

---

# TRADITIONAL LEADERSHIP IN THE ERA OF MULTI-PARTY DEMOCRACY: A FOCUS ON SOUTH AFRICA

Lungisile Ntsebeza

*Lungisile Ntsebeza is Emeritus Professor of African Studies and Sociology at the University of Cape Town. He holds two Research Chairs: the NRF Research Chair in Land Reform and Democracy in South Africa: State and Civil Society Dynamics, as well as the A.C. Jordan Chair in African Studies. His expertise is in the political economy of land in Africa.*

10 December 2020

## **Abstract**

The role of traditional authorities (chiefs of various ranks) in Africa in the era of multi-party democracy remains unresolved. This issue was brought to the fore in Africa in the early 1990s, when multi-party democracy and decentralisation were imposed on regimes in Africa by the Bretton Woods institutions. Politicians who were engaged in election politics saw traditional authorities as important actors. They surmised that winning the support of these authorities would put them in a strong position to win the support of the 'subjects'. A question thus arises in contemporary politics on the role of such traditional authorities in a multi-party democracy, which is founded on the principle of elected leaders. Historically, the institution of traditional leadership has been comprised of members who are either hereditary or appointed. This gives rise to a tension between a leadership based on the democratic principles of representative government, and one comprised of unelected leaders. This dilemma confronts South Africa as well. At the dawn of democracy, the country adopted a constitution, that, in its Bill of Rights, enshrined leadership that would be based on the will of its citizens. However, the same constitution recognised an institution of traditional leadership whose incumbents are appointed without clarity as to how this relates to the democratic practices enshrined in the Bill of Rights.

The aim of this paper is to discuss this tension arising from traditional leadership in a constitutional democracy. Its key argument is that recognising an institution of traditional leadership, based on unelected leaders, in a democracy in which the central principle is elected representation, and giving such an institution political and executive powers on land and natural resources undermines the democratic project. In the process of exploration, the paper highlights the complexities and intricacies associated with the role of traditional authorities in a multi-party democracy. The paper is informed by, and draws extensively from work I have been doing on democratisation in South Africa's countryside going back to the dawn of South Africa's democracy in 1994. My work on traditional leadership for the period up to 2004 has been consolidated in my PhD thesis, and my first book. This book, *Democracy Compromised: Chiefs and the Politics of Land in South Africa* was first published in 2005 by Brill Academic Publishers in the Netherlands, and then in 2006 by the HSRC Press in South Africa. For purposes of this working paper, I use the 2006 edition of the book. Additionally, democracy in the countryside, which interrogates the role of traditional authorities, is one of the three themes covered by my National Research Foundation (NRF) Research Chair in Land Reform and Democracy in South Africa.

## Introduction

The role of traditional authorities (chiefs of various ranks) in a democracy based on elected representation remains unresolved. This issue was brought to the fore in Africa in the early 1990s, when multi-party democracy and decentralisation were imposed on regimes in Africa by the Bretton Woods institutions (Ntsebeza, 2006). Politicians who were engaged in election politics saw traditional authorities as important actors. They surmised that winning over the support of these authorities would put them in a strong position to win the support of the 'subjects'. A question that arises, however, is the role of unelected leaders in a multi-party democracy based on the principle of democratically elected leadership. To complicate matters, colonial, and in the case of South Africa, apartheid, governments co-opted traditional authorities and used them to enforce their repressive policies. Traditional authorities, on the whole, became an extended arm of colonial and apartheid governments, something that made them unpopular with the anti-apartheid movement as they were identified with the system. This is the context within which the question as to their role in a multi-party, post-colonial/post-apartheid African setting arises.

In South Africa (the focus of this discussion paper), the post-1994 regime inherited a system that was based on 'Bantustans': rural areas administered by traditional authorities who were appointed and paid by the apartheid government. This made them upwardly accountable to their paymasters, as traditional authorities who disobeyed were replaced by compliant ones. At the dawn of democracy, South Africa adopted a constitution that enshrined in its Bill of Rights principles of accountable leadership based on the will of its citizens. However, the same Constitution recognised an institution of traditional leadership with incumbents who are appointed. The Constitution did not elaborate except to say, in section 211(1), that the institution of traditional leadership is recognised, 'subject to the constitution' and further goes on to urge parliament to pass relevant legislation clarifying the role of traditional authorities in a democracy.

This paper is essentially about the meaning of democracy against the background of, on the one hand, a history of colonialism and apartheid that African countries share, and on the other hand, a political context arising out of the imposition of multi-party democracy on African countries, often forcing politicians to sacrifice principle for expediency for the sake of political power. Its key argument is that recognising an institution of traditional leadership, whose leaders are not elected, in a democracy whose central principle

is elected representation, and giving such an institution political and executive powers on land and natural resources undermines the democratic project. South Africa is used as a case study to highlight the complexities and intricacies associated with the role of traditional authorities in a multi-party democracy.

The paper addresses the above issues by situating the role of traditional authorities in post-1994 South Africa within the country's historical context. The continental and global contexts will also be taken into account, specifically the situation in the late 1980s and early 1990s – a period characterised by the fall of the Soviet empire and transition to multi-party democracy and decentralisation on the African continent. The paper is not, however, a comparative study of how African countries are dealing with the role of traditional leaders in a multi-party democracy, though this is an important and urgent topic for both scholarly and policy purposes. Its importance requires treatment in a separate paper, which takes account of the diversity of African states despite their common history of colonialism and apartheid (Amin, 1973; Mafeje, 2003).

The paper is informed by and draws extensively from work I have been doing on democratisation in South Africa's countryside going back to the dawn of South Africa's democracy in 1994. I have worked on this topic since and have published extensively on it. My work in the period up to 2004 has been consolidated in my PhD thesis submitted in 2002 and my first book which draws its empirical evidence from my PhD. The book, titled *Democracy Compromised: Chiefs and the Politics of Land in South Africa* was first published in 2005 by Brill Academic Publishers in the Netherlands. The same book was published in 2006 for an African audience by the HSRC Press in South Africa. For purposes of this paper, I use the 2006 edition. Finally, democracy in the countryside is one of three themes comprising my National Research Foundation (NRF) Research Chair in Land Reform and Democracy in South Africa which I have held since 2008.<sup>i</sup>

The paper begins with a focus on the relationship between the ruling African National Congress (ANC) and traditional authorities in South Africa from a historical perspective. Analysis of the ANC is privileged for the simple reason that it has been the dominant party in South African politics since the 1980s and therefore dominates parliamentary decision-making. The paper then situates the ANC within the international context of the late 1980s and early 1990s in order to try to understand why the party finds it difficult to resolve the issue of traditional authorities in a democracy based on a Constitution and Bill of Rights that proclaim representative democracy.

## **Traditional leadership and national liberation politics in South Africa up to the late 1980s**

This section examines the ANC's position on traditional authorities from the organisation's establishment in 1912 to the period leading to the demise of apartheid in the late 1980s. This historical context lays the foundation for our understanding of how the ANC is dealing with the role of traditional authorities in a democratic South Africa.

The ANC's position on traditional authorities has always been ambivalent. When the organisation was formed in 1912, traditional authorities opposed to the Union of South Africa in 1910 were among the founding members. By this time, chiefs and headmen had been co-opted into colonial structures. Co-option was the strategy used by colonialists to rule the indigenous majority (Mamdani, 1996; see also Tabata, 1950). That some chiefs would support the ANC, as will be seen below, led to notions that chiefs could be divided between those who were compliant, on the one hand, and those who were progressive, on the other. It is this distinction between compliant and progressive chiefs and, specifically, what the features of a progressive chief are, that lies at the heart of the longstanding ambiguity in the ANC's position on traditional authorities, initially during the liberation struggle and later in South Africa's democracy (Ntsebeza, 2006).

Debates within the ANC on the role of traditional authorities only emerged in the open in the 1940s, when the ANC Youth League was formed with the intention of giving direction to a moribund ANC (Ntsebeza, 2006). Two broad schools of thought began to emerge: those in the ANC who supported traditional authorities that were critical of government policies, on the one hand, and those who, increasingly under the influence of communists, argued that the institution belonged to a previous feudal era and needed to be replaced by democratic structures. Govan Mbeki represented the latter. Here is his often-quoted statement (Mbeki, 1984: 47):

If Africans have had Chiefs, it was because all human societies have had them at one stage or another. But when a people have developed to a stage which discards chieftainship, when their social development contradicts the need for such an institution, then to force it on them is not liberation but enslavement.

