

**Traditional Leadership and its Relation to the Democratically Elected
Local Government Structure in KwaZulu-Natal**

By

Mojalefa Lehlohonolo Johannes Koenane

**A thesis submitted in accordance with the requirements for the Doctor
of Philosophy Degree (PhD)**

in the

Faculty of Arts

Governance and Political Transformation

at the

University of the Free State

May 2009

Promoter: Prof. L.Z.M. Khumalo

Co-promoter: Dr. T. Coetzee

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DEDICATION AND ACKNOWLEDGEMENTS

With love and gratitude I dedicate this doctoral thesis to all that have shared their lives with me thereby making my life rich, fruitful and full of memorable experiences. This gratitude is especially directed to my family, especially my parents through whose love I came to be and was sustained. I wish to acknowledge my deep appreciation for the example and instructions that I received from the University of the Free State, in particular, the Programme for Governance and Political Transformation, in particular Dr. Tania Coetzee (Programme Director) who worked hard to have me registered and get my study going, without her this thesis would have not been possible. On a different note, I thank Dr. Tania Coetzee as a co-promoter in this study. She was instrumental in making sure that the paper meets the standards the Programme for Governance and Political Transformation. I also wish to express my many indebtednesses to Prof. Zamolwakhe Khumalo for patiently directing this research. Both Prof. LZM Khumalo and Dr. T. Coetzee have taken more trouble than anyone else to look at the details of the manuscript and were pushing me harder than anyone to give a critical view of the study and interpretation. The responsibility for the remaining criticisms readers may have in this thesis is entirely mine. To Prof. Khumalo, it would certainly be an omission not to say the following words: Mntungwa! Mbulase! Mzilikazi kaMashobane! Wena odla umuntu umyenga ngendaba! Wena kaBheje eseNgome! uMntungwa akangakanani ngoba nasentendeni yesandla uyalingana. Wena owehla ngesilulu! Ndabezitha! To say thanks seems so insufficient, it is for this reason I said what I wrote above. Ngiyabonga Mashobane!

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I dedicate this thesis to the memory and the repose of the souls of the following persons: Foliki Koenane, Libuseng Koenane, Theresia Nkomo, and Pacificus Malinga. May their souls and the souls of all the faithful departed, Rest in Peace!

Above all, I thank the ***Almighty God*** from whom all mercy and knowledge flows, for all the blessing showered on me. Coming from a strong Catholic tradition I have a reason to say: “***The Almighty has done great things for me; may His name be exalted and praised!***”

GLOSSARY

Abanumzane	=	Designation for <i>Inkosi's</i> Councillors
Amakhosi	=	Traditional Leaders
Hereditary Inkosi	=	Hereditary Traditional Leader
Imijijo	=	Traditional water pumps
Induna	=	Headman
Izinduna	=	Plural for <i>Induna</i>, designating headmen
Isigodi	=	Ward or village
Izigodi	=	Plural form for <i>isigodi</i>, designating wards or villages
Imbizo	=	Gathering of the traditional people called by an <i>iNkosi</i>
Ingonyama	=	Lion, used as a sign of respect for the Zulu King
Iziphakanyiswa	=	Traditional Leaders not of royal blood
Kgosi	=	A Setswana expression for a Traditional Leader
Khonza Fee	=	A fee payable by a person to an <i>iNkosi</i> to whom he or she wishes to owe allegiance
Ndabezitha	=	Zulu expression generally used to address a Traditional Leader
uBukhosi	=	The Institution of Traditional Authority
uKumkani	=	A Xhosa expression for King.
uMbangazwe	=	Political struggle for the country
uMbusazwe	=	Governing the country
Pitso	=	Setswana for gathering of the traditional people summoned by a traditional leader.
Valelisa Fee	=	Fee payable by a person who wishes to leave a tribal area to an <i>iNkosi</i>.

DECLARATION

“I, Mojalefa Johannes Koenane, declare that the thesis hereby submitted by me for the Doctor of Philosophy degree at the University of the Free State is my own independent work and has not previously been submitted by me at another university. I further more cede copyright of the thesis in favour of the University of the Free State.”

