

# Review of Traditional Authority Customary Land Management Practices in Limpopo Province of South Africa

Traditional Authorities have potential to support the processing of modern land developments

## POLICY BRIEF

NOVEMBER 2024

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### ABOUT THIS BRIEF

This policy brief explores the municipal–traditional authority nexus through the lens of land development applications. By focusing on how traditional authorities handle land applications, the brief provides an insight into the dynamics and nuances at this level. The aim is to highlight the complexities and logic in the traditional authority land management and innovations taking place. The policy brief will contribute to ongoing work to increase local authorities to meet their constitutional obligations in land and natural resource management in South Africa.

### SUGGESTED CITATION

Chakwizira, J. and F. Tshivhase (2024) 'Review of Traditional Authority Customary Land Management Practices in Limpopo Province of South Africa'. Policy Brief. Johannesburg: Public Affairs Research Institute.

### AVAILABLE ONLINE AT

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## 1. INTRODUCTION

South African municipalities face complex challenges: inadequate service delivery and housing and land shortages. Service delivery protests, mushrooming informal settlements, rising unemployment and increasing poverty and inequality, require decisive solutions. The blurred lines of local government power and authority create a crisis of expectations and performance outcomes which undermines the land administration and management structures of both central, municipal and traditional governance systems. Consequently, traditional authorities have rapidly released land for housing, business, commercial and other land-use developments without consulting their municipalities or traditional communities. Nor have they considered the municipality, necessary land-planning and development applications, or administration and management processes (Bikam and Chakwizira, 2014; Ndlovu, 2021; Nyuke, Paradza, and Mjoli, 2023).

Land grabs are a common problem in traditional council areas throughout South Africa and result in a lack of land for agricultural activities, grazing livestock and future developments. The outcomes are land-disruptive events and challenging moments for the municipalities who are expected to formalise or regularise them, even when they are in conflict and in violation of approved land-use and planning or zoning provisions. The Spatial Planning and Land Use Management Act (2013) acknowledges that traditional land-use development processes are poorly integrated into formal systems of land-use management<sup>1</sup> and includes provisions that these areas be included as part of Spatial Development Frameworks<sup>2</sup> and as part of land-use schemes applicable to the entire area of the municipality's jurisdiction.<sup>3</sup> However, a detailed exposition on how the decision-making hierarchies and systems of traditional authorities should be included in practice is not provided and remains subject to continuing debates (De Visser, 2005; Murray, 2004; Mthetheleli and Nel, 2016; Mbandlwa et al., 2020; Winkler, 2021).

<sup>1</sup> SPLUMA, Page 2.

<sup>2</sup> SPLUMA, Section 12(h).

<sup>3</sup> SPLUMA, Section 24 (c).

