

Challenges and prospects for traditional leadership in Africa: Towards innovative ideas to enhance African values among the youth in South Africa

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Abstract

The highly contested public law issue of the recognition of African values in South Africa with emphasis on the youth is addressed in this article. The arguments mooted revolve around the hypothesis that the youth in Africa generally, but particularly in South Africa, are seldom involved in debates relating to African values, with the instance of African traditional leadership as a case in point. In expanding on this hypothesis two different approaches/schools of thought relating to the recognition of traditional leadership are highlighted. On the one end we find the 'traditionalists' with their emphasis on the 'continued existence of traditional leaders' for various reasons. On the other end, we find the 'modernists' who campaign for the total abolition of the institution of traditional leadership. However, the adoption of a more pragmatic middle course (an 'inter-entrenched' goalpost) is advocated. Nevertheless, the central question remains 'how the South African society should move between the two goalposts (between traditionalism and modernism)?' The answer to this question is the challenge.

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1 Introduction

The subject of traditional leadership in Africa is neither new nor wanting in critical analysis as evidenced by the abundance of literature on this subject. That traditional leadership is a contentious subject is illustrated by a number of facts: to some writers the topic is a sensitive one, a tangle of such complex issues as politics, gender, human rights, age and other related matters; to others it is thought provoking and has tasked the minds of different categories of individuals and organizations, some of whom have written passionately on the subject¹; and to the writer, the present discussion brings to the fore, as distinct from other discourse on the topic, issues relating to the youth in Africa whose voices are hardly, if at all, heard in the discussion and yet these are the leaders of tomorrow. In arriving at this point of departure distinguished from other discussions, the present writer was provoked by his personal experience with many of his students with whom he over the years, shared discussions during lectures on customary/indigenous law and, more recently, in classes discussing indigenous knowledge systems. The strong message that emerged clearly from these interactions is that these university students, like many of their young counterparts in different institutions, societies and/or communities, are ignorant and in need of knowledge about African values generally and the values, challenges and prospects, relating to traditional leadership in particular. This point was recently emphasised by one writer who had this comment to make:

Today, nearly half of the world population is under the age of 25. These 3 billion people – the largest-ever generation of young people – are our future and our present. Each has an indisputable role to play in achieving international development goals, driving economic and social development, and shaping the course of history. Yet around the world, young people are all-too-often unable to make critical choices that impact their future. We hear it straight from the young

¹See eg the following different authors on various topics and their comments:

Mtimkulu 'Traditional leaders and the Constitution', available at <http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=11615> (accessed 2013-01-03);

Logan 'Traditional leaders in modern Africa: Can democracy and the chief co-exist?', available at: <http://www.gsdr.org/go/display&type=Document&id=3153> (accessed 2013-03-15); Le Fleur and Jara 'Traditional leadership in South Africa – Facing the contradictions and embracing the realities', Unpublished Paper presented at a Goedgeacht Forum held from 09-12 February 2012 Johannesburg, South Africa; Meer and Campbell 'Traditional leadership in South Africa' A transcript of a meeting between President Thabo Mbeki President of South Africa (as he was then) and the Amakhosi of KwaZulu-Natal held on 24 January 2000; Ashton 'Traditional leaders in South Africa: Custom and tradition in a modern state?' (2010) publication of The South African Civil Society Information Service; Cele 'Discussion Paper on the role of traditional leaders in democratic South Africa' A Paper presented to the Conference on Traditional Leadership hosted the Department of Cooperative Governance and Traditional Affairs (COGTA) held in 2011 in Durban, South Africa – to mention but a few.

people, particularly the adolescent girls and the young women we work with every day – they are unable to access the information and services they need ...²

The significance of the above statement to the present discourse needs no over-emphasis. But while the reasons for too little, or a lack of, knowledge on the part of the youth vary from society to society; the need, therefore, arises to urgently address the challenge of ignorance and to ensure that the youth are able 'to access the information and services they need' because they are 'our future and our present'. That explains the importance attached to the present discussion aimed not only at providing access to information (an opportunity as yet apparently lacking) about traditional leadership but, more importantly, engaging the young by provoking their thoughts towards formulating new ideas leading to the emerging challenges of and possible prospects for traditional leadership especially in the context of Africa generally and South Africa in particular. In the final analysis, and this constitutes the hypothesis of this research, the writer contends that the youth of today have to be informed and be consulted fully about the importance and role of traditional leadership within the African value system of governance so as to enhance their knowledge and gain a better understanding of African values, traditions and practices on traditional governance in the context of modern democratic debates in Africa. So long as traditional values of good governance are all too often branded as archaic, primitive and irrelevant to modern democratic African states, including South Africa (chosen as the case study of this research), the need for information and for soliciting innovative ideas from the youth remains greater than ever before.

In directing the debates to address the above hypothesis, the following heads of arguments will be highlighted, in the belief that they can, and will, generate more arguments in supporting the contentious issues in the hypothesis:

- Understanding traditional leadership in the context of African values and practices;
- Exploring important milestones on the road to the current status and role of traditional leadership in South Africa;
- Analysing the legal and social dimensions of the emerging challenges;
- Establishing the diverse prospects; and
- Proposing the direction towards innovative ideas to enhance African values among the youth.

Each of the above heads of argument will be discussed *seriatim*, starting with conceptual issues relating to traditional leadership in African states and communities. The critical point of research to note at this early stage is the methodological approach which will deal first with accessibility to information

²Sheffield in the *New Vision* (one of 'Uganda's Leading Daily' Newspapers) (2013-09-26) at 14.

provided by this research, followed by identification of challenges to which the youth will be invited to offer innovative ideas thereby enhancing their knowledge, recognition of and appreciation for African values.

