

# Chiefs And Rural Local Government In Post-Apartheid South Africa

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## Introduction

Colonialism caused fundamental damage to the role of chiefs. It disturbed the pre-existing redistributive lineage system, undermined the foundation for the existence of chiefs and limited their tradition-based and personalised form of authority. It transformed chiefs from independent representatives of various people into government officials, appointed by the new colonial power and paid a salary. Shorn of their judicial power and prevented from performing their traditional functions, their pre-existing worlds of authority were dwarfed by the overpowering force of the colonial state. In broad terms, this depiction of the impact of colonialism on indigenous forms of authority may strike a chord of familiarity. Yet it presents only a partial picture. If indeed chieftaincy was robbed of the internal dynamics vital to the autonomy of chiefs, how is it that they have survived for so very long? If part of the reason for this longevity of chieftaincy is the fact that some chiefs had become co-opted into the local arm of the colonial state how does one explain the persistence of their apparent legitimacy? This paper will provide some tentative answers to these questions by attempting to paint a fuller picture of the various and changing roles of chiefs in the context of an emerging democratic order in the former bantustans of the Eastern Cape.

Irrespective of the fact that a large number of chiefs became colonial stooges, and despite the fact that many rural residents would be hard pressed to provide a precise definition of the contemporary role for chiefs in a democratic South Africa, chiefs have been recognised in the country's Constitution of 1996 as well as in legislation affecting the former Reserve Areas. This recognition causes tension and inconsistency in the Constitution. On the one hand, the Constitution enshrines democratic principles in the Bill of Rights while on the other, it acknowledges the role of unelected traditional authorities. There are large disparities between rights

enshrined in the Constitution and the possibilities that people have at their disposal for enforcing those rights. Besides this practical dilemma, the principle of traditional authority and the manner in which it contradicts the basic premises of democratic rule needs to be explored. Recognising chiefs has a number of far-reaching implications for gender equality, for control over land allocation, for the universal franchise and for democratic local government. Chiefly authority is ascribed by lineage rather than achieved through election, its patriarchal principles ensure that it almost invariably passes to men only, and it rests on the premise of exclusivity inherent in chiefly power over the allocation of land solely to eligible members. Recognising chiefs also raises questions about the constituencies that chiefs are supposed to represent and about the possibilities for putting the rhetoric of building a nation into practice. After all, if one grants chiefs some recognition does that not amount to an implicit endorsement of tribes and tribalism? How does this blend with the notion of a united nation? Is it possible to recognise chiefs outside a tribal constituency? In addition, does a national framework of democracy necessarily guarantee democracy at the local level or do the local alliances especially in the former Reserves reinforce undemocratic and traditional forms of domination?

The picture would not be complete if we did not emphasise that various chiefs responded differently to colonisation. While some attempted to bargain for better terms of their submission, others sought to struggle in a variety of ways for a measure of local power and autonomy. While some managed to adapt to changing circumstances others who failed to do so became thoroughly discredited. It is our contention that an understanding of these variations is vital for an analysis of the current position of chiefs in relation to the emerging system of rural local government under the new Constitution. It is also argued that the implementation of Bantu Authorities in local government severely restricted the scope of this variation as chiefs became firmly enlisted in the local arm of the central state. Thus, the paper provides some historical background to the roles of traditional authorities in governing indigenous people under successive colonial administrations.

The perspective of the paper is not a simplistic unilinear or progressivist one, suggesting that the pre-existing forms of social authority conformed neatly to Weber's (1947: 83-84) "ideal type" of traditional authority and the bureaucratic and impersonal authority of colonialism to his conception of rational-legal authority. On the contrary, the paper tries to demonstrate that the meeting of the two institutions encompassed a much more complex interpenetration. Quite clearly, colonialism was the dominant partner in this exchange since it wrenched away even the limited monopoly over the use of force which some chiefs may have had prior to their subordination. But chieftaincies persisted despite their defeat. In fact, even though the thinly spread magistrates wielded much more power, the prestige

of some chiefs lingered on. In other areas, the influence of chiefs waned to the extent that they were viewed as an anachronism by the mass of the people.

In a situation of such variation and difference, it is hazardous to attempt to generalise about the role of chiefs. This is not to imply that nothing can be said about the role of traditional authorities in general, but rather to insist on an acceptance of the regional variations, the historically specific policies and the uneven pace of their implementation. A general question in this connection is how chiefs have managed to survive with some credibility notwithstanding the ignominy of Bantu Authorities during the heyday of apartheid. But chiefs have done more than merely survive. Their revival in the late 1980s and consolidation in the early 1990s has led to a self-assured political posture – no doubt buttressed by the ANC strategy of inciting opposition to apartheid on as broad a front as possible and encouraged by some of the public statements made by President Mandela in this regard. Even the formerly discredited chiefs jumped onto the bandwagon of CONTRALESA (Congress of Traditional Leaders of South Africa), the organisation formed to express chiefly resistance to apartheid. Thus chiefs have demonstrated a remarkable resilience in the face of enormous odds. Opportunism is clearly part of the political game which they have learnt to play with breathtaking agility. But they have also been allowed the space to emerge as a political force by the pragmatic anti-apartheid alliance in which they became a partner.

There are two levels at which we engage the issue concerning the role of chiefs. First, at the level of principle, we discuss traditional authority in relation to the broad precepts of democracy. Second, at a pragmatic level, we discuss the viability and feasibility of implementing local government legislation while recognising chiefs. It is one thing to say that traditional authorities contradict the basic principles of democracy and quite another to attempt to build democratic institutions of popular participation in the context of the former bantustans of the Eastern Cape. Thus the paper deals with both the principle and practice of democratic local government in relation to the role of chiefs. It commences with a brief overview of the evolution of chiefly power *vis à vis* the changing nature of colonial policy; it goes on to provide an account of local government policies since 1994; highlights the enormous problems involved in implementing these policies. Finally, we assesses the actual and envisaged role of chiefs in local government as well as their responses to these policies.

### **The Shifting Basis of Chiefly Power**

Shepstone's segregationist policy of indirect rule, bolstering the power of chiefs, keeping blacks and whites apart, denying the former access to colonial law and promoting customary law in Reserves, was clearly a precursor to latter day apartheid (Davenport, 1987: 112-115; Mamdani, 1996: 67-69). There were however a variety of other influences in its evolution. This paper argues that the Cape

councillor system also fed into the overall segregationist project. Following the military defeat of independent chiefs, Cecil John Rhodes' Glen Grey Act of 1894 was a major legislative attempt to systematically curtail the authority of chiefs by replacing them with a system of government-appointed district councillors and introducing separate Reserve Areas under a distorted version of the communal system of land tenure. The Act had a number of purposes and a range of contradictory effects. The introduction of the district council system of local government was meant to steer Africans away from the Cape franchise to a form of separate political representation. It was a forerunner of the more all-encompassing segregationist and apartheid measures, especially the creation of territorially separate areas for African occupation – the Reserves.