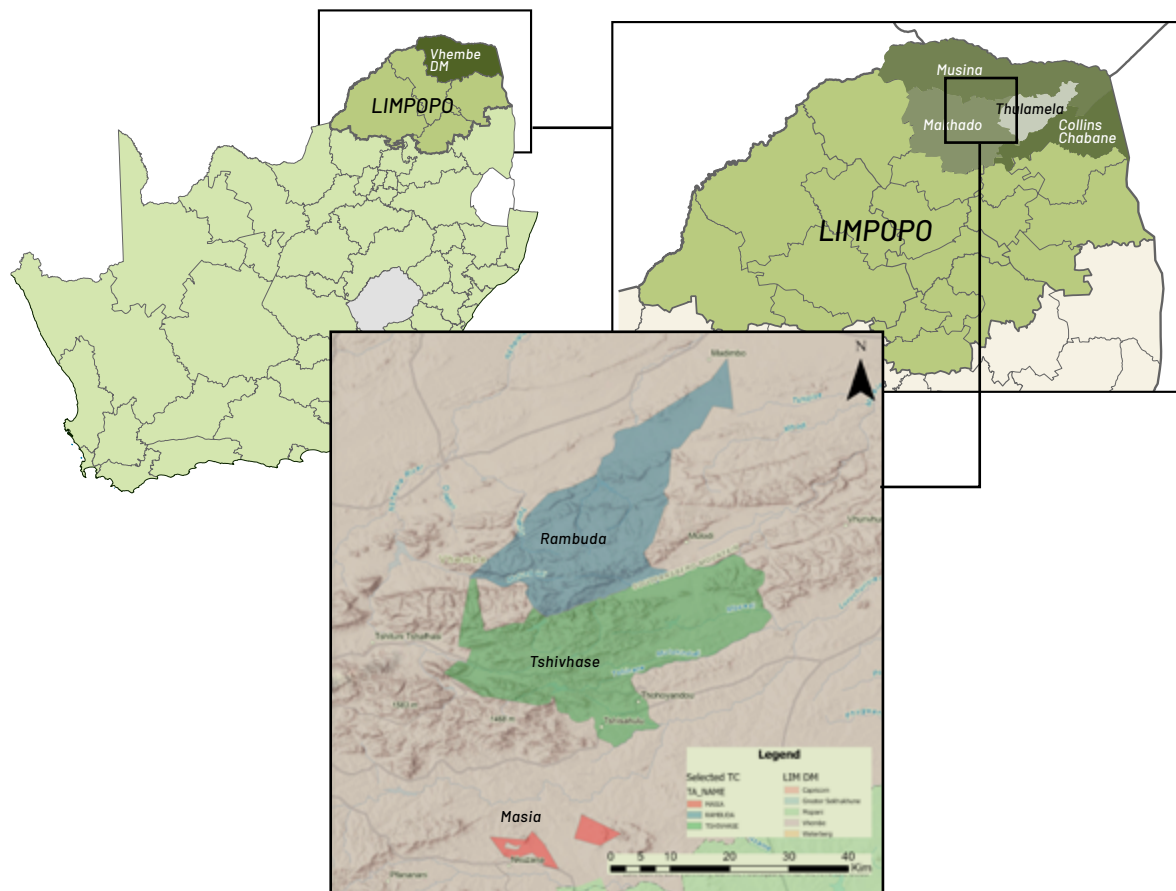
While growing research and policy attention have focused on how government, municipalities and traditional authorities intersect and connect in land development and management matters, the work has remained relatively inconclusive. A disproportionate focus on central government and municipal roles and functions is evident. This approach has been criticised as side-lining the traditional authorities thereby brewing fertile conditions for conflict, misrepresentation and misinformation. Recently, work by the Public Affairs Research Institute (PARI) focused on general challenges and opportunities for strengthening collaborative and cooperative governance between municipalities and the traditional authorities. However, while the work seeks to unravel the nuances involved, it does not cover in detail how decision making occurs within the traditional leadership and municipality interface.

## 1.1 Research methodology

This policy brief draws from case study of traditional authorities in Vhembe District Municipality (DM) in Limpopo Province. Limpopo was chosen because of the significant presence of traditional leadership in control of land in the province. Vhembe DM was selected purposively on account of the existing relationship and established community-entry and collaboration points between the traditional chiefs, the community and the University of Venda. The work focused on Rambuda, Tshivhase and Masia Traditional Councils.

Vhembe DM is a category C municipality, established in 2000 in terms of the Local Government Municipal Structures Act No. 117 of 1998. It consists of four local municipalities: Thulamela, Makhado, Musina and Collins Chabane, which are category B, executive municipalities.

**Map 1** presents a spatial illustration of the sampled traditional councils for detailed study investigation in Vhembe DM, that is, Rambuda, Tshivhase and Masia.



**MAP 1:** Case Study: Traditional Councils in Vhembe District Municipality, Limpopo Province

The sampled case studies of traditional councils involved a combination of small and big traditional areas covering different land-governance ecosystem environments. Tshivhase covers land to the south of the Soutpansberg and includes shared boundaries with the rapidly expanding rural town of Thohoyandou in Thulamela Municipality. Rambuda and Tshivhase constitute some of the largest traditional councils in the Vhembe district. Rambuda stretches to the north of the Soutspansberg to as far as Madimbo village, close to Kruger National Park. Masia covers a smaller area but has a strong history of land governance – engagement platforms and systems with both local and central government including stakeholders such as the University of Venda. Masia is also close to towns like Vuwani, Elim and Louis Trichardt, which reveals how the traditional council interacts with the largely urbanising small rural towns in Makhado (Louis Trichardt and Elim) and Malamulele (Vuwani) Local Municipalities.

Key informant interviews, transact walks and drives in the case-study areas were done to appreciate the land governance matters, including photographing the traditional council area. Selective stakeholder and key informants’ interviews were held with municipal and government officials to complement the case-study data collection.

## 2. THE ROLE OF TRADITIONAL COUNCILS AND LAND IN SOUTH AFRICA

Traditional councils and land in South Africa have their origins in the country’s colonial history. The hierarchical relationships evolved with the introduction of *bantustans* during apartheid. Bantustans were territories set aside for black inhabitants of South Africa, creating ethnically (and sometimes arbitrarily grouped) homogeneous ‘autonomous’ nation states as determined by the apartheid state. Bantustans strategically excluded black people from the South African political system under a racial segregation policy. Table 1 presents a tabular illustration of traditional council areas geographical and household characteristics in South Africa.