2 Understanding traditional leadership in the context of African values and practices

The best starting point for an understanding of traditional leadership and African values systems requires that we fall back to the basics, namely: the acknowledgment of the role of indigenous knowledge systems (IKS) as a critical factor for socio-political and economic development of any society. This was particularly true in pre-colonial Africa when IKS was in its purest form and practice and devoid of any influence from Western Europe. In that context, indigenous knowledge (IK), as commonly understood then, and even more so today, refers to 'the complex set of knowledge and skills including practices and technologies existing and developed around specific conditions of populations and communities indigenous to a particular geographical area'.³ It embodies not only knowledge and skills but also innovations, experiences and insights of indigenous people in their respective communities; it is accumulated over the years and applied to maintain and improve their livelihood; and it is the basis for decision-making in every aspect of peoples' lives including their approach to all sorts of social systems and activities.

With particular reference to indigenous knowledge systems, it is understood to be a phrase which merely means the processing of the stated indigenous knowledge or the application/ translation of that knowledge into action for human use for existence, survival and adaptation in a variety of environments. They are, indeed, technological systems which change with the environment and are not only passed down from one generation to another but are also closely interwoven with people's cultural values.⁴

³See *Guide 2005: The NRF focus area programme*, available at <http://www.nrfonline.nrf.co.za> (accessed 2013-11-23) in which this definition of IKS was provided within the context of IKS as one of the focus areas for researchers. See also: United Nations Educational, Scientific and Cultural Organisation (UNESCO) (s.d.) 'Best practices in indigenous knowledge', available at: <http://www.unesco.org/most/bpindi.htm> (accessed 2013-11-28) where several definitions were explored including one which states that IK is the knowledge belonging to specific ethnic groups and that such knowledge is unique to a given culture or society and that it is the knowledge that people in a given community have developed over time and continue to develop based on experience, often tested over centuries of use, adapted to local culture and environment and that it is dynamic and changing.

⁴For more details on the concept and application of indigenous knowledge, see the following: Odora-Hoppers *Towards a philosophy of articulations: IKS and the integration of knowledge systems* (2002); Mosimege 'National priorities in indigenous knowledge systems: Implications for research and curriculum development' 2005 (4)1 *Indilinga* 31-37; and Senanayake 'Indigenous

As applied particularly in Africa, IKS has recently not only come to prominence but has received increased interest and witnessed the development of research policies and legislative frameworks because of its emerging role for poverty alleviation and rural development. Traditional leadership and good governance are, therefore, interwoven to constitute a core of knowledge systems that are instrumental to and catalysts of socio-economic development for the rural poor.

More particularly, the link between indigenous knowledge systems, traditional leadership and African value systems can be better understood and appreciated by the fact that indigenous knowledge, as discussed above, is the basis for all local community decision-making processes or actions. Whether one is dealing with indigenous processes of governance, or with application of the value systems upon which those processes of governance are buttressed, or with the indigenous laws which regulate those processes, or the socio-economic processes of development *et cetera* – they all hinge/ depend on how much the society concerned embraces that knowledge. Indeed, as some authors have observed, ‘indigenous knowledge can be looked at as an all-inclusive knowledge which covers technologies and practices that have been and are still used by indigenous and local people for existence, survival and adaptation in a variety of environments’.⁵ What this means is that within the system of indigenous knowledge, one has to fully acknowledge that traditional leadership and African indigenous value and legal systems are all driven by that set of African of knowledge systems as briefly explained above.

With the above background, and in the context of African indigenous knowledge systems, the term ‘traditional leadership’ (and whatever similar phrases or terms are used) has a variety of meanings, depending on whatever role and relationships were imposed on them, particularly by the colonial and post-colonial administrations.⁶ Essentially all these phrases or terms refer to a ‘ruler’ or a ‘leader’ who is recognised as such. Historically, although there are many ways in which the institution has evolved over the years, most people in

knowledge as a key to sustainable development’ 2006 (2)1 *Journal of Agricultural Sciences* 45-51.

⁵Seeland (2000) ‘What is indigenous knowledge and why does it matter today?’ in Seeland and Schmitthusen (eds) *Man in the forest* 33-47. He is also cited by Materechera and Koitsiwe (2013) ‘Implementing the Bachelor of Indigenous Knowledge Systems (B.IKS) curriculum at the Mafikeng Campus of the North West University: Experiences and lessons’ in *Proceedings of the 40th Annual International Conference of the Southern African Society for Education* 223.

⁶Apart from the phrase ‘traditional authority’ commonly used during the colonial and apartheid eras, the terms most often used in Africa to refer to ‘traditional leadership’ include king, paramount chief, regent, chief, elder – all of which refer to a leader or ruler either of a nation (eg, King of the Zulus) or the head of a tribe (eg, Chief of the Pondos) or the head of a clan (eg, the Elder from Moruleng Village).

Africa can easily testify to whom the term 'traditional leaders' refers because of several important characteristics which include the following:⁷

- They occupy high political and social posts of leadership (king, chief, etc) by virtue of a hereditary claim acknowledged by their community;
- They enjoy tremendous prestige, power, rights, privileges and authority over their subjects for whom they represent special status and identity;
- They are the seat/ depository of all cultural systems and exercise all powers connected with cultural activities on behalf of their subjects for which they enjoy special popular support;
- They command the highest degree of respect and legitimacy in their respective communities;
- They represent their communities in their relationship with outside groups;
- They are the embodiment of indigenous laws and as such preside over the tribal council, tribal assembly and tribal courts;
- They are the embodiment of unity, peace and solidarity among their subjects and during times of conflicts, they are also the commanders-in-chief; and
- They are the direct link with the ancestral spirits of the tribe;
- They hold their positions of power not because of personal competence, knowledge or training, but rather because of such characteristics like family descendants, age, gender, *et cetera*;
- They owe their allegiance to the boundaries and structures created by tradition;
- Other persons belonging to the lineage of chiefs also enjoy rights and status which ordinary 'commoners' do not have.

