

# Changing landscapes of democracy, rural governance, traditional power and degraded commons in a former apartheid homeland

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## Abstract

This paper reviews the role of the Traditional Leadership and Governance Framework Act (TLGFA) of 2002 in resuscitating defunct tribal authorities in four poverty-stricken villages (Masakhane, Ndlambe, Prudhoe and Rabula) the Ciskei, a former apartheid homeland (Bantustan). By the time of the transition from apartheid to a democratic political dispensation tribal authorities had collapsed in these villages. In their place were diverse, community-based systems, rules, structures and mechanisms of local governance, justice, management of common property and customary law. These community-based regimes were also shaped by post-1994 legislation on rural local government and traditional leaders. The paper shows the impact of the TLGFA in resuscitating tribal authorities in these villages. The four case studies villages show the impact of the TLGFA in the following aspects: the nature and form of local democracy and governance, the meanings of identity and space, as well as contestations over the commons, in particular control over land, natural resources, and local economic development. The paper also shows emerging evidence of contestations over rural democracy, rural governance, boundaries of authority, identity, and common property.

**Key words:** *tribal authorities, traditional leaders, Ciskei, democracy, natural resources, development, local government.*

## INTRODUCTION

This paper reviews the role of South Africa's Traditional Leadership and Governance Framework Act (TLGFA) of 2003 in resuscitating previously defunct tribal boundaries and authorities<sup>1</sup> in four villages (Masakhane, Ndlambe, Prudhoe and Rabula) located in the former Ciskei homeland<sup>2</sup> in South Africa. In terms of post-apartheid demarcations, the Ciskei was dissolved and its territory is now part of the Eastern Cape province. Hendricks (2003) shows that about 63% of the population in the Eastern Cape is non-urban and that this province comes up as one of the poorest, if not the poorest province in the country. Of the country's

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<sup>1</sup> The terms "traditional authorities" and "traditional leaders" are all-encompassing terms to refer to "chiefs" of various ranks. In this paper the term *traditional leaders* refers to people, and not structures. The term *tribal authorities* refers to structures. Tribal authorities were the formal structures set up under the apartheid-era Bantu Authorities Act of 1951 and comprised chiefs and headmen, appointed councillors and a tribal secretary. The Act set up the framework for the establishment of homelands.

<sup>2</sup> Homelands were created by apartheid legislation. In terms of the homeland scheme, each black person in South Africa was assigned their homeland on the basis of their ethnicity and language. Black people could not be citizens of South Africa itself but of the homelands. The homelands occupied only 13% of the land mass of the country.

poorest 30 magisterial districts, no fewer than 28 are to be found in the Eastern Cape (Hendricks, 2003). In the Eastern Cape, poverty is centred in the former homelands of the Ciskei and Transkei. The situation is obviously not static as people have circulatory migratory patterns between the cities and rural areas. These patterns of poverty and migration characterise all the four villages.

The four case studies presented by these villages show the impact of the TLGFA in the following aspects: the nature and form of local democracy and governance, the meanings of identity and space, as well as contestations over the commons, in particular control over land, natural resources, and local economic development.

Apartheid-era legislation imposed tribal boundaries and authorities without consultation and consideration of actual practices and realities on the ground. In certain parts of the former Ciskei this imposition led to dissent and resistance that over time led to the eventual collapse of the tribal boundaries and authorities. By the time of the transition from apartheid to a democratic political dispensation the tribal authorities in these four villages were replaced by diverse, community-based systems, rules, structures and mechanisms of local governance, justice, management of common property and customary law. These localised regimes were subsequently shaped by post-1994 legislation on rural local government and traditional leaders. Legislation on rural local government made it possible for former homeland rural areas to be incorporated into democratically-elected municipal systems and structures which were also given a mandate to drive local development. On the other hand, the TLGFA together with the Communal Land Rights Act (CLARA), Act 11 of 2004 have re-enacted apartheid-era tribal boundaries and authorities, as well as extend powers for rural governance and control over land, natural resources and development to traditional leaders. The four village case studies demonstrate different patterns of contestations, dialogue and solutions to the imposition of different systems and authorities for rural local government.

Based on continuing research in the mentioned four villages, the paper shows the impact of the TLGFA in resuscitating tribal boundaries and authorities, and how this has come up against local experiments with community-based systems, rules, structures and mechanisms. The key question addressed in the paper is: what have been the key contours of changing landscapes of democracy, rural governance and traditional power in the former Ciskei and what do they mean for the management of common property resources? This question speaks to the broader dilemmas arising from the enactment and implementation of controversial new laws in South Africa that bolster the authority of traditional leaders within the boundaries of the apartheid-created “tribal” areas that constitute the former “homelands” – the least developed “commons” of South Africa.

The paper starts with an overview profile of each case study. This is followed by a presentation of the historical evolution of tribal governance into the post-apartheid period. Included here is how the apartheid homeland of the Ciskei became a degraded commons. This is followed by a presentation of post-apartheid democratisation of rural local government and its impact on rural local government. Throughout these discussions, inferences are drawn to the relevant case study. The conclusion discusses the impact of the post-apartheid legislative measures on

traditional leaders and local government on rural governance, the meanings of identity and space, as well as contestations over the commons, in particular control over land, natural resources, and local economic development.

## OVERVIEW OF THE FOUR VILLAGE CASE STUDIES

With the exception of Rabula, the other 4 village case studies follow communal tenure over land. However, this is far from stating that land tenure arrangements and rights are clear and secure. The functional disorganisation and uncertainty over land administration emerges as a major constraint to development because of the manner in which tenure is defined and because the uncertain future acts as a disincentive to invest (Hendricks, 2003). There is no clear policy on communal tenure and free tenure which co-exist in the case of the Rabula village. Presently there is ongoing tension between tribal authorities and community based organisations in rural areas. Tenure and land administration systems created in the apartheid era are still in force (Hendricks, 2003).

### ***Masakhane***

The Masakhane area is located in the old Victoria East district of the former Ciskei, some 15km outside the historic town where the University of Fort Hare is located. The Masakhane area consists of 5 villages which were former white-owned farms that were taken over by the apartheid homeland governments. The overwhelming majority of the residents of the Masakhane villages are former farm workers and/or descendants of farm workers. The Masakhane villages came together in about 2001 to lodge a legal claim for the land that had once belonged to white farmers in the area. They formed the Masakhane Communal Property Association (CPA). They consist of about 250 families spread over 7000 or so ha. To date they have still not received the title deed to the land. In terms of ethnic identity, the majority of the Masakhane community are part of the ImiNgcangathelo tribe which is under the leadership of a traditional leader (Chief Tyali) and occupies 22 other more densely populated villages adjacent to the Masakhane farms.