**Table 1: Traditional council areas in South Africa**

Province	Traditional Area (km <sup>2</sup> )	Total Area (km <sup>2</sup> )	% Area	Households in traditional areas	Total households	% Traditional households
Eastern Cape	38 819	169 311	23%	771 983	1 686 635	46%
Free State	1 318	130 012	1%	73 912	823 155	9%
Gauteng	41	18 182	0%	38 485	3 908 771	1%
KwaZulu-Natal	32 536	94 467	34%	951 067	2 539 218	37%
Limpopo	32 602	130 171	25%	1 055 043	1 417 717	74%
Mpumalanga	6 542	76 584	9%	490 911	1 075 276	46%
North West	18 806	106 502	18%	477 129	1 061 869	45%
Northern Cape	9 847	378 355	3%	51 438	301 261	17%
Western Cape	-	131 522	0%	-	1 633 860	-
<b>Grand Total</b>	<b>140 511</b>	<b>1 235 106</b>	<b>11%</b>	<b>3 909 968</b>	<b>14 447 762</b>	<b>27%</b>

Source: Department of Rural Development and Land Reform (DRDLR), 2018.

Table 1 illustrates the following points for policy makers:

1. Approximately 11 per cent of South Africa’s land area (around 140 000 km<sup>2</sup>) accommodates around 27 per cent of all traditional households – clearly illustrating the significance of traditional council/area forms settlement.
2. Seven out of nine provinces have a significant amount of land in the traditional councils/ areas.
3. Five out of nine provinces have significant populations and households in areas that are classified as traditional councils/areas.

While the total area for land falling under the traditional councils is zero per cent for both Gauteng and Western Cape, it is notable that traditional councils exist in these provinces. Planning and policy development initiatives must cater for these nuances for better planning and development outcomes.

1. Approximately 15 million (14,447,762) households live in areas under the traditional councils, which is important for policy and planning.
2. Overall, nationally, more than 88 local authorities are affected by Traditional Authority Areas regulation.

## 2.1 Structures of traditional councils and leadership

Traditional authorities are organised in a hierarchy. Although the determination of rank is dealt with in terms of the customs and cultural history of the traditional or national group, the following levels exist in the hierarchy of traditional councils and leadership:

- King (*iKumkani iSilo, iNgwenyama, Kgoshigulu, Morena emoholo, etc.*)
- Chief (*iNkosi, Kgosi, Kgoshi, Khosi, Hosi, Morena, iKosi*)
- Headman (*iNkosana, Kgorana, Vhamusanda, Litona, iKosana, iNduna*)
- Sub-headman (*isibonda somsege, induna yesigodi, Xamunganga, Vhakoma Bonakgoro*)

Traditional councils comprise 60 per cent of the members selected by the senior traditional leaders and 40 per cent elected by the community. A third of the elected members must be women. A traditional council has a five-year term of office.



**FIGURE 1:** Hierarchy of the institution of traditional councils and leadership in South Africa.

Source: Chakwizira and Tshivhase, 2024.

In **Figure 1** the base of the pyramid comprises civic leaders, i.e., sub-headman, who are responsible for small areas and communities, usually members of one clan. They constitute a vital link between their people and their immediate superiors. They are known by different names linked to the ethnic group's language, e.g. *induna yesigodi* in isiZulu.

The level of **headman** comprises hereditary leaders, or those appointed by the chief or the king or, in some cases democratically elected. They all perform the same function, although some preside over very small numbers of people and territories, equal to those of sub-headmen in other areas. These and are known by different names linked to the ethnic group's language e.g. *induna* in isiZulu.

The **chief** is an individual who, by virtue of his or her ancestry, has been appointed to govern in accordance with the traditions and customs an area and has authority over the people who live in that area (Mthandeni, 2012: 1). A chief is further defined as 'a traditional leader of a specific traditional community who exercises authority over a number of headmen in accordance with customary law, or within whose area of jurisdiction a number of headmen exercise authority' (Bizana-Tutu, 2008: 6). Chiefs have different names linked to an ethnic group's language, e.g. *hosi* in Tshivhenda.

