

Chapter 4

Critical Analysis of the Laws Governing the Institution of Traditional Leadership Versus the Governance of Royal Leadership Institutions: A South African Perspective

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Introduction

South Africa is an African country characterised by an entrenched traditional leadership system. Evidence suggests that traditional leadership began a long way back and continued through the colonial and apartheid regimes. In modern terms, the traditional leadership system is the only familiar governance system among indigenous people, and it has prevailed for centuries (Koenane, 2018). Although indigenous governance principles are old, they can, to an extent, be linked to some of the modern principles of governance, particularly concerning democracy and enhancement of citizen's general welfare.

The emergence of democracy in South Africa was accompanied by transformative and modernisation models selected through a constitutional process. The Constitution of the Republic of South Africa (1996) recognises traditional leadership institutions with different understanding and interpretation in the context of a traditional leader's role in a democratic South Africa. Logan (2009) holds the view that the current political trend has indirectly or directly discredited traditional leadership. This is because the laws governing the country are influenced by western liberal democracy.

The South African Government has not been able to explicitly define and simplify traditional leadership institutions' roles in the government, considering the historic role performed by these institutions. After gaining independence from the colonial and apartheid regimes, southern African countries introduced democratic institutions in which councillors are a vital facet of community leadership (Mershon, 2017). Democratic institutions occupied the roles performed by traditional leadership under the assumption that the two institutions would co-exist. Instead, traditional leadership institutions are expected to run their affairs independently, which does not allow for traditional governance principles to be integrated into the legislative governance framework (Tshitangoni & Francis, 2017). As a result, traditional leadership institutions are found to have limited legislative authority and responsibility in practising traditional governance over their affairs, despite being constitutionally recognised.

Conflicts and tensions continue to characterise the relationship between the two leadership areas. Unfortunately, this has weakened both institutions' effectiveness and functionality in advocating for rural community development (Mungwini, 2011). The debate about the roles of traditional leadership institutions is founded on two perspectives: the laws governing traditional leadership institutions in the democratic era and the original indigenous practice of governance by the same institution. Hence, this study critically analyses these two aspects' establishment and operational setting.

An attempt is also made to determine, from a governance perspective, the role of traditional leadership institutions amidst the existing laws and democratic institutions within the same community space. A brief historical background to traditional leadership as well as the South African political and legal frameworks for traditional leadership institutions are presented. The study drew from a global perspective to help deepen the understanding of the issue under investigation.

Background

Traditional leadership has been practised in Africa since before colonialism, apartheid and the advent of democracy. The main aspect of traditional leadership that has remained constant is its connection to political reforms, which established it as a formal institution through a legislative process. The Constitution of the Republic of South Africa (1996) recognises the traditional leadership institution and defines its status and role in relation to customary law (Republic of South Africa, 1996). To ensure its survival, Traditional Leadership Institutions formed alliances with various parties and authorities. In the South African context, it can be said that traditional leadership has operated under three regimes: colonialism, apartheid, and democracy. This means that Traditional Leadership Institution had to adjust its governance principles to those of the three mentioned regimes for its continued relevance because traditional leaders were considered powerful and highly regarded as community leaders (Ntjanyana, 2020). It can be deduced that the Traditional Leadership Institution is one of the institutions that has survived through difficult times grounded on its traditional governance principles, which are based on community values, trust and unity of purpose.

Traditional leadership institutions were held in high esteem by traditional communities due to their role in managing their communities' day-to-day affairs, which implies governance at the rural community level. This does not imply that Traditional Leadership Institutions' authority was without fault and some of the rulership elements infringed on people's rights: these people were referred to as subjects (Khunou, 2009). In South Africa, the role of traditional leadership is set out in the 2003 White Paper on Traditional Leadership and Governance, which provides an overarching national framework containing norms and standards. South Africa is characterised by provincial houses of traditional