

RESEARCH ARTICLE

The Interplay between Hereditary Traditional Leaders, Democratically Elected Leaders and Succession: A Case Study from Makapanstad, North West Province, South Africa

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Abstract

This article examines the interplay between traditional leaders, democratically elected leaders and succession in Makapanstad Village, North West Province, South Africa. The article stems from community-based participatory action research conducted in Makapanstad in 2018. The article uses research data, in the form of community dialogue, together with desktop literature on the same subject. The article analyses the significance and role of traditional leadership in a democratic South Africa. It considers traditional leadership and democratically elected leadership in conjunction with succession and the demarcation of roles and responsibilities. The article analyses participants' views to explore the form of leadership preferred by the residents of Makapanstad. It argues that, despite the recognition of traditional leadership in South Africa's Constitution, the roles and responsibilities of traditional leaders in local and provincial arms of government are limited, in contrast to those of democratically elected leaders.

Keywords: Traditional leadership; community; succession; democracy; election; public participation

Introduction

Traditional leadership in South Africa is recognized in the Constitution of the Republic of South Africa (the Constitution).¹ What is not mentioned, however, is the demarcation of traditional leadership roles and responsibilities as an integral part of the local and provincial arms of governance.² This issue has continued to be debated among societies since the Constitution was enacted. Part of the debate is whether traditional leaders should be recognized at all, since they are not appointed through a democratic election process, but instead generally according to patrilineal lines.³ This is different from democratically elected leadership, where regular elections are held to determine

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¹ Constitution of the Republic of South Africa 1996, secs 211 and 212.

² MLJ Koenane "The role and significance of traditional leadership in the governance of modern democratic South Africa" (2017) 9/1 *Africa Review* 1 at 2.

³ *Ibid.*

the next leader using the principle of one person, one vote. Critics of the traditional leadership system point out that it is “a one-man show” that does not allow much room for contrasting views.⁴ Despite this, rural communities maintain their confidence in traditional leadership as the best form of government that is free from corruption.⁵ Traditional leadership thus remains one of the truest forms of leadership: rule through the consent of the collective, having nothing to do with majority rule, despite the popularity of the latter in modern liberal democracies.⁶ In modern democracies, one sometimes sees opponents of the ruling party thrown out of Parliament or suspended for voicing contrasting views. This is not how traditional African leadership works.

One of the important tenets of traditional leadership is to ensure that the public participates in the decision-making process, which can be viewed as a form of direct democracy.⁷ The interface between hereditary traditional leadership and elected local government is a significant matter in South Africa and in Africa more generally, both of which are mired in succession disputes in terms of who should be in line to succeed. Litigated issues include whether a female can succeed to traditional leadership, for example, in *Mphephu v Mphephu-Ramabulana*⁸ and *Shilubana and Nwamitwa*.⁹ Traditional leadership has also not escaped disputes over matters such as accountability towards its members, while the role that colonialism and apartheid have played in enabling unaccountability should also not be discounted. One cannot ignore the impact that the legacy of apartheid and the issue of the former Bantustans [territories set aside for black Africans under apartheid] continue to have on traditional leadership today. Despite the popularity of traditional forms of leadership, especially in rural areas, community members continue to experience conflict and tension over succession to traditional leadership.¹⁰ This article aims to unpack the interplay between traditional leadership, democratically elected leadership and succession, in the light of a recent study conducted in Makapanstad.

Problem statement

The Constitution, as well as key national and provincial laws governing the powers of traditional leaders (such as the Traditional Leadership and Governance Framework Act of 2003 (TLGFA) and its provincial counterparts enacted in 2005), have played a significant role in affording traditional leaders legitimacy and significant governance roles.¹¹ However, the TLGFA was replaced by the Traditional and Khoi-San Leadership Act in 2019, a move that has received criticism. This is because, traditionally, African people were subjected to their own value systems, which determined how they should conduct themselves and live their daily lives. The Khoi-San Leadership Act has been criticized for placing more power in the hands of traditional leaders, resulting in abuse of this power.¹² Traditional leaders are not a law unto themselves; they derive their power from the community, which, in turn, can hold them accountable. The act has, however, silenced the

4 E Wamala “Government by consensus: An analysis of a traditional form of democracy” in K Wiredu (ed) *A Companion to African Philosophy* (2006, Blackwell) 433 at 435.

5 A Manthwa and L Ntsoane “Public participation, electoral dispute and conflict resolution mechanisms: The case of Moutse, South Africa, wards 5 and 6” (2018) 7 *Journal of African Elections* 105 at 109.

6 Koenane “The role and significance” above at note 2 at 3.

7 K Wiredu *Democracy and Consensus in African Traditional Politics* (2000, Indiana University Press) at 435.

8 2019 (7) BCLR 862 (SCA).

9 2008 (12) BCLR 914 (CC).

10 *Bapedi Marota Mamone v Commission on Traditional Disputes and Claims and Others* 2015 (3) BCLR (CC).

