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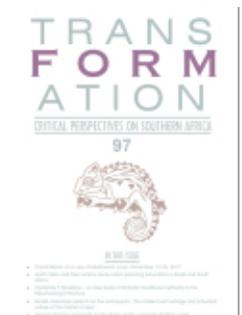
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Article

Who should stand up? Dilemmas and contradictions in post-apartheid local governance and planning: a case study of Umjindini traditional authority in Mpumalanga Province

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Abstract

The post-apartheid local governance legislative frameworks such as the White Paper on Local Government 1998, the Local Government Municipal Demarcation Act 1998, and the Local Government Municipal Systems Act 2000 seek to create a new relational order between traditional and municipal authorities of local government. However, traditional authorities are presented as a lesser partner of local governance. This challenge emanates from the South African Constitution of 1996 which is less explicit about the role of traditional leaders in local governance, thus creating contradictions and dilemmas resulting from overlapping functions and competing interests. Owing to the increasing pressure on municipalities to work with traditional leaders in facilitating service delivery, this relationship has become a pressing point. This paper investigates the dilemmas and contradictions ensuing from their divergent views on political authority, land allocation, implementation of municipal standards, and formulation of integrated development plans. The paper uses the case study of Umjindini Traditional Authority (Barberton) in Mpumalanga Province, to reflect on the strategies that traditional authorities adopt to shore up their authority, and the manner in which municipalities mitigate their position. It is argued that government's integration of the traditional institution has not translated into constructive practice, and that there is a need for alternative ways of re-negotiating the relationship in order to develop sustainable integrated governance.

Introduction

Who should stand up to show respect to the other, is it me [chief/*inkosi*] or the mayor? (*inkosi* Kenneth Dlamini, September 2014)

Traditional leaders ... have been ejected and replaced by municipalities, which have assumed the role, powers and functions of traditional leaders. (Inkatha Freedom Party press release, June 1, 2017)

The challenge is that the Chief allocates land without considering availability or provision of services and this is a difficult situation. (Mjindini ward councillor, September 2014)

Since its fusion into the democratic local government system, the role and place of the institution of traditional leadership in municipalities [is] fraught with tension, confusion and contradictory practices. (South African Local Government Association, August 2012)¹

The opening quotes from *inkosi* Kenneth Dlamini, a chief of the Umjindini area (located in a small town known as Barberton in Mpumalanga Province) and *inkosi* Mangosuthu Buthelezi, who is an *inkosi* of the Buthelezi clan in KwaZulu-Natal and president of the Inkatha Freedom Party, illustrate the contradictions around the institution of traditional authority (chiefs and headmen) and municipalities in post-apartheid local governance. Their sentiments reveal the frustrations of the traditional authorities with municipal laws in particular, regarding their role and status in local governance. Whilst commenting on what he considered the marginalisation of chiefs in municipal governance, the *inkosi* Dlamini posed the question, ‘Who should stand up to show respect to the other, is it me or the Mayor?’ (*inkosi* Kenneth Dlamini, September 2014). Through this question, he condemned the municipal practice of standing up in honour of the mayor when s/he walks into the council chamber during council meetings.² His comment emanated from the fact that the Local Government Municipal Systems Act (Republic of South Africa 2000) allows the chief to attend council meetings as an ex-officio member and therefore he is expected to join councillors in standing up as a sign of respect when the mayor walks into the council chamber. He emphatically dismissed the practice, arguing that it undermines the supremacy and significance of the traditional institution. This epitomises the dilemma of authority around the role of traditional leaders in local governance.

Ntsebeza (2004) observes that the dilemma in South Africa’s local governance and planning is rooted in the colonial-apartheid systems

which distorted customary law. The systems granted many powers to the traditional authorities, which resulted in them being unaccountable to the rural residents, and the subsequent violation of allocation procedures such as imposing illegal taxation. The abuse of power by some traditional authorities worsened in the 1990s (Ntsebeza 2004:78). Inherited from this past system, most land in rural areas and in former bantustans is owned by the state and the Development Trust, and is administered by traditional authorities (Ntsebeza 2004:72). While the post-apartheid government constitution has recognised traditional leaders, it did not clarify their role in local governance. Hendricks and Ntsebeza argue that the recognition of the traditional institution (framed as an integrationist approach in this paper), has ‘implications for gender equality, for control over land allocation, for the universal franchise and for democratic local government’ (1999:100). The challenges, however, do not end there. The post-apartheid legislative frameworks are also unable to eradicate the contradictory practices emerging from overlapping functions and competing interests in these areas.

