

## Contralesa Round Table with HLP

31 May 2017

(WCPP, Wale Street, CT)

**Attending:** Kgosi Masibi – NEC; Ngcobo – NEC; Sibenya – NEC; Prince Mahlangu – NEC (Sec MP); Princess Pinky Mota – ASC, Kgosi Thobejane.

**Panel:** Motlanthe (KM), Maloka (EM), Shisana (OS), Pillay (NP), Claassens (AC), Damon (MD), Nombembe (TN)

10:11 – KM Introduction and Agenda. Thobejane on Agenda

10:16 – Thobejane: introductions. Apologies – NEC has 39 members, but others are at Indaba

10:20 – KM: mandate of HLP; methodology; provincial visits (incl. KZN and Ingonyama Trust). After all this, feeling was Amakhosi should be heard as well, under the theme question: How do these laws impact on your communities and your job as community leaders?

10:27 – Thobejane: Thanks

\*Invitation from HLP met with mixed feelings. 1<sup>st</sup> Q: Why do we exist? That's the HLP question, to be brutally honest. We were annoyed [I know you won't like this].

\*But on other hand, it's an opportunity to explain ourselves.

= TLship was the only form of governance pre-1652. Governs whole of SA and Africa.

= Settlers brought way of life that reduced us to non-human beings

= Pre-existing stability was disturbed

1898 Malmet Commission

1913 Land Act – land forcefully taken (by the same people who were on a shipwreck and asked for help)

1999 Contralesa National Conference in Potch (Min Hanekom announces CLARA is coming)

We saw it as genesis of bringing back colonial dispossession. Asked Hanekom, Mandela, Mbeki, Zuma. What's wrong that needs to be fixed?

Graves, homesteads but also rivers, mountains and animals – were taken. But CLARA returns only homesteads.

Democracy was achieved by our forebears, but you are pushing away the descendants. That's why our beloved organisation is in shambles. The wealth of SA is in hands of ANC govt politicians, officials.

We've been driven down. You've put Municipalities on top of us. Instead of capacitating us. Councillors imposed on us are there and bring us to our knees.

We may not achieve restoration in our lifetime. You're inflicting pain on us.

African democratic dispensation is the best possible order. [Parliament is 490 for 55 million people. You don't talk well to people. You write to individuals. We use imbizo, phalafala. We've been AUTHORITY now we're COUNCILLORS. Latter is discretionary power, we can be overruled.]

10:44 – Pinky Mota: Thanks (in Sesotho). Answers questions as asked by HLP in the invitation to Traditional Leaders:

Q1: Values

1. Promotion of moral values, culture, all humanity, e.g. initiation schools
  - Elderhood respected (child of the village)
  - Reduce need for police
2. Custodianship of African culture and African customary law
3. Safety of the community
  - People respect TLs
  - Low crime (despite TCB not being enacted)

Q2:

- Ward councillors play our roles
- TLs exercise executive, judicial and legislative powers: that shows their worth
- Foreigners would not be welcomed
- CPF should be TL aligned

Q3: TLGFA

- No, it doesn't work for us. Many Councils not established because no budget
- Govt implements erratically. Not uniform. No money for some Councils. One king gets R56m. Others have no room. One King gets R1bn package
- NHTL not convening since 2012
  - House Act 2009 – meeting biannually

Q4: Current legislation

- TLs affected negatively. Legislation does not address our culture
- Will be worse if SPLUMA comes in
- No guarantee that Govt will implement properly. No service level agreement between Govt and TLs

Q5: Under custom, Traditional Leaders -

- Conduct dikoma
- Conduct customary courts
- Conduct enthronements
- Appoint izinduna

- Declare beginning of ploughing
- Exercise stewardship over environment and nature
- Protect Culture
- Customary law is within their competency

Q6:

1. Land – TLs issue PTOs (residential or business, or for development)
2. Accountability – annual meetings to report financially (i.e., audited statements). This must be compulsory.
3. IDP unclear, process politicised, lost original intention
4. Consultation
  - a. TL and TLC & community at large. But no, only political leaders. Officials bring IDP for endorsement
5. Communal land – Communal Land Act exists but not implemented

Q6 Outsiders

- Anyone, irrespective of origin, allocated land (PTO).