The Act was also intended to drive labour off the land by introducing a peculiar form of communal tenure. Often the land provisions of the Act are interpreted as an extension of individual tenure to “tribal” areas of communal tenure (Beinart, 1982: 43; Davenport, 1987: 181; Hammond-Tooke, 1975: 87; Lacey, 1981: 15; Southall, 1983: 76; Stadler, 1987: 39). On closer examination, the provisions of the Act on the policy of “one-man-one lot”, the division of the land into four or five morgen allotments (excluding, of course, any land that may be reserved for mineral exploitation or government usage); the fact that land held in this manner would not qualify the holder for the franchise; the restrictions placed on the alienation of land and the liability to forfeiture in the event of non-beneficial occupation resembles the distorted version of the communal system which came to operate in the Reserves rather than individual tenure in the sense of freehold title. In addition, if the councils represented the initiation of a system of separate political institutions for blacks, then it appears reasonable that the land policy would endorse that segregation rather than contradict it through the extension of individual tenure. The evidence clearly does not support the contention that the Act had anything to do with individual tenure. In fact there was nothing individual about the Glen Grey brand of land tenure except that the land would be in the possession of one holder, exactly as it is now held under certificate of occupation in the former bantustans.

The distortion of the communal system was crucial for undermining the position of the chiefs. It also facilitated the emergence of a class of people who were independent of chiefs and desirous of a “civilised status” even if title under the new provisions did not qualify landholders to the franchise. Rhodes was unambiguous on this (cited in Jaffe, 1), which is an indication of his early segregationist thinking,

I will lay down my own policy on this native question. Either you have to receive them on an equal footing as citizens, or to call them a subject race. I have made up my mind that there must be class legislation, there must be Pass Laws and Peace Preservation Acts, and that we have to treat Natives,

where they are in a state of barbarism, in a different way to ourselves. We are to be lords over them.

In his recent book, *Citizen and Subject*, Mamdani (1996) chose to refer to Smuts' role in the emergence of segregationist policies and in the manner in which the state was bifurcated. He could have done worse than to focus on the role of Rhodes in this process. While the labour and land provisions of the Act had little direct practical effect, its political component, embodied in the council system became a model for separate representation in the Reserves Areas. Indeed, one of its purposes was the creation of such reserves, as Rose-Innes (1936: 33) outlines:

The principles of the Act necessarily involve the creation of *purely* Native Reserves or areas from which Europeans are excluded by purchase or otherwise. This principle must be maintained against every species of opposition ... We shall in time be compelled to create more of such areas as "reservoirs of labour" and homes for these people into which the Native will be free to come and go. He requires this for his sake and we require it for our own.

Ultimately, the policy options of incorporating Africans into the political and social institutions of the colony, or preserving the shattered fabric of the indigenous mode of living in order to keep them apart from colonial institutions, would determine the role of the chiefs. Notwithstanding rhetoric to the contrary, and despite various intra-official controversies, colonists opted for the latter policy very earlier on. Questions about the nature of land tenure, the form of political representation, the powers of chiefs, the manner in which justice would be dispensed and the creation of separate reserve territories were critical to these early segregationist options. Already in 1894, the same year that the Glen Grey Act was passed, a separate Native Appeal Court with exclusive jurisdiction to hear civil appeals in matters involving the so-called native was created. The idea of a separate councillor system of local government for Africans was mooted more than a decade earlier in the 1883 Report of the Cape Native Laws and Customs Commission (Hammond-Tooke, 1975: 84; Evans, 1997: 184). This commission noted the extensive use of "customary law" in the Transkei even though it had not been codified:

We find no uniformity in the criminal law or procedure, which until lately has been administered beyond the Kei. Some magistrates inform us that they administer the Kaffir Law; others that they administer colonial law; some that they apply the Kaffir mode of procedure by calling in their aid assessor, and allowing the examination of prisoners; others that they adopt

our colonial mode of procedure; some that they apply Kaffir law and procedures in some cases and colonial law and its procedures in others.

The recognition of such customary practices; however inchoate and uneven this may have been for the colonial state, was critical to the power and position of chiefs. In this regard, the passage of the 1927 Native Administration Act went a long way to establishing some administrative uniformity in the country as a whole, including the Cape Province. The Act was intended to shore up the remains of chieftaincy in a country-wide policy of indirect rule, which would allow for segregation in the administration of justice. The policy was aptly named "retribalisation", giving chiefs the semblance of power and hoping that this would safeguard the allegiance and acquiescence of the Reserve residents (Lacey, 1981: 94-119).

In practice, magisterial and chiefly authority existed side by side. For example, since the Native Administrative Act conferred civil jurisdiction on chiefs, people had a choice of courts to which they could take their civil case. This duality often served to prolong the administration of justice as people who were dissatisfied with the judgement of a chief could take it to a magistrate where the case would be heard again. The magistrates obviously wielded much more power than the chiefs *vis à vis* the central government, but the chiefs were given a niche in the local arm of administration which they seized with alacrity. It certainly gave them more leverage in the tensions with the government appointed headmen. But chiefs were not regarded as a homogeneous group in terms of the Act. Instead it made provision for a distinction between chiefs who could be appointed by the Governor-General and those who would merely be recognised by the government. Only the former were given the limited powers provided for in the Act. No mention was made of the role of the latter and, in addition, the Governor-General could appoint a chief even in the face of popular opposition (Mqoke, 1997: 83-84). The pre-colonial system of chiefly authority obviously did not coincide neatly with the imposing bureaucratic structure of colonial authority. For one, the administrative areas (or locations as they were initially called) fell into a pattern of magisterial districts with little regard for the jurisdiction of chiefs. The government appointed headmen filled the gap. They occupied a "pivotal position" and without them, "... implementation of the policy of indirect rule would have been impossible, or at least extremely difficult" (Hammond-Tooke, 1975: 109).

The notion of indirect rule had been mooted and implemented long before the Bantu Authorities Act was passed in 1951 by the then newly-elected National Party government. Despite the best efforts of the colonial state to impose some uniformity in rural administration through the Native Administration Act of 1927, in the Transkei the situation remained capricious. The areas of jurisdiction of magistrates and chiefs did not coincide and the council system had persisted in the United

Transkei Territories General Council (UTTGC). The Act proposed to wipe out any administrative inconsistencies by establishing a uniform system of local, regional and territorial authorities. Chiefs were placed firmly in charge of local administration but directly linked to the central government through the Department of Native Affairs. The official justification was that Africans should assume a greater degree of control over their own affairs in the Reserves. Yet there were limits to indirect rule. The Minister of Native Affairs had ultimate control as the proclamation which gave effect to the Bantu Authorities Act conferred on him the power to depose any chief, cancel the appointment of any councillor, appoint any officer with whatever powers he deemed necessary, and control the treasury and budgetary spending and authorise taxation (Hendricks, 1992: 72).

