The challenges facing traditional versus municipal authorities in the Thulamela Local Municipality of the Vhembe District of Limpopo Province

Humbulani. S. Tshamano, Senior Lecturer, Department of Public Administration, University of Venda, P/Bag x5050, Thohoyandou, 0950 South Africa. Email: tshamanoh@univen.ac.za

Theodore .N. Mahosi, Senior Lecturer, Department of Public Administration, University of Venda, P/Bag x5050, Thohoyandou, 0950 South Africa. Email: tmahosi@univen.ac.za

Abstract

The research focuses on the changing role and influence of traditional leadership and authority with regard to the overall responsibilities that reside within the Thulamela local municipality of the Vhembe District of Limpopo Province. This is informed by the Municipalities Structures Act, Local Government Act, Remuneration of Traditional Leaders Act, the Constitution of the Republic of South Africa of 1996, Local Government Municipal Demarcation Act, and the Local Government Systems Act, that were a result of the birth of the new democratic South Africa. The adoption of the Native Administration Act no. 38 of 1927, and later the Bantu Administration Act no. 68 of 1951, meant that the powers of traditional leaders, that until 1927 resided within traditional authority, were usurped by the government of South Africa through to 1948 and the birth of the homeland policy. The beginning of the homeland policy saw this responsibility being given to the respective Chief Ministers/Presidents and their numerous traditional leaders. The new national and provincial governments after 1994 faced the challenge of realigning the presence and responsibilities of traditional leadership and authority vis-à-vis those of local municipal structures, as a result of the acts mentioned above, and given the conflict and animosities that are associated with local administration within the Vhembe District Municipality. The municipality is made up of Mutale, Thulamela, Musina, and Makhado Local Municipalities.

Key words: Traditional Authorities, Customary Land Rights, Residential Land Rights, Restitution of Land Rights, Thulamela Local Municipality.

Introduction
The main focus of this paper is on discussing the areas of conflict between traditional leadership and local government within the Thulamela Local Municipality after 1994. It is therefore important that the paper starts by introducing the historical background of the rural local administration, which was the realm of traditional leadership during the pre-colonial period, and thereafter migrates toward the apartheid period and beyond. It is unavoidable that the discussion will include traditional local administration within the Venda homeland system. This is done in order to show the change in the powers, responsibilities, and functions of Vhavenda traditional leadership over time. The apartheid period, and by implication the homeland period, serves as part of the historical background to distinguish the changes that were brought about by the adoption of the Constitution of the Republic of South Africa in 1998. Included in this is the process of transformation during the transitional period of 1993, of Transitional Local Councils (Green Paper on Local Government, 1997; White Paper on Local Government, 1998; Fankomo, 200: 28-39), leading towards the establishment of local municipalities (Kamieth, 2007; Economic Commission for Africa, 2007; Independent Projects Trust (IPT), 1999-2001). This paper discusses the impact of some legislation during both periods on traditional leadership. These are the Native Land Acts of 1913 and 1936, Black Administration Act no. 38 of 1927, Local Government Municipal Demarcation Act of 1928, Bantu Authorities Act no. 68 of 1951 (Bekker, 1991; Bekker, 1993: 200-203), the customary land rights, residential land rights in urban areas, and the restitution of land rights (Sikhwivhilu, Interview, 2011; Hugh, 2004). This legislation is relevant when one makes an overview of the pre-1994 period in particular. In this regard, the paper includes the Venda homeland legislation that governed the powers, functions and responsibilities of traditional leadership (Republic of Venda Constitution, 1979). A look at the democratic South Africa’s local government transformation vis-à-vis the powers, functions, and responsibilities of traditional leadership within an integrated municipalities system informed the authors to focus on both transitional and adopted legislation, in order to identify the problem areas between the two parties: traditional leaders and local municipalities. Some of this legislation is the Local Government Transition Act no. 209 of 1993, the Council of Traditional Leadership Acts 31 of 1994 and 10 of 1997, the Interim Protection of Informal Land Rights Act 31 of 1996, the Local Government: Municipal Structures Act 117 of 1998, the Municipal Demarcation Act of 1998, and the Traditional Leadership and Governance Framework Act 41 of 2003 (Kamieth, 2007). It should be pointed out that this legislation will be used or referred to in this paper in relation to the situation as it pertains to the relationship or cooperation between traditional leaders and local councilors, or the lack thereof.
Methodology