Eric Hobsbawm and Terence Ranger maintain that traditional leaders in southern Africa ‘have always engaged assertively with other sites of authority and government’, note Beall et al (2005:756). Since democracy in 1994 scholars have analysed how traditional leaders have attempted to assert their authority in post-apartheid South Africa (Khonou 2009, Beall et al 2005, Oomen 2005, Ntsebeza 2004, Hendricks and Ntsebeza 1999). For example, Beall et al (2005) have explored the relationship between the institution of chieftaincy and the local governance structures in the context of KwaZulu-Natal. In this region chiefs are an integral part of the democratic political system and strongly affirm their authority. Yet this authority is not without contestation. At an Inaugural Indaba of Traditional Leaders hosted by the Ministry of Cooperative and Traditional Affairs in 2017 it was asserted by Mangosuthu Buthelezi that ‘traditional leaders have been ejected and replaced by municipalities, which have assumed the role, powers and functions of traditional leaders’ (Inkatha Freedom Party press release, June 1, 2017). This suggests that rather than an integrationist approach municipalities have overriding authority over traditional authorities.

Although scholarship generally observes that an integrationist approach remains a preference for many countries in sub-Saharan Africa and triggers contests, there is limited research that analyses the antagonism

between the two sets of institutions that are involved in local governance (with the exception of Ntsebeza 2004, Beall et al 2005, Logan and Little 2009, and Bikam and Chakwizira 2014). The current investigation of the contests between the traditional and municipal authorities contributes to what Englebert considers ‘an ongoing reconfiguration of power across the continent’ (2002:52). This paper therefore contributes to the understanding of integration theory and the transformation of post-apartheid government through research conducted in the Umnjindini municipality.

This study employs a qualitative research methodology to investigate the relationship between the traditional and municipal authorities. The methods of exploration included a set of 100 questionnaires administered to randomly selected residents of the Umjindini Trust, observation and semi-structured interviews. With regard to the semi-structured interviews, purposive sampling was adopted and three ward councillors³ and five traditional leaders (chief, adviser, and three headmen) were interviewed for this study. While the officials in the Spatial Planning and Human Settlements section of Umjindini Municipality, were not available for interview, extensive information from other participants and secondary sources on planning and human settlement was used to provide insights into planning issues. Two research assistants were engaged to assist in conducting the fieldwork, which was done over a period of one month. Accessing information in the areas was not difficult because the researcher was familiar with the Swazi culture and had previous research and professional experience in similar settings. To analyse the data, the researcher identified and analysed themes, and considered implications of the findings and divergent patterns.

The problem

As the opening quotes reveal the ambivalent position of chiefs as representatives of traditional authority and their role as state proxies to advance local development projects in rural communities causes frustration for both traditional leaders and municipal officials. This unresolved tension between traditional and municipal authorities is also recognised at a national level. The South African Local Government Association raises a similar concern regarding the ambiguity of the relationship between the two institutions. It observes that ‘since its fusion into the democratic local government system, the role and place of the institution of traditional leadership in municipalities has been fraught with tension,

confusion and contradictory practices' (South African Local Government Association 2012:1).

The contests between the traditional leaders and the municipal councils can be contextualised within the vigorous debates which emerged during the transition period in the early 1990s, when the African National Congress (ANC) and other political organisations were unbanned in preparation for the transition to democracy. During the formal negotiations, chiefs demanded to be part of the negotiation process, and this culminated in the Interim Constitution recognising the role of chiefs (Oomen 2005). To address these views, the ANC-led government adopted a hybrid constitution which incorporated the traditional authorities in democratic governance. The constitution created three spheres of government: national, provincial and local (Ntsebeza 2004). The recognition of chiefs by the Constitution and the failure to clearly spell out the roles and responsibilities of the traditional leaders sparked dissenting views regarding the relevance of chiefs in a democratic South Africa. To advance the democratic principles at the local sphere of government, the constitution promotes the establishment of municipalities in both urban and rural areas, the latter of which is predominantly governed by traditional leaders (Ntsebeza 2004). The constitution therefore recognised both elected councillors and the unelected traditional leaders, which given differences in priorities and principles often leads to conflict.

The integrationist approach to local governance

In essence, the post-apartheid government pursued an integrationist approach which incarnated what Sklar (1994) termed 'mixed government', characterised by the juxtaposition of municipal elected councillors and traditional authorities in local governance. Proponents of this perspective promote the simultaneous existence of traditional institutions and municipal councils in local governance with the central government executing its mandate and authority as a sovereign state. Proponents such as Ismail (1999) argue that there should be a model that combines the democratic aspects of traditional governance with those of municipal governance. However, Bank and Southall (1996) are sceptical of mixed government, which they argue would compromise democracy as the traditional leaders might not be competent in political administration. In addition, the two systems may be underpinned by contradictory values and principles which impede their synchronisation (Meer and Campbell 2007).

Lungisile Ntsebeza in his book *Democracy Compromised* critically examines the integrationist approach, and raises concerns regarding the undemocratic principles underpinning traditional leadership which risks compromising democracy (Ntsebeza 2005). He concludes that the integration of traditional leaders into the democratic government could occur when the traditional leaders ‘abandon their hereditary status and subject themselves to the process of election by their people’ (Ntsebeza 2005:35). Often the integrationist approach advocates a subordinate status of the traditional institution and their non-involvement in political matters, local governance and the state. However, it is one thing to make this assertion and another thing to translate such a relationship into practice, as traditional leaders are resisting a subservient status in local governance.