11 BG Tsegai and MNR Rammala “Traditional African conflict resolution: The case of South Africa and Ethiopia” (2018) 12/2 *Mizan Law Review* 325 at 336.

12 P Zukiswa “Traditional leaders and Khoi-San Leadership Act ‘brings back apartheid Bantustans’, say activists” (8 December 2019) *DailyMaverick*, available at: <<https://www.dailymaverick.co.za/article/2019-12-08-traditional-and-khoi-san-leadership-act-brings-back-apartheid-bantustans-say-activists/>> (last accessed 10 November 2023).

communities by not stipulating that the leader derives their mandate from the community. Under the act, leaders are accountable only to the Constitution, not to their people. The legislative framework has also been severely criticized for increasing the power of traditional leaders, while ignoring communities.¹³ In addition, it does not help that certain legislation has brought back the hated apartheid intervention of renaming tribal authorities as traditional councils.¹⁴

The recognition and legitimacy of the role of traditional leaders in the post-apartheid era came about due to attempts to restore an historical injustice where, under apartheid and colonialism, these institutions were ignored by state institutions and treated as uncivilized.¹⁵ Modern systems of governance, however, led to pressure to abolish traditional leadership, due to the lack of democratic processes within it.¹⁶ Communities argue that they are still undermined despite these pieces of legislation, as participation remains a concern due to the denial of voting powers and the fact that community representation at local government level is severely curtailed. An important consideration that is not addressed by law reform, and which the community highlighted, is the issue of succession of chieftaincy. The objective of the research was to generate community knowledge to support the African harmony model of dispute resolution, and redefine and reconstruct local indigenous knowledge into the mainstream knowledge system.

Research methodology and objectives

Makapanstad is a rural area situated about 80 km from the City of Tshwane. It is currently under the leadership of Kgosi Nchaube Makapan III. The people are the Bakgatla Ba Mosetlha and their totem animal is the Kgabo, which refers to their spirit animal, the monkey. Makapanstad consists of approximately 32 villages. The research aimed to determine the means of dispute resolution and also knowledge seeking on issues of traditional leadership, for the benefit of the community at large as well as for the national discourse.

The research stems from community-based participatory action research, also referred to as “café conversations”. It was facilitated by the University of South Africa (Unisa) research team through community dialogues in the community hall at Makapanstad, where the traditional leadership resides. The research was conducted according to Unisa’s ethical clearance certification and guidelines. The research team emphasized the aims and objectives of the research and the topic for the dialogues. Traditional leaders and community members participated in the dialogues by expressing their own views on the topic, based on their individual experiences and knowledge. The discussions were regulated using a “talking object” (a stick or other visible object) to maintain order during the discussions. The language that dominated the discussion during these community dialogues was Setswana, as Makapanstad is predominantly a Tswana-speaking community. There is generally a lack of knowledge and understanding among many community members, in particular the youth, about how traditional leadership succession takes place. The study intended to discover this through *lekgotla*, as such gatherings are affectionately known. The discussion that follows reflects the community dialogues of the *lekgotla*. First, however, is a brief overview of the significance of traditional leadership, starting by discussing pre-existing African institutions and traditional leadership.

13 A Claassens “Contested power and apartheid tribal boundaries: The implications of living customary law for indigenous accountability mechanisms” 2011 *Acta Juridica* 174 at 174.

14 L Ntsebeza “Chiefs and the ANC in South Africa: The reconstruction of tradition?” In A Claassens and B Cousins (eds) *Land, Power, and Custom: Controversies Generated by South Africa’s Communal Land Rights Act* (2008, UCT Press) 238 at 258.

15 P Jackson *South African Government in Review: Anti-corruption, Local Government and Traditional Leadership* (2009, HSRC Press) at 47.

16 M Szeftel “Two cheers? South African democracy’s first decade” (2004) 31/100 *Review of African Political Economy* 193 at 193.

Pre-existing African institutions and traditional leadership

Historically, the majority of South Africa's population lived in primordial public realms with traditional leaders at the forefront.¹⁷ Succession to traditional leadership has always been a point of contention and dispute. Nonetheless, traditional leadership is a pre-existing African institution that has survived for many centuries.¹⁸ It maintained a hereditary culture, even pre-colonially, under which a set of rules was laid down indicating who should succeed an existing traditional leader.¹⁹ Pre-existing African institutions emerged from systems organized for the purpose of kingship.²⁰ These institutions did not emerge from common kingship, but from the identity and existence of a royal family, whereby descendants of that community were bound by the might of the king or royal family.²¹ The system has, over the years, been criticized for being patriarchal in nature.²²

Some community members oppose hereditary traditional systems of government on the basis that such systems are undemocratic. Nevertheless, traditional leadership systems predate democracy and have existed for centuries, while democracy in South Africa is an infant and common law artefact. There are millions of people who, despite arguments that traditional leadership is undemocratic, still believe in it as the best form of governance. They do not view traditional leadership as a violation of human rights.²³ However, there are many disputes over succession to traditional leadership in rural areas and this phenomenon can be viewed as a pervasive feature of rural communities.²⁴ The topics of these disputes have ranged from gender equality, where females are barred from inheriting, to who is the right successor after a death has occurred.²⁵