10:59 – Thobejane, wrap up.

11:00 – KM, wrap up: any clarity, follow-up?

Raises: safety of community (despite no TCB) as example

\*OS: what are your views on TCB – given the new revisions

Thobejane – Clarity: Constitution is a problem (sections 211, 212). These provisions exclude fundamentals. No role & function for TLs (must be a mistake).

\*Amend Constitution – give TLs powers & functions. We have no constitutional legitimacy. (Same as being classified as “other courts” – should be “Traditional Courts.”)

Are there any Gaps in current legislation: Yes and No

Yes – e.g. Land restitution – but does not speak about us – we’re “illegitimate children of this democracy.” (E.g. Invites to Depts are picky, whereas TLs cover all depts)

Unity of community, not as in Roman Dutch Law where you are taught to distance yourself as a judge. We are taught to look after everybody.

Mogoeng doesn’t know customary law. The Constitution is praised (**but they don’t replicate it**). \* To us it’s the worst.

Education system tailored to make us hate each other.

TCB:

Obligation of Parliament. For 23 years, Parliament has not complied.

The draft: \* every court has enforcement powers – Traditional courts have no enforcers. (If TL tries to enforce – he goes to jail like Dalindyebo for 12 years). There is no support system for traditional courts.

“The tool box is completely empty. We have nothing to do our work with. We’re candidates for jail, to be prosecuted under a foreign law.”

### Masibi

Constitution is main concern. Too Eurocentric (modelled on US, Canada). Has to be reviewed.

\*Answering OC: Bophuthatswana had the best courts bill.

- TCB is a political doc to appease NGOs. It was rejected, for instance, by North West.
- Scandalous. We’re marginalised.
- My village is over 50k from Mafikeng. Due to travel, court starts at 9:00. Leave @ 2.30pm to be in Mafikeng at 4. No justice. Compare with Magistrate’s Court
- Three weeks ago, inputs to TCB. Rejected totally. Worse than earlier versions.
- Our mistake was to accept Proportional Representation electoral system
- Public participation is a fallacy. Documents in English tabled same day. Outlying villages out of loop.
- TLs are left holding the baby: to give political education to ruling party. Rural people have no clue. Whose responsibility to teach the people?
- Same as with Triple Challenge: no traction in public accountability.

### Maloka

- Questions were not intended to insult. (TL Institution is already in Const).
- In provinces, TLs were mentioned all the time. Answers were frank. HLP Questions were not intended to undervalue TLs
- Trust deficit issue has not been raised. (Between TL and Govt; TL and people). \*Assist the HLP to build trust
- Djibouti has empty prisons (crime resolved at community level)

### Masibi

- Rustenburg hearing. HLP leadership elected. Provincial HTL; only they participated. We felt aggrieved.
- Trust deficit: my village in 2016 (13 Oct), my traditional offices illegally closed down by branch of ANC. Reason: local government elections. 2011 election process deterred. Went well. Except in my village, Councillor imposed 2015. I ran around, to no avail. ANC landslide. We did not recognise Council. It’s about resources – mining (three illegal meetings since Dec with prospectors).
- Institution is undermined by certain politicians who are greedy (they are a minority, but they create perception). e.g. SPLUMA. Same in Phokeng, Moruleng. Night meetings with bo-Rangoane.

- \*Gov seems to intend through legislation to drive a wedge between us and our communities
- We can't evict undesirables
- We have to declare gifts
- Thinking of resigning: but how can you resign from your birth right?

### Thobejane

- Very serious question. Not new. ORT once said TLs are left behind. ANC said "why bring in izimpimpi?" ORT answer: "TLs are in rural areas. Those burnt as izimpimpi are in urban areas. Are they real TLs?"
- Many African states made the same mistake, destroying TL Institution. Now they are trying to revive the institution.
- Why no crime in rural areas? It's not because of fear of jail. It's moral leadership.
- Elective office is an artificial creation. They feel threatened by TLs. \*Legitimacy comes not from land but from the people\*.
- Loss of trust is Govt's work. Gives Senior TL a salary (but not other family members)? Why not pay only Mayor – not Councillors? Treating Institution as individual. That's a mistake. Royal families can't pay school fees by praise, they need money like other officials
- Parliament (and Councillors) undermine traditional leaders, they are not part of it. They didn't recognise TLs as AUTHORITY.
- Harmonising with Councillors: 6000 versus 2 TLs at meetings

### Pillay

- Thanks for the big picture. Thanks. You've asked candidly:
  - Budget (TCB etc)
  - NHTL not meeting
  - Can't you do anything on your own initiative?
- Trust: do you have community support? How do you cultivate such support? Your annual meetings: do you have rewards?
- Answers in writing welcome.

