

THE BAFOKENG: RECONCILING TRADITIONAL AND MODERN INSTITUTIONS OF GOVERNANCE

Research findings from a project commissioned by the Royal Bafokeng Nation (RBN) highlight key opportunities and critical conditions for a developmental role of traditional institutions of governance, and how the dilemma between constitutional and customary law can be addressed. *Gerard Hagg, Nedson Pophiwa and Mojalefa Dipholo* show how the findings could contribute to debates, policy making and practices in rural local governance.

More than 15 million people in rural communities across South Africa live under a dual governance system: constitutional on the one hand and customary on the other. South Africa's constitution provides for basic human rights and governance through democratically elected municipal councils, and also sustains the institution of hereditary traditional leadership.

Some community representatives, advocacy organisations and researchers contest the relevance of traditional leaders in contemporary society because most are based on patriarchal systems of power. Hereditary rule is also perceived not to be commensurate with constitutional rights and accountability.

Traditional leaders insist that they have a legitimate right to lead the development of their communities – something legislation allows them to do. There are examples of traditional leaders who effectively lead the development of their communities, and use available resources to the benefit of their communities.

Traditional leaders who lead by example bring to light the complexities of the debates between 'formal democracy' and 'actual participation' of communities in governance and their own development. One example of effective linkages between traditional and modern institutions of governance is the case of the Royal Bafokeng Nation (RBN).

The research question

The research mandate of the study was to investigate Bafokeng customary law and its relationship to governance institutions, both within and beyond the Bafokeng community. The main aim of the project, titled *Melao ya Sefokeng* (laws/customs of the Bafokeng), was to document both written and living customary law practices and institutions. It also looked at contemporary Bafokeng governance structures, with the aim to assess their value for future Bafokeng generations.

Study methods

We did a desktop study focusing on Bafokeng customary law, a review of documentation from the current RBN governance institutions, 25 key informant interviews and five focus group discussions.



Kgosi Leruo Tshekedi Molotlegi is the 36th king of the Royal Bafokeng Nation.

Findings were further tested in focus group discussions among community residents from the five Bafokeng regions. The study covered traditional and modern governance institutions within a constitutional context, such as social relationships, resource management and service delivery. Of particular interest was the relationship between customary practices and contemporary lives of the people who live on Bafokeng land.

Land ownership

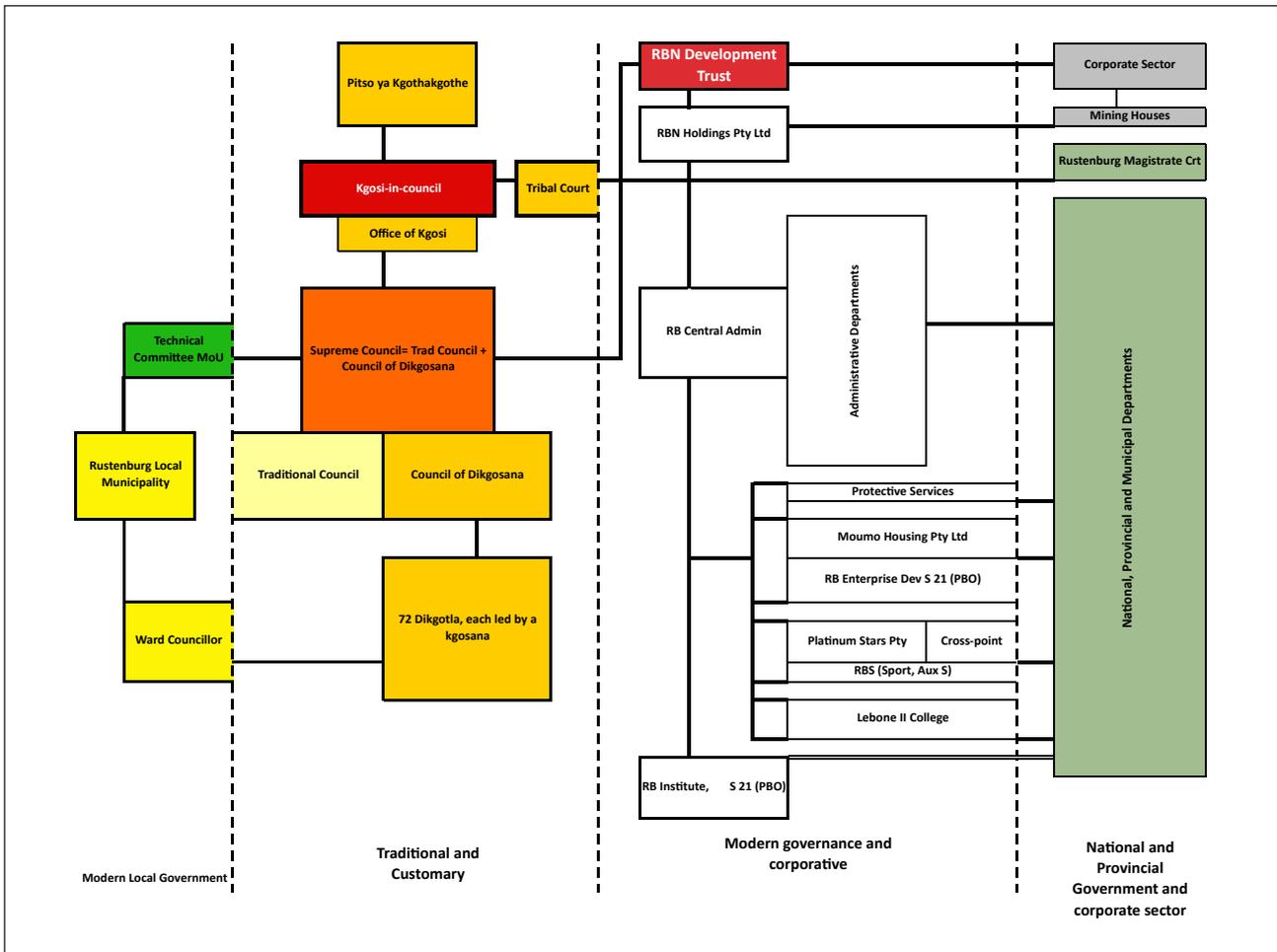
The situation of the Bafokeng is rather unique in South Africa. They define themselves as a royal nation and have succeeded in establishing registered ownership of more than 1 400 km² of land near Rustenburg, in the North West, including the co-ownership of platinum mines.