The final level is the **queen or king**, paramount chief (or principal) ruler and authority over all chiefs in an area. This title is normally afforded to a person to whom allegiance and loyalty are owed by various clans and tribes that have their own chiefs. The concept of a paramount chief, king or queen is a contested matter, with overtones of the colonial or apartheid bureaucracy state, who used the traditional leadership functions as a vehicle to 'divide and rule', while in some areas the kingship is pre-colonial e.g. the Zulu Kingdom (Beinart, 1985). Other examples of preexisting monarchies are the Vhavenda Kingship and the Balobedu Queenship.

### 3.1. Structure, functions and hierarchy in Rambuda Traditional Council

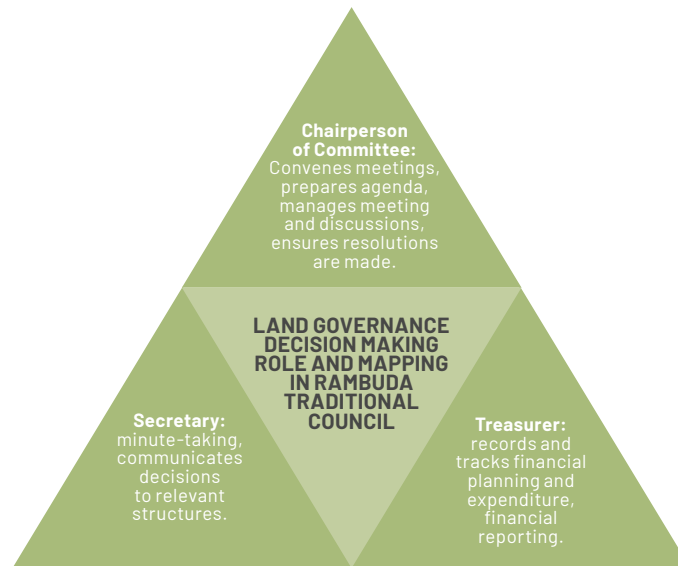
There are systems in place to process specific and certain issues, for example, where and how to report and which structures to consult in the case of the operation of illegal initiation schools. Traditional council hierarchy and internal power dynamics are instrumental in (re)shaping decision-making processes as summarised in the following quote from one of the participating chiefs:

*When as a traditional leader, I make popular decisions and pass laws and orders that are in line with the views of people, then the office and I [the traditional leader], is viewed and described as a very good leader, who listens to the people, makes decisions that better people and is a clever and intelligent leader. However, when I make decisions, pass laws and issue orders that are not popular and are perceived by some of the community members and interested people as not being representative of the needs and community requirements, then my office and I [the traditional leader], is viewed as being not so good a leader, very selfish and self-centered, and a dictator who just does what he or they like for their own benefit or the Royal House's benefit, which is really problematic.*

Land governance is characterised by complex land reform processes and court-case determination. This is summarised in Figure 2, which represents the land governance decision-making role and mapping in Rambuda Traditional Council and supported by the following quote by a participating chief:

*We do have a structure in place that we follow in decision-making. Decisions are not just haphazard and made on the spur of the moment. Issues can be received from community members. ... An issue or report is received from a headman, sub-headman or community members. These issues are reported verbally when people come either by driving, walking, by bus or using local non-motorised transport systems (e.g. donkey cart). Others phone or use the WhatsApp messages or voice messages. These messages do not necessarily all need to be only via the chief but can reach any member of the royal family of the chieftaincy chain or members of the traditional council – which I can call the equivalent of the Cabinet. Some of the issues are picked by the chief when attending traditional functions or during social gathering such as funerals. These matters are then directed to the relevant chairperson who draws up an agenda and calls for*

a meeting. The agenda is handwritten in the meeting agenda notebook or typed into a computer by the Secretary. The secretary takes the minutes and writes especially the resolutions in the minute book, noting who was present, the date of the meeting and what was discussed and the decisions that was achieved. We also do have a treasurer who keeps finance records in a worksheet or mathematics or accounting like a book. This is also entered into the computer. The cost of holding any event [...] is all written down so that we all know what is happening to the purse of the chief's account. However, gifts (in cash or kind) and any other form of gratitude offers are not written down, but most are given in public and visible. If someone pays homage with a goat, everyone can see it and the animal will be killed and used towards the upkeep of the traditional council or staff or during a community meeting or feeding guests.