Signature: _____

Date: _____

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CHAPTER ONE

1 INTRODUCTION

1.1 Rationale

One of the most interesting developments in South African law is the entrenching of the powers or roles and functions (as the Traditional Leadership Act and the Constitution of South Africa, Act 108 of 1996, would have it) of traditional leaders in the form the two Acts mentioned above. For the past fifteen years, a controversy has been raging over the role and position of traditional leaders in governance. The first formal move to give due and authentic recognition to the institution of traditional leadership in South Africa took place at the CODESA negotiations in (1991 - 1993) at Kempton Park. The acronym CODESA stands for the Convention for a Democratic South Africa. Negotiations were never easy; things came up during deliberations and eventually the Constitution of South Africa, that is, Act 208 of 1993 or what is generally referred to as the 'Interim' Constitution was finally drafted. The formal step was then included in the final draft of the new Constitution of the Republic of South Africa Act 108 of 1996. In both these policy documents, the recognition, role and functions of traditional leaders were entrenched. For what is worth, the democratic process established during the CODESA negotiations and agreements made during those negotiations must be pursued.

CODESA negotiations were not only meant to dismantle apartheid policies and structures but to establish new beginnings in the political transformation of South Africa. CODESA was further looking at establishing the political terms of reference which will inform multiparty participation in the future democratic South Africa. One of the main concerns of the Inkatha Freedom Party's participation in CODESA and later on in the first democratic general elections was around the issue of the role of His Majesty, King Zwelithini, and the whole question of the status of the King, traditional leaders and the Zulu Kingdom (Vilakazi, 2003:28).

The Constitution of the Republic of South Africa (Act 108 of 1996) itself and all component policy documents made allowance or at least alluded to the position and

functions of traditional leadership in the new political dispensation. However, the collection of policy documents which will later on be examined thoroughly failed to clearly specify what the role and functions of traditional leadership were. These policy documents came short of clearly demarcating areas of jurisdictional powers between elected political office bearers in a form of municipal officials and traditional leaders. The ambiguous and unspecified role, functions and position of traditional leadership in policy documentation of South Africa introduced a number of new problems such as:

- i. The relationship between the modern political system of governance and the traditional leadership system of governance.
- ii. Competition between the two systems of governance,
- iii. Lot of grey areas, thus bringing about confusion as to who should provide what services to rural communities, and
- iv. Poor service delivery of basic needs which could partially be blamed on differing political opinions with regard to the role traditional leadership ought to play in governance, economic constraints and financial mismanagement.

The new constitution established new power relationship and interrelations in order to promote and enhance democratic principles. For the institution of traditional leadership, these constitutional changes meant positioning itself for complete transformation.

The challenge for the South African government was now to look for ways of remedying the situation, particularly if service delivery was to be improved in rural areas. The confusion that was brought about by debatable issues and role of governance, with regard to the position of traditional leaders in rural areas gave rise to many other policy and position or opinion papers by academics and politicians alike. For some in the ruling party, the issue of the inclusion of the institution of traditional leadership in governance was a matter of urgency while others could not entertain the subject or even open it for discussions. For academics (the researcher included) the situation in the rural areas

seemed like a betrayal of the African National Congress' election manifesto, namely a better life for all.

The Constitution therefore recognises potentially conflicting rights and institutions, and in particular, as far as cultural rights and the powers of traditional leadership are concerned, this is of concern for the declared equal rights of women. The Constitution does not explicitly state whether individual equality should prevail over the rights and claims of groups when they are in conflict and there is therefore a certain amount of ambiguity. Traditional leaders were vehemently opposed to making African customary law subject to the equality clause at the time of the constitutional negotiations, and as a result "the relationship between the clauses on custom and equality was not clearly articulated". As Monique Deveaux remarks:

The question of how to reform customary practices and arrangements so as to bring them in line with the sex equality provision of the Constitution has proved to be no easy matter, however: what the Constitution does for sex equality and individual rights generally, it also does for the rights of cultural, linguistic and religious groups. Moreover the Constitution specifically recognizes the validity of African customary law and the system of traditional leadership associated with it (Deveaux, 2003:168).