The CPA is currently involved in a long-standing legal case concerning the ownership, use and benefit of bio-prospecting of the pelargonium plant which grows naturally in the area. The case is complicated by the reality that Chief Tyali has established the ImiNgcangathelo Community Development trust which signed a benefit-sharing agreement with Schwabe, a Swedish drug multi-national, over cultivation and harvesting of the pelargonium plant<sup>3</sup> (ACB, 2010). In terms of the agreement, one of the Masakhane villages has been incorporated under the jurisdiction of the Trust. This was done without the participation, consultation and

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<sup>3</sup> Pelargoniums are part of the geranium plant family, Geraniaceae, a plant family of world wide distribution. They form one of the most interesting groups within the Geraniaceae – they have their centre of diversity in the Cape region of South Africa and are renowned in horticulture and medicine and for their aromatic oil properties. The two species (types) of *Pelargonium* that form the subject matter of the patent challenge are *Pelargonium sidoides* and *Pelargonium reniforme*. These two species are indigenous to South Africa, with *Pelargonium reniforme* being endemic to the Eastern Cape province (that is, its natural distribution is confined to the Eastern Cape – not found naturally anywhere else in the world), whilst *Pelargonium sidoides* grows densely in the Eastern Cape province, but is also found in other provinces in South Africa and in Lesotho – it is endemic to South Africa and Lesotho.

concent of residents in this village. The benefit sharing agreement is not available for public scrutiny.

The case opens questions about whether the Masakhane community would consider signing similar commercial deals for pelargonium growing in the other four Masakhane villages. Another aspect concerns how commercial agreements may affect the social use of pelargonium which residents currently freely harvest for domestic use (against influenza and several domestic animal diseases). Will commercial agreements allow for the recognition of the social and biodiversity values of pelargonium? What kind of access and benefit sharing agreements would be fair to community and public interests? This case study is also about the convergence of customary law, traditional governance, democratic governance, and international trade law.

Aloe harvesting is a more popular activity than pelargonium. In both cases of pelargonium and aloe, people are at the mercy of the buyers, who come and pick up material from the side of the road and decide what price they will give. To get daily employment in a cultivation project would also be very appealing to most. The community is exploring a "Community Protocol" on the value of uwendle and come to common agreement about what kind of access and benefit sharing agreements would be fair. Such a process would create a space for community analysis and understanding and galvanise the leadership in future negotiations.

The Masakhane CPA successfully challenged a patent granted to Schwabe. The patent was in respect of a method for producing extracts of *Pelargonium sidoides* and *Pelargonium reniforme* to make Schwabe's blockbuster cough and colds syrup, Umckaloabo. The patent was revoked because it did not satisfy the requirements of the European Patent Convention. The Masakhane community regards themselves as the holders and custodians of the traditional knowledge associated with the beneficial use of pelargonium. They have consciously asserted that they have interacted with their natural surroundings, acquired a deep understanding of such resources and their uses, and see themselves as having played a vital role in the conservation of biological resources. The community is pursuing a further damages claims against Schwabe for alleged theft of traditional knowledge which Schwabe is alleged to have used to produce a tincture called Umckaloabo from the roots of both *Pelargonium* species.

### **Ndlambe**

The Ndlambe village is in the Peddie magisterial district of the former Ciskei. At the instigation of the then Ciskei homeland government, the Makinana royal family in Tshabho, some 90km away from the Ndlambe village, appointed one of their sons to be chief of Ndlambe village in 1982 (Mbelekane interview). This imposition was not accepted by a section of the people of Ndlambe. This division saw ongoing strife and tension in the village including violence, deaths and court cases (Mbelekane interview). These worsened during key political moments in the difficult transition from apartheid to democracy in South Africa.

Chief Makinana has created a Mhala Heritage Trust which many residents believe that is a vehicle for accessing resources and economic opportunities (RPM, 2010).

There are ongoing disputes over community initiatives for development, the revival of Tyhefu Irrigation Scheme (350 ha adjacent to the perennial Fish River) and an eco-tourism scheme associated with local caves and other local heritage sites. The disputes are over who has control and say over these potentially lucrative natural resources and development initiatives: is it the community farmer associations or is it Chief Makinana directly?

### ***Prudhoe***

The village of Prudhoe is also in the Peddie area. The people who stay at the Prudhoe village were labour tenants on farms long before the Ciskei homeland was granted “independence” from South Africa (Tom interview). In the early 1980s, the commercial farmers were bought out of these farms by the South African Development Trust, an entity established by the apartheid regime to “hold land in trust for black tribes”. For a few years, these communities were left on these farms to produce and farm for themselves. The Ciskeian government removed these communities from the various farms and located them in the Prudhoe farm (Tom interview). This farm was not under the jurisdiction of any tribal authority. The intention of the Ciskei government was to turn Prudhoe into a formal township (Tom interview). The then Dabi Tribal Authority, under Chief Njokweni, extended its jurisdiction to incorporate these communities to fall under his jurisdiction (RPM, 2010). With this, the people Prudhoe started to follow decisions of the tribal authority including the payment of dues and levies for the rental of sites for housing and use of land for grazing and cultivation (Tom interview).

With the advent of democracy in South Africa in 1994, the Prudhoe village sought to reclaim its independent status from Chief Njokweni (RPM, 2010). They used new post-apartheid laws to claim rights of ‘beneficial occupation’ as former labour tenants. The chief’s authority was dislodged and replaced by an elected civic committee to run community affairs (Tom interview). The Prudhoe community also asserted that the Dabi Tribal Authority is largely for people of Mfengu origin whereas the people of Prudhoe are not of Mfengu origin (Tom interview). With the passing of new post-apartheid laws, the tribal authority has sought to reassert its authority over Prudhoe (Tom interview). The community has mobilised a petition in response to this attempted re-incorporation. Of about 250 households in the village, more than 200 households have signed the petition.

### ***Rabula***

Rabula is in the Keiskammahoek district of the former Ciskei. In this village, freehold title has a 150 year history with 186 properties which were surveyed between 1865 and 1870 (Kingwill, 2008). The history of land occupation in Rabula gave it an ethnically diverse population. Not all the land in Rabula was allocated to private owners. Significant portions were left open for commonage land (used for grazing), forestry and communal occupation. These two factors (freehold ownership and ethnic diversity) meant that Rabula was not under a tribal leader for a large period of its 150 year history. This was changed with the advent of the Bantu Authorities Act of 1951 (see below). With this law in place, the Ciskei homeland government imposed a tribal authority in this ethnically diverse settlement the majority of whose residents did not live in communal land (Mgunyasi interview).