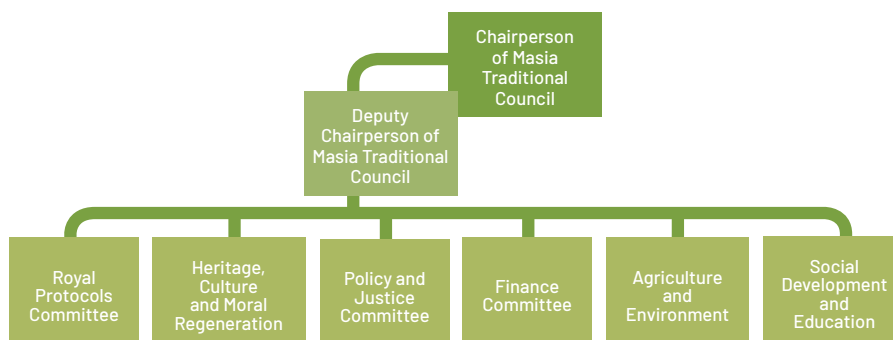


**FIGURE 2:** Land governance decision-making role and mapping in Rambuda Traditional Council.

Source: Chakwizira and Tshivhase, 2024.

In an example from the Masia Traditional Council area (see Figure 3), a participating chief explains that the traditional council has established a system of land governance that separates the roles, functions and duties of the chief from those of the traditional council, whose meetings are headed by a chairperson and not the Chief Masia himself. The example emphasises the subtle differential hierarchical functions from one traditional area to the next.

*I, as the Chief, am not directly involved in the decision-making process. Look, we have the Chairperson of the Traditional Council who is not me. Committee chairpersons report through the Chairperson who reports and updates I, the Chief [sic] on issues and developments in the traditional council. This makes me objective when I am required to decide and make a ruling on issues that committees and the Chairperson of the Traditional Council bring to me to decide.*

