional leaders are known in society. However, traditional leaders' roles concerning the allocation and administration of land have not been promulgated in legislation.

Mdoda (2023) highlights the fact that residents of communal areas rely largely on traditional leaders to access land. Research suggests that many organisations of residents of communal areas are strongly opposed to the concentration of land administration powers in this institution. Public land owned by the provincial and national governments and parastatals is subject to extensive regulations outlined in the Public Finance Management Act of 1999, including the requirement that accounting authorities "collect all revenue due to the public entity concerned". Khan et al. (2006) state that local government, like any other level of government, does not own land. In urban areas, the land is owned either by the banks, through mortgage bonds, or by holders of title deeds who have managed to repay their bonds. In rural areas, tribal or communal land is owned by the tribe as a collective.

According to Ovens et al. (2013), the most relevant types of tenure in South Africa are state, freehold, leasehold, customary, communal, and occupation rights. Public land is owned by all three levels of government: national, provincial, and local. Considerable tracts of land are also owned by state-owned enterprises such as Transnet and its subsidiaries, Portnet, Eskom, the Airports Company of South Africa (ACSA), and Denel. Under common law, all land not shown on cadastral maps and not registered in the Deeds Registry is vested in the state.

The next section discusses the issue of land in South Africa.

The Issue of Land in South Africa

Communal land under occupation by traditional leaders and communities constitutes 13% of South Africa's land mass and is the remainder of the land that was successfully defended by the forebears in the colonial wars of dispossession. It is regarded as a prized asset for traditional communities. The communal land is owned collectively by the tribal community and may not be allocated to outsiders. Its owners have no means to acquire land elsewhere because they are poor. However, they want to use the land for their own development and attract foreign investment. They do not want such development to take place at the expense of their land ownership by alienating developers, financial institutions and those who have money (Parliament of South Africa, 2014).

The issue of land, a resource of vital importance to rural households, is highly contested in the debate on rural governance.

Improved access to land for residents of the communal areas and rural residents, in general, is one of the reasons they participate in development processes, given the state of poverty in the countryside. Traditional leadership's power over the land gives them a measure of control over the communities, thus limiting prospects and spaces for meaningful participation where villagers can hold them accountable (Mdoda, 2011).

The land question for traditional councils remains a crucial point of debate. The process of South African land policy changes removed most traditional leaders' powers and functions of land administration in terms of customary laws and gave them to the government. These powers were then returned as added functions to traditional leadership, with the change that traditional leaders were managing land on behalf of the government. This action was contrary to the actual position of the customary law of African communities. In providing services at the grassroots level, municipalities should take traditional leadership and institutions on board to further harmonise their relationships. The democratisation of governance, decision-making, law-making processes, and decision implementation is impossible without effective traditional leadership participation, particularly in the development of rural communities (Poswa, 2019).

The state, which in terms of colonial and apartheid policies and legislation, is the legal owner of the land, must accelerate the process of transferring legal titles over communal land to communities. The title should be in the name of the traditional authority duly recognised to own that land. When such a transfer occurs, the community must decide how the land will be allocated, used, and administered. If the community believes that it will be in its interests to issue title deeds over individual allotments, that becomes the decision of the community to make, and not the government or anyone else (Parliament of South Africa, 2014).

Traditional power to allocate land

All the chiefdoms in South Africa have been settled for many decades and are hopelessly overcrowded. Bennett and Murray (2018) argue that rulers are seldom called upon to exercise such traditional powers as establishing new kingdoms, marking out royal homesteads or zoning land into sections dedicated to grazing or farming. The power to allocate plots of land to subjects who need places to live and farm is of greater importance. In practice, however, because most of the land has

already been allocated, the ruler is more often required to do no more than approve a transfer between existing landholders. Although under no obligation to accede to a request, the ruler is supposed to behave as a benevolent father with general responsibility for his subjects' welfare. His power is therefore construed as a duty (Bennett & Murray, 2018).

Allocating land implies "land use rights" (Du Plessis, 2018). Land use includes erecting a homestead, cultivating crops, and grazing livestock. There can be different rights held to the same parcel of land, and community members also often have access to various resources on the land, such as water, clay, or thatching. The allocation of these rights is informed by indigenous knowledge, sometimes with formal town planning knowledge (Du Plessis, 2018).

Although land allocation is not governed by set rules or procedures, it is not a matter of mere discretion. At a bare minimum, chiefs or headmen must achieve a fair distribution of the land in their areas so that all householders have enough according to their needs. To this end, decisions to allocate land are taken on the advice of elders and the applicant's future neighbours. In common-law terms, this is an administrative act and is, therefore, subject to the principles of administrative law (Bennett & Murray, 2018).

Methodology

Data collection was secondary, using desktop research and literature from South African government legislation and academic journals. A desktop research methodology and approach discovered data from existing documents and previous research, while secondary data was collected on a particular topic. Desktop research is based on the material published in reports and similar documents available in libraries, websites, and data obtained from surveys already carried out. The researcher drew data from published academic papers, government documents, databases, and historical records. In this study, the researcher clearly defined the research topic; identified the topic and its purpose; listed relevant research attributes; selected appropriate resources; looked for existing data; collated, compared, and assembled the facts; and analysed data. Sourcing relevant and current materials on the subject of interest paved the way for the literature review and informed the findings and recommendations. Land and traditional leadership are the focus of the following section.

Land and Traditional Leadership

Like any other level of government, local government does not own land. In urban areas, the land is owned either by the banks, through mortgage bonds, or by the holders of title deeds who have managed to settle their bonds. In rural areas, tribal or communal land is owned by the tribe as a collective. Even though under apartheid laws, the state is the legal owner of tribal land, factually and morally, the tribes own the land. No one can deal with it as they please unless they are spoiling for a fight. Under African tribal law, the custody of the land is entrusted to the traditional authority, that is, the head of the tribe and the counsellors. As trustees of the land, the traditional authority is required to act in the interests and according to the wishes of the owners of the land and the people at all times (Khan et al., 2006).

Baloyi (2016) contends that though the traditional leadership view themselves as the custodians and legitimate owners of land in terms of communal land tenures, they now feel that municipal councils deprive them of their powers and functions. Despite the enactment of the Traditional Leadership and Governance Framework Act 41 of 2003, a lack of understanding of the roles of the municipal council as the leading precursor of government programmes by traditional leaders, and conversely, the responsibilities of the traditional leaders by the municipal council, also triggers conflict. Moreover, when the municipal council critically challenges the legitimacy of some traditional leaders, it also perpetuates conflict (Mkata, 2010).

On allocating land such as building sites to individuals, Ngcobo (2016) states that in the case where a community member has negotiated with the person who needs a piece of land to build a home, the community member accompanies that person to visit the *induna* (tribal headman), who will then allocate it to that person. However, this only applies to people who already reside in the area. This must also be approved by a traditional council, which considers the nature of the land to determine whether it is suitable to build a house. A person to whom land has already been allocated may not negotiate land with a community member only, thereby excluding the *induna*; all processes must pass through the *induna* to avoid corruption. If someone has *inxiwa* (a residential site), that land does not belong to them but to *inkosi* (a chieftain) or *inkosikazi* (a chieftess), who own it on behalf of the community. Therefore, that person cannot just sell or allocate that land to someone else of their own accord and exclude the

induna from the process. It must be done by going through the *induna.* The following section discusses the policy and legislative framework.

Policy and Legislative Framework

Approximately 16 to 19 million South Africans live in rural areas, of whom more than 90% are on communal land. Land rights in rural areas remain a highly complex and contested issue. In some instances, according to Ovens et al. (2013), rights and duties are subject to well-defined community rules and management regimes enforced by local authorities such as traditional leaders or elected committees. In others, these management regimes have broken down, and "open access" prevails. Therefore, changes to communal land policy must grapple with the fact that simplistic notions of homogenous "communities", with clearly defined social and territorial boundaries and under the accepted authority of traditional leaders, are inappropriate in many communal areas in South Africa (Ovens et al., 2013).

Rural groups are either culturally defined, as in the case of traditional communities, or voluntarily constituted. Traditional communities may obtain recognition under the Traditional Leadership and Governance Framework Act of 2003 and the complimentary provincial legislation. The rules, practices, and procedures are normally designed and accepted by the communities concerned and gain recognition under the 1996 Constitution. By contrast, non-traditional communities, especially land reform beneficiaries to whom land is transferred, must establish legal entities, often Common Law Trusts or Communal Property Associations, under the Communal Property Associations Act No. 28 of 1996 (Ovens et al., 2013).

Constitution of the Republic of South Africa of 1996

In urban areas, tenure is traditionally secured through a title deed, lease, or deed of grant. The Constitution of the Republic of South Africa of 1996 entitles all persons to adequate shelter, and municipalities are responsible for providing services at the local level, including addressing basic needs within informal settlements. Still, despite state delivery of subsidised land and housing developments, most of the urban poor fall outside the conventional property market. Indeed, the registration statuses of properties do not necessarily reflect the rights of the people residing on them, as many urban residents live in informal backyard shacks located within formal township areas.

These and other forms of informal settlements remain unregulated, although there are informal systems for managing land use in these areas (RSA, 1996; Ovens et al., 2013).

White Paper on Local Government of 1998

The White Paper on Local Government of 1998 aimed to create a local government system in which traditional authorities and municipalities play an important role in service delivery and local development (Phakathi, 2018). Phindi (2020) states that the significant issues addressed in the White Paper of 1998 relate mainly to the place and role of the institution of traditional leadership in the new system of governance; specifically, the role of traditional authorities in the development of the local area and community under their tutelage, which includes:

· making recommendations on land allocation and the settling of land disputes
· lobbying government and other agencies for the development of their areas
· ensuring that the traditional constituency participates in decisions on development and contributes to development costs
· considering and recommending to authorities trading licences in their areas following the law (Republic of South Africa, 1998).

Local Government: Municipal Structures Act 117 of 1998

The Local Government: Municipal Structures Act 117 of 1998 provides a different perspective because it changes the nature of participation of traditional authorities in the municipal government. This Act says nothing about traditional authorities being members of councils but rather says that traditional leaders may attend and participate in council meetings, but without voting rights since these are only afforded to elected council members (RSA, 1998). The Local Government: Municipal Structures Act of 1998 regulated traditional leadership within the local context and included matters affecting land administration and allocation.

Traditional Leadership and Governance Framework Act 41 of 2003

The Traditional Leadership and Governance Framework Act 41 of 2003 sets out a national framework and the norms and standards defining traditional leadership institutions' role in South Africa. Section 20 of the Act provides that the national government may provide a role for traditional leaders and councils concerning various issues, including land administration. A traditional council, established through Section 3(2) of this Act and chaired by *inkosi*, has its role in the land allocation process. This Act makes it clear that land allocation falls solely under the jurisdiction of the institution of traditional leaders through *izinduna* (plural of *induna*). This arrangement is so because traditionally, they are the first level of traditional leadership contacted on land-related matters.

Communal Land Rights Act No. 11 of 2004

In 2004, the Communal Land Rights Act No. 11 of 2004 was passed, primarily to give landholders under customary law greater security of tenure as required by Section 25 of the Constitution of the Republic of South Africa of 1996 (RSA, 2004). It is designed to override customary interests over communal land and generate an entirely new land tenure system similar to that provided by the Communal Property Associations Act No 28 of 1996 (Bennett & Murray, 2018).

Section 21(2) of the Communal Land Rights Act 11 of 2004 provides that if a community has a recognised traditional council, the powers and duties of the land administration committee of such a community may be exercised and performed by a traditional council (RSA, 2004). As leaders of their tribe, chiefs enjoy a range of rights and privileges over the land, including the right to demand a tribute from the harvest or the hunt and the right to choose the best land for their purposes. They also represent their people in any dealings concerning the land. As a result of this concentration of powers, certain rulers have, perhaps inevitably, described themselves as 'owners' of their domains and, therefore, entitled to sell mineral rights and charge rent for businesses (Bennett & Murray, 2018).

The enactment of the Traditional Leadership and Governance Framework Act 41 of 2003 and the Communal Land Rights Act of 2004, particularly the circumstances around which the latter was legislated, demonstrate that democratic governance in communal areas is

far from being realised. Mdoda (2011) contends that chiefs wield considerable power regarding land administration under the current legislation. This has been a bone of contention not only with elected municipal councils but with communities as well.

In terms of this Act, the "communities" are constituted as juristic persons and thus the registered titleholders of the land. The land area involved is then subdivided into portions, and each portion must be registered in the individual's name. Bennett and Murray (2018) argue that the powers to represent the community, dispose of rights in communal land, allocate and register individual rights, and promote and safeguard the community's interests are vested in land administration committees. If a community is already subject to a traditional council (established under the Traditional Leadership and Governance Framework Act), the council may exercise the committee's powers.

The Municipal Property Rates Act 6 of 2004

The Municipal Property Rates Act 6 of 2004 requires municipalities to determine a rates policy subject to a public participation process. Property rates are calculated by multiplying the market value of the immovable assets. A municipality is not compelled to adopt exemptions and rebates; there are no prescribed categories and rebate limits for applications. Consequently, rate policies vary significantly across the country, even between the three major metropolitan municipalities (RSA, 2004).

Communal Land Tenure Policy of 2014

The Communal Land Tenure Policy of 2014 was passed to address ongoing land tenure insecurity in the former homelands. The policy largely resonates with the Communal Land Rights Act. Rather than legally securing land rights based on customs or allowing land to be vested in Communal Property Associations, with their ostensibly democratic structures, Branson (2016) proposes handing authority regarding land administration to traditional councils. These councils are then given legal titles and awarded institutional use rights to individuals and families.

Under the Communal Land Tenure Policy, traditional councils become responsible for overseeing local investment and developing the natural resources on communal land. The implication is that chiefs

benefit from greater authority over local mining, infrastructure, and forestry projects in return for delivering rural votes for the ANC by wielding, if necessary, their discretionary power over land distribution in their communities (Branson, 2016). The focus of the following section is on municipal governance and land allocation.

Municipal Governance and Land Allocation

Land ownership enables municipalities to regulate local development and promote sustainable development and innovation by placing sustainability requirements on housing developers that extend the current legislation. Examples of countries that have done this are Sweden, Denmark, the Netherlands, and Germany (Candel & Gustavsson, 2019). Municipalities can use their urban development projects as testbeds for innovative sustainable solutions by allocating desirable, developable land. The knowledge gained during these demonstration projects will be shared to influence mainstream construction practices. These projects pose many challenges for developers, as their experimental nature adds an additional layer of risk and uncertainty (Candel & Gustavsson, 2019).

A study by Baloyi (2016) observed a conflict of interest between traditional leaders and municipalities concerning land allocation in South Africa. Traditional leaders claim to own the land, while municipalities argue that certain land is state-owned and privately owned. Traditional leaders tend to allocate land for residential development without informing the municipality or considering the municipal Spatial Development Framework during the allocation of stands. There is a view that traditional leadership does not work well with some local municipalities regarding land allocation and service provision.

When villagers need to access land due to the lack of clarity in policy, they find democratically elected structures ineffective and rely on the chief to access land. According to Mdoda (2011), the role of councillors in communal areas is loaded with challenges as they must deal with traditional authorities who hold the view that councillors have been put in place by the government to substitute them. Customary law and growing demands of democratic governance have created the need for a more inclusive and authentic cooperative relationship between traditional leaders and democratic local structures on matters of land administration and allocation (Ngcobo, 2016).

Phakathi (2018) found that while the roles of the traditional authority and municipal ward council are contested, the community is also not well informed about the role of traditional authorities within their communities. This dualism as a system of governance in rural communities creates confusion among community members over where to go or to whom to direct their energies in petitioning for services.

Ovens et al. (2013) contend that South Africa has made innovative and active use of digital solutions for rapid delivery, such as geographic information systems and digital boundaries, to determine municipal boundaries and "evaluation" solutions for rapid land appraisal. Within the formal sector, land governance systems are accurate, reliable, highly sophisticated, and easily comparable to developed countries. This situation is often very different in rural areas. Because of this, Mathonsi and Sithole (2017) contend that an underlying incompatibility exists between the modern democratic system and the traditional leadership on land matters amidst nationally acclaimed legislative and policy framework provisions.

Atkinson and Reitzes, quoted by Baloyi (2016), further explain that traditional leaders may recognise the council's authority but are unfriendly towards ward councillors and do not recognise them. Traditional leaders regard providing services or infrastructure without their involvement as undermining their power base. They often feel that councillors only consult them when they experience problems and require the traditional leaders to intervene. The allocation of land by traditional leaders, within certain areas, without the involvement of ward councillors, has also given rise to conflict. It is further argued that poor relationships between traditional leaders and municipal councils are due to the poor representation of citizen opinion and the degree of interest represented by institutions with overlapping legal authority over a region.

The Role of Local Government in Land Administration

Municipalities have acknowledged informal settlements through several mechanisms, such as the enumeration of dwellings and the provision of basic water and sanitation services. In such cases, recognising such communities or "groups" is administrative rather than legal. If the land occupied is suitable for upgrading, the process may begin on the original site; where the land is unsuitable for upgrading, as when an informal settlement lies within a floodplain,

the municipality may move the community to alternative land, though relocation may not begin for several years. Sometimes households are relocated into RDP houses with individual titles; at other times, households are moved to a more suitable portion of land without title, in which case the municipality continues to administer the community as a "group" (Ovens et al., 2013).

The Constitution provides the overarching legal framework for physical and spatial planning. The White Paper on Spatial Planning and Land Use Management of 2001 proposed certain elements of new spatial planning and land use management systems. SPLUMA brought several fundamental changes to spatial planning and land use management as follows (Du Plessis, 2018):

First, it gives municipalities, not the provincial government, the sole mandate in planning (land development and land use management), meaning that municipalities are the primary authorities charged with this responsibility.

Second, it establishes and determines the composition of MPTs and appeals structures of municipalities and sets out who can determine and decide on land development applications.

Third, it develops a single and inclusive land use scheme for the entire municipality, emphasising a differentiated municipal approach (RSA, 2013).

Regarding SPLUMA, municipalities can also make by-laws to provide for *amakhosi* (tribal chiefs) matters in the Act and Regulations. This provision allows municipalities to consider how they will administer land not previously administered as part of Land Use Management Schemes and to provide for local conditions such as customs and customary practices. SPLUMA recognises and allows for the participation of traditional councils in planning matters, where such planning will impact communities residing in areas where traditional councils exist (Du Plessis, 2018).

The issue of the administration of land and the relationships between the traditional authorities and the municipal councils are the main causes of conflict that negatively impact economic development and conflict resolution in some areas. These are also two issues that directly affect the legitimacy and authority of the *amakhosi* and their leadership role (Baloyi, 2016). The argument is that the level of authority of traditional leadership in communities has been, and will

remain, the centre of power in the community and the interactive body between the community and local government.

Land allocation by municipalities

As the research on urban responses to climate change has grown, so too has the recognition of the potential importance of the municipalities as a place for addressing such issues. Increased involvement of local governments in construction has led to a discussion on their role as change agents, though still arguably a modest one. Although municipalities in numerous countries have a monopoly on urban planning and land use, which creates opportunities for action, some have found their role as an authority to be insufficient in governing sustainable change. Municipalities in some countries have instead found that their position as landowners offers them another alternative for governing sustainable development (Candel & Gustavsson, 2019).

Regarding who is responsible for land allocation, Ngcobo (2016) clearly states that land administration is currently the responsibility of traditional leaders in areas under their jurisdiction. However, according to Mhlanga (2012), the relationship between traditional leaders and ward councillors over ownership of projects, control, land distribution and authority is very poor. Traditional leaders feel that the present democratic government has given too much power to the ward councillors for most development programmes. There is no proper consultation of traditional leaders by local government officials, municipalities and ward councillors before any development is done in their areas.

Conclusion

The government is aware of the gaps within the land governance system in South Africa and is trying to address these in several ways. Regarding who is responsible for land allocation, this chapter reflects that land administration is currently the responsibility of traditional leaders in areas under their jurisdiction. The author described land governance, the cooperative relationship between traditional leaders and democratic local structures on land administration and allocation matters. Policies and legislative frameworks on traditional leadership were examined to give a sense of how traditional leadership should be incorporated into the democratic regime in South Africa in land administration and allocation. The SPLUMA and its regulations seem

to empower the "traditional councils", as land use approval must be done "in accordance with customary law". Customary law assumes that it is determined by traditional councils or leaders alone and does not need consent from, or a particular interpretation of, customary law. In addition, the responsibility remains with traditional councils and leaders to determine what land use is customary and what is not, which can influence the development of the land (Du Plessis, 2018).

Recommendations

The following recommendations advanced in this chapter can enhance addressing the political and policy dynamics of municipal governance and land allocation:

·   The partnership agreement should be developed and entered between two parties (traditional authorities and municipal councils). Because the traditional leaders are the custodians of the land and the municipality provides service delivery to the community, the political dynamics need to be addressed as they can hamper service delivery.
·   Consultation is very important to traditional leaders and other affected stakeholders when agreeing on land allocation and service delivery.
·   The working relationship between the traditional leaders and the municipal council needs to be harnessed and improved to create a conducive environment for development.
·   A review and/or amendment to legislation and a formal policy framework to address the burning issues on municipal governance and land matters is necessary.

A methodology and related tools should be prepared to support municipalities implementing an incremental tenure approach. Many urban poor live in such settlements, and to date, municipalities have lacked innovation and the political will to determine an appropriate response. In conjunction with the Department of Cooperative Governance, the national Department of Rural Development and Land Reform should develop an incremental tenure approach for urban informal settlement dwellers. A support strategy for municipalities should be rolled out to implement an incremental tenure approach for informal urban settlements (Urban LandMark, 2013). In the case of land administration, the integrated development plans (IDPs) of municipalities must involve a comprehensive process incorporating

projects initiated or led by traditional leaders. The prioritisation that is implicit in this process will inevitably impact municipalities' planning and participatory structures.

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Chapter 6

Strategic Stakeholders in Land Management and Allocation in Municipalities: The Case of Contested Land in Kwazulu-Natal and Eastern Cape

Isaac Khambule

University of the Witwatersrand, South Africa

Abstract

Municipalities are increasingly playing an essential role in South Africa's socio-economic development. This role is evident in municipalities delivering essential social services and economic developmental resources due to their proximity to communities. In recent years, the importance of municipalities has been observed through the local government sphere emerging as a key player in land management and allocation through a participatory approach as enshrined in South Africa's constitution. The various stakeholders involved in land management and distribution include community leaders, ward councillors and traditional leaders. This approach also presents opportunities for the country to address the historical land dispossession and inequities in land ownership through a participatory process. However, the involvement of various stakeholders in land management and allocation also presents grounds for contestations due to their diverse interests. Against this backdrop, this chapter explores the role of local stakeholders in land management and allocation in municipalities. Methodologically, the paper utilises secondary materials in the case studies of two contested municipal and traditional lands in KwaZulu-Natal and Eastern Cape. It further explores the underlying and emerging contestations in land management and allocation as informed by the diverging needs of the various stakeholders. The chapter contributes to an in-depth understanding of the complexities facing strategic stakeholders in land management and allocation.

