An overview of land use management and the role of traditional leaders in terms of SPLUMA[1]

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1 Introduction

After 24 years of the demise of Apartheid, South Africa is still trying to get to grips with addressing spatial inequality. Perhaps as part of the bigger conversation we are having around land reform at the moment, it is also important to talk about how we can address this spatial inequality, and how we can speed up the process of spatial redress in our constitutional democracy by utilizing the current legislation.

[1] This is a draft of the paper that was delivered at the "Traditional leadership and authority versus local government" KAS/NWU conference, held in Potchefstroom on 13 & 14 September 2018.

A Constitution and legislation need to be executed, and in this is also true for planning law. It is for this reason that the Spatial Planning and Land Use Management Act 16 of 2013 (hereafter SPLUMA) provides a framework and authority for spatial planning and land use management. While municipal planning is a municipal power, traditional authorities have been given a role to play in planning law. What the role is, and how it fits into planning will be dealt with in this paper.

This paper will start with a brief overview of the institution of traditional leadership, followed by a discussion on land tenure systems in the former Bantustans. This will include a history of land tenure on communal land. It is only against this background that a sensible the discussion on SPLUMA and the inclusion of traditional leaders can be had. There will also be a short discussion on other legislation that can impact on the issues raised in terms of SPLUMA. The conclusion will be an assessment of the inclusion of traditional leaders in SPLUMA.

I want to state upfront that this paper will not dwell on the question of whether traditional leadership as an institution, and as an institution of governance, is still relevant in a democratic society. I accept it as a given, since the Constitution[2] recognizes the institution.

2 Traditional leadership as an institution

It is said that pre-colonial African societies had a kind of participatory democracy. The community participated in decision-making on important matters that affected them, through a general assembly comprised of adult men.[3] It is reported that these discussions were marked by great freedom of speech, that some weight was attached to the opinion or the attitude of the people, while other commentators stated that in

[2] S 212(1).
[3] Known as *kgotla, pitso* or *ibizo*. Sam Rugege, "Traditional Leadership and Its Future Role in Local Governance," *Law, Democracy & Development* 7, no. 2 (2003). 172. See also Peter Bikam and James Chakwizira, "Involvement of Traditional Leadership in Land Use Planning and Development Projects in South Africa: Lessons for Local Government Planners," *International Journal of Humanities and Social Science (4)* 13 (2014). 145.

theory the freedom of speech was great, but in practice people followed the line of the chief since they feared reprisals.[4]

But it is impossible to say that all chiefs were great chiefs, chiefs who cared for the people. There were chiefs who were autocratic and oppressive. These chiefs were often deserted, killed or overthrown by civil war.[5] Whichever way, leaders seem to largely rule by the people's consent.

Colonialism and Apartheid weakened these traditional leadership institutions. Traditional leaders were allowed to preside over the day-to-day running of the community, as agents of the government. The accountability shifts from the people to government. The institutions were changed into tribal authorities, and power resided in these authorities, as agents of the Apartheid state, to rule the people and to serve the government interests. Access to land and labor therefore took place through these authorities. This meant that if people were of the opinion that their traditional leader no longer served their interests, that they could no longer rely on traditional methods to keep the leader accountable. Since the leaders were no longer required to be accountable to the people, some leaders became oppressive toward the people, thereby losing their legitimacy with the people.[6] This also enables the state to fire and appoint traditional leaders[7] to suit their agenda.

This power was largely confirmed in the post-apartheid political dispensation, and is now largely the power of provinces.[8] The Constitution provides a framework for this in section 211 that recognize the institution, status and role of traditional leadership according to customary law. It is not clear if what is meant with "role of traditional leadership in accordance with customary law" is the pre-colonial leadership, or leadership as distorted by colonialism and apartheid.

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[4] Rugege, "Traditional Leadership and Its Future Role in Local Governance." 172.
[5] Ibid. 172.
[6] Ibid. 173.
[7] Ibid. 173. This was done in terms of the *Black Administration Act*, 38 of 1927. s 2(7) and (8).
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While traditional leaders do not have specific powers in terms of the Constitution, the national legislature may pass laws to provide for the role of traditional leadership as an institution at local level, and pertaining to matters that affect the local communities. It also did so in terms of the Traditional Leadership and Governance Framework Act.[9]

Section 3 of the Traditional Leadership and Governance Framework Act[10] (hereafter the TLGFA) defines traditional councils, and deems pre-existing tribal authorities as created under apartheid legitimate, provided that they comply with certain requirements. Firstly, 40% of the council must be elected, and secondly, one third of traditional council members must be women.