However, the position taken by Govan Mbeki was never endorsed as policy for the organisation. The ANC was inclined to continue its strategy of wooing 'progressive' traditional authorities, rather than evolving a strategy of establishing alternative democratic structures that would replace traditional authorities in rural areas (Ntsebeza, 2006). Part of the reason for pursuing this strategy was that the ANC was exceptionally weak in the rural areas, and never had a coherent programme for building alternative democratic structures in these areas (Ntsebeza, 2006). Even Mbeki, at times, was not clear on the question of discarding traditional authorities. In the same book, he argued that if traditional authorities failed 'the peasants', the latter would 'seek new ones' (1984: 146). Did Mbeki suggest that the peasants would discard chieftainship, or was his point that they would seek new traditional authorities?

The role of traditional authorities in the liberation struggle received renewed attention within the ANC and its alliance partner, the South African Communist Party (SACP), in particular, after the banning of political organisations in 1960 (Ntsebeza, 2006). The ANC debated working with people such as Prince Mangosuthu Buthelezi, who were working within the system. The debate 'raged', according to Mbeki (1996: 92), 'for years within ANC circles, especially on Robben Island.'<sup>ii</sup> Govan Mbeki, who was incarcerated on Robben Island, was the leading figure in cautioning against working with traditional authorities operating within the system (Ntsebeza, 2006). The same could not be said about Nelson Mandela, who maintained a good relationship with Buthelezi (see Mandela, 1995).<sup>iii</sup> The ANC/SACP members in exile seem to have adopted a position similar to Mandela. According to Mbeki, the exiled members 'encouraged Buthelezi to establish a political party in the homeland along the lines of Chief Victor Poto Ndamase's Democratic Party in the Transkei' (Mbeki, 1996: 92). It appears, from Mbeki (1996: 92), that the exile position 'met with strong opposition from the ANC's internal membership in Natal' – people, I should add, who were in the thick of things (Ntsebeza, 2006). The position of the members of the ANC in exile compelled Govan Mbeki to make the following powerful observation (Mbeki, 1996: 92):

The ANC leadership in exile seems to have seriously underestimated the capacity of government-created institutions to fulfil their intended role. They continued to believe that people who were not affiliated to the ANC could be trusted to fight apartheid from inside the apartheid created institutions. This confidence led to a situation in which MK cadres who were being infiltrated into the country were instructed to call on Buthelezi. But the chief minister of the KwaZulu Bantustan was playing a different game from that of the ANC in exile.

As already indicated, the organisational weakness of the ANC in the countryside compromised it and forced the organisation to adopt desperate positions of collaborating with traditional authorities. Mbeki quoted Oliver Tambo (1987) as having confessed from exile: 'We have not done and are not doing sufficient political work among the millions of our people who have been condemned to the Bantustans' (quoted in Mbeki, 1996: 95).

The question of the role of traditional authorities in the struggle for liberation received attention inside South Africa since the banning of political organisations in 1960 only in the mid-to-late 1980s, when the internal struggles in South Africa started shifting to rural areas. The dominant internal organisation in this period was the United Democratic Front (UDF), largely regarded as an internal, above-ground wing of the then-banned ANC and SACP. As debates on Robben Island and among exiles were going on, the UDF found itself required to elucidate its position concerning chieftainship and its incumbents. Like the ANC, the UDF was essentially urban orientated, and poorly organised in rural areas (Ntsebeza, 2006). According to Van Kessel (2000; 1995; 1993), rural mobilisation in these areas owed more to local youth initiatives than to any planning or co-ordination on the part of the UDF leadership. She observed that the fact that organisation in these areas was given to Murphy Morobe, a Soweto-born product of the 1976 student uprising, bears testimony to how lowly ranked rural areas were in the UDF. Above all, Morobe had numerous responsibilities in the UDF. He was later to confess in an interview with Van Kessel: 'that was the one position I was never able to fulfil' (Van Kessel, 1993: 599).

However, over time, the UDF evolved a position on traditional authorities when they targeted these areas in the mid-1980s. Their position was radically different from that of the ANC in exile and some members on Robben Island (Ntsebeza, 2006). The leading exponent of UDF policy on rural areas at the time was Patrick 'Terror' Lekota, currently leader of the Congress of the People (COPE). When interviewed in 1985 about the UDF policy on chieftainship, he categorically and unambiguously stated that chieftaincy is 'a dying institution' (in Van Kessel, 1995: 173):

As the pressures of the capitalist economy penetrate even those rural areas, more and more people are making a break with the tribal ties of loyalties to the chief – who are being seen to be serving not the community but themselves. What we are going to see is the building of new leaders, not on the basis of old tradition.

It can be seen here that Lekota's position was similar to that of Govan Mbeki (Ntsebeza, 2006). The UDF reiterated this position in 1986 when commenting on the rural struggles of the mid-1980s: 'tribal authorities are being replaced by democratically elected village councils' (Van Kessel, 1995: 170; 1993: 599). The 1986 National Working Committee of the UDF resolved that 'organisation (in the Bantustans) must be intensified and tribal structures should be replaced with democratic organisations' (quoted in Van Kessel, 1995: 173).

The above UDF position was qualified with pronouncements that short-term alliances could be forged with chiefs who still enjoyed popular support (Ntsebeza, 2006). But there was no equivocation regarding the long-term goal: 'chiefs must go and the people must run the villages' (Saspu, 1986, quoted in Van Kessel, 1995: 173). The participation of the youth who were members of youth congresses in particular seems to have been informed by this vision of the UDF (Ntsebeza, 2006). For example, the late Peter Mokaba, at the time a youth leader from Lebowa, who later became President of the ANC-aligned South African Youth Congress (SAYCO) and later the ANC Youth League, announced at the height of resistance in Sekhukhuneland in May 1986 that (Van Kessel, 1995:215):

We intend removing the tribal chiefs as soon as possible. We have called on them to resign. Our ultimate intention is to allow the people to govern themselves. We have already established people's courts in some areas and are in the process of forming our own militia which will carry out the orders of the courts.

The UDF recognised, as early as 1987, the 'ambiguity' of forging alliances with contradictory forces (Van Kessel, 1993: 613). In its 1987 rural report, the UDF (Van Kessel, 1993: 613) noted:

If we accept that the struggle against the Bantustans and for a united South Africa needs to incorporate the broadest possible range of people, how do we deal with these 'allies'. In many situations these alliances have clear limits. In others our ability to control them, or to take them further may mean that the victories we win are limited. In yet other circumstances people who are allies during a specific period may in fact turn against us.

It is clear from the above that the general policy of the UDF in the mid-1980s was geared towards replacing chiefs and their institution(s) with democratically elected structures. Striking alliances with chiefs who

still had support was seen as a short-term tactic. Otherwise, 'chiefs [would] go and the people [would] run the villages' (Ntsebeza, 2006).

To sum up this section, two broad positions are identifiable within the broad Congress movement comprising the ANC and SACP in exile, the leading members of the ANC in prison in South Africa, and the UDF, seen as the internal wing of the ANC. The ANC in exile and leaders such as Nelson Mandela favoured working with traditional authorities that were deemed to be 'progressive' and willing to work with the ANC. What the role of these traditional authorities would be was never clear. On the other hand, leaders such as Govan Mbeki and the UDF were in favour of democratically established structures replacing traditional authorities in the rural areas. However, as will be seen in the next section, the position of the UDF would radically change in the same year (1987) that their rural report was published. At the heart of the somersault was the formation of the Congress of Traditional Leaders of South Africa (CONTRALESA) and the aftermath of this event (Ntsebeza, 2006).