These disputes can result in violence, influencing financial resources as well as causing destruction of property and loss of life, and they can endure for years. It has been argued that part of the problem is the dysfunctional nature of kingship, which is rooted in pre-existing institutions of customary law that may not accept change, meaning that the hereditary nature of succession is maintained. The principle of indirect rule has existed for a long time in South Africa and has an impact on traditional leadership. This is a process whereby a circumstance is created to manage indigenous people so that they are not enfranchised.²⁶ Indirect rule was implemented by the British and purported to maintain the pre-existing colonial structures of traditional leadership. However, in fact, it was established as a measure to control communities in their demarcated areas.²⁷ Colonialism brought with it changes to the leadership monopoly, with the colonists introducing their own authorities, thus resulting in traditional leaders becoming agents of the colonial administrators and having to fall in line with colonial strategies and objectives. Different legislation was enacted with the purpose of creating self-governing black people and units. One such piece of legislation, which furthered this goal, was the Promotion of Black Self-Government Act 1959. The Natives'

17 MDJ Matshabaphala "Traditional leadership and a simpler way to accountability in local government" (paper presented at the 2nd Annual International Conference on Public Administration and Development Alternatives, 26–28 July 2017, Gaborone, Botswana) at 282, available at: <http://ulspace.ul.ac.za/bitstream/handle/10386/1877/matshabaphala_traditional_2017.pdf> (last accessed 10 November 2023).

18 P Delius "Chiefly succession and democracy in South Africa: Why history matters" (2020) 47/2 *Journal of Southern African Studies* 209 at 211.

19 Id at 217.

20 WD Hammond-Tooke "Descent groups, chiefdoms and South African historiography" (1985) 11/2 *Journal of Southern African Studies* 1 at 2.

21 JD Krige "Traditional origins and tribal relationships of the Sotho of the Northern Transvaal" (2011) 11/1 *Bantu Studies* 321 at 323.

22 P De Vos "Time for rethink on traditional leaders" (2010) *Constitutionally Speaking*, available at: <<https://constitutionallyspeaking.co.za/time-for-rethink-on-traditional-leaders/>> (last accessed 10 November 2023).

23 DD Ndima "The resurrection of the indigenous value system in post-apartheid African law: South Africa's constitutional and legislative framework revisited" 2014 *Southern African Public Law* 294 at 297.

24 Delius "Chiefly succession and democracy", above at note 18 at 211.

25 *Ludidi v Ludidi* 2018 ALL SA 1 (SCA).

26 L Ntsebeza *Democracy Compromised: Chiefs and the Politics of Land in South Africa* (2005, HSRC Press) at 17.

27 Ibid.

Land Act 1913 also shaped the direction for many South Africans and its enactment can be considered a landmark moment in the history of South Africa. This is because, under this act, black people were expelled from their areas of residence to crowded reserves.²⁸ The act was a culmination of the dispossession of black people and confirmation that the colonists had taken control of South Africa.²⁹ In addition, it marked a change in the South African landscape and a new era of economic and political change through the 20th century.

The Natives' Land Act marked the laying of the foundations for segregation and apartheid in South Africa and also saw the creation of the so-called homelands policies, under which Bantu authorities were appointed for the purposes of implementing influx control and to drive other critical areas for apartheid, such as pass laws.³⁰ It resulted in forced removals through other legislation, such as the Group Areas Act 1950, resulting in poverty and unemployment and a great deal of considerable instability. The apartheid government created the Bantustans based on the languages and cultures of various traditional groups. Some, such as Venda and Ciskei, no longer reported to their people but to the apartheid government.³¹ The traditional leaders gradually lost control and the independence of Transkei, for example, attempted to put in place an element of sovereignty through the introduction of a mixture of democratic and traditional leadership processes. This resulted in elections being held in Transkei in 1963, giving rise to a system of self-government to legitimize the segregation and apartheid of the homelands system.³² Traditional leadership, with its hereditary nature, was seen as an undemocratic means of governing. Traditional leaders in these areas were merely the puppets of their colonial administrators and were given limited power and recognition to operate the Bantustans on their behalf.³³

Under pre-colonial African institutions, traditional leaders received their legitimacy from the people, but this changed after contact with colonialism as they became agents of the colonizers, inevitably affecting their accountability to their people.³⁴ In Makapanstad, community members still complain that nothing has changed because their traditional leaders are in the pockets of a government that exerts undue influence over them. In the context of Makapanstad, the view is that history is repeating itself. While colonialism was initially the problem, the community now views its participation as having been lost to democratic processes. The Zulu Kingdom, to consider a similar situation elsewhere, has always resolved disputes through its own democratic means, showing that democracy, in any form, is merely a procedure. The subjects of the Zulu Kingdom thus consent to be guided in the pursuit of a common individual and collective goal.³⁵ The community view from Makapanstad is that they can resolve disputes for themselves without interference from western style courts. Coherent critical comments offered by participants about traditional leadership were recorded within the context of topical issues (such as the accountability of traditional leaders and the voice of community members in how traditional leaders are running community affairs) and were then contextualized and their content extrapolated. Accountability was viewed as part of the problem in Makapanstad.³⁶

28 R Hall "The legacies of the Natives Land Act of 1913" (2014) 1/113 *Scriptura* 1 at 1.

29 P Delius and W Beinart "The historical context and legacy of the Natives Land Act of 1913" (paper presented at the Land Divided conference, University of Cape Town, 24–27 March 2013).