Contests experienced in sub-Saharan Africa

Many African countries experience the simultaneous existence of customary and statutory institutions which compete for power (Englebert 2002), and some such as in the South African case have revised their constitutions and extended the role of traditional leaders to participate in democratic governance. In many of these countries, the traditional authorities are involved not only in customary issues but also in service provision and development projects (Ubink 2008). The southern African region is not exempt from experiencing this phenomenon. Countries experiencing clashes between state and traditional institutions in the Southern African Development Community include Botswana, Namibia, Zambia and Zimbabwe (D’Englebronner-Kolff et al 1998) and Swaziland (Simelane 2013). In many of these countries the contestation over authority is also linked to land allocation and power.

In Botswana, the House of Chiefs has expressed its discontent regarding the erosion of power attributed to democratisation of the traditional institutions. Similarly, in peri-urban Kumasi (Ghana) the relationship between traditional and elected authorities is fraught with tension. Ubink (2008) reports that tension arises from the commodification of customary land by chiefs, and the subsequent failure of state institutions such as the Land Commission and the District Assembly to control the chiefs, despite the fact that they have the mandate to do so.

In Swaziland, an urban development project, co-funded by the World Bank and the government of Swaziland, and implemented in the informal

settlement of Moneni, suffered as a result of contests between the traditional leaders, the Ministry of Housing and Urban Development and Manzini municipal authorities (Simelane 2013). The upgrading project could not be implemented for more than a decade as traditional authorities resisted the authority of the Manzini Municipality in land management. To date, the issue of authority over the area is still unresolved. South Africa's contestations are, therefore, not unique on the continent.

South Africa: the role of traditional leaders from precolonial to post-apartheid era

In South Africa, precolonial customary structures comprised kings, chiefs, headmen, councils and members of the community (Thipe 2017). The chiefs derived authority from 'patronage, ritual and symbolic power' (Beall et al 2005:9), and they executed political and administrative functions based on customary law (Khunou 2011). The arrival of Europeans in South Africa altered the traditional governance system through the introduction of a new policy (Khunou 2011). According to Mamdani (1996) they introduced a 'bifurcated state' resulting in coexistence of the traditional governance structure and the colonial governance structure. As a legislative framework to control the traditional institution, the colonial administration, introduced the Natives Land Act of 1913. The Act distorted the traditional land tenure system and promoted entrenchment of the established African reserves (Claassens and Cousins 2008). Chiefs became agents of the colonial administration. The Act also dispossessed black South Africans of land and exacerbated their poverty (Modise and Mtshiselwa 2013). South Africa was divided into four provinces: the Cape, Natal, Transvaal and the Orange Free State. In addition, the black population was grouped according to their clans for administrative purposes.

The system of indirect rule was piloted in colonial Natal and later extended across the country (Beall and Ngonyama 2009). This colonial influence had the same effect on the black Africans living in Eastern Transvaal (du Preez 2012). As such, Tsongas and other chieftainships in the Eastern Transvaal province were all restricted to the native reserves (Thornton 2002) and their areas served as a supply of cheap labour for the apartheid capitalist economy (Cousins and Claassens 2004). The Native Administration Act of 1927 permitted the establishment of new structures, namely tribal authorities and regional authorities, which served as an arm

of the white government to control black African people (Thipe 2017). This Act recognised customary law and special courts to address issues related to customary law in most provinces.

In the Eastern Transvaal, however, the situation was more complex. The Swazi chiefs struggled to obtain full recognition and were not granted reserves by the Department of Native Affairs until the introduction of the Bantu Administration Act 1951. Instead, the Department had instructed them to relocate to Swaziland. The chiefs however, were opposed to this because they considered their land as part of Swaziland, and were supported by king Sobhuza II (Macmillan 1991:304). In the 1930s, the chiefs and headmen of the Swazi clan signed a petition expressing their concerns that they did not own land (Macmillan 1991). Consequently, Macmillan asserts, 'as late as 1947 the attitude of the Department of Native Affairs towards Swazi Chiefs had changed very little' (Macmillan 1991:304). However, the Tomlinson Commission of 1955 provided a 'blueprint for the consolidation and development of the reserves along ethnic lines', thus Swazis managed to get reserves in Eastern Transvaal (Macmillan 1991:305). Ever since that period, king Sobhuza II of Swaziland and his advisers engaged in fruitless negotiations to reclaim the land. The issue of land reclamation is still inconclusive and on the agenda of the Swazi monarchy (Macmillan 1991).