Although the above characteristics may be contested on the grounds that they have not undergone the test of exhaustive empirical research, they nevertheless reflect the general opinion and experiences of several community elders who were approached on the subject of their validity in the communities they come from.⁸

The context of African values and practices referred to in the sub-topic above, are equally important in understanding issues of traditional leadership because of the role they play in ensuring good traditional governance by these traditional leaders. These roles are buttressed upon certain African values. To appreciate the critical relevance of these values, one needs to elaborate some of their important elements. In the first place, although it is acknowledged that *Ubuntu* is founded on diverse forms and nomenclatures in many societies in

⁷For further explanation see Olivier *et al Indigenous law* (1997) 4.

⁸Even some of the students who were asked about their experiences in the local communities from which they hail confirmed a common recognition of many of these characteristics.

Africa, what exactly constitutes the concept may vary from one society to another. Nevertheless, the concept of *Ubuntu* as generally understood in most African societies is essentially associated with God's presence and manifestation among human beings. In that respect, it has been argued that Africans believe that anyone who has *Ubuntu* understands the value of human life and will use her/ his abilities for the good of the common cause; that *Ubuntu* teaches Africans love of oneself, love of others and respect for their belongings; to help the community to achieve communal goals leading to the common statement among the Bantu that '*umuntungumuntungabantu*' – translated broadly as 'I am because we are' or 'a person can only be a person through others'. While this principle remains at the heart of all policies and practices of all indigenous knowledge systems of Africans, the final conclusion among most Africans is that the principle sets the standards of behaviour and the value systems against which all human activities are measured.

The discussion so far has attempted to mainstream the three aspects of the above understanding, namely the aspects of IKS, of African values (*Ubuntu*) and of traditional leadership, all of which combine to strengthen the understanding of traditional leadership because of the interface between those three aspects. The critical significance of IKS to traditional leadership is its fundamental link to indigenous culture just as much as the existence of the link between traditional leadership and culture. In the same way, culture which is the foundation of both IKS and traditional leadership is buttressed by *Ubuntu* which establishes and guides cultural values. With culture as the base line and the common denominator in all three aspects, each aspect interfaces with the others and strengthens them when it comes to the nature, characteristics and application as is clearly illustrated in the case of traditional leadership. The strength of this argument is supported by the common view among Africans that a social group that is organized along the lines of traditional authority is one which relies heavily upon traditions, customs, their underlying values and habits. They, in turn, are guided by those cultural values in order to regulate human behaviour, to distinguish right from wrong, and to assure sufficient stability, solidarity and peace in order to allow the group to survive under all changing circumstances of the environment.

In the final analysis, an effort has been made in the above discussion to explain why traditional leadership is best understood within the context of the other two complementary aspects (*Ubuntu* and traditional legal system) thereby clarifying the understanding of traditional leadership in its nature, characteristics and application or use. What now remains is to test how the cultural values (*Ubuntu*) underlying the status of traditional leadership and applied under indigenous knowledge systems or technologies have been used over the years in South Africa to the stage of the current position where it now has become so

contentious. In the next part of the article an attempt will thus be made to provide the answer.

3 Exploring important milestones on the road to the current status and role of traditional leadership in South Africa

3.1 *The origin and nature of traditional leadership*

Recent research throws more light on what has been said on traditional leadership by making an interesting observation on the origin and nature of traditional leadership in Africa and stated that pre-colonial Africa was a mosaic of different cultures and linguistic communities consisting of different African population groups with different languages, cultures and traditions which were governed by tradition and not by elected leaders; that the philosophy underlying that origin was that the leadership was linked with God; and that with reference to societies, leadership was a social contract in which society needed strong leadership that required no special training.⁹ The aspect of the point of interest in this extract is the deeper insight into the nature and characteristics of traditional leadership in pre-colonial Africa.

To provide more light on the characteristics of pre-colonial African leadership, another writer had this to say: '[T]heir pedigree qualified them for office. Nor did they have any precise defined powers over their subjects; the ruler's authority was both diffuse and all-inclusive and was not separated into executive, judicial and legislative powers.'¹⁰ The new point to note, therefore, is that during the pre-colonial era, African social groups were organized along the lines of traditional authority and relied heavily upon traditions, customs, habits and routines in order to regulate human behaviour, to distinguish right from wrong and to assure sufficient stability to allow the groups to survive. To such societies, whatever had come before was assumed to be the way things should be, either because they had always worked that way or because they were sanctified by higher powers in the past. In that context, those who held positions of power in systems of traditional authority typically did so not because of personal competence, knowledge, or training. Instead, leaders held their positions based upon well-defined characteristics like age, gender, family, etc. At the same time, however, the allegiance that people owed towards authority figures was very much personal rather than towards some 'office' that a leader held. Traditional

⁹Khunou *A legal history of traditional leaders in South Africa, Botswana and Lesotho* PhD thesis (North West University, Potchefstroom Campus) (2006) 7.

¹⁰Bennett 'Traditional leaders: Indigenous government and colonial intervention' in *Human rights and African customary law* (1998) 66-67.

leadership also expressed a culture of patronage and patriarchy perpetuated by given spiritual authority handed down by the ancestral spirits of hereditary clan leaders, meaning that power belonged to the hereditary leaders. According to many writers, therefore, these and other qualities of traditional leaders and governance characterised the period prior to the sight of European white settlers in 1652 in the case of South Africa.