Keywords: Traditional leaders, land use management, spatial planning, land reform

> "Land is an asset. Land is scarce. Land is fragile.
>
> These three statements reflect the basic relationships of humankind with the land: social, economic and environmental. Humanity's association with land springs from the enduring nature of land: it is the basis of food, shelter and livelihood." – Dirk C du Toit, Deputy Minister of Agriculture and Land Affairs

Introduction

The advent of democracy brought a new era to South Africa's social, political and economic landscape. With the many promises made by the governing party when it took over, the land issue was the central question for most South Africans who suffered land dispossession from the colonial and apartheid regimes (More, 2011). With the Department of Agriculture and Land Reform and municipalities emerging as custodians of land reform and allocation, the slow rate of land reform has left many discouraged, with the land debate dominating parliamentary proceedings because of the contentious nature of this issue. Some scholars also note that land reform has been slow, and some land reform processes are mired in maladministration and corruption. In contrast, some have also debated the need to review section 25 of the Constitution (Ngcukaitobi, 2018). In these debates, the Economic Freedom Fighters have suggested that the land should be in the hands of the state, while some parties (such as the Democratic Alliance) prefer a willing buyer−willing seller system.

One of the unique mechanisms that accompanied the democratic dispensation was the emphasis on creating a participatory approach to social, political and economic affairs. Within the land issue, various policies and legislative frameworks provide for the participation of multiple stakeholders in land management and allocation. The Spatial Planning and Land Use Management *White Paper* (2013) requires all municipalities to develop a land use management system to inform public land use and underscores the need for active participation in developing such policies. Some imperative stakeholders include traditional leaders, community organisations, individuals, ward councillors, municipalities and private stakeholders. This participatory approach is enshrined in South Africa's constitution and promotes

participatory governance—which supports the broad participation of different stakeholders in land management and allocation. However, an underlying concern about the role of stakeholders in the land management and allocation process is the diverse interests that different entities and people represent in decision-making. While a participatory approach is noble, it presents challenges in cases where stakeholders cannot agree on common goods or the common utilisation of the land.

In recognition of the role of different stakeholders in land management and allocation within the local government landscape in South Africa, this chapter explores the role of local stakeholders in land management and allocation in municipalities. This study is necessitated by the complex nature of land management and allocation in South African municipalities, which increasingly experience "land grabs" from the landless. The chapter uses case studies of land management and allocation issues in two provinces; KwaZulu-Natal and Eastern Cape, to depict various stakeholder-related contestations in land use and allocation. The Ingonyama Trust Board (ITB) case study in KwaZulu-Natal involves the complex nature of land management and allocation within a Kingdom/traditional system. In contrast, the case of Xolobeni demonstrates the conflicting interests of communities and government in land allocation and use when private companies are involved.

The Contested Space of Land Use, Management and Allocation in South Africa

Post-apartheid South Africa has not fully addressed the land issue and the roots of colonial and apartheid-era systems that dispossessed the African people's land through the two brutal regimes. More (2011: 180) notes that

> "Arguably, the most controversial issue in the Southern African region for the past two or more decades has been the land question in... Zimbabwe; the Democratic Republic of Congo, and Namibia. The same issue has also been the bone of serious political contention since the demise of the apartheid regime in South Africa. The region's leaders are caught up between legitimate demands of the land-hungry black masses and the minority white farmers' possession of the land acquired through colonial conquest."

Ramose (2003: 1) noted that "the loss of land, the close connection between land and life meant also that by losing land to the conqueror, the Africans thereby lost a vital resource to life." In addition to this, Simensen (2014) argues that colonialism has to be criticised "for its extreme use of violence during the first phase [especially] in South Africa where land was confiscated, and Africans subjected to forced labour; for taking a disproportionate share of the value created; and for failing to use state power to promote broader development." The common thread between these scholars is the observation that by dispossessing Africans of the land and other resources, colonialism and the subsequent apartheid policy tore into the livelihoods of the colonised. In these two repressive systems, we can argue that land management and distribution were used to disempower Africans while empowering those of European descent.

During the apartheid era, the practice of land management and allocation was exercised through a racial separatist ideology that denied Africans many rights. Within this "separatist" development ideology, large parts of the country were neglected and deliberately underdeveloped, while many communities were forcibly removed from well-located land (Todes & Turok, 2018). Spatially, Africans were disempowered by legislation such as the Native Laws Amendment Act of 1952, which limited black people's rights to reside in cities and towns. The Group Areas Act of 1950 used systematic policies to control and allocate land, while preventing Africans from owning land in urban areas, further entrenching land injustices. In this case, Africans were removed from productive land that was transferred to white ownership, cementing a racial land use and allocation legacy. Accordingly, South African History Online (2021) observes that the text of the Native Urban Areas Act mandated that local authorities reserve land for Africans.

More (2011) and many other scholars (such as Madlingozi, 2018) argue that the "constitutional settlement offered black people the right and not the means to own land while it simultaneously entrenched white ownership of the unjustly appropriated land. It took with the one hand what it gave with the other". Madlingozi (2017) underscores these misfortunes in the negotiated political settlement within the early transition period between the ANC and the National Party and the subsequent pursuit of neoliberal policies. However, in contesting the land issue, a scholar from the Afrikaner community holds that Africans migrated from the North to the South and cannot be custodians of the land in South Africa. This posture has been used

to justify land dispossession and the subsequent rejection of land redistribution in post-apartheid South Africa. Notably, these matters contribute to issues in current land use, management and allocation and have dire implications for the country's social cohesion as South Africa continues to be the most unequal country in the world.

The democratic dispensation and the advent of a new local government system in 2020 created more unique spaces to entrench democratic land policies. The new land use, management and allocation system is underpinned by local government being the custodian of decision-making in land-related matters within jurisdictions. Secondly, the local government sphere utilises the Integrated Development Plans (IDPs) prescribed by the Municipal Systems Acts of 2000 as the critical land use and planning avenue (Spatial Land Use Management Act, 2013). The role and function of local spatial planning, land use management and land development involves the overall "planning of human activity to ensure that land is put to the optimal use, taking into account the different effects that land uses can have in relation to social, political, economic and environmental concerns" (SPLUMA 2013). Accordingly, success within this new framework will rely on the effective linkage between the planning and development control functions of local spatial planning, land use management and land development.

Within the White Paper on spatial planning, land use management and land development, the concept of land use management includes the following connotations:

· The regulation of land use changes such as, for example, the rezoning of a property from residential to commercial use;
· The regulation of `green fields' land development, i.e., the development of previously undeveloped land.
· The regulation of the subdivision and consolidation of land parcels;
· The regulation of the regularisation and upgrading process of informal settlements, neglected city centres and other areas requiring such processes; and
· The facilitation of land development through the more active participation of the municipality in the land development process, especially through public-private partnerships (SPLUMA 2013).

The development of spatial planning, land use management and land development is guided by four principles: development of policy for land use and development; guidelines for land use management; a capital expenditure framework showing where the municipality

intends to spend its capital budget; and a strategic environmental assessment (SPLUMA 2013). The last factor, environmental assessment, is essential because of the climate change implications, as evident in the recent floods in KwaZulu-Natal that resulted in the loss of more than 500 lives and many livelihoods. Based on the above-listed considerations of land use management, it is clear that the local government sphere is the custodian of land use and allocation matters.

Stakeholder Issues in Land Management in South Africa

The South African Constitution (1996) holds that while the different spheres of government have distinct roles and functions, they are nonetheless interdependent and should work together to provide social and economic goods and services. This thinking promotes effective and coordinated development planning by integrating different efforts from the three spheres of government, thereby strengthening institutional arrangement and enhancing capacity. Within the land management and allocation system, the national government establishes a coherent and effective spatial planning framework with the power to intervene in extraordinary cases (SPLUMA 2013). All spatial planning, land use management and land development decision-making powers rest with local municipalities as the administrative custodian of all land in their jurisdiction. Municipalities are the custodians of formulating the planning frameworks that govern how land decisions will be taken. The provincial government is entrusted with the power to support this sphere of government through capacity-building initiatives. A further role for the provincial government is to head the appointment and management of land use tribunals and appeal tribunals, and adjudicate on all land disputes (SPLUMA 2013).

Outside of the three spheres of government, there are other stakeholders in the land management and allocation process. Traditional stakeholders are notable stakeholders in land management and allocation in South Africa because vast areas of land remain under traditional leadership. For example, the eThekwini Municipality shares the governance of the rural periphery of the city with the Ingonyama Trust and 18 traditional councils, each consisting of their traditional leader (inkosi) and headman (induna) whom the King chooses to help govern the traditional area in eThekwini Metropolitan Municipality. This aligns with Chapter 12 of the South African Constitution (1996), which mandates customary law as the legislative framework governing the traditional systems. Further, traditional authorities'

role in land management and allocation is informed by the Traditional Leadership and Governance Framework Act of 2003 (Framework Act). Poswa (2022) lamented that the framework allocates underwhelming and "supportive" powers to traditional leaders. These powers only facilitate an intermediary role in the land process and deny traditional leaders the necessary decision-making power.

While noting that traditional leaders previously played a leading role in land management and allocation in some parts of the country, Poswa (2022) further criticised the SPLUMA for ending the traditional authorities' exclusive control of land management and allocation, and creating a dual system of sharing the control with municipalities. Although this approach has merit, it has also produced mistrust between municipal authorities in the form of tension between ward councillors and traditional leaders in cases where there are disputes. This has often resulted in custodians of municipalities having to intervene and define the role played by councillors and traditional leaders in land management and allocation. In a different context, Njoyi (2022) argued that the adoption of the Khoisan and Traditional Leadership Act of 2019 reiterated the government's commitment to preserving and protecting traditional customs in land management despite the relegation of the role of traditional leaders to a secondary status. De Visser (2022) observed that the institutional conflict between municipalities and traditional leaders creates grounds for new and unplanned development that are not outlined with IDPs and affect the outcome of rural communities.

Private sector players have emerged as external stakeholders in land management and allocation because they are responsible for land utilisation. Within SPLUMA (2013), the principle of minimalism implies "an imperative on government to create space for the operation of other spheres of society, especially the private and non-governmental sectors to play their roles in spatial planning, land use management and land development". This underscores the need to extend the list of stakeholders beyond governments and traditional leaders and to include community organisations and other private players within the land space. It further reiterates that "where land development projects are initiated by the private and non-governmental sectors, there must be procedures that ensure that interested parties have an opportunity to express their views or to object" (SPLUMA, 2013). Minimal public participation in land management and allocation has resulted in "land grabs" in many parts of the country, particularly in urban settings within land earmarked for other types of development. Land grabs

in South Africa increasingly occur in metropolitan municipalities because of the availability of livelihood strategies through job access and creative employment avenues (Bank & Hart, 2019).

Some of the land grabs in South Africa have occurred in unhabitable conditions because of the demand for land access in urban areas. In Durban, some communities have settled near a riverbank in Quarry Road West informal settlement after migrating to the city in search of better opportunities. Sutherland et al. (2023) note these communities' precarious positions during heavy rainfall and floods because of their location on the riverbank. In Eerste Fabriek (Tshwane), Mitchely (2022) noted that floods destroyed more than 700 informal shacks and displaced over 1300 people on 9 December 2019. Over 60 residents were stuck on roofs when floods occurred on 5 February 2022. These examples denote the consequences of land grabs in unhabitable areas and the failure of municipalities to effectively allocate land to citizens in a sustainable manner. This suggests the need to build effective land management and allocation structures that consider the needs of poor urban dwellers to be in proximity to economic spaces, while also preserving land zoning.

The role played by different stakeholders in land management and allocation signifies participatory governance aligned with the values promoted within IDPs. The idea of governance represents the efforts to create alternative institutional arrangements to maintain and allocate land to avoid stakeholder conflict. Acemoglu and Robinson (2013) proposed inclusive institutions for creating governance structures capable of securing property rights for all citizens. However, South Africa's history of dispossession and the failure to effectively redistribute land in the post-apartheid dispensation undermined such a participatory approach. While participatory governance consists of the participation of all stakeholders in decision-making, issues such as land tenure rights in a land governed by customary law present challenges for building inclusive communities. Khambule and Gerwel-Proches (2019) observe that community challenges can be resolved through a social dialogue process that infuses the participation of all stakeholders through negotiation, consultation and information sharing.

Research Methodology

This chapter adopted a case study approach from a research design perspective by focusing on two case studies in South Africa. Creswell

(2014) notes that case studies became the common type of research in the 21st century because of the unique nature of not focusing on issues but rather focusing on a case basis. Case studies are helpful because they are informed by a group, organisations or entities that share similar functions, roles, and responsibilities that shape the nature of the study. The first case study is on the stakeholder issues that emerged within the operational functions and limits of the Ingonyama Trust in the KwaZulu-Natal province in South Africa. The second case study is from the stakeholder conflicts and contestations in the Xolobeni area in the province of the Eastern Cape. The last two case studies are critical because they deal with land allocation and management in a manner that conflicts with public needs in favour of private corporations. These case studies meet the goal of a case study approach because they are underpinned by a researcher going out to study one or more groups clustered under one domain. In this case, the entities at hand manage and form stakeholders in land management.

Methodologically, this chapter adopted a secondary qualitative approach to land management in South Africa. This chapter aimed to explore the role of local stakeholders in land management and allocation in municipalities. The secondary data are based on credible, valid and trustworthy papers published in the form of books and journal articles, and supplemented by newspaper articles that contain the latest insight on land management issues in South Africa. An important consideration that is further explored is the underlying and emerging contestations in land management and allocation as informed by the diverging needs of the various stakeholders. Data analysis was performed through content analysis from existing data in the public domain. Bryman et al. (2011) defined content analysis as the analysis of written documents, texts and visuals to elucidate themes that emerge and their meaning to the study undertaken by the researcher. The data is used ethically and follows all ethical guidelines utilised in social sciences research.

Land Management under Ingonyama Trust in KwaZulu-Natal

The Ingonyama Trust Board was established by the KwaZulu-Natal government in 1994 with the blessing of the national government to safeguard the welfare of the Zulu nation as part of the political arbitration and settlement at the end of the apartheid regime. The entity's mission is to "contribute to the improvement of the quality of life of the members of the traditional communities living on

Ingonyama Trust land by ensuring that land management is to their benefit and in accordance with the laws of the land" (ITB, 2023). As underscored in this mission, the entity is driven by the need to ensure that land management and allocation prioritise the overall socio-economic benefits of those who live in land managed by the entity. To meet this mission, the Ingonyama Trust invested in projects such as the agricultural development programme through Mshisweni Agricultural Cooperative, where the entity assisted by fencing over 72 hectares of land and helping small-scale farmers with seeds for production (ITB, 2023). Notably, this programme is similar to the one headed by the Presidency to support small-scale farmers with farming equipment and material, with over 250 000 beneficiaries expected in 2023 (Ramaphosa, 2023).

Legislatively, the Ingonyama Trust derives its constitutionality from sections 1996 (Act No. 108 of 1996) and 211 and 212 of the South African Constitution (ITB, 2023). These sections recognise traditional leadership and customary law as institutional architectures for the Ingonyama Trust, provided that its actions are within the constitutional prescripts. The King of the Zulu nation automatically becomes the sole trustee of the Ingonyama Trust and is mandated to elect the chairperson of the Board. The Ingonyama Trust is in charge of assisting the King (Inkosi) with the land use management (of 2.8 million hectares) of Ingonyama Trust land across the KwaZulu-Natal province, along with 221 traditional councils who also govern over 10 million people residing on the property (ITB, 2014). For example, South Africa's eThekwini Metropolitan Municipality shares the governance of 38% of the municipal area (97 000 hectares) with the Ingonyama Trust and 18 traditional councils, both governed by the eThekwini municipality and traditional councils.

In 2000, the Ingonyama Trust land was autonomous of municipal administration. Nonetheless, the national civil demarcation process led to the growth and development of municipalities to include Ingonyama Trust land throughout KwaZulu-Natal, which shifted the governance of Ingonyama Trust Land. A dual governance shift allowed the Ingonyama Trust and traditional leaders an opportunity to work closely with municipalities. However, King Zwelithini and the Ingonyama Trust warned away anyone who perceives that they have the mandate to explore how the Trust uses its money and what is happening to people's land rights (Claasens, 2018). According to the Ingonyama Trust Land (2014), the main functions of the Ingonyama Trust include land management (mostly land leases), encouraging

economic development and opportunities for the communities residing in the area, and the delivery of assistance and human development for traditional councils.

The constitution and national legislation through SPLUMA require municipalities to facilitate development, land management and allocation within their boundaries to ensure effective spatial planning. This prescript binds municipalities and the Ingonyama Trust to collaborate in land management and allocation, thereby creating grounds for diverse interests and seeking common ground. Within the Ingonyama Trust's allocation system, Sutherland et al. (2016) described land allocation as an oral process whereby individuals apply for a site to the traditional authority, with the neighbours afforded space for input in the final process. This has raised several contestations as people under Ingonya Trust land do not receive title deeds, undermining the security of tenure and property rights because the land remains under the Ingonyama Trust. Furthermore, the Pietermaritzburg High Court declared that the land-lease programme implemented by the Ingonyama Trust's Board in 2012 was unlawful. It infringed on the residents' constitutional rights within the entity's land (KwaZulu-Natal High Court 2021). This problem goes as far as women not being allowed to have land registered under their names within the Ingonyama Trust's system.

One of the tenets of the Ingonyama Trust is to ensure that the land is managed and allocated to promote the interests, and social and human welfare of the entity's citizens. However, this mission has not been upheld as citizens are not treated as stakeholders in the land management and allocation process, but as tenants through the unconstitutional land-lease agreement. In response to this matter, the High Court declared that the Ingonyama Trust should pay back the millions it had unduly collected, with over R90 million estimated to have been collected between the 2018/2019 financial years (Ncwane, 2022). Further to this, another stakeholder issue that has emerged involves the failure of the Ingonyama Trust to account for its financial operations in parliament as an oversight stakeholder in the land management and allocation process. The criticism is that the Trust failed to abide by the Public Management Finance Act, which prescribes the Ingonmyama Trust Board to declare how it spent its R20 million received from the government and the R31 million it loaned without lease agreement (Harper, 2022).

Land Management in Xolebeni in the Eastern Cape

Xolobeni is a rural community in the Eastern Cape, one of South Africa's most underdeveloped provinces, with vast areas of land under traditional and customary law. Just as in KwaZulu-Natal, the Eastern Cape province shares similar characteristics of a dual land management and allocation system governance comprising traditional councils and the municipality. Within the community of Xolobeni, most households engage in subsistence farming and depend on their land for daily survival. This denotes the critical relationship between this community and the land they consider sacred and ancestral. These beliefs have pitted the Xolobeni community against an Australian mining company that sought to mine in Xolobeni. The proposed mining project would extract over nine million tons of titanium-iron, rutile, zircon, leucoxene and ilmenite, while bringing potential employment and socio-economic opportunities to the community (Steyn & Damba-Hendrik, 2022). On paper, such an opportunity sounds good for the Eastern Cape province, considering the high unemployment rate and dearth of infrastructure. However, there is another side to the projected opportunities from the mining venture.

According to Stey and Damba-Hendrik (2022), the mining rights were granted by the department charged with overseeing the mining sector, the Department of Minerals and Energy, in 2008. However, the High Court later declared this approval invalid and suspended it in 2011 when the Amadiba Crisis Committee and the Legal Resource Centre pursued legal intervention. Ledwaba (2019) pointed out that the initial agreement was spearheaded by the political elite, including senior government officials, because the community had little to no power to contest such decisions after deliberately being excluded from the process. Concurring with this position was the court's withdrawal of the mining rights, as it was found by the court that the community was not fully included in the decision-making process that led to the granting of mining rights. Furthermore, the Pretoria High Court (2018) also declared that mining activities in Xolobeni can only be undertaken if the community consents for such activities to occur and the community has the right to self-determination. This ruling is instrumental in showing that while local municipalities are the custodians of land management and allocation, the municipality must afford communities an equal opportunity to determine what happens with their land.

A vital stakeholder management lesson that emerged from the declaration that no land development can take place without the full consent of the citizens is that communities cannot be bypassed for private interests. Madiya (2020) argues that the government deprived the community of Xolobeni an opportunity to use their agency to determine what is supposed to happen within their land. There was also another view that the interests of those interested in the mining activities because of the potential socio-economic benefits were sidelined in the decision-making process, as alluded to by the Minister of the Department of Minerals and Energy and other stakeholders (Amadiba Crisis Committee, 2019). This reflects the contested nature of Xolobeni, where internal stakeholders such as the community want different outcomes, thereby revealing underlying stakeholder contestation in land management and allocation. However, a significant concern is that an activist opposing the mine was assassinated in 2016, signalling that these contestations have far more deadly consequences than initially thought.

The conflict over the land management and allocation of Xolobeni involves more stakeholders than just the government and the community. Various groups and people are interested in mining activities in the Xolobeni community. To further the stakeholder dilemma,

> "The Amadiba Crisis Committee has accused the Australian mining company of bypassing the community and dealing instead with elite shareholders and politicians in the area, including local businessman and former Mbizana mayor, Zamile Qunya, and the Amadiba chief Lunga Baleni. Qunya and Baleni are shareholders in a black empowerment company called Xolobeni Mining Company (XolCo) which owns part of the mining project through a complicated structure" (Steyn & Damba-Hendriks, 2020).

This excerpt reveals that other stakeholders, such as local businesspeople, politicians and traditional leaders played a role in undermining community interests in favour of private interests. The country has seen various scandals of this nature, where those entrusted with representing the community's needs tend to make deals with investors to influence decision-making to their benefit. In Brazil, South Africa's peer within the BRICS countries, it is observed that private entities have exploited opportunities in the neoliberal

system and engaged in land dispossession and displacement with the assistance of the political elite (Borras Jr & Franco, 2012). These cases demonstrate the lack of respect for communities as important land management and allocation stakeholders.

An increased number of stakeholders have been observed trying to preserve the land in Xolobeni. Environmentalists are stakeholders who are rapidly emerging as key to the matter because of the need to protect biodiversity in the community, particularly the role played by the diverse nature of the land in sustaining the livelihoods of some community members. However, some gain no immediate benefits from the diversity because they are far from it, thereby arguing for the mining company to be given the mining rights (Steyn & Damba-Hendriks, 2022). These contests form part and parcel of some of the key issues that the SPLUMA did not consider, and the various mechanisms to remedy land conflicts are not capacitated to deal with matters of this magnitude. This is why courts have been the preferred structures to deal with such disputes within the land management and allocation process. Essentially, the case also puts into question the power afforded to municipalities to administer and manage land allocations.

Implications of the Case Studies on Land Stakeholders Management

Stakeholders play a crucial role in influencing decision-making within the public sphere. Given that land is an essential aspect of social, political and economic development, stakeholders inevitably form part of the decision-making process because they need to be involved in decisions that will impact the land they inhabit. The case of eThekwini reflects a vital case study depicting the clash between rights afforded to customary law and constitutional rights afforded to municipalities. While land under the Ingonyama Trust is within the jurisdiction of municipalities, the local government system has not developed a functional system of co-governance with the entity because the Ingonyama Trust enjoys sole decision-making. Within the iLembe District on the North Coast of KwaZulu-Natal, the Ingonyama Trust owns 68% of the land under the control of traditional leaders (Khambule 2015). In this context, the municipality does not seem to enjoy a custodial role, but rather a stakeholder role in that the Ingonyama Trust takes all decisions without much input from the municipality.