The Bantu Authorities Act damaged the reputation of chiefs more than any other measure. The Native Administration Act had allowed the prestige of the chief to persist by relieving them of the power to implement unpopular government policies, foisting these instead (including the arduous task of local policing) on headmen. The role of the chief was dramatically altered under the Bantu Authorities Act which unambiguously tied the chiefs to the local arm of the state and enlisted them in the responsibility for social control. Recalcitrant chiefs – those who refused to be party to such an evidently oppressive system – were simply sidelined to make way for their more compliant counterparts. Invariably, the latter were subordinate chiefs not recognised by the mass of the population. Thus, for example, Sabata Dalindyebo was deposed as the paramount chief in Thembuland in favour of Kaiser Matanzima. A similar fate was visited on the Pedi paramouncy, as the government merely propped up minor chiefs and headmen where they were willing to accept Bantu Authorities. Lucas Mangope, a minor chief managed to install himself in power, as did Mangosuthu Buthelezi though through a slightly more circuitous route. In some cases, as in the former Ciskei, chieftaincies had to be created in order for the policy to have local force. Compliant commoners like Lennox Sebe made the most of the opportunities for collaboration presented by the new measures (Maloka, 1996: 175; van Kessel and Oomen, 1997: 563-564).

While chiefs had already experienced far-reaching changes through land dispossession, the council system and a host of other colonial restrictions on their power, their powerlessness in the face of the power of the colonial state ironically assisted them in their battle for survival since they were not given responsibility for implementing unpopular government measures – a role reserved for government appointed headmen. In this way they were, to some degree at least, safeguarded against popular discontent by the manner in which they had been marginalised from the command structure of the Department of Native Affairs (Hammond-Tooke, 1975: 94; Bank and Southall, 1996: 412). The irony in this is that chiefs could command a measure of popular respect (even legitimacy), precisely because of their powerlessness.

The Bantu Authorities Act irrevocably changed all of this. It removed even the slim basis of chiefly legitimacy by conferring wide-ranging powers on the chiefs. It transformed chiefs by bringing them directly into the service of the state. It became more and more difficult for chiefs to claim legitimacy, win respect from their followers and implement the provisions of the Bantu Authorities Act at the same time.<sup>1</sup> Paramount Chief Victor Poto of Western Pondoland was one of the few to manage on this tight rope of collaboration with the authorities on the one hand and maintenance of popular tradition-based legitimacy on the other (Hendricks, 1990). While the Act was passed in 1951, it was extended, by proclamation, to the Transkei five years later. Henceforth, there could no longer be "good" chiefs, accountable to the people, only co-opted lackeys of the central state. Popular opposition to discredited chiefs and the measures they had been charged to implement was swift and widespread yet simultaneously local and inchoate (Mamdani, 1996: 195). The legitimacy of the chiefs had all but dissipated in a sea of rural revolt.

Bantu Authorities were to form the basis for the homeland system. They swept aside the Native Representative Council (the so-called toy telephones following the 1936 Native Representative Act); in the Transkei transformed the UTTGC into a Territorial Authority and totally excluded the rural poor and migrant workers from any access to the machinery of local government, except via the patronage and corruption of the chiefs (Evans, 1997: 186). Yet the Native Commissioners remained as the direct local representatives of the government instructed to, "... continually keep a watchful eye over tribal authorities" (Secretary for Native Affairs cited in Hendricks, 1990: 57). The Bantu Authorities Act paved the way for the passage of the Bantu Self-Government Act of 1959 which removed white representation of Africans in parliament. Since this formed the basis of "trusteeship" and contradicted the notion of devolving power to chiefs in a system of indirect rule in the reserve areas it could not be countenanced. The architects of apartheid had hoped that self-government would echo the independence movement which had swept through Africa in the 1960s. The resemblance was not particularly profound. For, while the latter represented a national struggle for self-determination, the bantustan system represented an attempt to foist an unwanted and bogus independence upon the mass of people who had identified the franchise in the central state as the most basic political demand. Nevertheless, self-government carried the trappings of independence with it. It introduced the concept of nationhood for different African ethnic groups on the understanding that these should develop separate political identities. Tribes had become nations which required states. Who would be most qualified to govern these than the loyal chiefs? In a sense then the chiefs were to bridge the gap between tradition and modernity, since they would be at the helm of nominally independent states and control the new legislatures in these "independent" states (Bank and Southall, 1996: 413). The



basis for the sham independence of the 1970s and 1980s had been well and truly laid.

There is a well documented catalogue of collaboration by chiefs and their autocratic abuse of power, especially after the introduction of Bantu Authorities (Tabata, 1951; Mbeki, 1961; Hendricks, 1990). Inevitably therefore, the question of how they managed to attain the recognition which they have in the new Constitution presents itself. How did some of them shift from being the tools of oppression to active agents of liberation? In practice, what made it possible for somebody like Stella Sigqua, former president of the Transkei and member of the royal house in Eastern Pondoland to become a cabinet minister in a democratic South Africa? The answer lies partly in the ANC's strategy of galvanising as much support as possible in the anti-apartheid struggle. CONTRALESA was crucial to the revival of chieftaincy. Initially formed in 1987 to oppose the declaration of independence in KwaNdebele, the organisation soon spread to other parts of the country. By 1989 it claimed the support of 80% of the chiefs in the Transkei and 50% in KwaZulu-Natal (Maloka, 1996: 180). Clearly aligned with the ANC during these early years, CONTRALESA's constitution outlined its objectives as, "... fighting tribalism and ethnicity, claiming back the stolen land, demanding the dismantling of the Bantustan system and reclaiming South African citizenship, building a 'true' South African culture and national talent" (cited in Maloka, 1996: 180). There was no mention of how exactly tribalism and the Reserves would be dismantled while retaining the chieftaincy. Indeed, it is our contention that tribalism is inherent in the recognition of separate chieftaincies. There may be something in the argument of retaining chieftaincy as an aspect of cultural defence against the colonial onslaught, but then the role of the chief should be clearly limited to customary ceremonies and the transmission of oral tradition.

However, the ANC was keen to broaden its support base beyond the militant youth which had alienated a considerable proportion of the adult population, (certainly most of the elders in tribal authorities), and was eager to avoid a Mozambique-type of conservative alliance. Accordingly, it decided to woo chiefs. The strategy was not without its critics within the ANC, as the youth and civic movements found the rapprochement between the liberation movement and their former enemies particularly repulsive. There is also some circumstantial evidence that this division coincided largely with the cleavage between returning exiles and local activists. While the latter were thoroughly embroiled in the battles against the chiefs whom they viewed as puppets of apartheid, the former were more concerned with pursuing a more broad based liberation movement (van Kessel and Oomen, 1997: 572).

It is a moot point whether the ANC responded to an existing support base of chiefs in preparation for elections or whether they simply propped up a dying institution. Certainly in Kwa-Zulu Natal, traditional leaders enjoyed and continue

to enjoy a substantial following, even if much of this is regimented by the Inkhata Freedom Party. However, the assumption of chiefly support and the possibility of bloc votes was often horribly wrong. Once the ANC had embarked on a strategy of cajoling chiefs into their movement it became impossible to distinguish between different chiefs, between those who commanded some traditional legitimacy and those whose existence depended on the apartheid regime. But the very institution of chieftaincy had to be defended, irrespective of whether chiefs were indeed chiefs in the traditional sense. Their *de facto* position would confer on them immediate legitimacy if they joined in the struggle against the white minority regime. Therefore, expedience rather than principle was the basis of the alliance with the ANC which has encroached very heavily on the nature of democracy at the local level in post-1994 South Africa. For a while the national framework is clearly guided by a democratic constitution, this does not automatically translate into democratic policies or practices at a local level especially in the former Reserves where traditional authorities continue to operate.