### **The formation of CONTRALESA and its significance**

Although not the only factor, the formation of CONTRALESA had a major influence in directing the ANC towards adopting a position that would lead to the recognition of traditional authorities in the interim, and indeed the final, Constitution. This meant that the position cherished by Govan Mbeki and the UDF in the mid-1980s of doing away with traditional authorities was defeated (Ntsebeza, 2006). CONTRALESA was officially launched on 20 September 1987 by a group of traditional authorities who were opposed to the declaration of apartheid-style independence in KwaNdebele. Given their harassment by the apartheid state, they saw the UDF as an organisation that could give them protection and help them in organising other traditional authorities (Oomen, 1996: 49). According to Zuma (1990: 68)<sup>iv</sup>, SAYCO 'had a significant influence in the formation of CONTRALESA'.<sup>v</sup> This seems to suggest that the UDF itself did not have a unanimous position on traditional authorities. As shown in the previous section, the 1987 rural report denounced 'chiefs' and promised to replace them with democratically elected village structures. In the same year, Peter Mokaba was busy organising the formation of CONTRALESA.

However, it is important to note that the UDF was 'in considerable disarray' (Van Kessel, 1995: 174), following the effects of the national State of Emergency declared in June 1986: many political activists were detained; others went underground or fled the country. Leading members of the UDF who

articulated a policy on traditional authorities, such as Lekota, had been detained even earlier, and were facing charges in a marathon trial in Delmas. The one UDF leader who was not detained, much to the surprise of some commentators, was Peter Mokaba<sup>vi</sup> (Ntsebeza, 2006).

The ANC celebrated the formation of CONTRALESA and urged a delegation of CONTRALESA that visited the ANC in Lusaka on 24 February 1988 'to spread itself into the whole of South Africa, organising all patriotic chiefs who are longing for a political home' (Zuma, 1990: 70). Following their leaders, SAYCO welcomed CONTRALESA in these terms (quoted in Zuma, 1990: 70):

We are proud that traditional leaders are beginning to realise the truth ... We have a long history of chiefs who fought on the side of the people. We believe in such chiefs ... Let the present chiefs, if they are still chiefs, lead the people in the fight against what actually deprives their people of their land... Let them be accountable to the people and directed by them.

In presenting an argument for the relevance of 'the institution of chieftainship', Zuma criticised the Govan Mbeki position that the institution had outlived itself, arguing that it 'could cause a lot of political problems for us'.<sup>vii</sup> According to Zuma, the Mbeki argument did not take into account the 'political consciousness' of rural people (Ntsebeza, 2006). Without substantiating his claim, Zuma asserted that 'there are many popular chiefs in South Africa today who together with their people are taking part in the struggle' (1990: 75).

Importantly, Zuma argued that 'the institution should be allowed to exist in future but under "our" control, "our" here suggesting democratic people's power' (1990: 74), pointing out that 'A lot of political work will have to be done to raise the consciousness of both the chiefs and the people as a whole on whatever formula of coexistence we find' (1990: 75). On the vexed question of the future of traditional authorities, Zuma (1990: 75) declared:

One can further argue that people's power will create a whole new set of political and economic conditions which together could create a basis for the gradual phasing out of the system of chieftainship. But this will take a long time. And in any case not everybody will agree that the system must wither away. There may be those who want a new constitution to guarantee a secure position for the chiefs, queens and kings. Political history does show numerous cases where the institutions

and traditions of royalty continue to exist (albeit controlled by the constitutions) even in advanced capitalist countries.

It is difficult to be sure what precisely Zuma's position was on especially the future of the 'system of chieftainship', but he seemed to put forward two positions. At one level one gets the impression that recognising traditional authorities was a short-term strategic move, the end goal being the 'gradual phasing out of the system'. At the same time, Zuma suggested making provision for the continued existence of 'royalty' but with a condition that the royalty be 'controlled by the constitutions' (see Ntsebeza, 2006).

Quite clearly, the position put forward above accorded the 'system of chieftaincy' a secondary and subordinate position. This position was sustained when the political negotiation process began after the ANC and other liberation organisations were unbanned and political prisoners released in 1990 (Ntsebeza, 2006). In its policy guidelines, formulated in 1992, the ANC clarified its policy on traditional authorities thus (quoted in Oomen, 1996: 103):

The institution of chieftainship has played an important role in the history of our country and chiefs will continue to play an important role in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of chiefs shall always be exercised subject to the provisions of the constitution and other laws. Provision will be made for an appropriate structure consisting of traditional leaders to be created by law, in order to advise parliament – on matters relevant to customary law and other matters relating to the powers and functions of chiefs. Changes in the existing powers and functions of chiefs will only be made by parliament after such consultation has taken place.

The ANC guidelines were clearly informed by the notion of the co-existence of democratic and traditional authority structures in a democracy. In this regard, the powers of traditional authorities were defined as unifying 'our people' and as performing 'ceremonial and other functions allocated to them by law'. The guidelines clearly limited the powers of 'chiefs' by subjecting them 'to the provisions of the constitution and other laws' (Ntsebeza, 2006). The guidelines further limited the participation of traditional authorities to an advisory capacity, advising parliament 'on matters relevant to customary law and other matters relating to the powers and functions of chiefs' (quoted in Oomen, 1996: 103).

The implications of the above position for traditional authorities were that they would lose the substantial powers they enjoyed under the apartheid regime. Some ANC members, such as Albie Sachs (1992), also a constitutional expert, never envisaged that chieftainship and chiefs, *qua* hereditary authorities, would have a primary role in local government. He suggested that there would be a growing tendency towards creating democratically elected councils to work with chiefs and chieftainesses in local administration. In other words, the role of chiefs and chieftainesses would be subordinate to that of elected representatives. How this arrangement would be put into practice was never spelt out. However, there were sceptics. Writing in the SACP mouthpiece, *The African Communist*, Maloka, warned that although there are 'genuine and dedicated chiefs' who might play an advisory and ceremonial role in elected local government structures, other 'chiefs survive on the fringes of our society through clientelism and coercion' (1995: 43). Maloka, though, did not provide any evidence of who these 'genuine and dedicated chiefs' were, and on what he based his claim (Ntsebeza, 2006).

Critics such as Houston (1997) have suggested that the UDF had an influence in shaping the ANC position. By 1990, UDF activists who had been detained and/or were underground as a result of the State of Emergency were back in action again (Ntsebeza, 2006). As Houston (1997: 129) observed, 'many of the Front's (UDF) members were... aware of the role of traditional leaders in the homeland system, leading to a rejection of this institution by the urban-based membership of the UDF'. When the UDF disbanded in 1991, some of its members, such as 'Terror' Lekota, not only joined the ANC and the SACP, but occupied high-ranking positions in these organisations. This led Houston to believe that the ANC and the SACP received members whose political culture was shaped by, *inter alia*, opposition to tribal authorities. Van Kessel, on the other hand, was more perceptive. According to her: 'The legacy of this extraordinary period of youth mobilisation in the 1980s gave the ANC a difficult start after its unbanning in February 1990. It could not simply build on the foundations laid by the UDF, which in the rural parts of the Northern Transvaal had become largely associated with rebellious youth' (1993: 612).

I would be inclined to share Van Kessel's cautious position. It does appear to me that, on the whole, it is the position of the ANC in exile that informed the ANC guidelines. This position was not only informed by the ANC's desire to not be seen to support the 'rebellious youth', as suggested by Van Kessel, but also by the ANC's strategy of broadening its support base (Ntsebeza, 2006). The ANC policy guidelines, as will be seen below, informed its strategy during the political negotiation process leading to the first democratic

elections in South Africa in 1994 (Ntsebeza, 2006). To complete the picture, I propose to pause and focus on traditional authorities during the transition to democracy.

### **Traditional authorities during the political negotiation process**

Traditional authorities during the transition divided into two broad categories: Those who supported the ANC and were members of CONTRALESA, and those who were members of what became the Inkatha Freedom Party (IFP).<sup>viii</sup> Unlike CONTRALESA, whose membership swelled when political organisations were unbanned and the political negotiations were underway, the IFP was vehemently and violently opposed to the UDF in the 1980s, and the ANC when it was unbanned in 1990. This was after the IFP, which initially enjoyed support from some ANC leaders, had a fallout with the organisation. According to Govan Mbeki (1996), relations between the ANC and Prince Buthelezi soured in 1979 when the latter broke a secrecy pact agreed upon between an ANC delegation, led by Oliver Tambo, and an Inkatha one, led by Buthelezi. Pursuing its strategy of working with government agents, the ANC delegation had recommended that Buthelezi should use his position as the leader of the KwaZulu Bantustan to mobilise the rural people for a united and non-racial South Africa. Buthelezi, according to Mbeki, used the meeting instead to raise his own profile, using the fact that he had the ear of the ANC leadership to give himself greater legitimacy (1996: 96). When the ANC-oriented UDF was established in 1983, there were tensions between it and Buthelezi that led to bloody conflict through most of the 1980s and the first half of the 1990s.

