

# Reconciling Africa's fragmented institutions of governance

First phase fieldwork Findings:  
Giyani and Matatiele case studies

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# South Africa: Historical Context

- Pre-Apartheid institutions of governance
  - Dutch-Anglo institutions 1652 – 1902
  - African tribal institutions
  - South African consolidation 1902-50
- Under Apartheid
  - Apartheid institutions formalised
  - Homeland development
  - Responses from African communities

# South Africa: current legislative context

- SA Constitution: Chapter 12
- Liberal Democracy and Basic Human Rights
- Recognition of Traditional Institutions
  - National House of Traditional Leaders Act (1997),
  - Municipal Structures Act (1998)
  - Traditional Leadership and Governance Act (2003)
  - Communal Land Rights Act (2004)
  - Traditional Courts Bill (2008)

# Current debates

- Basic Human Rights vs Traditional Institutions
- Democratic Pragmatism vs Organic Democracy
- Representative vs participatory democracy
- Service delivery: effective governance vs failed state
- Democratisation of Traditional Institutions;
- Reconciliation of TIs and Liberal Democratic

# South Africa: Giyani

- Location in Limpopo, Mopani District
- Population: 247,657
- 1 semi-urban, 30 wards as municipality
- 91 villages under TA
- 60% unemployment
- 78% without income
- Low economic capacity/potential

# Ambiguous relationship TI and MI

- Historical background:
  - Traditional Institutions under colonialism
  - Gazankulu homeland
  - Identity confirmation: Tsonga tribe, culture
  - Moderate levels of service delivery
  - Post-1994: ANC needs constituencies
  - Acknowledgement of TI and TA
    - Constitution and legislation
    - Government
    - people

# Ambiguous relationship TI and MI

- **Structural relationship**

- Municipal structure: municipal council, wards, administration
- TA structure: Hosi, tribal council, indunas, communities
- Difference ward and TA boundaries
- Legislative position of TI:
  - Custodians of culture and custom
  - Owners of land
  - Advice to Municipality via LTC and 10 chiefs on Municipal Council
- Legislative position of MI:
  - Democratic governance: 2 municipal levels
  - Decision making and implementation
  - Service delivery
  - LED

# Peoples' perceptions of relationship

- Legitimacy of TI acknowledged:
  - Socially embedded: identity
  - Historically embedded: cultural roots
  - Permanence: sustainable
  - Government closest to the people
  - Deep participatory and consultative
  - Hosi as father, governor, provider, representing historical roots
  - **But:** Youth challenges



# People's perceptions of relationship (2)

- Legitimacy of MI acknowledged:
  - Constitutional
  - Result of democratic struggle
  - Responsible for service delivery: resourceful
  - Ward councillors as channel to MI
  - Willingness to participate in Ward committees
  - **But:** Disappointment with service delivery

# People's perceptions of relationship (3)

- Rejection of polarity between TI and MI
- Both are legitimate governance and responsible for service delivery
- Need for respect and cooperation

# Practice in relationship

- Rural people start with TI
- Opportunism and shuttling prevented
- Accept subsequent shift to MI when mandate is legally determined (crime) or resources absent
- Occasional/regular communication between TI and MI

# Local interpretation of democracy and governance

- Democracy not as determining factor in perception of governance
- Experience differences between TI and MI less than in theory
- Structure vs procedure
  - Party and hereditary leadership
  - Split functions vs unified functions
  - In both consultative processes
  - In both potential for abuse, corruption
- Priority of people is well-being
- Measure for TI is identity, social cohesion, stability, service delivery
- Measure for MI is service delivery

# Findings: Land issue

- General agreement: Ownership with Hosi as custodian:
  - Basis for authority
  - Land cannot be sold
  - Land use, not title deed
- Land allocation:
  - Combination TI and MI
  - Differentiation housing, business, agriculture
  - Application route: TI – TI/MI – MI - TI
- Other resources: TI
  - Wood, sand
  - Medicinal plants
  - Food: Marula, Mopani worm