In terms section 4(1) of the TLGFA, traditional councils have certain functions that impacts on planning, namely:

(c) supporting municipalities in the identification of community needs;

(d) facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose are the that community resides.

As will alluded to later,[11] the Municipal Structures Act[12] requires a partnership between the municipalities and the traditional leaders, that promotes a cordial relationship based on mutual respect and a sharing of responsibility.[13]

Criticism is meted against the institution since our Constitution embodies both democratic principles (based on elected representative government) and on the other hand give unelected traditional authorities a role to play, without clarifying the roles and functions of these authorities.[14] For purposes of this paper, it is important to note that giving traditional authorities certain powers may have implications for control over

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10 41 of 2003.

11 4.

12 11 of 1998.

13 S 5(10).

14 Lungisile Ntsebeza, "Democratization and Traditional Authorities in the New South Africa," *Comparative Studies of South Asia, Africa and the Middle East* 19, no. 1 (1999). 83.

land allocation, but also democratic local governance, gender equality and the idea of universal franchise. Traditional leaders are not elected, and is largely based on patriarchal principles, where decisions are almost invariably taken by men.[15]

3 Land tenure systems of people living on communal land

3.1 History of land tenure systems in former Bantustans

Perhaps it is prudent to start by explaining the various land tenure systems that are still applicable in areas of traditional authorities. Most of the land, before 1990, was unregistered, unsurvey state land. This emanates from the Glen Gray Act in 1894 that was introduced by then Governor Cecil Johan Rhodes, which in general is seen as the foundation for Apartheid policies. This Act restricted the authority of the traditional authority and replaced them with a governance system of district councilors, with separate reserve areas under Rhode's vision of what communal land tenure involves.[16] The idea was one of "one-man-one-lot", where the land was divided into four or five morgen, with a restriction on alienation of land and the risk of losing the land if the land is not occupied beneficially.[17]

In terms of the 1913 Land Act, scheduled areas were created for the occupation by Africans. African people were not legally permitted to acquire land outside the scheduled areas. When these areas became overcrowded, the Development Trust and Land Act[18] was promulgated to purchase additional land to consolidate the reserves. In terms of the Development Trust and Land Act, land occupation was based on a "permission to occupy" (hereafter PTO) system.[19] This allowed the holder of the

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[15] Ibid. 83.
[16] Ibid. 85.
[17] Ibid. 85.
[18] Ibid. 85.
[19] Section 4 of Proclamation 26 of 1936 empowered the magistrate to grant permission "To any person domiciled in the district, who has been duly authorized thereto by the tribal authority, to occupy in a residential area for domestic purposes or in an arable area for agricultural purposes, a homestead allotment or an arable allotment, as the case may be". In terms of the Act, "not more than one homestead allotment and one arable allotment shall be allotted […] to any Native, provided if such

right to remain on the land until his death, and to elect the person to whom the site can be allocated to after his death. This right could be forfeited if occupation was not taken up within a year, or there was no beneficial use for two years.[20]

This form of tenure, however, was very vulnerable. The PTO holders could be forcibly removed without consultation with the government in the nominal owner of the land deemed it fit. This was the case with the Betterment Plan, where development schemes were introduced on land that people occupied. Some people's houses were demolished without compensation or recourse to the law. These PTOs were also not recognized as collateral by financial institutions.[21]

In terms of regulations passed in terms of the Black Administration Act, trabial authorities or traditional leaders had a role to play in the allocation of arable land and residential lots. African people were required to get permission from the Bantu Affairs Commissioner, who in turn granted the permission after consultation with the triable authority.[22]

With the promulgation of the Black Authorities Act[23] in 1951, traditional authorities played a more critical role in land allocation. Traditional authorities had a role to play in the process of construction and maintenance of roads, rural bridges, drains and the supply of water to rural communities; the establishment and maintenance of hospitals and clinics and the process of improving farming afforestation and agricultural methods.[24] By making the traditional authorities part of the local government, and where the Apartheid government allowed the traditional leaders appointed by them to govern if they worked with them. This meant that Chiefs played to the tune of the government, and not to that of the people. The tribal authorities have been

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Native is living in customary union with more than one woman, one homestead and one arable allotment may be allotted for the purpose of each household".

