ELEVEN

In defence of traditional leadership

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Twenty-three years into freedom and democracy, South Africa still grapples with the role of traditional leaders in the life and governance of the country's citizens. This in itself is indicative of the fact that when the current constitutional order was negotiated, key elements of our traditions and governance systems had not been fully expressed or taken on board. Unfortunately, this gave the impression that, when the colonial settlers took over the land and control of the lives of the natives, the latter had never had governance systems of their own.

The truth of the matter is that pre-colonial South Africa, like the rest of Africa, did have its own governance systems. The institution of traditional leadership was the epitome of such a system, a system that was underpinned by African laws, which in turn were anchored on customs and traditions adopted and adapted over ages. The Bill of Rights which was embedded in South Africa's original constitutional order was informed by 'ubuntu', a humanitarian philosophy ensuring that citizens look after each other before they promote their own personal interests. Thus, even before democracy, when ubuntu was

the overriding principle, we had no orphanages, no old-age homes, no landless or homeless people.

The land was governed by traditional leaders together with counsellors who were trusted to guide leaders in the exercising of their powers. It was incumbent on all to respect the values and mores enshrined in the customs and traditions of the people. The system of justice administration, as well as decision-making in general, was characterised by openness, inclusivity and democratic principles. Of course, in the past, women and the youth were generally not directly involved in these activities, although, with the passage of time, women could become rulers and commanders of armies under certain circumstances.

History tells us that the wars of land dispossession unleashed by the colonial settlers, mainly Dutch and British, upon the natives resulted in the loss of 87 per cent of the land to the settlers. The remaining 13 per cent, which had been successfully defended from marauding bands of European invaders, came to constitute the land over which the nine apartheid homelands were created. Having been dispossessed of most of their land, Africans were able to lead their lives in more or less their own ways in these so-called homelands. Inevitably, under the control and supervision of the colonial and apartheid masters, traditional leaders continued to govern the affairs of their people according to tradition.

Let me also assert that the role of traditional leadership in the fight for freedom and human rights in this country looms large in the background, and cannot be ignored. As a collective, we are certainly proud of luminaries like Nkosi Langalibalele Dube (uMafukuzela), the founder president of the African National Congress (ANC), of the Qadi clan in Zululand; Nkosi Albert Luthuli (uMadlanduna), another ANC president, of amaKholwa in Zululand; King Sabata Dalindyebo (Ah! Jonguhlanga) of the Thembu, who died in exile after joining the ANC, and many others who occupied the moral high ground in defence of the rights of the citizens of this country in years gone by.

Needless to say, the iconic first president of democratic South Africa himself, Nkosi Nelson Rolihlahla Mandela (Ah! Dalibhunga), hails from the royal house of the Thembu. The moral of this story

is that in the history of our beloved country, traditional leadership permeates virtually all facets of the development of ordinary people who would otherwise remain at the margins of society economically.

All in all, traditional leaders, in support of the broader struggle for freedom, remained a moral compass and refuge for many South Africans. To this day, they continue to govern the affairs of their people according to tradition. When the apartheid governments failed to provide the requisite resources, traditional leaders mobilised their communities to raise funds for the building of schools, clinics and other social amenities. They approached the corporate world, notably mining companies where most of their people worked, to ask for funds to provide these amenities.

They served as channels, in the manner of present-day municipalities, for public funds to local communities; they ensured infrastructure developments such as roads and bridge-building, as well as the fencing of arable and grazing lands. As administrators of traditional community land, they allocated land for residential, crop cultivation and business purposes. Traditional leaders were automatically members of school and clinic committees and hospital boards. They were responsible for agricultural development and livestock improvement, working closely with all relevant government departments.

Essentially, they were, and still are, the link between government departments and the people – in other words, they were conduits for government services.

The great majority of criminal and civil cases across the whole of South Africa are tried and heard by the Royal Courts of Traditional Leadership, so-called 'traditional courts'. In the conduct of these cases, the parties do not pay legal fees. The proceedings are held in familiar surroundings, in a language they speak and understand, in accordance with laws, customs and traditions they know, and presided over by their own peers, i.e. fellow tribesmen. The main goal is restorative justice, rehabilitation of offenders, reconciliation of the victims with perpetrators, as well as the maintenance of peace in the community. As stated before, the proceedings are inclusive, participatory, democratic, transparent and open.