The paper has employed the qualitative method, as it is mainly narrative and describes some events based on case studies. This paper discusses the legislation of the period of the reserves, the apartheid period, and the post-1994 era. This legislation is used to discuss the historical relationship between traditional leaders and the then apartheid government, the Venda homeland government and the democratic government after the formation of the Thulamela Municipality, which falls under the Vhembe District Municipality of Limpopo Province. Included in these sources are Green Papers and White Papers on Local Government and Traditional Leadership in South Africa, the Constitutions of 1993 and 1996. Government Gazettes, the Municipality Structures Act 117 of 1998, the Local Government Act of 1998, and the Traditional Leadership and Governance Framework Act 41 of 2003. Various secondary sources such as books, journal articles, and theses have also been consulted. Oral interviews have been conducted with traditional leaders and some councilors of the Thulamela Municipality.

Theoretical framework

The theory behind the participative leadership movement of was that a leader could reach a good decision by involving all individuals who had some insights into a problem. The participative leadership style used in this paper is the democratic approach, as it is discussing the source of conflict between traditional leaders and councilors of the Thulamela Municipality.

The challenges of cooperative governance between traditional leaders and municipal councilors within the Thulamela Municipality of the Vhembe District in Limpopo

Native Land Act no. 27 of 1913

This Act stipulated that white South Africans should own the majority of the land and black South Africans should be shipped into designated areas called reserves. The result was that whites eventually owned 87% of the land, while the majority black population occupied only 13% to be used for residential, grazing, gathering, and burial purposes. In other words, blacks were squeezed into small residential areas where they lacked fields for cultivation and were reduced to a state of poverty. White people made up less than 20% of the total
population of South Africa. According to vhamusanda vho-Mudzunga, who is a councilor in the Vhembe District Municipality, the Land Act demarcated the country into portions with each portion allocated a number (Mudzunga, Interview, 2011). There was communal, state, and private land.

**Natives Land Amendment Act of 1936**

This Act designated more land for occupation and/or farming and other purposes by white South Africans, and brought about forced removals of the black population from their fertile settlements, without any compensation. Examples of these are people from Ratombo, the area where there are blue-gum and pine tree plantations, sawmills and other types of farming, to Mauluma in Nzhelele, where it is rocky and relatively infertile (Sikhwivhilu, Interview, 2011; Netsianda, 2001: 24-25). Other such forced removals were experienced from Mpheni near Elim Hospital, in the Makhado Municipality, from Luvuvhu (Levubu) to Tshakhuma and Ha-Mashau, to give a few examples. During this period the land that was administered by traditional leaders on behalf of their communities was reduced from the already small 13% to 11%, without any form of compensation, leading to a further overcrowding. This came as a result of the introduction of Crown Lands, which targeted all fertile land found within the reserves. These lands were taken over by the Union Government and plantations and/or commercial farms were introduced. This led to some pockets of white farmers being found within the black reserves.

**Customary Land Rights**

According to Hugh, during pre-colonial times, customary law was an established system of immemorial rules, which evolved from the way of life and natural wants and needs of the people. This also applied to special cases retained in the memories of traditional leaders and their counselors, their “sons, their sons’ sons, until forgotten, or until they became part of the immemorial rules” (Hugh, 2004). In other words, customary law included even such issues as land, whereby the land belonged to the community and was administered by traditional leaders as the custodians. However, during colonial times Roman-Dutch law was treated as the common law of the land in South Africa, resulting in the non-recognition of indigenous laws as early as 1652 (Hugh, 2004). Customary Land Rights were designated to be inferior legislation that governed black land rights in particular, as opposed to what was regarded as superior land rights for whites (Sikhwivhilu, Interview, 2011). As a result,
customary land rights were not really taken into consideration or regarded as important, because they were viewed as a backward and inefficient form of land-holding system. In the process, this draconian land legislation afforded the white government the right to invade, seize, and occupy land as and when it deemed fit (Sikhivivhilu, Interview, 2011). This nullified the title-holding of land through inheritance by black communities and/or traditional leaders. Therefore, because traditional leaders continued to be used to administer the land on behalf of the white government, land rights were turned into a mere formality, because they did not even have political rights. As a result of these developments such legislation as residential land rights evolved.