[20] See in this regard regulation 51(2) read with regulation 61 of Proclamation R188, GG 2486, 11 July 1969 made in terms of section 25(1) of the Black Administration Act 38 of 1927 read with section 21(1) and 48(1) of the Development Trust and Land Act 18 of 1936.

[21] Ntsebeza, "Democratization and Traditional Authorities in the New South Africa." 85.

[22] Proclamation R188, GG 2486, 11 July 1969 regulations 19 and 49.

[23] 68 of 1951 Section 4(1)(c)

[24] Bikam and Chakwizira, "Involvement of Traditional Leadership in Land Use Planning and Development Projects in South Africa: Lessons for Local Government Planners." 145.

transformed into traditional councils and falls under section 28(4) of the Traditional Leadership and Governance Framework Act.[25]

Land in these areas were owned by the state, and traditional authorities, operating through tribal authorities, played an important role in the administration of land. Their powers were not only administrative, they were also judicial and executive, ruling the communities with a clenched fist.[26]

By the late 1980s there was resistance to this. While in Transkei and Ciskei, land was allocated in terms of the PTO system, mass mobilization started in the countryside. There were calls for the resignation of headmen, and in areas of Ciskei where the tribal authority system collapsed, civic associations took over.[27] This also affected tribal authorities in the Transkei. In KwaZulu Natal, there was a war between the supporters of the Inkatha freedom Party and the United Democratic Front, and later the African National Congress.

In the early 1990s, before the end of Apartheid, the National Party introduced a land reform program of upgrading of land rights, land redistribution and land utilization. The Upgrading of Land Tenure Act was introduced in 1991 in an effort to convert the PTOs to ownership. Section 19 provided that "[a]ny tribe shall be capable of obtaining land in ownership and […] of selling, exchanging, donating, letting, hypothecating and otherwise disposing of it", subject to certain restrictions.[28] There was also a possibility of people obtaining title deeds on communal land, but this was criticized by the National Land Committee who warned that in terms of customary law, there might be overlapping land rights.[29]

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[25] 41 of 2003.
[26] Ntsebeza, "Democratization and Traditional Authorities in the New South Africa." 85. Mamdani clenched fist
[27] ———, "Democratic Decentralisation and Traditional Authority: Dilemmas of Land Administration in Rural South Africa," *The European Journal of Development Research* 16, no. 1 (2004). 75.
[28] Restrictions included that land may not be sold, exchanged, donated, let or allocated to any person that is not a member of the tribe unless there was consent from the court. The court can only do so subject to the relevant disposal authorized by tribal resolution, if it is not in conflict with the interests of other members of the community and if there is other property available for the people residing on the land.
[29] Ntsebeza, "Democratization and Traditional Authorities in the New South Africa." 86.

In this conundrum and in the transition years, the leaders were given recognition in a Constitution that also embodies democratic principles in local government, but also in land. Land reform programs aimed at communal land should therefore be understood in this context.[30]

3.2 Land tenure systems in former Bantustans in terms of the Constitution

3.2.1 Political background

After 1994, the Department of Land Reform divided land reform into three programs: redistribution, tenure reform and restitution. The Upgrading of Land Rights Act got amended in 1996, making it possible for a community to pass a "tribal resolution" democratically in accordance with the customary law of the community. In the White Paper on Land Policy in 1997, the Department recognized the unique character of customary law rights in land. It argued that these rights should vest in the people as the holders of the rights, and not in institutions such as local authorities or tribal authorities. It differentiated between group rights and individual or family rights. The argument was made that when the rights are held on a group basis, then the right holders must have a choice about the system of land administration would manage the land and rights on a day-to-day basis. In doing so, the rights of all the members of the community must be protected, especially the right to democratic decision-making and equality.[31] The Minister made it clear in a meeting with CONTRALESA that government cannot disregard the views of communities or individuals who have historical land rights which is registered as state owned. Such actions will be regarded as unlawful.[32]

It is therefore clear that in the beginning years a distinction was drawn between landownership and governance. Communities could decide how they own the land,

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[30] Ibid. 86.
[31] Ibid. 87.
[32] Ibid. 87.

and then how to make decisions about the land. During apartheid, this all was the function of the state, as delegated to traditional authorities (and thus governance).[33]

The concepts of "land" and "property" in common law and customary law differs. Common law requires land to be demarcated and identified in official deeds, which means that this land can be alienated at will. This land can also be subject to the state's regulatory powers such as development and land use management. This is different from the customary law system, where the value of the land often lies in its social and ritual functions.[34]