Buthelezi and his supporters never bothered to join CONTRALESA. In fact, they displayed a great deal of hostility towards the organisation. The election of Chief Maphumulo of KwaZulu-Natal as the president of CONTRALESA predictably angered Buthelezi (Ntsebeza, 2006). He is reported as having described CONTRALESA as an organisation attempting to 'thrust the spear into the very heart of Zulu unity' (Zuma 1990: 72). In September 1989, a few months after the election of Chief Maphumulo, Buthelezi is alleged to have summoned a meeting of all traditional authorities in KwaZulu-Natal, including King Zwelithini, to Ulundi (Ntsebeza, 2006). According to Zuma, Buthelezi told the gathering that they should 'close ranks and rejoice in our unity and to tell Inkosi Maphumulo to go to hell'. King Zwelithini is reported to have added his voice and attacked Chief Maphumulo (Zuma, 1990: 72)<sup>ix</sup>.

Relations between CONTRALESA and the ANC started changing after the murder of Chief Maphumulo on 25 February 1991.<sup>x</sup> Chief Phathekile Holomisa took over from Chief Maphumulo as President. There were shifts in relations between CONTRALESA and the ANC under Holomisa. First and foremost, CONTRALESA rejected the ANC's vision that the institution of chieftainship be a ceremonial and advisory body. Instead, it pushed for the recognition of traditional authorities and their institutions as the primary level of government in rural areas. CONTRALESA, under Chief Holomisa, rejected the notion that, in the rural areas of the former Bantustans, municipalities and elected councillors be the primary level of local government<sup>xi</sup> (Ntsebeza, 2006).

Unlike the IFP which opposed the ANC from without, CONTRALESA remained within the ANC and raised its issues from within (Ntsebeza, 2006).

Traditional authorities as an institution did not participate in the political negotiation process. Where individuals participated, they did so as part of the delegations of the former Bantustans and in the case of members of CONTRALESA, as part of the ANC (Ntsebeza, 2006). Regarding the IFP, Prince Buthelezi put some conditions on his participation, including a demand for separate delegations for his KwaZulu government and his king. When this was not granted, he and the King pulled out of the process. The ANC and the National Party saw the non-involvement of the IFP as a threat to the negotiated transition, especially after the date for the first democratic elections was announced. Consequently, on the eve of the first democratic elections in 1994, several concessions were made to ensure the participation of the IFP in particular. These concessions included increasing the powers of provincial governments and recognition of the Zulu King. In this regard, the ANC and the NP undertook to recognise and protect the institution, status and role of the constitutional position of the King of the Zulus and the kingdom of KwaZulu, which would be provided for in the provincial constitution of KwaZulu-Natal (Henrard, 1999: 400). This ensured, six days before the 1994 national democratic elections, that the IFP would participate in the elections (Ntsebeza, 2006).

Despite all the difficulties in getting traditional authorities fully involved in the negotiations, the NP and ANC pushed ahead. They were nonetheless worried that traditional authorities were not participating (Ntsebeza, 2006). They considered 'the institution of traditional leaders (as) still relatively widely supported, especially in rural areas where they fulfil an important government function at local level' (Henrard, 1999: 397). According to Oomen, the ANC and the NP saw traditional authorities as 'important

vote brokers' (1996: 56). The broader context of this statement is that by this stage, the question of non-racial elections was squarely on the cards and votes counted. Whether the assumptions of the NP and ANC held water or not was highly debatable (Ntsebeza, 2006).

In the final analysis, traditional authorities in CONTRALESA 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 points, *inter alia*, were agreed upon:

- Traditional authorities will continue to exercise their functions in terms of indigenous law as prescribed and regulated by enabling legislation.
- There will be an elected local government, which shall take political responsibility for the provision of services within 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.

Thus, in the interim Constitution, traditional authorities managed to secure guarantees, albeit of a subordinate position, to that of the elected bodies. There was an agreement that the principles and values contained in the interim Constitution would not be undermined by the final Constitution. In this regard, a series of 34 Constitutional Principles were endorsed. The final Constitution had to comply with these principles (Henrard, 1999: 380). With regard to traditional authorities, Constitutional Principle XIII stated:

The institution and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied in courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

In many ways, the principles agreed on were an endorsement of the ANC Policy Guidelines of 1992. The recognition of traditional leadership was subjected to the provisions of the Constitution and existing legislation. In addition, Resolution 34 has a strong bias in favour of elected local government, and traditional authorities would only be *ex officio* members of the local government (Ntsebeza, 2006).

It is important to note, as I wrap up this section, that the IFP rejected the interim Constitution. Although participants in the adoption of Resolution 34, CONTRALESA under the Presidency of Chief Phathekile Holomisa had serious reservations about what he and his supporters considered to be a secondary status. My opinion is that pressure from CONTRALESA was behind the fact that there was no provision in the 1993 *Local Government Transition Act* to define the form that local government would take in those rural areas controlled by traditional authorities (Ntsebeza, 2006). As will be seen below, it is disagreements on the issue of who would govern these areas that defined, and continues to define, relations between CONTRALESA and the ANC.

### **Traditional authorities in the first decade of South Africa's democracy**

It took the ANC-dominated Government of National Unity almost 10 years to meet its constitutional obligation of promulgating legislation that would clarify the role of the institution of traditional leadership and its incumbents. These laws were passed in 2003 and 2004. In the intervening years, the ANC was trying to resolve its dilemma of reconciling the interests of traditional authorities with those of rural residents who, mainly under the leadership of the South African National Civic Organisation (SANCO), were waging struggles against these traditional authorities. The ANC enjoyed support from both traditional authorities and activists in civic organisations and did not want to alienate either of the two. I have indicated above that it was difficulties around resolving this tension that delayed incorporation of transitional structures in Tribal Authority areas. Although this was before the 1994 democratic elections, and the National Party was still in power, the ANC was a key partner in the political negotiations of the early 1990s and played a critical role in the promulgation of the *Local Government Transition Act* of 1993 (Ntsebeza, 2006).

While the role of traditional authorities in a democracy was not directly addressed in the first decade after South Africa's first free elections, strides were made to promulgate legislation on local government. The government took a significant step forward in its attempts to democratise rural local governance: it separated the functions of local government and land administration, thus undoing a major legacy of apartheid which was to concentrate and fuse power in one authority, the Tribal Authority. Furthermore, the division between the rural and the urban was abolished in the sense that municipalities consisting of elected councillors were extended to all parts of the country, including rural areas under traditional

authorities where municipalities did not previously exist. This was in line with the 1993 interim Constitution and later the final Constitution of 1996 (Ntsebeza, 2006).

Regarding the land question in the rural areas of the former Bantustans, the 1997 White Paper on South African Land Policy announced its 'key areas of concern' as 'the rights to land of the people living in' rural areas. The White Paper provided a guide for the legislative process that would define the land tenure rights of rural people, and a system of land administration. It drew a distinction between 'ownership' and 'governance' and implied that tenure reform in these areas would entail transferring 'ownership' of land 'from the state to the communities and individuals on the land' (1997: 93). By the beginning of 1998, the then Department of Land Affairs (DLA) had developed principles that would guide its legislative and implementation framework. The principles emphasised that, where land rights 'to be confirmed exist on a group basis, the rights holders must have a choice about the system of land administration, which will manage their land rights on a day-to-day basis'. In addition, 'the basic human rights of all members must be protected, including the right to democratic decision-making processes and equality. Government must have access to members of group-held systems in order to ascertain their views and wishes in respect of proposed development projects and other matters pertaining to their land rights' (Thomas *et al.*, 1998: 528; Ntsebeza, 2006).