30 T Kepe and L Ntsebeza *Rural Resistance in South Africa: The Mpondo Revolts after Fifty Years* (2011, University of Cape Town Press).

31 SF Khunou "Traditional leadership and independent Bantustans of South Africa: Some milestones of transformative constitutionalism beyond apartheid" (2009) 12/4 *Potchefstroom Electronic Law Journal* 81 at 81.

32 B Chidester *Religions of Southern Africa* (1992, Routledge) at 207–08.

33 A Spiegel and E Boonzaier "Promoting tradition: Images of the South African past" in E Boonzaier and J Sharp (eds) *South African Keywords: The Uses and Abuses of Political Concepts* (1988, David Phillip) 40 at 49.

34 *Ibid.*

35 MB Ramose "In memorium: Sovereignty and the 'new' South Africa" (2007) 16/2 *Griffith Law Review* 310 at 326.

36 P Jackson et al *South African Governance in Review: Anti-Corruption, Local Government, Traditional Leadership* (2009, HSRC Press) at 47.

Accountability and criticism of traditional leaders

The continuing presence of traditional leaders depends on legitimacy, as well as on the support of the community and the ruling royal family. The royal family often wields considerable power in the succession of traditional leadership and in the removal of traditional leaders. The royal family and its appointed leader also remain in control of the kingship's resources.³⁷ The royal family's endorsement is significant for the king's survival and this support can be bought because a king needs the security of the royal family. This can lead to a lack of accountability and to loyalty being aligned with those with resources and other means of ensuring that a particular person's power is heightened.³⁸ Nonetheless, this has not stopped communities from demanding accountability from traditional leaders as the custodians of resources, land and governance, among others. Globalization, migration and individual free choice are today resulting in people having a say about where they want to be or with which traditional group they want to associate. There is also the issue of social media platforms, which are used today to raise people's awareness of concerning developments in the ins and outs of traditional leadership. The demands of today's cosmopolitan society are different from those of primitive society, where the will of the traditional leader would be accepted without objections being raised.³⁹ Contemporary society challenges traditional leaders to respond differently to new challenges. They must be ahead and stay ahead of developments in society, such as sociological developments, lest such developments influence the direction that society is taking.⁴⁰ It is argued that this is a new challenge and that it requires a response and mentality different from the stoic approach that led some leaders to see themselves as a law unto themselves and above everyone else.

These are the challenges that are still faced today by communities such as Makapanstad, as revealed in the community dialogues. The leadership paradigm is predicated on major themes, such as play, organization, self, emergence and coherence.⁴¹ Some traditional leaders have not effectively reacted or responded to the ongoing cosmopolitan and globalization challenges. Traditional leaders are, in some cases, overwhelmed in instances where they feel as though their authority is being challenged. Meanwhile, people are moving away from the traditional institutions where they, previously, mainly worshipped.⁴² One aspect that came out during the dialogues, as highlighted below, is the necessity for existential freedom, where community members feel the need to claim their freedom and humanity within the context of individualism. This, however, is something that may not relate to how traditional leaders view life.⁴³ The role of indigenous law, in terms of how it addresses transgressions, and the accountability of kings, regarding the protection of human rights and good governance, must not be ignored.⁴⁴ There is generally a lack of accountability on the part of some hereditary traditional leaders. This can be problematic because, as alluded to earlier, people may not have a voice in removing them as they occupy their positions through heredity. Ayithey posits regarding accountability: "[t]he indigenous form may be different from the western. Nonetheless, the important fact is traditional African rulers - chiefs and kings - are held accountable for their actions and were removed from office or killed (regicide) for

37 SE Kim "To whom are traditional leaders accountable after the rise of competitive challenges? Evidence from central Malawi" (2022) 13/3 *The Journal of the Middle East and Africa* 241 at 242.