It is in this context and against this background that Parliament has a duty to consider and process a law giving full and meaningful recognition to these Royal Courts of Traditional Leadership. This is but one example where government and traditional leadership need to come much closer for the benefit of the country as a whole.

The prevalent question when it comes to the role, place, powers, functions and relevance of the institution of traditional leadership tends to be misguided and, at times, even patronising. Those who show sympathy for the institution ask: 'How can we accommodate the institution of traditional leadership in a democratic South Africa?' Had our current political leaders been true to the history and heritage of Their Majesties – such as King Mampuru of the Pedi, Cetshwayo of the Zulu, Nyabela and Mabhena of the Ndebele, Ngungunyana of the Shangaan, Makhado of the Venda, Moshoeshoe of the Sotho, Montshioa of the Tswana, Ngubengcuka of the Thembu, Langalibalele of the Hlubi, Mhlontlo of the Mpondomise, Faku of the Mpondo, Hintsa of the Xhosa, Autshumato of the Khoi, Kok of the Griqua and Le Fleur of the Korana, as well as Queens Modjadji of the Lobedu, Mantantisi of the Tlokwa, Labotsibeni of the Swazi, Nonesi of the Thembu and countless other traditional leaders who led their people in the wars of resistance to colonial invasion – the question from the onset would have been: 'How shall we accommodate the Western way of governance within the original African forms of governance?'

The role and participation of traditional leaders in the decision-making structures of the land, such as legislative bodies, the judiciary and the executive, remain paramount. This is more so in light of the erosion and, in some instances, abolition of African values, systems and cultures, and their replacement by those of the European colonisers.

Irritating as it is, it falls upon us as Africans in general and the descendants of the legendary traditional leaders mentioned above in particular, to explain ourselves in order to justify our existence and relevance. We need to take responsibility and use the platforms and mechanisms provided by our government to confront these matters as custodians of African culture, customs and systems of governance.

The Great Place

My own insight into the institution of traditional leadership stems from the fact that I was born into it. My parents and their forebears were royal. I was destined to succeed my father as traditional leader of my clan, amaHegebe, in accordance with the dictates of our customary law of traditional leadership succession.

At the young age of six, I was taken by my father Nkosi Mathathisa Moses Holomisa (Ah! Jongisizwe) to live at the home of Nkosi Douglas Dywabasini Prince Ndamase (Zwelinzima!) of Mpondoland in Ngqeleni. He was married to one of my father's cousin's sisters, Princess Nozilumko Victoria MaLuSwazi. I had not been told why I had to leave my home to stay at the home of Zwelinzima. Later, I learned from conversations MaLuswazi had with various people that I had been brought to her place to be hidden from my own people, in accordance with traditional practice applicable to royal heirs. It was even later that I learned I was the prospective traditional leader of my clan when those who knew let slip that that was the reason I was there.

The Mampondomiseni Great Place, as the royal homestead was known, was the seat of a great deal of activity, a place full of men and women, young and old, living as members of the family. However, over time, some would leave, while others would join us. It dawned on me that some of them were in a position similar to mine for, as they became adults, they had to go home to take up their duties as traditional leaders of their clans. The women would follow various life paths, including getting married, going to high school, attending college to become teachers or nurses and returning home. The place was a training ground for leaders of the future.

We all learned how to perform our domestic duties as males and females; some chores were strictly for males, while others were for females, yet others still had no gender bias. I learned to look after lambs, kids and calves as a little boy. I had to make sure the calves did not suckle before the cows were milked, otherwise punishment was to follow. I graduated to the level of looking after sheep, goats, cattle and horses. These had to be taken to the veld in the morning and back

to the homestead in the afternoon. I had to ensure that they did not stray into people's gardens and mielie fields, otherwise punishment and sanctions were the consequence.