3.2.2 Living customary law

Land held in terms of customary law has not been subjected to land use management systems. This is also why SPLUMA was so important – to ensure that the whole country has equal rights with regard to a healthy and safe environment that land use management manages.[35]

If one looks at the living customary law, this also being the customary law that is recognized and promoted by the Constitutional Court,[36] then the layered character of land administration is evident. Decision-making processes about land happens on different levels of the social organization – family, household, clan, sub-village and village level.[37]

In the Tongoane judgment[38] the court described the common features of customary land tenure as land use that requires different degrees of "control at different levels of socio-political organization". Land use decisions happen at different levels of society, and members have the right to participate in decision-making at various levels

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[33] Ibid. 87.
[34] Mthetheleli Dubazane and Verna Nel, "The Relationship of Traditional Leaders and the Municipal Council Concerning Land Use Management in Nkandla Local Municipality," *Indilinga African Journal of Indigenous Knowledge Systems* 15, no. 3 (2016).
[35] Ibid.
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[37] Aninka Claassens, *Land, Power & Custom: Controversies Generated by South Africa's Communal Land Rights Act* (Juta and Company Ltd, 2008).
[38] *Tongoane V National Minister for Agriculture and Land Affairs*, ZAGPPHC 127 ZAGPPHC (2009). Par 29.

as relevant. The terms "communal tenure" is somewhat problematic in this context, because people often have strong family and individual rights in residential and arable plots, while certain land rights are communal in character.[39]

The allocation of land also implies "land use rights". Land use includes things like the erection for a homestead, land for the cultivation of crops, and grazing land. There can be different rights held to the same parcel of land, and community members also often have access to various resources on the land, such as water, clay or thatching. The allocation of these rights is informed by indigenous knowledge, and sometimes with knowledge of formal town planning knowledge.[40]

Land administration will depend on how the community wish to hold the land. If the land is held in a CPA, for instance, the rules of the CPA should be applied.

4 SPLUMA

During Apartheid each province and every black homeland had their own, separate planning legislation. After 1994 the challenge was to develop an integrated, overarching, policy for spatial planning.

The Constitution provides the overarching framework for planning law. In this respect the Constitution assigns powers and functions to the different spheres of government.[41] In this respect, municipal powers[42] include municipal planning.[43]

The White Paper on Local Government[44] laid down the new paradigm in which this must happen, with a focus on integrated development planning. From this White Paper emanated the Municipal Structures Act,[45] and the Municipal System Act.[46] The Municipal System Act made the Spatial Development Framework (SDF) part of the

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[39] See also Delius book in this regard.
[40] Dubazane and Nel, "The Relationship of Traditional Leaders and the Municipal Council Concerning Land Use Management in Nkandla Local Municipality." 228.
[41] Sections 155 and 156.
[42] Section 156.
[43] Schedule 4 part B.
[44] 1998
[45] 117 of 1998.
[46] 32 of 2000.

Integrated Development Plan (IDP) but it did not provide comprehensive planning legislation.

This was left for the White Paper on Spatial Planning and Land Use Management of 2001, that proposed certain elements of new spatial planning and land use management system. This includes certain principles,[47] land use regulators,[48] IDP-based local spatial planning,[49] uniform set of procedures for land development approvals,[50] and national spatial planning frameworks.[51]

The National Development Plan recognized that reform of the planning system is important,[52] specifically forward planning and secondly the reform of the legislative system.[53]

SPLUMA[54] brought several fundamental changes to spatial planning and land use management. Firstly, it gives municipalities, and not the provincial government, the sole mandate in planning (land development and land use management), which means that municipalities are the authorities of first instance.[55] Secondly, it establishes and determines the composition of municipal planning tribunals and appeals structures by municipalities, and sets out who can determine, and decide on, land development applications. This is where the discussion of this paper lies. It also develops a single and inclusive land use scheme for the entire municipality with an emphasis on a municipal differentiated approach.

SDFs, the forward planning tool, need to be developed by all spheres of government based on a set of norms and standards and guided by development principles. This also allows for the development of regional spatial development frameworks if needed.

