Rural Governance and Citizenship in post-1994 South Africa: Democracy Compromised?

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ABSTRACT

Against the background of rural local governance that was dominated by apartheid created authoritarian Tribal Authorities, the post-1994 South African state has committed itself to the establishment of an accountable, democratic and effective form of governance throughout the country, including rural areas falling under the jurisdiction of traditional authorities (chiefs of various ranks). However, I argue that the promulgation of the Traditional Leadership and Governance Framework Act and the Communal Land Rights Bill (CLRB) runs the risk of compromising this project. The Framework Act establishes traditional councils which are dominated by unelected traditional authorities and their appointees, while the CLRB gives these structures unprecedented powers over land administration and allocation. This raises, I argue, serious questions about the meaning of democracy and citizenship in post-1994, in particular for rural people. Rural citizens do not seem to enjoy the same rights as their urban counterparts who elect their leaders.

PRESENTATION

Although the focus of my presentation is the first 10 years of our democracy, it is important to locate rural governance in the former Bantustans within its historical context, especially given attempts since 1994 to establish a credible and democratic order in South Africa: urban and rural.

In very brief terms, rural governance in the former Bantustans was controlled by Tribal Authorities. These structures were dominated by chiefs, headmen and their appointees. Tribal Authorities were unaccountable, undemocratic and despotic. They
were imposed on unwilling rural residents. In areas such as Phondoland (Mbeki 1984), Sekukhuneland (Delius 1996) and Xhalanga (Ntsebeza 2002), the imposition of these institutions led to often bloody conflicts between apartheid state supporters and those in resistance. Mahmood Mamdani (1996), in his book, *Citizen and Subject*, has correctly, in my opinion, characterized Tribal Authorities as a South African version of “decentralized despotism” similar to what countries on the African Continent went through under colonialism.

When rural struggles re-emerged in the late 1980s and intensified in the early 1990s, Tribal Authorities were in almost all cases the target. Evidence abounds of cases where chiefs and headmen abused their authority in the land allocation process. In many cases where Tribal Authorities were challenged, they were replaced by Residents Associations made up of elected representatives. At the centre of these struggles was control over land, in particular, land allocation. By 1994, land administration in many rural areas, especially in the Eastern Cape had virtually collapsed, and there was no clarity as to who ruled in these areas.

For most of the first 10 years of South Africa’s democracy, the ANC-led government has embarked on the all important democratization process. In the rural areas of the former Bantustans, this included attempts to dismantle the concentration of powers in Tribal Authorities in the form of reforms in local government and land administration. A new conception of “developmental local government” introduced the notion of elected local leadership and an emphasis on improving the quality of life of previously disadvantaged sectors. Attempts are also being made to democratise the system of land administration, including the involvement of women in land administration structures.

My presentation explores the manner in which the South African state has attempted to extend democracy to the rural areas falling under traditional authorities with particular focus on the tension in the constitution between enshrining democratic principles largely modelled along liberal democratic lines of representative government, on the one hand, and recognising an inherently undemocratic hereditary institution of traditional leadership. The role of traditional authorities is investigated against the backdrop of the role they played during the colonial and apartheid periods. The discussion of the role of traditional authorities in post-1994 rural development is explored through the prism of local government and land administration.
The input is not about an empirical examination of the problems of rural governance and an evaluation of the performance of post-1994 rural structures. The focus is on policy and its implications for democracy and citizenship for rural people. The cardinal issue here is whether rural residents must continue to be “subjects” under the rule of unelected traditional authorities, or whether they will enjoy the citizenship rights, including the right to elect leaders and representatives, the South African constitution confers on all South Africans, or both.

At one level, post-1994 policy on rural governance does not provide a prominent role for traditional authorities. For example, in local government, as already indicated, municipalities made up of elected councillors are the leading actors. In this sphere, traditional authorities were identified as an interest group, along with women and farm workers, and were given not more than 10 per cent representation of the total number of seats. This was later increased, on the eve of the second local government elections in 2000 to 20 per cent.