All of these chores we had to perform before and after school. The fact that there were people who were employed to perform them as well did not mean that we were absolved from doing our bit. They were there to assist us while we were otherwise engaged with school work. The idea, I came to learn later, was that as future leaders we should be able to do work that we would require others to do. Assistants were not servants that were required to serve your whims, but were there to assist you when you were not in a position to do the work due to other responsibilities.

Mampondomiseni Great Place was the administrative, legislative, judicial and cultural hub of the tribe falling under Zwelinzima's jurisdiction. On a daily basis, men and women would come with issues requiring the advice or arbitration of the Nkosi. I came to learn a technique that I found to be very effective in resolving the people's issues.

Zwelinzima would listen to a person, ask him or her a variety of questions and, with the answers given, the person would go home thoroughly satisfied with the advice, even though the answers came from himself or herself.

The exercising of traditional authority was done in a layered, systematic way. Those who sought the traditional leader's advice would be advised to first consult the family head, then the head of the clan, the sub-headman of the village, the headman and ultimately the senior traditional leader, if all the other rungs of leadership were unable to resolve the issues. Each of these leaders had at their disposal a council that assisted them where they could not handle a matter by themselves. Resolutions taken would serve as precedents to be used by others finding themselves in similar positions.

The family heads constituted the sub-headmen's council, the sub-headmen the headmen's council, the headmen the senior traditional leader's council, the senior traditional leaders in turn the king's council. Each one of these heads had, in addition, at their disposal, elders knowledgeable about the history and culture of the family, clan

and/or tribe. Some of these counsellors would be relatives, such as brothers and uncles. Thus, the head was in a position to be advised and even admonished on how to conduct the affairs falling within his area of jurisdiction.

When I had occasion to sit close by and listen to the proceedings of the councils, mostly at the level of the senior traditional leader's council, I would learn that Zwelinzima would introduce the subject of discussion, outlining its origin, the path it had followed to be finding itself at that particular forum and why it had not been resolved. The matter would then be discussed, debated and argued, with everyone in attendance allowed to participate, until it was time for the Nkosi to pronounce the decision. He never imposed his own views without regard for those of the meeting. This was so even though they would leave the seat of administration stating that it was the Nkosi's decision.

This principle of participatory democracy applied also to the trials of cases – criminal and civil. All the witnesses would be given the opportunity to give their evidence and, while there was an officer designated as the evidence leader, everyone was allowed to examine and cross-examine the witnesses, sometimes to the extent of inadvertently giving evidence themselves. This could be so because, generally, people in the court were familiar with each other's circumstances. Hearsay evidence was allowed, provided it could be corroborated by other witnesses or evidence. The proceedings were conducted in respectful ways, yet within an environment of informality so as to put everyone at ease.

With regard to the question of land, I learned about the manner in which the land of the Mampondomiseni people had been acquired, which was essentially through fights with other tribes who had been living on the land previously. The defeated would either flee, to fight others elsewhere and to settle, or were subjugated by the conquerors and became loyal to the new traditional leader. They had been allowed to have their own sub-headmen and headmen, and to continue to practice their customs.

Harmony thus prevailed. While the land was said to belong to the Nkosi, in practice he dealt with it not as his personal property, but as that of the people. This was so because even if he was the

leader, when it was acquired the people were directly involved. Thus, it was regarded as communal land. When an application for a land allotment was made to the traditional leader, the applicant had to first satisfy the sub-headman and the villagers that he was deserving of such allotment by reason of the fact that he had a new family or was about to start one, and was thus expected to build a homestead and to cultivate food for his family's sustenance. Such an allotment became that family's property in perpetuity, unless the community as a whole convinced the senior traditional leader that the head was a criminal or a person who unjustifiably refused to abide by the rules and norms of the community.

Quite often it is asked why traditional leaders get paid salaries by the state, instead of being maintained by the people they lead. From my observation of how the Great Place was viewed by the people of Mampondomiseni, it seemed that in the distant past, the people did maintain the royal family. There were three large mielie fields that belonged to the Great Place. They were all ploughed, planted, cultivated and harvested by the community. Villagers took turns to perform each of the activities necessary for a successful production. I remember it being one of my responsibilities at some stage to record the spans of oxen that came to work in the fields. There was a great deal of enthusiasm on the part of the families as they came to register the presence of the working villagers. For all the work they did, no financial payment was expected. They were doing a job that they considered their civic duty to perform and were satisfied with the meals given to them first in the fields, and later at the Great Place.