38 Id at 259.

39 P Dixon *The Future of Almost Everything* (2015, Profile Books Limited) at 16.

40 Matshabaphala "Traditional leadership", above at note 17 at 292.

41 MJ Wheatley and M Kellner-Rogers *A Simpler Way* (1996, Berrett-Koehler Publishers Inc) at 52.

42 P Drucker *Managing in the Next Society* (2002, Butterworth-Heinemann) at 235.

43 Matshabaphala "Traditional leadership", above at note 17 at 289.

44 SJ Ndlovu-Gatsheni "Inkosi yinkosi ngabantu [A king is king because of the people]: An interrogation of governance in pre-colonial Africa - The case of the Ndebele of Zimbabwe" (2008) 20 *Southern African Humanities* 1 at 4.

dereliction of duty. By contrast, most modern African leaders cannot be held accountable and commit crimes with impunity”⁴⁵

A king must be accountable, even if he is appointed through heredity; this does not mean he is immune to the norms and laws that bind kings. Failure of the king to comply with norms must be met with sanctions and justice must be seen to be done. In terms of African indigenous knowledge systems and norms, the king must be accountable to the people and cannot be a law unto himself.⁴⁶ Law, in general, does not restrict itself to a precise or universal definition.⁴⁷ The community can ignore the law of the traditional leader if he does not have the legitimacy of the community.⁴⁸ Such law is not limited by the boundaries of modern states, nor is it bound or generated by the bounds of state power. Law, in its nature and existence, takes stock of some form of authority and creates obligations.⁴⁹ Law provides the function of ensuring order and establishing relationships by which people can abide. Similarly, the law is the measure and mechanism used to hold kings accountable.⁵⁰ The relationship between a king or queen and his or her people is one of mutual dependency, where one cannot exist without the other. It entails interdependence whereby the king or queen could be given a tribute or a small portion of the people’s hunting and agricultural production.

Traditional leaders have limited power to make laws and attain legitimacy in their communities today, since their power is demarcated by legislation. A king or queen must have legitimacy granted by the community.⁵¹ The institution of traditional leadership received considerable criticism and pressure was brought for it to be abolished in the run-up to the advent of the 1996 dispensation, because it did not conform to modernist forms of governance. However, it survived scrutiny and provision was made for it to be recognized in the Constitution.⁵² This became a point of debate at the multi-party negotiations, as some within African National Congress circles argued in favour of finding a meaningful role for traditional leadership in governance. The discussion below reflects the views of the community. It is contextualized within the growing body of literature on the lack of accountability on the part of traditional leaders and the suppression of community views. The dialogues consist of the views of community members falling under traditional leaders.

Community dialogues

Views of community members

The community dialogues took place in 2019 and were concluded during December that year.⁵³ December is an important month in the history of South Africa and Africa. It marks the birth of several African leaders and heroes, including Thomas Sankara, Eskia Mphahlele and Steve Biko, and is also important in the South African calendar because it is the month in which King Dingaan made his mark. The dialogues began with a rendition of *Mayibuye I-Afrika* (a well-known slogan meaning that we, as Africans, should return to our ways as they were before the arrival of the brutal colonial conquerer). The two governance systems that exist in Africa, one through democratically elected means and the other through the hereditary traditional leadership system, were put

45 G Ayittey “Traditional institutions and the state of accountability in Africa” (2010) 77/4 *Social Research* 1183 at 1185.

46 W Wilcomb “The in-between world of Kgosi Nyalala Pilane: (Mis)appropriation and accountability among the Bakgatla Ba-Kgafela in 21st century South Africa” (2021) 47/2 *Journal of Southern African Studies* 173 at 174.

47 C Rautenbach “Case law as an authoritative source of customary law: Piecemeal recognition of (living) customary law” (2019) 25 *Potchefstroom Electronic Law Journal* 1 at 6.

48 Ibid.

49 N Roughan *Authorities, Conflicts, Cooperation and Transnational Legal Theory* (2013, Oxford University Press) at 1.

50 Rautenbach “Case law as an authoritative source”, above at note 47 at 6–7.

51 JL Comaroff and S Roberts *Rules and Processes: The Cultural Logic of Dispute in an African Context?* (1981, University of Chicago) at 80–83.

52 Szeftel “Two cheers?”, above at note 16 at 194.

53 Transcripts of the dialogues are on file with the author.

forward to provide a basis for dialogue. In Africa, which recognizes the traditional leadership role, leadership is born; it is not democratically elected and does not allow for any person to contest the position concerned on the basis of popularity.⁵⁴ This differs from European legal systems where people are elected through one of several voting processes.

Chapter 12 of the Constitution recognizes the role of traditional leadership. Democracy survives because of numbers, where the majority can rule by electing an individual or party to a position of leadership. However, succession to African leadership does not require numbers; it survives through spiritual gain. In South Africa today, there are more than 1,970 traditional leaders: headmen and women. Several community members during the dialogue bemoaned the abandoning of the old system in favour of the “boat system”.⁵⁵ According to them, this resulted in Africa facing many challenges and the abandonment of the traditional system.⁵⁶ This, they felt, had contributed to poverty among Africans because Africa was defeated through the actions of African elites who were enticed by the colonists to take up administrative positions and a share of power.⁵⁷ Other community members pointed out that a way must be found to fight poverty because it is the root of all evil. They questioned the relevance of slogans such as *Mayibuye i-Afrika*, feeling that, because they are in Africa and have Africa, there is no point in a slogan saying that Africa must come back.