**Residential land rights**

The emergence of segregatory legislation during apartheid set aside special residential areas for different population groups, first through the passing of the *Population Registration Act no. 30 of 1950* by means of which a national register classified each individual according to race (Cameron and Spies, 1992: 278; Muller, 1993: 482; Worden, 1994: 137; Davenport, 1989: 362, 377, 563). Following the passing of this Act, during the same year the *Group Areas Act no. 41 of 1950* was enacted for the purpose of designating residential areas along racial lines in urban areas for blacks, coloreds, Indians and whites (Cameron and Spies, 1992: 278; Muller, 1993: 482, 494; Worden, 1994: 96; Davenport, 1989: 362-363, 419-422, 513-515). In this instance, blacks were not granted title deeds or deeds of grant to residential sites, meaning that they were not expected to occupy those sites on a permanent basis, regardless of the area having been declared a black residential area. This scenario had already been prepared by legislation that had been passed some decades before. This was the *Land Act of 1913*, *the Native Affairs Act of 1920*, *the Native Urban Areas Act of 1923*, the *Native (also called Black) Administration Act no. 38 of 1927* and the *Black Authorities Act no. 68 of 1951* (Cameron and Spies, 1992: 278; Davenport, 259). The crux of the matter is that a barrage of legislation dealt with the administration of black affairs, which included the issue of land rights, and not only restricted the movement of blacks in urban areas but also black ownership of land in urban areas. This scenario became a challenge when the post-apartheid government had to deal with land rights.
Restitution of Land Rights

This paragraph concerns the Restitution of Land Rights Act no. 22 of 1994. The new government in 1994, guided by the transitional constitution of 1993, started to embark on the process of restitution of land to the black majority in particular (Constitution of the Republic of South Africa, 1993: Chapter 43; White, 1998: 1,4,5) who were deprived of their land rights by the former government through the infamous Land Act of 1913. This met with stiff resistance from white land-owners, regardless of their having acquired the land through racially exclusive legislation that was intent on giving land to whites, at the expense of black land-owners, without compensation. Resistance to the process of land restitution steadily affected the process and pace of land restitution, even when the government included the clause of “willing-buyer-willing-seller” (Lahiff, 2008:1). This not only slowed the process of land restitution, but in the process the government ran into a shortage of funds to pay the compensation, resulting in only 8% of the land being reinstated to its rightful owners.

The challenges of cooperative governance between traditional leadership and the Thulamela local municipality

According to Sikhwivhilu (Interview, 2011), the democratic government inherited some of the elements of the apartheid legislation, such as the Black Authorities Act, when it came to land administration at local level, including rural land administration as it was during the independent homeland system. The Thulamela Local Municipality is located in the former Venda homeland. During the existence of the Venda homeland there were no municipality structures, as local administration was the responsibility of the Department of Local Government, which was an extension of urban departments of South Africa. In the Venda homeland, traditional leadership, who also doubled as ministers, used the powers that were vested in them to dictate how rural land administration and allocation was to be performed. The Venda homeland administration restored the powers and functions of traditional leadership, which included the building of schools, and clinics, and also land allocation for residential purposes and cultivation (Republic of Venda District Councils Act, 1986). The establishment of transitional local councils in South Africa, and later local municipalities, the former Venda homeland included, created suspicion among traditional leaders that land administration in the rural areas was being taken away from them by the new structures. It is for this reason that the relationship between traditional leadership and the Thulamela local municipality started on a platform of suspicion and mistrust.
The post-apartheid Department of Local Government inherited the elements of legislation from the Department of Urban Affairs under apartheid and the homeland period. This legislation informed the transitional department with regard to local administration, through the Local Government Act, sections 174 and 175 of the 1993 Constitution (Interim Constitution of the Republic of South Africa, 1993). The first section covered the establishment of local governments, which included rural local governments, while the second section linked with the powers and functions thereof. Included in the Constitution is the section concerning the membership of traditional authorities in local government. The Constitution of 1996 spells out the issues of co-operative governance and stipulates the need to cooperate in “mutual trust and good faith by fostering friendly relations, assisting and supporting one another and informing one another of, and consulting one another on, matters of common interest” (Constitution of the Republic of South Africa, 1996: Chapter 3, 41(h)). In this regard, one would conclude that this section concerns among others, local government in such places as Thulamela, where local administration is, in the main, the combined duty and responsibility of traditional leadership and the local council as an area is dominated by the rural communities who observe traditional customs. This is made possible by the recognition of “the institution, status and role of traditional leadership, according to customary law subject to the constitution” (Constitution of the Republic of South Africa, 1996: Chapter 12, 211(i)). By implication this recognition would entail the recognition of the powers influence and jurisdiction of traditional leadership over their respective communities.