It is in the light of this that the role of chiefs had to be redefined in order to legitimize the alliance with them. What were once puppets, stooges, collaborators or policemen chiefs for the colonial and apartheid regimes immediately became progressive agents ostensibly representing their people.

This is why the following statement in the The White Paper on Local Government (1998: 97) is untenable.

(T)here is no doubt that the important role that traditional leaders have played in the development of their communities should be continued.

This statement is fundamentally flawed for three main reason. First, there is not simply one role which traditional authorities have played, but a diversity of roles depending on the political and temporal context. Chiefs do not constitute a homogeneous group with a single purpose and role. Besides the internal differentiation between paramount chiefs, chiefs and sub-chiefs and their councillors and contestation over the seniority of different chiefs in various groups leads to a highly complex map of chiefly influence. The government-appointed headmen and chiefs merely compound the situation. Second, the claim that chiefs have developed their communities is contentious. Even in terms of the narrow purview of the policy, the performance of Bantu Authorities was a dismal failure (Hendricks, 1990: 58). Oppression, control and corruption rather than development far more adequately capture the role of traditional authorities in the Reserves, especially during the apartheid era. Thirdly, to suggest that the role of traditional authorities should be continued even after the local government elections of 1995, without specifying the limits of that role, is to undermine the authority of elected representatives in a democratic society and to fudge the differentiation between elected officials and

hereditary leaders. Since chiefs played such a treacherous role in upholding apartheid, proposing that they should continue provides them with a licence of legitimacy and maintains the old forms of domination.

The White Paper on Local Government (1998: 97) also introduces the concept of traditional communities without specifying exactly what these may entail. No mention is made of how these traditional communities are to coexist with democratic institutions. Nor is there any discussion about who is to decide on membership in these communities, or what the basis for such membership would be and how non-members could be excluded from the community. It seems reasonable to assume that these are communities presently under some or other form of the relics of Bantu Authority at the local level. The concessions granted to chiefs in this regard are therefore extraordinary and far-reaching as the following statement shows.

Traditional communities will be entitled to vest the responsibility for general administration and the allocation of their land in the institutions of their choice, which may include traditional authorities.

This statement raises a host of questions about the nature of democracy. If people are afforded the choice of yielding their democratic right to elected local government in favour of some form of traditional authority, the empirical question of how that choice is to be determined becomes crucially important. Is this to be done by way of a referendum? What is the role of the chief in this process? How does one deal with a situation where there are clear differences between those preferring traditional authorities and those who have embraced democratic representation? There are no easy answers to these questions and the White Paper certainly does not provide any, except to defer them by mentioning that the thorny issue of traditional authorities and their relation to democratic institutions is to be dealt with by three government departments. Meanwhile, the Department of Constitutional Development is preparing its White Paper on Traditional Affairs, which inter alia will include a national audit of traditional leaders; the Department of Justice intends to establish community law courts which will grant traditional authorities special recognition; and the Department of Land Affairs is investigating a range of land tenure options. In many ways then, the situation is in flux and traditional leaders, sensing this lack of clarity, have attempted to worm themselves into the new circumstances just as they had done under colonialism and apartheid. To add to the muddle, the ANC is internally divided over the extent to which traditional authority should be grafted onto local and provincial levels of democratic governance.

In sum, confusion continues to reign about the nature of local government in rural areas. After Bantu Authorities, chiefs were given considerable powers in the

reserve areas. With the demise of apartheid and the introduction of a democratic government in 1994, local government councillors were elected in rural areas, in keeping with the constitutional requirement for democratically elected government. At the same time, the Constitution recognised the institution of traditional authorities without clarifying their precise role of chiefs in relation to the newly-elected rural councils. This calls for a detailed assessment of the nature of rural local government in a democratic South Africa in order to identify the role envisaged for chiefs and the problems encountered in practice. This is the subject of the next section.

### **Local Government After Apartheid**

In a recent paper, Jeff Lever (1997: 1) argues that South Africa has experienced a paper revolution and that there is an enormous chasm between policy and practice. The situation in local government is no exception. There is a veritable gold mine of official documents at different stages of the legislative and policy-making processes. Also there are several policy documents which have not been successfully implemented. As pointed out earlier, there is a multiplicity of government departments involved in the formulation of various policies in respect of the role of chiefs which, we would argue, accounts for the widening gap between policy and practice. In what follows, we attempt to provide tentative answers to why implementation is so problematic and how this is related to the dilemmas of the political and constitutional changes currently taking place in the country. This will be done by focusing on how the new government proposes to address the legacy of apartheid inequalities by extending basic services to blacks in local government and how chiefs may fit into this overall framework.

The Government of National Unity inherited a complex system of local government policies in line with the policy of separate development. The existing local government system was also characterised by inefficient and expensive duplications. The government has tried to create order out of the state of disarray by rationalising the local government system. At the same time, there is the painful recognition that the changes that are envisaged will not be smooth at all; because negotiation, mediation and settlement of disputes will be involved as the old order gives way to the new.

The changes were ushered in by the Constitution, the Transitional Local Government Act, and the Development Facilitation Act. In addition, there is a veritable flood of Green Papers, White Papers and Discussion documents which hope to provide the specific guidelines for the new post-apartheid order in concert with the major objectives of the Constitution. There is little doubt that the 1996 Constitution heralded a new era for local government in South Africa. It made provision for local government autonomy in the sense that national and provincial governments may not compromise a municipality's functioning. Local govern-

ment, on paper at least, is no longer a regulatory extension of central government. On closer examination, especially in relation to the provisions in the transitional arrangements of the Constitution for the continued functioning of traditional authorities and traditional courts, there appears to be a great deal of continuity as the old order meshes with the new. In practice, a hybrid form of local government in various stages of transition emanates from these inconsistencies in policy.

Section 40 (1) of the South African Constitution unequivocally states:

In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.

Furthermore, the Constitution introduces the principle of co-operative government which makes local and provincial governments into spheres of government in their own right, ultimately accountable under the Constitution. However, the purse strings are centralised and since the revenue generating capacity of provinces is severely curtailed, their power, in the long term must, of necessity, dwindle. On the other hand, in terms of the Constitution, there is an effort to enhance the powers and functions of local government by giving greater prominence to the role of local authorities in supporting socio-economic upliftment and local economic development. Municipalities have the power to make regulations and by-laws on those matters over which they have jurisdiction. The following "objects of local government" are set out in the Constitution, Section 152(1):

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

However, a regulation or bye-law will be declared *ultra vires* if it is deemed to contradict the Constitution (SAIRR, 1996/97 Survey: 570).

On the issue of development, the Constitution, Section 153 (a) stipulates that a municipality must "...structure and manage its administration and budgeting and planning processes to the basic needs of the community and to promote the social and economic development of the community ..." In other words, over and above the regulatory local government functions of control and service delivery, the Constitution adds "development duties", including development planning, facilitation and support. This, of course, corresponds with the overall manner in which the Constitution seeks to entrench second generation or socio-economic rights of the mass of the population. Again, these seem to be paper rights. The difficulties of implementing them will become apparent presently.