They argued that there is too much focus on what has been lost and that this highlights the colonial conquerer and the fact that the settler community has been forced onto the people of Africa. The essence of this thinking is that Africans are seen as behaving as though they have lost Africa, when in fact Africa is still in its position; the actual problem is the way of life and the choices made. What also emerged from the dialogues is that colonialism has bombarded the indigenous people of Africa with the idea of universal human rights, a script that is not neutral as it advances an understanding of human rights from a western perspective. It sidelines the communal interests of Africans and the all-encompassing concepts of *ubuntu* [humanity to others], which are sufficiently broad to encapsulate rights such as equality and dignity.⁵⁸ This is largely because of the egoistic nature of western systems that value individuals over communal arrangements.⁵⁹ One elderly member of the community pointed out that it has become common for traditional leaders to partner with democratically elected leaders in rural areas, notwithstanding the strength of some of the traditional authorities and how well they have worked with local government. Other community members in Makapanstad supported these views. They further highlighted that part of the problem is that traditional leaders have aligned themselves more with political party disputes at the expense of not taking care of communities.

An elderly community member argued for a document of knowledge to educate people about their genealogy because this remains a neglected space. Many children leave rural areas at a

54 Szeftel “Two cheers?”, above at note 16 at 194.

55 The boat system refers to the colonization of South Africa by the Netherlands between 1652–1795 and 1803–06, when Roman Dutch law was implemented as the law of South Africa, and by Great Britain between 1795–1803 and 1806–61: AN Allott “What is to be done with African customary law? The experience of problems and reforms in Anglophone Africa from 1950” (1984) 28/1–2 *Journal of African Law* 56 at 59. The colonists thus replaced the indigenous laws of South Africa with their foreign laws.

56 DD Ndima “The African law of the 21st century in South Africa” (2003) 35/3 *Comparative and International Law Journal of Southern Africa* 325 at 328.

57 AC Diala and B Kangwa “Rethinking the interface between customary law and constitutionalism in sub-Saharan Africa” (2019) 52/1 *De Jure* 189 at 198.

58 CRM Dlamini “The clash between customary law and universal human rights” (2002) 1/1 *Speculum Juris* 26 at 26. *Ubuntu* is the African pillar of life that informs the way communities arrange their daily lives to fulfil their values and interests. It serves as a yardstick to measure acceptable and unacceptable human behaviour among individuals, families and communities. It represents Africa’s version of human rights, which ensures that communities and leaders behave in the best interests of the communities. It is more encompassing than the widely accepted European human rights that only focus on the individual. *Ubuntu* considers the circumstances surrounding the individual.

59 AR Radcliffe-Brown and D Forde (eds) *African Systems of Kinship and Marriages* (1950, Oxford University Press) at 1.

young age, before they can be informed about and educated on their genealogy and the history of traditional leadership. They then go to live in the cities where they are exposed to different value systems, including being educated in the western education tradition. When they return to the rural areas, they fight and argue for rights to which they are not entitled. The same community member pointed out that she and other historians are available and willing to disseminate knowledge to the youth because this is their responsibility as knowledge holders in the community. In Africa, an elder person, such as a historian, is regarded as a library. This means that, when one passes away, the loss is tragic because the community has lost a library. Another elderly community member pointed out that the youth appear uninterested in listening and taking existing knowledge on board. They pointed out that there is an outcry for a programme to facilitate knowledge for the benefit of the youth in Makapanstad.

Several young community members stated in response that educational programmes on traditional leadership and governance are necessary because, in many cases, traditional leaders are blamed for the lack of service delivery, such as water and sanitation, and job creation. The community sometimes wants to remove the traditional leader in response to such shortcomings, even though they are not of the leader's making. Young community members pointed out that they are still subject to municipal processes and decisions taken by the government regarding voting registers, as well as the supply of water and sanitation. They further stated that there is a need to educate people about the role and responsibilities of traditional leaders, so that the community does not expect them to assume responsibilities that fall outside their duties and responsibilities, but within the ambit of the municipalities. One youth member pointed out that not everyone needs education because some of them were raised with the required knowledge and education. He argued that traditional leaders cannot be removed because they were not elected democratically. Some felt that traditional leaders should be allowed to contest elections so that their scope of governance can be broadened and the community can then hold them accountable for issues such as service delivery. Another community member asked for information about the Makapanstad financial budget and who controls the budget.

Yet another community member indicated that the Natives' Land Act had taken land and distributed it to people who neither deserved nor were entitled to it, thereby undermining the role and responsibilities of traditional leaders by making this important task subject to western systems.⁶⁰ Community members at Makapanstad believe that traditional leaders and the government are responsible for everything that is needed in the community. They suggested that these leaders need to find a way to work together to end the current confusion. The existing set-up also creates scapegoats where an organ that is responsible for service delivery, for example, will blame another organ for its failure to deliver on its responsibilities. This is especially important at a time when globalization and urbanization are growing. Some of the community members at Makapanstad view traditional leaders as a law unto themselves and highlight that community education is also important so that disputes can be taken to the right platforms for resolution.