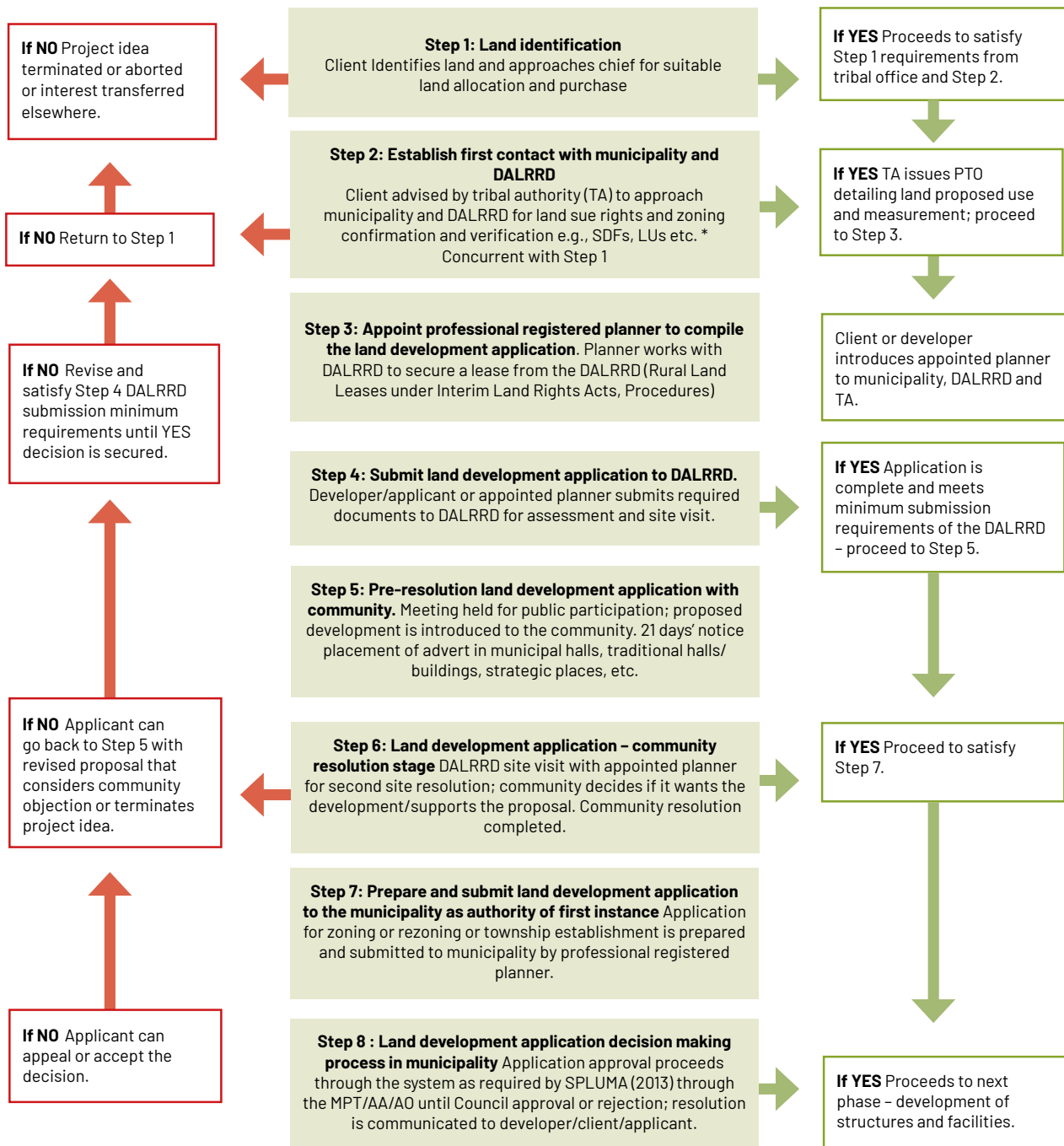


**FIGURE 3:** Land governance hierarchy and decision-making power systems in Ha-Masia Traditional Council.

Source: Chakwizira and Tshivhase, 2024.

### 3.3 How the Traditional Council processes Land Development Applications Land Development Applications

The process for handling land-use application is elaborate and complex, but all inclusive as depicted in Figure 4.



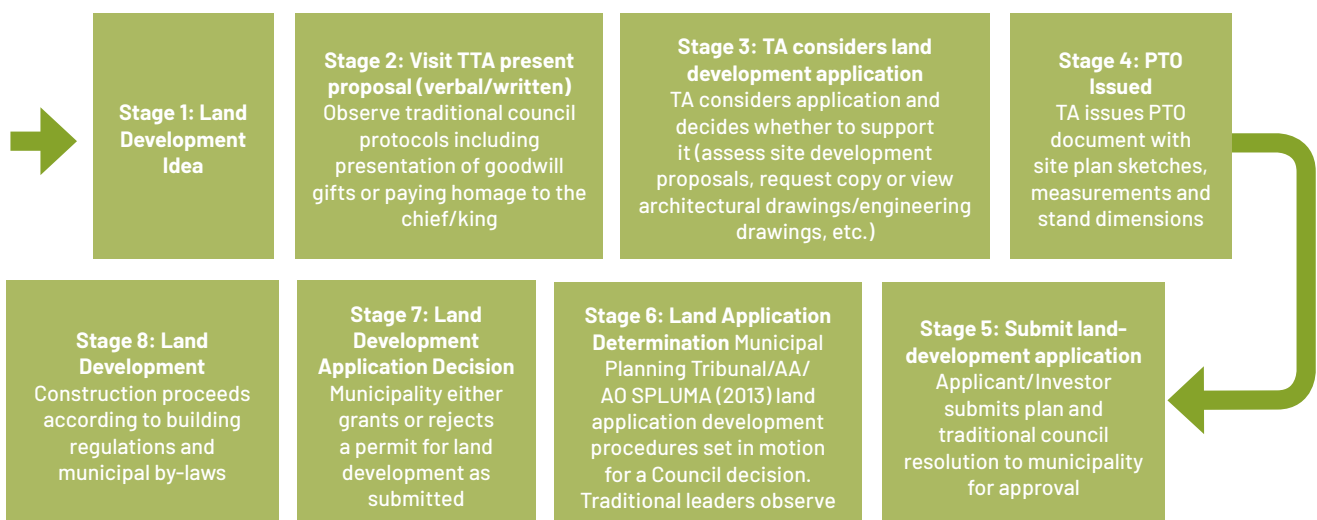
**FIGURE 4:** Model decision-making process flow land-development application schematic illustration in Tshivhase Traditional Council.

Source: Chakwizira and Tshivhase, 2024.

The decision-making process is logical and has improved government’s capacity to complement and strengthen the traditional authority’s capacity to execute land administration and management functions. The decision-making flow points of interest include:

- **Land identification for development:** The process starts with the client identifying a section of land they wish to develop and approaching the traditional council for land allocation and purchase.
- **Concurrent advice to consult and engage with municipality and DALRRD in early land application stages:** The traditional council will advise developers to approach the municipality and the Department of Agriculture, Land Reform and Rural Development (DALRRD) for the necessary land use rights before using the property.
- **TA issues PTO:** The traditional authority will issue a developer with a permission-to-occupy (PTO) document, detailing the proposed land use and measurements of the stand if the land development application is clear and can be supported from the traditional authority’s perspective.
- **Appointment of professional planner to work with DALRRD:** After obtaining the PTO, the developer will then appoint a planner to work with the Department to secure a lease agreement.
- **Submission of land-development application to DALRRD:** The developer must submit all required studies and documents to the Department for assessment and a site visit. A pre-resolution meeting is then held for public participation, where the proposed development is introduced to the community. After 21 days and the placement of adverts in various gathering places, the developer returns with department officials and a town planner for a second resolution meeting, where the community decides whether they want the development to proceed or not.
- **Submission of land-development application to the municipality in accordance with SPLUMA (2013):** Once the resolution process is complete, the application for rezoning or township establishment is prepared and submitted by the town planner, along with supporting specialist studies such as services, traffic and environmental impact assessments. The application goes through further processes until approval is granted.