Failure to recognise the institution of traditional leadership and incorporate it in the newly established democracy in South Africa is seen as the major reason for slow pace of rural development. Therefore from the above what becomes obvious is the conflict of rights even in the Constitution. Duvenhage (2003:21) holds a view that "generally service delivery for the poor has improved since 1994". Duvenhage maintains that most poor people are able to access clean water, health services for children and senior citizens and the unemployed is offered free. As much as the researcher agrees with Duvenhage, he (the researcher) opines that much still needs to be done about making rural people's lives better through development at a rapid speed. The researcher argues that living conditions in the rural areas particularly in KwaZulu-Natal are worse today than they were ten to twelve years ago. Human (1998:33) believes that in most rural areas, the reality of the escalating underdevelopment is inescapable. It is for this reason

that transformation of delivery of service was top priority in South Africa since 1990 through until now. Efforts leading to transformation, which will effectively bring about better service delivery, began with elections in 1994.

1.2 Research problem

After the 1994 general elections, the government of South Africa embarked on a course to transform the South African state politically. The transformation of the institution of traditional leadership was also topping the list, with a hope of aligning it with the democratic order and the constitutional principles such as transparency, equality and non-discriminatory practices. Government officials held a position that the institution of traditional leadership can co-exist with the modern political dispensation only on condition that the institution is democratised or transformed (Nthai, 2005:5).

This element of democratising the institution of traditional leadership had problems and negative implications. The debate at the national, provincial and local government levels about the legitimacy of the institution of traditional leadership remain unresolved. Such a debate may seem irrelevant in rural areas where most traditional leaders are accepted as authority on issues of rural development. The central idea behind developmental local government is the acknowledgement that local government is closest to the people and most capable of negotiating development elected representatives who are accountable to the people, at least in theory. It is then obvious that in rural areas this usurps the role in which traditional leaders would see themselves. It is becoming more and more evident that the most important issue is to find the best ways as de Jongh (2006:11) puts it through which modern political dispensation (local government) and traditional leaders can work together in order to improve the lives of the people in rural areas. Once such co-existence and collaboration is achieved, most rural people will benefit and thus satisfying the utilitarian approach to politics.

Ensuring co-existence presupposes an element of trust between elected local government structures and the institution of traditional leadership. One of the research questions which the study poses is as follows: Is it possible for the African National

Congress to construct a system for arriving at decisions that is compatible with the idea of political equality with the institution of traditional leadership? The value of this question cannot be underestimated, since millions of people living in the rural areas throughout South Africa depend on the decision the government makes about the meaningful role and power of traditional leaders in South Africa

The hypothesis of this study is that lack of clarity as to the powers; role and limits of traditional leaders in governance causes an element of political instability and grey area problem.

At the time the study was done, evidence of what Human (1998) referred to as escalating underdevelopment was observed, for example, most traditional water pumps (*imijijo*) at iSibonelo, Mbongolwane, Nkandla and other places were no longer operational and some for a long time now. According to traditional leaders in places mentioned-above, municipal officials that is, democratically elected councillors are now responsible to see to it that people in rural areas get access to clean water or at least service these traditional *imijijo*. On the other hand, municipal officials do not want anything to do with any resource constructed by the institution of traditional leadership. As the disagreements continue, people in the grass-roots suffer. There were a number of occasions when the government will fill up tractor water tanks and people who line up for water for long hours since, it would be everyone's guess when exactly to expect the truck with a water tank. During the course of this study, some elected councillors allege that when they attempted to repair or service traditional *imijijo*, they were obstructed from doing so by traditional leaders.

Broadly, under the traditional leadership system of governance, services in rural areas were decided upon and rendered without consultation with communities. As the country adopted democratic principles many believed that political transformation must also penetrate how the system of traditional leadership works. The province of KwaZulu-Natal became a critical one in the political strategic sense. The debate surrounding the institution of traditional leadership polarized the South African society. Africanists

believed that the institution is inherently African and must play part in governance, while proponents of modernity hold a different view-point.