One of the community members argued for the second liberation of Africa from the current situation. According to him, it is important, especially in the wake of the Fees Must Fall and Rhodes Must Fall movements, that the student activists' work was not in vain.⁶¹ If this were to be allowed to happen, they would merely be *batsomi ba ba sa boweng ka sepe* (a Tswana adage that refers to a hunter who goes hunting but comes back empty-handed, yet wants to take solace

60 See N Sibanda "Amending section 25 of the South African Constitution to allow for expropriation of land without compensation: Some theoretical considerations of the social-obligation norm of ownership" (2019) 35/2 *South African Journal on Human Rights* 129 at 129–30.

61 I Konik and A Konik "The #RhodesMustFall and #FeesMustFall student protests through the Kübler-Ross grief model" (2017) 39/4 *Discourse: Studies in the Cultural Politics of Education* 575 at 575.

in having tried). The problem, he pointed out, is that lineage in Africa is not protected; Africa is forgotten and neglected.⁶² Molefi Kgosokong, as a participant in the dialogue, pointed out that the Constitution provides traditional leaders with powers, but the problem is that many traditional leaders are affiliated with political parties. According to Mr Kgosokong, this results in factions being created between traditional leaders, thereby causing divisions in the house of traditional leadership.⁶³ Traditional leaders are therefore rendered unable to be neutral, but are driven by the political agendas of the political parties with which they are affiliated. Traditional leaders, therefore, find themselves conflicted in cases where the mandate of the political party with which they are affiliated clashes with their duties and responsibilities as traditional leaders. This can result in the traditional leader furthering the organizational goals of a political party, rather than acting in the best interests of his or her community. A king is bound by the obligations created by the concept of *kgosi ke kgosi ka batho*: if a king does not act according to the mandate given to him or her by the people, then he or she is not fit to rule, thus is not a legitimate leader. His or her legitimacy can therefore be contested⁶⁴ and he or she should be removed for not being *inkosi yinkosi ngabantu* [a king is king because of the people].⁶⁵ There is also a problem of a lack of black consciousness, where one fails to see his or her image reflected in the next person and to recognize that the next person is a brother or a sister, thereby sharing the communal goal of a better Africa.

Views of traditional leaders

Kgosi Mogoboya, a traditional leader in a different village, was invited as a guest to the dialogues in Makapanstad. He pointed out that traditional leaders participated in the formation of the liberation party and in the idea of one-man-one-vote and that they should therefore be respected. He also pointed out that there were traditional leaders in Africa before 1652, when the Dutch arrived in Africa with the mission to colonize, and that there were also traditional leaders long before the formation of political parties and the advent of politicians.⁶⁶ He also indicated that traditional leaders, such as Kgosi Sekhukhune, had fought in the brutal wars of colonialism to protect the territory and the indigenous knowledge system. According to Kgosi Mogoboya, Kgosi Sekhukhune did not sell out to the regime, even though others did and accepted what colonialism brought. However, today, there is no respect or acknowledgement of the roles played by such leaders. An example of this is the lack of recognition of traditional leaders through the naming and renaming of streets. In substantiating his view about the lack of recognition of traditional leaders through the naming of streets projects, Kgosi Mogoboya pointed out that the streets of South African cities are named after people who dehumanized black people and served as architects of black genocide.⁶⁷ One should avoid renaming being done inappropriately before the situation escalates to a point where it causes catastrophe. According to him, Africans should fight for the preservation of indigenous value systems and workshops should be conducted for that purpose. The importance of traditional leaders is also evident in countries such as England, where there is an element of consultation between prime ministers and the reigning monarch in the decision-making process. The prime minister first has to seek guidance and approval from the reigning

62 TG Daly “Kindred strangers: Why has the Constitutional Court of South Africa never cited the African Court on Human and Peoples’ Rights” (2019) 9/1 *Constitutional Court Review* 387 at 387.

63 See for example, M Sadike “Rifts in Bapedi nation over appointment of queen mother as regent” (15 March 2021) *Independent Online*, available at: <<https://www.iol.co.za/pretoria-news/news/rifts-in-bapedi-nation-over-appointment-of-queen-mother-as-regent-e52d5712-53cd-495a-ab12-8d5d3e53dc8a>> (last accessed 10 November 2023).

64 Wilcomb “The in-between world”, above at note 46 at 175.

65 Diala and Kangwa “Rethinking the interface”, above at note 57 at 197.

66 Allott “What is to be done with”, above at note 55 at 59.

67 Ramose “In memoriam: Sovereignty”, above at note 35 at 337.

monarch and, in countries where there are kings, the king is consulted for approval. According to Kgosi Mogoboya, this practice is not evident in South Africa and he decried the ignorance of the government officials involved.