3.2 *The important milestones*

But all the above changed with colonialism. Typical of this paradigm shift, on the one hand, was the fact that the Dutch, the first settlers at the Cape, maintained the *status quo* with insignificant intervention in the established system of governance in the area of occupation, now commonly referred to as The Cape Colony. On the other hand, however, the British who took the reins of power and administration in the Colony in the late 19th century introduced the policy of 'divide and rule'. In terms of this policy – as consolidated and legitimized by the South African Act of 1909 – the control and administration of 'native affairs' was placed squarely under the Governor-General as the Chief Administrator of the Colony. This was soon followed by the Native Land Act of 1913 which not only established the 'native areas' for the blacks but ensured that 'direct rule' was imposed on previously autochthonous rulers, a deliberate undermining of the legitimacy of the traditional ruler. The result was the creation of an administrative system of governance which cut across tribal boundaries and, more importantly, reduced the authority of the tribal rulers.

Within the above paradigm shift, not only did British colonial rule obscure the long-standing and genuine characteristics of traditional governance that had for generations existed in the region, but even influenced the terminology used to refer to those traditional leaders – ranging from king, chief, traditional leader and elder. For example, among peoples where the traditional leaders had supremacy over their subjects, like among the Swazi, Sotho and Zulu, the colonial masters called them 'kings'. But where central control was weaker, as was the case among the Xhosa, the term used to refer to them was 'paramount chief' leading to the indiscriminate use of the term 'chief'.¹¹ The point to note is that whatever the terminology used by the colonial rulers, most black Africans would know who their 'traditional leaders' were given the general characteristics referred to in paragraph 2.1 above.

Another notable milestone in the paradigm shift was the introduction of the Black Administration Act of 1927, characterised by important provisions influencing traditional governance.¹² In the first place, the Act applied broadly and cut across 'native areas'. Secondly, it was introduced with the aim of establishing

¹¹Bennett (n 10) p 66.

¹²For details see Olivier (n 7) 190-191.

a national system for the recognition and application of customary law. Thirdly, it not only provided for the recognition, appointment and removal of chiefs and headmen, but also vested them with specific administrative roles and duties in the society. Fourthly, it also provided for the establishment of traditional courts headed by chiefs and headmen in addition to creating the hierarchy for the traditional courts. What makes the Act a milestone was that it presented, for the first time, a challenge to the legitimacy of traditional leaders in terms of their status, political authority and role, and to their relationship with their subjects. The Act started to corrode the institution of traditional leadership and its procedures of governance including processes of accessibility, decision-making based on participatory consensus, and other qualities creating greater harmony and unity among subjects. This type of negative intervention was to be reinforced by what happened during the apartheid era as discussed below.

Indeed, the paradigm shift in the colonial treatment of traditional leaders paled into comparison with what transpired during the apartheid era as clearly emphasised by Cele:

From the early 1950s under the apartheid government, the development of legislative and administrative structures in the Bantustans saw the traditional leaders used in increasingly cynical ways and implicated chiefs even more deeply in apartheid government ... (whose) power of patronage was encapsulated in its power to depose and install chiefs and it was an effective tool in implementing apartheid policies in rural areas ... traditional leaders increasingly turned to the government rather than their subjects for support. State recognition became more vital for the chieftaincy than popular support. The apartheid system turned chiefs to civil servants, to be hired, fired, paid and, if necessary, created by the government.¹³

The significance of the apartheid system's negative impact on traditional leadership was that it disempowered the traditional leaders and rendered them puppets of the apartheid regime. The leaders had no real authority except to serve the system in return for income, without any legitimacy and authority over their subjects, thereby losing the status and role established by custom. Writers like Bank and Southall observed that the greatest reduction of authority took place in the judicial sphere whereby no chief nor headman was permitted to decide any criminal or civil case; they no longer had the necessary powers to enforce their decisions; and any litigant not satisfied with the decisions of the chiefs could bring their cases to the magistrate's court where it was heard *de novo*.¹⁴ The end result was the creation of the Bantustan system of 'separate

¹³Cele (n 1) 5-6.

¹⁴Bank and Southall 'Traditional leaders in South Africa's new democracy' (1996) *Journal of Legal Pluralism* 410.

development' based on the Bantu Authorities Act of 1951 and this Act applied throughout the apartheid regime. Much as the policy behind the Bantustan system was to grant to chiefs certain executive responsibilities, the overall effect of this 'grant' was the massive erosion of the legitimacy of traditional leadership.

Eventually local resistance to apartheid started to build up as far back as the 1990s and it grew to the extent that traditional leaders, after realizing that the imposition of the Bantustan system was meant to corrode chieftainship as an institution, joined forces to combat apartheid. Notable among those chiefs who spearheaded the resistance was Paramount Chief Victor Poto of Western Pondoland who, in 1963, led the resistance against the imposition of 'separate development' upon his territory. The momentum of the resistance became political with the suppression of the African National Congress (ANC) and evolved from opposition to the Bantustan programme to politics of liberation led by the ANC. This was followed by the formation in 1987, and subsequent official launch, of the Congress of Traditional Leaders of South Africa (CONTRALESA) with the primary aim of restoring the dignity, reverence and respect to the ancient institution of chieftainship that had been manipulated and abused by the apartheid rulers.¹⁵ The desire for the achievement of this objective conveniently afforded the opportunity for CONTRALESA to join the ANC as important national political players. To evidence this common agenda with the ANC, in 1986 when the legal and constitutional committee of the ANC produced a set of constitutional guidelines intended to provide the fundamental principles of a new democratic South Africa, it provided in the guidelines that hereditary rulers will conform 'with principles of democracy, embodied in the Constitution and its Bill of Rights and consequently, all inequalities, especially that between men and women, inherent in the institution (of traditional leadership) had to be abolished'.¹⁶ Their role as important national political players is one of the reasons the members of CONTRALESA have always argued that they need representation at the national level either in a national house of chiefs or through the direct involvement of chiefs in the Senate.

Despite the above-mentioned burning quest and aspirations, the subsequent discussions which followed and resulted in both the Interim Constitution of 1993¹⁷ and the Final Constitution of 1996¹⁸ did not quite bring home all the fruits they had struggled for, as discussed in the subsequent sections.

¹⁵*Id* 416.