In 1971, the South African government introduced the Self-Governing Territories Constitution Act granting homeland leaders authority over their citizens with the endorsement of the South African government (Khunou 2009). The Act exacerbated structural and racial imbalances (Thipe 2017) which remain a challenge in the post-apartheid legacy. Poverty worsened in the homeland as a result of infertile land and abuse of public funds by the homeland leaders, thus exacerbating antagonism between residents and the leaders (Khunou 2009). The 1970s was characterised by unrest as trade unions exerted pressure on government to end apartheid. In addition, in the 1980s youth and civic associations revolted against chiefs who supported apartheid and the bantustan system (Murray 2004). Subsequently, the traditional authorities were divided into two factions: progressives (who advocated dismantling of the apartheid system) and non-progressives (who benefited from the apartheid system).

The unbanning of the ANC and other political parties in 1990, and the subsequent release of Nelson Mandela, in principle marked the end of the bantustans. During the move towards a democratic state, the ANC

government, however, recognised the contribution of the Congress of Traditional Leaders of South Africa (Contralesa) to the struggle against apartheid. Since then Contralesa's membership has increased (Oomen 2005). A National House of Traditional Leaders, consisting of 18 members, was established in 1997 to promote the role of traditional leaders in democracy and collaborate with provincial Houses of Traditional Leaders.

South Africa's legal framework: harmonising traditional leaders and municipal authorities?

In its efforts to address the needs of both sets of institutions, the post-apartheid government has embraced an integrationist approach. The first draft of the constitution of South Africa, introduced in 1995, signalled, for traditional leaders, their marginalisation in political governance. Contralesa threatened to persuade the traditional leaders to boycott the first democratic election if their role was restricted to an advisory role in customary law and practice (Beall and Ngonyama 2009). Contralesa also pushed for the recognition of traditional authorities and their institutions as the primary level of government in rural areas (Ntsebeza 2004:270). The interim Constitution stipulated that 'the institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution' (Interim Constitution Act 200 of 1993). The final Constitution complied with the stipulations and recognised traditional institutions. However, other commentators observe that the final Constitution accords less power to the traditional leaders than the interim Constitution (Ntsebeza 2005). For instance, the interim Constitution mandated the national legislation to establish provisional houses of traditional authorities but the final Constitution makes them discretionary (van Kessel and Oomen 1997). The Constitution 1996 (chapter 12, section 212) reads: 'National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities' (Republic of South Africa 1996). The cautious 'may' used in this clause avoids prescribing a mandatory role for traditional leadership in local communities, instead keeping it optional. The national government is not obliged to include traditional leaders in all levels of governance (van Kessel and Oomen 1997). Both the interim and final Constitution granted traditional leaders an ex-officio status in local government, suggesting a subservient status to municipalities. Notably, the amendment was mainly in respect to the powers of the chiefs in the

rural, not municipal areas (Bikam and Chakwizira 2014). Bikam and Chakwizira observe, Section 151 of the Constitution of the Republic of South Africa (1996), which established municipalities, weakened traditional institutions in that functions which the Black Authorities Act (1951) accorded to traditional leaders were now assigned to municipalities. Consequently, land use planning and service delivery are the preserve of municipalities and traditional leaders may be provided with a supportive role. The Constitution failed to spell out the nature of these roles between traditional leaders and municipalities given the new relationships of power with municipalities (Bikan and Chakwizira 2014:146).

The White Paper on Local Government of 1998 (Republic of South Africa 1998), which some consider as a mini-constitution on local government, indicates that the role of traditional leaders in economic development includes lobbying government and other agencies for the development of their areas. According to this policy, traditional leaders must play a facilitative role in socio-economic improvement and local economic development. The White Paper (1998:96) stipulates the roles:

- making recommendations on land allocation: settling of land disputes;
- lobbying government for the development of their areas; and
- ensuring that the traditional community participates in decisions on development and contributes to development.

Clearly, on its own, this does not accord much power to traditional leaders, but rather reinforces the supremacy of the municipal government institutions. In simple terms, it positions traditional leaders as supporting agents of the municipal structures and other state institutions. Section 81 of the Municipal Structures Act 1998 provides for a maximum of 20 per cent representation of traditional leaders in municipal council meetings (Republic of South Africa 1998). However, ‘no legislative framework exists for the payment of allowances (let alone salaries) to traditional leaders’ (South African Local Government Association 2012:3). This is resented by the chiefs, and these ambivalent clauses exacerbate the antagonism between the traditional leaders and municipalities.

Furthermore, the Municipal Demarcation Act 27 of 1998 (Republic of South Africa 1998) permitted the establishment of an independent authority to facilitate the demarcation and redetermination of boundaries to correct apartheid-based irrational settlement patterns marginalising black South

Africans. The Demarcation Board, chaired by Michael Sutcliffe, resulted in some rural areas being part of municipalities, thus interfering with the power of chiefs to distribute land. The demarcation process is therefore contested by chiefs, who believe it usurped chiefly powers and conferred these upon municipal authorities. For this reason, 'the usurping of traditional Chiefly powers by local government dominates the local debates' (Murray 2004:13).