According to law, national government and all provincial governments “must promote partnerships between municipalities and traditional councils through legislative or other measures”. The envisaged partnership must be based on the “principle of mutual respect and recognition of the status and roles of the respective parties guided by the principle of cooperative governance” (Government Gazette, 2003: 25855, Act 41, 5.1 and 5.2). In addition, the national government and provincial governments, “by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs based on cooperative governance” (Constitution of the Republic of South Africa, 1996: Chapter 7, 154(i)). However, the Constitution seems non-committal when it comes to the nature of the role that traditional leadership must play, as is spelt out in Chapter 12 of the Constitution. In this instance it simply says that “national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities” (Constitution of the Republic of South Africa, 1996: Chapter 12, 212 (i)). It is
also mentioned that “national government or a provincial government, as the case may be
may through legislative or other measures, provide a role for traditional councils or traditional
leaders”, in respect of various fields, including land administration (Government Gazette,
2003: 25855, Act 41, 20.1(b)). The issue of land administration happens to be the source of
conflict between traditional leadership and the local council in the Thulamela Local
Municipality. One is, therefore, bound to conclude that the fact that the two clauses, both
from the Constitution and the gazette, uses the word may, is open to the chances of the
municipality not providing any role to traditional leadership if they do not agree on matters
pertaining to land allocation. This opens a loophole for the local municipality to abuse its
powers, as the clause does not commit it do so. According to Dhliwayo, the fact that
traditional leaders are in hereditary positions, while local councilors are elected, creates the
situation of the elected party undermining the hereditary authority and regarding them as
having no mandate from the people (Dhliwayo, Interview, 2011).

The democratic government enacted the Municipality Structures Act 117 of 1998 and
the Municipality Demarcation Act of 1998 which were promulgated to bring about economic
development and equity in land use, as well as to normalize service delivery (Constitution of
the Republic of South Africa, 1996). As a result, local governance had to be brought in line
with basic community service delivery by coming up with the Integrated Development Plan
,IDP). The IDP is aimed at integrating the less developed areas with the relatively developed
ones, or the rural and urban/peri-urban areas. It is here that, in the case of the Thulamela
Local Municipality, the paper identified conflict areas between traditional leaders and
municipal authorities which, as a result, pose a challenge to service delivery and the
successful implementation of the IDP. Below are some of the areas of conflict that the paper
was able to identify:

The municipality uses ordinances, whereas traditional leaders use resolutions. The
two are poles apart and the government needs to formulate a new approach to harmonize the
two. This, in turn, delays service delivery.

Thulamela is surrounded by a number of underdeveloped areas which still fall under
the jurisdiction of traditional leadership (Sikhwivhilu, Interview, 2011). As a result, the
traditionally administered areas find themselves at the cutting edge of both the traditional
leaders and the local municipality. This is the core of the conflict between the Thulamela
Local Municipality and areas under traditional leadership, especially with regards to the allocation of sites for residential occupation and business purposes.

Traditional leadership within this municipality always complain of lack of consultation concerning it comes to site allocation for residential areas or business purposes, as well as other service delivery issues.

To make this situation even more disturbing the Thulamela Local Municipality does not have title deeds, just as the former Venda homeland did not have them. This is linked to the inheritance of the white government Urban Areas Act by the Local Government Department.