With regard to the organisational structure of local government, section 151(1) of the Constitution stipulates that the "... local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic". The Constitution does not specify the form municipal structures should take, except to say that "... national legislation must define the different types of municipality that may be established". Three categories of municipality are mentioned:

- (i) Category A, one with exclusive municipal executive and legislative authority in its area;
- (ii) Category B, one that shares municipal and executive authority with a category C municipality within whose area it falls; and
- (iii) Category C, one that has municipal and executive authority in an area that includes more than one municipality.

On the other hand, under the Local Government Transition (Amendment) Act of 1996, a "district council" model of rural local government is proposed. Briefly, this consists of a two-level structure of local government, encompassing a district council at a sub-regional level, constituted of representatives from both urban and rural areas, and a range of possible structures at local (primary) level. A variety of possibilities is envisaged for rural areas. Firstly if residents so desire it is possible to have no structure whatsoever. It is also possible for the administrator to define the demarcation, constitution, powers and functions of primary structures; or residents, may prefer to have structures called Transitional Representative Councils (TrepCs) which should be demarcated on the basis of magisterial districts. These are seen to be representatives and brokers which would evolve into effective and democratic local authorities.

The Act stipulates that members of the Transitional Representative Councils (TrepCs), should be elected by proportional representation. Moreover, if the MEC considers it desirable, members may be nominated by interest groups recognised by the MEC provided that no single interest group nominates more than 10 per cent of the total number of members of a Transitional Representative Council and the total number of members nominated by interest groups in aggregate does not exceed 20 per cent of the total number of members. "Interest groups" are defined as farmers, land owners or levy payers, farm labourers, women, and traditional leaders. It is therefore as an "interest group" that chiefs can vie with elected councils as representatives of the people.

The Interim Constitution had defined an *ex officio* status for traditional authorities in local government and indicated that national legislation *shall* establish provincial houses of traditional authorities. These were concessions to the demand on the part of the chiefs for constitutional guarantees for their position. The firm promises of the Interim Constitution gave way to an indecisive formulation in the final constitution (adopted by the Constitutional Assembly on 8 May 1996,

amended on 11 October of that year and signed three months later by President Mandela on 10 December 1996), to the effect that national legislation may establish institutions of traditional authority but there is no obligation to do so. Thus, the mandatory nature of the establishment of provincial houses of traditional authorities of the Interim Constitution was replaced with a discretionary clause in the final text (Kessel and Oomen, 1997: 573). Yet, in Schedule 6 of the Constitution dealing with Transitional Arrangements, the *ex officio* membership of traditional leaders of various bodies of local government is confirmed, at least until April 1999.

What is the rationale for a District Council model? In his opening and closing addresses to the "Workshop on Traditional Authorities and Local Government" held in Johannesburg on 24 and 25 November 1997, Minister Moosa argued that rural areas, particularly the former Bantustans were reduced to reservoirs of cheap labour over years of colonial and apartheid rule in South Africa. As a result they lack human and material resources to provide municipal services such as water, electricity, and so forth for their communities. The District Council model is an attempt towards equity and redistribution in terms of which the wealthier, urban councils will be amalgamated with poorer neighbouring communities. The idea is that basic services may in this manner be extended to the poorer communities. This argument does not address the widespread problem in the former Bantustans of small, poorly run towns existing close to vast poverty-stricken rural communities. The assumptions are that the wealthy urban areas can transfer some revenue to the poorer rural areas for the purpose of expanding service delivery. But, if the small urban areas themselves experience enormous revenue problems the assumption rests on rather shaky grounds. In this regard, we may refer to the recent debacle in Butterworth, in the former Transkei, where the provincial government had to step in to oversee the administration of the town, despite the protestations of the outgoing mayor.

### **Problems of Practice**

There are several practical problems which hamper implementation. First, there is a lack of understanding of the policy by those who are supposed to implement it and those affected by it at the grassroots level. In particular, the lower level government officials, district councillors and transitional representative/rural councillors<sup>2</sup> do not have a clear grasp of emerging policies and legislation. Consequently they are not in a position to explain and interpret the new policies to their constituencies, the majority of whom are illiterate and semi-literate.<sup>3</sup> Secondly, there is lack of clarity regarding local government in rural areas which arises from the ongoing struggles between the "leadership/elite"<sup>4</sup> among traditional authorities. Leaders in CONTRALESA, the Provincial Houses and National Council of Traditional Leaders, have articulated their opposition to the Constitution and legislation guiding the existing (rural) local government model, namely

the Local Government Transition Act 1993 as amended. They clearly reject the policy formulation process and new legislation on (rural) local government and are insisting on constitutional guarantees for their position and authority. Since they lost the battle for dropping the gender equality clauses of the Constitution, they feel that they had to dig in their heels on the question of local government. In essence they are trying to resuscitate a form of Bantu Authorities where they are the primary instruments of local government. Since this amounts to a violation of the Bill of Rights there have been ongoing political struggles between chiefs and elected councillors, especially in the Eastern Cape. These struggles have not made local government any easier. Also, rural local government does not feature very prominently on the list of government priorities. This marginalisation, in terms of committing human and material resources, makes the picture in rural areas look gloomy.<sup>5</sup> There is confusion at the level of service delivery as to the exact role of elected councillors. Some labour under the impression that they are responsible for facilitating development and others that they are directly involved in the operational side of service provision and management. Rural councillors themselves do not seem to know where they stand. In the one case of the Xhalinga magisterial district in the Eastern Cape, the TrepC is seen to be competing with NGOs in aspects of rural development, including provision of water,<sup>6</sup> instead of helping facilitate the provision of services through partnerships with these NGOs.

The list of difficulties does not end there. In reality, TrepCs, and indeed District Councils in the Eastern Cape have demonstrated that they do not have the capacity and resources to directly provide services in rural areas, let alone facilitate development. These are new structures, lacking in experience and material resources, and often having to develop their functions from scratch. Capacity problems plaguing local government in rural areas, are acknowledged in the Green Paper on Local Government in the following terms.

It is generally true that few powers and duties have been devolved to rural municipalities due to lack of capacity. TrepCs generally do not have their own administrations, and remain little more than advisory structures to District Councils, on whom they rely for their administrative, technical and financial support. Although TRCs have taxing powers, they have very limited potential to generate adequate tax and service, charge revenue, and thus very little to sustain a level of fiscal autonomy. They are reliant on grants from and through the District Councils. This fiscal support is limited, and the basis for transfer is not entirely clear and so does not generate fiscal certainty. The limited powers and resources of rural municipalities, and their consequent inability to serve local communities, has lessened their credibility. This loss in credibility poses a threat to the future development of local government in these areas.<sup>7</sup>



The TrepCs also cover very large geographic areas. In Mqanduli, for example, 17 councillors are expected to cover 40 scattered villages with limited facilities, especially transport. Typical basic services currently required in rural areas include the provision of water, upgrading and maintenance of rural roads, electricity supply to homesteads, improved telecommunication, and refuse collection and disposal.<sup>8</sup> In the view of their numerous limitations (see above), it is virtually impossible for TrepCs to provide services in these areas.