The problem of consultation forms a crucial factor in the debate on the position of traditional leaders. Traditional leaders believe that in order for them to contribute positively toward good governance of rural people, and then the government must involve them in strategic decision-making particularly in matters that directly affect the institution of traditional leadership. De Jongh (2006:11) argues that respect and recognition of the institution of traditional leadership requires more than fine-sounding declarations in a constitution.

The idea of political recognition is not my original idea it comes from the writings of Nancy Fraser (1997:6), however, it was adapted to fit in with the purpose of this study. Thus recognition in this study refers to recognising the institution of traditional leadership as another distinct system of governance, from which the democratic system can learn. In this way recognition also means recognising that the two systems of governance are two sides of the same coin. Recognition means that South African democratic system must be prepared to admit that democracy is multifaceted and there cannot be one and universal definition of the term that must fit all cultures.

1.3 Aims and objectives of the study

The research has manifold aims. It seeks to give a brief background toward the history of the institution of traditional leadership with a hope of highlighting changes and continuities in the institution of traditional leadership in the province of KwaZulu-Natal. To answer the above question, the following research objectives are adopted for investigation in KwaZulu-Natal:

- a) to explore political strategies by means of which the role of traditional authorities may be redefined in the new democratic dispensation;
- b) to determine which recognition do traditional authorities enjoy under the Constitution;

- c) to determine which aspects of service delivery must be a responsibility of traditional leaders or elected local authorities, that is, demarcate areas of responsibilities;
- d) to determine how the existing disagreements between traditional authorities and elected local authorities can be managed, in order to facilitate improved service delivery based on the principles of *Batho Pele* and
- e) to compare the South African socio-political situation with regard to the institution of traditional leadership with selected African countries, such as Botswana, Swaziland and Zimbabwe for these are closer to South Africa than any other. The country of choice for comparison abroad is England for obvious reasons, namely as a country which retained its traditional leadership system in a form of House of Lords. England is also chosen for the fact that it colonised South Africa and contributed to the unfortunate situation South Africa finds itself in today.

1.4 Research design and methodology

Research was conducted using a qualitative, descriptive and contextual design. An advantage of a qualitative approach is that it assists us with insights into the everyday lives of traditional leaders and their traditional communities. However, to a lesser degree, part of the study includes a quantitative approach, in a sense that statistics are essential and thus provided to substantiate arguments provided in this thesis. As a point of departure a detailed descriptive strategy aiming at an in-depth description of the area under investigation is provided. In simple terms, this implies that the document will also give moon-stats graphs, pictures of houses of people in the rural Uthungulu district and a map giving the reader a mental picture of the areas under investigation.

Two main sources of information were identified. First, interviews were conducted with targeted members of local government, key community leaders such as political leaders, community leaders and traditional leadership. Second literature informing and guiding the study was also consulted, the main literature informing the relationship between the institution of traditional leadership and elected government officials was the

Constitution and other policy documents including the policy of the apartheid government. Other literature approach was interdisciplinary in nature as all these sources added value to the quality of the study.

1.5 Value of research

The anticipated impact of this research is three-fold: firstly, it is hoped that the study will contribute by making people participate in the debate from a well informed position, since some work have not managed to be politically impartial. Secondly, the researcher hopes that the study will become a source of a more accurate and valid information which can be ascertained by anyone who wishes to research more about issues surrounding the institution of traditional leadership in KwaZulu-Natal. Finally, the researcher hopes to contribute positively towards strategies that could resolve existing disagreements in the role and functions of traditional leaders, since good governance and improved service delivery in rural areas depend on this. It is therefore suggested in this study that good policy and well structured constitution is not enough, theory and practice must be brought together.

1.6 Outline of the study

In the light of the aforementioned, the study is divided into seven chapters which are logically forming a continuous unit:

Chapter One: This chapter is formed by the above research proposal, which provides the reader with the general introduction of the research and the methodology followed to collect data and to analyse it. It provides the background to the study and defines the research problem.