Figure 5 explores the land-development application decision-making timeline for municipalities.



**FIGURE 5:** Lateral land-development application decision-making processes timeline for municipalities.

Source: Chakwizira and Tshivhase, 2024.



### 3.4 Innovation in land-application processing in traditional authorities

#### 3.4.1. Innovation 1: Responding and managing land invasion in traditional council areas

Traditional and municipal land authorities are struggling with the challenge of land invasion. Drawing from the experiences of the Tshivhase Traditional Land Council area, the innovation of Record, Engage, Collaborate and Avoid (RECA) was developed to mitigate land invasion. This means all land transactions, purchases, stand purchases and diagrams should be *recorded* (refer to Figure 6).



**FIGURE 6:** Record, Engage, Collaborate and Avoid (RECA) land invasion and matters resolution model in Tshivhase Traditional Land Council Area.

Source: Chakwizira and Tshivhase, 2024.

RECA is a tenable land-invasion mediation and is conditional upon the following:

- Generating detailed and complete recording of land development transactions covering all stand purchases – including site and survey diagrams or sketches of plots/stands demarcated in the traditional council of jurisdiction.
- Engaging communities in land development applications and decisions to avoid surprises, conflict and suspicion between and among stakeholders, in particular, the community, chief and municipality. The stakeholders should co develop a solution to the land invasion problem.
- Collaboration with the relevant municipality is fundamental and allows the traditional authority to access town planning and engineering services in support of building better human settlements. That is, proper layouts and township establishment processes will then be implemented to their logical conclusion, ensuring that everyone benefits from the partnership.
- Avoiding creating a vicious land invasion bubble cycle. It is prudent that TA and municipalities adopt forward looking land invasion fighting strategy. This is meant to avoid a situation in which these institutions limp behind and leak the wounds of land invasion through responding to the issues reactively rather than proactively. This is important so that the syndrome of perpetual various waves and cycles of emergencies and land invasion fire-fighting crisis can be broken. A land-invasion-bubble cycle risk-register can be developed as both a mitigation and adaptation tool, and response mechanism to better managing the growing pressures for land in areas under traditional councils.

### **3.4.2. Innovation 2: It is possible for high tech and modern land developments to be handled and managed by a traditional council**

Tshakhuma Shopping Mall in Ward 12 under Acting Chief Madzivhandila Mathambo Traditional Authority represents how land under the control of a traditional leader was developed by Makhado Local Municipality in Tshakuma village. The development provides essential amenities for the people of Tshakhuma, who previously either travelled to Louis Trichardt town or Thabani shopping mall (Thohoyandou) or Elim shopping mall (Elim) for their shopping needs, creating a high demand and inflated costs. The proposal for Tshakuma Shopping Mall was supported by the Makhado Local Economic Development Authority and located at the intersection of R524 and Road D1253. The layout plan for the mall was prepared by a professional town-planning company. Previously, the closest retail node was in Thohoyandou, or alternatively Elim or Louis Trichardt (Makhado). However, the retail space in Thohoyandou could not meet the demand for high-order goods and a wider retail variety for the surrounding villages, besides being located approximately 32 kilometres away. As such, there was a need for a retail centre closer to Tshakhuma. Alongside the site plan, a proposed master plan was developed. The process Flow Land Development Application Schematic Illustration in Tshivhase Traditional Council is an example of a working system that can be further improved as necessary. The Tshakhuma shopping mall and township establishment were a major achievement, being executed according to national planning standards. This example is shared notwithstanding cases in which traditional councils have abused the land development systems and have been seen as peddling communal or traditional land to elites and big companies, and accused of corruption.