The ANC government introduced the Local Government Municipal Systems Act of 2000, which sets out core principles, mechanisms and processes that give meaning to developmental local government. Initially, the government had introduced the Local Government Municipal Structures Act of 1998 which recognised the traditional leadership.

Traditional authorities that traditionally observe a system of customary law in the area of a Municipality, may participate through their leaders identified in terms of section (2), in the proceedings of the council of that Municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council. (Republic of South Africa 1998: Section 81.1)

This section again makes the participation of the traditional authorities' non-mandatory, thus leaving it to the discretion of municipalities. Subsequent to the introduction of the above-mentioned legislation, the South African government passed the Traditional Leadership and Governance Framework Act 41 of 2003 in an effort to provide clarity and substance to the role of the traditional leaders (Republic of South Africa 2003). The Act stipulates that 'any partnership between a Municipality and a Traditional Council must be based on the principles of mutual respect (and recognition of the status)' (Section 5). The weakness of this Act is that it again does not provide a clear role for traditional leaders within the 'state institutional system' and the nature of the partnership referred to is also unclear. Although the framework aimed to align the Traditional Councils with principles of democracy (Meer and Campbell 2007), translating this into practice remains a challenge.

However, the passing of a Communal Land Rights Act of 2004 which allowed the transfer of title deeds to be endorsed by the traditional leaders caused confusion (Thipe 2017). The Act was opposed by groups who felt vulnerable and was subsequently nullified by the Constitutional Court for violating democratic principles. Notwithstanding this hurdle, the efforts to integrate the traditional leadership into legislation continued. In 2013,

the government introduced the Spatial Planning and Land Use Management Act No. 16 of 2013 (Republic of South Africa 2013), which provides direction on land development and planning. Section 23(2) of the Act reads: ‘Subject to section 81 of the Local Government: Municipal Structure Act 1998- and the Traditional Leadership and Governance Framework Act of 2003 a Municipality in the performance of its duties in terms of this chapter must allow the participation of a Traditional Council’ (Republic of South Africa 2013). This clause recognises the traditional authority, but again failed to unpack the nature of the participation. The case study below demonstrates how the dilemma and contradictions unfolds in the context of a Umjindini Municipality.⁴

The case study of Umjindini traditional authority

The Umjindini municipality is located within a gold-mining area, 45 kms from Mbombela (formerly Nelspruit) in Mpumalanga Province (formerly the Eastern Transvaal). The municipality of Umjindini is administered by the Ehlanzeni District Municipality, and situated in the southern lowveld of the province. It is predominantly a Swazi area, with a population of 67,156 (Statistics South Africa 2011), characterised by inadequate services. Key economic activities in the area include gold mining, forestry, agriculture and tourism. The history of the traditional leadership in the area dates back to about 1860 during the reign of king Mswati II, of Swaziland, who successfully united different clans into one Swazi nation (Thornton 2002, Bornman 2006). The unified clans became known as BakaMswati, meaning people of Mswati. The Swazi regiments who settled in Selapi, 10 kms west of what is now the town of Barberton, named the area Mjindini. The name Umjindini (as a verb) means that they were settling there permanently, and were not prepared to go any further (Bornman 2006). King Mswati earmarked his younger wife, who was officially addressed as *Inkhosikati LaShongwe*, to join the regiment at Umjindini. The *Inkhosikati* and the regiment stayed in the royal homestead until the Europeans discovered gold in the area in 1886 (Bornman 2006). The apartheid government relocated the royal homestead to different sites within the area at least three times before settling the site where it is currently situated (Interview with senior headman Matsebula, September 2014). Currently, the royal homestead lies to the south-west of Barberton town, four km away, and is known as Umjindini Trust.

Inkosi Kenneth Dlamini is a prince (Thornton 2002). His father,

Funwako Dlamini, succeeded Mhola, who served as chief from 1924-1965. *Inkosi* Kenneth Dlamini is often referred to as prince, and sits in the House of Traditional Leaders of Mpumalanga Province (Interview with *inkosi* Kenneth Dlamini, September 2014). He performs the functions of a chief and administers the area with the assistance of the Tribal Inner Council. Umjindini Trust consists of 12 sub-areas administered by 12 *izinduna* (headmen). Five of these headmen are females (Interview with *Indvuna* Matsebula, September 2014). The fact that there are five female *tindvuna* can be seen as an attempt to adhere to the democratic principles of good governance. Senior *indvuna* Matsebula plays a supervisory role over the others. The headmen are classified into two categories: those with royal assignment, who are mainly from the clans who were part of the regiment that first settled in the Umjindini area, and administrative headmen, who are elected by community members and approved by the chief based on certain good qualities such as respect and discipline (Interview with *inkosi* Kenneth Dlamini, September 2014, and with *induna* Matsebula, September 2014). The election of the administrative headmen complies with the democratic principles. However, the extent to which the two categories exercise power remains unequal as those with royal assignment dominate. The post-apartheid Demarcation Act incorporated Umjindini Trust into the Umjindini municipal boundary, hence the coexistence of the municipality and the traditional institution and the emergent contradictions analysed in this study.

