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TOPIC:*STATE OF RELATIONS WITH MUNICIPALITIES AND AREAS OF
COLLABORATION*

1. INTRODUCTION

The institution of traditional leadership has its foundation on the basic tenets of “Ubuntu” which encapsulates all the principles of putting people first in governance, leadership, service delivery and community development. Traditional communities subscribe to a system of traditional leadership because it is for them and about them.

Since time immemorial, Traditional Leaders have always played the leadership role in facilitating the provisioning of basic services to traditional communities even before the advent of constitutional democracy in South Africa. They provided leadership in their communities to build schools, preserved natural resources, managed agricultural activities and many other key activities in their communities.

It is in this spirit of willingness to work for community development that we as Traditional Leaders heed to the inherent call to make our contribution to all efforts that are aimed at providing better life and welfare for the benefit of the people of South Africa especially the traditional communities to whom we are accountable.

The notion of “authority” in Traditional Leaders needs to be highlighted with reference to the current legislation that recognizes the institution and its structures. This notion of authority or rather the lack thereof will be discussed under the legislative provisions.

2. AREAS OF COLLABORATION

The role of Traditional Leadership in governance cannot continue to be limited to their participation in local government structures only. In addition to Traditional Leaders and Traditional Councils, there are Houses of Traditional Leaders, which are statutory structures established to operate and contribute towards the law making process at local, provincial and national levels of government.

The role of Houses extends beyond the legislation process to support the legislatures in their oversight role on service delivery, which is provided by the executive arm of government. Houses, through their committees forge working relations and sign Memoranda of Understanding or Agreements (MOU/A) with government departments and other organisations in order to facilitate service delivery in Traditional Communities.

In some cases, Houses support government departments in their advocacy programmes and campaigns for the benefit of their communities. A living example of such campaigns is on the agrarian revolution where district municipalities and all other roles players are expected to provide the necessary support in line with their mandates for the success of the agrarian revolution programme, another one is on safe initiation during the customary initiation season where multi sectoral task teams are established to run the campaign. There are many other examples.

This assertion does not attempt to overlook the role of traditional leadership and its challenges at local level but seeks to highlight the fact that the scope is wider than normally emphasized. Much attention always focus on the participation of Traditional Leaders in Municipal Councils and the Integrated Development Programmes (IDPs) as the key service delivery vehicles, however, consideration of areas of collaboration requires a much broader view at all levels of government.

In addition to the local government structures, there are local, provincial and national government departments, legislatures and the Chapter 9 institutions and statutory bodies which seek to promote and protect what Traditional Leadership stands for, which is socio economic development.

Traditional Leaders are custodians of African tradition, customs and culture therefore, should forge good working relations with statutory bodies and agencies such as the Commission for Protection and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), National Heritage Council and also the Department of Arts and Culture, among others for the benefit of Traditional Communities

3. POLICY AND LEGISLATIVE PROVISIONS

Since 1994, with the advent of constitutional democracy in South Africa, the state gave birth to the new system and structures of local government which were institutionalized in terms of public policy “The White Paper on Local Government” and the acts of parliament, the Municipal Structures Act, 1998 (Act 117 of 1998), the Municipal Systems Act, 2000 (Act 32 of 2000, Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) (SPLUMA) and the rest of the encyclopedia of Local Government statutes.

The institution of Traditional Leadership is also recognized in terms of the following public policy and legislation:

- White Paper on Traditional Leadership and Governance, 2003
- Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
- Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003)
- Section 81 of the Municipal Structures Act (Act 117 of 1998)

- Municipal Systems Act (Act 32 of 2000)
 - Spatial Land Use Management Act, 2013 (Act No. 16 of 2013)
 - Guidelines on the Participation of Traditional Leaders in Municipal IDP processes are developed by the Department of Traditional Affairs (DTA)
 - And other pieces of legislation supporting the developmental role of traditional leaders in a democratic dispensation such as the Disaster Management Act among others.
- Traditional Leadership and Governance Framework Act, 2003 (Act 41, 2003) provides for recognition of Traditional Leaders and structures with roles and functions which are supportive to government structures in nature. These provisions replace the notion of powers and authority with roles and functions. Sections 19 and 20 of the act provides for the roles and functions of Traditional Leaders in government.

4. THE STATUS OF COOPERATION

Over the years, the implementation of the provisions for participation of Traditional Leadership in Governance has been characterized with a number of challenges, which resulted from lack of clarity on their roles and relations with government structures. In summary, the legislative provisions are inadequate to enable traditional leaders to play an effective role in government structures and therefore call for a constitutional and legislative review to improve the status quo.

The challenge about these provisions is that the allocation of roles and functions by government departments is discretionary and not obligatory. To date there are no guidelines provided to enable the allocation of roles and functions to Traditional Leaders hence these provisions are implemented on discretionary basis. Another option that could be explored would be to strengthen the provisions for obligatory allocation of roles by government departments. This is a challenge that needs to be addressed in order to strengthen the role played by traditional leaders in any area of governance.

❑ Implementation of Section 81 of The Municipal Structures Act, 2000 (Act 117 Of 1998)

At local government level, the implementation of section 81 of the Municipal Structures Act which provides for participation of Traditional Leaders in Municipal Councils was not realized without challenges due to the discretionary nature of the provision rather than obligatory and also the lack of clarity on the role of Traditional Leaders in Municipal Councils, beyond merely attending the Council sittings. The extent to which Traditional Leaders participate in the Municipal Council depends on the will of the executive leadership of the Municipal Council.