At another level, the ANC-led government has been ambivalent about the precise role of traditional authorities, in local government and land administration. Part of this prevarication could be attributed to opposition from traditional authorities. Indeed, traditional authorities were never happy with the democratization of rural areas. This is not surprising given the monopoly and the concentration of power which Tribal Authorities enjoyed under the apartheid system. It is worth noting that opposition came from even members of Congress of Traditional Leaders of South Africa (CONTRALESA), an organisation that is historically aligned to the Congress tradition. In the run-up to the first democratic local government elections in South Africa in 1995/1996, the IFP and CONTRALESA began to work together. This was despite their differences in the pre-1994 period. In other words, the post-1994 government policies and laws were closing the ideological gap between members of CONTRALESA and those traditional authorities who are sympathetic to the IFP.

While the initial collaboration was around local government, it is quite clear that the main issue that brings traditional authorities together is their opposition to the notion of introducing new democratic structures. They would be happy to be the only primary structure in rural areas and insist on preserving the concentration of functions they enjoyed under apartheid, in particular land administration. Not only are they opposed to the idea of separation of powers, they are also opposed to any attempt to introduce alternative structures that would compete with them. For example, in the
case of local government, traditional authorities reject the introduction of municipalities in “their” areas. They argue that they should play a central role in rural development, and by implication, they reject the democratic principles upon which post-1994 developmental local government is based.

After many hesitations, the South African Parliament eventually passed two pieces of legislation in 2003 that would give some degree of clarity about the position of traditional authorities in South Africa’s democracy. These laws make concessions to traditional authorities, effectively resuscitating the powers they enjoyed under the notorious Bantu Authorities Act of 1951.

An objective of the 2003 Framework Act that is pertinent for our purposes is the provision for the establishment and recognition of traditional councils. A traditional council, according to section 3(1) will be established in an area which has been recognised by the Premier as a traditional community. This would take place, in terms of the pre-amble, within the context of transforming “the institution of traditional leadership … in line with constitutional imperatives … so that democratic governance and the values of an open and democratic society may be promoted”. The Act provides for a role for traditional leadership, not only in the local government sphere, but in all three spheres of government. It does not specify a role for traditional authorities in land administration. This is dealt with in the Communal Land Rights Bill.

With regard to the composition of traditional councils, the majority of its members are unelected, made up of traditional authorities and their appointees. Initially, there was a recommendation that a mere 25 per cent of members should be elected. After strong protests from NGOs and other civil society organisations, this number was increased to 40 per cent. This, however, still gives unelected traditional authorities and their appointees a majority. Although there is provision for a minimum of 30 per cent representation of women in the councils, this does not subtract from the fact that the majority of the members are not popularly elected.

It seems clear from discussions in the Portfolio Committee on Provincial and Local Government that establishing traditional councils dominated by traditional authorities and their appointees was a trade-off to persuade traditional authorities not to push for a constitutional amendment regarding the introduction of municipalities in rural areas. Members of the portfolio committee agreed that a constitutional
amendment could be made after the finalisation of the Framework Bill and if there was “significant consensus between the traditional leaders, South African Local Government Association and other key stakeholders”.

A last minute amendment to the Communal Land Rights Bill by the cabinet on 8 October 2003, at more or less the same time the Framework Bill was being considered, seems to have resolved, at least for now, the thorny issue of the role of traditional authorities in rural governance. The cabinet amendment provided that the traditional councils established in terms of the Framework Act as described above, will have land allocation and administration powers and functions in communal areas.

This gives enormous and unprecedented powers to a structure with a majority of unelected members. Under the colonial and apartheid systems, the final authority in the form of issuing permits to occupy land in communal areas lay with magistrates and later District Commissioners. The 2004 Communal Land Rights Act makes traditional councils supreme structures when it comes to land allocation. This means that they will be decentralised and indeed despotic in so far as they will be unaccountable.

To the extent to which traditional authorities could claim legitimacy, this has been based on their control of the land administration and allocation process at the local administrative and Tribal Authorities level. The powers they will enjoy under the Communal Land Rights Act perpetuate this apartheid legacy.

The amended draft of the Communal Land Rights Bill drew criticism from a range of civil society organisations, gender and land rights activists. Despite the protest, the controversial Bill was bulldozed through and passed unanimously by parliament on 27 January 2004.

For the first time in more than ten years traditional authorities have given their overwhelming support for the Communal Land Rights Act. But the question of what democracy and citizenship mean for rural residents still stands.