This traditional community has approximately 100 000 members living in the platinum belt, while a large number have migrated to other parts of South Africa. In addition, about 50 000 non-Bafokeng people live on Bafokeng land, mainly working in the mines.

The RBN receives impressive revenue from its land ownership and co-ownership of platinum mines. The RBN has consistently invested its resources in the development of its people through the provision of services in education, health, security and infrastructure.

Governance and customary law

Figure 1: The institutional landscape of the Royal Bafokeng Nation



What makes the RBN unique is its purposeful and consistent integration of customary and modern institutions of governance to ensure effective resource management and the promotion of the Bafokeng identity.

In this process the RBN combines two sets of governance (Figure 1). First, the traditional institutions consist of layered levels of governance and authority, from local, household level to clan (kgotla) level. At a higher level, governance occurs through the communal meeting, *Pitso ya Kgotha-Kgothe*, a bi-annual general meeting open to all adult members of the Bafokeng community.

Other customary institutions include the *Council of Dikgosana* (headmen), the traditional court, the supreme council and Bogosi (the king). The latter is a joint sitting of the supreme council of dikgosana and the traditional councillors, who are elected in terms of the North West Traditional Leadership and Governance Framework Act, 2005.

Secondly, the RBN has established a number of contemporary institutes and companies that deal with infrastructure, investments, education, health and social development, enterprise leadership development, and sport, among others. The RBN Development Trust links the traditional and modern governance structures.

Constitutionally and legislatively the Rustenburg local

municipality is responsible for development and service delivery in the Bafokeng area. The municipality is represented in the Bafokeng community through ward councillors, but no ward committees have been established. The relationship between RBN and the Rustenburg municipality is formally regulated through a memorandum of understanding initially signed in 2003 and renewed in 2014.

The RBN has used its own resources to operate as an effective municipality since the 1990s.



Historically, the municipality has not provided many services in the RBN area. The RBN has used its own resources to operate as an effective municipality since the 1990s. National and provincial government departments do provide significant direct services to the community, with which the RBN top-up services collaborate closely.

In the RBN, the relationship between hereditary traditional leadership (*dikgosana*), elected traditional councillors and elected municipal councillors is characterised by the seniority of the traditional leader (kgosana) within a customary legal system. The dominance of tradition requires sensitive management of this relationship, as the three parties have different legislative mandates.

The combination of the Council of Dikgosana (72 members) and the traditional councillors (18 members) in the 90-member supreme council is a practical integration of two decision-making structures in which the *dikgosana* seem to dominate by numbers. However, from a legislative point of view, the traditional council remains the official representative body of the Bafokeng within the South African governance system.