During the dialogues, Kgosi Makapan advocated for an information session for the youth in the community of Makapanstad. He asked external stakeholders to work hand-in-hand with the local House of Traditional Leadership. He reminded all present that he had not been elected as a traditional leader. When he succeeded to the position, he already had siblings, but his siblings understood that he was the one in line to succeed their father. As a result, they did not challenge him for the position of traditional leadership because they understood that succession to this position was not subject to an election campaign. The succession was already determined at the time of his birth as he was the chosen one. He pointed out that he is proud that Africans are fighters and, in many cases, remain united, despite having been conquered by colonists and dominated by apartheid. He further bemoaned the fact that the colonists had introduced Christianity to Africa because the conversion of many African leaders to Christianity was largely responsible for causing them to abandon their original value system in favour of a system with a far shorter history in the country.⁶⁸ The early conquest of South Africa by Dutch settlers led to the establishment of the Dutch Reformed Christian Church.⁶⁹ Since then, Africa and South Africa have seen large-scale conversion to Christianity, with many African men having become priests and preachers. The Pedi people, under Khosi Sekhukhune, did not undergo extensive conversion to Christianity because Kgosi Sekhukhune rejected Christianity.⁷⁰

Findings

The community dialogues revealed interesting conversations regarding some of the topical issues in modern-day South Africa. The conversations were contextualized within the context of issues facing rural areas, such as a lack of accountability on the part of traditional leaders. Other issues were raised as concerns, including the matter of traditional leaders forming pacts with political party leaders to advance party interests rather than the interests of rural communities. There is a need to address these issues, and also for women and children to play meaningful roles in rural areas. Women have always played important roles in African indigenous value systems. Scholars of African epistemology have, over the years, highlighted that women have always been “the stabilizing factor of the group, the backbone of the family, the ward and the village, loyal to her husband in all actions and advice”.⁷¹ Women, in the past, assumed more challenging leadership roles in the national discourse. Mahao argues that women leaders, such as warrior queen Mmanthasi of the Batlokwa clan and Mmantshopa of the Basotho Nongqawuse of the Amakhosa, participated immensely in the history of their clans and played an essential role in fighting the degrading subordination of women as perpetual minors.⁷²

Returning to the dialogues, an elderly community member pointed out that the position of traditional leadership is, in many cases, linked with the clan name and this is how ancestors identify with the traditional leader chosen. An example was given that someone with the surname Mahlangu cannot be a traditional leader in Makapanstad. Only a Makapan can be chosen. This is because a person occupies this position by virtue of his ancestry and in line with the traditions and customs of that community.

68 Ndima “The African law of the 21st century”, above at note 56 at 328.

69 K Omeje “Understanding conflict resolution in Africa” in DJ Francis (ed) *Peace and Conflict in Africa* (2008, Zed Books) 68 at 88.

70 P Delius and K Ruther “The King, the missionary and the missionary’s daughter” (2013) 39/3 *Journal of Southern African Studies* 597 at 600.

71 JJR Jolobe “Umsenzi wabazazi kwisizwe esintsundu” [The role of women in African society] in WG Bennie (ed) *Imibengo* (1935, Lovedale Press) 208 at 225.

72 NL Mahao “O se e ho morwa ‘morwa a towe’ [Never ever say to a bushman: “You are just a bushman”]: African jurisprudence exhumed” 2010 43/3 *Comparative and International Law Journal of Southern Africa* 317 at 326.

Recommendation

The Makapanstad community appears largely in agreement that traditional knowledge and experience have been lost. According to the community members, there is a need to embark on a return to traditional ways, especially for the youth so as to enable them to have knowledge and understanding of traditional systems, thereby preventing the system from disintegrating and being replaced with western ideas of law and morality. It is also important that community members comprehend the role of traditional leadership at the local and provincial levels of government, separately from the role of democratically elected leadership based on the majority win-and-rule. A king is born, not elected. There must be more accountability by traditional leaders and respect for human rights. The marginalized voices of women and children must be heard. The literature increasingly reflects concerns in relation to a lack of accountability among traditional leaders and this is echoed by the Makapanstad community members. The authors also recommend that traditional courts should be used to resolve disputes over succession to traditional leadership. The concern is that there is a growing number of litigated cases in western style courts where disputes can be heightened owing to the confrontational nature of the adversarial system.

Conclusion

The authors' view is that the role played by traditional leadership is still valuable in Africa because this is the original way of governance under African law. Other forms of governance have been introduced by colonialism and reflect western morality over African law. Africa needs to break away from western governance and return to its rich history of group solidarity, something that seems to be disintegrating today. The authors agree with the community that liberation is still required from the demeaning nature of western morality. Africa's liberation will be complete when her people have liberated their minds to imagine new ways of interpreting human behaviour, based on her long inheritance before the intrusion of Europe. The African people must break free from the culturally demeaning curriculum that is disseminated around the world. Colonial conquest was genocidal and robbed the continent of its rich traditional epistemology. This was replaced by western civilization and Christianity.⁷³ They annihilated and obliterated Africa's experience and knowledge and replaced it with their own understanding of the world. Africa must make efforts to return to what was lost, and the first step is to give absolute recognition to the role and rights of traditional leaders.⁷⁴ Equally important is that traditional leaders must be accountable to their communities.

Competing interests. None

⁷³ W Soyinka *The Burden of Memory, the Muse of Forgiveness* (1999, Oxford University Press) at 32.

⁷⁴ RA Williams *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990, Oxford University Press) at 6.

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