Chapter Two: This chapter begins by introducing the theoretical framework of the research. The theoretical framework entails two main theoretical points of departure and they are both necessary in order to follow the research and get an understanding of the position taken by supporters of either of the two main political actors in the study, namely representatives of the institution of traditional leadership and those that are

Westernised and hold a liberal democratic position. The two theoretical points of departure are the cultural framework and the legislative/political framework. The second part of the chapter discusses in-depth the cultural theoretical point of departure. The material is coordinated in such a manner that the reader could decide for him/herself as facts speak for themselves.

Chapter Three: The focus of this chapter is on the legislative/political framework. The chapter gives a background of various legislative works, policies of the government, including the government of the Nationalist Party and the former KwaZulu Legislature. It focuses more on recent developments by the government of the democratic South Africa beginning with the Interim Constitution and other legislative policies of the country and the province. These documents are thoroughly scrutinised and a relationship is drawn of what the legislature says about the nature of the relationship between the institution of traditional leadership and the modern democratic government. The theoretical framework of this chapter shows that the character of the effective relationship between organs of the state at any given time is influenced by the contemporary policy agenda. The researcher concludes by suggesting that all legislative frameworks though not specific do provide an enabling environment to some extent for dual governance and co-existence between the two systems.

Chapter Four: The institution of traditional leadership is the oldest form of governance not only among Africans but also among Western societies including the Great Britain, which still have the institution at work and holds a much more powerful political power than the political system in that country. Therefore the debate surrounding the legitimacy and the right to co-exist together with the modern political system of governance is not unique to South Africa. In other words, the challenge to the South African situation is better positioned given the experiences of other countries. This chapter therefore looks at a number of selected countries in Africa and abroad, with a hope that these can shed a light to the South African political elites on how South African political system can incorporate the system of traditional leadership into the

democratic dispensation in such a way that the institution of traditional leadership plays a meaningful role in governance.

Chapter Five: The main area of focus is the dominant debates around the African National Congress' position about the institution of traditional leadership. The researcher argues that it is precisely the ambiguous position adopted by the African National Congress many years ago which is still prevailing and thus making the negotiations about the role and function of traditional leaders untenable in the new political dispensation. The researcher further argues that it is this position that renders services in rural areas non-existent or slow. The chapter also looks at what the African National Congress puts forward as weaknesses in the institution of traditional leadership, including the discrimination of women in the succession battle for inclusion as traditional leaders. The politics of recognition also form part of this chapter.

Chapter Six: The Socio-economic demographic characteristics: For effecting a greater understanding of the area covered by the investigation, the historical background of where in the map uThungulu District is situated is given. The whole background of the situation as it is how people live, that is, what kind of work people of KwaZulu-Natal do and their poverty levels and educational level currently is also given. This is done to provide the reader with a mental picture of the situation in the areas covered by the study, again in order to make facts speak for themselves. In the final part of this chapter focus is turned on empirical data. The chapter will give a brief explanation of how collected data was analysed and interpreted. Furthermore, there is also executive summary of the International Conference on the Institution of Traditional Leadership. This part is based on the discussions and recommendations of the conference as well as the appendices as attached. This section must be read together with the appendices One to Four.

Chapter Seven: General conclusions and recommendations. The researcher gives a number of recommendations which he believes would contribute positively towards the debate about the strategic positioning of the institution of traditional leadership in South

Africa. The recommendations strongly emphasise the following elements: creating enabling environment for the institution of traditional leadership to function effectively and efficiently, depoliticisation of service delivery, political recognition of the system of traditional governance, strategic positioning of the institution of traditional leadership within the department of the Premier, common citizenship and co-existence and inclusion of traditional leadership in policy-decision making, particularly in issues that directly affect them and their subjects in rural tribal areas. The recommendation also includes the challenges facing the institution of traditional leadership that must also transform with time and be democratised to some extent. The researcher therefore conclude that the change of attitudes is needed if the political system has a political will to avoid the destruction of the institution of traditional leadership as the colonial powers and apartheid system has done in the past.