¹⁶Nthai (2005) 'Constitutional and legislative framework for traditional leadership in South Africa' in *The seventh conference on traditionalism, political parties and democratic governance in Africa* 5.

¹⁷200 of 1993. See particularly s 181 and Schedule 4 of the Interim Constitution, but more specifically s 181(1).

¹⁸Constitution of the Republic of South Africa, 1996 (the Constitution).

3.3 *The current status and role of traditional leadership*

It is generally acknowledged by most writers on traditional leadership and governance that the current status and the current role of traditional leaders are based on the 1986 constitutional guidelines, the principles entrenched in Schedule 4 and Section 181 of the 1993 Interim Constitution and Chapter 12 of the Final Constitution of the Republic of South Africa, 1996. While the 1993 Interim Constitution favoured traditional leadership by constitutionalizing not only the recognition of the institution but also the indigenous law under which it was to operate, the Final Constitution of 1996 provides for the continued authority and functioning of such leaders in accordance with traditional law, within the broader legal framework, and for traditional leaders to participate at local government level. It also provides for the establishment of a Council of Traditional Leaders.¹⁹ From then on, a number of pieces of legislation have been enacted to give effect to the provisions of the Final Constitution. This has taken the form of regulating the scope and degree of traditional authority and its functioning according to traditional law and practices. For that purpose, the most important legislation includes:

- The Traditional Leadership and Governance Act 41 of 2003 aimed at giving clarity and substance to the role of traditional leaders in South Africa. It was amended in 2010 to provide, among others, for the recognition of kingships and queenships; recognition of principal traditional communities; regulation of the establishment of traditional councils – thus acknowledging the position of traditional leaders not only within the local government but also in the provincial and national spheres of government.²⁰
- Communal Land Rights Act²¹ makes traditional councils supreme structures when it comes to land allocation, thereby giving traditional leaders substantial and unprecedented powers.
- The National House of Traditional Leaders Act 22 of 2009 was established in the national sphere and in some provinces to carry out an advisory role in government.
- The Traditional Courts Bill²² (withdrawn from Parliament in 2014) aims broadly to provide traditional leaders with powers to act as courts to resolve customary disputes. The three main justifications for this Bill are: to recognise the traditional courts; to give powers to traditional leaders to deal with disputes; and to create access to justice.

¹⁹Sections 211 and 212, respectively.

²⁰See especially s 20 of the Act.

²¹Act 11 of 2004.

²²First introduced in Parliament in 2008 and subsequently in 2013 and 2014, but was again withdrawn in February 2014.

- The Department of Cooperative Governance and Traditional Affairs (formerly the Department of Provincial and Local Government) is one of the ministries of the South African Government. It is responsible for the relationship between the national government and the provincial governments and Municipalities and for overseeing the traditional leadership of South Africa's indigenous communities.
- Other relevant institutions include: Traditional Councils, Houses of Traditional Leaders, The Commission on Traditional Leadership Disputes and Claims.

The above, together with other related legislation, rules, regulations and related institutions put in place the current status and role of traditional leaders in South Africa. Indeed, as duly observed by Oomen:

From the days of colonialism, through apartheid and up into the present, traditional rulers have taken for granted the rights to rule and there has been little to convince them, or their tribes, otherwise. This results in a large number of ethnic communities who subscribe to the authority of traditional leaders. In terms of relevance on broad level, research has shown that up to eighty percent of people living in rural areas still support and acknowledge chiefs and tribal leaders.²³

Given the extent and complexity of the current debates on the concept and application of democracy in the African countries emerging from the yoke of colonialism that characterized Africa since 1950, traditional leadership and democracy have not been spared the onslaught of those debates. South Africa with its twenty years of democracy and as one of the youngest democratic states has experienced one of the most heated debates when it comes to the burning issue of traditional leaders and democracy. The particular context of these debates relates to the introduction of democratic local government and the establishment of municipalities across the country by the (new) South African constitutional dispensation (referred to above). Since then, South Africa has joined others in Africa including governments, politicians, NGOs, donors, parliamentarians, academics, researchers, development institutions and many other interested citizens who have been grappling with the challenges associated with the democratisation of the political systems in their various countries.

In the case of South Africa, the emerging challenges were ignited in 1988 by the Constitutional Guidelines of the ANC in their quest for a Democratic South Africa when they stated that the institution of hereditary rulers and chiefs will have to be transformed to serve the interest of the people as a whole in conformity with the democratic principles embodied in the Constitution. This policy direction was

²³Oomen 'Walking in the middle of the road: Peoples' perspectives on the legitimacy of traditional leaders in Sekhukhune, South Africa' (2002) Paper for Research Seminar held in January 2002 at the African Studies Centre in Leiden.

given effect by the 1993 Interim and 1996 Final Constitutions as discussed above. However, what followed the implementation of the policy insofar as the introduction of democratic local government and the establishment of municipalities across the country were concerned, gave rise to the following questions challenging the implementation strategies, namely: are traditional leaders relevant in present-day democratic South Africa? Are they compatible with a modern democracy, that is, can democracy and traditional leadership co-exist? Is traditional leadership's existence legitimate? If so, it is important, that is, has it not outlived its importance? As earlier stated, these are some of the emerging challenges that have tasked the minds of several groupings of members of society in Africa generally and in South Africa in particular. The subsequent paragraphs will attempt to analyse some of these challenges with a view to finding solutions to them. For that purpose the analysis will be discussed under two main and important dimensions: the legal dimension followed by the social dimension, starting with the former.