In Rabula, there were headmen historically. From 1990 there has been an elected residents' committee that governs community affairs including the common property (Mgunyasi interview). From 2008 there has been a newly appointed sub-chief linked to a tribal authority. The sub-chief is from a land-owning family (Mati interview). The jurisdiction of the residents' committee and the sub-chief does not include the function of land allocation on freehold land. It is accepted that freehold land is owned by families and devolves according to family norms (Kingwill, 2008). Some of the private land owners have encroached on the common property (Mgunyasi interview). In general, the private owners are not excluded from the common property yet the communal dwellers are excluded from the private lands. With population increases, housing settlements have taken over increasing parts of the common property (Mgunyasi interview).. These sites were allocated by the residents' committee. The new sub-chief is seeking to assert his authority over land allocation (Mati interview).

Rabula shows a concept of family property and succession that have far more in common with customary principles of property ownership and devolution than with the formal registration system, despite the presence of title deeds (Kingwill, 2008). In other words, freehold tenure has been adapted to accommodate ongoing customary practices (Kingwill, 2008). Customary principles survive within families yet the involvement of the residents' committee and the sub-chief in private land administration is excluded (Kingwill, 2008). Yet, common property is contested between residents living in the communal part and those in the private freehold land. Another site of contestation is over control over local heritage sites which include a historic mountain at which the Ciskei homeland government built a "national monument" which is now used for an annual heritage festival organised by an elected committee. The dispute is over whether the sub-chief should lead this process.

## **HISTORICAL EVOLUTION OF TRIBAL GOVERNANCE OVER A DEGRADED COMMONS**

### ***Apartheid cooption of traditional leaders***

The status, role and authority of traditional leaders in the apartheid period in South Africa was preserved by the use of communal land tenure in the native reserves where black people were confined to by colonial and apartheid laws (Southall and Kropiwnicki, 2003). These native reserves later evolved to become homelands. When larger volumes of land were still available before the advent of colonial and apartheid land dispossession, traditional leaders did not exclusive power in land allocation. They were one leg of consultation in a multi-layered system of accountability (Southall and Kropiwnicki, 2003). However, with the increased population densities in the reserves, the apartheid state needed traditional leaders to play a major role in social control in which control over land was central.

Traditional leaders were co-opted through a process of conferring statutory powers on them and subjecting them to a system of statutory control. Under apartheid, traditional leaders were statutorily conferred with governmental powers over Africans in "black areas", particularly at local government level. In terms of the

Bantu Authorities Act of 1951, those powers and the statutory structures within which they were exercised formed the building blocks of the homeland system.

Authors such as Weiner and Levin (1991) and Maloka (1995) regard the chieftaincy as a profoundly undemocratic institution that was granted highly repressive powers by apartheid laws. In agreement with Ntsebeza, Mamdani (1996) regards the role and position of traditional leaders in colonial and post-colonial Africa as decentralised despotism that are against the deepening of democracy in the countryside. Therefore, according to Mamdani (1996) the achievement of democracy in rural areas must start with the dissolution of the traditional leadership system. In the context of apartheid-era legislation in South Africa, Ntsebeza (1999) further problematises the credential of traditional leaders when he points out how traditional leaders used the powers and authority given to them by the apartheid-era Bantu Authorities Act. These powers and authority attenuated the profoundly undemocratic elements of hereditary governance. In many instances this led to widespread abuse of power and corruption by the traditional leaders. Through this law, traditional leaders thereby became *“the local arm of the central state”* (Ntsebeza, 1999: 2).

Traditional leaders and homeland governments also used the laws to advance their own interests. For example, the former State President of the Ciskei, Lennox Sebe, used the provisions of the Bantu Authorities Act to establish and provide legal status to tribal authorities. This included him dissolving tribal authorities that may have challenged his positions, and him inventing bogus chieftaincies. In the case of the Ndlambe village, in 1982 Sebe’s government imposed a traditional leader from outside to a village that had had no chief for close to a century. In the Prudhoe village, Sebe’s government incorporated former farm workers into the Dabi Tribal Authority. In Rabula, an ethnically diverse area with more than 100 years of private freehold tenure was put under a newly established AmamMbombo Tribal Authority (which was ethnically Xhosa).

### ***Betterment schemes***

Other important measures were the betterment schemes imposed throughout the Ciskei. For our case studies, betterment was undertaken in Ndlambe and Rabula. The 1936 Land Act proclaimed betterment locations in terms of which villages in the native reserves would be divided into residential, arable land, forestry and grazing areas with regulations to limit stock and offset increasing soil erosion (Kropiwnicki, 2001; Hendricks, 2003). The Ciskei was deemed the most overstocked reserve; officials warned that if something was not done *“the Native Areas in the rest of the Union will be tomorrow what that of the Ciskei is today”* (Switzer, 1993: 210). Using the Ciskei as a test case, Livestock Control and Improvement Proclamation No 31 of 1939 was introduced and implemented in selected districts. The Ciskei Territorial Authority initiated a four-year plan in 1962 declaring 210 of 243 locations as betterment areas. People were moved into demarcated areas, arable areas were stabilised, grazing areas were demarcated and fenced, large numbers of cattle were culled on the basis of a calculated carrying capacity for each area, and the population was divided between farmers and non-farmers (Kropiwnicki, 2001). By reducing the number of cattle in half, this reduced an important means of economic survival and also violated custom in

which cattle represented wealth, savings and security. The scheme also involved restrictions in access to forests and firewood. Furthermore, rehabilitation measures involved the use of unpaid, forced labour under the supervision of chiefs (Southall, 1982). The traditional leaders played a key role in enforcing betterment. Many were offered incentives if they accepted rehabilitation measures including increased stipends, land allotments, and places of honour (Kropiwnicki, 2001). The betterment schemes confirmed traditional leaders as key instruments of apartheid rule (Southall, 1982).

Many authors have shown how the betterment schemes failed in terms of environmental conservation and in establishing viable farming in the peripheral Bantustan areas (De Wet, 1985; Kropiwnicki, 2001; Westaway, 2008). The failure of betterment was inevitable because *“the real problem of the people is not that they have too many cattle but that they have too little land”* (SACP, 1981: 143). The betterment schemes were regarded by the majority of rural dwellers as a threat to their security and were consequently met with great opposition even though this was appeared to be hidden rural struggles (Beinart and Bundy, 1987). In the Ciskei, these hidden rural struggles became more overtly political and organised as part of the intensifying anti-apartheid struggles (see below).