1.7 Conclusion

In this chapter the rationale and reasons for undertaking the study are presented. The chapter also outlines the nature of the problem surrounding the institution of traditional leadership and its relation to democratically elected government structures. Challenges facing the dual system of governance in South Africa are outlined

CHAPTER TWO

2 THEORETICAL PERSPECTIVES OF THE STUDY AND FOCUS

This chapter comprises of two inter-related but distinguished parts, namely the cultural framework and political framework. The purpose of including a chapter on theoretical framework in this study is to develop a structure of relationships among variables indicating delineated logical connection and assumptions as framework or model. These theoretical frameworks are grouped together as primary and secondary bases on which the study departs. Also forming part of this chapter is the conceptual model in which operational definition of concepts are clear. The political/legislative and policy framework among others includes a critical analysis of a number of legislative and policy documents such as:

- i. The Constitution of the Republic of South Africa, Act 200 of 1993 (herein also referred to as the Interim Constitution);
- ii. The Constitution of the Republic of South Africa, Act 108 of 1996;
- iii. Traditional Leadership and Governance Framework 2003, (Act 41 of 2003);
- iv. KwaZulu Amakhosi neZiphakanyiswa Act of 1990;
- v. KwaZulu-Natal Traditional Leadership and Governance, 2005 (Act 5 of 2005);
- vi. Ingonyama Trust Act; and
- vii. Municipal Structures Act and others.

All the above-mentioned documents also forming part of public policy documents, the purpose of which is to outline the nature of the problem underpinning the dual system of governance in South Africa between the institution of traditional leadership and the elected government officers. The major challenge for South Africa is to reconcile the two models of governance (i.e. the Western model or the modernists school of thought and the traditional African model proponents of which are also referred to as traditionalists; and thus bring about good governance).

2.1 Introduction

The hypothetical assumption of the theoretical framework is that attempts must be made to reconcile the traditional system of governance and the liberal or rather Western democracy. The researcher argues that such reconciliation is possible and must be guided by historical, socio-cultural and political perspectives. Because of the divergent nature of these two models, it will always be difficult to equate the two models of governance; therefore, there will be no attempt to do that in this study. The first part of this chapter deals with the cultural framework, the aim of which is to give the reader a mental picture of how the institution of traditional leadership works, so as to leave no doubt or ambiguity in the mind the reader in his/her engagement with the thesis.

The epistemological background of how the institution of traditional leadership operates will assist the reader to judge for himself/herself of the historical and existential factors around the debate about the institution of traditional leadership. Within this context we can therefore move on to discuss factors impacting negatively on the relationship between the institution of traditional leadership and the democratically elected structures, both as systems of governance. Therefore in order to draw a clearer picture of both the cultural and political framework key concepts will also be defined. However, the chapter focuses on cultural and the understanding thereof.

2.2 Cultural framework

It is my opinion that the concept culture also entails its own politics, in this sense we can also speak of cultural politics or the politics of culture. According to Wallner (2005:125) we can differentiate between two kinds of culture. Wallner differentiates between cultural relativism and cultural absolutism. Wallner further maintains that the concept culture suffers from these two flaws or errors. Cultural relativism is a belief system that all cultures are different and that there is no one single culture that holds all truth and is thus universal. Thus cultural relativism is a view that propositions depend on culture. In this way, propositions offer a culture specific and thus a relative worldview (Wallner, 2005:126). In this way a worldview refers to one's conception of the nature of the world more especially as a philosophical system. So much as the word represent a theoretical

perspective, the notion is widely used as a component in analysing socio-political relations and cultures. According to Christo van Staden (1998:15) contends that culture is a Western concept and often contradicts history and as such forms part of the Western discursive apparatus of modernity (and colonialism) and provides opportunities for dismantling discourses of colonialism, oppression, subjugation and marginalisation. Therefore, any consideration of culture in Africa must take into account the different uses to which the concept has been exposed.

The concept culture embraces both historical and political meanings. Culture is political in the sense that the concept may be used to further political enterprises or to achieve certain political effects, whether these effects are politically conservative or progressive. For the purpose of this study, it is important to state that no definition of culture is considered politically neutral. In other words, every definition of culture is a specific use of culture as it entails certain exclusions and inclusions.