The foregoing provides some evidence of the huge chasm existing between national policy and how it is communicated, or not communicated to those for whom it is intended. For example, the White Paper on Local Government provides various options to creatively utilise scarce capacity and resources. It suggests that partnerships with other organs of state, the private sector, NGOs, CBOs, or other civic structures can mobilise additional capacity. While a municipality remains the ultimate authority responsible for ensuring that a service is provided, and regulating that service, this approach enables local government to use different service providers to fulfill municipal objectives. Given the overall lack of capacity in the public sector to provide services to rural communities particularly, though not exclusively, in the Eastern Cape, as well as the remoteness of these areas, there is little prospect of any public sector agency improving service delivery there. Both District Councils and TrepC's recognise this reality, but unfortunately they are not aware of the various partnership possibilities which the policy recommends.

There is, above all, confusion on the role of local government in development. This practical and conceptual muddle is likely to be aggravated by the land reform programme. In particular policies being developed for land tenure reform have the potential to confuse the most astute or studious administrator. It is the expressed intention of the Department of Land Affairs to forgo its trusteeship role in communal, so-called tribal land, which even now is held in trust by the state on behalf of the various "tribal" communities. Through a convoluted process, the Department of Land Affairs intends to return land to its rightful owners, namely people who have proven rights to land.<sup>9</sup> In some instances, this process will effectively privatise communal land, thus raising the question about the "developmental duties" of local government on private land. Moreover, how are traditional leaders to be accommodated in, or excluded from, this plan?

The instruments to effect the "developmental duties" of local government are the *Integrated Development Plan (IDP)* and *Land Development Objectives (LDOs)* provided for in the Local Government Transition Act 1993 as amended, and the *Development Facilitation Act* respectively. These require the preparation and implementation of LDOs for local government bodies. The regulations lay down procedures to ensure the active participation of communities and all stakeholders in the setting of LDOs which should be linked to the budgeting process of local government. There is little evidence to show that District Councils and TrepCs in

the Eastern Cape understand what legislation requires of them in fulfilling their "development duties".<sup>10</sup> This also applies to their understanding of the implications of the resolve by the Department of Land Affairs to "privatise" communal land. Some rural councillors wrongly understand their "development duty" to include the vexed question of land allocation – a function that gave traditional authorities during the apartheid period unfettered powers of control and corruption. When "tribal" land was still the nominal property of the state, the chiefs, as owners, could decide on the question of land allocation. Traditional authorities derived much of their power from their control over the allocation of land in terms of the Bantu Authorities Act 1951. However, the one implication of the decision by the Department of Land Affairs is that communal land will now be owned by those who live on it. It is therefore the members of the particular group concerned that will decide on the question of land allocation. How this will work in practice is not clear.

The District Councils and TrepCs : s local government are not the land owners, and as such will not have any role to play in the allocation of land. It will still be their duty as local government, though, to regulate the use of land and to facilitate development in rural areas. Needless to say, the chiefs are not at all happy with proposals which so clearly remove the basis for their power. The ambiguity of the policy in relation to the constitutional guarantees for chiefly authority and the concessions of the White Paper on Local Government allowing communities, in typical voluntarist fashion, to decide whether they would prefer to have their areas administered by traditional authorities, suggests that these proposals from the Department of Land Affairs will not be easy to implement. The ambiguity is a reflection of the nature of consensual politics which does not privilege any particular position. The subsequent rulings by the Constitutional Court in favour of the chiefs reveals the deep-seated nature of the tension between an expedient alliance with chiefs on the one hand and the principles of democracy on the other. In this regard Mqoke (1997: 3) argues that the scope for the application of customary law is an implicit recognition of cultural pluralism and the non-derogation provision (in the treatment of traditional leaders) confirms that there is a role for chiefs in the new dispensation.

The perception of many people<sup>11</sup> of the functions of elected rural councillors has also been the source of much confusion. Indeed, traditional authorities themselves are not clear on the functions of elected councillors *vis-à-vis* their own. This point is captured in the submission of the chairperson of the National Council of Traditional Leaders to a workshop of traditional authorities and local government. According to Kgosi Suping:

Much of this tension arises from the fact that the current legislative framework provides for the co-existence of Traditional Authorities and the new local government structures. The emergence of elected local governance

structures could be perceived as challenging the role and powers of Traditional Authorities, and therefore necessitating clarification and negotiation on our perceived future role.

This perception is further heightened by the behaviour of some elected councillors, who continue to wage a power struggle against traditional authorities. The struggle against traditional authorities prior to the negotiated settlement of the early 1990s was seen by the civic movement led by the South African National Civic Organisation as a struggle to replace traditional authorities by democratically elected structures. As early as 1986, the National Working Committee of the United Democratic Front resolved that, "... tribal structures should be replaced with democratic organisation" (cited in van Kessel and Oomen, 1997: 568). The democratic election of local government structures meant that some, but not all, functions, as we have seen above, would be performed by elected rather than appointed structures. However, the perception continues in the minds of many people that all the functions that were performed by traditional authorities, including the maintenance of law and order, dispute adjudication and resolution, and so forth, would now be taken over by elected councillors. Given the disarray of local government and fluidity of the situation in relation to the role of chiefs this is hardly surprising. Furthermore, the fact that indigenous law is protected through the Constitutional Court means that the judicial functions of chiefs are also safeguarded. These contrasting signals feed into the ambivalence of the role of chiefs in a democratic South Africa. It is also related to questions about the expediency of alliances with chiefs in the event of local government elections and even national elections. Such alliances do not come cheaply. Chiefs have demanded concessions and bargained for better terms in the new circumstances. The rationale for this position is the perception that chiefs may be a hindrance within the anti-apartheid alliance but that they would be far more dangerous outside such an alliance in a democratic South Africa. It should be mentioned that while it may be vital to secure an election victory, the long term implications of concessions to chiefs are inimical to democracy.

## **The Role Of Traditional Authorities In Rural Local Government**

It would appear that existing policies and legislation provide an extremely limited role for traditional authorities in local government, as an "interest group" with no more than 10 percent representation.<sup>12</sup> The position is much more fluid and uneven in practice. Chiefs are engaged in a rearguard action to defend the roles which apartheid had designed for them. They have used the ambiguities in the Constitution and the various concessions in the legislative processes to full effect. Hence, Bank and Southall (1996: 408), following Richard Sklar, have proposed a version

of Sklar's concept of mixed government, involving a transformed chieftaincy in the promotion of democracy. In agreement, Manona (1997: 68) argues in favour of harmonising the relations between chiefs and the civic structures involved in local government. This position is premised on the notion that, "... traditions are not meant to hamper progress but should actually facilitate it". The basis for such arrangements is not clear since chiefs continue to insist on complete administrative control over their areas of jurisdiction. At the very least they wish to uphold indigenous law, but the demand to control land allocation under a system of communal tenure also remains firmly entrenched (Mqoke, 1997: 5). Much of the argument in favour of merging chieftaincy with democratic local government rests on the presumption of "good" chiefs who resisted apartheid and eschewed involvement in local government during the apartheid era (Bank and Southall, 1996: 425).