### ***The apartheid homeland as a degraded commons***

Apartheid land dispossession and betterment created a *“natural resource”* crisis for the rural population (Weiner and Levin, 1991: 96). The homeland rural areas do not provide the subsistence needs of its inhabitants (Kropiwnicki, 2001). Demographic and socio-economic profiles of each of the four villages confirm that not a single villages is able to meet the reproduction needs of its residents. The legacy of territorial segregation has left deep imprints on the state of land and production in the former homelands (Hendricks, 2003). According to Hendricks, *“estimates of the current contribution of agriculture to household income in the [former Eastern Cape homelands] vary from 1,2% to about 12%”*.

Weiner and Levin (1991) cite a 1989 regional development plan produced by the Ciskeian government which estimated that in 1989 one region of the Ciskei had 500 per cent more land being cropped than is potentially arable. This has been a consistent problem in the Ciskei. Weiner and Levin (1991) also refer to how betterment led to the cultivation of regions which were unsuited for crop production because of poor rainfall, inferior soils or excessive slopes. In the Ndlambe village, the availability of arable land was further limited by the entrance of ULIMOCOR (a Ciskei government agricultural corporation) into the Tyefu Irrigation Scheme. the bantustans. In this scheme, a small layer of aspirant capitalist farmers were supported by the Ciskei government. Rapid forms of urban forms of settlement layout have also reduce arable land availability in the Prudhoe village.

According to Hendricks (2003: 18), the betterment schemes had a profound impact on the character of land use in the reserves where they were applied: *“as the population increased and as more and more people were forcibly relocated to the reserves, the residential areas have encroached onto the grazing commonages and onto the arable allotments”*. In this way, the homelands became human residence with limited opportunities for agricultural production (Hendricks, 2003).

Biodiversity provides the fundamental natural resources upon which rural people depend (Kepe et al, 2005). In some cases, as with the pelargonium plant in Masakhane, natural resources can provide opportunities for commercial development. Other ecological services provided by natural resources include pollution control, crop pollination, and climate regulation (Kepe, et al, 2005). Post-apartheid environmental laws and policies include the involvement of local communities in the planning and management of biodiversity and natural resources and the development of appropriate partnerships to realise economic and other opportunities associated with the sustainable utilisation of natural resources (Kepe et al, 2005). However, there have been ad-hoc processes and poor coordination of the management of natural resources. Despite the recognition of protected areas, the new laws and policies perpetuate the myth that protected areas are isolated islands of biodiversity (Kepe et al, 2005). This does not bode well for reconciling the development, participatory and conservation agendas (Kepe et al, 2005). Creating the legal and political space for innovative and flexible solutions to natural resource management is crucial. The disputes between the ANC provincial government and traditional leaders created an authority vacuum in many under-developed rural areas, affecting both the use of natural resources and development (Kepe, 2001).

### ***Rural democratic struggles***

The roles played by traditional leaders under apartheid led to the erosion of their legitimacy (Southall and Kropiwnicki, 2003). By the late 1980s and early 1990s, the mass mobilisation which characterised most urban areas of South Africa during the 1970s and 80s, had also spread to rural areas. Tribal authorities became the main target. In vast areas of the Ciskei the Tribal Authority system collapsed and the more democratically formed and controlled civic associations took over. The rural struggles in the 1980s targeted corrupt, abusive and extortionist behaviour by chiefs in parts of the Ciskei and other parts of the country (Ntsebeza, 1999; Claassens, 2001). As a result, the late 1980s and the early 1990s were a period *“of relative ‘liberalisation’ in terms of the tribal system”* (Claassens, 2001: 38). The tense political transition from apartheid to democracy was a major factor. This transition also saw a reduction of institutional, financial and administrative support from the state, the police and the army to the traditional leaders (Claassens, 2001).

The intensification of the anti-apartheid struggle in the 1980s created fertile conditions for a military coup against Sebe which took place in March 1990. Immediately after the coup the new military government in the Ciskei forced all headman to resign, encouraged the formation of residents’ associations but retained chiefs in their positions (Southall and Kropiwnicki, 2003). This encouraged militant youth *“who went from village to village, persuading their elders to form new associations, which spread like wildfire”* across the Ciskei (Southall and Kropiwnicki, 2003: 7). The advent of the military government in the Ciskei and the anti-apartheid struggle seriously eroded the powers of the chieftaincy in the four villages and many other localities in the Ciskei. This was also endorsed by the ANC which was not yet government in the early 1990s. The collapse of headman and the mushrooming of these democratic civic associations was also a fact of life in the 5 village case studies discussed in this paper. In the case of the Ndlambe village, the rise of civic associations led to the subsequent formation of the Rural

People's Movement which, today, is at the heart of the contestations between residents and the traditional leader.

However, the democratic impulse went beyond what the military government had intended: "*the chieftaincy system itself was nearing collapse*" (Southall and Kropiwnicki, 2003: 7). This led to a drastic turnaround by the military government: it restored the tribal system and banned the residents associations (White, 2008). This generated intense conflict and violence directed at the restored headman (White, 2008). It is worth noting that civic organisations merely challenged Tribal Authority rule without any pre-conceived blueprint of alternative proposals and practices. These practices took time to develop. They are varied. But at their core is participation and consultation. New here was the increased social and political space for the participation of women and young people in meetings and elected civic structures. This feature remains to this day in various residents' structures that exist in the four village case studies discussed in this paper.

It was in the immediate aftermath of this instability in rural areas of the Ciskei that the ANC took office in the newly-established province of the Eastern Cape that incorporated the Ciskei together with the Transkei Bantustan and a large portion of what was the former white districts of the old Cape Provincial Administration. In its first years, this ANC provincial administration was involved in intense conflicts with traditional leaders in both the former Ciskei and Transkei (Southall and Kropiwnicki, 2003). The ANC was initially biased in favour of the residents' associations, many of which affiliated with the ANC-aligned South African National Civics' Organisation (SANCO). The ANC government also bypassed the chiefs when it started to implement new development projects in the rural areas. This led to resentment on the part of the chiefs. This coincided with disagreements over fiscal allocations to the provincial house of traditional leaders and salaries to be paid to chiefs. Without a resolution to these problems, the traditional leaders threatened to deny access for election campaigns in rural areas as the 1995 first-ever democratic local government elections were to be held (Southall and Kropiwnicki, 2003). Ultimately, these battles were decisively settled by the final content and provisions of the TLGFA and CLARA, laws which were decided at a national level by the ANC government after years of running tension between government and traditional leaders. Several authors bemoan that these laws were passed with minimal consultation with ordinary rural dwellers and a wide array of organised rural formations (Claassens, 2003).