Rules of engagement: Consultation and accountability

The RBN manages the challenges of combined governance systems in multiple ways. Important is the general acceptance of the need for accountability, which is part of good traditional and modern governance. Within the customary context, the traditional leaders govern within a consultative system, in which all stakeholders can participate. For example, the kgosi (king) consults with representatives from the royal house, the various governance structures and local communities. The RBN institutes follow the King III recommendations on corporate governance and other legislation while reporting to the supreme council. Within the wider constitutional governance system, the RBN ensures that it fulfils its obligations to relevant state departments. The RBN consults with the relevant provincial and national departments, such as the departments of education, health, environment, minerals and resources, and others when planning its own development and service delivery interventions. The system shows that equal collaboration between traditional and modern governance institutions is indeed feasible.

The Bafokeng business

Similarly, the RBN is in continuous communication and collaboration with corporate partners, including those with operations on RBN land and those in which the RBN has invested as a shareholder. Significant resources flow directly from state coffers and corporate funds into the community, for example, for public education and healthcare, social grants and social workers.

All RBN entities and funds are audited annually, and financial statements and project reports are published and presented at community gatherings. There is a detailed project and programme management system that anyone can access online to see the development interventions in progress and what they aim to achieve. The traditional governance system is still largely patriarchal, but employment in the leadership of the administrative sphere is based on merit, independently of gender or membership in the community.

Communal property, including investments and land, is managed through the interaction between the modern and the customary institutions. Investments on the JSE

are governed strictly according to modern regulations and practices, but expenditures on financial matters that have a direct implication on the lives of Bafokeng are tabled at the supreme council and the *Pitso ya Kgotha-Kgothe*, where final decisions are made.

Customary land regulations lag behind contemporary social conditions.



The issue of land

Land is managed through a land use committee within the RBN, which combines customary communal land rules with modern town planning regulations guided by the framework of the Rustenburg local municipality.

Land management remains tricky, with competing interests of Bafokeng farmers, the mines, other businesses and normal residents. Customary land regulations, particularly with regard to domestic site allocation, lag behind contemporary social conditions, for example, only permitting residential stands to be allocated to people who are married. In keeping with the rest of South Africa, very few Bafokeng are getting married today. While unmarried men cannot access a stand under any circumstances, except through inheritance, unmarried women with children and unmarried women over the age of 40 can be allocated stands under certain circumstances and on the basis of need.

Within the increasingly post-modern context of the urbanising Bafokeng, limitations by age and marriage status result in educated youth leaving the area, diminishing the economic development of the locality.

Investment in schools and bursaries... has resulted in well-educated young Bafokeng.



Testing the tradition

The RBN leadership is not uncontested. Although the RBN's PULA survey of 2011 indicated that more than 90% of respondents trusted *kgosi* and his *dikgosana* in representing their interests, support for the traditional institutions did not preclude criticism of individual leaders. The PULA survey provided a register of all parks and land occupation.

Several families are in a long court dispute with the RBN and the Minister of Rural Development and Land Reform about title deeds for farms they consider their personal property rather than part of the Bafokeng collective. Non-Bafokeng residents, often renting backyard shacks from Bafokeng families, do not necessarily see themselves as part of the customary system. Youth are increasingly alienated from customary practices and adhere to post-modern lifestyles.



Lebone II College

The RBN investment in schools and bursaries for advanced education and its promotion of a forward-looking approach to self-development has resulted in a cohort of well-educated young Bafokeng. This may come at a price, such as a disregard for the older leadership who is less educated.

The dependence on revenue from platinum as its dominant income source leaves the RBN vulnerable.



Effect of the mine strikes

The dependence on revenue from platinum as its dominant income source leaves the RBN vulnerable. Decreasing dividend revenue after the platinum mine strikes in 2014 resulted in the RBN leadership embarking on a reorientation and reconfiguration of the RBN institutions and a reprioritisation of its responsibilities for development and service delivery. Furthermore, the RBN is now looking for increased investments by the Rustenburg municipality. Such an increase may lead to a demand for more decision-making power by the municipality, which may undermine the customary governance system.

A model to emulate

The question arises whether the RBN model can be replicated in other communities. Interestingly, the nearby Bakgatla community has also started to use its platinum revenue for community development and the empowerment of local entrepreneurs, artists and crafters, and for exploring the potential of the tourism sector. However, there are communities where leaders are embroiled in court cases around mismanagement of revenue. Furthermore, traditional communities without the abundance in natural resources are at a disadvantage and have far less space for self-development.

The research did not investigate the replicability of the RBN system, partly due to the RBN's unique resource situation. However, the underlying principles may prove useful in other locations, particularly the combination of customs of accountability, deep consultation with the community, and collective decision making with modern legislative regulatory systems; the acceptance of responsibility for self-development by the leadership, the combination of communal interests with opportunities for investment and effective land use and management; and the promotion of communal identity in a context of increasing individualism. ■

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