It later dawned on me that in times of want, destitute families were able to come and ask for food parcels from the Great Place. Invariably, they would be given food. Those who had some means to pay for the food parcels, but did not have enough money to pay the price demanded by the local white shopkeepers, would be given the parcels at reduced and affordable prices.

The introduction of taxes and other levies on the people by government quite clearly meant that the maintenance of the royal families by the tribe could not be sustained. Their energies had been thereby diverted to filling government coffers. To continue with the

traditional practice would amount to double-taxation, and thus oppression. Besides, the taxes were the money that should have been used to service the community and the royal family.

When I returned to my home in Mqanduli at the conclusion of my post-graduate studies, I discovered that the systems that pertained in Mpondoland were a replica of what was in place in the land of amaHegebe. I have had the benefit of a tertiary education including two university degrees that qualified me to be a lawyer, with funds having been collected at the behest of Nkosi Zwelinzima, from amaHegebe. I have thus been exposed to the white man's world, through education and the world of work. Yet I remain unconvinced that there is any inadequacy in the institution of traditional leadership that calls for a diminution of its relevance in modern-day South Africa. On the contrary, if given the necessary resources – such as those at the disposal of state institutions – then the institution is best placed to bring a better life to the people in the countryside.

I became even more convinced of the efficacy of the institution when I led the Congress of Traditional Leaders of South Africa (Contralesa) from 1989 until 2013. The stories I heard from traditional leaders in all the bantustans painted a picture similar to that evident in Nkosi Zwelinzima's Mampondomiseni territory.

Authenticity and legitimacy

While we justifiably raise concerns about the discrediting of traditional leaders under a democratic dispensation, it is also important to acknowledge that in the last 20 years government has enacted laws that have set up the National, Provincial and Local Houses of Traditional Leaders, as well as the traditional councils. These platforms enable traditional leaders to make some contribution to the formulation of policies and laws that shape the future of the people of this land, albeit in an advisory capacity in national, provincial and local spheres of governance. In resolving the question of the role of traditional leaders in a democracy, South Africa must look at the disposition of the founders of the ANC. They set up two Houses –

the Lower House and the House of Chiefs – ostensibly modelled on colonial Britain's parliament, which was and still is composed of the House of Commons, made up of democratically elected Members of Parliament, and a House of Lords occupied by traditional leaders and custodians of British traditions and customs.

The fact of the matter, however, is that this dispensation was in accordance with African tradition. This tradition allowed for counsellors to hold deliberations among themselves over issues pertinent to the nation, at the end of which recommendations would be referred to the traditional leadership for review and possible endorsement.

It should not be forgotten that the whole of South Africa historically belongs to the indigenous people of the land. Those of foreign origin may not be allowed to claim they owe no allegiance to traditional leaders and thus have no obligation to provide for their maintenance. That is arrogance of the first order and a manifestation of deliberate amnesia. If other Africans have forgotten this historical fact, traditional leaders have not. We look at other nations in Europe with traditional leaders being accorded the appropriate status to the extent that some white South Africans regard them as their traditional leaders, and feel nauseated by such racism. All the riches in our oceans, below and above ground, exploited or not, belong to us and our people and, accordingly, traditional leaders deserve recognition as their custodians.

At the heart of this discussion is not only the role of the institution of traditional leadership in a democracy, but also the issue of our identity as Africans. We must be bold if we want to recover our true heritage and cast off imposed colonial architecture. In so doing we need to integrate the Houses of Traditional Leaders and traditional councils into the law-making structures and decision-making bodies of the land. Besides, the law governing the conduct of traditional leaders in democratic South Africa and the Traditional Leadership and Governance Framework Act of 2003 both enjoin all state departments to formulate ways of engaging traditional leaders in the execution of their policies and programmes. A symbiotic relationship between government and the institution of traditional leadership will

go a long way towards harmonising relations between the two and forging a sustainable developmental agenda.