In the 1994-2003 period, the ANC provincial government in the Eastern Cape was determined to exert its power over the countryside by containing the powers and ambitions of the chiefs. According to Maloka (1995), the tensions in the Eastern Cape centred around three issues: securing a place for traditional leaders in local government structures; the establishment of a House for traditional leaders; and the retention of headmen. The TLGFA has resolved these tensions in favour of positions advanced by traditional leaders.

With the passing of the TLGFA in 2003 and CLARA in 2004, the ANC provincial government turned away from confrontation to significant accommodation with traditional leaders. The provincial government finances the infrastructure, assets, personnel and operations of the provincial and local houses of traditional leaders

and local tribal authorities. Salaries have been increased, and the local status of chiefs confirmed. These fiscal allocations are only one source of wealth as many traditional leaders are also increasingly seeking commercial deals with the private sector on the basis of economic opportunities and natural resources available in the areas under their jurisdiction. The cases of Ndlambe and Masakhane present evidence of these commercial deals.

nature and form of local democracy and governance, the meanings of identity and space, as well as contestations over the commons, in particular control over land, natural resources, and local economic development.

### **What the constitution says**

South Africa's celebrated post-apartheid Constitution was negotiated and passed in 1996, at a time when the ANC provincial government still had a confrontational stance towards traditional leaders. The institution of traditional leadership and associated customary are given recognition in the 1996 Constitution. Sections 211 and 212 of the 1996 Constitution are boxed below. The foundations of Sections 211 and 212 of the 1996 Constitution are in the 1993 Interim Constitution which had similar provisions. Sections 211 and 212 of the 1996 Constitution may appear ambiguous when it comes to the recognition and role of traditional leaders. In the view of Levin (1994: 47), the Interim Constitution allowed chiefs to continue with their contested roles in *"land allocation and development issues"*. Levin (1994) saw these constitutional provisions as setting the stage for ongoing struggles in rural areas biased against mass-based initiatives and alternative rural governance systems.

For Levin, these constitutional provisions raised serious questions about the possible success of participatory processes of research and transformation. Levin (1994: 48) cites a regional leader of the ANC in the Mpumalanga province who believed that traditional leaders should not play political roles or have powers over the allocation of land: *"The chieftaincy is a long established institution, and, although the roles of the chiefs were changed, and more powers given to them, like over land allocation, the ANC maintains that the chieftaincy should not be done away with. The existing reality is that the chiefs play a political role, and there are chiefs who want to retain political power... Chiefs should organise traditional functions and not deal with land allocation because it is a political issue"*. An analysis of the TLGFA and evidence from the four village case

#### **Box 1 - Section 211 of the 1996 South African Constitution: Recognition of Traditional Leaders**

- (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
- (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

#### **Box 2 - Section 212 of the 1996 South African Constitution: Role of traditional leaders**

- (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law
  - (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and
  - (b) national legislation may establish a council of traditional leaders.

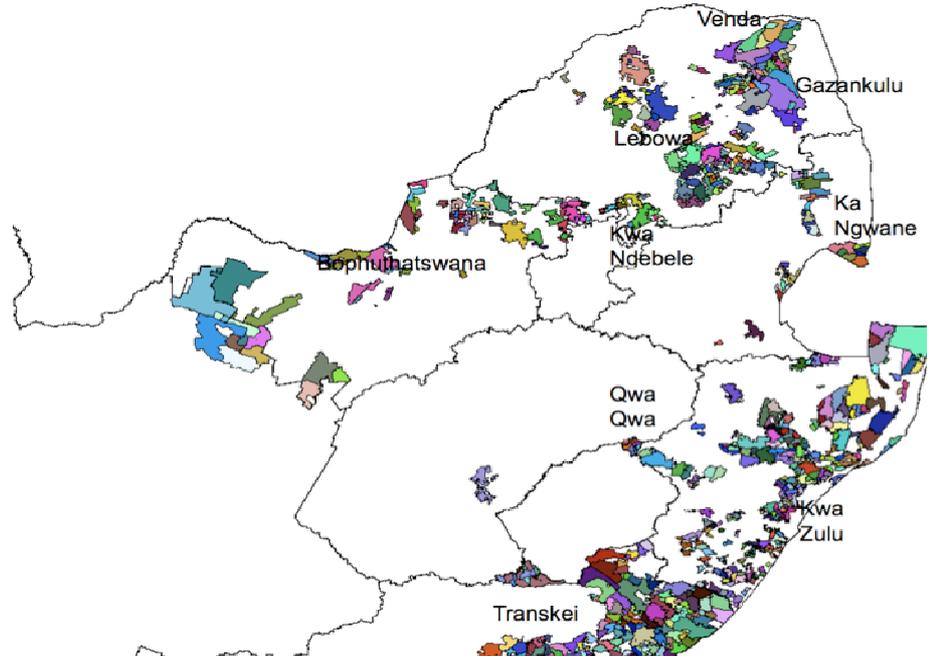
studies presented in this paper bear testimony to Levin's caution.

It is important to underline that at the passing and Constitutional Court certification of the 1996 Constitution, it was not apparent that later legislative development may open the door to governance roles for traditional leaders. In its judgment to certify the 1996 Constitution, the Constitutional Court held that the 'role' of traditional leaders did not include a governmental role and therefore national legislation providing for the role of traditional leaders may not include governmental powers and functions for traditional leaders.

