

Bentley *et al*, 2006: 59 quote an Eastern Cape traditional leader, Inkosi Mtikrakra from the village of Sithebe:

‘In the new democratic government people no longer do that [obey the tribal authority] because there are no laws to compel people to heed what the tribal authority says. An example is the Transkei Authorities Act 4 of 1965, which was against illegal gatherings, but now people do as they wish or please. People hold meetings in schools, churches, even in open spaces. Even tribal authorities courts are no longer respected by the defendants being charged.’

Albert Luthuli in 1962 described the Bantustans as follows:

Inside this closed world there is no hint, not even the remotest suggestion of democratic rule. There is provision only for the march back to tribalism – but in a far more dictatorial form than Shaka dreamed of. The modes of government proposed are a caricature. They are neither democratic nor African. The Act makes our chiefs, quite straightforwardly and simply, into minor puppets of the Big Dictator. They are answerable to him and to him only, never to their people.

The origins of this approach are foreshadowed in the Department of Constitutional Development's 1999 'Status quo report on traditional leadership and institutions'. The report (DCD, 1999: 19) refers to the 'problem' of the increasing loss of power by traditional leaders

'following the introduction of new local government structures. In some cases, community organisations and local government structures have taken over land administration functions while new land ownership forms, such as those arising from the Communal Property Associations Act of 1996, have diminished the role of traditional leaders in land administration.'

The report recommends that these problems could be resolved 'by developing legislation that clearly distinguishes which structures in the rural areas have responsibility for land administration, developing legislation to exclude land belonging to traditional leaders from the application of the Communal Property Associations Act and developing legislation to enable traditional authorities to obtain the title deeds of tribal land.'

In his affidavit in the Tongoane case, Acting Chief Christopher Mahlangu (para 2.5) insists that no independent community exists within the jurisdictional area of his traditional council and that ‘Kalkfontein B and C are part of Ndzundza (Punguthsa) traditional community’ (para 23.2). Furthermore, ‘in terms of the Ndzundza customary law, all land occupied by the community is controlled by a senior traditional leader as political head’ (para 2.3). Mahlangu says the ‘suggestion that the co-purchasers became “owners” is misleading, and that the ‘notion of freehold title is unknown in customary law and the communal system’ (para 20.2).

Chief Mhinga in his affidavit disputes the relevance of a Land Claims Court judgment asserting the tenure rights of the Makuleke community at Ntlaveni. His grounds are that the Restitution of Land Rights Act 22 of 1994 is an 'interim measure' that cannot supersede the Framework Act, the Constitution and the Limpopo Traditional Leadership and Institutions Act 6 of 2005 (para 33.2). He insists that the Makuleke are part of the Mhinga traditional community (para 57) and must accede to the authority of its traditional council. He says the executive is not obliged to accept the factual findings of the Ralushai Commission that Makuleke is a separate community (para 32.3)

Affidavit by Chief Director of DRDLR in litigation pertaining to the state's failure to transfer title of restitution land to the CATA CPA. Affidavit dated 6th June 2012

5.4 Despite the optimism with which the settlement agreement was done and the time frames set therein, the practicalities in the facilitation of the transfer of the land have been cumbersome and have now encountered fierce objections by the Traditional Leaders who state that the agreements transferring ownership of rural land to community based associations undermines their authority. In various discussions with Traditional Leaders they are resolute in objecting to the transfer of land falling under their authority to CPA. The land in question falls under Chief Ulana and in order to get a long lasting solution it is imperative that Chiefs should accept the process.

7.

In the circumstances whilst it was felt that the order sought by the applicants in this matter should not be opposed the Minister has issued an instruction that these matters be opposed on the grounds that discussions for the implementation of CLARA are still continuing and no state land has to be transferred until this process has been finalised. Thus a notice to oppose this

Statement by Van Warmelo

‘A census would certainly provide more information but I am not certain that we would know what to do with it. In my opinion the problem is caused by the Department’s efforts to force the owners of private land to constitute themselves as tribes and to be governed as such when they are neither tribes, nor do they wish to be tribes. Given that tribal government is built on voluntary support, the absence of voluntary affiliation shows that the tribal system is not wanted here. The buyers of land, the members of syndicates and of artificially created ‘tribes’ often buy land precisely to get away from tribal government. They then organise themselves extremely well through committees etc. In fact, here we see the ingredients of a law-abiding and effective form of local government. It will presumably require new legislation to make it possible but I don’t see how that can be avoided. I propose that we should support the efforts being made here and work towards the creation of a system of local government. It is part and parcel of the broader question of how best to administer rural towns. Tribal government is not appropriate for that context and the Department cannot possibly want to have to do it all itself.’

Minority Judgement in Pilane v Pilane 2013

MOGOENG CJ AND NKABINDE J

This application has a long and toxic history. It has its genesis in concerted efforts by the first applicant and his father over the years to assume the headmanship of the Motlhabe community. The basis for this claim was that the current lawfully appointed and recognised headman and his father were, according to the applicants, not the legitimate traditional leaders of that community.

...

Traditional leadership is a unique and fragile institution. If it is to be preserved, it should be approached with the necessary understanding and sensitivity.

Bearing in mind the need to help these fledgling institutions to rebuild and sustain themselves, threats to traditional leadership and related institutions should not be taken lightly.

Rural Delegate from Nkomazi – Mpumalanga Workshop
about the TCB, 2009

The thing is that we in South Africa, we are one. We, who live in the rural areas and in the towns and in the townships and in the farms - we are all South Africans. When we vote we use the same ballot papers. But then why do we remain outside democracy? We are saying that we don't want this law. We repeat. We don't like it and we have never been comfortable with it. ... Now we have voted and we have a parliament that allows us to talk. Who told them we want this Bill?

Affidavit by then DG of DPLG Lindiwe Msengana–Ndlela in her answering affidavit in the *Tongoane* litigation (para 45.1):

‘The traditional councils have clearly defined areas of jurisdiction. Those who find themselves in those areas must adjust to the rules and traditional practices of that area.’

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