In fact, we lose none of the good that comes with the positive elements of European systems and norms; on the contrary we gain by becoming a truly modern and innovative African nation. The wrath of the ancestors will, unfortunately, be visited upon the African house, and not on the European one, if we continue to conduct ourselves as if they never existed. Their descendants are with us.

Let it be known that here I am talking about traditional leaders who serve as such, rather than those who actively conducted themselves as politicians leading the bantustan homelands of the apartheid era. The bulk of ordinary traditional leaders, even as they participated in those homeland parliaments, paid attention to serving their people. Some such traditional leaders actually gave clandestine support to the struggle for liberation by, *inter alia*, giving sanctuary to the freedom fighters who worked in the underground structures of the liberation movement. Some of them ended up in jails such as Robben Island for their fight against the racist regime and its satellites.

The council of the senior traditional leader, having been successively modified by the apartheid and democratic governments to become tribal authorities and traditional councils, should be accorded the necessary resources in the form of human resources, offices and other forms of accommodation, equipment and amenities. This will enhance the institution's capacity to serve the people in the modern day, just as it did in the past. The question should not be asked as to how the institution of traditional leadership can be accommodated in a democratic South Africa, as if it is that institution that is new in this land. Instead, new forms of government, especially at the local government level, should be modified to fit in with the original mode of governance.

This brings us to the matter of resources exploited by developers. Just as communal land belongs to the people as a collective, so too do the natural resources that are embedded in the soil. The royal family, as the first family, is entitled to a *pro rata* share of the proceeds arising from investments in those resources, be it in the form of shares, dividends, profits or royalties. Government and developers/investors

have a duty to ensure that the traditional relationship between the people, the land and traditional leaders is not violated. All – the royal family, the people, the investor and the state – should benefit in equitable measure. None must benefit at the expense of the other but, importantly, the traditional leader must not be manipulated, extorted or blackmailed by any of the outside entities in the name of development.

Finally, a note on gender: I had the opportunity to engage traditional leaders of the Southern African Development Community in a series of human rights seminars organised by the Zambian women's organisation, Women for Change. This women's rights organisation was convinced that for the culture of human rights to take root in the region's rural areas, traditional leaders had to be taken on board. To their surprise, Women for Change were lectured by traditional leaders on human rights from an African perspective. They became converts, who went on to champion the cause of traditional leadership.

It needs to be borne in mind that the legitimacy of the incumbents in the institution lies in the customs, cultures and traditions, the norms and moral values of a traditional community. If, for instance, those tenets decree that a woman must inherit a position upon the death of a traditional leader, then let that decree be followed. The same applies for a man. Democracy has opened up the space for men and women to apply for appointment, or campaign to be elected, to all forms of leadership, as opposed to inheriting leadership positions. To open the institution to such norms would serve only to destroy the institution and all that it stands for. At the end of the day, we hold these positions in the name of our ancestors who cast the rules in stone.

Research and the democratic agenda

Academics, scholars and researchers rely on studies conducted by people who do not necessarily have experience of either traditional leaders or the people who are directly affected by the institution of traditional leadership. Others may be people who have some connection with these communal areas, having been born there, but

have since gone to stay in the cities in search of better education or employment opportunities. These researchers tend to become aware of the existence of the traditional institution when they come for short holidays or weekend cultural events such as weddings, rites-of-passage, celebrations or for a few days to conduct research on particular aspects of African cultures and traditions. Some of these people are interested in finding ways in which the institution of traditional leadership can be weakened, if not done away with, so that foreign forms of governance, dubbed 'democracy', can replace the institution. Of course, they will not admit that this is their goal, but you will detect it when you note their lamenting of the fact that traditional leadership continues to thrive and to be relevant to traditional communities, despite its association with colonial and apartheid regimes, and the advent of democracy. They wonder why and start picking at the anomalous conduct of a few traditional leaders to conclude that the institution is bad.

Development and service delivery in rural Africa continues to suffer because politicians do not want to give due recognition to the role of the institution of traditional leadership. Where there is cooperation and mutual respect between government and traditional leaders, the people benefit. It is thus incumbent on government to make laws that view the institution as an ally in the cause of good governance, service delivery and human rights, rather than seeing it as an as opponent of progress.