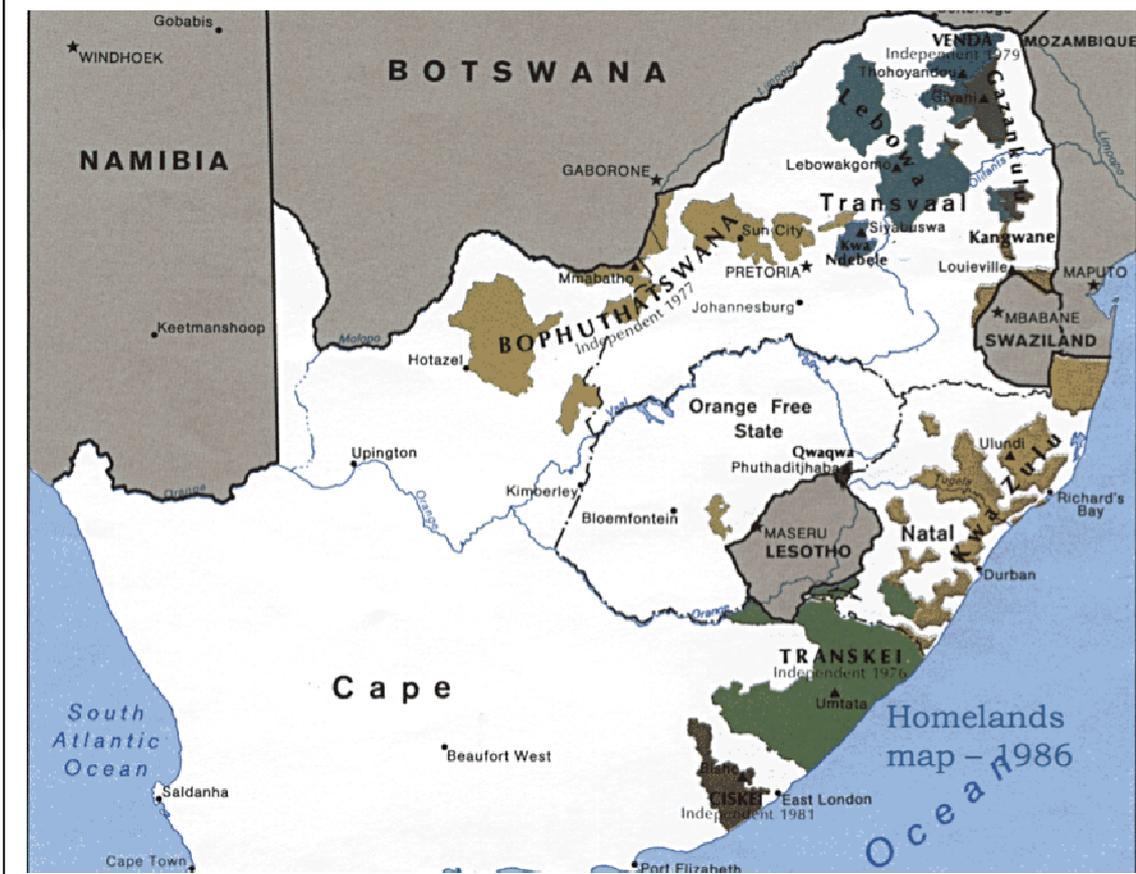
### ***Key provisions of the TLGFA***

The TLGFA is the central post-apartheid law that sets the framework of boundaries and institutions for rural governance. Section 28(1) of the TLGFA states that *'[a]ny traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.'* Section 28(3) deems *'[a]ny "tribe" that, immediately before the commencement of this Act, had been established and was still recognised as such ... to be a traditional community contemplated in section 2 ...'* In terms of section 28(4), any *'tribal authority that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 3 and must perform the functions referred to in section 4 ...'*

**Figure 1: Maps of traditional councils in South Africa, 2010**



**Figure 2: Maps of apartheid homelands in South Africa**



Section 20 of the Act describes the powers that may be granted to these institutions as affecting every sphere of socio-economic life in rural areas. These include: land administration; agriculture; administration of justice; safety and security; health;

welfare; arts and culture; tourism; registration of births, deaths and customary marriages; and the management of natural resources. The door is left open in the TLGFA for traditional councils to levy taxes. Sections 4(2) and 4(3) of the TLGFA speak of traditional councils accounting for 'gifts' and 'levies' received by them.

Through the TLGFA, the former homeland boundaries and their authority structures are preserved without democratisation or regard for the will of rural citizens. The same structures are given extensive powers over the lives of rural people, including the power of taxation. The accountability of these authorities to rural people is not adequately provided for and there is no mechanism to enable groups to withdraw from a community that was wrongly constituted under apartheid.

The preservation of tribal boundaries and authorities established in terms of the Black Authorities Act makes post-apartheid South African citizenship and depth of rural democracy dependent on geography. People living in former homelands are made tribal subjects. The TLGFA subjects rural people to a separate form of governance from other South Africans. Effectively, therefore, the TLGFA preserves the homeland system whereby there were two separate South Africas. This shown graphically by the maps (see figures 1 and 2 below) showing how the pre-1994 boundaries of homeland territories coincide with those of the newly reconstituted tribal authorities (now called "traditional councils" under the TLGFA).

In essence, the TLGFA provide the framework for traditional leaders to assume, a la Mamdani (1996), all "*moments of power*": making laws for rural governance, control over development, control over land and other natural resources, and in assuming responsibilities for administering rural areas including the administration of justice.

### ***Impacts of the TLGFA in the 5 villages***

With the advent of the TLGFA, except for the Masakhane CPA, each of the other 4 villages has been incorporated under the jurisdiction of a tribal authority. In terms of the TLGFA, the land rights of those in communal land have now become defined exclusively by their tribal allegiance even if they may opt otherwise. This makes the rights of Prudhoe and Ndlambe residents as they are actively mobilising against the extension of chiefly jurisdiction over their land. Any battles they fight with Chiefs Njokweni and Makinana respectively will now have to be on the basis of ethnic affiliation. Their rights to their homes, fields and access to development opportunities will now dependent on them remaining loyal and respectful 'tribesmen' and 'tribeswomen'. One of the leaders of the residents' committee in Ndlambe was taken to court for "disrespecting" Chief Makinana. It is striking that the residents' committees explain and justify their actions on the basis that, as South African citizens, they are entitled to independent land rights. They do not assert their claims and actions on the basis of their tribal identity and allegiance. They are seeking to benefit from what they see as communal resources that have now been privatised for the chief's exclusive benefits (Mbelekane interview).

Another problem in all the 5 village case studies are the conflicting boundaries: i.e. TLGFA boundaries for traditional councils revive the exact tribal boundaries imposed by apartheid legislation yet the new local government system has different

boundaries given its attempts to break apartheid boundaries. In addition to this contradiction, these conflicting boundaries also have impacts about land-use and development planning at the ward level. How will a municipality drive an effective consultation and planning process if the same ward is divided into 2 different tribal authorities? Which interests will be heeded? In the case of Masakhane, the CPA land is seen as private land and local governments are reluctant to develop private land (Hall et al 2005). Further, with TLGFA granted powers Chief Tyali may be have advantage over the Masakhane CPA in the ongoing privatisation of pelargonium as a potentially lucrative plant.

Another effect of the TLGFA has been to expand the power and prestige of traditional leaders in each of the 5 villages. With this expanded power and prestige, there have conscious attempts by the traditional leaders in the cases of Masakhane, Ndlambe and Prudhoe to ensure exclusive control over development opportunities, natural resources and related revenue bases.