While noting the stakeholder challenges related to the roles and responsibilities between municipalities and the Ingonyama Trust, it is equally important to consider the challenges related to how the municipality facilitates land management and allocation with its citizens. Firstly, the failure to develop a land tenure system that secures property rights for the citizens is not consistent with the Ingonyama Trust's mission of managing land in a manner that promotes the welfare of the citizens. Furthermore, making citizens pay rent for land through a lease model is not consistent with constitutional values that govern traditional land. These factors explain why there are concerns with the existence of the current model of the Ingonyama Trust, with Ngcukaitobi blaming such land models for having colonial roots (Ngcukaitobi 2018). From a stakeholder management perspective, such a model treats citizens within the Ingonyama Trust's land as second-class citizens on their land. The failure of the Ingonyama Trust to account to parliament also adds to the prevailing view that the Trust is an authority unto itself and has a weak governance structure. Currently, the relationship between the government and the Ingonyama Trust is fragmented because of these far-reaching matters and other accountability issues that the parliament has flagged.

The case of Xolobeni presents an interesting study of the citizens' wishes clashing with the desires of mining companies and some community structures. It is estimated that 68 out of 72 families that live in the proposed mining area oppose the development, whereas the other four families see some merit in building the mine (Steyn & Damba-Hendrik, 2021). Within this contentious proposed development, the Amadiba Crisis Committee blames the Australian company for bypassing the community and working with political leaders as intermediaries through state power. A similar controversial issue is playing out in the battle over the Tafelberg land in Cape Town, where a private company wants to build a new development. In contrast, a civil society organisation is fighting for the land to be redirected towards social housing. The Western Cape High Court (2020) set aside the sale of the land to the private developer and declared that the city should use the land to address the history of spatial inequalities. However, the Western Cape government insists on selling the land as it has petitioned to appeal the decision. These examples demonstrate the case of government leaders using their powers to favour land management and allocation for private developments instead of the developmental needs of the community. Under President Bolsonaro, similar patterns were noted in Brazil, where the Amazon Forest

was invaded by private interests in cahoots with the state, despite community groups rejecting the move.

Another stakeholder perspective that emanates from the case study of Xolobeni is the need for better management of internal stakeholder issues within the community. Notably, the case study also teaches us that citizens do not have common needs, as reflected in the few families that accepted the development, while the majority is against this sort of development. An important consideration here is whether there is a tyranny of the majority against the minority in decision-making over the Xolobeni land. A response to this important question is that balancing the community's diverse needs is part of stakeholder management and these issues are not unique to the South African context. A recent report showed that 75% of India's land management and allocation conflict happened over community-owned spaces (Land Conflict Watch, 2022). Such disputes often turn violent and dangerous, as evident in the killing of activists in the case of Xolobeni and many other cases within developing nations. Furthermore, it is not easy to resolve such stakeholder impasse issues as they touch on the lived experiences and socio-economic needs of the citizens.

These case studies present better ways of understanding governance challenges in land management and allocation within the current dual model that considers the role of local government and traditional councils/customer law. The case of the Ingonyama Trust is significant because it delves into how some of the powers of customary law can be used against the welfare of citizens, particularly through the failure to create effective systems of promoting land tenure in a county king battling land dispossession. The Xolobeni case is also important because it reflects a stakeholder management problem where the community's wishes are not respected, and the state machinery advances the needs of the private sector. Despite numerous public participation forums to determine policy adoptions on building a mine and lodge within this preserved land, where the community voted against such developments, the matter persists because the state wants a different outcome. In this case, stakeholders seem to be unequally prioritised in the public decision-making process.

Summary

This chapter reflected on the emerging and underlying contestations within South Africa's land management and allocation system between various stakeholders. The country's dark history contributed to ushering in new policies to create democratically accountable systems of managing and allocating land in the democratic dispensation. Such an approach was necessitated by the fact that previous regimes allocated land on a racial basis and cemented the ongoing spatial inequalities that underpin the high unemployment rate and uneven access to opportunities. Using the case study of the Ingonyama Trust and the ongoing Xolobeni land conflict, the chapter noted various success factors and challenges presented to stakeholder management. The case of Ingonyama Trust is instrumental because it shows how customary laws clash with the country's constitutional framework that supports secure property rights and land tenure. The Ingonyama Trust does not promote these tenets, in that it unlawfully made people tenants in their land and failed to promote the welfare of the citizens. These issues are further exacerbated by the lack of accountability of the Ingonyama Trust to the government as a stakeholder overseeing the overall operation of institutions. These stakeholder challenges have inevitably pitted the entity against the state, the constitution and the people's will.

The case of Xolobeni is historic in that it presents the first case where communities were fully given the right to determine what developments may occur on their land. While critical policies such as SPLUMA denote local government as the custodian of land management and allocation, the court judgment in the case of Xolobeni reiterates the power of communities as the most critical stakeholders in land management. Although the ruling caught people by surprise, it is critical because it gives people the right to determine what to do with their land and limits the power of the state to favour private developers. A contentious issue for stakeholder relations is the conflict over what to do when communities have diverse interests in common land. Should the minority be subjected to the majority's will, as democracy dictates? These issues are not unique to the South African context, as a country like India is experiencing similar problems. Overall, the two case studies present the country with enough material to re-think land management and allocation in South Africa and the role of different stakeholders in influencing decision-making.

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Chapter 7

The Gender Dynamic: Access, Planning, Use, and Management of Land for Gender Equity

Zamantshali Dlamini

University of KwaZulu-Natal, South Africa

Abstract

Access to land in South Africa brings forth tales of discrimination and restrictions which explicates the violation of human rights. Through the lens of race, gender and class, South African history carries a divided past. Through patriarchal structures, ideologies and systemic frameworks, many have suffered long. The exclusion of women has always been rife in matters of land redistribution, participation and ownership where male power and privilege dominate. Marriage, through customary laws, was a filter that sought to be a legislative framework, deciding how women become players in this terrain, and this affected unwed women and widows at the time of death, as they lost landownership rights because they were women. The advent of democracy, through local government, came with the reconsideration of land issues which translated into protocols that were geared towards eliminating the structural gender inequalities. The results of such efforts ensured equal participation for men and women in the economy. One notes the role of traditional leadership to manage land issues which created problems by further imposing culture. Since 1994, the introduction of a gender-responsive legislative framework has sought to redress land access and use by women as a means of improving transformational outcomes. Women's empowerment is the ultimate goal for sustainable development. Land is a critical conversation that unmasks opportunities for growth, security, and economic development. Gender equity has the potential for creating independence, and restoring the dignity of women whilst giving them a sense of well-being which every citizen needs to enjoy as a beneficiary. The questions that this chapter seeks to answer is, how does municipal governance in South Africa put enabling frameworks

in place where women's rights are amplified when it comes to access to land and participation thereof? How are women in South Africa 29 years into democracy participating and accessing land rights? Using desktop research, this chapter underscores the role and contribution of women in land use and management in South Africa. It engages how traditional leadership and municipal governance intersect with women's participation in matters of land management and allocation. Lastly, it submits recommendations on how women can be better equipped to fully participate in land issues.

Keywords: Human rights, land rights, marginalisation, structural gender inequalities, legislation, municipal governance

Acronyms

AIDS   Acquired Immunodeficiency Syndrome

CEDAW   Convention on the Elimination of all Forms of Discrimination Against Women

HIV   Human Immunodeficiency Virus

NGO   Nongovernmental organisation

NTFP   Non-timber forest products

PWAL   Promoting Women's Access to Land

SDG   Sustainable Development Goals

WFP   Women on Farms Project

Introduction

Every society creates opportunities for its citizens to thrive, ensuring that they meaningfully participate in the country's economy and are a part of decision-making, enjoying equality and dignity. Good citizenship grants its citizens rights to participate in different spheres and this has been met with challenges on issues of land in South Africa. Rethinking and revising land redistribution as part of redressing inequalities has been a goal of bringing reform. However, due to racial, gender and class tensions, this has been a slow-moving process. Women's access to land remains a contentious issue as women's rights are infringed due to discriminatory practices where culture interferes in its jurisdiction. Different challenges have resurfaced as new policies on land infringe on progress for persons previously marginalised. This has

been a huge setback, further alienating women from being recognised as owners and farmers in this landscape. South African history suggests that due to socio-cultural norms, women as rightful citizens have been excluded from benefiting from gaining access to resources and land participation. Patriarchal laws have created constraints that have constantly excluded women from participating in leadership and decision-making structures. Traditionally, conservative communities and customary laws have permitted the exclusion of indigenous women. These are old conservative rulings permitting men to take decisions while women are simply expected to comply. Hence, males have, by virtue of being males, simply benefitted because of lineage and thus enjoyed this privilege. This is the kind of history that has been passed down from generation to generation, preventing women from economic empowerment. In responding to this question, certain aspects come to mind and these include "liberalisation policies vis-a`-vis land, land markets as a vehicle for women's inclusion, and employment generation as an effective strategy for both poverty eradication and gender equality" (Walker & Unies, 2002: 20). This chapter seeks to ask pertinent questions which are tabled as follows:

· What was the role and contribution of women in land use and management in South Africa between the years 2000–2022?
· How do traditional leadership and municipal governance intersect with women's participation in matters of land management and allocation in South Africa?
· How has gender on land access and participation evolved between 2000–2022?

Grounded theory has been used to interweave the argument followed in this chapter. Data collected herein has been systemically gathered into categories. Themes are presented and analysed.

This chapter presents a systematic review of gender and land issues in South Africa. It further explores the role of traditional leaders and participation of women in land matters in South Africa in the democratic era. Surveying the literature in this landscape is critical in the sense that it gives direction to the discourse and enables the researcher to tease out important themes that guide the discussion. This systematic review is drawn from desktop research methodology, scoping primarily from secondary sources and data sources. This methodology enables the researcher to generate as much data as possible from existing sources of data. Hence, the author was able to extract relevant information for the deliberation engaged in this

chapter. The author also managed to formulate a discussion based on themes elicited; points summarised and synthesised to give an overall perspective on how gender and issues of land are critical in this chapter. The author qualified the relevant and suitable literature using the search words "Municipal Governance", "Customary laws", "Traditional Leadership", and "Land Management in South Africa (2000-2022)" which all align with the title of the chapter and demonstrated the depth of understanding and knowledge of the subject matter.

Literature Search and Evaluation

Inclusion criteria: In search of the relevant literature, the author set key characteristics that defined the scope of work to be engaged in this chapter and hence included book chapters, online newspapers and paper publications around the history of gender and land issues in South Africa.

Literature identification: The search for the relevant literature was a discriminatory process whereby the researcher used key terms such as "gender and land issues in South Africa", "Women participation in land issues", "Traditional Leadership", and "Land Management in South Africa (2000-2022)". In some instances, the author used customary law and indigenous leaders managing land issues in South Africa. The author chose the most recent work on the subject matter, checking the publication titles, abstracts and engagements from each chapter that was well aligned with the discussion of the chapter. "Google Scholar" and other sites were visited.

Land, Patriarchy and Political Arms of Oppression

Land reform and land restitution have become buzzwords in this democratic era, with the government seeking to redress unjust displacements. Against the backdrop of poverty, and inequality, land reform underscores "the geographical exercise that attempts to reshape the spaces of land-based production and livelihoods by redefining people's relationships of access to such resources" (Rangan & Gilmartin, 2002: 636). This is about "reforming policies, systems, and instituted geographies of communities that depend in large part on land-based resources" (Rangan & Gilmartin, 2002: 636). *The personal is political*: this dictum is relevant when citing the discrimination and

the inequality that is experienced by women, which ultimately affects family livelihoods.

South Africa carries a history of marginalised populations, systematically restricting people in terms of race, class and gender; further creating poverty instead of creating access to opportunities for using land for economic wealth and to sustain livelihoods. From generation to generation, women as rightful landowners have been discriminated against and constrained by tradition. Gender inequalities have for years marginalised women's and girls' "rights to land, property and inheritance" (Juda-Chembe, 2018: 92) from their ancestral land. Customarily, in patriarchal communities the expectation has been that widows, single women and girls are "represented by their male relative(s), which results in the piece of land being registered under the name of the male relative" (Juda-Chembe, 2018: 91-92). During the HIV/AIDS pandemic, various vulnerabilities were evident as the illness affected men and women differently. Women and children were left alone to fend for themselves when husbands and fathers died. This has compounded the struggles women have endured when it comes to accessing land. One major concern is that women comprise "the majority of the country's landless population" (Cross & Hornby, 2002: 42). These are poor women whose lives have been centred on the burdens of being housekeepers and focusing on childrearing activities. Through death or divorce, women have become vulnerable and have carried the cross as women-headed households, expected to take care of their children.

The legacy of apartheid is complex, with layers where injustices have devastated communities. This is an area that requires scrutiny and reform. Reflecting on the twentieth century, the dispossession of land details a rich cultural memory. In the past, land was the basis of generating income whilst it was the viable mechanism of sustaining families. Hence, it was argued that land dispossession was a precondition for their economic subjugation (McCusker & Carr, 2006: 786). In patriarchal societies, people of colour have experienced poverty and discrimination, leaving children and women struggling economically. In this case, households remain as sites of struggle with continued structural inequality where many are destitute and hopeless. This is purely because households have been understood as "sites of struggle and inequality" (Razavi, 2007: 1484). This constant "push and pull" phenomenon where women are left with the decision to leave their marital homes has been problematic and has delayed development and transformation. Through liberation

policies, it has become critical to "redress colonially derived and post-independence unequal land ownership, discriminatory land use regulations and insecure land tenure systems" (Moyo, 2007: 60). In the post-apartheid era, the topic of land redistribution has become a necessary conversation as it compels South Africa to "assesses its potential for achieving its goals of social justice, poverty alleviation and gender equity" (Meer, 1997: 113). This means revisiting the issue of land rights, land use, access and management thereof. Therefore, achieving gender equality is an invitation to both men and women and it has become critical to "restructure rural economic space, property regimes and socio-political relations" (Cousins, 2007: 220). The 2030 Agenda for Sustainable Development becomes an impossible dream whenever policies fail to articulate gender equality in areas that previously excluded women when it pertains to land.

Land access and reform remain the bedrock for economic development. In fact, Odeny (2013: 4) argues that "land is one of the cornerstones of economic development on which farmers, pastoralists and other communities base their livelihoods. Furthermore, it is a useful component that strengthens business, primarily playing a critical role in business investments. Land is also recognised as a source of power and social status, and of wealth generation (Moloko, 2018). Despite the complexities around ownership, land edifies family livelihood in a sense that "it is the key to the development of agriculture, tourism, mining, housing and industry" (Moyo, 2007: 60). Yet issues around land dispossession and contestation indicate a skewed distribution and inequalities that have impacted on socio-economic standards. This fragmented history in Africa has distorted growth and development, particularly when it comes to women. Hence, any form of reform is a legitimate and moral course. It is about rectifying the old political errors and misdemeanours by strengthening the economy, particularly in rural places. Women have found themselves excluded through policy enforcement and reasons relating to family relations, as culture testifies to their demise. Africa is known globally to subscribe to cultures that shape and form gender-specific realities. Whilst this cultural framework filters in every sphere as an ideology that has been sustained and reproduced as a dogma, land issues are no exception.

Whilst South Africa is said to uphold progressive frameworks, in terms of gender inequity, South Africa moves at a snails' pace. Without women participating in land redistribution, inclusive economic systems that do not recognise gender equality and equity diminish hopes of progress. It is therefore necessary to deliberate

on the recent changes that delineate the government's anti-poverty strategy, which primarily marks gender equity as a form of redress, enabling women to get recognition as landowners and enjoy the right to participate in land discussions. From the early 1990s, land issues have been augmented with the intent to reform and transform. Hence, land reform programmes considered the inclusion of women, whether married or single (Jacobs, 2004).

Culture and Tradition – Immoral Ingredients to Women's Erasure on Gender Politics

Women have faced devastating effects of oppression because of race, social class and geographic location. Bunch (1990: 489) argues that this has been "a deadly denial of women's right to life and liberty" throughout the entire universe. Because of their gender, women have been socialised to accept and embrace subordinate positions. Women have navigated cultural norms that have caused more harm in elevating the role of women in society. In a study conducted by Mutangadura (2004), he cites numerous factors that have discriminated against women when it comes to land rights and these are tabled as barriers linked to the socioeconomic well-being of women; barriers linked to custom/traditional law, and lastly barriers related to statutory law. The first category highlights issues pertaining to female illiteracy, lack of knowledge of their land rights, and lack of resources to claim their rights. Internalised discrimination limited the participation of women in decision-making bodies on land tenure issues, and limited the rights of women to own land due to patriarchy. Land allocation administered by traditional leaders created more problems as many women got overlooked. Moreover, the data revealed that laws that govern and regulate land issues do not voice the promotion of women's land rights. Marriage has been the very same institution that compromises women and what further compounds the challenge, is the fact that marriage laws and inheritance perpetuate this discrimination.

The forced removal of people from their ancestral land is a sad narrative that marks South African history. This has had dire effects in terms of poverty, oppression and inequality across class, race and gender. Despite progressive laws and frameworks, many live in poverty, and access to land is a contentious issue. It would appear that colonialism and apartheid laws further pushed South Africa deep into a legacy of structural inequalities and pervasive oppression, which underlines poverty both in rural and urban spaces. Under colonialism,

white males perpetuated women's subjugation and during apartheid, black women's subjugation was perpetuated by black male power (Nxumalo, 2016). The strain has been visible on all fronts since law, culture and economic power preserve patriarchy (Ngcukaitobi, 2021). African people have lost land, making it difficult to enjoy their wealth and fortune from the land of their great-grandfathers. Based on similar frameworks that considered males as heads of households, access to land also marginalised women; which articulates clearly the infringement of women's rights in terms of acquiring land. Policies have always protected only landowners and poorly reflected the rights of women. In most instances, women have managed to have "access to farmland only through their husbands or fathers as they are only granted usufructuary rights as land title passes through the male line" (Mutangadura, 2004: 2). Over the years, various elements have badly affected women; an example being the atrocious history of HIV/Aids pandemic which has affected women in particular. Widows and children of AIDS patients were left without any form of agricultural support since they did not have "the right to inherit their late husband's/father's agricultural land" (Mutangadura, 2004: 2), thus subjecting them to serious poverty and dependency for survival.

Having cited this as a challenge, it becomes necessary to revisit this Human Rights conversation and ask questions that could elevate women's issues when it comes to land. In order to ensure that women are treated fairly and equally, full rights to own and access land without any reliance on their male counterparts is critical. As part of women's development and empowerment, policies have been designed to use, access and inherit; enjoying all necessary benefits as citizens. This leads to the conversation on legal frameworks that have necessitated this trajectory.

Legal Frameworks Anchoring Gender Equity on Land Issues

In South Africa, policies have demonstrated a commitment to address gender inequity for landowners. It has become important that in view of women being considered powerless and inferior, legislated frameworks enable them to have authority and assist them in exercising their voices in terms of participating. As such, a plethora of policies seeking to fight discrimination are presented as follows:

· The Universal Declaration of Human Rights, 1948;
· The International Covenant on Economic, Social and Cultural Rights, 1966;

- The Convention on the Elimination of all forms of discrimination against women. At the regional level, the African Charter on Human and Peoples' Rights, 1981; and in Southern Africa,
- The Development Community Declaration on Gender and Development, 1997;
- The global conferences, including the Vienna Declaration and Program of Action of 1993; the Cairo Conference on Population and Development (ICPD) of 1994; the Beijing 4th World Conference on Women;
- Declaration and Platform for Action (1995); and
- The Durban World Summit on Sustainable Development, Johannesburg, 2002, which confirmed the strong link between the gendered nature of violations of human rights and the advancement of women's rights.

Whilst there is an appraisal of policies articulating land reform, ambivalent sentiments emerge citing how women continued to be "treated as an 'add-on' category, as in the statement that the programme will assist 'labour tenants, farm workers, women as well as emergent farmers' " (Jacobs, 1998: 76). More arguments on this topic highlight the participation of women's movements in pushing the gender equity agenda, which was often met with resistance. With regard to this argument, Walker and Unies (2002: 15) argue that the "strength of patriarchal attitudes and practices in society and the absence of a strong lobby for land rights among rural women have meant that the implementation of these policies has received far less attention". In rural communities, married women relied on their spouses to accrue land and in the event of death or divorce, this posed challenges and a serious threat when it came to accessing land. Upon a divorce decree, women would be forced to go back to their families and be left destitute. What has remained the greatest struggle of all time is the violence perpetrated against women, which has posed a challenge due to policies against land reform. Inasmuch as women worked tirelessly to change the status quo, recognising their rights and desiring to improve their lives independent from men has been deterred by patriarchal attitudes and behaviours. Hence, "violence against women restricts their ability to capitalise on the 'enabling spaces' provided by the Constitution" (Walker & Unies, 2002: 20). Apart from violence as a barrier, women navigate many challenges that are domesticated, such as childcare and other household chores.

Over and above these declarations and policies, The Convention on the Elimination of all forms of Discrimination Against Women

(CEDAW) summarises conventions and treaties that protect and promote the rights of women and those aspects that articulate and endorse women's rights to non-discrimination on the basis of sex, and affirm equality. Furthermore, the CEDAW works on the principle that women's land rights should be treated on a rights-based approach. Hence, men and women should enjoy equal treatment when it comes to land access and participation in agrarian activities without the interference of marriage or inheritance laws. This also created equal access in the event of divorce or death when the husbands die. At the core of CEDAW, countries including South Africa have rectified these frameworks, primarily ensuring that discriminatory laws against women are abolished. The South African Constitution remains progressive in redressing past imbalances.

Further mechanisms observed in launching the enabling processes was the inclusion of women to lobby on women's issues. Hence, the recognition of women in senior office structures has been an enabling process that supports gender equality in the land sector. This was further observed when the representation of women in parliament grew stronger. The land access issue is critical in the sense that it enables production, and qualifies as a person's livelihood. It is a marker of social identity, cultural identity, and political power that leverages participation. When women have the power to exercise their rights, this gives them a voice and the authority to exit abusive relationships.

Ownership and control were left in the hands of some, whilst others were prevented from exercising control. This has affected families as they lost access to their rightful citizenship. Gender inequality has thus been engulfed by discriminatory and exclusionary laws. Hence, it has been critical to come up with gender-sensitive frameworks that seek to restore justice and people's dignity. The rural landscape has been marked by poverty. On the same continuum, one marks the class issue as one of the impediments. Walker (2002: 72) argues that education and opportunities for employment have made it critically difficult for women to access land ownership. Systemic challenges have endorsed injustices. With patriarchy as a system of domination, women have been embroiled and boxed in "the rule of husbands, of male bosses of ruling men in most societal institutions, in socio-political and economic dimensions of the society" (Kameri-Mbote, 2005: 2–3). For years, it has been remarkable that this patriarchal stance was encouraged by white people; further bringing damage (Walker, 2002). It has been extremely difficult to navigate this issue of access to land since laws and social norms perpetuated the narrative

of male headship as the rightful approach to land distribution. Single women, widows and divorcees have experienced evictions due to the mindset that seeks to exclude and marginalise. Numerous stories of change explicate how women are becoming owners of residential sites. To necessitate this process, policies have been effected to augment women's issues on land.

Strengthening women's land rights is critical as a "pathway to poverty reduction and gender equality" (Slavchevska et al., 2021: 3). The Sustainable Development Goals (SDGs) articulate this perfectly, as its Goal 1 aims to end poverty, and Goal 5 works toward achieving gender equality by empowering women and girl children. In the subject of land rights and ownership, women are by law deemed to have equal rights and access to ownership and control over land and other economic resources.

Mnisi and Claassens (2009) debunk the reality of binaries, that which has framed the political discourse. It is vital that there is a shift beyond "the binaries of modern/traditional, informal/formal, urban/ rural, individual/communal" which all underscores the dichotomy of customary laws (Mnisi & Claassens, 2009: 493). Due to opportunities and socio-economic reasons, women play a huge role in tending to families. Hence it is necessary that they be allocated land. By rights, women are eligible to access and participate in the use of land so that this improves their family livelihood.