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[47] Aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management, which must be adhered to by the planning authorities.
[48] Mostly municipalities.
[49] With the inclusion of the SDF, creating a direct link between the land use management scheme.
[50] This is for the whole country, and includes alignment with important legislation such as environmental legislation.
[51] In regions or priorities.
[52] NDP page 251.
[53] P 252.
[54] Implemented nationally from 1 July 2015.
[55] This was confirmed in Johannesburg Metro v Gauteng Development Tribunal

An intergovernmental approach requires the strengthened support through enforcement, compliance and monitoring. Likewise, there needs to be an alignment of authorization processes with regard to policies and legislation that impacts on land development applications and decision-making processes.[56]

This is where land use management fits in. Land use management systems (LUMS) involves the planning of new land development or managing the change of the existing developed areas – such as subdivision, consolidation, land use change etc), and includes managing the intensity of development. This takes place on municipal level, within the framework and standardized guidelines of SPLUMA.

In terms of SPLUMA, municipalities can also make by-laws to make provision for matters dealt with in the Act and in Regulations. This allows municipalities to consider how they will administer land not previously administered as part of Land Use Management Schemes, and to provide for local conditions such as customs and customary practices.

SPLUMA not only recognizes, but also allows for the participation of Traditional Councils in planning matters, where such planning will impact communities residing in areas where Traditional Councils exist.[57] In terms of section 23(3), "a municipality, in the performance of its duties in terms of this Chapter [on land use management] must allow the participation of a traditional council". This is subject to the Local Government: Municipal Structures Act 117 of 1998. In terms of the Regulations,[58] a service level agreement may be concluded with the municipality in whose area the traditional council is located, and that the traditional council may perform functions as agreed to in the service level agreement. It may not, however, make a land development or land use decision. This means in the absence of such an agreement, the, the traditional council will be required to provide proof of land use allocation in terms of customary law.

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[56] DRDLR 2014 SLUMA implementation: challenges and proposals: presentation to the 8th National SALGA MM Forum Program 4 – 5 September 2014.
[57] Section 23(2) and Regulations 19(1) and (2).
[58] 19.

This decision was controversial for various reasons. On the one hand, traditional leaders claimed that it gives municipal councils power over the traditional institution, which according to the leaders, "is the rightful owner to the land".[59] On the other hand, there are concerns about the wide-ranging powers these traditional councils have.

As alluded to above, in terms of chapter 6 of SPLUMA, Municipal Planning Tribunals are established that are responsible for the facilitation and enforcement of land use and development measures. They determine the land use and development application within a municipal area, and since all land now falls under a municipality, this includes land under traditional authorities. It is this that makes the traditional leaders unhappy, accusing government of undermining them. Government answered that municipalities will make land use decisions in consultation with the traditional leaders as "the de facto owners of the land", and that leaders will be represented in the proposed municipal planning tribunals.[60]

As alluded to in the beginning, many of the councils don't comply with section 3 of the TLGFA and as such may not have legal capacity to accept and exercise the powers granted in terms of the regulations. Neither the Act nor the Regulations provide guidelines on how these decisions should be made. The focus falls on official customary law, that is still rooted in the Apartheid concept of what customary law is, and not the living customary law that looks at the changing practices on the ground. Where, in terms of living customary law, decisions are made in layers and on different levels, we are now left with a situation where the traditional authority alone can decide, with no requirement of community consent or involvement.

The fact that traditional councils can prove a customary law allocation to anyone living in the area, means that it is left to the traditional councils to define the content of

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[59] Andisiwe Makinana, "Amakhosi Fight for Their Turf on Land Development Applications," *City Press* 2015.

[60] Ibid. As Ayesha Motala, "Traditional Leaders - Not Rural Citizens - Are at the Centre of the Land Expropriation Debate," *Daily Maverick*, 24 April 2018. argues – placing the authority in the hands of unaccountable leaders lead to various mining deals that was entered into without the consent of the community.

customary law.[61] Without clear guidelines on how decisions should be made, specifically with reference to community involvement, it is left to the traditional council to decide when an application will comply with customary law or not. This means that local land allocation can be left to the traditional councils, who will also be the only people entitled to decide what the content of customary law rights are. This often undermines the customary laws and practices of many rural communities, where land allocation and management take place on the various levels. Customary law is more often than not layered, and not centralized. The proposed powers of traditional councils to be involved in land allocation in the way that SPLUMA envisions, in this model of customary law, would therefore distort customary law.[62]

When the focus falls on the service level agreements with municipalities, the question is whether these powers can legally be granted to the traditional councils. Traditional councils, in terms of our Constitution, does not have governmental functions or powers. The Certification case stated that it was only the "institution, status and role" of traditional leaders that is recognized, with no specific government functions being allocated. This recognition is also subject to Customary law. One should therefore be concerned about the possibility that largely unelected and sometimes still Apartheid inherited traditional councils perform land use and management function of the municipality.