The TLGFA and CLARA opens up tailor-made opportunities for traditional leaders to assert unprecedented rights over land for grazing, cultivation and housing as well as natural resources. In the case of Rabula, the sub-chief has not yet secured exclusive control over land. Prudhoe and Masakhane residents are concerned about the encroachment over their land by the traditional leaders they have been put under. In the case of Prudhoe, there have been conflicts over the role played by the traditional leader in the allocation of sites for housing. In the case of Ndlambe, the disputes show a power battle between the elected residents' committee and the traditional leader over the control of land, an irrigation scheme and local heritage resources. In all these cases, traditional leaders assert that they are given clear powers by the law. In response to this claim, residents' committees point to the constitutional language of rights and democracy as well as legislative measures that introduced democratic, developmental local government. In all the case studies, traditional leaders have the edge over ordinary people: they have the support of the law, and they have been able to work the system to their advantage. The disputes also underline significant public confusion about the actual content and status of various government policies and programmes, existing land laws, the powers of traditional leaders, the roles of elected rural government, and the status of traditional leaders.

## **TRADITIONAL LEADERS AND THE DEMOCRATISATION OF RURAL LOCAL GOVERNMENT**

Rural local government has also been affected by the 1996 constitutional framework and new policies of the post-apartheid government (Kepe, 2001). Both the Interim Constitution of 1993 and the final Constitution of 1996 dismantled the homeland system and removed governmental powers given to traditional authorities at national and provincial level. This boosted the prestige of elected residents' associations in each of the five villages. In addition, the Local Government Transition Act No. 209 of 1993 ("the LGTA") dismantled *inter alia* the homeland local government system and removed governmental powers given to traditional authorities at local level.

In 1995, the Eastern Cape provincial legislature passed the Regulation of

Development in Rural Areas Act which effectively stripped traditional leaders in the Eastern Cape of their development duties, including the allocation of land, as prescribed in the Bantu Authorities Act (Kropiwnicki, 2001). This was partly informed by ongoing struggles between residents' associations and headman in the Ciskei and Transkei (Kropiwnicki, 2001).

The 1996 Constitution establishes wall-to-wall elected municipalities across every inch of South African territory. Before the 1996 constitution, rural areas in the former homelands were under the traditional leaders and did not have elected local government. In addition to its service delivery, control and regulatory roles, local government has been granted 'development functions' by the Constitution. Section 151 (1) of the Constitution states that the local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic. In the new local government system, a municipality is legally defined as comprising not just the councillors and administration, but the *local community as well*. Among the objects of local government in the Constitution are *"to provide democratic and accountable government for local communities"* and *"to encourage the involvement of communities and community organizations in matters of local government"*. Local government must *"structure and manage its administration and budgeting and planning process to the basic needs of the community and to promote the social and economic development of the community ...."* (South African Constitution, section 153).

After the lapse of a short transitional period from 1994 to 1995, the new legal framework for the restructuring of local government was consolidated by the Municipal Structures Act of 1998 and the Municipal Systems Act of 2000. The Structures Act made provision for the participation in municipal councils of traditional leaders although this was to be on a non-voting basis and was not to exceed ten percent of the total membership. The 1998 White Paper on Local Government was built on the premise that African customary systems could be merged with elements of modern democracy. The White Paper appealed to the need for creative institutional arrangements that would combine the *"natural capacities of both traditional and elected local government to advance development or rural areas and communities"* thereby opening the door to significant roles for traditional leaders in local rural governance and development (Ministry for Provincial Affairs and Constitutional Development 1998, 75-79). The White Paper also located this within the concept of "cooperative governance" in terms of which all spheres of government work and cooperate with each other in a spirit of mutual trust and shared interests and mandates (DPLG, 2000). For their part, traditional leaders regarded the emphasis on democracy as a threat to their powers and status inherited from apartheid (Kepe, 2001). These included land allocation and conflict resolution powers in the communal areas. Chiefs also generated lucrative income derived from the fines imposed in the cases and disputes they handled (Kepe, 2001). These were specifically outlawed in the White Paper.

In terms of the Municipal Systems Act a municipality *"must develop a culture of municipal governance that complements formal representative government with a system of participatory governance"*. There is no similar provision in the TLGFA. The Municipal Systems Act makes it clear that residents have the right to contribute to the municipality's decision-making processes. They also have the right to submit

recommendations and complaints to the council and are entitled to prompt responses to these. They have the right to “*regular disclosure of the state of affairs of the municipality, including its finances*”. In order to encourage residents to pay promptly for their services, municipalities are required to inform them about the costs of providing the services, the reasons for the payments of the fees, and the uses to which the monies raised are put. Residents also have the right to give feedback to the municipality on the quality and level of services offered to them. There were attempts to roll out these provisions in the Eastern Cape including in all the village case studies discussed in this paper. These attempts were met by challenges of limited resources and sometimes inefficient elected councillors. It is remarkable that in none of these villages was there opposition from traditional leaders to the roll-out of democratic local government structures.

The new local government system also provides for ward committees to be set up in each ward of a municipality in order to “*enhance participatory democracy*”. A ward committee may make representations on any issue affecting a ward to the councillor or through the councillor to the council. It can also exercise any duty or power delegated to it by the council. A ward committee comprises the ward councillor as the chairperson and up to 10 other people representing a “*diversity of interests in the ward*”. Women have to be “*equitably represented*” in a ward committee. From the 2000 local government elections, all the four village case studies discussed in this paper have had elected ward committees. From March 2010, all the villages took part in elections for traditional councils established in terms of the TLGFA. Field research shows that in each village the traditional council elections violated provincial regulations in terms of quorums for nomination meetings, other nomination procedures, extremely low polls (in all the villages less than 5% of residents voted) and the control of local election machinery by the traditional leader. It is still early days before disputes about shared authority between ward committees and traditional councils can be observed.

An important element of the new local government framework is the provision for democratic developmental local government to also play a role in poverty eradication through local economic development. This developmental local government framework described above constitutes a remarkably progressive framework for advancing socio-economic rights, consolidating citizen’s popular participation at the local level and transforming local economies.

This new local government mandate was a break with the colonial and apartheid periods where local government was in the form of concentrated “*administrative, judicial and executive power in a single functionary, the Tribal Authority*” (Ntsebeza, 1999: 2). The establishment of a post-apartheid local government system is part of the constitutional doctrine of the “*separation of powers*”. The new local government framework created a potential basis for democratic control over development, land use planning, and control of local resources.