Gender Identity and Land Ownership

The gender constructions of male and female have played a crucial role in society in defining limitations women experience in accessing and managing land. This has been identified as a gap where women demand access to land which prompts a redress and a rethinking to opportunities that enable women to enjoy the rights of landowners. Rural women encounter many challenges that limit their understanding and role in the use of land. Scholars argue that they are primarily socialised from a young age on the importance of performing traditional gender roles such as childrearing, and to embrace these distinct gender roles without questioning them (Daley et al., 2013). The notion of "male headship" has marginalised women and left many destitute. Research contends that women have also not been empowered to facilitate their ways and insights around land management. This is aggravated by a lack of literacy, little or no education, lack of capacity and functional skills that would enable land governance. In a way, gender discrimination

has been enforced and reproduced, making it extremely difficult for women to exercise their rights to ownership and management. Also, there has not been an enabling environment, and little political will, to promote women's land rights, make land institutions gender-responsive, or develop practical, low-cost, and culturally acceptable tools (Daley et al., 2013: 10). Women have been denied independence in making decisions on land, as this relied on male association.

Women have faced exclusion, as their labour and focus are centred around food production. According to Walker (2002), due to gendered labour, women were forced to focus on collecting wood and childcare as major roles for the upkeep of the family. The hegemony of patriarchal customs and tradition has endorsed male authority; leaving women outside the scope of ownership. It is only necessary to imagine the struggles faced and endured by women as they get trapped into relationships reliant on sustenance. Women with no or insecure land rights have less bargaining power within the household, and less ability to access other resources, control their lives and their destiny, and participate in decision-making (Daley et al., 2013). One deduces that not enjoying land rights equates to having no voice, which in retrospect affects wellness and well-being. In many communities, it would also mean being silenced, having no voice and little autonomy to self-regulate. Structural and cultural violence where women are treated as property is a reality that forces women to escape their marital homes. With the resurgence of gender-based violence, it is unimaginable to comprehend how this pandemic has created vulnerability in women and children. This background is critical because it formulates the backdrop of land reform upon which laws and legislative frameworks have sought to make necessary amendments in bringing gender equity, and advancing a transformational agenda. In recognition of Sustainable Development Goals, with their interlinked objectives to end poverty (Goal 1), and create space and room for gender equality (goal 5), it is imperative that women have power over their economic destinies as they fully engage in land issues.

One of the major goals of democracy was to enhance gender equity on land reform whilst removing any political discriminatory laws and prescripts. Jacobs (2004) mentions three important aspects that had to be tackled; namely:

· Land restitution, designed to compensate the victims of racially motivated land dispossession since 1936, either through restoration or redress.

· Land redistribution, targeting commercial agricultural areas, to deliver land to the landless and land-hungry as well as to black aspirant farmers; this sub-programme has aimed to transfer 30% of commercial agricultural land—approximately 25 000 hectares—into black ownership; at first within five years of democracy, i.e. 1999, but later rescheduled to 2014.

· Tenure reform, aimed chiefly at farm-dwellers and people living in the former Bantustans or communal areas and intended to "improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including [...] communal tenure".

Whilst the Constitution clearly enshrined the rights of women as articulated by human rights, other scholars have questioned whether land rights are a viable measure for transformation "for women in terms of welfare, efficiency and empowerment gains for both women and men" (Jackson, 2003: 455).

The Role and Contribution of Women in Land Use and Management in South Africa

Land use, access and management explicates how people have the authority to utilise the land to their full benefit. It is about using the natural resources for personal use, for garnering economic and cultural activities, and farming the land. In any given space that can be accessed and utilised, for it to be claimed as useful, protocols that need to be followed will always depend on the land tenure system of any society. These include "transfer rights, use rights and control rights of land and natural resources—including rights to housing, food, water, forest, environmental and mineral resources" (Chigbu, 2019b: 39). One remaining obstacle with the land tenure system is its embeddedness in social-cultural relationships between people and land. The characterisation system of land tenure has discriminated against women both overtly and covertly. Hence, scholars argue that patriarchal ideologies have posed restrictions that feed onto the inequality narrative where women are excluded on land matters, making it extremely difficult to access land.

The term "gender" holds meaning as per social constructions in patriarchal societies. When one explores the role of women, we approach this by acknowledging that women's contribution to land issues details the co-production of land use and livelihoods whereby "both land use and livelihoods as manifestations of local social

relations laden with power" (McCusker & Carr, 2006: 792). This has led to different complications, where males dominated controlled and had access to land resources. History states that women have been short-changed, purely because "in patriarchal, matriarchal and matrilocal land tenure systems is that men rule in all of these systems" (Chigbu, 2019a: 126). This has marked the landlessness of women and their role in claiming their space in patriarchal societies.

Women have been seen actively participating in small-plot agricultural plantations and this was often in the light of domestic consumption. Upon scrutiny, it emerged that policies back then never favoured women as beneficiaries in this landscape. Cousins argues that in the 1990s a National African Farmers Union was formed to rethink and revisit policies that enable women to "acquire land, credit and support services" (2007: 231).

When it comes to forest dependence, non-timber forest products (NTFPs) created an option for creating space for rural livelihoods and sustenance (Paumgarten, 2005: 193). Whilst women showed interest in this way of poverty alleviation, limitations and restrictions were based on how women are still expected to uphold traditional duties of tending the households. According to Paumgarten (2005), women who are participating actively in non-timber forest products have benefited from pursuing it as an alternative livelihood strategy. Often, women have formed bonds that would give them safety nets during difficult seasons.

Traditional Leadership on Land Issues: Use and Access

Apartheid policies restricted black people from living in 'white' areas; arguing that they "had citizenship rights in the Bantustan associated with their mother tongue" (Claassens & O'Regan, 2021: 155). Traditionally, women were treated as minors and could not be part of engaging discussions in their communities. Post-1994, traditional leadership was recognised as "the pillars of the community" (Chauke, 2015: 35). As per the constitution of the country, customary law meant that the administration of land issues was in the hands of traditional authorities and this system was grounded on the basis of being patrilineal. This meant that governance was based on only firstborn male children being allowed to succeed their fathers (Chauke, 2015). This is a form of "indigenous or local form of governance based on a localised cultural logic that prioritises local social relationships and resolution of social problems on a case-by-case basis" (Sitholeo,

2009: 16). In retrospect, it is disturbing that post-democracy, such a ruling was discriminatory in its nature. In KwaZulu-Natal, traditional leadership was based on "a hierarchy of authority and political authority is centrally controlled" (Meer & Campbell, 2007: 10). This is a common model that has presented itself as a useful approach, which honours the importance of traditions and customs being passed down from one generation to the next. Traditional leadership in rural areas was understood to be the proper vehicle "to cultural identity and cohesion in regulating local populations' affairs" (Phago & Netswera, 2011: 1024). This afforded the traditional leaders to be closer to the people, serving them on key aspects and encouraging public participation where people are underrepresented. This specifically was attributed for the chiefs and kings to be in charge as they traditionally inherit these leadership portfolios. This role always marked the task of being spokespersons, giving a public voice in as far as handling grievances and mediating between community members.

The White Paper articulates roles to be played by the traditional leaders and as such, traditional leaders were expected to:

· act as spokespersons of the people, and this granted them administrative power;
· preside over customary law courts and maintain law and order;
· consult with traditional communities through imbizo/lekgotla;
· assist members of the community in their dealings with the state;
· liaise and advise local government with matters relating to traditional affairs in consultation with other advice traditional leaders in governance;
· preside at every consultative meeting, mediating community matters and ensuring that the needs and community priorities are discussed and resolved;
· safeguard and preserve cultural values whilst cultivating a sense of belonging in a community;
· be the spokespersons generally of their communities;
· be symbols of unity in the community, and be custodians and protectors of the community's customs and general welfare" (Mathonsi & Sithole, 2017: 40).

However, in the municipal areas, there has been an exclusion of such roles and municipalities' functioning without the involvement of traditional leaders. When it comes to land administrative terms, the traditional leaders in KwaZulu-Natal have secured and maintained a number of cases whereby widows' or orphans' inheritance of land

rights were directly threatened (Odeny, 2013). In the area of Muden, the indunas and the chiefs played a pivotal role in ensuring that the administration of lands was protected. This always became a contested terrain due to males being central to the decisions, which often limited women's voices and participation. Traditional rulership was under threat since tribal authorities were "under the mould of their apartheid creators, highly authoritarian and despotic" (Ntsebeza, 2005: 14). Hence, they collapsed; which at a later stage questioned and criticised the government's capacity to rural development (Rangan & Gilmartin, 2002).

According to Rangan and Gilmartin (2002), traditional authorities not only derive their power from controlling access to land occupation, but also from using African customary law to maintain social order through gendered privileges, marital status, and age-based hierarchies. Another scholar argues that "a good relationship is necessary as a measure to influence economic development in order to benefit rural community members" (Phago & Netswera, 2011: 1025). Traditional leaders have always played a pivotal role when it comes to land matters. For example, amongst other roles, they also were central to community development and as such this meant providing leadership with regards to "the provision of infrastructure, adjudication of cases, distribution and sale of land as well as management of communal resources (water, land, graveyards and forest resources, inter alia). In handling these matters, there were collaborations of Christian missionaries in the provision of schools, health centres, water as well as scholarships" (Donkoh, 2005: 4-6).

Another argument lodged against traditional leaders is that the reason they favoured customary law and its practices, was that it "enables lucrative business opportunities" (Branson, 2016). Serious concerns have been raised about how traditional leaders always benefited by pocketing the profits from business prospects. Other complaints include the challenge of young women who are forced into marriage with older men and in some instances, widowed women being forced to marry the brother of the deceased. All these are typical cases where culture significantly plays a role in making women inferior. *Ukuthwala and ukungena* (a custom that expects a widow to marry her husband's brothers after his death) is common in KwaZulu-Natal and subjects women to discrimination, and in the worst cases, leads to abuse. Against these realities, gender inequalities remained a bigger challenge; hence efforts required serious intervention by traditional chiefs. In KwaZulu-Natal, the Ingonyama Trust played a vital role in

necessitating resolutions by permitting traditional chiefs to preside over local issues relying on advisors to govern the land. Sitholeo (2009) further argues that *ubukhosi* is "chiefship" even though the term "chief" is politically derogatory in South Africa, due to its association with apartheid's emasculation of dignity from "chiefs". For the longest time, chiefs have always presented and represented signs in the collective African past embodying the political memory of the past, and yet defining the future through the democratic lens where people are governed (Koelble & Li PUMA, 2011). Chiefs have also played significant roles as witnesses for families in handling land issues where land has to be rented; a strategy employed when there is insecurity.

Certain challenges have hindered development in this regard, where there was male inheritance, which thus further perpetuated the violation of human rights by further endorsing inequalities, patriarchal practices and sexist views. Debates on the issue of women taking centre stage on issues of land have, since the dawn of democracy, caused a stir where patriarchal ideologies and biases dismiss the role of women on the grounds of customary clauses. In KwaZulu-Natal, more tensions arose, since civil organisations that fought for women's rights on land issues were also male-dominated structures. Hence, by virtue of this positioning, women's interests continue to be neglected as males discreetly pursue their own agenda.

Tradition leaders as historical indigenous authority figures are significant in marking progress and post-1994, this means that as a governance institution at the local level, they have played a remarkable role in matters affecting local communities. They are said to infer a level of legitimacy and hence they play critical roles in the management of land, in the administration of justice, and the stewardship of culture. They also play a fundamental role where "cultural connections exist between traditional leaders, land, and communities" (Eberbach et.al. 2017:191). These scholars further argue that the control and allocation of land resides in their hands. Traditional leaders also play a role in articulating claims for restitution. Amongst many policies, legislation and acts that regulated accountability and customary law progress, there was the Recognition of Customary Marriages Act, 1998 (RCMA), allowing customary marriages or unions to be granted space and status in the new dispensation. In the previous dispensation, these customary marriages were considered inferior, according to the Marriage Act, 1961.

Traditional chieftaincy under the rule of *amakhosi* requires interrogation. as traditional leaders play a role in creating accountability. Women are particularly vulnerable under the traditional system, where they have curtailed rights, no access to communal resources outside their relationship with their father or husband, and limited representation on traditional councils. Traditional leadership and municipal governance intersect with women's participation in matters of land management and allocation. However, after 1995, it is interesting to note the inclusion of women into traditional leadership. A case in point is Queen Modjaji, who grew up in The Kingdom of Modjadji in Limpopo Province. Another case study concerns the Valoyi tribe, which made history by developing the customary law that permits a woman to ascend the throne of *vuhosi*" (Chauke, 2015: 37).

Land has proven to be a viable means of maintaining family and community livelihoods. Land use is reflective of a power-laden ordering of the world, where the appropriate crops, labour, land area and intensity for a given context are not only agricultural/biophysical facts, but important forms of knowledge that rest upon and produce relations of power in local contexts (McCusker & Carr, 2006: 791). The latter further argue that "livelihoods and land use are different manifestations of these social processes through which people negotiate the challenges facing their everyday lives that we must turn our attention to these processes if we are to advance our understanding of this relationship" (McCusker & Carr, 2006: 791). Gender and land reform necessitate redistribution which in the long run impacts women's autonomy and family livelihood. In agrarian spaces, women have been afforded opportunities to participate in smallholder agricultural programmes for establishing sustainable livelihoods, facilitated by civil society organisations (Lemke et al., 2012: 25). These programmes primarily targeted rural black and coloured South African women. In the Western Cape, a programme called "Growing The Future" (GTF) agricultural and life skills training was established in 2009, aimed at assisting unemployed rural women from two neighbouring townships (Lemke et al., 2012: 30). Unemployed women identified for this programme are capacitated with skills for organic vegetable and fruit production, animal husbandry and bee-keeping, and receive education on literacy, numeracy, basic computer skills, health and safety issues, HIV/AIDS awareness, and business planning (Lemke et al., 2012: 30-31). Another strategy used to empower women is that of cooperatives, namely the Women on Farms Project (WFP), a South African nongovernmental organisation (NGO) that seeks to recognise women who work on the farm with dignity. This organisation

has been fundamental in shaping rural entrepreneurial cooperatives. Furthermore, it has been instrumental in assisting women to gain access to land and applying for funds. Lemke et al. (2012) state that this cooperative organisation offers workshops on cooperative governance, training in various farming activities, business planning, and marketing. The availability of water is of great concern, affecting women in rural villages, and affecting productivity. In another study in Pietermaritzburg, the issue of water access was discovered to be problematic. Most households use household taps; however, where farming requires land, water is a challenge since greater investment is needed to procure irrigation systems that can work on a larger scale. Recommendations shared in this study, in order to address this issue, have focused on improving "access to water and agrarian support for women" (Thamaga-Chitja et al., 2010: 132). Different movements have played a role in promoting women's participation in the agrarian landscape. Another case study is that of "Promoting Women's Access to Land" (PWAL). This organisation has done incredible work in trying to "advance the land rights of poor rural women in South Africa" (Cross & Hornby, 2002: 18). In response to the complex problems and specific challenges faced by women, the sole objective of this organisation is aimed at "achieving gender equity in land and agrarian reform projects and processes" (Cross & Hornby, 2002: 18). The project raised questions relating to women's ability to obtain land, women's security of tenure on the land, and whether women are able to use land effectively. These are serious questions against the reality of illiteracy. Responding to the focus on the organisation meant factoring in how women access the land, particularly in the rural areas and amongst women who are said to be the "poorest of the poor". Furthermore, the programme's focus has been to establish what women can do with the land; in other words, how does the land enable women to change their lives, and their families'? The main focus has therefore been to eradicate and challenge frameworks steeped in gender roles, and instead reinforce gender relations that have the benefit of eradicating rural poverty. Many other factors have had to be considered issues of differences where women experience patriarchy differently because of their background and socialisation. Cross and Hornby argue that "women are not a homogeneous social entity—they differ in class, ethnicity, religion and culture, and their experiences may also differ due to where they live, where they come from, and other factors" (2002: 24). I argue further that when expanding this gender issue beyond the gender binaries, more people may have been erroneously neglected and excluded from land issues.

Summary

This chapter has deliberated on the issue of land use, access and management in South Africa. It has focused on the role of patriarchy in conservative communities, enabling the discrimination of women in land matters. In its introductory section, it highlighted apartheid and colonialism as being instrumental in creating demarcations where many have been removed from their ancestral lands, leaving women marginalised. Black women have always participated in land matters, cultivating land informally in their own small plots for the livelihood of their families. This is the kind of domestic work that women are expected to perform. However, recognising the importance of women's empowerment and their autonomy, women have been able to exercise their agency when it comes to land access and participation as rightful owners. The chapter underscores how legislative frameworks were both useful and contradictory, when infringing on women's rights, further compounding women's vulnerability. This chapter also elaborated on the role played by traditional leaders in handling issues of land tenure, particularly in many black marginalised communities. These recognise social justice as an essential feature for redress and development. This chapter recognises efforts that have seen women becoming landowners, farmers, and active participants in the political economy when it comes to land matters. Recommendations need to be made that challenge patriarchal laws that impede progress. There needs to be a full recognition that constitutionally, women are rightful citizens who have a critical role to play in improving the economy of the country and hence are to participate in the landscape. Structures that involve decision-making on land access and participation may need to revise their constitutions by creating space for women to fully have a voice. Lastly, my submission is that there need to be programmes in place that equip and empower women with skills, knowledge and expertise so that they are ready to tackle the challenge, as their male counterparts do. The issue of gender should not become a stumbling block, because women are capable and can make a difference on land issues, thus improving the livelihood of their families and communities.

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Chapter 8

The Role of the Ingonyama Trust Board in Local Governance, Traditional Leadership and Land Management in Kwazulu-Natal: Where to?

Dolly Ngema and Purshottama Reddy

University of KwaZulu-Natal, Durban

Abstract

The Ingonyama Trust is a special entity created in 1994 in South Africa to hold all the land that the Zulu people have historically possessed, in trust. The chapter explores the role of the Ingonyama Trust in local governance, traditional leadership, and land management in KwaZulu-Natal (KZN). Since its establishment, the Ingonyama Trust has been the subject of discussion and contention. On the one hand, the Trust has been instrumental in safeguarding the Zulu people's traditional legacy and offering social assistance to locals who live on its property. On the other hand, it has been criticised for impairing national efforts to implement land reform and for violating the rights of locals.

The Ingonyama Trust has aided in preserving the Zulu monarch's dominance and the protection of the Zulu people's legacy in KZN by promoting Zulu customs and traditions and managing disputes and conflicts. The Trust has aided in fostering cooperation and preserving stability in the province, serving as a mediator between residents and local government authorities. However, critics contend that the Trust should change its emphasis from conventional leadership to modern governance structures. A system of leases and occupational rent is used to administer the roughly 3 million hectares of land that the Ingonyama Trust owns in KZN. Using the funds obtained from occupational rent, the Trust has built schools, clinics, and other facilities in KZN.

However, the Trust has encountered many difficulties in carrying out its mission. The impression that the Trust is a tool for traditional leaders to enrich themselves at the expense of their

communities has been one of the biggest obstacles to development. Limited transparency and accountability in the Trust's activities has been another challenge which has meant that it has not gained the confidence of its beneficiaries, and other stakeholders like the government and civil society organisations.

Greater accountability and openness in the Trust's operations, such as the release of annual reports and audits, could be potential solutions to these challenges. There should also be more interaction between the Trust and its beneficiaries relative to its operations and decision-making. Finally, there could be greater oversight and regulation of the Trust by government institutions to ensure that it is fulfilling its mandate fairly and equitably.

Keywords: Ingonyama Trust, KwaZulu-Natal, land management, local governance and traditional leadership.

Introduction

Reversing the effects of colonial dominance by transferring the land back to Africans was anticipated to be one of the main goals of the post-1994 government. However, to date, the government's policy for land redistribution has only resulted in 5.46 per cent of commercial agricultural land being transferred to Africans (Phakathi, 2020:104). All the AmaZulu land was annexed into the Natal Colony by 1897 and made available for white settlement after the AmaZulu were vanquished in the wars waged with Europeans in the 1800s (Wright, 2018: 4). This had the effect of turning part of the AmaZulu land into state property while leaving other properties in white ownership.

The belief is that as long as the white community possesses an unequal share of land and wealth compared to the African majority, the eradication of racism in the country is not possible. It is assumed that altering land ownership patterns will likewise alter South Africa's current power structure, which favours white people. Vorster (2019:8) is of the view that traditional African "Promised Land" traditions purport to oppose the presence of colonial occupation and oppressive practices, as they unwittingly promote the same "Promised Land" mentality that colonisers employed as a justification for land seizures, which had fatal repercussions. Land reform experiences have demonstrated that traditional authorities are very likely to abuse tribal and ancestral concepts of land.

The potential for chiefs and traditional leaders to exert control over the land reform process currently jeopardises the security of land ownership for vulnerable communities. This concern has been expressed in multiple reports, including the 2017 High-Level Panel on the Assessment of Key Legislation and the Acceleration of the Fundamental Change Report, the 2019 Final Report of the Advisory Panel on Land Reform and Agriculture, and the study conducted by Kepe and Hall (2018). The issue is particularly severe in former homelands and in regions where the Ingonyama Trust is in control, where traditional leaders/officials frequently assert that they are the only ones with the authority to sign contracts with investors regarding communal land (Vorster, 2018:8).

The research methodology adopted for the chapter was qualitative, which included a desktop study of pertinent literature including *inter alia* acts; policies; journal articles; books and book chapters; and complemented by semi-structured interviews with key public functionaries, leadership of NGOs and academics.

Background and context

Originating from colonisation, apartheid, and the displacement of the native populations, South Africa's history of land ownership is a complicated and multidimensional topic (Ntsebeza & Hall, 2007:108). South Africans who were black were prohibited from owning land, and the Group Areas Act, which was enforced by the apartheid government, required them to reside in predetermined areas (Mafumbu et al., 2022:5). Due to this, there was widespread land confiscation, poverty, and inequality that are still present today (Mafumbu et al., 2022:5-6).

The Inkatha Freedom Party (IFP) and the KwaZulu Government, both of which were then led by Prince Mangosuthu Buthelezi, viewed the 1994 elections in South Africa as a threat rather than a liberation. As a result, they promised to boycott the elections, just as they had done with the constitutional negotiations. In the end, the IFP consented to take part in the elections despite not receiving the substantial assurances of political devolution it had demanded; the assurance was a physical one, namely land for traditional authorities which constituted the basis of the KwaZulu Government (Lynd, 2021:319).

The political negotiations that culminated in the demise of apartheid and the installation of a democratic government in the country provided the context for the establishment of the Ingonyama

Trust. It was specifically developed because of discussions surrounding the 1996 adoption of the country's first democratic constitution. The Ingonyama Trust was founded in 1994 and is a key player in South Africa's land reform initiatives because it manages all the land that the Zulu people have historically controlled (Lethiwe, 2023:5). The Trust has drawn criticism for leasing land to people and companies rather than allowing complete land ownership, which has raised worries about land confiscation and the impossibility of constructing homes and businesses. Claims have been put forward that the Ingonyama Trust is being treated as the personal wealth of the king and is being utilised in a manner detrimental to his followers (Mnguni, 2018; Interviewee 3, 27 April 2023).

