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Colloque Recompositions territoriales, confronter et innover, Territorial restructurings, comparisons and innovations. Proceedings of the French-South African meeting on territorial innovation. Actes des Rencontres franco-sud-africaines de l'innovation territoriale janvier 2002

Partie I les expériences françaises et sud-africaines dans le mouvement universel de recomposition territoriale

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***Traditional leaders and new local government dispensation
in South Africa***

Traditional leaders and new local government dispensation in South Africa

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Introduction

Approximately three quarters of population in South Africa live in rural areas and they are under the governance of traditional leadership, whose practice has been the source for controversy recently. The institution of traditional leadership has been regarded as the main ruling system closest and accepted by the people at the grassroots level.

Local government in South Africa is presently in a process of fundamental transformation. One of the major problems South Africa inherited from apartheid was a structure of race based municipal boundaries. Demarcation is one of the controversial factors dogging the period of local government history. Demarcation was necessary to remove all traces of apartheid borders and to allow for more democratic municipal government.

Who is a traditional leader?

A traditional leader is defined as a person who, by virtue of his ancestry, occupies the throne or stool of an area and who has been appointed to it in accordance with the customs and tradition of the area and has traditional authority over the people of that area or any other persons appointed by instrument and order of the government to exercise traditional authority over an area or a tribe.

Their primary function is to regulate and control relationship and social behaviour within a traditional community. They are in essence people oriented and not service oriented as local government structures. The authority of a traditional leader is derived from tradition and is exercised in consultation with senior advisers without being regulated by legislation. A traditional leader is a leader by birth. Traditional leaders do not exercise their functions alone but a single traditional leader may be assisted by up to ten more subordinate leaders, resulting in a total of some ten thousand traditional leaders. Traditional leaders or authorities are social leaders and systems rather than actual government institutions.

School of thoughts on Traditional Leaders

The modernist approach

The first school of thought is the modernist approach, which calls for a transformation of the institution of traditional leaders to meet the requirements of a modern, non sexist and non racial democracy. The institutions of traditional leaders are believed to be the basis of rural patriarchy. He says that the institutions of traditional leaders are not in accordance with the precepts of democracy. Hereditary title, its male-centeredness, its racial and tribal nature are a serious obstacle to democracy.

The traditionalist approach

The second school of thought is the traditionalist approach which believes that the institutions of traditional leaders are at heart of rural governance, political stability and successful policy implementation, and hence, rural development. It is argued that in this regard, traditional leaders act as a symbol of unity, maintain peace, preserve customs and culture, allocate land to people, and resolve disputes and faction fights; the list is endless. There is agreement between modernists and traditionalists that the institution of traditional leaders, its composition, functions and legal manifestation should change in order to adapt to transformation in the social and political environment.

Historical African experience

Traditional chieftaincy has been taken by many “traditional communities” as the form of government closest to the people. The delivery of the basic services to the rural communities has been largely the task traditional leaders

The institution of traditional leadership is considered legitimate because it is culturally grounded in the day to-to-day lives of rural communities. Today, the systems of law potentially applicable in South Africa are supported by diverse legal postulates that reflect different values, inherent in different cultures. There is already a vehicle to bring chiefs into local government and this is evident by the fact that section 81 of the Municipal Structures Act 1998 provides for their participation on local authorities, but not a right to vote.

Traditional leaders and Local government in South Africa

Constitutionally, traditional leaders are represented in some local government on an ex-officio basis. At a provincial level they are represented in a House of Traditional Leaders whose function is to advise the Provincial government on matters, which affect the customs and traditions of their communities. In this House of Traditional Leaders chiefs are represented by their counterparts and not voted into the institution. A National House of Traditional leaders has

been constituted and it, too, advises the government on matters affecting the customs and tradition of communities.

Legislation provides that traditional leaders can participate in discussion in the municipal council, but have no voting powers. By virtue of this provision it is clear that their position is only advisory and is subordinate in respect of that of the elected councillors. The *Amakhosi* denied that their stance on demarcation is motivated by self-enrichment as they will lose some of their powers and benefits.

Conclusion

Negotiations on the relevant issues should be based on the premise that successful rural local government depends on mutual respect and co-operation between local government and traditional leaders, as well as between provincial government and traditional leaders. Although the traditional leader’s power bases and the traditional political and economic balances, and the socio-economic character of their people, have changed over the years, these leaders and their corresponding authorities have survived to the extent that they are still an essential part of the social fabric in many rural areas.

