

Face off: Traditional leaders and the battle for democracy



The impact of the Xhalanga District Court judgement by a full bench of the Eastern Cape High Court on 18 August 2015 in favour of the local community and against the Eastern Cape government, is reverberating throughout the rural landscape. *Ina van der Linde* reports on a two-day dialogue in East London on research on traditional leadership in the Eastern Cape, using the court case as an example.

With us we don't want the traditional council as we had never had one before, we had *izibonda* [elected councillors] only, and we want the court to liberate us from these atrocities. *Selenditshilo* - I have said what I have said.'

This statement from a young theology student at the University of Stellenbosch, Khayaletu Manzi from the Mxhalanga Location in King Williams Town, captured the mood of a young, educated generation who feels themselves increasingly distant from the autocratic rule of chiefs in rural areas.

And judging from the boisterous two-day dialogue on the impact of the Xhalanga District Court judgement by a full bench of the Eastern Cape High Court of 18 August 2015, young leaders are taking along an older generation who lived under repressive homeland leaders such as Lennox Sebe and Kaiser Mathanzima.

'This ruling could serve as a model to solve the long-standing tension between traditional leadership and the Constitution in democratising traditional institutions' - Lungisile Ntsebeza

The dialogue was hosted by the Department of Science and Technology (DST), the Human Sciences Research Council (HSRC) and the African Centre of the University of Cape Town.

Research done by Lungisile Ntsebeza, professor and holder of the NRF Research Chair in Land Reform and Democracy at UCT was used extensively during the court case to show that historically, the Cala Reserve residents had the right to vote for their own headman, as argued in his book *Democracy compromised: Chiefs and the politics of land in South Africa*. This right was taken away by Chief Gecelo of the Gcina traditional council, but now the court has given it back to the community.

'There are many more of these kinds of cases waiting in the wings', said Wilmien Wicomb, the instructing attorney in this case. 'And they will succeed'. She pointed to another pronouncement concerning the Bakgatla-Ba-Kgafela Communal Property Association, the Constitutional Court issued a 'resounding and unanimous judgment in support of democratic control of land in traditional areas' that established important precedents in the approach to community rights in areas controlled by traditional leaders.

'The traditional rural areas are diverse', said Ntsebeza, cautiously painting a wide-ranging picture of areas that fall under chiefs. Some people agree with the chief's claim of legitimacy and accept his leadership but in other areas people feel that the chiefs are imposed on them and they don't want them. A third category of people have accepted the system of headmanship, but insist that they want to choose themselves.

The implication of the Xhalanga court case, as voiced by Judge Clive Plasket, was that traditional institutions are recognised in the Constitution, but in terms of the Constitution these institutions need to be democratised.

'This ruling could serve as a model to solve the long-standing tension between traditional leadership and the Constitution in democratising traditional institutions', said Ntsebeza.

'Parliament's increasing insistence on entrenching traditional leadership ... continues to reduce members of traditional communities to the second-class citizens that they were under apartheid, but now with a constitutional veneer' - Wilmien Wicomb