5 Other legislation

5.1 Local Government: Municipal Systems Act 32 of 2000

The Constitution sets out functions of the different spheres of government, and envisage that local government must be autonomous. In terms of the constitutional principles of co-operative governance, the spheres are expected to work together.

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[61] Land & accountability research centre, "Spatial Planning and Land Use Management Act (Spluma)," http://www.customcontested.co.za/laws-and-policies/the-spatial-planning-and-land-use-management-act-spluma/

[62] Ibid.

Therefore, the Municipal Systems Act want to ensure sustainable solutions to improve the quality of lives of South Africans.

One way to do this is with IDPs. This was introduced as an instrument that local authorities can use to ensure transformation and to achieve the aims of the Reconstruction and Development Program (RDP). IDPs should play an integral role in ensuring inclusive socio-economic development and effective service delivery across the country.

The Municipal Structures Act in section 81 recognizes traditional leaders as advisors to the municipal council.

5.2 Interim Protection of Informal Land Rights Act

The Interim Protection of Informal Land Rights Act (IPILRA) of 1996 provides protection for people living in the former Bantustans who no longer have valid documents to prove their rights in the land, in order to protect them from land sales or investment deals that exclude them and thereby deprive them of their land rights. Section 2(1) is protectionist in that it precludes people from being deprived of what is termed "informal rights" to land, unless they consent to being deprived of the land (or in the case of expropriation, unless suitable compensation is paid).

For the sake of being thorough, it should be mentioned that IPILRA also provides protection for people who previously had PTOs and anyone living on land uninterrupted since 1997 "as if they were the owner".

While this was meant to be a temporary law, it has been extended every year with the aim of ensuring that vulnerable people have protection.

5.3 National Environmental Management Act 107 of 1998

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5.4 International standards pertaining to consent from communities

SPLUMA, although speaking of justice, seemingly did not incorporate the ideas of culture and best practices surrounding bio-cultural community protocols. The idea of free, prior and informed consent seems to be absent in the case where land management issues deals with communities and biodiversity. South Africa endorsed the United Nations Declaration of the Rights of Indigenous Peoples UNDRIP and singed the Nagoya protocol, and is therefore bound by it.[63] On the continent there is the African Charter on Human and Peoples Rights (Banjul charter 1981).

6 Conclusion

The contestation for power to make decision on land on communal land is a contestation of political power. If the power to make decisions on land use and spatial planning should be with the people, then the question is who is best suited to look after the people's needs? Traditional councils, or local government. And more importantly: how do we ensure the principles of democratic decision-making are respected when it comes to these decisions?

It seems as if SPLUMA is its regulations empowers the "traditional councils" to define custom as the approval of the land use must be done "in accordance with customary law". This rests on the assumption that customary law is determined by traditional councils or leaders alone, and that it does not need the consent to the particular interpretation of customary law. This leaves it in the hands of the traditional councils and leaders to determine what land use is customary and what not, and this can influence the development happening on the land. This does not reflect customary law where decision-making takes place on various levels of the social organization. It leaves people vulnerable, and it leave especially marginalized groups and women vulnerable. This centralization of power, with very little mechanisms to hold the

[63] AD Williams, "A Framework for a Sustainable Land Use Management System in Traditional Xhosa Cultural Geo-Social Zone of the Rural Eastern Cape South Africa" (University of the Free State, 2015). 11.

decision-makers accountable is not only against customary law, but also against the principle of democracy as contained in our Constitution.[64]

What should also be of concern is how one does land use management where the systems were designed for demarcated parcels that might not be easily duplicated on communal land. Yet, land use management is important for issues such as basic services, especially in areas that are disaster-prone. One can also question the suitability of the current land use systems to local needs. [65]

It is my contention that the problems surrounding traditional leadership will remain unresolved unless the roles, powers and functions of traditional authorities not only vis-a-vis local government, but also in relation to the communities, are not clearly demarcated, especially pertaining to land. This is likely to become more heated as the conversation regarding land reform intensifies. People on the ground living on land under the authority of traditional leadership, increasingly calls for a form of governance that is inclusive and democratic, something that is currently lacking in traditional leadership.

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64 http://www.cls.uct.ac.za/usr/lrg/downloads/CLS_Submission_SPLUMARegs_04092014%28final%29.pdf

65 Dubazane and Nel, "The Relationship of Traditional Leaders and the Municipal Council Concerning Land Use Management in Nkandla Local Municipality."

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