### \*Thobejane

- Budget allocated selectively. No Councils since 2003. What's the reason? We're a white elephant.
- NH. We have 860 TLs in SA. Only R3m budget. Not even enough for the bi-annual meeting. No room at The Inn (but youth, women are always there – main chamber).
- COGTA budget. TLs are a sub-directorate vs Municipalities (20% vs 80% attention).
- Make reporting compulsory (accountability).

### \*Aninka

- Are current laws implemented? Do they need amendment?
- Clarify:
  - What are the lack of implementation problems
  - What are the content problems, e.g. Accountability. What about TKLB?

### \*Thobejane

- TCB needs massive amendment (not cosmetic)
- Section 20 (23 Ministries to give support) None so far
- E.g. 17m grants, 80% are rural poor. But the money is not spent in rural areas (pay points, security, service etc). No employment opportunity.
- Food security at school. Capacitate rural farmers to feed schools. Sustainable, no govt grants.
- Gillooleys traffic interchange in Gauteng is not state land. Belongs to a white man. They pay him rent. Millions per month.

### COMFORT BREAK

12:41 \*TN - Capacity is needed, incl. systematic methods of TL institution to support itself (not depend on State).

Education is key. Capacity to have volunteers (for legal, financial, or research tasks) to keep issues alive – e.g. constitutional issues. (For instance, a 1<sup>st</sup> generation Chartered Accountant was lost to Auditor General to go to his Traditional Authority).

### OS:

- Khoisan, are they part of TLs? (Contralesa?) & “1<sup>st</sup> peoples” demand for land?
- Land, PTOs or Title Deeds or Deed of Alienation (where communal)

### Thobejane:

- Agree with TN. Anything is possible with people with the will to progress. No more shocks. Allocate for homestead, NOT umkhukhu
- Change spending patterns.
- Change of foreign direct investment to direct it to Rural Areas
- When we become successful, we encourage ourselves and others to give back to rural areas.

Khoisan issue: Contralesa conferences always open to inclusive approach. We did not elect them to NEC, but we co-opted Khoi, San, Nama onto NEC.

Land: Basis for existence of TL Institution.

\*Thus, despite forced removals, we are embracing remainder in a communal way. Our problem as Africans is individualism. “We” not “me.” Our 13% has been defended by our forebears. Careful of Title Deeds. People will sell. Banks will repossess.

- Ideally, Contralesa supports communal land approach.
- Link to SPLUMA. Public hearings and consultations are ineffective. Weak attendance. It's for Academics, NGOs, CBOs, speaking in English. What informed the passage of SPLUMA? We were never consulted!
- SPLUMA came in by default. It was illegally brought in. We ask the HLP to note! It will never work for rural areas. Maybe for townships or Sandton.
- If not repealed, it's a danger to stability of this democracy.
- When land was taken, the only competing model was Ubukhosi. When it is returned, suddenly there are new models.

### MASIBI

\*Answer to OS: amend the law which vests communal land in Minister. It makes a mockery of TLs – and makes members perpetual minors. “Usufruct” is the African way for the family that is defined as consisting members have gone before, who are here now, and who are coming hereafter.

- Khoisan problem is massive. At least we have 13% - they have nothing. Legislature made a mistake; govt should make them a separate project.
- Govt: political expediency.
- To Judge Pillay, I have proof; NW Provincial TLGFA TLs get remuneration as public officers, can't bite the hand that feeds them (i.e., Provincial HTL leaders). – The Municipality
- Even provincial Portfolio Committee, they don't understand their job. Only solution is litigation – and we have issues with that.

13:25

KM, wrap up. Thanks to Contralesa. Appreciated.

Proposes: written document from Traditional Leaders (clearly delineate the issues)

5th and 6th Parliament need clear guidance from the HLP recommendations and can be held accountable on that basis.

END