A constitutional reform to permit expropriation without compensation (EWC) to redress the disparities of land ownership is one recent step in South Africa's efforts to implement land reform (Vorster, 2019:1). Concerns regarding the nation's investment climate and property rights have also been raised by this idea, which has prompted a heated debate. Commentators predict that this expropriation will harm the South African economy; nevertheless, there is disagreement on what exactly the economy means to various segments of society. EWC may have unforeseen negative effects on economic growth and investment, according to some experts who contend that it is required to redress the systemic disparities in land ownership (Koot et al., 2019:341).

The creation of the Ingonyama Trust was not explicitly aimed at redressing the imbalances of the past, but rather to recognise and support traditional leadership and land ownership of the Zulu monarch in KZN. The land is being held in custody for the different traditional authorities in KZN (Interviewee 3, 27 April 2023).

Legal and Policy Framework

Constitution of the Republic of South Africa (1996)

All laws and regulations in South Africa must conform to the Constitution, which has supreme authority. The Constitution's Sections 25(6) and (9) serve as the incentive for granting informal and customary land rights held by residents of communal areas as part of legal legitimacy. A right to tenure security is provided by "Section 25(6) of the Constitution":

> *"A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or comparable redress"* (RSA Constitution, 1996).

To implement the right, the government must enact laws, according to section 25(9) of the Constitution:

> "Parliament must enact the legislation referred to in subsection (6)."

The reason behind these rules is to guarantee that those who currently have unclear tenure because of historical racial discrimination are protected by the Constitution, and to compel Parliament to enact laws that preserve and advance the rights of people with uncertain tenure. This demonstrates that the Constitution obliges the government to safeguard and enhance the rights to tenancy of those who reside in communal spaces. The Constitution would be violated if the government did not fulfil this duty (RSA Constitution, 1996).

To fully guarantee the right to tenure security, the state is required to take various measures, including legislative, administrative, budgetary, judicial, and promotional, in addition to other appropriate actions. This responsibility arises from the obligation to both promote and fulfil the right to tenure security.

Interim Protection of Informal Land Rights Act No.31 of 1996 (IPILRA)

The Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) was enacted by Parliament in 1996 to provide temporary legal protection to persons who lack officially recognised land rights. In accordance with the Constitution, notably sections 25(6) and (9), this was carried out while the government created more thorough legislation to control community tenure. However, since 1996, IPILRA has required renewal because there is not a more complete statute controlling communal tenure (Delius & Beinart, 2021:95).

According to Section 2(1) of IPILRA, an individual's informal rights to land cannot be taken away unless the individual agrees to it or the government takes the land and compensates them fairly (LARC, 2016:70).

Informal land rights include:

- The right to use, occupy or access land that falls within one of the former homelands (or was previously South African Development Trust land). Customary rights to land would fall within the scope of this definition, including customary rights to residential or arable land, and the use of and access to common resources (for example grazing land).
- The privileges of Trust-arrangement beneficiaries are established under a statute approved by Parliament. For instance, this would apply to anyone residing on Ingonyama Trust-registered property.
- The legal rights of anyone who previously held legitimate Permission to Occupy (PTO) documents.
- The rights of landowners who have been using their property profitably since the beginning of 1993, regardless of where they live in the country (Clark & Luwana, 2017).

Despite the provisions outlined in IPILRA that mandate negotiations between individuals or corporations interested in acquiring or using communal land and those holding land rights that are informal over such land, the law is often disregarded and weakened in practice.

The IPILRA is useful and has served to counteract attempts to undermine informal land rights. However, it has seen limited practical application, has rarely been tested in court, and has little administrative support. The Act permits communities to use a majority vote to expropriate property from families, based on the customary practices and usage of the community. However, families are entitled to a limited amount of compensation. Judgments in mining-related court proceedings in Mogalakwena (Machoga v. Potgietersrus Platinum) and Somkhele (Global Environmental Trust and Others v. Tendele Coal Mining) favoured larger traditional communities with pro-mining local chiefs as their leaders. The assertions made by disenfranchised smaller factions of landowners who experienced land loss were therefore disregarded (Delius & Beinart, 2021:95). This is a potential problem with IPILRA and shows that the meaning of the term "community," which is used in IPILRA, is unclear (Beinart et al., 2017: 100–102).

The KwaZulu Ingonyama Trust Act No. 3 of 1994

The KwaZulu Ingonyama Trust Act of 1994 established the Ingonyama Trust Board (ITB) in South Africa, as one of the sunset clauses just days before South Africa's first democratic elections. The Trust became

operational on 24 April 1994 (Interviewee 4, 24 April 2023). The KwaZulu Amakhosi and Iziphakanyiswa Act No. 9 of 1990 states that Ingonyama is the King of the Zulus or iSilo as a result. This definition is found in Section 13 and consequently, the king is the custodian of vast tracts of land in KZN. According to the Act, the king holds the land in trust for the communities identified in the Act (Ingonyama Trust Act, 1994; Interviewee 3, 27 April 2023). The king (Ingonyama/Isilo), who theoretically owns all the land, is in charge of administering this area following AmaZulu customary law. To administer and distribute land under their jurisdiction, the amakhosi (chiefs) and their izinduna (headmen) have a certain amount of autonomy (Phakathi, 2020:112). In 1997, the Act underwent significant changes that established the IDB as the entity responsible for managing the land in compliance with the legislation (Ingonyama Annual Report, 2020:106).

Despite the Trust having extensive management authority over the property it owns, the Act contains measures that protect the beneficiaries' land rights. According to Section 2(2) of the Act, the land that was previously part of the KwaZulu homeland is entrusted to the Zulu king for the well-being of the members of the tribes and communities residing on the land (Interviewee 1, 18 April 2023). Section 2(3) stipulates that the Ingonyama will act as the trustee of the Trust, which will be managed by both the Ingonyama and the Board under the rules laid out in this Act. According to Section 2(4), the Ingonyama is permitted to manage the land described in Section 3(1) using Zulu customary law or any other relevant law, as long as it complies with the regulations stated in the Act and any other legislation. Furthermore, Section 2(5) of the Act prohibits the Ingonyama from disposing of any part of the land or interest in it without prior written consent from the traditional or community authority concerned. Section 2(7) states that even though this Act is in effect, any national land reform initiative introduced and carried out under any legislation will be relevant to the land mentioned in Section 3(1). However, before implementing any such initiative on the land referred to in Section 3(1), consultation with the Ingonyama Trust must occur. Also provided for in Section 2(8) is the Ingonyama Trust's obligation to respect any pre-existing rights or interests. As a result, the Act safeguards the rights to use, occupy, and access land that the Trust oversees for persons who have ownership interests in it (Ingonyama Trust Act, 1994).

According to Timse (2015), despite these claims and the safeguards provided by the Ingonyama Trust Act, the Trust has drawn a lot of criticism for its inability to uphold the land rights of residents

under its management. The Trust has faced criticism for pursuing further negotiations for long-term surface lease contracts with mining corporations, under which it does so to permit mining operations on land that is frequently inhabited by nearby communities. These agreements are occasionally reached without adequate community input, resulting in the loss of usage rights and access to land (Clark & Luwana, 2017).

The Trust has insisted that its actions have been legal. Before approving mining or development activities, the Trust is required by Section 2(5) of the Ingonyama Trust Act to acquire the traditional councils' written consent. The Trust contends that for formal authorisation to negotiate a lease over Trust land, approval of the traditional council is all that is necessary. This interpretation holds that only traditional councils have the authority to make decisions. The obligations for customary consultation, which are frequently included in communal tenure systems, are undermined by this strategy (Claassens, 2021). Communities residing on land owned by the Ingonyama Trust saw a paradigm shift as a result of the Pietermaritzburg High Court's decision on June 11, 2021. It was confirmed that the "real and ultimate proprietors" of the property are people and communities, not the Ingonyama Trust or the Ingonyama.
  The IPILRA (Interim Protection of Informal Land Rights Act 31 of 1996) applies to Ingonyama Trust land, according to the judgment. This reinforces the Trust Act clause that states that whenever the Board manages the land, it must adhere to Zulu customary law. If mining operations are to take place on Ingonyama Trust territory, they must unquestionably get the approval of the individuals whose land rights are at stake. The court also affirmed that, according to Zulu customary law, every community member is entitled to a land allotment. Residential or agricultural land stops being community land if it is given to an individual (Mtabane, 2022).

The Role of Traditional Leadership in Local Governance

"Traditional leadership" is a term used to describe a form of government that originated centuries ago, particularly in Africa, and is founded on the use of customary law (Eberbach et al., 2017). Traditional leaders, according to Ndima (2017), "are considered as the representatives of the community and as such are charged with a crucial responsibility, namely that of harmonising communal norms and traditions with the ethos of the Constitution". Even though the African National

Congress (ANC), the liberation movement that was at the vanguard of the war against apartheid, is given greater credit for the establishment of democracy, South African traditional leaders cherish the role they played in the conflict. Traditional figures undoubtedly made a fair contribution to the cause of the white majority's dominance (Mathonsi & Sithole, 2017:35).

Following South Africa's democratic transition in 1994, in order to direct the roles of traditional leadership, the Traditional Leadership and Governance Framework Act (No. 41 of 2003), was enacted in South Africa to regulate concerns pertaining to traditional culture (Khunou, 2011; Hagg & Kanyane, 2013; Peires, 2014). The goal of this Act was to promote cooperation between traditional leaders and government agencies. The Traditional Leadership and Governance Framework Act's Sections 19 and 20(1) make special reference to the functions of traditional leaders in fostering communal governance and leadership. This also fits the roles outlined in the 2003 White Paper on Traditional Leadership and Governance (White Paper on Traditional Leadership and Governance, 2003).

Traditional leaders continue to have a significant impact on the welfare of the populace in rural regions today, even though this is not often acknowledged. Due to the role that traditional leaders have had in their societies over the years, according to Koenane (2017:2) and Bakamana et al. (2020:95), rural populations have always had great faith in the traditional leadership system. In the past, traditional leaders had multifaceted roles in their communities, encompassing political, military, spiritual, and cultural leadership. They were viewed as the primary guardians of societal values (Bikam & Chakwiriza, 2014:145; Dansoh et al., 2020:3). According to Logan and Amakoh (2022), traditional leaders are acknowledged as having a substantial impact on local governance throughout Africa. However, according to Mathonsi and Sithole (2017), there is a need for better coordination between traditional leaders and a modern liberal democratic system, such as in South Africa, to minimise inconsistencies and tensions.

Ntsebeza (2005) criticises the function of traditional leaders in democracies and contends that this has been the most difficult task for the government since 1994. Traditional leaders held positions that included both local government and land management during the colonial and apartheid eras. These leaders, like the people who created their systems of power, were authoritarian and anti-democratic. They were despised and feared in many rural villages as a result, making them unpopular (Ntsebeza, 2005:14).

President Zuma urged traditional chiefs to hire knowledgeable attorneys and start land claims for their communities in 2014 at the inauguration of the House of Traditional Leaders (Mail & Guardian, 2014). In 2017, the President told the House that for traditional leaders, land was a crucial concern. The Zulu monarch also commended in public the potential role that mining could play in the growth of rural communities. The King stated in 2015 that traditional leaders should lead mining projects and that mining companies should give them training when speaking to rural residents from areas of the province affected by mining. Although all of these initiatives were ostensibly designed to help those living in communal areas, they actually made rural populations more vulnerable (Yeni, 2019:5).

According to Enweri and Uwizeyimana (2020), traditional leaders play a vital role in bridging the communication divide between the government and citizens, by conveying essential information from the government to residents in rural areas. They act as key representatives of governance at the local level, ensuring that people are informed about government decisions such as new policies and laws (Interviewee 2, 22 April 2023). Additionally, traditional leaders work in conjunction with other governmental entities, such as the Government Communication and Information Service, information officers, and community development workers, to provide citizens with access to critical information (Enwereji & Uwizeyimana, 2020:129).

According to Ramolobe (2023:3), at the municipal level, traditional leaders serve as the representatives of their supporters. They make decisions on behalf of the constituents they represent, making sure that their needs are fairly and accurately represented. Due to the powers it wields at the local level, traditional leadership must be incorporated into state governance, according to Tieleman and Uitermark (2019). Enwereji and Uwizeyimana (2020) concur by stating that traditional chiefs distribute land and work with the government to build homes for the needy. They also aid in finding solutions to the unemployment issue. This is important for assisting in the reduction of poverty in rural areas (Enwereji & Uwizeyimana, 2020:130).

The White Paper on Traditional Leadership and Governance of 2003 emphasises that traditional rulers have a significant responsibility in preserving and promoting the justice system, including both maintaining and facilitating it. Traditional leaders have the right to promote and safeguard the national legislation and the Constitution of South Africa, as well as to facilitate justice. They can resolve disputes among community members using customary

courts before transferring them to local or provincial courts for further proceedings. Additionally, traditional leaders play a role in maintaining safety and security in their communities by promoting and enforcing safety measures (Buthelezi, 2021:38).

Mawere and Mayekiso (2014) have expressed the view that the roles and responsibilities of traditional leaders in South Africa for promoting fair and just governance have not been clearly defined and have not been given enough recognition. Although there have been attempts to enhance the status of traditional leadership in certain provinces such as the House for Traditional Leaders, there are still doubts about their position, functions, and duties. According to Mboh (2021:53), some prominent individuals perceive traditional leaders as unproductive, corrupt, undemocratic, and oppressive. This negative perception has harmful consequences for traditional leadership in South Africa, as many citizens believe that their collaboration with the government is only for personal gain.

Sections 5(1), (2)(a)–(b) and (3) of the Traditional Leadership and Governance Framework Amendment (RSA, 2003b) require that cooperation between municipalities and traditional councils be encouraged by law or other measures. Additionally, suggestions on how local government and traditional leadership might collaborate were included in the White Paper on Local Government (1998:15) . It made it possible for traditional leaders to take part in council discussions about topics about their communities' needs and interests. According to the White Paper on Local Government (1998), traditional leaders had specific development responsibilities, such as offering guidance on land allocation and dispute resolution, promoting regional development, encouraging community participation in development, and advising on business ventures (Republic of South Africa, 1998). Cooperation between a municipality and a traditional authority has to be based on cooperative government principles, respect and awareness of one another's position (Ramolobe, 2023:5).

Ingonyama Trust and Land Management

The Land Administration Domain Model defines the process of determining, recording, and disseminating knowledge regarding the relationship between people and land as "land administration" (IS0, 2012). According to the "United Nations Committee of Experts on Global Geospatial Information Management", every person has the right to a high standard of living, regardless of the formal, informal, statutory,

customary, legal, legitimate, or other nature of relationships between people and land. This is stated in their Framework for Effective Land Administration (UN–GGIM, 2020).

The right to an acceptable standard of life brought about by the use and enjoyment of a piece of land under a secure land tenure system excluded the majority of indigenous people and imposed racial segregation in South Africa before the installation of a fully inclusive government in 1994. A total of 16 million hectares, or 13 per cent of the South African landmass, was designated as communal land, which includes all customary, traditional, tribal, and other types of South African homeland land. Despite being used by communities, communal land includes land that has been declared or declared to be state land, land that has never been registered as state land, land that has been reclaimed by the state, and land that has been designated as "Trust" land. Most individual occupancy rights in common spaces are recorded informally and with little security (Williams-Wyn, 2021:4-5).

As a traditional leadership institution, the ITB has duties to carry out on behalf of traditional authorities. The allocation of resources by the ITB is necessary to support traditional authorities in accomplishing different initiatives, among which is the pursuit of sustainable agriculture. The ITB institution's core area of focus is land management, and it has put agricultural programmes into place to supplement those advised by the Department of Agriculture and Rural Development. Additionally, to support the Department of Health in improving the healthcare system, the ITB provides rent concessions for State Domestic Facilities, such as hospitals and clinics, that are situated on Ingonyama Trust land (Luthuli, 2015:60).

The ITB drives local economic development programmes and makes land available for these programmes to flourish to enhance the socio-economic development of local communities. These programmes' effects will differ from one town to the next. The local traditional council will help the Ingonyama Trust lease out the necessary land rights (Luthuli, 2015:60).

According to the principles of customary tenure, the ITB owes a debt of gratitude to all tribal communities that are subject to its purview for "improving the quality of life of its beneficiaries and ensuring that land management is to the communities' benefit" (Ingonyama Trust Annual Report, 2021/22). According to Msomi (2016), land has significance beyond its function in production, including the provision of housing and food security. In addition, it stands for money,

authority, and control. Msomi (2016) argues that land does not only factor in the role of production such as food security and housing, but it is also an asset that signifies wealth, control and power. Hence the functions and establishment of the ITB can be seen as a financial investment of wealth, control and power by King Goodwill Zwelithini and his traditional leaders.

The ITB unilaterally decided to convert rural inhabitants' land rights into lease agreements that required yearly rental payments in 2007. The relationships between traditional authorities and their subjects were redefined by the conversion of tenure rights. Rural people suddenly found themselves under the control of traditional rulers. With R96 130 563 being recorded in rental between 2015 and 2016, it is said that the ITB leasing agreements provide a sizeable sum of income for the Ingonyama Trust. Even though the Act stated that the funds were to be used to enhance the well-being of communities residing on the land, there is little evidence that this has happened (High Level Panel Report, 2017).

The Zulu Royal family is the sole owner of all the land in the former KwaZulu territory as a result of the Ingonyama Trust Act (Interviewee 3, 27 April 2023). The ITB has been convincing the residents of this land to trade their ownership rights for leasing rights for the past ten years by providing false information and utilizing coercive methods, which obligate them to make yearly payments to the ITB. When civil society organisations and a few brave rural residents contested the legality of the leases in court, the situation reached a critical point. The problem was finally resolved in court after civil society organisations and a few courageous rural inhabitants challenged the leases as being unconstitutional. The lease scheme was ruled to be unlawful and to violate the residents of Ingonyama Trust land's traditional ownership rights by the verdict, which was rendered in June 2021. It was damning to the Ingonyama Trust's involvement in the case as well as to the Minister of Land Affairs, who had backed the Trust (Council for the Advancement of the South African Constitution, 2021). The persistent conflicts over land ownership in South Africa's rural areas serve as a reminder that, even after the formation of democracy, the rights of those who live there are still not clearly defined. Traditional authorities and rural residents frequently argue over who has the right to own and control the land in these places because there is no clear answer to the land tenure problem. Politicians also make matters worse by giving unjustified concessions to traditional leaders. For example, the government's 2014 Communal Land Policy Framework gave traditional

leaders access to communal land's outer boundaries. This concession contributes to the issue. Therefore, by stating that rural residents are entitled to equal protection under the law, the recent judgment helps to resolve this complex issue (Ncapayi, 2021).

Traditional authorities around the country have frequently assumed the task of managing land allocation for many years, although they lack a legal justification for doing so. This is made worse by the unique position that traditional authorities now occupy as a result of the Ingonyama Trust's establishment (Mabasa, 2019). According to De Kadt and Larreguy (2018), traditional leaders have made deals with mining firms concerning communal land in certain areas without obtaining the consent of local inhabitants. Consequently, mining companies in rural parts of Northwest, Limpopo, Mpumalanga, and KZN have carried out activities that negatively impact on the health of rural residents, such as polluting the air and water. These mining firms operate without any repercussions (De Kadt & Larreguy, 2018:384). Therefore, mining companies have operated in ways that negatively impact the health of rural residents in the North West, Limpopo, Mpumalanga, and KZN through air and water pollution (High Panel Level Report, 2017).

According to the South African Development Trust, communal land tenure rights include "customary land rights, beneficial occupation of land, and rights of access, use, or occupation in terms of custom, administrative practice, or usage in a particular area or community" (Deochand, 2022:45). According to a report by the South African Cities Network (2013), the ITB is still in operation and has a direct influence on the procedural aspects of land use and development planning in municipalities. If someone wants to apply for land within the Trust's boundaries, they will need the permission of the traditional leader. In addition, the development agent must submit a three-part application to the ITB, the local municipality, and the Department of Agriculture and Environmental Affairs. It is worth noting that individual land ownership is verbally agreed upon and overseen by a traditional leader who carries out the functions of the ITB, leaving rural residents vulnerable to land tenure insecurity (Msomi, 2016:29).

In tribal communities in South Africa, the allocation of land and the issuing of permission to occupy (PTOs) to beneficiaries are under the control of traditional leaders, as noted by Makhoba (2020). However, those who receive PTOs and occupy the land are faced with land tenure insecurity, as they only own the buildings constructed on top of the land, but not the land itself, as highlighted by Kassier (2019).

According to Dhlamini et al. (2018), with the PTO certificates, one has the authority to occupy the land, construct a house there, and make other changes that increase its worth. The direct effect of such a twisted incentive is an underdeveloped asset, yet one has no method to realise this increased value. Additionally, selling or subletting the property is not a way to grant this right to someone else. Despite the people in the area theoretically owning valuable land that is in the care of the king and the Ingonyama Trust, this factor contributes significantly to the elevated levels of poverty in rural KZN.

The ITB has hired an agricultural expert to find initiatives that could significantly help local communities' economies and social conditions (Luthuli, 2015). However, given that traditional leaders' constituencies account for a sizeable portion of rural votes, some people think the government is using land to keep control over them. Traditional leaders would have real authority if given ownership of land. In remote places where people might not completely grasp their land rights and cannot produce papers as proof, traditional leaders also serve as a gateway to business opportunities like mining (Buthelezi & Yeni, 2016).

Critique of the Ingonyama Trust

Twenty-seven years later, the Ingonyama Trust is in the news more for the abuses of power it has allowed than for the peace it preserved. The Trust started to urge that locals in some places convert apartheid-era Certificates of Authorisation for Occupancy in Leases (Lynd, 2021:357). The lengthy, formal English-language 40-year residential leases were typically provided without translation or explanation. The lease agreement provides the ITB with broad eviction authority and includes an annual rate hike of 10%. This is in total contradiction to Section 5 of the KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994, which states that "The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community authority concerned, and otherwise than in accordance with the provisions of any applicable law" (Ingonyama Trust Act, 1994).

Instead of protecting the land rights of rural people as advocated by Buthelezi, the Ingonyama Trust acts like a landlord, earning more than R96 million in rental income in 2015/2016. Its actions have been denounced for displacing individuals from their land to create more

profitable leases (Lynd, 2021:358). Moreover, the system favours male rights holders, making it difficult for women to assert their land rights. The trust is criticised for being unconstitutional and for unfairly treating millions of people in rural areas under its control. In addition, women claim that the trust treats them differently based on their gender (Makhaye, 2020).

According to Harper (2022), the Land Reform Portfolio Committee of Parliament informed Minister Didiza that the ITB had consistently failed to submit quarterly reports, had disobeyed the Public Finance Management Act, and had refused to account for the millions of rands it annually raised from commercial tenants. The emergence of Ingonyama Holdings (Pty) Ltd, a company that was established in late 2019 and to which the ITB "loaned" R31 million without the presence of any loan agreements, has the Committee particularly concerned. The Auditor-General of South Africa, who has repeatedly raised queries on the ITB and the Ingonyama Trust for failing to account for assets and expenditures, also raised concerns about the transactions.

The Zulu monarchy appears to have been the target of a complicated scam in which it was promised investment totalling $2 billion (R36 billion) for community development projects on land under the Ingonyama Trust control. The ITB has indicated that the money was not received as there was a dispute regarding the memorandum of understanding. The new Zulu King, Misuzulu ka Zwelithini, has intervened in the running of the entity, of which he is the sole trustee, instructing the chairperson of the Trust, Judge Jerome Ngwenya, to make public the finances and programme (Harper, 2023).