## **4. POLICY RECOMMENDATIONS**

In seeking to strengthen and enhance the traditional council's decision-making systems, processes and process flow in land administration and land development application processing, focus and attention should be paid to the following policy and planning issues:

- ***Traditional councils have the potential to transform and integrate land development processes with municipal land development application processes.*** Traditional authorities can execute their land development application processes in ways that are consistent with municipal systems. This is despite various imperfections owing to the state of readiness to integrate traditional authority land development systems.
- ***Traditional council twinning, exchange programmes and establishing centres of land development application excellence:*** Traditional councils can and will continue to learn from one other. This includes sharing good practices of land development application systems can be learnt, experiences shared and fears explored. The goal would be to build a stronger cooperative governance model in local government in South Africa.
- ***Strengthening and building traditional councils' land development application record and cadaster systems.*** All traditional councils interviewed conceded that the land recording and cadaster systems are inadequate. Continuous training and capacity building could mean that government seconds interns who are town planners, engineers and surveyors to these traditional authorities. In turn, these interns could build a solid database of land, infrastructure and facilities records. Such interns could even work with the communities, using drones or GPS coordinates to gather property and land-use information. This could be implemented via the social tenure domain model approach: the interns, together with community members, compile layout maps or cadaster maps. These maps could provide details on allocated rights, including identifying overlapping and multiple rights. Such approaches would explore and present practical ways to overcome diverse land-use rights and conflicts through community resolutions or decisions, in a new and better way.

- **Land re-parcelling and re-allocation in response to growing population and demand for elastic traditional-authority land size.** Land in traditional authority areas is generally inelastic except with annexation owing to boundary redetermination or land claims, for example. Most traditional authorities are experiencing land scarcity. A practical solution is to secure a traditional community resolution to the effect that community members can subdivide family allocated stands into smaller stands among family members. Alternatively, exploring land-intensification approaches, such as vertical developments, which are becoming prevalent in most rural areas in South Africa. However, it is currently less an expression of a land-densification process than an expression of affluence and lifestyle. Rural densification studies need to be undertaken to identify the correct balance of land-densification actions required in such environments.
- **Land innovation options and measures.** Scope and options exist to explore new and advanced forms of farming activities in traditional authorities. This involves the incorporating intensive and highly productive farming systems, given the shrinking nature of land availability in rural areas. The prospect of innovations in horticultural enterprises in rural communities, such as vertical piggery and poultry farming (creating pseudo pig or poultry skyscraper agricultural production gardens or cities), do beckon as opportunities to be pursued.
- **Strengthening and refinement of the land development allocation processes for enhanced inclusivity and clear role-determination of traditional councils/chiefs.** The current arrangement as provided by SPLUMA (2013) falls short in terms of the traditional councils' roles in determining approvals, and requires elevation. A policy proposition is that a traditional leader or representative sits in the municipal planning tribunal (MPT) at the decision-making stage of an application that falls under their area and can make input.
- **Confronting land invasion and shortages matters in traditional land areas and municipalities.** Land invasion and shortages is a double-edged knife that cuts both the traditional councils and municipal councils alike. While the municipalities can grow through expansion, or encroaching on or engulfing surrounding farms and areas previously under traditional councils or farmland, as part of municipal boundary redefinition and gazetting, the same cannot be said of traditional councils. Traditional councils, except in cases where claims are made and previously occupied lost land is returned to their custody, there is no clear mechanism for the traditional councils to expand their boundaries. Protests and legal battles around these matters sometimes drag on for years while in the interim, land invasion happens. What is required is a policy and system, including a fast-track mechanism to identify such land and expedite its determination and supply – for either rural traditional land expansion or municipal planning. The state may also strategically identify such land and develop a land-release and banking strategy, with clear formulas to allocate and distribute land between the municipal and traditional councils as necessary.
- **Record, Engage, Collaborate and Avoid (RECA) collaborative approach to land invasion management.** This approach has the potential to improve how land invasions and conflicts in municipalities are managed. This can be integrated in land- and area-based rural development plans and can shed unintended land-invasion development challenges.
- **Land development allocation advocacy and policy work remains a priority.** Finally, advocacy for land-development application and decision-making processes for marginal and disadvantaged groups and communities, including the traditional authorities, remains a priority until the systems start to work seamlessly without any backlash for land development stakeholders involved in the decision-making value chain.

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## Legislation Reviewed

1. Traditional and Khoi-San Leadership Act 3 of 2019
2. Spatial Planning, Land Use and Management Act (SPLUMA), 2013
3. Spatial Planning, Land Use and Management Act (SPLUMA) Regulations, 2015
4. National House of Traditional Leaders Act 10 of 1997
5. Traditional Leadership and Governance Framework Act 41 of 2003
6. Promotion of Administrative and Justice Act 3 of 2000
7. Constitution of the Republic of South Africa, 1996