4.1 The emerging challenges of a legal nature

4.1.1 Constitutional dimensions

The most important aspects of the constitutional dimension are the following: In the first place, there are questions often raised about the constitutionality of traditional leadership. Some of the arguments raised in that respect are:

- that the institution should be rejected, because, as a matter of principle, constitutional democracy is driven by the majority but, in the case of traditional leadership, the institution is undemocratic, therefore unconstitutional in a constitutional democracy like South Africa. Examples of the undemocratic aspects include the traditional practice of the principles of hereditary political structures associated with traditional leadership and the principle of primogeniture both of which are deeply entrenched in and generally associated with traditional leadership;
- that traditional leaders and their councillors have generally been men, hence the implication and evidence of male dominance which violates the principle of equality entrenched in Chapter 12 of the South African Constitution;
- that by failing to be specific on the role of traditional leaders in the local sphere of government, the Constitution relegates the institution of traditional leadership to a level far inferior to that of elected councillors – a constitutional provision thoroughly detested by many traditional leaders who argue that the Constitution accords far more power and prestige to municipal councils whose functions have been clearly spelled out. By so doing, the argument continues, the Constitution lacks equality by discriminating against traditional leaders whose functions are considered too backward and

primitive for recognition and elevation to the same Constitutional level as those of municipal councillors.

The above are but some of the contradictions introduced by South Africa's new constitutional dispensation, thereby bringing into sharp focus the fact that:

Even though our Constitution is supposed to reflect sufficient consensus among South Africans about what country we envision for ourselves and what binds us as a people, we remain confused about the meaning and content of our basic law [the Constitution].²⁴

This same point has been emphatically driven home by another author who in 2013 argued that the place and role of traditional leaders in South Africa's new democratic political system have not been clearly defined in the Constitution.²⁵ According to this writer:

A better effort could have been made to try to accommodate traditional leaders in the country's Constitution. As it stands, the Constitution leaves the traditional leaders in the dark about their powers and future role, much to the chagrin of the Congress of Traditional Leaders of South Africa (CONTRALESA) which claims to represent 80 per cent of the country's traditional leaders.²⁶

4.1.2 *Legislative dimensions*

By the time legislation, as commonly understood, came to be introduced and applied in South Africa to the present day, a number of different pieces of legislation have been directed towards traditional leadership. For that reason, the number of the emerging challenges can be as many as the laws themselves, depending on how one critiques them. Given their number, only a few of these effective laws will be discussed in order to illustrate the nature and characteristics of their flawed impact, and to demonstrate specific emerging challenges in their attempts to regulate the status, rights and obligations (role) of traditional leaders. These include:

(a) Legislation evolved in colonial and apartheid South Africa

The most notable early colonial Acts in South Africa were of British origin, namely, the South Africa Act of 1909, the Native Land Act of 1913 and the Black

²⁴Nkasawe 'Comment: Traditional leadership is part of us' *Mail and Guardian* (2012-05-24) <http://mg.co.za/article.2012-05-24traditional-leadership-is-part-of-us> (accessed 2014-06-20).

²⁵See n 1 where the argument was advanced by Mr Phil Mtimkulu in his article entitled: 'Traditional leaders and the Constitution'.

²⁶*Ibid.* In the same article, he estimated the number of traditional leaders in South Africa to be approximately 800 assisted by 10,000 traditional councillors and over 16,5 million rural people who live under the jurisdiction of traditional leaders.

Administration Act of 1927. Most writers who have analysed their impact on traditional leadership have argued against these legislative enactments first because these Acts sowed the seed for undermining the legitimacy and independence of traditional leaders. Secondly, they constituted the first design of official policy to bypass and weaken the authority of traditional leaders; and thirdly, they introduced an administrative system that cut across tribal boundaries. The impact of all these new approaches to traditional governance is the challenge faced today as traditional leaders no longer have full authority over their subjects in their local areas.

The apartheid regime then followed and the introduction of the separate development policy which was legitimised by the Bantu Authorities Act of 1951. The most notable aspect of this legislation was to officially incorporate the traditional system of chieftainship into the apparatus of the apartheid state.²⁷ Explaining the impact of the challenge introduced by this new political structure to the African social fabric to the present day, Cele emphatically concluded that the emerging colonial and apartheid system of governance meant that:

... the traditional leaders increasingly turned to the government rather than to their subjects for support. State recognition became more vital to the chieftainship than popular support. The apartheid system turned chiefs to 'civil servants', to be hired, fired and paid, if necessary, created by the government. This meant that traditional leaders became puppets of the apartheid system.²⁸

Whether the impact of this kind of system of governance is still felt to the present day is a question taxing the minds of many researchers on the subject.

(b) Legislation evolved in post-colonial/post-apartheid South Africa

Implicit in South Africa's constitutional dispensation and the modern democratic values entrenched in it is the fact that traditional leadership is widely accepted in South Africa, as it is in many African and other countries the world over. Traditional leaders continue to play very important roles in achieving communal harmony and specifically in the development of communities and the larger society, and any debate about their status, rights and obligations faces the challenge not of whether they should continue to exist or not, but how can the constitutional values relating to their existence be given effect. For that reason, a few of the legislative provisions enacted to give effect to the pertinent constitutional provisions and to bridge the gap between the colonial and apartheid laws that tried to exploit traditional leadership to further their objectives will be examined. Critical legislation that has attempted to undo the legacy of the colonial and apartheid legislation includes the following:

²⁷For further details of the impact of this new policy, see Bank and Southall (n 14) 412-415.

²⁸Cele (n 1) 5-6.

- the Traditional Leadership and Governance Framework Act of 2003;²⁹
- the Communal Lands Rights Act of 2004;³⁰
- the National House of Traditional Leaders Act;³¹ and
- the Traditional Courts Bill of 2008.