It seems quite clear from the above that both the then Departments of Provincial and Local Government and the DLA intended to subject traditional authorities to a system that would make them more representative and accountable to their communities (Ntsebeza, 2006).

Not surprisingly, the moves by the ANC-led government towards democratising rural local governance drew fierce criticism and resistance from traditional authorities, including those in CONTRALESA. There had already been signs that the ideological gap between members of CONTRALESA and those traditional authorities who were sympathetic to the IFP was closing (Ntsebeza, 2006; 2004; 2002). These became evident in the run-up to the first democratic local government elections in South Africa in 1995/1996. The two organisations began to work together. They took the ANC-led government to the Constitutional Court, challenging the government over the issue of establishing municipalities throughout the country, including rural areas under their jurisdiction. The then president of CONTRALESA, Chief Phathekile Holomisa, who had become an ANC Member of Parliament, took an increasingly defiant stand towards the ANC. He called for a boycott of the first democratic local government elections (Ntsebeza, 2006).

While the initial collaboration between the IFP and CONTRALESA was around local government, it became clear that the main issue that brought them together was their opposition to the notion of introducing new democratic structures. They would be happy to be the only primary structure in rural areas and insisted on preserving the concentration of functions they enjoyed under apartheid, in particular land administration. Not only were they opposed to the idea of separation of powers, they were also opposed to any attempt to introduce alternative structures that would compete with them. For example, in the case of local government, traditional authorities rejected the introduction of municipalities in 'their' areas. They argued that they should play a central role in rural development, and by implication, they rejected the democratic principles upon which post-1994 developmental local government is based. Traditional authorities adopted a similar stand with regard to land tenure reform. While they agreed with government that land in the rural areas of the former Bantustans should not be the property of the state, they rejected the notion that where land is held on a group basis, the administration thereof should be transferred to democratically constituted and accountable structures. Traditional authorities strongly argued that the land should be transferred to Tribal Authorities, which are undemocratic and unaccountable. Transferring land to Tribal Authorities would legally exclude ordinary rural residents from vital decision-making processes, including those on land allocation (Ntsebeza, 2006).

### **Government succumbs to pressure from traditional authorities**

Things came to a head in the run-up to the second democratic local government election in December 2000. Traditional authorities exerted pressure on the government, threatening to boycott the local government elections. As a result, there was a delay in the announcement of the election date. After a series of meetings between the government and traditional authorities, government made some concessions. The first significant concession was the amendment of the Municipal Structures Act that was successfully rushed through Parliament just before the local government elections. The amendment increased the representation of traditional authorities in local government from 10 to 20 per cent of the total number of councillors. Furthermore, traditional authorities would not only be represented at a local government level, but also at district and, in the case of KwaZulu-Natal, metropolitan level. Traditional authorities, though, would not have the right to vote. This concession seemed to have encouraged traditional authorities to ask for more, rejecting the 20 per cent increase. They wanted nothing short of amending the Constitution and legislation flowing from it regarding municipalities in rural areas in the

former Bantustans. They wanted municipalities to be scrapped in these areas and be replaced by apartheid-era Tribal Authorities (Ntsebeza, 2006).

The response of government was, for the second time in as many months, to present a bill to Parliament to amend the Municipal Structures Act. The bill did not address the central demand of traditional authorities, namely the scrapping of municipalities in rural areas in favour of Tribal Authorities. The bill merely sought to give local government the authority to delegate certain powers and functions to traditional authorities. In addition, a range of peripheral duties would be assigned to traditional authorities. Predictably, traditional authorities rejected the bill and threatened to boycott the 2000 local government election. They also threatened that there would be violence in their areas if their demands were not met. The bill was subsequently withdrawn on a technicality. It would seem that the President gave some undertakings, given that traditional authorities eventually participated in the election (Ntsebeza, 2006).

At the same time as the above discussions were taking place, shifts were underway in the then DLA. We have seen above that the guiding principles of this department towards land administration were that, where land was held on a group basis, the land rights holders would have a choice about the system of land administration. However, when Minister Thoko Didiza replaced Derek Hanekom as minister of Land Affairs, after disbanding the drafting team of the Land Rights Bill that she inherited from Hanekom, she unveiled in February 2000 her 'strategic objectives' regarding land tenure and administration in rural areas. With regard to land administration, she committed herself to building on 'the existing local institutions and structures, both to reduce costs to the government and to ensure local commitment and popular support' (Lahiff, 2000: 63).

It was only in 2003 and 2004 that a degree of clarity about the role of traditional authorities in South Africa's democracy emerged. In 2003, Parliament passed the Traditional Leadership and Governance Framework Act (the Framework Act). An objective of this law that is pertinent for our case was the provision to establish and recognise 'traditional councils'. A traditional council, according to section 3(1), will be established in an area which has been recognised by the Premier as a traditional community. The preamble to the Act says that this would take place within the context of transforming 'the institution of traditional leadership ... in line with constitutional imperatives ... so that democratic governance and the values of an open and democratic society may be promoted'. The Act provided for a role for traditional

leadership, not only in the local government sphere, but in all three spheres of government. It did not specify a role for traditional authorities in land administration. This would be dealt with in the Communal Land Rights Act, which was promulgated the following year, in 2004. The Act recognised apartheid era Tribal Authorities as the basis on which traditional councils would be established. A four-year transition period for the transformation of Tribal Authorities was allowed. But there was no provision, as Cousins and Claassens (2003) pointed out, for sanctions in the event that Tribal Authorities were not transformed.

As far as the constitution of traditional councils was concerned, they resembled the Tribal Authorities they were meant to replace. Although there was provision for a minimum of 30 per cent representation of women in the councils, the majority of the members would not be popularly elected. Initially, there was a recommendation that a mere 25 per cent of members should be elected. After strong protests from NGOs and other civil society organisations, this number was increased to 40 per cent. This, however, still gave unelected traditional authorities and their appointees a majority.

Following the Framework Act of 2003, another Act was passed, the Communal Land Rights Act of 2004. In terms of this Act, traditional councils established under the Framework Act were empowered to have land allocation and administration powers and functions in the areas they controlled under apartheid. Section 21(2) of the Communal Land Rights Bill read: 'If a community has a recognised traditional council, the powers and duties of the land administration committee may be exercised and performed by such council'. This gave enormous and unprecedented powers to a structure with a majority of unelected members. Under the colonial and apartheid systems, the final authority in the land allocation process and which issued permits to occupy land resided with magistrates and later District Commissioners. The 2004 Communal Land Rights Act made traditional councils supreme structures when it came to land allocation. According to then *Cape Times* reporter Christelle Terre'blanche, these provisions were made shortly after a meeting involving then Deputy President Jacob Zuma, King Zwelithini and the IFP's Prince Buthelezi, leading to speculation that the amendment was a deal (Terre'blanche, 2004).

The draft Communal Land Rights Bill which was gazetted on 14 August 2002 proposed to transfer registrable land rights to individuals, families and communities. On land administration, it divested traditional authorities of their land administration functions, including land allocation in favour of democratically elected administrative structures. Where applicable, 'legitimate' traditional authorities were accorded *ex officio* representation not exceeding 25 per cent. The draft bill clearly attempted to

strike a balance between the constitutional obligation to extend democracy to all parts of the country, including rural areas, and accommodating the institution of traditional leadership, which is recognised in the Constitution (Ntsebeza, 2006).

Traditional authorities rejected the August 2002 draft Bill. Chiefs Holomisa of CONTRALESA and Mzimela of the National House of Traditional Leaders indicated that they were going to oppose the envisaged legislation and would take up the issue, as they did in the past, with the President (*Sunday Times* and *City Press*, 25 August 2020). According to Chief Holomisa (quoted in *Daily Dispatch*, 2 November 2002):

In 2000, we (traditional leaders) held three meetings with him (Mbeki), where he categorically stated that in no way would the power of traditional leaders be reduced or diminished by his government. We asked him to put it in writing, and he took exception, saying it looked as though we doubted his word.

Some traditional authorities reportedly threatened bloodshed (*Daily Dispatch*, 2002).