While there may very well be chiefs who were opposed to government policy in respect of independence for the homelands, this is no guarantee of their commitment to democracy. There may be chiefs who still attempt to address the concerns of their communities, but the basis on which they do this is critical for the future of democracy in South Africa. In a sense, chiefs can only be "good" if they reject the very basis of chiefly authority and embrace democratic forms of representation. The history of colonial interference in chiefly authority has rendered the latter necessarily despotic. According to van Kessel and Oomen (1997: 584), the firm alliance between chiefs and the ANC started to disintegrate especially after the local government elections when the ANC grew more confident that it "... could win on its own without cumbersome alliances with traditional leaders";<sup>13</sup> that "we have grown up. We're more comfortable with our democracy now than we were in 1993, more confident of our support and less inclined to believe the traditional leaders when they say we can't rule without them. Our experience is proving otherwise. And on top of this, Holomisa has pissed everyone off royally by engaging in stand-off politics, like marching with Buthelezi and calling for an election boycott" (*Weekly Mail and Guardian*, 13 September 1996). In the Eastern Cape, the many visits by President Mandela and his mediating influence between the civics and chiefs; his statement that the "culture" of the people should unite chiefs and commoners; and the election of CONTRALESA stalwart, Gwadiso, as provincial leader of Holomisa's United Democratic Movement all point to a more complex situation. There is certainly no record of public statement about jettisoning chiefs as an alliance partner in the province, though many activists would prefer to get rid of them. Maloka's (1995: 42) position is equally contradictory. While arguing, correctly in our view, that, "... by its nature, chieftaincy encourages tribal and sectarian consciousness", he goes on to seek out the authentic chiefs, "... rooted among the rural people". The latter simply does not make any sense. If indeed chiefs are intrinsically anti-democratic then even those who are rooted

among the masses cannot be expected to foster democracy unless they abdicate their position as chiefs, in which case they will, obviously, not be chiefs. The logic of this position is that chiefs should be organised on a democratic platform, not as chiefs but as ordinary rural citizens.

There are basically two routes for chiefly representation: the *ex officio* path elaborated in the Transitional Arrangements of the final Constitution or as an "interest group" as defined by the White Paper on Local Government. Chiefs are not happy with either of these, claiming that their status places them above commoners. There are however other avenues for chiefly authority. The IDP and LDO processes which define the development role of local government clearly lay down procedures to ensure the active participation of communities and all stakeholders in the setting of LDOs which should be linked to the budgeting process of local government. This means that traditional authorities who continue to command the respect of their "subjects" will become key stakeholders in mapping out a vision for their areas, and setting long term objectives and short term action plans as required by the planning and development processes. Once again, these processes and procedures are hardly known and understood by those who are supposed to implement them and those affected by them. It is the contention of this paper that the confusion and lack of understanding of functions, powers, roles, processes and procedures, feeds into the tensions between elected councillors and traditional authorities. This in turn leads to obstacles to good governance as well as democratic participation and development at the local level. The state will have to commit enormous resources to enhance the efficacy of local government in rural areas. In particular, financial resources are needed to attract skilled activists to be candidates for local government positions. At the moment, the allowances for councillors in rural areas are too small to attract skilled people.<sup>14</sup>

As indicated above, continuing struggles between the leadership of traditional authorities and the government compounds the confusion that besets local government in rural areas. They are clearly rejecting and/or resisting the 1996 Constitution, existing legislation and the new policies that are emerging through the White Paper on Local Government Process. On the other hand, the post-1994 process attempts to define a role for traditional authorities within a "modern" democratic representative system. Conversely, traditional authorities argue that the new democratic dispensation should define its place within traditional authority structures. As far as these traditional authorities are concerned, the debate on local government in rural areas, and the role of traditional authorities has not been resolved and a new beginning is proposed, in disregard of post-1994 developments. The widely reported "defections" of traditional authorities from the ANC in the Eastern Cape, which led to meetings with traditional authorities in the Transkei region addressed by President Mandela, Ministers Moosa, Hanekom and Zuma, are clear manifestations of these unresolved tensions.<sup>15</sup>

To illustrate this point, let us consider the case of the Eastern Cape.<sup>16</sup> Traditional authorities in the Eastern Cape, unlike their KwaZulu counterparts, participated in the negotiation process of the early 1990s.<sup>17</sup> They were party to the adoption of Resolution 34 of the National Negotiating Council which was unanimously adopted on 11 December 1993. In terms of this resolution, the following was, *inter alia*, agreed upon:

- Traditional authorities shall continue to exercise their functions in terms of indigenous law as prescribed and regulated by enabling legislation.
- There shall be an elected local government which shall take political responsibility for the provision of services in its area of jurisdiction.
- The (hereditary) traditional leaders within the area of jurisdiction of a local authority shall be *ex officio* members of the local government.
- The chairperson of any local government shall be elected from amongst all the members of the local government.

However, when the final constitution was adopted, the *ex officio* membership of traditional authorities was omitted from the text but included in the Transitional Arrangements (pp 164-165). In effect chiefs have been given a new lease of life which they are attempting to turn into a recipe for permanent survival. In their presentation to the Department of Constitutional Development<sup>18</sup> the House of Traditional Leaders in the Eastern Cape claim that they were not consulted when the Constitution was amended. Attempts to challenge the amendment in the Constitutional Court failed. However, the Court "did express a view that it reserves a right to declare any act or administrative direction which undermines the institution of traditional leadership to be unconstitutional." (p 9). Despite this, the Eastern Cape House of Traditional Leaders is concerned that the "Constitutional provisions as they are do not guarantee the role of traditional leadership at a Local Government sphere".

Apart from the Constitution, the above body rejects the Local Government Transition Act 1993 as amended which establishes, as indicated above, the "district" model of local government in non-metropolitan areas. They contend that together with their rural communities they, "... were not part of the negotiations that produced the Bill and it is only fair and just that no provision of such Act should be operative in our areas". According to them, the Act "... is a product of negotiation between the civic movement on the hand and metropolitan and other municipalities on the other...".<sup>19</sup> The fact that the Act provides for the participation of traditional authorities as an "interest group" along with farmers, farm workers and women, is rejected as "against the spirit and express terms of the agreement reached between traditional leaders and all the parties at the World Trade Centre Talks", and "totally unacceptable and ... an insult to our institution". Thirdly, the Eastern Cape House of Traditional Leaders challenges the fact that elections in rural areas did not accommodate the election of candidates on a ward

basis. They dub this omission as “an unfair discrimination prohibited by the Constitution”.<sup>20</sup>

The solution proposed by them is a new beginning, that is, to start almost from scratch a process similar to the negotiations that led to the Local Government Transition Act to ensure “... a true (*sic*) Rural Local Government which will be acceptable to all”. In the interim, “... traditional authorities and the regional authorities should be allowed to continue to exist and exercise their functions in terms of the existing enabling legislation”. In the same document, the above body proposes, *inter alia*, the following model for rural local government:

- (T)hat the Government should recognise that at a local level three different structures should be recognised and maintained, namely:
  - (a) Metropolitan Local Government;
  - (b) Town/Village Municipal Council;
  - (c) Traditional Authority
- The traditional authorities must be recognised as a primary tier of local government.
- That each and every administrative area within an area of a traditional authority must constitute a ward and that the municipal area within a magisterial district must constitute a separate primary authority. The traditional heads of administrative areas should be *ex officio* members of the traditional authority.
- The councillors of traditional authorities should be democratically elected from each ward within its area of jurisdiction and the Head of this sphere of Government must be a traditional leader.
- The councillors at the primary level should elect representatives to the regional authority to represent their constituencies.
- The heads of traditional authorities should be members of the regional authority together with councillors elected by other councillors. The mayors of stand-alone towns or villages and councillors should also be members of the regional authority.
- The Government, in consultation with the Regional Authority concerned, should appoint a chief executive officer accountable to parliament and the Auditor General.
- We and the rural communities reject the notion of municipalities for rural or traditional authority areas and for the reason the Government should revisit Chapter 7 of the final Constitution, Act 108 of 1996.