Contradiction on political authority – who should stand up?

The traditional authorities (*inkosi* and headmen) of Umjindini Trust and municipal authorities (councillors) concurred that traditional authorities are permitted by the Municipal System Act 2000 to participate in Council meetings as ex-officio members. However, this study revealed that Umjindini Trust traditional authorities do not attend Municipal Council meetings. When questioned concerning their non-attendance, they offered justifications which mirror a dilemma of linking traditional institutions and state institutions in the local governance of South Africa.

Inkosi Dlamini and the area's senior headman, headman Matsebula, expressed their concern that the political behaviour and language used in Council meetings is sometimes disrespectful; therefore they protect their chief from this humiliating behaviour. The traditional leaders mentioned that in such Council meetings, for instance, usage of title is

often overlooked, and members call each other by first names, sometimes rudely communicated. In contrast, the Swazi tradition considers calling a chief by his first name disrespectful, as is shouting at him. An adviser to the chief, who is a teacher by profession, emphasised that ‘the Chief is protected from being embarrassed by Councillors’ (Interview with Mr Nkosi, September 2014). The traditional leaders also complained about the fact that they are given an ex-officio status in Council meetings. They believe that such a status is demeaning of the traditional institution. For this reason, they argued that their attendance is less fruitful than that of others because they do not vote, which suggests they are only being used as rubber stamps and spectators in local governance decision-making processes (Interview with *inkosi* Kenneth Dlamini, September 2014 and *indvuna* Matsebula, September 2014).

In addition, the traditional leaders expressed their concern that the position of the chief in relation to the mayoral position is not clearly spelled out. Both the chief and the three headmen interviewed for this study explained that the position of *inkosi* or chief is a permanent one, and enjoys supremacy over the mayoral position. They stated that the *inkosi*’s position does not depend on elections, thus cannot be equated or be subordinated to a mayoral position. For this reason they condemned the fact that the chief is not accorded a supreme status at the Council Chamber. Illustrating the subordination of the traditional leaders’ position, *inkosi* Kenneth Dlamini used as an example the practice in Council meetings whereby councillors are expected to stand when the mayor walks into the Chamber to chair Council meetings, as a way of honouring him or her. He therefore wondered ‘do I have to respect the Mayor, stand up when he walks into the Council Chamber?’ Expressing his dissatisfaction and frustration further, he said: ‘But the Mayor is my subject’ (Interview with *inkosi* Kenneth Dlamini, September 2014). The mayor’s home is at Umjindini and according to Swazi custom he is a subject of the chief. He also mentioned that he had never received a formal invitation to attend from Umjindini Municipal Council. When asked to comment on their failure to formally invite the chief to Council meetings, the acting mayor asserted:

The problem is that there are no clear guidelines from COGTA (Cooperative Governance and Traditional Affairs). The agreement⁵ has no provision on allowance. However, the Municipality has accepted the Chief and has a good relationship with him. (Interview with the acting Mayor, September 2014).

Her statement demonstrates the difficulty in harmonising the two sets of institutions. However, many residents disputed the fact that there is a good relationship between the traditional leaders and the Municipality (survey participant 2014). Residents instead revealed their sentiments concerning the relationship⁶ between the institutions in the following ways:

They do not understand each other.

There are more issues that need to be sorted out.

There is sometimes miscommunication between them.

(Survey participants 2014).

The statements reveal the tension that affects the residents and the fact that creating harmony between the institutions remains a challenge. The acting mayor used two examples to demonstrate the ambiguity regarding the role of the traditional leaders in policy formulation. First, she contended that it is unclear if the traditional institution needs to be represented in all Council meetings or not. Secondly, the issue of who should pay the allowances for the traditional leadership representative in Council meetings also remains a grey area. However, the acting mayor's assertion disregards the fact that the Municipal Structure Act 1998 dictates 'a traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation' (Municipal Structure Act 117 of 1998, Section 81.5b), and calculation of the out of pocket expenses rests with the Municipal Council. Evident in her observation is the vagueness and the failure of the government to provide rates of payment to these authorities rather than leaving the function as the prerogative of municipal councils who may not prioritise remunerating the traditional leaders.