According to the 2019/20 Annual Report, the ITB received a qualified audit opinion because it did not disclose the complete amount of its irregular expenditure. The Board only disclosed an amount of R943 824, which it believed fell under the category of irregular expenditure and was submitted for auditing by AGSA. The Board contended that Section 55 (2)(b)(i) of the Public Finance Management Act (PFMA) did not require them to reveal the full extent of the irregular expenditure (Parliamentary Monitoring Group, 2021).

In the 2017 High Level Panel Report (HLPR, 2017), former President Kgalema Motlanthe strongly criticised the Trust, claiming that the king's control of land had resulted in the emergence of "unorthodox individuals, opportunistic politicians, a subservient bourgeoisie, and quasi-bantustan administrators" who had no obligation to organise and, in reality, reaped benefits from the current

state of affairs (Mabasa, 2019: 28). This was significantly impacted by the fact that rural residents continue to utilise and occupy land based on customary tenancy rights not covered by laws or records in writing (HLPR, 2017).

Many KZN communities impacted by mining expressed their displeasure in 2015 about the expansion of mining operations in their villages and the involvement of traditional leaders in this matter. Similar stories were reported in Fuleni and Makhasaneni by a few newspapers. Who owns the property, or more specifically, where do mining firms go to obtain permission to utilise the land when they arrive for the first time, is at the centre of these tales. Additionally, the government did not enforce the way mining development took place or ensure that mining companies properly consulted with local communities (Leonard, 2019:295). As the entity that grants surface leases to mining companies and the "owner" of the land, the ITB has been in the public eye of late. Concerns were expressed by community members regarding mining firms' lack of openness, lack of consultation, and violated promises. People complained about the disappearance of grazing fields, crumbling homes from mine blasting, limited employment opportunities, disrupted livelihoods, and affluent traditional leaders. King Zwelithini's key argument that traditional leaders should lead mining initiatives to ensure that the general public gains from them should be ingrained in everyone's memory. Despite all the concerns of the residents living in mining districts, the king believed that mining was vital for rural development (Buthelezi & Yeni, 2016).

Inkosi Thanduyise Mzimela of Golela and Ntshidi in the King Cetshwayo district has recently been chosen to serve as the Ingonyama Trust's new chairperson. Judge Jerome Ngwenya has been replaced by Mzimela, who was appointed by the late King Goodwill Zwelithini (Interviewees 2, 3 and 4 interviewed on 22, 27 and 28 April 2023 respectively). No officials are allowed to follow official directives given by the outgoing chairperson as there is now a new chairperson (Harper, 2023).

The decision by Zulu King Misuzulu ka Zwelithini to dismiss Ngwenya and replace him with Inkosi Thanduyise Mzimela has been rejected by ITB chairman Judge Jerome Ngwenya. Instead, Ngwenya, who held the position for more than 20 years, filed a lawsuit to have Land Reform, Agriculture, and Rural Development Minister Thoko Didiza's appointment of an interim board at the organisation overturned (Harper, 2023).

Professor Musa Xulu, chair of the Indonsa Yesizwe, a think-tank that supports the monarchy, stated that it was troubling that the current conflict is driven by individuals rather than by processes and procedures to support secure tenure and access to land for millions of people living in rural communities on land owned by the Ingonyama Trust.

Xulu indicated that the king encounters inadequate administrative support from personnel who are poorly qualified and inexperienced in managing his affairs, which hinders access to his diaries and restricts his capabilities. According to him, the monarch was in a state of isolation, acting independently, and exposed to significant vulnerability due to the lack of support from amakhosi. Xulu urged the provincial administration and amakhosi to fulfil their responsibilities by aiding the monarch and ensuring that he had the tools and assistance he needed (Newsroom Africa, 2023).

Inkosi Thanduyise Mzimela, who was proposed by Zulu King Misuzulu kaZwelithini to succeed as the ITB chairperson, will not assume the position, according to Ndou (2023). Prince Mangosuthu Buthelezi, founder of the IFP and prime minister of the Zulu nation, on Saturday, April 29 2023, indicated that when Inkosi Thanduyise Mzimela's appointment to the position of chair of the ITB was first announced, he asked for the nomination to be removed.

It is debatable whether the Ingonyama Trust is still necessary. The Trust, according to supporters, is crucial in defending rural residents' land rights and safeguarding traditional systems of government. Additionally, they emphasise that the Trust generates income that can be used to fund development programmes in rural areas (HLPR, 2017).

However, detractors contend that the Trust's actions have forced people off their land and favoured male rights holders over female ones (Leonard, 2019:291). Furthermore, there are worries that the Trust's mission may not be in line with the more general South African land reform and democratic governance principles. Some contend that a separate Trust is unnecessary, and that land administration should be handled by already-existing government structures. The way that traditional leaders currently manage the distribution of land in their regions suggests that they have a great deal of influence over those seeking land there. This makes rural residents, especially women who live in traditional authority regions, vulnerable. As a result, in rural regions, especially among women, vulnerable groups live in constant fear of being told to leave the land they are on if they disobey the

relevant traditional authority. Because of this, the problem of secure land tenure is crucial for rural development (Sibanda, 2022).

In 2018, the late King Zwelithini proposed collaborating with right-wing Afrikaner groups to resist the expropriation of land, describing the legislative and presidential advisory committees' recommendations as an attack on the Zulu people (Pather, 2018). The Land Reform Portfolio Committee of Parliament and the Department of Agriculture, Land Reform, and Rural Development played a more active role in managing the Trust after several unsuccessful audits, persistent irregular expenses, and administrative disarray. Consequently, the Committee opted to withhold funding for the Trust in the 2020/2021 fiscal year (Gerber, 2020).

The decision as to whether the Ingonyama Trust is still necessary will ultimately depend on several variables, including its effectiveness in defending land rights, its contribution to rural development, and its consistency with more general notions of democratic governance and gender equality.

Where to from here?

The Pietermaritzburg High Court ruled on June 11 2021 that the Trust had violated the Constitution and the law by signing residential leases with individuals who are legitimate landowners under Zulu customary law (UCT, 2021). Thirty years after supposedly guaranteeing the land rights of those living in common areas, the tenure reform policy has not yet produced any legislation.

According to Cousins (2021), the failure to enact the necessary legislation mandated by the Constitution is a significant stain on the track record of the African National Congress, the party in power. The main cause of this gap is primarily political, revolving around disagreements regarding the authority and responsibilities of traditional leaders in a democratic South Africa. Despite efforts by the parliamentary portfolio committee on traditional affairs, led by former president Kgalema Motlanthe, to draw attention to these issues related to abuse of power, no progress has been made. However, legal action against such misconduct has now proven successful, as the Court has instructed the Trust to return the funds it unlawfully obtained. Cousins (2021) goes on to state that the ruling provides backing to President Cyril Ramaphosa's initiatives to combat not only specific instances of state capture and corruption but also corruption in a broader sense.

Additionally, the ruling illuminates how Parliament has had minimal involvement in monitoring land-related matters, which exposes the insufficient transparency and responsibility of entities such as land trusts, and reveals the government's inadequacy in handling land management issues. The ruling also highlights how former ministers have shown little interest in restricting the actions of rural elites who act in their own interests.

Uncertainty surrounds the future of the Ingonyama Trust, which is the subject of continuing discussion and debate. To make the Trust more transparent, responsible, and consistent with broader land reform goals and democratic principles, some have urged that it should be changed or eliminated (Interviewees, 2, 3 and 4 interviewed on 22/28 and 27 April respectively; HLPR, 2017). The Ingonyama Trust Act legally grants land to traditional leaders, but it only applies to the Zulu monarch. This has caused some other traditional leaders to feel neglected and let down by the democratic government, as only the Zulu monarch is authorised to handle land matters for the Zulu people. To avoid appearing to favour one monarch over all others, it would be prudent for the South African government to extend the Ingonyama Trust Act No 3KZ of 1994 to all kingdoms in the country so that all monarchs are equally recognised and respected. However, if the Act is extended, the Trust or Board should not enter into residential leases with the true owners of the land, as this has been recently declared unlawful and inconsistent with the Constitution's principles (Mtengwane, 2021:49).

The late King Goodwill Zwelithini was very involved in the process, and it is worth noting that he even threatened violence in response to the Nhlapho Commission's actions. This Commission was created back in 2003 to resolve disputes over chieftainship and define what constitutes a "traditional community". Unfortunately, some of its conclusions did not support the Zulu monarchy's claims. When the 2017 High Level Panel released its findings, the king reacted in a way that showed he was trying to protect his interests as well as those of the monarchy. This is just one example of how he has acted to preserve his power and position (Kelly et al., 2021:540).

Conclusion

African people have a special bond with the land that they inhabit. For them, owning the land is not just about having a piece of property; it is about asserting a deep spiritual and physical connection with the

land itself. They feel that the land fundamentally belongs to them, and they see themselves as being deeply tied to it. This connection is a part of their identity, and it is something that they take very seriously. The land represents a tangible link to their past and their future. It is where they live, work, and play, and it is where they will be buried when they die. The land represents their identity and independence, and it is a valuable possession that they hold in high esteem.

For South Africa's indigenous communities, owning land is not just about having control over a generic piece of property. It relates to exercising a minimal level of sovereignty over the land they call home, and it is something that they see as being essential to their very identity as a people. The Ingonyama Trust has made an effort to protect the Zulu people's ancestral lands but has been unsuccessful in fostering local economic growth in rural areas where poverty is still common. The Ingonyama Trust Act 3 of 1994 needs to be reconsidered, since it frequently prevents rural development in places where growth and development are expected to occur.

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Chapter 9

The Unfinished Business and the Land Reform Question in South Africa: The Future of Traditional Leadership and Municipal Governance in Land Allocation and Management

Darlington Sibanda

Postdoctoral Research Fellow at the University of Cape Town

Abstract

Are the current functions of traditional authorities consistent with democratic principles in South Africa? Do current laws provide traditional authorities with unilateral decision-making powers over communal land? These are some of the prominent questions around land in South Africa, almost three decades after the inaugural democratic elections. This chapter unpacks some of the key arguments around traditional leadership and governance of rural land and the implications around land reform, allocation, and management. The primary objective of this chapter is to provide critical insights into how land administration provides traditional leadership with critical leverage for both gaining political leverage and a patronage system in rural communities under the communal land tenure system. Using examples from across the country, the chapter unpacks how the survival and resurgence of traditional authorities is largely based on land allocation resulting in contradictions and ambiguities with democratic principles as envisioned in the 1996 Constitution of South Africa. Overall, the chapter argues that the entanglement of political elites with traditional authorities, and the ambivalence displayed by the ANC-led government, subvert democratic principles as laid out in the Constitution. This results in a "bifurcated" state and widening of inequality, including failure to protect vulnerable groups such as women, and entrenching existing unequal power relations and patriarchal hegemony in areas under the control of traditional leadership. This chapter suggests reassignment and strengthening

rural land governance and management to municipalities to ensure that the land rights (including access and use) of all citizens are realised. Traditional institutions could play a supporting role with a special focus on building social cohesion and other ceremonial duties.

Keywords: Traditional leadership; municipal governance; customary land; power; land tenure; land reform; bifurcated state

Introduction

In December 2015, something unprecedented happened. A powerful traditional leader, the AbaThembu king from the Eastern Cape, began serving his sentence after an Eastern Cape High Court had initially sentenced him to 15 years for serious offences which included arson, kidnapping and culpable homicide, and defeating the ends of justice. The Supreme Court later reduced the sentence to 12 years imprisonment. This was based on crimes committed between 1995 and 1996 against the king's 'subjects' when he was the Paramount Chief of the AbaThembu. In the synopsis of evidence presented to the Supreme Court, which led to arson and kidnapping charges, "170 of Stokwana's goats and approximately 80 of his sheep were impounded at the instance of the appellant on the basis that they had strayed beyond their normal grazing area and had wandered onto restricted areas which had been cordoned off to enable them to recover from the previous years' grazing" (Supreme Court of South Africa, 2015: 19; Xaba, 2020). After partially paying the fine imposed, he struggled to settle the balance. Among other crimes, the king had "set fire to the houses, crops and livestock of subsistence farmers living within his jurisdiction, in full view of their families, because they resisted his attempts to have them evicted, or otherwise did not immediately comply with his orders" (Supreme Court of South Africa, 2015:19). In concluding the judgment, the Supreme Court judges were scathing: "His behaviour was all the more deplorable because the victims of his reign of terror were the vulnerable rural poor, who were dependent upon him [....] We are a constitutional democracy in which everyone is accountable and where the most vulnerable are entitled to protection" (Supreme Court of South Africa, 2015: 30).

This judgment demonstrated that everyone, including traditional leaders, is subject to the law and the Constitution (de Vos, 2015). In further clarifying this issue, as stated in Section 211 (1) of the South African Constitution, "(T)he institution, status and role of traditional leadership, according to customary law, are recognised, subject to

the Constitution" (Constitution of the Republic of South Africa, RSA, 1996:68; de Vos, 2015). Despite subsequent serious political pressure by CONTRALESA (Congress of Traditional Leaders of South Africa; the powerful body representing traditional leaders in the country), for the President of South Africa to pardon the king (Tau, 2019), the courts sent a clear message that there was no one above the Constitution. In what some might view as a "punishment" by the ruling ANC Government for failing to prevent his subsequent incarceration, the king joined the opposition Democratic Alliance in 2013 (Ndaba, 2019). President Ramaphosa went on to grant the king a special remission of sentence and he was released from prison in 2019. In another political twist, the king endorsed the Economic Freedom Fighters (EFF) in the recent local government elections, who in turn presented him with a car (Dayimani, 2021). The case brought into sharp focus the complex issues around land administration and land held under customary tenure in former Bantustans or homelands of South Africa. Cousins (2007) explains customary tenure as communal land tenure systems that are guided by principles and values anchored in customs that are often unwritten, socially acceptable, and deemed as traditional. In fact, the Presidential Advisory Panel on Land Reform and Agriculture (RSA, 2019: 36) recently articulated this question by traditional leadership: "*How to effect a constitutional injunction on tenure security while at the same time remaining respectful of, or without upending the traditional system*". It also shows how traditional leaders tend to use their influence over political leaders to ensure that their hold over their "subjects" is not weakened. There is clearly a contradiction posed by upholding the Constitution that, while it enshrines democratic principles, it also supports the functions of unelected and unaccountable traditional authorities. Key questions arise: What is the role of traditional leadership in land administration and governance in the former homelands? Are current functions in contradiction with the Constitution?

Secondary data sources with a specific emphasis on traditional authorities, municipal governance, land tenure reform and land reform were utilised. Data were accessed from Scopus, the Social Sciences Research Network (SSRN), ResearchGate and Google Scholar. Key terms used for the search were "land reform", "land tenure", "traditional authorities", "municipal governance" and "South Africa". Identification of these concepts was carried out from keywords, titles and abstracts. These research articles and documents were searched by Boolean operators to ensure a more focused search. In addition, South African case studies from the media and documents in the public domain were utilised to illustrate, as well as provide, evidence.

Research findings from outside South Africa, and ineligible subject areas, were excluded. Results were analysed using a thematic analysis approach. A thematic analysis is defined as "a method for identifying, analysing and reporting patterns (themes) within data". (Braun & Clarke, 2006:79).

This chapter begins by critically discussing the role played by traditional leadership in South Africa during colonial and apartheid periods. This helps to locate and frame how the current approaches have failed to address the land question as well as ensure tenure security for residents living in rural areas under the control of traditional authorities. This will be followed by a critical outline of the resurgence and consolidation of power by traditional authorities in former homelands. Through a documented review and examples of publicly available material, this chapter argues that attempts to incorporate traditional leaders in land administration and tenure governance are at variance with democratic principles.

Dispossession and Control: Traditional Leadership Under Colonial and Apartheid Periods

South Africa's history of land dispossession is extensively covered by several studies (Bundy, 1979; Davenport, 1987; Ngcukaitobi, 2018). As part of "formalising" the dispossession, reserves for African occupation were established by two pieces of legislation: the 1913 and 1936 Land Acts (Ntsebeza, 2003). The colonial and apartheid systems extended their control over conquered and dispossessed African people, who by now had been pushed into "reserves". For Mafeje (1971), the reserves were used by both colonial and apartheid authorities as a strategy to divide Africans, as they imposed the notion of "tribes". As a source of cheap labour, reserves became a critical injection in the development of capitalist South Africa, driven by the mining industry (Wolpe, 1972).

What is critical for this chapter is to demonstrate how both the colonial and apartheid systems went on to construct a dichotomous practice of direct and indirect rule, which persists in the democratic dispensation. Guided by what Smuts referred to as institutional segregation, the system attempted to restore native institutions while at the same ensuring the availability of labour for the growing economy through institutions of migrant labour (Mamdani, 1996). This resulted in a bifurcated state that "contained a duality: two forms of power under single hegemonic authority" (Mamdani, 1996:18). Mamdani (1996) further explains that direct rule manifested through

urban civil power which excluded black people from civil freedoms enjoyed by other races. In contrast, indirect rule referred to a rural tribal authority where "subjects" became part of a state-enforced customary order (Mamdani, 1996). Tribal authorities became extended arms of the colonial and apartheid state, thus initiating a system of indirect rule (Ntsebeza, 2013). While they did not own land, the colonial and apartheid administrations bestowed enormous power on both chiefs and headmen, which included land administration and judicial powers (Ntsebeza, 2006; 2013). "Permits to occupy' (PTOs) were allocated to rural residents who needed land, only through the approval of the magistrate (Ntsebeza, 2013). However, women's PTOs were only registered in the name of their husbands, resulting in tenure insecurity, especially after the passing of their husbands (Ntsebeza, 2013).
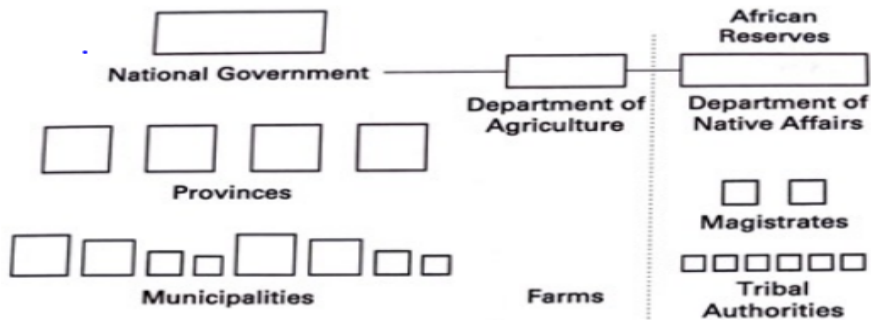
Figure 1: **Dual structure of direct and indirect rule** Source: Wittenberg (2006: 331)

Some of the tribal chiefs who had led the war of resistance were arrested and imprisoned on Robben Island (Ngcukaitobi, 2018), while some of them actively participated in the expansion and enforcement of apartheid policies and legislation in the former homelands (Hendricks, 1990). They were "recruited by the colonialists and architects of apartheid as junior partners in governing the majority" (Ntsebeza, 2013: 59). After they were defeated, some of the chiefs transformed from being leaders of resistance against colonialists, to become collaborators (Ntsebeza, 2013). Those who resisted lost their positions to "puppet" leaders who willingly submitted to the systems of the colonial and apartheid authorities (George, 2010). They "were used as puppets of the Bantustan canon" (Van Kessel & Oomen, 1997: 561). For the colonial masters, they became indispensable intermediaries, who

were to be given "additional prestige and authority" (Ribot 2001:18, cited in Ntsebeza, 2005). This did not only make them very powerful, but also made them appear legitimate (Ntsebeza, 2006).

It is important to also point out there was no homogeneity in the established land tenure system in the "reserves", which land became homelands (Bantustans). First, the phases as well as the approaches employed by both the Dutch (who later became known as Boers, an independent, self-governing group) and the British colonialists differed (Ntsebeza, 2013; RSA, 2019). In 1910, the Orange Free State and the Transvaal (so-called Boer Republics) together with the Cape and Natal (British colonies) formed the Union of South Africa. Inasmuch as some pockets such as ThabaNchu and BaFokeng had some form of individual tenure, this was broadly not permitted in the former Boer Republics (Davenport & Hunt, 1974). The former British colonies of the Cape and Natal had different approaches, with some in the Cape Colony possessing individual tenure (Davenport & Hunt, 1974; Ntsebeza, 2013). After the Union, the Natives' Land Act of 1913 had black Africans restricted to occupational rights in the reserves, while denying them legal access to land located elsewhere (Ntsebeza, 2013).

The passing of the Bantu Authorities Act of 1951 resulted in the formation of Tribal Authorities which placed traditional authorities in control of political hierarchy in rural areas. For Ntsebeza (2013: 60), the traditional authorities "became the primary level of rural local governance", including "a key role in the allocation of land". Thus, "control over the allocation of land became the main weapon that the chiefs and headman used to oppress and exploit rural residents" (Ntsebeza, 2013: 60). This led to some resistance in some parts of the former homelands, which was violently quelled (Kepe & Ntsebeza, 2011). As the population grew, access to land became limited and land that was initially demarcated for grazing became allocated for residential plots, resulting in more conflicts, as some rural residents resisted calls to cull their stock as the land became overgrazed (Ntsebeza, 2013). Thus, during apartheid, traditional leaders' responsibilities encompassed all aspects of rural life including political, military, spiritual and cultural; hence, they became principal overseers of the values in these societies (Bikam & Chakwiriza, 2014). This took place in more or less "decentralised" systems as shown in Figure 2 below.
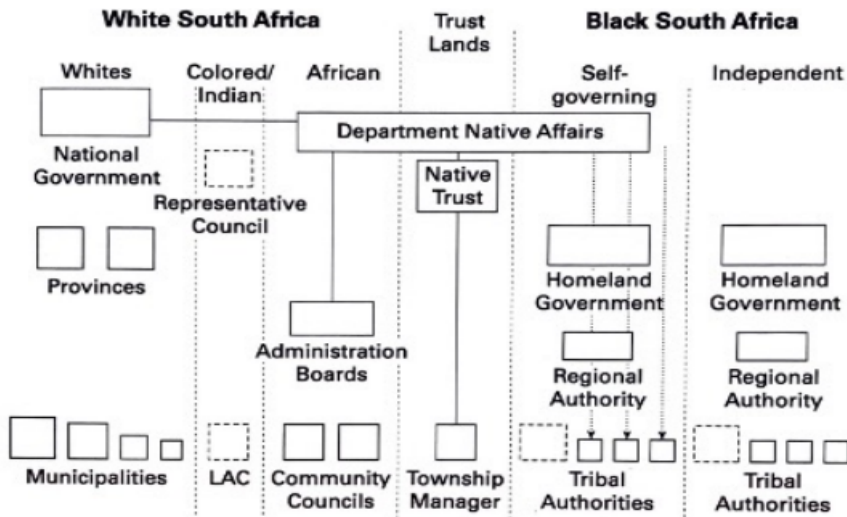
Figure 2: **Decentralised system of governance towards the end of apartheid.** Source: Wittenberg (2006)

Are traditional authorities an appropriate institution to administer land in democratic South Africa?

At the advent of democratic dispensation, South Africa was faced with a complex challenge. On the one hand the aspirations of both the interim and 1996 Constitution to promote human rights within the constitutional democracy, while on the other hand a complicated task to dismantle the entrenched system of tribal authorities. Yet, central to this scenario was the part played by traditional authorities in a democratic South Africa. As in other former colonies such as Zimbabwe, there were loud voices to completely dismantle the institution of traditional authorities (e.g., Ntsebeza, 2005; 2013; Ainslie & Kepe, 2016); others were calling for fully recognising the institution (e.g., Koenane, 2018) or integrating the institution within the municipal system (e.g., Selepe, 2009; Oomen, 2006). For this section, it may be important to revisit some of these debates in the context of land administration in democratic South Africa.