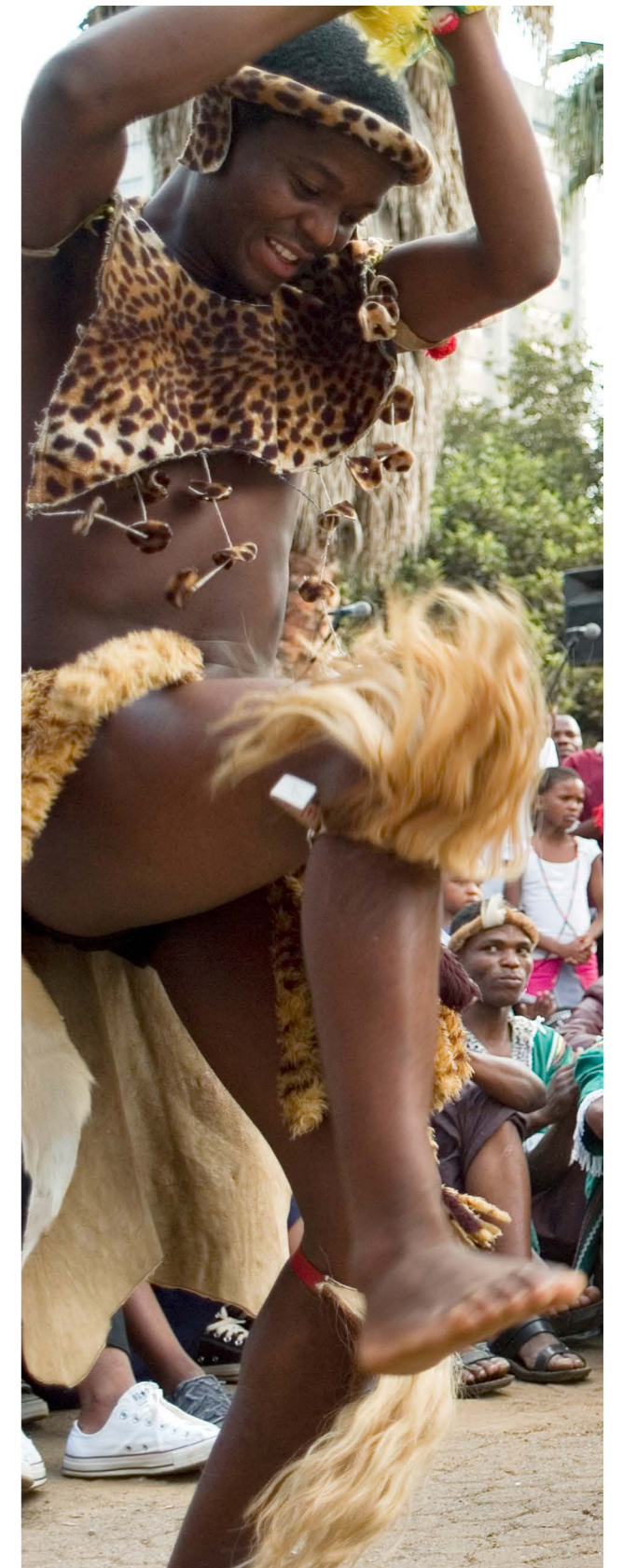
The decision, says Ntsebeza, is inextricably linked to the critical issue of land tenure and property regimes in rural areas, particularly in the former Bantustans where people bore the brunt of forced removals and the discriminatory Land Acts of 1913 and 1936. The intersection between land tenure reform, traditional authorities, and rural local government has important implications, considering the crucial role that land restitution could play in transforming the economy, particularly in a context of endemic poverty and deepening inequality.

Wicomb said the court case, in essence, encouraged communities to develop their own customary law and democratise rural local government.

Not mincing words, several participants said the African National Congress (ANC), under the leadership of President Zuma, is empowering traditional leaders deliberately because they will be able to exert control over their subjects when it comes to elections. Dr Fani Ncapayi, director of the Cala University Students Association who did extensive research in this area, said the government provides chiefs with opportunities and support because of the role chiefs can play 'in bringing votes for the ruling party'.

Said Wicomb: 'Parliament's increasing insistence on entrenching traditional leadership as the sole aspect of customary law deserving of recognition ... is far more than a game of semantics. Instead, it continues to reduce members of traditional communities to the second-class citizens they were under apartheid, but now with a constitutional veneer.'

Deputy chair of the Eastern Cape House of Traditional leaders, Prince Zolile Burns-Ncamashe, gave a long dissertation of where he believed the court case, and



Ntsebeza specifically, were factually wrong. Laying him open to criticisms of 'pompousness' he said what is needed is Africans scholars and intellectuals 'who are proud of being Africans and who are prepared to bring into the discourse such epistemological and ontological trajectories that are consistent with the agenda of affirming endogeneity, Africanity, as against alterity.'

'The customary law practice of the Xhalanga Native Reserve is 'a colonial Westminster construct of common law' that perpetuated a distortion about social systems of indigenous African people' - Prince Zolile Burns-Ncamashe

He hinted that academics submit 'to the soporific deception of neoliberal charisma... [who betray] the selfless sacrifices of their forebears as well as the embedded heritage of our future generations' and that the customary law practice of the Xhalanga Native Reserve is 'a colonial Westminster construct of common law' that perpetuated a distortion about social systems of indigenous African people.

So where does this leave the Eastern Cape leadership and future policy? Themba Naboliti Hani from Municipal Economic Development in the Eastern Cape Department of Local Government and Traditional Affairs explained the challenges of a dual system of governance with traditional leaders ruling communities in rural areas while elected ward councillors managed municipal affairs in urban areas.

The policy implications of the court decisions, among others, is the challenge of involving traditional leaders as power struggles and tensions continue to manifest themselves in relation to all matters pertaining to land.

Hani said it is clear that institutions of traditional leadership cannot easily be destroyed and favoured the establishment of a hybrid model of representatives of traditional and elected leadership at a ward or community level. He also suggested the establishment of a register of compliance to good governance practices that would monitor and audit traditional councils at least once a year.