Having to debate the role and future of traditional leaders in the 1990s is perhaps an indication of the strength and virility of the institution. Throughout Africa and the subcontinent the institutions of traditional leaders has managed to survive the quest for modernity and state control imposed on it by colonial and postcolonial rulers.

Traditional leaders have played important developmental, administrative and political roles in rural areas. The underlying premise for these roles is that they represent the ethnic units and are closest authorities to the people. Traditional leaders act as culture bearers and custodians of customs. As a symbol and representative of the group’s collective identity, the traditional leader is expected to preserve the group’s heritage and ensure its transmission from generation to generation. Their role also include the judicial role where they act as interpreters of customary laws and practices

Various functions of traditional authorities are similar to that of local government. Traditional leaders have to ensure enforcement of all laws, order, institutions or requirements of government relating to the administration within their area. Traditional leaders also have a very important role of mobilizing their communities for development. This is due to the fact that they are respected leaders in their communities. Land allocation is of critical importance to traditional leaders precisely because it has remained one of the few de facto powers and sources of influence available to them.

Traditional leaders and development

Traditional leaders are social leaders and systems rather than actual government institutions. Traditional leaders do not have sufficient capacity to become service providers themselves. Traditional leaders are very important in mobilising their subjects in development planning and implementation. Their primary function is to regulate and control relationships and social behaviour within a traditional community tribe. Traditional leaders have been the only authorities at local level in many rural areas in South Africa. As a result social cohesion, stability and development in rural areas depends largely on these leaders. Chiefs are very important when one talks about participation of all the people in government because they have popular support in the grassroots level.

Constitutionally, traditional leaders are recognised and represented in some local government on an ex-officio basis. The opposition of many traditional leaders to the establishment of a strong local government system is based more on feelings of insecurity than on the principled objection to strong, elected local government. The envisaged service delivery role of local government includes the functions of the same nature as that the traditional leaders have been doing. These include provision of water, sanitation, electricity, etc.

. The main criticism that can be levelled against the recognition of traditional leaders in the South Africa’s new democratic dispensation is that the institution does not operate in accordance with the principles of democracy. Traditional leader’s position is hereditary and not elected. Traditional leaders are generally male and only Africans can become traditional leaders, which is in direct conflict with the idea of a non-sexist and non-racial society.

Recommendations

1. Traditional leaders and authorities should play an active role in rural development. Development projects are far more likely to succeed if they have the blessing and co-operation of traditional leaders.
2. Traditional leaders should not be nominated members of the councils. Their participation in the legislative arm of government should be devised along the lines currently envisaged by Section 183 and 184 of the Constitution, that is, it should be of an advisory nature.
3. Traditional leaders should continue to exercise limited civil and criminal jurisdiction. They should have unlimited powers of mediation but their judgement should be subject to review by a high legal authority.
4. If the traditional leader assumes a party political role, they should appoint substitutes to handle their traditional role so as to avoid a conflict of interests.
5. Training should be given to traditional leaders with regard to the possible influence of fundamental rights on customary law.

There is a problem with a traditional leader’s position in that it is hereditary and not elected. According to the constitution of South Africa, people have a right to democratically elect the person who will represent. Representation is a relationship between electors and elected. The representation is required to ensure that she or he views decisions and actions with those the people on whose behalf she or he decides or acts. The representatives are also required to continuously make conscious effort to establish what the people or group of citizens requires and what their desires are.

Another problem that can be cited with traditional leaders/authorities is that traditional leaders are generally male, succeeding on the basis of male primogeniture, which is in direct conflict with the idea of non-sexist society. It is also in conflict with the notion of a non-racial society since only Africans can become traditional leaders. Furthermore, the institution of traditional leaders perpetuates tribalism, which is seen as fundamentally divisive and is accordingly in conflict with the efforts to create a unitary state.

The institutions of traditional leaders should be transformed to move with the times. Many traditional leaders, for example, chief Z. Mlaba of the Ximba clan, accept the role they have to play as part of the new order as well as the resulting challenges associated with the process of transformation. Traditional leaders played and still have an important role to play in family disputes.

The traditional leader is seen as one who is a chief through his people (*inkosi, yinkosi, ngabantu*) and he has a definite role to play in traditional communities. Many people see a traditional leader as the embodiment of law and order, the upholder of values and as a provider for the needs of the community and in some instances, even as an institution created by God. This idea was mentioned by men, women, the youth during the research. It is very important for the people to realize that traditional leaders are social leaders and systems rather than actual government institutions. Their primary function is to regulate and control relationships and social behaviour within a traditional community. They are in essence people oriented and not service oriented like government structures.

In principle, traditional leaders should not be drawn into party politics and their role should remain one of the neutral leadership.