The amended draft of the Communal Land Rights Bill drew criticism from a range of civil society organisations, and gender and land rights activists, organised under the auspices of the University of Western Cape based Programme for Land and Agrarian Studies (PLAAS) and the National Land Committee (NLC). It also received criticisms from some ANC Members of Parliament.<sup>xii</sup> The uproar was based on the view that traditional councils are 'a retreat from democracy' and an attempt to revive a defunct apartheid institution which, amongst others was deeply discriminatory of women. Cousins and Claassens (2003) argued that under 'customary law' women will be dependent on men and vulnerable to loss of their land and other property on divorce or the death of their husbands. Despite the protest, the controversial Bill was bulldozed through and passed unanimously by Parliament on 27 January 2004 (Ntsebeza, 2006).

For the first time in more than ten years, traditional authorities gave their overwhelming support for the Communal Land Rights Act.<sup>xiii</sup> In a *Business Day* article dated 2 December 2003, the then chairperson of the National House of Traditional Authorities, Chief Mpiyezintombi Mzimela, supported the second draft of the Communal Land Rights Bill with these words: 'The Communal Land Right Bill aims to restore to rural communities ownership of the remnants that they occupy of land that the colonial and apartheid

government took from them by force – giving the communities registered title, so that it cannot happen again' (*Business Day*, 2003).

At the same time, Mzimela gave an indication that they would continue fighting for a constitutional amendment, pointing out that their 'communities wish to govern their own areas and want traditional communities to constitute the local government, not a fourth tier, but part of the third tier'. He averred that the institution of traditional leadership was the 'only institution that does not have its powers and duties set out in the Constitution', an 'omission' he urged should be 'rectified'. He was seemingly not happy that the Framework Act did not do away with municipalities made up of elected councillors as the primary form of local government in rural areas (*Business Day*, 2003).

The Communal Land Rights Act was however challenged by some rural residents (Claassens, 2013). They were concerned about their rights to land tenure, given that control over their land was in the hands of traditional councils that had a majority of unelected members. The applicants also contested the process followed in making the last-minute amendment to the Communal Land Rights Bill as outlined above. The matter went as high as the Constitutional Court. In 2010, the Constitutional Court declared the Communal Land Rights Act invalid in its entirety. The judgement, which was presented by the then Chief Justice Sandile Ngcobo was based on administrative grounds. The Court found that the provinces were never properly consulted when the Bill, which had an impact of customary law, was enacted. This could be interpreted to mean that rural residents should also be consulted, not just traditional authorities (Ntsebeza, 2006).

On the issue of land tenure that was raised by the applicants, the Chief Justice reasoned that it was unnecessary for him to make a pronouncement given that the Act had been declared unconstitutional in its entirety. All he could say was that procedure should be followed to make it possible for legislation to be passed as contemplated by sections 25(6) and (9) of the Constitution (Ntsebeza, 2006). Despite promises to introduce a Green Paper that would kickstart the process of promulgating legislation on tenure reform in the former Bantustans, nothing of substance has been done to pass the necessary legislation. The land rights of rural residents in areas that are controlled by traditional authorities continue to be precarious. In the case of KwaZulu-Natal, land that was under the KwaZulu Bantustan is held under the Ingonyama Trust, something that renders rural residents in that province tenants on their own land.<sup>xiv</sup>

The same applies, by and large with respect to governance issues. The only difference is that the Framework Act has since been replaced by a new law, the Traditional and Khoi-San Leadership Act that was signed into law by President Cyril Ramaphosa on 20 November 2019. Some of the provisions of the Act are:

- To provide for the recognition of traditional and Khoi-San communities, leadership positions and for the withdrawal of such recognition; and
- To provide for the functions and roles of traditional and Khoi-San leaders.

This Act extends apartheid era structures to new territories, notably the Western and Northern Cape, with new actors, those identifying themselves as the Khoi-San.

In sum, in so far as the rural areas of the former Bantustans are concerned, very little has changed from the apartheid past. There is, in these areas, a perpetration of the system at both the level of land tenure and governance. This raises questions about the meaning of democracy for those living in these areas, an issue I address in the next section.

### **Recognition of traditional authorities and implications for democracy**

In instances where government has succumbed to pressure and demands from traditional authorities, as outlined in the previous section, this poses a huge threat to the democratic project that is at the heart of the South African constitution. As shown in this paper, traditional authorities in South Africa were unelected, and collaborated with the apartheid regime through apartheid-created structures, the Tribal Authorities that they and their appointees dominated. Furthermore, they were given executive powers, the most powerful being land administration and control of natural resources within areas of their jurisdiction. Although they did not own the land, no decision on land would carry weight if it was not endorsed by the Tribal Authority concerned. In many instances, traditional authorities took decisions without consulting residents, irrespective of whether the decision directly affected residents or not.

Mamdani (1996: 23) characterises the above concentration of power in one authority, as a ‘clenched fist’, i.e. the fusion of various powers – judicial, legislative, executive and administrative – within one office. In such a situation, there is no room for the classic liberal democratic notion of a separation of powers that, as I will show, undergirds the South African Constitution. Mamdani further reminds us that ‘Native

Authorities’, to use his term for what, in South Africa, were Tribal Authorities, were protected by colonial governments from any form of external threat. Their officials, as already noted, were appointed from above, had no term of office, and remained therein for as long as they enjoyed the confidence of their superiors (1996: 53). For Mamdani (1996), Native (Tribal) Authorities in a post-colonial/apartheid situation should be dismantled so as ‘to link the urban and the rural – and thereby a series of related binary opposites such as rights and custom, representation and participation, centralisation and decentralisation, civil society and community – in ways that have yet to be done’ (1996: 34).

In many ways, Mamdani’s proposals echo the spirit of the South African Constitution. As indicated in the introduction to this paper, the recognition of the ‘institution, status and role of traditional leadership, according to customary law’, is, according to section 211(1) of the Constitution, ‘subject to the Constitution’. The same sentiment is expressed in the Traditional Leadership and Governance Framework Act of 2003, discussed above. In its preamble, the Act categorically states its purpose as to ‘define the place and role of traditional leadership within a system of democratic governance’ as well as ‘to transform the institution in line with constitutional imperatives’. The preamble of the Constitution clearly points out that the Constitution lays ‘the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law’. Section 1(d) spells out one of the values of the Republic of South Africa as ‘universal adult suffrage, a national common voters’ roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness’, while section 19(2) guarantees every adult citizen ‘the right to free, fair and regular elections for any legislative body established in terms of the Constitution’.

The principles and values of democracy in the Constitution were upheld in a landmark Bisho High Court (Full Bench) judgement, *The Premier of the Eastern Cape vs Penrose Ntamo* (2015), involving the appointment of headmen in terms of the Framework Act. The Premier of the Eastern Cape had appealed a Lower Court decision that upheld an application by residents of a village in the Eastern Cape, Cala Reserve that their long-standing practice of electing their headmen be maintained. They were opposing the appointment of a headman without their participation, basing their case on my research and affidavit. In paragraph 49, Justice Plasket, who wrote the judgement, which was endorsed by his two colleagues had this to say (Bisho High Court Judgement, 2015):

The facts set out in Professor Ntsebeza's affidavit establish a practice (of electing their headman) of long duration ... It is a reasonable practice in that it is not in conflict with legislation or the Constitution. Indeed, it is a practice that is consonant with the value of democratic governance, aimed at the achievement of accountability, responsiveness and openness that is one of the Constitution's founding values. It is also consistent with various fundamental rights, such as the right to dignity, the right to freedom of opinion, the right to freedom of association and the right to make political choices ...

The judge came back to this point when interpreting section 18 of the Eastern Cape version of the Framework Act. According to the judge, this section should be understood to mean that the 'royal family', when appointing a headman, should take into account the custom in the area concerned. In this respect, the learned judge argued (paragraph 82) that section 18 'advances, rather than retards the promotion of democratic governance and the values of an open and democratic society by recognising the customary law of local communities in the identification of those who will govern them on the local, and most intimate, level'. The judge ended this paragraph by remarking that identifying 'those who will govern ... is a recipe for the legitimacy of local government' (Bisho High Court Judgement, 2015).

With respect to customary law, in paragraph 85 Justice Plasket made the insightful observation that the very nature of this law means that it not only differs from place to place, but, crucially for purposes of this paper, 'may also change over time' (Bisho High Court Judgement, 2015).