The Communal Land System and the Commercial Land Tenure System aggravated the conflict. Communal land happens to be the political base of traditional leadership as, according to traditional practice, the land belongs to the community and the traditional leader administers it on behalf of his people. As a result the land is never sold, but is given to the community to cultivate. The members give a fraction of their harvest/produce to the traditional leader, as a token of gratitude or tribute.

While, for example, the mayor of Thulamela Municipality, councilor N.G. Mahosi, acknowledged that there was a serious problem regarding land allocation for residential and business purposes within the municipality, this strengthens the claim that traditional leadership are usually not consulted, especially when it comes to issues of land administration (Ngoho News, 2011).

Another area of concern regarded the subject of rates, where Thovhele M. Mphaphuli complained about the unilateral decisions taken by the municipality when it came to rates for residential sites (Ngoho News, 2011).

Another bone of contention is that the municipality is regarded by the traditional leadership as the provider of services and of development and not the owner of the land. On the other hand, Vhamusanda vho-Mudzunga (Interview, 2011), who works in the Vhembe district municipality, indicates that the Municipality Demarcation Act locates almost every piece of land under the jurisdiction of the municipality. In his own words, each area has been demarcated wall-to-wall. However, this creates an impression or a misunderstanding that the purpose of demarcation of areas is not mainly for service delivery and development for
economic purposes, which is the responsibility of municipalities, but that the land has been placed under the ownership of the municipality. This creates further conflict.

Traditional leaders are pointing fingers at some members of the Thulamela Municipality, who sell land for business purposes in the town of Thohoyandou, without consultation. There are also widespread accusations of money exchanging hands (corruption). This sounds like another case of non-consultation or lack of transparency. Within the town of Thohoyandou, development of what may be regarded as an up-market residential area was stalled for a period in 2006-8 because the traditional leader, Thovhele Mphaphuli, claimed that he was not consulted (Ngoho News, 2011).

Vhamusanda vho-Sikhwivhilu (Interview, 2011) suggests that for a smooth, cooperative and effective land administration there must be a clear demarcation of boundaries between the land that is under the jurisdiction of traditional leaders and that under the Thulamela Local Municipality. In other words, this will assist in removing the overlapping areas of jurisdiction concerning responsibilities and functions. This is compounded by the practice of non-consultation between the Thulamela municipality and traditional leaders on matters pertaining to land and service delivery and the local council. Vhamusanda’s recommendation is based on the ongoing friction, which is mostly caused by the municipality selling, without consultation, land which traditional leaders consider to be under their jurisdiction, because according to them, under customary land rights land is never sold, as it belongs to the people under the custodianship of the traditional leadership. The suggestion is that the municipality, through the provincial and national governments, needs to revisit the Urban Areas Act and resolutions on land of the former homeland (between the former homeland government and tribal authorities) taken under the former Venda government.

Land acquisition within the Thulamela Municipality is made unmanageable because of the lack of due process due to corruption which is rife within the ranks of the local councilors, thereby aggravating the absence of consultation. As a result, there is much encroachment into the land tenure system, as there are instances where a traditional leader or the municipality gets involved in an area already proclaimed. In most cases the proclamation of an area as urban must be accompanied by relocating the affected community to an identified new area for settlement. However, within the Thulamela Municipality, in a number of cases this has not happened.
The Thulamela Municipality is using Ordinances to apply its authority or jurisdiction, instead of having by-laws to guide administration. Conversely, traditional authorities administer through resolutions. This is a critical area which is making cooperation between the two parties difficult, and the implementation of the goals and objectives onerous if not impossible. In the process this delays service delivery and causes an imbalance between the areas under traditional leaders and those under the direct control of the municipality.

The annual budget of the local municipality is never discussed with the traditional authorities. This means that traditional authorities are not party to the financial management (payment of rates, for example) of the Thulamela Municipality. These situations sometimes lead other traditional leaders to encourage their subjects not to pay rates as a form of protest.

BIBLIOGRAPHY


Fankomo, F.C. 2000. Integrating traditional leaders and contemporary local governance in South Africa: A case study of the Northern Province. Master of Public Administration, University of the Western Cape.


Mahosi, T.N. 2000. Then and now: The question of traditional leadership within the new political dispensation. Paper delivered at the conference of the Northern Province History Association, University of Venda.


Zoutpansberger. 1999. Land issue again bounced to and from council agenda.