The lack of clarity on the role of traditional leaders led to the discretionary allocation of roles to traditional leaders by various municipal councils who have Traditional Leaders representatives. This also led to inequitable provision of tools of trade and remuneration to traditional leaders due to lack of guidelines to implement section 81 of the Municipal Structures Act. The

lack of uniformity in the implementation of the provisions of law has led to dissatisfaction and tensions between the municipal councilors and Traditional Leaders in many areas. These conditions do not provide a conducive work environment for the two parties especially, where there is no will to take an initiative to facilitate the cooperation from either or both parties.

❑ Implementation of Municipal Systems Act, 2000 (Act No. 32 of 2000)

Some municipal councils made an effort to find common ground with Traditional Leadership in order to ensure there is cooperation between the two parties while others took advantage of that gap and chose to ignore traditional leadership in their operations.

Some ward councilors would chose to categorize traditional leadership as members of the community and meet them only when they hold meetings to facilitate public participation instead of recognizing them as key stakeholders or role players in governance and during the Integrated Development Plan (IDP) processes. This approach does not enhance cooperation between the two parties but rather create a rift instead. A series of negative activities ensue from this negative posture and treatment.

Roles and responsibilities between Traditional Councils and Municipalities, Ward Councilors and Ward Committees in particular on issues pertaining to service delivery need to be clarified through legislation and should be adhered to. There is inadequate consultation and communication on municipal planning processes, that should also be addressed.

❑ Implementation Of SPLUMA, (Act 16 of 2013)

The implementation of the Spatial Land Use Management Act (SPLUMA) by Municipalities poses serious challenges for Traditional Leaders. Municipalities tend not to consult Traditional Leaders on allocation of land for development while land allocation was initially the primary function for Traditional Councils, but currently given to Municipalities through SPLUMA. As a result, traditional leaders submitted to Parliament that SPLUMA should not be applied in traditional leadership communities until such time the concerns raised have been addressed.

In Limpopo province, Traditional Leaders, through the Limpopo Provincial House of Traditional Leaders intervened through the National House of Traditional Leaders and the Office of the Premier in the Province until they were given a hearing on the matter.

A series of engagements were held with the Premier of Limpopo where Traditional Leaders vehemently rejected Spluma and declaring it unworkable and a total failure as it left them outside the processes. Consensus was reached to develop a Limpopo Provincial SPLUMA Bill which will cover the interests of all affected parties, and stakeholders within the scope of the Law and the implementation processes thereof. Currently, the Limpopo SPLUMA Bill is serving before the Provincial Executive Committee and the Limpopo Legislature for consideration and approval into Law.

Municipalities continue to implement SPLUMA despite the concerns raised by the Traditional Leaders in this regard.

5. ELEMENTS OF GOOD COOPERATION

There are best practices where traditional leaders participate in municipal councils in a harmonious environment characterized by cooperation and mutual respect.

Intergovernmental structures of government such as the MINMEC and Technical MINMEC can also contribute towards the facilitation of cooperation and strengthening of roles that Traditional Leadership can play in governance in Traditional Communities. One of such initiatives was the decision of MINMEC to include traditional leaders in the Integrated Councillor Induction Programme (ICIP) in 2016.

The ICIP was coordinated and rolled out by the South African Local Government Association (SALGA) to all Municipal Councilors and Traditional Leaders. The NHTL served in the National Joint Task Team that led the coordination of the ICIP to ensure that Traditional Leaders participated. This attempt to harmonise relations by encouraging cooperation at the foundation phase was also not met without challenges. Large provinces with a large number of Traditional Leaders were not in a position to take all Traditional Leaders for the ICIP and took only those who were serving in Municipal Councils instead, due to financial constraints.

In the study conducted by the Department of Traditional Affairs on cooperation between Traditional Leadership and government structures in 2011, the following factors were identified as areas of opportunities, which need to be explored to improve the cooperation:

- **Political will** and commitment based on understanding and commitment of municipal councilors towards traditional affairs would assist to improve on the current challenges.
- Traditional Leaders **initiative** to forge relationships and partnerships on community development projects with the municipality and several government departments such as Social Development, Justice, Health, Education, Agriculture, Arts and Culture was applauded.
- Traditional Leaders and councilors should **prioritize community development needs**, consult and cooperate in the IDP processes.
- **Acknowledgement and understanding** of the role played by traditional leadership during the liberation struggle and negotiations; the role they are expected to play to build a developmental post-apartheid state for the benefit of traditional communities; and the restoration of the institution of traditional leadership.
- **Mutual respect and trust** among the role players.

6. CONCLUSION

Relationships need to be established, maintained and strengthened between government structures and traditional leadership. All stakeholders and role players need to play their role. I have outlined a glimpse of efforts that were

made by some role players in various platforms including government at all levels, some organisations like SALGA and Traditional Leaders, in an attempt to make the relationship and cooperation work however, more commitment and effort is required from all stakeholders.

The establishment of structures for governance should always translate to service delivery for the benefit of the people in local communities. Their existence should change the lives of the people for the better. This can be achieved if these structures, both government and Traditional Leadership work together to compliment and support one another. Dysfunctional Local Houses and Traditional Councils due to inadequate resources or lack thereof affect the effective participation of those structures adversely. Adequate allocation of sufficient resources to traditional leadership structures is imminent.

Above all, all pieces of legislation that provide roles and functions to traditional leadership in governance should be reviewed to clarify their roles, functions and relations with the government structures and strengthen their impact. This would establish a solid foundation on which the structures should operate.

The NHTL invites further engagements with all government departments and other stakeholders in order to achieve harmonious working relations that would translate to good standards of living and socio economic development for the people of South Africa especially in traditional communities.