# Findings: Conflict Resolution

- Aim: reconciliation, harmony
- TI central
  - Family-Induna-Tribal Court
  - Function of Tribal Court
- MI function (Magistrate court):
  - Referral
  - Crime
- Reasons for preference Tribal Court

# Findings: Decision making and Gender

- Depending on issue
- TI and MI participatory and functional mandate
- Traditional mandate accepted
- Government policy accepted
- Women included in TI decision making
- Inheritance
- Land Committee
- Ward Committee
- Councillor

# Findings: Service delivery

- Role of TI: provide for wellbeing
- Role of MI: provide services
- TI: limited, per village, ad hoc, low cost/free, local resources
- MI: comprehensive, per ward, IDP cycle, cost-recovery, limited + national resources
- TI and MI: Portfolio Committees
- People accept two channels and functions



**Reconciling Africa's  
Fragmented Institutions:  
Matatiele**

# The Research Sites

- Magadla (amaHlubi)
- Tyali (eMafube)
- Sibi (kwaSibi)
- Dlamini (eNhlangwini)

# The Government Departments

- Education
- Home Affairs
- Social Welfare
- South African Police Services
- Justice
- Agriculture
- Health
- The Municipality
- Moral Regeneration Programme

# Focus groups with communities

- These involved iinkosi, some headmen (amaphakathi), izibonda (assistant headmen, ward councilors, women, men, the youth
- Focus on the role of traditional institutions, their interaction and linkage with government departments
- Also gained insight on history, succession principles, 'place' of

# Emerging issues: departments

- Traditional institutions are useful in gaining access and gaining the trust of communities whilst implementing government programmes [Health]
- They are important in securing land – from a practical perspective (whether or not the land tenure debate is resolved) [Agriculture]
- Good relations with traditional councils are good for community partnerships – the trust issues [SAPS]

# Emerging issues: The Municipality

- TLGFA regarded as important; but not implemented yet – Traditional Councils and Local Houses not constituted yet
- Some initiatives have taken place in discussion of synergistic partnerships – workshops between iinkosi and the municipality (Councilors mainly)
- Representation of Traditional leaders in municipal council has also been an issue

# Emerging issues: Municipality

- linkosi and land
- linkosi and the jurisdiction of councilors – frustration through boundaries; frustration through unstructured interface of councilors with iinkosi; frustration through perceived political differences; frustration through limited budgets whilst there is competition

# Conclusion: Traditional Institutions

- They perform an extension or linking role – co-operation and referrals on law and justice issues
- They are needed by the state and communities – development facilitation with communities
- Areas of exclusive service on a different type of justice with greater insight on local issues; land issues and access to basic entitlements by communities; on site dispute resolution and management of order; supervision of socio-cultural entitlements in a changing society



# Conclusion: Traditional Institutions

- Unique attributes:
  - Kinship system - the basis of 'traditionality'. 1) There is a need to measure patriarchy against mere patrilineality. 2) To what extent is this different from general 'cultural norms' 3) The clash with equality of human rights (especially on gender) – is it ideological or/and practical
  - The concept of justice – related to understanding of kinship dynamics: injustice-redress/compensation-punishment
  - Local presence and social welfare – hunting, harvesting forests, guarding ceremonies, dispute resolution
  - Morality issues – declining role (issues are 'respect'; generational conflict; some

# Reconciliation of institutions

- Agreement: both must be retained
- Parallel or fused?
- Resolve duplication
- Resolve dominance and exclusion
- Resolve boundaries of wards and TAs
- Resolve decision making vs advisory roles
- Democratisation of TI: elections, gender
- Capacity building of MI, TI

# Theoretical issues

- Limited polarity between two institutions:
  - Complex relationship
  - Interpenetrable/overlap
  - Dynamic, not fixed
- Three parties: TI, MI, people (central)
- Democracy: structure vs procedure
- Living traditionality: reification vs reinterpretation
- Regulation - relationship building
- Communication - functional delineation
- Importance of individual personalities