In essence, this would imply a return to Bantu Authorities. As indicated, similar proposals were made by the other Houses of Traditional Leaders, the National Council of Traditional Leaders and Contralesa. The submission by the House of Traditional Leaders is that the Province has an established and statutory system of Traditional and Regional Authorities which exercises all relevant powers of local government in traditional communities. This is also a two tier model of local

government in which all relevant powers are ascribed to elected Regional Councils, but could be assumed by one of its primary structures, including Traditional Authorities, as soon as such structures acquired administrative capacity so allow (p. 6). What makes the position in KwaZulu Natal different in the existence of a category of "remaining areas". In terms of the Local Government Transition Act a "remaining area" means any area which is situated within that part of the area of a district council which does not form part of the area of jurisdiction or area of a transitional local council, a transitional representative council or a transitional rural council".

## **Conclusion**

The proposals of traditional authorities do not take into account the argument raised by Minister Moosa that due to the low tax base in rural areas, fewer and not more structures and councillors should be proposed. The District Model and moves towards amalgamation are attempts to reduce the number of councillors. Contrary to this, the proposal by traditional authorities implies that there will be more councillors. This raises the question of funding, given the rather fragile tax base of the rural councils. Chief Gwadiso, the deputy chairperson of the Eastern Cape House of Traditional Leaders is unconvincing in suggesting that elected councillors in rural areas will be prepared to offer their services on a voluntary basis. Traditional Authorities are not setting a good example in this regard, given the fact that one of their main concerns in the post-1994 dispensation is the possibility of losing their remuneration. Secondly, the above proposal creates a dichotomy between "urban" and "rural" life as if the two exist in separate compartments, with neither influencing the other, adversely or otherwise. This seems to suggest that the leadership is lagging behind their "subjects" whose needs and demands, for example, reticulated water, electricity, roads, telecommunications, etc, are increasingly competing with those residing in "urban" areas.

The deadlock outlined above between the government and traditional leaders has so far not been resolved. The Minister of Provincial Affairs and Constitutional Development, Vally Moosa, continues to speak in vague terms about how exactly the above dilemma will be sorted out. The ANC dominated government seems to be caught in an agonising dilemma. A decision that favours elected representatives in terms of the existing policies and legislation, or the proposal by the leadership of the traditional authorities, is likely to have grave implications for the ANC. It is unlikely that they will get the support of both traditional authorities and their supporters, on the one hand, and civil society on the other, as was the case in the 1994 democratic elections. Arguably, it is this dilemma that makes it difficult for a forthright response to emerge. Premised on expedience rather than principle, the role of chiefs in the next election therefore becomes critically important. The chiefs who appeared friendly to the ANC were initially used to split the bloc of pro-



apartheid chiefs and to prevent a conservative alliance of the National Party and its marionettes. Chiefs thus survived the transition to democracy in South Africa because some of them threw their lot in with the ANC once it became clear that the National Party could not hope to remain in power.

Alliances are premised on promises. The ANC have attempted to keep parts of their assurances to the chiefs by recognising them in the Constitution, legitimising their existence in the provincial houses for Traditional Authorities and allowing them a role in local government. The tension between democracy and traditional authority thus persists in the new South Africa and we suspect that the ANC is keen to delay resolution of the issue until after the next elections. At the same, the longer these tensions persist, the more they will be exploited politically especially by traditional authorities. At the village level, this holds grave consequences for democratic and effective governance.

## Notes

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1. Other unpopular measures which chiefs were supposed to implement included the Betterment, Rehabilitation and Stabilisation Schemes (see Hendricks, 1992).
  2. Eastern Cape Provincial and Regional officials are also often not sure about issues affecting local government in rural areas.
  3. These observations are based on ongoing research in parts of the Eastern Cape. Given the differentiated nature of South Africa, no attempt is made to generalise them.
  4. This gap between the “leadership” and the ordinary chiefs and headmen resident in rural areas was observed during extensive fieldwork in some rural areas in the Eastern Cape, and conferences and workshops attended involving the leadership of traditional authorities, a significant number of whom are no longer permanent residents of the rural areas.
  5. The Eastern Cape opted for the Transitional Representative Councils at the primary level of local government.
  6. See various reports by Calusa and Health Care Trust, two leading NGOs operating in the Xhalanga magisterial district, Eastern Cape.
  7. Department of Provincial Affairs and Constitutional Development (1997) Green Paper on Local Government.
  8. This is not often raised as a serious concern in most rural areas, except in the resort areas in communal land, for example, Coffee Bay and Hole-in-the-Wall in Mqanduli.

9. The question of how land will be registered is currently receiving the attention of the Department of Land Affairs, and it is expected there will be legislation to this effect by the end of this year.
10. This became clear during numerous interviews conducted with government officials at Provincial, Regional and Local Government levels by Erik Buiten and Lungisile Ntsebeza in our commissioned work for the Department of Land Affairs to "Resolve Land Tenure and Governance Issues in the Tshezi communal area, Mqanduli, Eastern Cape.
11. The confusion runs through a wide spectrum, from illiterate to literate.
12. This does not mean that traditional authorities do not have a role to play in the lives of rural people. As has been mentioned, they could, depending on their acceptance and popularity, still play an important role in the maintenance of law and order, dispute resolution, and so on.
13. Mark Gevisser (1996) quotes a senior ANC constitutional negotiator, "It's not so much that our policy [towards traditional leaders] has changed, as ..."
14. See paper by Ntsebeza quoted above, p. 157.
15. See Daily Dispatch issues of late February and early March 1998.
16. The contribution of the House of Traditional Leaders in the Eastern Cape to the White Paper workshop organised by the Department of Provincial Affairs and Constitutional Development in December 1997 was similar to those of Contralesa and the Council of Traditional Leaders. There are slight differences with the contribution of the House of Traditional Leaders in KwaZulu Natal. All Houses of Traditional Leaders and Contralesa are united in rejecting and resisting the provisions of the Constitution, existing legislation and emerging policies on rural local government.
17. Traditional authorities from other provinces also participated in the negotiation process of the early 1990s.
18. See House of Traditional Leaders (Eastern Cape) (1997). "Position Paper of Eastern Cape Traditional Leaders and their communities on a model for rural local government", adopted by the House of Traditional Leaders (Eastern Cape) on 16 October, 1997.
19. What is not clear, though, is whether these bodies did not have people from rural areas.
20. Traditional authorities in the Eastern Cape did not participate in the Local Government elections of 1 November 1995.

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