

Local Government and Traditional Leadership

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Xavia Poswa

University of the Western Cape

This Webinar

- Brief history of Traditional leadership before and after 1994
- Policy statements on the intersection
- Recognition and role of Traditional leadership in the 1996 Constitution
- 2 pieces of legislation that deal with the role of Traditional leadership
 - Traditional and Governance Framework Act of 2004
 - Spatial Planning and Land Use Management Act of 2016
- Conclusion

History of Traditional leadership before and after 1994

- Before 1994, various traditional and regional authorities performed governmental functions in the former homelands.
- Most traditional leaders were “captured” by the apartheid regime or collaborated with it in implementing its laws and policies.
- However, with the advent of democracy, debates about the role of traditional leadership began to emerge. **Why?**

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- Also, there were debates about the transformation and role that local government should play. **Why?**
- Role of local government in the implementation of racial segregation. **Through its planning powers.**
- Since 1994, local government has undergone gradual democratisation with elected municipal councils performing functions previously executed by Traditional leaders. **Implications of this?**

Recognition and Role of Traditional Leadership in the 1996 Constitution

- The 1996 Constitution in terms of section **S 211(1) and (2)**
- recognises the institution of traditional leadership. It also recognises the customary law that traditional leaders practice and observe, but places it subject to the Constitution.
- Unlike local government, the role of traditional leaders is not set out in the Constitution.
- Instead, the Constitution in terms of section **212** anticipates that Parliament will adopt legislation to that effect.

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- Many of the functions performed by traditional leaders intersect with local government functions.
- White Paper on Local Government addressed the **intersection**
- “traditional leaders acting as the head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers. Also, traditional leaders would make recommendations on land allocations and settle land related disputes . References
- Page numbers”

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- White Paper on Traditional Leadership was issued in 2003
- Attempted to define the roles that the institution of traditional leadership may play in democratic South Africa.
- TL can play a key role in 'supporting' government to improve the quality of life of the people.
- must complement and 'support' the work government at all three levels.

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- In terms of section 4 of the TLGFA, functions are allocated to the traditional council.
- These functions include **assisting** municipalities in the identification of community needs;
- **facilitating** the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
- **recommending**, after consultation with the relevant local and provincial houses of traditional leaders, appropriate intervention to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
- **participating** in the development of policy and legislation at local level etc.
- **What does this mean?**

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- A key aspect of these functions is that they are of a supportive nature to the clearly defined functions performed by municipalities.
- All of them are phrased as duties to “cooperate”, “recommend”, “facilitate”, “alert” etc. These functions do not vest **decision making** powers in the council, but rather emphasise it as a partner of the municipality.
- Generally, **exclusion** from decision-making invariably fuels the tensions between traditional leaders and municipalities, leading to a unhealthy relationship.

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- The Spatial Planning and Land Use Management Act 16 of 2013 is another important law that impacts the role of traditional leaders.
- Before this Act came into effect, traditional leaders were **the primary authority** for the allocation of land use rights, in terms of customary law.
- SPLUMA compels municipalities to adopt 'wall-to-wall' **land use schemes**.
- A land use scheme or a zoning scheme is a planning instrument that regulates or governs the use and development of land within a municipal area

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- land use schemes are the instrument through which land use rights are granted to successful applicants who submitted land use applications.
- Thus, SPLUMA effectively ends the traditional leaders' **exclusive** control of land use in their areas of jurisdiction. **But?**
- Traditional areas will now be included in land use schemes and municipalities must adopt spatial plans and land use management systems for these areas

Land allocation as a form of land use management

- SPLUMA empowers municipalities to administer land use management throughout the Republic.
- A traditional leader exercising his or her powers over land, in terms of customary law is carrying out a form of **land use management**. In the rural areas this power is referred to as the land allocation power
- Once an allocation of land has been made, it is automatically accompanied by a set of land use rights. These include,
- a **build a** homestead, a **right to** erect a kraal for the safe keeping of livestock, a right to access agricultural fields for growing of crops etc.

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- This means the process of allocating land by TL should be construed as a form of managing the use of traditional land.
- For example, a TL after consulting the community would decide with his/her council which allocations of **land use are permitted where**.
- Allocations of land for a homestead will be far away from wetlands, rivers or areas prone to floods or fires.
- **Times have changed?**

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- According to sub-regulation 19 (1) of SPLUMA, traditional leaders are invited or encouraged to form working relationships with municipalities by entering into **service level agreements/MOU**.
- In terms of these **SLA**, traditional leaders will be allocated functions, provided those functions **do not** include making a land development or land use decision. **Problematic section?**
- **What is the alternative?** Sub-regulation 19 (2) which allows traditional leaders to continue allocating land and provide proof of the allocation of land in terms of the customary law applicable in that traditional area.

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- Which option will traditional leaders choose?
- Option 2 of course because they retain their power to allocate land and still remain the custodians of the land.
- Therefore why are Traditional leaders vehemently objecting to the implementation of SPLUMA in their areas?

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- There are a number of reasons as to why they resist the implementation of SPLUMA.
- **Misunderstanding** of SPLUMA that it seeks to take away the power of traditional leadership to allocate land and vest it exclusively to municipalities.
- Lack of **Consultations**

Misunderstanding of SPLUMA

- A traditional leader from Limpopo said this when asked about the opposition to SPLUMA-

'On this issue of SPLUMA, in the house of traditional leaders in the district there is a very loud cry. Why? Because the municipality will have to allocate stands for those people. It goes hand in hand with the issuing of proof of residence. Immediately if the municipality takes over those things, it means there is no more power in those traditional leaders. We are there to only to manage the land, allocate people land and try to collect as little as we can. If you strip them of that function, it means you have just killed those traditional leaders'

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- A national government involved in the roll out of SPLUMA said that-
- *'We had a meeting with the late Zulu King in 2016 and the first thing he said to us was that this SPLUMA is another attempt to take away his land and he wont allow that'*

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- The good news is that SPLUMA does not in fact seek to take away the power of traditional leaders.
- It actually seeks to integrate the two systems of land use management. **How?**
- **Proof of a land allocation must be provided.**
- **This means traditional leaders are 'authorities of first instance' in terms of receiving a request for the allocation of land**
- **Municipalities are the authorities of first instance in terms of receiving formal land use or land development applications**

Conclusion

- Way forward?
- How do we avoid contestation?

- The word cooperation means?
- Oxford dictionary: work jointly towards the same end.
- New meaning in the context of this intersection must be developed
- Information-empowerment= cooperation
- Benefits of cooperation? Save lives, **KZN example**, unlock more development

Thank you
Very much