Contradiction in who should allocate land

The traditional leaders insist that the chief conducts land distribution and maintenance of law and order with the assistance of the *tinduna*. Survey participants pointed out that the Municipality only provides services such as water, sanitation and electricity in the area. In addition, more than 80 per cent of the participants observed that *bukhosi* (chieftainship) allocates land (Survey participants 2014). The traditional leaders said that land distribution is executed by the traditional leaders, and that the land is communally owned, whereas the councillors believe that allocation of land should be the prerogative of the Municipality, in accordance with the

Spatial Planning and Land Use Management Act (Republic of South Africa 2013). The traditional leaders' assertion that the Municipality of Umjindini became involved in the area for the purpose of introducing the full Integrated Development Plan suggests that they expect the Municipality to play a marginal role in land management. Councillors expressed dissatisfaction with the fact that the *bukhosi* distributes the land without considering the municipal development plans and availability of infrastructure. One of the ward councillors asserted that 'the challenge is that the Chief allocates land without considering availability or provision of services, and this is a difficult situation' (Interview with ward councillor, September 2014). Similarly, the acting mayor, invoking the municipal regulations, asserted that the *bukhosi* needs to contact the Municipality to ascertain if the land has services before land distribution. The three ward councillors interviewed lamented that owing to this missing link, there are residents who have been allocated land already earmarked for community development projects.

The councillors complained that ad hoc allocation of land by *bukhosi* creates development challenges in that the allottees on unserviced land eventually revert to the Municipality demanding services. During the rainy season, residents settled on unserviced land experienced flooding. The acting mayor asserted that 'in turn these residents demand services from the Municipal Council, failing to recognise that the Municipality was not involved in the irregular land allocations' (Interview with acting mayor, September 2014). The situation puts Municipalities in a precarious position in that the Municipality sometimes violates its own development code by providing *in situ* services on plots with a hazardous environment. In some cases, people are allowed to build on sites earmarked for public purposes such as soccer fields.

The traditional leaders presented opposing views on the issue regarding the allocation of land, stating that they are aware of the Municipal plans. *Inkosi* Kenneth Dlamini argued that before land distribution traditional leaders request the Municipality to prepare a layout plan for the site according to standards agreed upon by the *bukhosi*. There is no doubt that the issue of land management is a thorny issue causing confusion to residents and frustrating both the traditional leaders and the Municipality. However, residents find strategies of muddling through the grey intersection of the two institutions, and negotiating the disjointed political terrain.

Contradiction in municipal standards

The *inkosi* and the senior headman stated that they have their own standards regarding plot sizes, thus they do not adhere to the Municipality's standards. When asked about the minimum plot size that the traditional leaders use, the *inkosi* only said it was quite different from the one set by the Municipality. The study was unable to obtain the plot sizes used by traditional leaders. Ironically, although mandated by urban laws (such as the Spatial Planning and Land Use Management Act) to control development in the urban area, the Municipality still has to adhere to standards set by the traditional institution, a contradiction of the municipal development code. The fact that the traditional leaders expect the Municipal Council to prepare layout plans according to standards set out by them presents a rare dynamic in the contestation between the traditional leaders and the municipalities. It is not clear why the traditional leaders insist on their own standards.

Contradiction in Integrated Development Plan (IDP)

Despite the fact that the Local Government Municipal System Act 2000 promotes a culture of participation in municipal processes, traditional authorities of Umjindini Trust feel that the IDP process marginalises them. They explained that in previous years the Municipality conducted the IDP process in collaboration with the traditional authorities. The ward councillors and ward committees met with the chief and Traditional Council before finalising the process. The traditional authorities complained that the municipality has since refrained from following the procedure. A resident asserted 'they used to be involved in project planning in the past' (Survey participants 2014). *Inkosi* Kenneth Dlamini explained that the exclusionary approach affects the development of the area and the residents. He gave an example that during 2014 the residents of Umjindini would have preferred to be provided with water rather than electricity, but the Municipality installed electricity. The *inkosi* further alluded to how poor elderly people were excluded from projects meant to benefit them, as a result of the marginalisation of traditional leaders in the process. He argued that 'we know the needy people, the Municipality has money but does not know them', and that 'therefore the *Bukhosi* (Chieftaincy) should take the lead' (Interview with *inkosi* Kenneth Dlamini, September 2014). However, censoring of the document by the traditional leaders before submission of the inputs could undermine democratic

principles regarding citizen participation. *Inkosi* Dlamini argued that ‘the relationship between the Municipality and the traditional leadership depends on the incumbent councillor, every five years new councillors are elected and they all behave differently’ (Interview with *inkosi* Kenneth Dlamini, September 2014). Describing the clash between the traditional leaders and municipal authorities, mr Nkosi, the advisor to the chief of Umjindini area, observed that ‘through attending the workshops organised by the COGTA, there is a gradual improvement in the relationship between the *inkosi* and the Municipal council’ (Interview with mr Nkosi, September 2014).

Concluding remarks

The study illustrates the contradictions between the traditional and municipal laws in local governance, which frustrate both traditional and municipal authorities. It demonstrates the dilemmas in local governance, and that both parties violate each other’s rules in the process of asserting their authority. It can be argued that four points of tension confront the traditional leaders. The first is that completely adhering to municipal legislation could lead to losing the independence they have exercised in land administration over several decades. The traditional institution adopts alternative strategies to sustain their relevance to democratic South Africa and access to economic and political opportunities. Since control over land and mineral wealth is one way in which chiefs exercise their authority, it is unsurprising that capital exploitation in the form of land and minerals is observed in some rural areas. However, government institutions are also characterised by feeble accountability mechanisms (Department of Performance Monitoring and Evaluation 2013). The extent to which they manage land is subject to criticism. For instance, urban development scholarship generally observes that municipalities have relocated informal settlements in favour of private developers, thus worsening the condition of the poor.