There are two main and diametrically opposing trends concerning the dual systems of governance in South Africa, the traditional African model which is founded on culture and the Western model which is founded on the principles of liberal democracy. For purposes of this study the word 'traditionalist' is used to refer to supporters of the traditional African trend; on the other hand, the concept 'modernist' refers to any person on the opposite stream. These two trends agree on the idea that there must be development in rural areas of South Africa, there must be transformation and that service delivery needs improvement. However, the parties concerned disagree or have divergent views of how such government goals of governing rural communities are to bear fruits. The two trends disagree on the most effective and efficient way to reach the goal. This is because each trend focuses on a different aspect where one focuses on changes in the society and thus explains social transformation in terms of reactions to reflections of these changes. The other argues for the definition of social change based on their role as agents of social transformation.

For Thornton (1988:23) culture is too often taken to be indicative of the differences between people or groups and therefore is used to exclude, whereas people do understand each other across 'cultures' and are therefore not fundamentally different.

On the one hand, Bell (1986:40) defines culture in the sociological and anthropological sense to denote a process, which shapes specific and distinct ways of life. Understood from this perspective, therefore, in this study culture refers to systems of meanings and values. On the other hand, Gramsci's (1985) definition of culture is as follows:

Culture is the exercise of thought, acquisition of general ideas, habit of connecting causes and effects. For me, everybody is already cultured because everybody thinks; everybody connects causes and effects (Gramsci, 1985:25)

As Gramsci puts it, cultures are ever changing, bringing about changes in worldview. In this way culture means a new way people live and see the world. The institution of traditional leadership has often been slow to appreciate the nature of changes that have occurred. Gramsci's definition of culture best suit my purpose in this study for a simple reason that if all people are cultured as he claims then it follows that cultured people know their place and identity in the society, cultured people know their roles or have ideas about their roles in the political arena. The main argument here is on the understanding of the relationship between traditional leaders and elected government structures.

For effective and relevant rural development, the institution of traditional leadership needs to understand the content of the message and then relate it to the contemporary situation. According to Burnett (1992:122) there are two main processes by means of which a culture changes, namely innovation (that is, what has been generated from within the society) and diffusion (that is, borrowing or adopting elements from another society). In this way culture is not static it evolves, culture progresses.

Since the institution of traditional leadership is made up of certain practices in which everything is guided by norms, values, beliefs and meanings, this indigenous system of governance is according to Cilliers, a complex system. Cilliers (1998:4) describes complex systems as systems that have a history. In other words, complex systems evolve through time but their past is co-responsible for their present behaviour. Furthermore, Cilliers (1998:3) argues that complex systems cannot be explained in simple terms. Cilliers also contends that traditional methods of science and analytical philosophy are not sensitive enough to the dynamics of complex systems. Departing from this point of view, one can argue that the institution of traditional leadership and all its components can also be classified as a complex system. Therefore in order to understand a complex system, everything about the system must be taken into account, in addition, components of what forms this complex system need to be analysed sensitively.

The institution of traditional leadership is a complex one, in a number of ways but only two are valuable for this study and these are briefly discussed below. The first complexity of system of traditional leadership is a fact that the system manifests itself in many forms from country to country. Therefore in this way there is no one particular way or model of the system that is regarded as the blue print of what the institution of traditional leadership must be or is. The second area of complexity about the system of traditional leadership is the term 'traditional leader' itself. The term traditional leadership is an all embracing concept because it includes a number of categories in the governance of traditional rural African communities. In the system itself, there is the King, *Amakhosi* (i.e. hereditary traditional leaders), *iZiphakanyiswa* (appointed traditional leaders), *izinduna*, *abanumzane* and the entire council of elders and advisers. Understanding the complexities surrounding the institution of traditional leadership and the term 'traditional leader' is of vital importance because by understanding these complexities clarifies any misconceptions involved in the system.