However, this framework is challenged in rural areas given the contradictory thrust of the TLGFA which seeks to locate traditional leaders as the primary institutions of power in rural areas. Indeed, it is also important to note the general crises affecting the performance of this framework: limited budgets, cost-cutting measures, a lack of capacity in many municipalities in particular rural municipalities, and extremely

poor implementation of public participation measures. With inadequate resources and capacity, the new democratic rural local governments struggled to provide effective services in rural areas. In the initial 1995-1999 transitional period to this new system, there was limited support provided to newly elected rural councillors. Unlike urban municipalities, the rural municipalities had a lower tax base, lower levels of development had to work in geographically dispersed and often inaccessible villages. These problems emboldened traditional leaders to reclaim space and power they had lost to democratised local government. In the case of Ndlambe, the elected ward councilor has been told to his face by the tribal authority that they cannot organise meetings without the authority's permission and that the authority is now responsible for development (Mbelekane interview). Mbelekane (interview) believes that *"the chief is a stumbling block to development"*. In Masakhane and Rabula, the ward councilors are central in development even though the Rabula sub-chief has attempted to undertake development initiatives. This has not yet resulted into tension between the councilor and the sub-chief.

## **CONCLUSION**

The above discussion sought to present five case studies in the former Ciskei where there is unfolding contestations over rural governance that have significant meanings for boundaries of authority, identity, common property and space.

### ***Democracy and tradition***

Kepe (2001) shows that the constitutional recognition of both modern democratic principles and traditional authorities in rural areas led to intense conflict. This is borne out by evidence from all the case studies. Ntsebeza (1999) regards the constitutional foundation of modern democratic principles as being fundamentally contradicted by the recognition of unelected traditional leaders in the same constitution. According to Ntsebeza (1999), whilst the Constitution is based on democratic principles, including the election of government at national, provincial and local levels, the same Constitution gives significant recognition to, and enables significant governance roles to unelected traditional authorities. Ntsebeza (1999) warned that the constitution opened up far-reaching space for traditional leaders to later claim and secure significant control over land allocation and rural local government.

Weiner and Levin (1991), Maloka (1995) and Ntsebeza (1999) also bemoaned the patriarchal nature of chieftaincy and cautioned about how this would affect land allocation decisions that would negatively affect women. This is a common concern in all the five case studies. A submission to parliament by the Rural People's Movement cites cases of violations of women's rights under traditional governance in the cases of Ndlambe and Prudhoe (RPM, 2010).

In agreement with Ntsebeza, Levin (1994: 48) cites an ANC leader in the Mpumalanga province: *"People accept the chiefs, but they are seen as largely irrelevant and not given much allegiance. This is because the people are now too developed to accept hereditary leadership"*. A rural activist leading a civic association in the same Mpumalanga province told Levin that *"the institution is being eroded by the developing environment. If the ANC did not have this*

*[acommodationist] strategy, it is possible that the chieftaincy would have been eroded by now” (Levin, 1994: 47).*

Mamdani (1996) has shown how the daily lives of rural dwellers are patterned around extra-economic forms of coercion through traditional leaders. Levin (1994) prefers a model of rural democracy and development based on participation and territoriality. Levin (1994) sees participation as both a means and an end through which communities are in control throughout processes of governance. Important here is the need for bottom-up processes without the imposition of processes from above (Levin, 1994). The Ndlambe case study speaks to this aspect. Levin (1994) also recognises that this idealised participation is mediated by social differences of class, gender and generation. When it comes to territoriality, Levin (1994) refers to notions of locality as well as social and power relations which occur within a place and which shape rural communities and their interaction with the environment as can be seen in the Masakhane case study. In all the five case studies, the effect of the TLGFA has been to slow down the democratisation of rural local government. With the TLGFA, traditional leaders have begun to circumscribe the power and agency of the majority of rural dwellers, whose decision-making is key to effective systems, rules and mechanisms for the management of common property.

Other authors have taken a less critical approach to traditional leaders: for example, Claassens (2001), recognises instances of clear advantages that pre-existing customary systems have over new local government structures. These include familiarity, predictability and a measure of stability in rural areas where there is minimal presence of the state in the form of the police, the courts, and other state services. However, Claassens (2001) recognises that the very absence of the state allows these systems to operate with differing degrees of support and legitimacy. Claassens (2001: 84) describes this as a *“delicate and unstable equilibrium between the legitimacy of the institution of traditional leadership and its coercive underpinnings”*. In the case of the selected case studies, there is a stronger inclination for the expansion of democratic local government with traditional leaders playing lesser roles in development and control over land.

Without falling into the trap of a sweeping generalisation, it is important to acknowledge that there are some traditional leaders who exercise their power through participatory processes and as a result are respected and legitimised by their followers (Claassens, 2001). Communities should have the space to determine their own systems of rural governance appropriate to their circumstances (Claassens, 2001). Such a process will take time as people work out their interests, power balances and how to accommodate these. However, for such a dynamic process to take root, it is important that the law does not put up significant barriers (Claassens, 2001). The TLGFA is one such significant barrier as it has tilted the balance towards ‘coercion’ away from voluntary participation.

### ***Land administration and common property***

The developmental, land administration and governance roles that traditional leaders now have in terms of the law has entrenched features similar to those provided for by apartheid legislation. These roles do not sit well with the constitutional doctrine of the separation of powers. The control of land by the

traditional leader undermines other alternatives in land administration that had begun to develop in each of the 5 case studies following the late 1980s/early 1990s collapse of apartheid tribal authorities.

Rising tensions between traditional leaders and democratic systems in rural areas militates against conducive conditions for the successful and sustainable management of common property resources.

### ***Identity***

Maloka (1995) also pointed to the potential dangers of tribal consciousness and ethnic division that are associated with traditional leadership. He saw these as tools that could be open to anti-democratic populist mobilisation by disaffected chiefs. This dynamic is present in the tensions between the Prudhoe community and Chief Njokweni. This is a complicated matter in the ethnically diverse Rabula with anecdotal evidence of a growing ethnic differentiations amongst sub-sections of the residents.

### ***Final word***

The unfolding contestations are likely to continue and deepen beyond the five villages discussed here. The outcomes of these contestations will affect rural governance and the power equation between rural dwellers and traditional leaders. These contestations imply ongoing rural instability that may negatively affect how land, natural resources and development pan out in communal rural areas across South Africa. For the five villages, this may delay the onset of the require stability to ensure a sustainable management of common property resources and sustainable development.

ENDS

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