I argue in this paper that the demands made by traditional authorities for a return to apartheid era rule in areas under their jurisdiction must be situated within the context of the Constitution, the supreme law of the land, and legislation flowing from it, as outlined above. As has been demonstrated in this paper, traditional authorities are fighting tooth and nail for the restoration of apartheid-era Tribal Authorities, euphemistically referred to as Traditional Councils, and are demanding that what is effectively a fourth sphere of government be established for them. As I point out in my book *Democracy Compromised*, policy formulators, politicians and some scholars focusing on policy issues must not only pay due respect to the law, but must also be sensitive to historical and current empirical evidence when defining a role for traditional authorities.

**How to explain the ANC's prevarication: The international and national contexts**

The recognition of traditional authorities in South Africa cannot be divorced from the general re-emergence of traditional and customary authorities on the African continent (Ntsebeza, 2006). This resurgence of traditional authorities came to light when multi-party democracy and decentralisation were introduced in the region in the early 1990s. Hitherto, it had become standard practice for African countries to become one-party states at independence, thus nullifying the importance of elections at that point. Using this power, countries such as Mozambique and Tanzania abolished the institution of traditional leadership. With the advent of multi-party democracy, the ruling Mozambique Liberation Front (FRELIMO) party in Mozambique for instance was compelled to take traditional authorities seriously (Ntsebeza, 2006). Some scholars and commentators argue that by marginalising traditional authorities, FRELIMO drove some traditional authorities to the camp of the opposition, (Mozambique National Resistance (RENAMO), which waged a civil war against FRELIMO in the 1980s and early 1990s (see Dinerman, 2001; Bowen, 2000; Libombo, 2000; Pitcher, 1996). When FRELIMO was waging war against RENAMO, the ANC had offices in Mozambique and closely witnessed developments there, including the role of traditional authorities in that country. In fact, in the discussions about CONTRALESA outlined above and on how the ANC should relate to traditional authorities, reference could be made to the Mozambican experience, that, if not well managed, traditional leaders have potential to draw support away from the political elite (Ntsebeza, 2006).

However, while this example illustrates a point about the importance of contextual issues, this paper is not meant to provide a comparative study of how African countries are dealing with the issue of traditional authorities in a multi-party democracy. To repeat, this requires a separate paper.

At the time the ANC entered into talks with the apartheid government, in addition to developments on the continent in the early 1990s, the global context was rapidly changing. The Cold War had come to an end with the demise of the Soviet empire and capitalism became the only system dominating the world. This left organisations such as the ANC, which drew its support and inspiration from the Soviet-bloc, almost stranded and in search of new global allies. This void was exploited by forces within the ANC who were capitalist minded. As a 'broad church', the ANC accommodated all sorts of elements for as long as they were anti-apartheid. With the collapse of the Soviet empire, the radicals within the ANC began to lose ground. There were, as Marais (1998) argued, tensions within the ANC, but the conservative forces, including those who were supportive of traditional authorities, won the day (Ntsebeza, 2006).

At the national level, poor performance by elected councillors has strengthened the position of traditional authorities. Rural residents had high expectations that democracy would bring relief. Some of these hopes were fuelled by election promises. When these promises could not be fulfilled, rural councillors lost the confidence of ordinary rural residents who initially supported them. The burning issues in most rural areas in the former Bantustans, apart from land for residential purposes, concern infrastructure, especially water and roads. These services fall within the jurisdiction of municipalities. The latter have consistently failed to deliver on these services, hence their loss of popularity. On the other hand, traditional authorities have power over land and on this they deliver (Ntsebeza, 2006). Eager to gain votes, the ANC may not want to lose the support of traditional authorities. But the latter also have their own agenda, the return to apartheid rule in the countryside under their control.

### **Concluding remarks**

The focus of this paper is on the role of traditional authorities in a democracy, with specific reference to post-1994 South Africa, and grounded in the historical context of the role of traditional authorities during the colonial and apartheid eras. I have shown that the ANC was essentially an urban-based organisation that did not have strong roots in the rural areas, either in the former Bantustans or in white-controlled commercial farms. I have also demonstrated that the ANC never had a clear-cut policy on traditional authorities. Its strategy was to associate itself with what it considered to be 'progressive chiefs', a position that was often challenged by a minority within the organisation, notably Govan Mbeki. Colonialists distorted the institution of traditional leadership and co-opted chiefs to enforce their strategy of divide and rule, and to ensure that as a foreign minority they managed to rule an indigenous majority, to follow Mamdani (1996). However, there were traditional authorities who resisted co-option and it is these traditional authorities that key ANC leaders regarded as progressive. Traditional authorities who worked with the apartheid state, including Prince Buthelezi, were rejected. The establishment of CONTRALESA in the 1980s must be understood in this context (Ntsebeza, 2006).

This paper also showed that when political negotiations began in earnest in the early 1990s, the ANC's 1992 Policy Guidelines assigned a ceremonial role for traditional authorities. CONTRALESA rejected the ceremonial role assigned to it and, as it later turned out, demanded the retention of the powers they enjoyed under apartheid. At the time, the first President of CONTRALESA had been murdered and the

organisation was being led by Chief Holomisa. At first, the ANC, supported by civil society organisations who had bitter experiences of the role traditional authorities played as lackeys of the apartheid regime, resisted this demand (Ntsebeza, 2006). The ruling party was to later concede to some of CONTRALESA's demands.

The role of the IFP in calibrating the powers of traditional leaders has also been highlighted. The organisation did not participate in the political negotiations of the early 1990s until the ANC and NP conceded that land in the rural areas of the KwaZulu bantustan would be registered under the Ingonyama Trust, whose sole Trustee was King Zwelithini. Unlike CONTRALESA, which worked within the ANC, the IFP waged a bloody conflict first against the UDF, and then with the ANC after the unbanning of political parties.

I have demonstrated in this paper that soon after the first democratic elections of 1994, an alliance of traditional authorities, irrespective of their political affiliation, emerged. This put the ANC in a dilemma, largely because it did not want to lose the support of traditional leaders who were members of CONTRALESA while at the same time it did not want to lose the support of civil society organisations, most of which were opposed to traditional authorities. I have argued in this paper that this was by and large the reason why the ANC was ambivalent about the precise roles, functions and powers of traditional authorities in a democracy in the period up to the early 2000s (Ntsebeza, 2006).

This paper has shown that the ANC finally resolved its dilemma when it promulgated the Traditional Leadership and Governance Framework Act of 2003 and the Communal Land Rights Act of 2004, both of which propped up traditional authorities. By that time, I have argued, civil society structures in rural areas were weak and councillors had discredited themselves. As has been shown the two laws compromised the democratic project in that they created structures along the lines of those created by the apartheid regime. As was the case during the apartheid period, the majority of the members of the traditional councils are not chosen by the people they control. This defeats the whole purpose of the liberation struggle in which the key principle was that leaders should be chosen by the people they rule.

I conclude the paper by arguing that conferring political and executive powers to unelected, traditional leadership structures compromises the post-1994 democratic project. It eschews the Bill of Rights principles of accountable leadership based on the will of its citizens.

## References

African National Congress. 1992. *Ready to Govern: ANC policy guidelines for a democratic South Africa*. Adopted at the National Conference 28-31 May 1992. Policy Unit of the African National Congress.

Amin, S. 1972. 'Underdevelopment and Dependence in Black Africa: Origins and contemporary forms'. *Journal of Modern African Studies*, 10(4), 503-524.

Bisho High Court Judgement. 2015. *Premier of the Eastern Cape et. al versus Penrose Ntamo et. al*. Case no. 169/14. Date heard: 7 August 2015; Date delivered: 18 August 2015 (Reportable). Eastern Cape Local Division, Bisho. Full Bench.

Bowen, M. L. 2000. *The State Against the Peasants: Rural struggles in colonial and postcolonial Mozambique*. Charlottesville: University Press of Virginia.

Cousins, B. and Claassens, A. 31 October – 6 November 2003. 'Looming land disaster'. *Mail and Guardian*.

Claassens, A. 2013. 'Recent changes in women's land rights and contested customary law in South Africa'. *Journal of Agrarian Change*, 13 (1), 71-92.