The second point of tension for traditional authorities is that full adherence to the integrationist approach, which accords superior status to municipalities, could erode the confidence local people have in their legitimacy. Whilst this is a concern, the issue of allegiance to chieftainship is superseded by economic factors. Consequently, in many municipal boundaries chiefs are gradually losing jurisdiction because they do not have a budget to provide basic services. The third tension point is that a

total disregard of the municipalities' laws and policies may result in forgoing infrastructure and service improvements in their constituency, thus setting the traditional institution up against its subjects. Lack of resources limits their chances to operate independently from the municipalities in urban development. The traditional leaders exercise cautious strategies of resistance, some of which have been discussed in this paper, to prevent being phased out. The fourth point of tension is that communities are not in favour of granting absolute powers over communal land to chiefs for fear of abuse and tenure insecurity. Scholars such as Oomen (2005) and Claassens and Cousins (2008) assert that chiefs are sometimes accused of being involved in illegal land market transactions. For this reason rejecting the absolute power of chiefs in local administration is necessary.

Nevertheless, the traditional authorities are not prepared to relinquish their jurisdictional and local administration powers. The question posed by *inkosi* Dlamini, 'who should stand up?' to show respect and recognise authority reflects this challenge. It would seem the government purposely adopts a weak integrationist approach to avoid confrontation with the traditional leaders. There may be political implications around rural support bases for the ANC if they did engage in direct confrontation. One of the ward councillors, for instance, commented that 'we understand that chiefs went through struggles during apartheid, thus they need to be recognised and as councillors, we understand the traditional institution' (Interview with ward councillor, September 2014). These two statements suggest a recognition of the institution and the factors underpinning the lenient approach.

In local governance, the contradictions emanating from the intersection of the two sets of authority cannot be neglected because they have development ramifications for residents and cities. As asserted by *inkosi* Dlamini, the challenge in synchronising the traditional and municipal authorities is a problem in South Africa. He clarified: 'As Mpumalanga Province traditional leaders we lodged our concerns with COGTA. We suggested that there should be a meeting to discuss this' (referring to operations of traditional and municipal authorities) (Interview with *inkosi* Kenneth Dlamini, September 2014). Traditional leaders view themselves as important actors in local governance. Complicating the issue is that some traditional leaders also serve in government institutions, and are custodians of both traditional and government institutions. The result is

the messiness and weakness of the integrationist approach as these individuals sometimes behave opportunistically and draw on either institution as they deem fit.

Despite the general observation that some chiefs are criticised for commercialising land, the communal land tenure system remains the most affordable in Africa compared to commercial tenure systems such as freehold title. After all, a general observation is that some state institutions in sub-Saharan Africa are considered ineffective and unaccountable and failing to address the needs of the poor. This study raises questions around redefinition of the authority and roles of the traditional institution in local governance, particularly, on policy formulation, land use management and integrated development planning. Notwithstanding the challenges emanating from the competing claims of the different authorities, the time is ripe for governments in Africa to design institutions that will mediate and adjudicate conflicting claims. This should not be necessarily an expedition to make traditional leaders obsolete. Future studies of the contests in other provinces and Africa should explore alternative models of integrating the traditional institutions and municipalities in urban local governance. Certainly, the integration of the traditional institution into legislation has not translated into constructive practice nor improved local governance, rather it results in dilemmas and contradictions.

Further research work is required in addressing the dilemmas and contradictions and to improve the integration of the traditional institution into the democratic state. An effective integration of the traditional institution can benefit residents in municipalities where the two sets of institutions co-exist. Similarly, collaboration on development programmes and projects between the traditional leaders and municipalities may improve and benefit the disadvantaged communities such as Umjindini Trust. A well-defined integrationist approach might contribute to the development of an effective accountability mechanisms in service delivery and resource allocation, which would result in an improvement of local governance.

Notes

1. The title *inkosi* in South Africa is also used to refer to chiefs. *Inkosi* is a siSwati phrase. In Swaziland, only the head of the monarchy is referred to as *inkosi*. Since this paper focuses on South African issues I use the terms *inkosi/izinkosi* to refer to chiefs.

2. Standing up is a practice expected of all Councillors.
3. Interviews with three ward councillors of Umjindini Municipality.
4. Field work for this study was undertaken in 2014 before the merging of Umjindini and Mbombela, 2016.
5. Referring to the agreement, which she had initially indicated, which was signed by both the traditional and municipal council, allowing the former to sit in council meetings.
6. The survey questionnaire had a question ‘is there a good relationship between the traditional and the urban authority?’

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