In general, these legal instruments were meant to regulate traditional rights and governance and to create an enabling legislative and regulatory environment for dealing effectively, efficiently, holistically and in a sustainable manner with traditional affairs. For that purpose, the Department of Traditional Affairs was established in 2010 (now all lumped together in the Department of Cooperative Government and Traditional Affairs) to assist, among others, the institution of traditional leadership to transform itself into a strategic partner of government in the development of communities.³²

Notwithstanding the noble objectives of the above pieces of legislation, the plethora of currently available literature abounds with all kinds of criticism challenging their expected effectiveness, efficiency, their expected holism and sustainability within the context of traditional matters. The very fact that the Communal Land Rights Act of 2004 was struck down as unconstitutional by the Constitutional Court in 2010³³ on grounds of not only failing to serve the very purpose for which it was enacted but, more importantly, of giving traditional leaders more wide-ranging powers than was anticipated in the Act; and the fact that the Traditional Courts Bill has been withdrawn from Parliament more than once are all indicative of the challenge faced in the application of the various Acts. Issues of gender, abuse of power by traditional leaders, primogeniture, heredity, culture and failure to embrace change have continued to negatively affect the rights and lives of rural communities, particularly women – hence the need to examine the social dimensions of these challenges.

4.2 The emerging social dimension of the challenges

The social dimension envisaged as emerging challenges range from historical, political, and cultural challenges to traditional leadership. Many writers who have considered and argued about social challenges have focussed those emerging challenges on social factors and have identified issues of history, religion, culture, politics *et cetera* as the main causes. For example, Cele argues that traditional leaders claim legitimacy based on history and religion in the following way:

²⁹Act 41 of 2003.

³⁰Act 11 of 2004.

³¹Act 22 of 2009.

³²For general information about cooperative government and traditional leadership see the official website of the new department <http://www.cogta.gov.za> (accessed 2014-06-24).

³³See *Tongoane v Minister of Agriculture and Land Affairs* 2010 8 BCLR 741 (CC).

historically, traditional leaders 'claim political authority derived from the pre-colonial period (and since then they) are seen to represent "indigenous, truly African values and authority"'; and religious because they 'claim links to the divine, whether a god, a spirit or the ancestors'.³⁴

In the final analysis, and because of the social dimension, two important consequences have emerged each with its own challenges. In the first place, there emerges an expectation that in the national sphere, traditional leaders should be limited to cultural, ceremonial or (frequently undefined) 'advisory roles, but at communal level they should share with local government officials real power over issues like land, tax revenue, resources, responsibility for dispensing justice and influence over community activities and decisions'.³⁵ These social consequences have both turned out to be very contentious. The other resulting social consequence is what many authors characterise as the division of society into two extreme positions or schools of thought, namely: 'the traditionalists' and 'the modernists'. According to the arguments of the former school, the institution of traditional leaders and its procedures of governance are not only a simpler form of government with true representation of their people, but also a more accessible, more respected, better understood, and more participatory form of governance. The latter, on the other hand, argue that traditional authority is chauvinistic, authoritarian and an increasingly irrelevant form of governance.³⁶

What the above arguments demonstrate is the fact that despite the various forms taken by the emerging social challenges, there are a few that stand out as critical in the debate about the role of traditional leaders in a modern constitutional democracy like South Africa's. Whatever the dimension for the challenges, whether, constitutional, legislative or social, today many questions on traditional leadership remain unanswered. They include:

- Are traditional leaders relevant in present-day democratic Africa?
- Are traditional leaders compatible with democracy?
- Are traditional leaders important?
- Are traditional leaders legitimate in post-colonial Africa, given that some of their inherent characteristics are unconstitutional?

From the context of the present discussion, the above questions should be addressed bearing in mind modern concepts of democratisation, constitutionalism, good governance and African values, cultures and traditions such as *Ubuntu*.

³⁴Cele (n 1) 7.

³⁵*Id* 4.

³⁶Keulder 'Traditional leaders and local government in Africa: Lessons for South Africa' (1998) Unpublished Paper by Human Sciences Research Council 3.

5 Establishing alternative prospects for traditional leadership in South Africa: The three-pronged approach

Having explored the main concept, characteristics and role of traditional leaders in Africa, with South Africa as a case study, and having further established the challenges facing the role of such an institution in modern democracies like South Africa, the arguments have reached that space in the discussions where alternative prospects need some discussion to complete the picture of a holistic understanding of what traditional leadership is all about in past and present Africa before considering what the future offers.

As regards solutions to the above-mentioned challenges, most writers on the topic point to two extreme and deeply entrenched positions with one middle course as discussed below. This represents the three possible alternative prospects ('goalposts') open to those looking for the way forward. An analysis of the three goalposts follows.³⁷

5.1 *Continued existence of traditional leaders as one firm goalpost approach*

Entrenched in this first goalpost are the traditionalists who insist that the strength of relevance, compatibility, importance and legitimacy of the institution of traditional leaders in modern constitutional democracies is based upon such arguments as the following: that traditional leaders are continuing to play important roles in the social and political life of their communities – an indisputable fact and indispensable in African societies; that they hold important responsibilities in managing land tenure, local justice, property inheritance, and implementation of indigenous law as custodians of indigenous values, laws and knowledge systems; that they provide guidance to their communities on matters of culture, cultural events and rituals; that they provide continuity, stability and harmony in addition to providing legitimacy; that they are democratic because they are accessible, better understood, consultative based on consensus, transparent and participatory and provide simpler form of governance; that they are better placed to respond more positively to the demands of service in rural communities; that they have strengths which can be built upon in modern

³⁷For details see <http://sacsis.org.za/site.article/534.1> (accessed 2014-06-25); Logan 'Traditional leaders in modern Africa: Can democracy and the chief co-exist' (2008) *AFRO BAROMETER* Working Paper No. 93 5-6; Cele (n 1) 8 – to mention but a few from the plethora of literature on the various arguments.

democratic societies; and that, therefore, they have important roles to play in the transition to democracy in modern local communities.³⁸