The integration of chiefs into a new democratic system is important, yet complicated, said Wicomb. 'Maybe this question relates to the dichotomy of traditional governance in a Western-type of democracy at community level'.

On the future of the place of traditional leaders, Ntsebeza aligns himself with the principles of the Constitution in that traditional institutions could only be recognised to the extent that they can bring their practices into line with the democratic principles set out in the Constitution 'and that to me is the future of the traditional leaders'.

'The Bill, if passed, will deny 18 million South Africans living within the former Bantustans the option to escape their imposed status as tribal subjects' - Aninka Claassens.

Author: Ina van der Linde, editor, *HSRC Review*

*Disclaimer: The HSRC Research Seminar series is funded by the Department of Science and Technology (DST). The views and opinions expressed therein as well as findings and statements do not necessarily represent the view of DST.

POST SCRIPT

On 26 August, eight days after the Xhalanga District Court judgement, Cabinet approved the tabling of the Traditional and Khoisan Leadership Bill, 2015 in Parliament.

The statement from Cabinet reads:

'The Bill contributes to the National Development Plan's (NDP) key target of broadening social cohesion and unity while addressing the inequalities of the past by providing for the statutory recognition of the Khoisan communities and leaders.'

'It proposes the establishment of an Advisory Committee on Khoisan matters which will assist government with the recognition process relating to Khoisan communities and leaders.'

The bill came in for robust criticism. Commenting on the Bill, Dr Aninka Claassens, chief researcher at The Centre for Law and Society at the University of Cape Town, said the bill is 'a smokescreen for entrenching autocratic traditional councils, which have dodged fiscal and democratic accountability for more than two decades'.

She wrote in an article in City Press, 'Chiefs bill: Back to the bad old days' that if the Bills is passed, it will deny 18 million South Africans living within the former Bantustans the option to escape their imposed status as tribal subjects.

'Why has Cabinet chosen to bolster the power of traditional leaders rather than enforce the property and citizenship rights of the poorest and most vulnerable South Africans?

'The answer relates, at least in part, to the mining interests of senior politicians and their families. As long as senior politicians benefit from the opaque mining deals brokered by traditional leaders it is in their interest to keep these deals secret, and silence opposition by those whose land is being ravaged in the process,' Claassens asserts.

Dr Sindiso Mnisi Weeks, a senior research associate at the same centre, wrote in an article in the online publication, The Conversation, 'Of a cruel king and the bitter battle for the soul of South Africa's democracy' that the new Traditional and Khoisan Leadership Bill will attempt to give traditional leaders more unaccountable and unconstitutional powers.

'The governing ANC opens up space for traditional leaders' quest for power, exempt from the constraints of the rule of law, to become viable by passing laws that benefit them at the expense of the rights of ordinary people. This all makes it more difficult for the state to rein in traditional leaders who abuse their powers.'

Weeks states that 'these efforts to evade justice are yet another salvo in the battle for the soul of South Africa's democracy: the notion that every citizen is entitled to fearless protection of their citizenship and other democratic rights. And no person, whether king or ordinary citizen, is entitled to special treatment under the law'. ■



Conversation on policies: healthy livestock act as security against hunger

The role of cattle and other domesticated animals in promoting food security should take on an increasingly important position on the policy agenda argue Sarah Chiumbu, Safiyya Goga and Vasu Reddy, reporting on a new project that focuses on the social and human dimensions of primary animal health care for small-scale farming communities in South Africa.

Food security is a concern in South Africa. Child undernourishment continues to be too high for South Africa as a developed, middle-income country. The 2011 General Household Survey of Statistics South Africa shows that 11.5% – that is close to 10 million people – experienced hunger in the 30 days prior to the survey; and according to the Presidency's *20 Year Review: South Africa 1994-2014*, 21% of households continue to experience difficulty in accessing food.

There is increasing recognition within the international development literature, as well as in research on sub-Saharan African economies and livelihoods, that small-scale livestock farming provide pathways out of poverty, towards food security and sustainable livelihoods. According to Dr Rebene Moerane, chair in Public Animal Health Care, University of Pretoria, there are approximately 1 million small-scale

livestock keepers in the country, with 6 million cattle, 3.5 million sheep and 4.6 million goats. Keeping small numbers of cattle continues to be crucial to many agricultural households across the country, as shown in Figure 1:

Smallholder farmers who are already in precarious socio-economic circumstances are worst affected by livestock disease outbreaks