Claassens, A. 2001. "'It is Hard to Challenge a Chief': Transfer of title to tribes – the Rakgwadi case'. *Research Report No. 9*. Bellville: Programme for Land and Agrarian Studies.

Claassens, A. 2000. 'South African Proposals for Tenure Reform: The Draft Land Rights Bill', in Toulmin, C. and Quan, J. (eds.), *Evolving Land Rights, Policy and tenure in Africa*. London: DFID/IIED/NRI, pp 247-266.

South Africa Government. 1996. *The Constitution of the Republic of South Africa, 1996*. Pretoria.

Department of Land Affairs. 1997. *White Paper on South African Land Policy*. <http://www.ruraldevelopment.gov.za/phocadownload/White-Papers/whitepaperlandreform.pdf>, accessed 22 September 2020.

Department of Provincial Affairs and Constitutional Development. 1998. *The White Paper on Local Government*. [http://www.cogta.gov.za/cgta\\_2016/wp-content/uploads/2016/06/whitepaper\\_on\\_Local-Gov\\_1998.pdf](http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/whitepaper_on_Local-Gov_1998.pdf), accessed 22 September 2020.

Dinerman, A. 2001. 'From "Abaixo" to "Chiefs of Production": Agrarian Change in Nampula Province, Mozambique, 1975-87', *The Journal of Peasant Studies*, 28 (2), 1-82.

Henrard, K. 1999. 'The Interrelation between Individual Human Rights, Minority Rights and the Right to Self-determination for an adequate Minority Protection', Unpublished Doctor of Law degree, Leuven University.

Houston, G. F. 1997. 'Traditional Leadership and the Restructuring of Rural Local Government'. Paper presented to the Internal Conference on Traditional Leaders in Southern Africa, Umtata, 16-18 April.

Lahiff, E. 2000. 'Land Tenure in South Africa's Communal Areas: A case study of the Arabie-Olifant's Scheme'. *African Studies*, 59 (1), 45-69.

Libombo, A. 2000. 'Mozambique's bitter war between Chiefs and Liberation Government'. *Land and Rural Digest*, 5 (2), 120-145.

Mafeje, A. 2003. *The Agrarian Question, Access to Land, and Peasant Responses in Sub-Saharan Africa*. United Nations Research Institute for Social Development: Civil Society and Social Movements Programme Paper Number 6. [https://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/A2B577C61B19F92EC1256D56002B5291/\\$file/mafeje2.pdf](https://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/A2B577C61B19F92EC1256D56002B5291/$file/mafeje2.pdf), accessed 22 September 2020.

Maloka, T. 1995. 'Traditional Leaders and the Current Transition'. *The African Communist*, 2<sup>nd</sup> Quarter, 25-43.

Mamdani, M. 1996. *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*. Cape Town: David Phillip Publishers.

Mandela, N. 1995. *Long Walk to Freedom: The autobiography of Nelson Mandela*. London: Abacus.

Marais, H. 1998. *South Africa, Limits to Change: The political economy of transformation*. London: Zed Books.

Mbeki, G. 1996. *Sunset at Midday: Latshon' ilang' emini!* Braamfontein: Nolwazi Educational Publishers.

Mbeki, G. 1984. *South Africa: The peasants' revolt*. London: International Defence and Aid Fund.

Ntsebeza, L. 2002. 'Structures and struggles of rural local government in South Africa: The case study of traditional authorities in the Eastern Cape'. Unpublished Doctor of Philosophy thesis, Rhodes University, Grahamstown.

Ntsebeza, L. 2004. 'Democratic Decentralisation and Traditional Authority: Dilemmas of land administration in rural South Africa'. *European Journal of Development Research*, 16 (1), 71-89.

Ntsebeza, L. 2006. *Democracy Compromised: Chiefs and the politics of land in South Africa*. Cape Town: HSRC Press.

Ntsebeza, L. 2013. 'The More Things Change, the More they Remain the Same'. In: Hendricks, F, Ntsebeza, L and Helliker, K. (eds.). *The Promise of Land: Undoing centuries of dispossession in South Africa*. Auckland Park: Jacana, pp. 54-75.

Oomen, B. 1996. 'Talking Tradition. The position and portrayal of traditional leaders in present-day South Africa', Unpublished M.A. thesis, University of Leiden.

Pitcher, M. A. 1996. 'The Politics of the Countryside: Democracy and economic liberalisation in Northern Mozambique'. Paper presented to the annual meeting of the African Studies Association, November 23-26.

Sachs, A. 1992. *Advancing Human Rights in South Africa: Contemporary South African debates*. Cape Town: Oxford University Press.

Tabata, I. B. 1950. *The All African Convention: The awakening of a people*. Johannesburg: People Press.

Thomas, G., Sibanda, S. and Claassens, A. 1998. 'Current Developments in South Africa's Land Tenure Policy'. *Proceedings of the International Conference on Land Tenure in the Developing World with a focus on Southern Africa*, University of Cape Town, 27-29 January 1998.

Traditional Leadership and Governance Framework Act, 41 of 2003. 11 December 2003, [http://www.cogta.gov.za/cgta\\_2016/wp-content/uploads/2016/06/TLGFA-Traditional-Leadership-and-Governance-Framework-Act-2003-Act-No-41-of-2003.pdf](http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/06/TLGFA-Traditional-Leadership-and-Governance-Framework-Act-2003-Act-No-41-of-2003.pdf), accessed 10 September 2020.

Van Kessel, I. 2000. *"Beyond our Wildest Dreams": The united Democratic Front and the transformation of South Africa*. Charlottesville, VA: University Press of Virginia.

Van Kessel, I. 1995. *"Beyond our Wildest Dreams": The United Democratic Front and the transformation of South Africa*, Unpublished PhD Thesis, Leiden University.

Van Kessel, I. 1993. 'From Confusion to Lusaka: The youth revolt in Sekhukhuneland'. *Journal of Southern African Studies*, 19 (4), 593-614.

Zuma, T. 1990. 'The Role of Chiefs in the Struggle for Liberation'. *The African Communist*, 121, 65-76.

### ***Newspaper articles<sup>xv</sup>***

Business Day, 2 December 2003.

City Press, 25 August 2002.

Daily Dispatch, 2 November 2002.

Mail and Guardian, 31 October to 6 November 2003.

Sunday Times, 25 August 2002.

Notes

- 
- <sup>i</sup> For more about the chair, visit [www.africanstudies.uct.ac.za](http://www.africanstudies.uct.ac.za).
- <sup>ii</sup> My assumption is that Mbeki's reference to the ANC also includes members of the SACP.
- <sup>iii</sup> At a personal level, Chief Buthelezi and Mandela corresponded with each other, and Chief Buthelezi ostensibly refused 'independence' because of the continued incarceration of Mandela.
- <sup>iv</sup> Not to be confused with Jacob Zuma. The name Thando Zuma used in the article could not have been the real name of the author. He/she wrote several articles in the African Communist Periodical.
- <sup>v</sup> Peter Mokaba also attended the launch.
- <sup>vi</sup> SAYCO was launched at the height of repression, in March 1987, after the declaration of the national state of emergency in June 1986. For an account of Mokaba's dubious role in politics, see the *Mail and Guardian*, 14-20 June 2002.
- <sup>vii</sup> The use of the term 'Mbeki's position' is mine and is not used by Zuma.
- <sup>viii</sup> The IFP transformed itself from a 'cultural' movement into a political party in July 1990.
- <sup>ix</sup> See also Oomen (1996).
- <sup>x</sup> After prior attempts on his life, Chief Maphumulo was shot and killed at his home in Pietermaritzburg by assassins. No one was apprehended.
- <sup>xi</sup> The author shared numerous platforms with Chief Holomisa in the late 1990s and early 2000s, debating the question of the role of traditional authorities in a modern democracy.
- <sup>xii</sup> This is based on my own observation and participation in some of the meetings.
- <sup>xiii</sup> As we have seen, disagreements between traditional authorities and government about their respective roles in a democracy go back to the political negotiation period in the early 1990s.
- <sup>xiv</sup> A separate paper would be required to do justice to the Ingonyama Trust.
- <sup>xv</sup> The newspaper articles referenced in this section are old, and are not accessible online. This is why they have been placed in a separate section from the rest of the references.