5.2 The total abolition of the institution of traditional leadership as the other firm goalpost approach

Entrenched in this second goalpost are the modernists who insist that the weakness of the relevance, compatibility, importance and legitimacy of the institution of traditional leadership in modern constitutional democracies is based upon such arguments as for example: they are undemocratic because of hereditary practices besides silencing the voices of society, especially women and the youth; that they are unaccountable and dictatorial in governance; that they are irrelevant in modern political systems because their effectiveness is only to be found in local communities; that they are also irrelevant because they are limited and only suitable to cultural, ceremonial and ritual activities in the local sphere of government; that they are unnecessary 'bulls in a kraal' fighting for power in a winner-takes-all battle for the hearts, minds and resources of local communities; that they impede development and that their co-existence with elected municipal councillors in modern constitutional democracies provides proof of the impossibility of cooperation leading to complex and often contradictory positions; and that (as is the case in South Africa) the majority of the chiefs have been so deeply corrupted by the Bantu authorities system that a reversal of rural despotism would be a virtually impossible or, at least, very difficult socio-legal and political task.³⁹

5.3 The mixed approach

This 'inter-entrenched' goalpost (which constitutes a middle course), as proposed by the ANC guidelines of 1988, stipulates that the 'institutions of hereditary rulers and chiefs (traditional leaders) shall be transformed to serve the interests of the people as a whole in conformity with ... democratic principles'.⁴⁰ It is this middle

³⁸Keulder (n 36) 11; Logan (n 1) 3; Ashton (n 1) and also available at: <http://sacsis.org.za/site/article/534.1> (accessed on 2014-06-25); Nkasawe (n 24) – to mention but a few of the sources.

³⁹For additional arguments, see Logan (n 1) 3-7; Meer and Campbell 'Traditional leadership in democratic South Africa' (1997) Unpublished Paper presented to the International Conference on Traditional Leadership in Southern Africa hosted by Konrad Adenauer Stiftung and University of Transkei Umtata, South Africa 10-14; Cele (n 1) 6-9; Bank and Southall (n 14) 410-415 – to mention but a few of the sources.

⁴⁰Details of similar arguments may be found in: Logan (2008) *ibid* 7-12; Mattes 'Building a democratic culture in traditional society' 1997 Unpublished Paper presented to the International Conference on Traditional Leadership in Southern Africa, hosted by Konrad Adenauer Stiftung and University of Transkei Umtata, South Africa, 5; Bank and Southall (n 14) 425-427 – to mention but a few of the sources.

course which has been advanced and used by the ANC during the CODESA negotiations resulting in the provisions of the 1993 Interim and 1996 Final Constitutions providing for traditional leadership, the details of which have already been discussed. What, however, makes the 'middle course' critical to this discussion is the establishment of space between the two goalposts for new ideas as to the nature of what the 'mixed approach' should be. Given that the very constitutional democratic approach advanced by the ANC and given effect to by the various pieces of legislation has been under attack with the several challenges referred to above, the question arises as to what should be the way forward. How should the South African society 'move' between the two goalposts? What is the best way to 'score a goal' between these two different goalposts? Are there no other alternatives to what is provided in the current South African Constitution and related legislation giving effect to its provisions?

The answer to the above question is the challenge confronting the future of traditional leadership not only in South Africa but also in Africa generally. This explains the reason why I plead for innovative ideas especially from the youth – the future leaders of society in Africa. Any society in Africa will get nowhere if the youth do not engage in debates on culture (and on the definition of traditional leadership), and there is a danger that the spirit of the traditional values of culture may die a natural death because no one bothers or cares. People who want to destroy society use culture, the glue that binds society. In essence, this entails an invitation to the youth, in particular, to make a contribution via innovative ideas to enhance the African values to which every African can relate – the focal point of this article.

Towards innovative ideas to enhance African values among the youth
What the above discussion has established is the view that there is a need for the youth in Africa generally and especially those in South Africa to engage in debates relating to African values, the most important of which is traditional leadership and good governance. This view, as earlier stated, is based on the author's experience relating to the ignorance of the youth in matters of African values. To prompt them to participate in that debate, critical issues of the debate have been raised in the above four sub-headings. What is left to holistically assess the future direction of the debate is to challenge the youth to come forward with innovative ideas concerning a complex and contentious topic. One important lesson that has emerged from the discussion, so far, is that the need for knowledge acquisition and dissemination relating to African values to the youth is real and quite disturbing to more 'senior citizens', like the author, who feel that the time has come to sensitise the youth about issues of incorporating traditional and modern processes into learning. There is a dire need to advance critical thinking and analysis for innovation among the youth. No less essential is

the provision of: forums where the youth can express their innovative ideas; support to promote African indigenous knowledge system programmes for the youth; ambassadors of indigenous knowledge at different levels and institutions to market those values; and most importantly, encouragement for research and other capacity building activities to enhance African values among the youth.

The submissions above are but a few of the propositions being suggested for further thought and discussions by the youth in the hope that will develop innovative ideas of their own to enhance African values within the context of the complex and contentious issue of traditional leadership in modern democracies.

Conclusion

The above discussion was based on the hypothesis that the youth in Africa generally, but particularly in South Africa, are seldom involved in debates relating to African values with the instance of African traditional leadership as a case in point. Not only has the discussion exposed some of the values of traditional leadership, but it has also analysed the challenges and prospects with a view to educating the youth on those values and the challenges they present to modern constitutional democracies.

The discussion went further to invite the youth, as future leaders, to come forward with innovative ideas to enhance African values. Obviously many issues have emerged – some of them were discussed at length while others remain untouched. There is, therefore, a need to solicit more opportunities for the youth to acquire more knowledge than provided in this article, just as there is a need to acquire more skills to unearth more information on the African values through strategic collaboration with indigenous knowledge holders, including the traditional leaders themselves; through research assisted by institutions of indigenous knowledge; and through multi-dimensional and pragmatic activities initiated by all stakeholders as regards African values in both South Africa as well as in Africa.