It is widely accepted that traditional leadership was a key governance system among many societies across the world. The democratic project is regarded as a foreign form of governance imposed by colonialists on African societies. According to Koenane

(2018), traditional leaders are not a "one-man-show", but a system that promotes consensus and ensures freedom of speech, both professed by so-called democratic principles. Thus, it is argued that prior to the arrival of colonialists, "Africa had participatory and direct democracy, free village markets, and free trade. Freedom of expression also existed in traditional societies" (Ayittey 1991: 18, in Ntsebeza, 2005). The challenge with this argument is that key proponents of traditional leadership assume the homogeneity of the system of traditional authority in the pre-colonial period. While the system of traditional leadership may have worked in some societies, this may not have been true in others. Koenane (2018) uses examples from the Sotho communities in South Africa, yet South Africa is made up of various ethnic groups that claim certain identities and customs. Sharing a similar language may not mean that the same communities have the same practices and beliefs. A case in point is in the Eastern Cape, where isiXhosa speakers include the Hlubi, Amaphondo and others, who all have differences in the way customs, traditions and norms are conducted. In addition, the dynamic nature of cultures, norms and customs does not seem to be taken into consideration. Another key argument advanced by proponents of promoting the role of traditional leadership is that as "an indigenous system of governance through traditional leaders, [it] is still regarded by many, especially those living in rural areas, as a better system than local government with its corruption and ineffectiveness in transforming lives and delivering services in tribal areas" (Koenane, 2018: 2). While it may be true that current local government officials are ineffective and corrupt, completely doing away with democratic principles may not be the best solution. In the introduction to this chapter, an example of how a traditional leader was convicted of serious offences is provided. Thus, the system of traditional leadership is not immune to similar challenges.

The proponents of completely doing away with the institution of traditional authorities argue that the system is undemocratic and does not serve "citizens", but "subjects" (Mamdani, 2006; Ntsebeza, 2005; 2013). Hendricks and Ntsebeza (2000) argue that it is "inherently undemocratic … [since] chiefs are not elected by popular vote but imposed on the basis of ascription and lineage and [because] there is very little chance of women becoming traditional authorities" (cited in Ainslie & Kepe, 2016: 20). This shows that traditional authorities are discriminatory based on gender and the likelihood is strong that residents who do not fall in the lineage will live as subjects in perpetuity. Using examples from the Francophone

experience, Ribot (2001:70) argues that traditional leaders are "not necessarily representative, legitimate, accountable, or even liked by the communities under their jurisdiction" (cited in Ntsebeza, 2005). In South Africa, the colonial and apartheid states made sure that the traditional authorities became an "extension" of their rule. Using the system of divide and rule, a two-fold policy of both ethnic pluralism and urban-rural division, the colonial authorities used the institution as a tool to control the colonised (Mamdani, 1996; Ntsebeza, 2005). Indirect rule was justified on the basis of "tradition" and forms of social organisation were "customary" (Ntsebeza, 2005). As pointed out in the earlier section, tribal chiefs were incorporated in such a way that they became collaborators with the oppressors of their "subjects". While these tribal chiefs were despotic, they still answered to their colonial masters through magistrates belonging to the colonial and apartheid authorities (Ntsebeza, 2005). Democratic South Africa inherited this dual system, which does not promote a common citizenship approach. Thus, the aspirations of the democratic project are not compatible with traditional authorities, which were inherited from the colonial and apartheid past. Thus, according to Bikam and Chakwiriza (2014), the role of traditional leaders was removed to an extent by Section 151 of the 1996 Constitution of the RSA, which established municipalities.

The proponents of the mixed government and co-existence approach suggest that it is possible for elected representatives to co-exist with traditional authorities and leaders (Selepe, 2009; Oomen, 2006). Englebert (2002: 346) argues "that the incorporation of traditional structures into democracy could improve governance of African states". One of the arguments advanced is that, as Ribot (2001, cited in Ntsebeza, 2005) opines, in areas under their jurisdiction, it is difficult to achieve anything without involving traditional authorities. Yet one can ask if this may be so because using the power gained before democracy, traditional leaders continue to manipulate the system to suit a scenario of "if not with us, then nothing for everyone else"? Proponents of this argument argue that a "mixed" government was possible where traditional institutions take an added (second) dimension of political space, "a dimension behind the sovereign state" because these domains do not compete with, but complement each other (Sklar, 1994: 1). In addition to this argument, rather than regarding traditional authorities as antagonistic to democratic principles, they play a complementary role (Sithole, 2005). Aspects of this proposition appear to have taken root as South Africa entered its first five years into democracy. While the initial stages were focused on building democratic institutions and promoting rights for all, pressure,

political lobbying and ambivalence by the ruling ANC government saw a shift towards strengthening and entrenching traditional institutions in a democracy.

Addressing the Land Question and Tenure Security in The First Decade of South African Democracy

The early years of the young democracy were characterised by a negotiated transfer of power at the national level as key political players worked towards a workable political compromise (Ainslie & Kepe, 2016). What followed was a period "in which the institutions, spheres and processes of governance were either amalgamated, reshaped or established for the first time" (Ainslie & Kepe, 2016: 21). These structures included the creation of provinces and elected local government authorities. During this time, the Government of National Unity (ANC-led) was committed to the dismantling of the "clenched fist" of tribal authorities by separating local government functions and powers, land administration and land ownership (Mamdani, 1996; Ntsebeza, 2006; 2013). For Mamdani (1996), prior to democracy, the tribal chiefs ruled the countryside with the so-called "clenched fists" of decentralised despotism. Dismantling of systems that operated under the colonial and apartheid periods was expected to be central to the post-apartheid democratic project (Ntsebeza, 2013). Most ANC leaders were clearly motivated by the aims of the Freedom Charter which stated that: "the People Shall Govern! Every man and woman shall have the right to vote for and to stand as a candidate for all bodies which make laws; All people shall be entitled to take part in the administration of the country" (ANC, 1955).

For Ntsebeza (2005), most rural residents expected that the newly elected councillors would be responsible for land allocation and governance, in keeping with democratic principles. Thus, the early years of democracy were characterised by aspirations of elected representatives and an era of accountability. Dealing with the land question, while simultaneously transforming the systems of governance, including the former homelands, were key priorities of the Government of National Unity in the democratic dispensation.

Policies were developed to guide the transformation of institutions and the legislative process. The ANC-led unity government recognised both the complexity and the urgency to address the question of land. In the White Paper on Land Policy (1997: 4), there was an acknowledgment that "the history of conquest and dispossession, of

forced removals and a racially-skewed distribution of land resources" had left the young democracy "with a complex and difficult legacy". According to the White Paper, "the racially-based land policies were a cause of insecurity, landlessness and poverty amongst black people, and a cause of inefficient land administration and land use tenure" (Department of Land Affairs, 1997: 4). Thus, the government's land reform was anchored on three key components:

> "Land Restitution: this involved returning land (or otherwise compensating victims) lost since 19 June 1913 because of racially discriminatory laws.
>
> Land Redistribution: made it possible for poor and disadvantaged people to buy land with the help of a Settlement/Land Acquisition Grant
>
> Land Tenure Reform: aimed to bring all people occupying land under a unitary, legally validated system of landholding". (Department of Land Affairs, 1997: 7).

As shown above, land tenure reform was critical and the democratic government needed to address insecure tenure situations specifically in former homelands. This was guided by Section 25(6) of the Constitution of the RSA, stating that a "person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress" (RSA, 1996:7) As pointed out earlier, apartheid had ensured that black people had not only been dispossessed of their land, but a tenure system was in place which was discriminatory and this created "a second class set off-register and largely informal forms of land occupation" (Parliament of the RSA, 2017: 257). This also included the customary law-derived rights, which involved group-based land tenures in the erstwhile Bantustans or homelands (Parliament of the RSA, 2017). The key challenge with the advent of democracy was to introduce policies and legislation that would redress legally insecure land tenure because of former race-based discriminatory laws and practices, according to meet the constitutional obligation (Ntsebeza, 2003). In line with this constitutional imperative, policies developed by the Department of Land Affairs explicitly stated that land rights should be vested in individuals who hold the land and not traditional leaders (Ntsebeza, 2013).

As pointed out earlier, rural residents held land in PTOs, which are not comparable to freehold title and do not provide them with legally secure titles (Ntsebeza, 2003). The earliest attempt to secure rights of tenure for people residing in the erstwhile homelands was an introduction of the Interim Protection of Informal Land Rights Act of 1996 (IPILRA) (Ntsebeza, 2003; 2013). This Act was passed to "provide for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith" (RSA, IPILRA, 1996:2). The IPILRA also provided an extensive process with regard to critical decisions affecting people with so-called informal rights including residents of former homelands (Claassens & Makopi, 1999). However, the HLP (Parliament of RSA, 2017) observed that due to the Parliament's failure to introduce comprehensive legislation, the IPILRA has been renewed annually since 1996.

While IPILRA sought to temporarily protect the rights of people living under informal rights, the introduction of the White Paper on Local Government 1998 (RSA, 1998) failed to clarify the role and functions of traditional leaders in the new dispensation. The White Paper on Local Government of 1998 established that the traditional leadership were to be assigned a role "closest to the people" and while this role related mostly to category B municipalities, it also applied to district municipalities (RSA, 1998:63; Ntsebeza, 2003). While the White Paper on Local Government of 1998 claimed that customary authorities played a developmental role in their communities, Ntsebeza (2003) argues that there was no evidence to back this claim; rather, past development projects in the rural areas were implemented by government line ministries. This claim by the White Paper on Local Government of 1998 was also contrary to what the Constitution of the Republic and the RDP had articulated, that elected local government structures will fulfil this role.

The passing of the Local Government: Municipal Structures Act (LGMSA) of 1998 established municipalities across the country, including the former homelands. The LGMSA of 1998, provided limited participation of traditional leaders in council meetings. It states that:

The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 10 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may so participate (Republic of South Africa, 1998: 56).

The LGMSA of 1998 further mandated the member of the executive (MEC) for local government to regulate the involvement of traditional leaders in the proceedings of municipalities, in consultation with the provincial House of Traditional Leaders (RSA, 1998). Clearly, in line with the Constitution of South Africa, the role of development in local government was given to elected officials, not traditional leaders. Traditional leaders were clearly unhappy with the LGMSA of 1998 as it threatened their power, resulting in furious lobbying and political pressure on the ANC-led government.

As the country geared towards the first local government elections, several draft bills on tenure were considered. For example, the 1999 Land Rights Bill sought to create new institutions that would empower land rights holders themselves to decide which authority or institution would administer land rights on their behalf (Ntsebeza, 2003). This clearly challenged the authority of traditional leaders as it sought to ensure accountability to the rights holders. When a new minister was appointed, a new draft Communal Land Administration Bill was unveiled as a compromise between traditional authorities and legal entities (Ntsebeza, 2003). Under this Bill, a somewhat democratic process would be led by either traditional authority or a legal entity involving community consultation, with the decision of the majority adopted. However, this was still not acceptable to traditional leaders, and a subsequent National Land Tenure Conference held in November 2001 in Durban could not resolve the issue around the role of traditional leadership (Ntsebeza, 2003). It is worth noting that these Draft Bills did not include land under the Ingonyama Trust in KwaZulu-Natal (Ntsebeza, 2003). Prior to the holding of local government elections, the ANC-led government made concessions with traditional leaders to amend the LGMSA of 1998. Inasmuch as this increased the representation of traditional authorities in local government from 10% to 20%, this was rejected by the traditional leaders. For Ntsebeza (2003: 87), traditional leaders wanted the LGMSA of 1998 scrapped and replaced with "old Tribal Authorities as primary local government structures". Clearly, land allocation was the key source of power and losing the ability to administer it meant that they also lost the power. While those within the movement committed to transforming rural governance were pushing ahead, the traditional authorities were "concerned with clinging to the benefits they'd under apartheid" (Ntsebeza, 2013: 71). Thus, by the late 1990s, the ANC began to gravitate towards a conservative and less democratic direction (Ntsebeza, 2013; Ainslie & Kepe, 2016).

Following years of dithering and ambivalence, attempts to "recognise" and clarify the functions of traditional leaders were made through the passing of the Traditional Leadership and Governance Framework Act (TLGFA) 41 of 2003 and the Communal Land Rights Bill (CLRB) of 2003. The TLGFA of 2003 sought to recognise traditional communities, the institution of traditional leadership, and the provision of functions and roles of traditional leaders (RSA, 2003). Ntsebeza (2005) criticised the passing of the TLGFA 41 of 2003 because it was an attempt to effectively resuscitate the powers enjoyed by the 1950 Bantu Authorities Act introduced under apartheid. It is important to note that the TLGFA 41 of 2003 was later amended in 2009 before finally being repealed by the Traditional and Khoi-San Leadership Act (TKSLA) 3 of 2019.

In addition, the CLRB of 2003 sought:

> to provide for legal security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for the co-operative performance of municipal functions on communal land (RSA, 2003: 2).

Inasmuch as the CLRB of 2003 was initially signed into law in July 2004, it never came into effect due to several challenges. According to the Bill, a community applying for title was supposed to institute a land administration committee that would represent the community owning the land. This committee could apportion land rights, keep records of rights and transactions, aid dispute resolution, and act as the liaison with local government bodies regarding land administration functions (Cousins, 2007). It recognised the authority of traditional councils in the administration and allocation of land in rural areas (Ntsebeza, 2005). After its passing into law in 2004, the Communal Land Rights Act (CLARA) was meant to provide clarity over land administration, by introducing a land administration committee that administered land that would have been transferred to "communities" (Bennett et al., 2013). A determination would then be made by the Minister regarding the location and amount of the land being transferred. The Bill failed to clearly define what constituted a community, with some submissions

by senior government officials who stated that they viewed populations under the jurisdiction of traditional leaders as communities (Cousins, 2007; Claassens & Cousins, 2008). The CLRB was opposed by civil society, and it was eventually struck down as unconstitutional. The Bill was also criticised for undermining the principle of equality through its favouring of traditional authorities (Claassens, 2005). For Claassens (2005: 43), the Bill entrenched past discrimination through "upgrading" and formalising "old order" rights held by men while "enhancing the powers of traditional leaders over land" and was subsequently likely to reinforce patriarchal power relations.

Dismantling the "Clenched Fist": Resurgence and Consolidation of Traditional Leadership in South Africa

As the introduction of some of the policies that promoted democratic principles appeared to be at variance with and somewhat subverting the authority and power enjoyed by traditional leaders in the previous dispensation, a consolidated "fightback" ensued. This is contrary to the widely held belief that they gradually declined and eventually faded away (Ainslie & Kepe, 2016). The ambivalence demonstrated by the ruling ANC government towards anti-democratic practices can partly be explained by the ruling party's notion of a "broad church", which has its roots in the struggle against apartheid. Through this notion, the ruling party was able to "accommodate big business and traditional authorities while at the same time appealing to radical and militant elements in the liberation movement, some of which were opposed to both capitalism and the institution of traditional leaders and its incumbents" (Ntsebeza, 2013: 71). This means that in order to govern the majority, the ruling party aimed to win the traditional leadership over. Yet, during the liberation struggle, the ANC did not have a clear-cut role for traditional leadership, and there was a belief that the institution would slowly die or be eventually abolished (Ainslie & Kepe, 2016).

Thus, at the advent of democracy, traditional leaders were envisaged to play a lesser political role; and through "recognising" them they would "oversee traditional matters, such as local succession debates, cultural heritage, ritual ceremonies and calendrical events, and the entrenchment of indigenous languages" (Ainslie & Kepe, 2016: 24). This went against traditional leaders who by now were well-organised and occupying influential positions within the ANC. In addition, former President Mandela was considered more accommodating and

sympathetic towards traditional leaders. They were now strategic allies in contesting state power (Ainslie & Kepe, 2016). Furthermore, the ruling ANC government made two concessions, which emboldened the traditional authority. First, in order to take away political control of Kwa-Zulu Natal from the Inkatha Freedom Party, the ANC government recognised and accommodated the Zulu monarchy at the provincial level, while the budget of his royal house was taken care of by the government (Ainslie & Kepe, 2016). The second concession, according to Ainslie and Kepe (2016), was the commitment to find a place for traditional authority at the local government level, with roles related to land reform and administration.

During this period, the growing unity of traditional authorities under CONTRALESA and the weakening of the rural civil society led to a surge in the power the traditional authorities could now wield (Ainslie & Kepe, 2016). The dysfunctionality of post-apartheid local authorities led rural communities to consider traditional authorities as the better option. This is because the traditional authorities were visible and available to assist when there was a need (Ntsebeza, 2006). There were sharp contrasts between squabbling, corrupt local councillors and "stately" and "dignified" traditional authorities (Ainslie & Kepe, 2016). After the removal of Mbeki, traditional authorities made huge gains "under the neo-traditionalist presidency of Jacob Zuma" (Ainslie & Kepe, 2016: 24). Under the Zuma presidency, traditional authorities were handled by a national department, signalling their prominence in the administration.

Not to be left out, traditional leaders enthusiastically participated in the Land Expropriation Without Compensation debate, where they largely supported a radical approach. They lobbied the ANC to exclude areas under their control from its land reform drive, despite HLP (Parliament of RSA, 2017) recommending reviewing some of the laws giving powers to traditional leadership around land administration. Speaking to the media, CONTRALESA General Secretary Zolani Mkiva stated: "There is the land which is under the stewardship of traditional leaders, which is referred to as communal land. We are saying that is already land in the hands of Africans...It is the little land that was left for the Africans to reside on, so that land is not up for grabs. It's not for expropriation" (Stoddard, 2018: no page). This shows a determination by the traditional leaders to either keep the status quo or amend the Constitution to give them more power and control over land beyond their jurisdiction.

What Is the Current Status of Rural Land Administration?

Earlier, this chapter mentioned that one of the key approaches to the land question as outlined in the White Paper on Land Policy (1997) was the reformation of the tenure system. The first land audit on land owned by the State, published by the Department of Rural Development and Land Reform (DRDLR) in 2013, revealed that most state land was unregistered and unsurveyed, occupied by individuals and communities in the former homelands (DRDLR, 2018). This land was under traditional authorities and characterised by insecure tenure.

Table 1:   Proportion of dwellings out of the formal tenure system

Location	Number of People	Proportion of the Population%
Communal areas	17 million	32.8%
Farm workers and dwellers	2 million	3.9%
Informal settlements	3.3 million	6.3%
Backyard shacks	1.9 million	3.8%
Inner City buildings	200, 000	0.38%
RDP Houses – no titles	5 million	9.6%
RDP houses – titles inaccurate or outdated	1.5 million	3.0%
TOTAL	**30.72 million**	**59.7%**

Source: Hornby et al. (2017: 8); Sibanda, (2018)

Table 1 above shows a huge majority of rural residents (32,8%) of South Africa living on land classified as communal areas. This is significant, as these rural residents do not enjoy secure tenure rights as other citizens do. As "subjects" of traditional leaders, the land on which they live is controlled and administered by traditional leadership with little or no choice.

One recent suggestion on the role of traditional authorities in the administration of land and rural governance is the proposal for the "wagon wheel" model. The Communal Land Tenure Policy (CLTP) proposed a "wagon wheel" model (Figure 3) to represent communal land tenure arrangements (DRDLR, 2013; Sibanda, 2018). According to the DRDLR (2013: 20), "this system completes the circle of land rights, authority and responsibility on the one end, production discipline, household food security and a basis for investment on the

other and collectively, the overall rural economic transformation these engender".
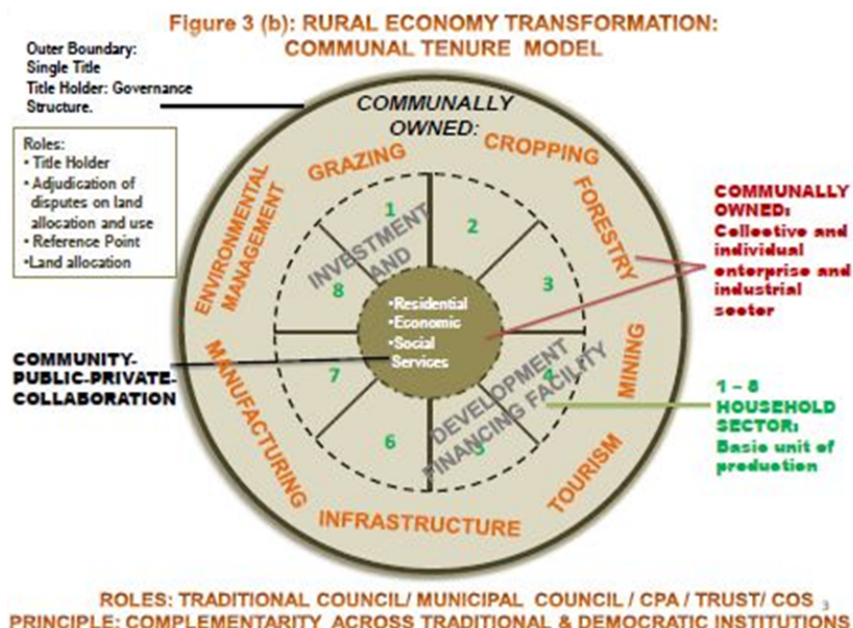
Figure 3: The wagon wheel model. Source: DRDLR, (2013)

One of the key challenges with the model is that it fails again to really specify what roles are occupied by traditional authorities in a democracy. Assuming that elected institutions such as local government will simply "cooperate" and work with traditional leadership is unrealistic. Still, there is a tendency to gravitate back towards the dual system that existed during the colonial and apartheid systems. The model further complicates a complicated system. Thus, as Ntsebeza (2013: 56) argues, post–1994 the democratic project is "not only compromised, it seems to have been dumped, particularly for those residing in the rural areas...". One may argue that at the core of this is the fear that challenging traditional authorities may be akin to "political suicide". Indeed, most of the traditional leaders already occupy various positions in the structures of the ruling ANC government which include members of parliament, executive and others (e.g., Ainslie & Kepe, 2016). It is within these platforms that they lobby and push for policies and laws that maintain and entrench the power they already wield.

In the same year the DRDLR proposed the "wagon wheel", the Spatial Planning and Land Use Management Act (SPLUMA) was passed in parliament, coming into force in July 2015. SPLUMA is a spatial transformative planning law in South Africa that sought to replace apartheid's fragmented and segregatory planning laws (Maluleke, 2017). SPLUMA recognises and provides for Traditional Councils, including roles such as participating in planning matters in areas under traditional authorities (RSA, 2013). However, traditional leaders keep pushing back at the legislation because, in their view, it takes away their powers to manage land (Louw, 2021). SPLUMA has also been criticised for giving traditional councils wide-ranging powers around allocation of land and planning and use (Louw, 2021). In addition, there is generally no accountability because most of the traditional councils have been found not to meet requirements, such as those that concern gender and elected members. In situations where municipalities, traditional councils and communities do reach consensus on land planning and management, there is no clarity on how this should be resolved (Maluleke, 2017).

The Traditional and Khoi-San Leadership Act, 3 of 2019 (TKLA) was passed into law more recently and came into effect on 01 April 2021. While the TKLA sought to include Khoi-San leaders in official structures for traditional leadership, it also replaced the TLGFA of 2003 as the law that recognised and regulated traditional leadership structures in South Africa (RSA, 2015). Civil society has largely rejected the law for "effectively bringing back apartheid Bantustans" (Gerber, 2019). According to Claassens and O'Regan (2021: 155), "(d)uring the 1950s and 1960s, a central plank of grand apartheid policy was to consolidate these reserves into ten 'homelands' or bantustans delineated according to the main African language groups in South Africa–Zulu, Xhosa, Ndebele, Swazi, Sotho, Tswana, Pedi, Tsonga and Venda". Civil society argued that TKLA continued to reinforce and entrench the tribal divisions and undemocratic principles common under apartheid. The TKLA was again declared unconstitutional by the Constitutional Court because Parliament "overwhelmingly failed in facilitating public participation" (Broughton, 2023). This demonstrates that the issue is complex and far from over.

Furthermore, a recent study found that the process of tenure formalisation had resulted in the rise of informal "land markets", "characterised by corrupt exchanges and is out of reach for the poor and vulnerable, especially women" (Zamchiya, 2023: 3). The study found that around 7 in 10 of the respondents who had managed to acquire

domiciliary plots or arable land during the 10 years covered by the study, had paid cash for it to a traditional authority or individual. Another key finding of the study was that 49.8% of the households under customary land in South Africa felt there had been increased conflict over land in the past 10 years. Some of the causes of these conflicts were "double allocations of the same parcel; access to common property resources; boundary conflicts; inheritance conflicts; divorce disputes; disputes with new settlers and returnees; eviction by the state and private investors, and gender-based conflicts" (Zamchiya, 2023: 5). Some of the recommendations of this study include the provision of more explicit legal and social recognition of tenure by rural residents as well capacitation of state institutions responsible for formulation of laws and policies. In addition, the study recommended the promotion and strengthening of women's land rights in the former homelands. This shows that issues linked to land under the jurisdiction of traditional authorities are complex and far from over.

Conclusion

The introduction of this chapter provided an unfortunate account of crimes committed by one of the traditional leaders against rural residents. This is obviously not an isolated event. One may argue that similar incidents may be occurring but may not be reported or do not attract media attention. This demonstrates that as South Africa completes three decades since the advent of democracy, rural residents still do not enjoy the benefits of the democratic project. The ambivalence of the ANC-led government, the consolidation of power by traditional leaders, and arguably the weakening of rural civil society, means the land question in rural areas under traditional authorities remains at a stalemate. As demonstrated, traditional leaders in South Africa will not give up power, especially when it comes to land allocation and administration. One of the recommendations by the HLP (Parliament of the RSA, 2017: 254) is that there is "a need for a new form of land right that is not ownership, and is not leasehold, but that is secure and administered properly – internally and externally – by the CPA (Communal Property Association) Registrar, by the local municipality and by the Deeds Office". It is through recording, proper administration and recognition of right holders that tenure security for rural residents under traditional leaders' jurisdiction can be achieved. It is in the interests of everyone, including current traditional leaders, that the recognition and rights of all citizens can be achieved. If completely removing traditional authorities from land custodianship

and administration may not work now, perhaps a new consensus and social compact may need to be defined. This requires strong political will and leadership, accompanied by effective and competent elected local leadership.

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Chapter 10

The Future Of Enhancing Land Tenure and Management Collaboration Between Local Governments and Traditional Leader Land Trusts in South Africa

Henry Wissink and Purshottama Reddy

School of Management, IT and Governance, UKZN

Abstract

The future of resolving land tenure and management in South Africa requires a balanced and inclusive approach that recognises the potential of traditional leader land trusts. These trusts can address challenges, promote equity, and ensure robust governance structures, thereby achieving land tenure security, sustainable development, and cultural preservation. Strategic collaboration between traditional leaders, communities, government agencies, and civil society organisations is crucial to unlock the potential of traditional leader land trusts and create a brighter future for all South Africans. This final chapter explores the complex and challenging issue of resolving land tenure and management within the context of traditional leader land trusts in South Africa, considering historical context, philosophical perspectives on land ownership, the current state of land ownership and tenure, and the need for sustainable and equitable land management. It highlights the opportunities and benefits of traditional leader land trusts, such as preserving cultural heritage, empowering communities, and promoting sustainable land management. It also addresses the challenges and concerns, including democratic principles, land rights conflicts, and capacity building. The potential outcomes of successful implementation of traditional leader land trusts include increased land tenure security, sustainable development and economic opportunities, and social cohesion and reconciliation. The chapter summarises salient issues raised in the previous chapters, and also describes the importance of reconciling the differences between formal local authorities and traditional leader

structures for effective land management and suggests steps to foster collaboration and dialogue between these entities. It also makes recommendations to manage and fast-track these solutions within the provisions of SPLUMA, to grant municipalities the authority to oversee land utilisation within their jurisdiction, and to guarantee compliance with zoning regulations and authorised construction blueprints.

Keywords: Local government, land security and tenure, traditional leader land trusts, philosophy of land ownership, sustainable land management, SPLUMA.

Introduction

The future of resolving land tenure and management in South Africa lies in a balanced and inclusive approach that recognises the potential of traditional leader land trusts. By addressing challenges, promoting equity, and ensuring robust governance structures, these trusts can serve as valuable mechanisms for achieving land tenure security, sustainable development, and cultural preservation. Strategic collaboration between traditional leaders, communities, government agencies, and civil society organisations is essential to unlock the potential of traditional leader land trusts and create a brighter future for all South Africans. The future of resolving land tenure and management within the context of traditional leader land trusts in South Africa is therefore a complex and challenging issue. There are a number of factors to consider, including the historical context of land ownership and dispossession, the current state of land ownership and tenure, the role of traditional leaders, and the need for sustainable and equitable land management. Valuable lessons from similar continental experiences are important and such experiences can be employed in order to avoid blunders or to build on future approaches in South Africa (Akinola & Wissink, 2019; Hayley et al., 2021; Nyoni, 2013; Whittal, 2014).

The Philosophies and Policies Related to Land Ownership

The philosophy of land ownership encompasses various perspectives and theories regarding the ethical, social, and economic dimensions of how humans relate to and interact with land. Different philosophical frameworks and ideologies shape these perspectives, and they can vary across cultures, historical periods, and legal systems. The section

below will explore some key philosophical and historical perspectives on land ownership.

Lockean theory of property – Natural Rights Theory

John Locke's theory of property is a foundational concept in liberal political philosophy. According to Locke (1689), individuals have a natural right to private property through their labour and the mixing of their labour with the resources of the land. He argued that by exerting effort and transforming natural resources into valuable goods, individuals acquire ownership rights over them. This theory emphasises the importance of individual rights and the role of labour in the acquisition of property.

Utilitarian perspective

Utilitarianism, associated with thinkers like Jeremy Bentham (1789) and John Stuart Mill (1861), focuses on maximising overall well-being or utility for the greatest number of people. From a utilitarian perspective, land ownership should be structured and regulated in a way that maximises societal welfare. This could involve considerations such as the efficient use of land resources, equitable distribution of benefits, and minimising negative externalities (SEP, 2014).

Indigenous and communitarian views

Indigenous philosophies often emphasise collective land ownership and stewardship. These perspectives reject the notion of land as a commodity and prioritise the interconnectedness between humans, nature, and ancestral heritage. Communitarian theories, more broadly, emphasise the importance of community and social cohesion in land ownership and management. They argue that land should be held collectively, and decisions regarding its use should be made through participatory processes that reflect communal values and priorities. These perspectives and views are clearly articulated in the approach to this text and in particular the paper of Branson (2016), and the legal acknowledgement of traditional leadership and communal land rights in South Africa (RSA, 2003, 2004, 2013, 2014).

Georgist perspective

Henry George, an American economist, advocated for a single tax on land as a means to address economic inequality and promote social

justice. According to the Georgist perspective, land is a common heritage of humanity, and individuals should pay rent or tax for exclusive use of land. This approach aims to capture the unearned value of land and redirect it for the benefit of the broader community (George, 1879).

Ecological and conservation ethics

Ecological and conservation ethics consider land ownership within the context of environmental sustainability and the protection of natural ecosystems. These perspectives prioritise the preservation of biodiversity, ecological balance, and the long-term health of the planet. They argue for responsible land stewardship, recognising that humans are interconnected with the natural world and have a moral obligation to protect and sustain it. Conflicts between the two priorities can occur, and therefore "all countries driving transitions may face a two-front legal battle where powerful corporations are suing them for property rights and citizens for environmental rights". It is the contention that "courts and tribunals must reformulate property law as well as trade and investment law to assimilate environmental concerns" (Lähteenmäki-Uutela et al., 2021).

Marxist theory

Marxist philosophy views land ownership as a product of social relations and class struggle. According to Marx, land ownership is closely tied to the capitalist mode of production and the exploitation of labour. Marxist perspectives call for the abolition of private ownership of land and the collective ownership of means of production, including land, for the benefit of all members of society (Marx & Engels, 1848).

Existing legal and institutional frameworks

Existing land ownership is therefore shaped by these philosophical approaches and legal and institutional frameworks that vary across different jurisdictions and historical contexts. These frameworks reflect the history, values and priorities of specific societies and may aim to balance individual rights, social welfare, environmental considerations, and historical justice. It is important to note that these perspectives are not mutually exclusive, and there can be overlapping elements and complexities in real-world land ownership systems. The South African case is a good example; that is, a result of the merging of colonial-influenced philosophies and policies with the establishment

and maintenance of indigenous communal land use practices, as well as legal establishments, such as the Ingonyama Trust in KwaZulu-Natal, as detailed by Ngema and Reddy in Chapter 8. The philosophy of land ownership continues to evolve as societies grapple with issues such as sustainable development, indigenous rights, and social justice, highlighting the ongoing need for thoughtful reflection, dialogue, and inclusive decision-making processes (Whittal, 2016; Branson, 2017; Kepe & Hall, 2018; Klaaren & Van der Walt, 2017).

The Historical Context of Land Dispossession in South Africa

The historical context of land dispossession in South Africa is a critical factor to consider when thinking about the future of land tenure and management. The 1913 Natives Land Act limited African land ownership to 7% of the country, and this policy was further entrenched by the apartheid government. As a result, millions of black South Africans were forcibly removed from their land and relocated to homelands, which were often underdeveloped and overcrowded. According to Mutereko and Olufemi (Chapter 4), this legacy of land dispossession has had a profound impact on South African society, and continues to shape the way that land is owned and managed today (Wissink, 2019).

The current state of land ownership and tenure in South Africa as highlighted by Reddy, Wissink and Kariuki in Chapter 1, is also a complex issue. The government has made some progress in land reform, but there is still a long way to go. The majority of land in South Africa is still owned by white South Africans, and black South Africans are disproportionately represented among the landless. This inequality is a major obstacle to economic development and social justice in South Africa, and the need for spatial justice and land use planning, especially in the urban context, is critical (Swanepoel, 2020).

Traditional leaders play an important role in land tenure and management in South Africa. Traditional leaders are responsible for administering land that is held in trust for their communities. They also play a role in resolving disputes over land ownership and use. However, as pointed out by Mayisa in Chapter 2, the role of traditional leaders is often contested, and there is a debate about how to best integrate and involve traditional leadership into the modern South African state (Bikham & Chakwizira, 2014).

The need for sustainable and equitable land management is another important factor to consider when thinking about the future

of land tenure and management in South Africa. Land is a finite resource, and it is important to ensure that it is used in a sustainable way. It is also important to ensure that land is managed in an equitable way, so that all South Africans have access to land and the resources that it provides is in line with land reform and the strategic framework (DRLR, 2019).

The future of resolving land tenure and management within the context of traditional leader land trusts in South Africa is a complex and challenging issue. There are a number of factors to consider, and there is no easy solution. However, it is important to continue to have a national conversation about this issue, and to find ways to address the legacy of land dispossession, promote economic development, and ensure social justice for all South Africans (Ncube & Hall, 2015).

As highlighted in many preceding chapters, land tenure and management in South Africa have been subjects of considerable debate and challenges since the country's colonial history. The legacy of apartheid and forced dispossession of land has resulted in complex land-related issues, with land tenure rights being a significant concern (Posel & Hall, 2011). In recent years, the concept of traditional leader land trusts has gained attention as a potential solution for resolving land tenure and management disputes.

Understanding Origins of Land Trusts

Traditional leader land trusts refer to the communal land governance systems led by traditional leaders, who act as custodians of the land and make decisions on behalf of their communities. These trusts are rooted in the country's rich cultural heritage and are recognised by legislation such as the Traditional Leadership and Governance Framework Act of 2003 (RSA, 2003). Traditional leader land trusts offer a potential avenue for addressing land tenure and management issues while incorporating customary laws and practices (Branson, 2016).

Opportunities for Resolving Land Tenure and Management

It is the contention of the authors of this text and this final chapter, based on the contributions in this text, that the following needs to be considered. This chapter continues to explore the future of resolving land tenure and management within the context of traditional leader land trusts in South Africa, considering the opportunities, challenges,

and potential outcomes, and proposes the following actions and strategies:

Preservation of cultural heritage

Traditional leader land trusts provide an opportunity to preserve and promote indigenous cultures, customs, and practices. By recognizing the authority of traditional leaders and involving local communities in decision-making processes, these trusts can contribute to the maintenance of cultural identities associated with the land.

Community empowerment and participation

Traditional leader land trusts can empower local communities by giving them a voice and agency in land-related matters. Including community members in decision-making processes can foster a sense of ownership and enhance local participation in land management, leading to sustainable and inclusive development.

Sustainable land management

Traditional leader land trusts can promote sustainable land management practices by drawing on the deep knowledge of the land and ecosystems held by local communities. This approach recognises the interconnectedness between people and the environment, leading to environmentally conscious land use and resource conservation.

The Role of the Spatial Planning and Land Use Management Act (SPLUMA)

The Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013 (RSA, 2013) as highlighted in many preceding chapters (notably Nzimakwe in Chapter 5; Msuya in Chapter 3; and Mutereko and Olufemi in Chapter 4) comprises legislation in South Africa that governs spatial planning and land use management. It aims to provide a framework for integrated and sustainable land use planning, promote equitable access to land, and facilitate coordinated decision-making processes. SPLUMA establishes a system of spatial planning that considers social, economic, and environmental factors to guide land development and management. It outlines the roles and responsibilities of various stakeholders, including government authorities, landowners, and communities, in the planning and decision-making processes. SPLUMA emphasises the importance of public participation, transparency, and

accountability in land use management, aiming to balance competing interests and ensure the efficient and equitable use of land resources.

Simplify language and terminology

SPLUMA legislation can be complex and filled with technical language. Simplifying the language and using plain, understandable terms can make the law more accessible to a broader range of stakeholders, including communities, landowners, and small-scale developers.

Provide translations and local language versions

Translate SPLUMA into various local languages to cater to diverse linguistic communities across South Africa. This will ensure that individuals who are not proficient in official languages can understand their rights and obligations under the legislation. Providing local language versions of SPLUMA will also promote inclusivity and encourage participation.

Develop user-friendly guides and summaries

Create user-friendly guides and summaries of SPLUMA that distil the key provisions and processes into a concise and easily understandable format. These guides should include practical examples, visual aids, and step-by-step instructions to assist users in navigating the legislation.

Online resources and digital platforms

Establish dedicated online resources and digital platforms where individuals can access information and resources related to SPLUMA. These platforms can host downloadable versions of the legislation, frequently asked questions, case studies, and relevant forms and templates. The platforms should be user-friendly, searchable, and regularly updated to ensure the information remains current.

Training and capacity building

Organise training sessions, workshops, and capacity-building programmes to educate stakeholders about SPLUMA. These initiatives can target various groups, such as government officials, planners, landowners, and community leaders. Training should focus on interpreting and implementing SPLUMA, ensuring that stakeholders understand their rights and responsibilities under the legislation.

Public Awareness Campaigns

Launch public awareness campaigns to increase knowledge and understanding of SPLUMA among the general public. These campaigns can involve media outreach, community engagement events, and the dissemination of informational materials. Engaging with community-based organisations, civil society groups, and local media can help amplify the reach and impact of these campaigns.

Collaboration with stakeholders

Involve key stakeholders, including government agencies, municipalities, professional associations, and civil society organisations, in the process of making SPLUMA more accessible, as advocated by Msuya in Chapter 3 and Khambule in Chapter 6. Collaborative efforts can lead to the development of comprehensive resources, guidelines, and tools that address the specific needs and challenges faced by different sectors.

Localised Implementation Support

Recognise the regional and local nuances in implementing SPLUMA and provide localised support to municipalities and communities. This can include training programmes tailored to specific regions, mentorship initiatives, and peer-to-peer knowledge-sharing platforms.

Continuous Evaluation and Improvement

Regularly evaluate the effectiveness of the accessibility measures put in place for SPLUMA and make necessary improvements based on feedback and monitoring. Conducting impact assessments and soliciting input from users will help identify areas where further enhancements can be made. By implementing these strategies, SPLUMA can become more accessible and user-friendly, enabling stakeholders across South Africa to better understand and comply with the legislation. Improved accessibility will contribute to effective spatial planning and land use management, fostering sustainable development and equitable land governance.

Feedback mechanisms

Establish mechanisms for receiving feedback, suggestions, and queries from stakeholders regarding SPLUMA. This can be done

through dedicated helplines, email addresses, or online feedback forms. Promptly addressing concerns and providing clarifications will enhance transparency and foster trust in the accessibility of SPLUMA.

Recognition and Management of Dual Governance Systems

Acknowledge and recognise the legitimacy and roles of both formal local authorities and traditional leader structures in land management. This recognition should be enshrined in legislation and policies, emphasizing the importance of cooperation and shared decision-making.

Dialogue and consultation

Facilitate regular and structured dialogue between formal local authorities and traditional leaders. This can be achieved through forums, joint committees, or platforms that allow for open and inclusive discussions on land management issues. Engaging all relevant stakeholders, including community representatives, will ensure diverse perspectives are considered.

Clarify roles and responsibilities

Establish clear guidelines and frameworks that delineate the roles and responsibilities of formal local authorities and traditional leaders in land management. This should include defining their respective powers, decision-making processes, and areas of jurisdiction. Clarity on these matters will help prevent overlapping or conflicting mandates and reduce potential tensions.

Collaborative decision-making

Encourage collaborative decision-making processes that involve both formal local authorities and traditional leaders. This can be achieved through joint planning, policy development, and implementation processes. Engaging in participatory approaches, such as community consultations and consensus-building, can help foster a sense of ownership and shared responsibility among all stakeholders.

Incorporate Customary Law into formal systems

Explore mechanisms for integrating customary law principles and practices into the formal legal system. This can involve

legislative reforms that recognise and incorporate customary laws in land management processes while ensuring compatibility with constitutional rights and principles.

Mediation and dispute resolution mechanisms

Establish mediation and dispute resolution mechanisms that can be utilised when conflicts arise between formal municipal and traditional leaders. These mechanisms should be impartial, transparent, and accessible to all parties involved. Mediation can help find mutually agreeable solutions and bridge the gaps between different perspectives.

Strengthening governance and accountability

Promote transparency and accountability in land management processes by developing robust governance mechanisms. This includes implementing checks and balances, ensuring fair and inclusive representation, and establishing accountability measures for both formal municipalities and traditional leaders.

Challenges and Concerns

There are however challenges and concerns in the manner in which this matter needs to be addressed. They are related to the following:

Maintaining democratic principles and equality

Critics argue that traditional leader land trusts might undermine democratic principles and perpetuate inequality. Concerns are raised regarding gender disparities (underscored by Dlamini in Chapter 7), exclusion of marginalised groups, and limited accountability mechanisms within these trusts. It is essential to address these challenges to ensure fair and equitable land tenure and management.

Resolving land rights and conflicts

Resolving land tenure issues within traditional leader land trusts requires balancing customary laws and constitutional rights. Clashes may arise between communal ownership and individual land rights, necessitating careful navigation and legal frameworks that protect the interests of all stakeholders.

Potential Outcomes of this Approach

The following potential outcomes need to be pursued and secured as part of this process:

Increased land tenure security

Traditional leader land trusts can offer a pathway to enhance land tenure security, particularly for rural communities. Clearer ownership rights, supported by legal recognition and improved governance mechanisms, can help prevent land disputes and protect the interests of communities.

Sustainable development and economic opportunities

By empowering local communities and promoting sustainable land management practices, traditional leader land trusts can create opportunities for economic development. This includes initiatives such as ecotourism, agroecology, and community-based enterprises, which can contribute to poverty alleviation and overall socio-economic progress.

Social cohesion and reconciliation

Successful implementation of traditional leader land trusts has the potential to foster social cohesion and reconciliation within diverse communities. By acknowledging the historical injustices and involving all stakeholders in decision-making processes, these trusts can contribute to healing the wounds of the past and building a more inclusive and united society. Reconciling the differences between formal municipalities and traditional leader structures is crucial (as emphasised by Darlington Sibanda in Chapter 9) for effective land management and resolving land-related issues in South Africa. The following are some key steps that can be taken to foster reconciliation and promote collaboration between these entities.

Continuous Monitoring and Evaluation

Regularly monitor and evaluate the effectiveness of reconciliatory efforts and collaboration between formal municipalities and traditional leaders. This will help identify gaps, challenges, and areas for improvement. Feedback from affected communities and

stakeholders should be actively sought and incorporated into decision-making processes.

Engaging civil society and external expertise in the process

Involve civil society organisations, academia, and experts specializing in land management, governance, and conflict resolution. Their knowledge and experience can contribute to the reconciliation process, providing neutral perspectives and technical expertise. Reconciling the differences between formal municipalities and traditional leaders requires a long-term commitment, open-mindedness, and a willingness to find common ground. By working together and respecting the contributions of each entity, South Africa can develop effective land management systems that promote sustainable development, social cohesion, and equitable land tenure for all.

Conclusion and Summary of Recommendations

Specific suggestions are proposed on how to resolve land tenure and management issues in South Africa: There are many other things that can be done to address the issue of land tenure and management in South Africa. It is important to continue to have a national conversation about this issue, and to find ways to work together to create a more just and equitable society.

· The government should continue to make progress in land reform, and should focus on redistributing land to South Africans who were dispossessed during the apartheid era.
· The government should work with traditional leaders to develop a new system of land administration that is both traditional and modern.
· The government should promote sustainable land management practices, and should provide financial and technical assistance to farmers and communities who are working to conserve land and natural resources.
· The government should ensure that all South Africans have access to land and the resources that it provides.
· The current land tenure system is complex and fragmented, and it has led to a number of problems, including landlessness, poverty, and environmental degradation. New legislation could help to address these problems by:
· Clarifying land rights and tenure.
· Streamlining the land reform process.

- Promoting sustainable land management practices.
- Ensuring that all South Africans have access to land and the resources that it provides.

However, it is important to note that new legislation will not be enough to solve the problem of land management in South Africa. There also needs to be a change in mindset and a commitment to working together to create a more just and equitable society.

Here are some specific examples of how new legislation could improve land management in South Africa:

- A policy framework that clarifies the rights of customary landholders. This would help to prevent disputes over land ownership and use, and it would give customary landholders more security of tenure.
- A policy framework that streamlines the land reform process. This would make it easier for people to access land, and it would help to reduce the time and cost of land reform.
- A policy framework that promotes sustainable land management practices. This would help to protect the environment and ensure that land is used in a sustainable way.
- A policy framework that ensures that all South Africans have access to land and the resources that it provides. This would help to reduce poverty and inequality, and it would create a more just and equitable society.

It is important to note that these are just a few examples, and there are many other ways that new legislation could improve land management in South Africa. The key is to find solutions that work for all South Africans, and to create a more just and equitable society.

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