In order to understand the cultural dynamics which determine people's relationships, we need to unpack the root of the activities and events of people's cultural experience and

define what culture is. As a meaning-endowing process, culture encompasses the totality of non-reflected structures, that is, structures that are taken for granted. Mouton and Joubert (1990:89) define culture thus: “patterns of ideas – traditions which are transmitted from generations to generation”. In this way culture must be understood in this study as systems or patterns of beliefs.

Nancy Fraser (1997) treats the subject of cultural problems which she believes need to be addressed by means of remedies of cultural recognition. This also suggests the idea of cultural identity. This account brings into picture the constructed nature of culture and identity, which must be recognised internally and externally.

To begin with, we need to answer the question of what is postmodernism. The importance of beginning by understanding the philosophy behind postmodernism is basically that it is impossible to address issues concerning the institution of traditional leadership without referring to paradigm shift that influences most of our policies today. Political transformation in my opinion is also influenced by the strong move towards postmodernism as a way of life. From McGrath's (1996:184) definition of postmodernism below, the correlation between the concept and culture becomes evident. According to McGrath postmodernism is defined as follows:

Postmodernism is generally taken to be something of a cultural sensibility without absolutes, fixed certainties or foundations, which takes delight in pluralism and divergence, and which aims to think through the radical 'situatedness' of all human thought McGrath, 1996:184).

Veith (1994:42) points out “If the modern era is over, we are all postmodernists, even though we reject the tenants of postmodernism”. Postmodernism refers to a distinct ideology while post-modern refers to a time period. In the light of this study, postmodernism is understood as a condition or a spirit of the times rather than a school of modern theoretical thought (Botha, 2005:62). Foshaugen (1998:107) defines postmodernism as an intellectual situation that is profoundly complex and ambiguous. In the light of this study, postmodernism refers to a diversity of cultural and intellectual

cross currents shaping the intellectual political climate. The discussion of postmodernism plays a role in issues of traditional leadership because some believe that we are now faced with a reality of postmodernism where people particularly the youth would opt for a move away from traditional institutions and traditional practices.

The history of the institution of traditional authorities, not only in KwaZulu-Natal, but also throughout Africa, dates back beyond any memory and beyond the recall of the stories, which have been passed from generation to generation (Shamase, 2001:8). In the rest of Africa, before colonisation, the systems of governance were characterised by traditional leadership rule, and traditional leaders and institutions dealt with a wide range of issues, which impacted directly on their communities. Six out of nine South African provinces, KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, Limpopo and the North West have Houses of Traditional Leaders.

However, the government manual on Traditional Leadership and Governance, Act 4 of 2003 has two Kings for the province of KwaZulu-Natal. There has never been two Kings in the Province of KwaZulu-Natal therefore that must be noted as a bad mistake on the part of that policy document. However, the Eastern Cape has six Kings. This cannot, in a traditional African setting does not make sense. It is a complicated situation which even traditional leaders have up until now failed to address in the Eastern Cape. The situation in the Eastern Cape is a clear indication that the position and role of *uKumkani* (King) has some benefits of some sort, therefore every one of the six Kings will not step aside. This is an example of the situation where the political intervention would be appropriate, that is, in an attempt to bring about order since the Eastern Cape situation suggests that the system of traditional leadership in that province was disrupted during the colonial and apartheid eras and it is still in a chaotic state.

Places that will be covered by this study are clearly marked in the map of KwaZulu-Natal presented in the beginning of this study see pages 18 and 31. However, of these places; the tribal parts will be the focus of this study. The province of KwaZulu-Natal lies on the eastern seaboard of South Africa, stretching up to Mozambique and Swaziland in the

north and bordered by the Drakensberg Mountains to the west. It covers a total area of 100 000 square kilometres. The area was originally populated by San hunter-gatherers and by Nguni-speaking people who were later united into the Zulu nation.

Thorpe (1991:30) points out there are some differences existing between the San people and the Zulu community and among these Thorpe mentions the following:

- i. Linguistic,
- ii. physical appearance,
- iii. economics and
- iv. social life.

Thorpe (1991:30) further points out that one of the cardinal differences between the San people and Zulu nation was basically in the area of temperament. Whereas the San people had either retreated from conflict situations or acquiescently became absorbed into Western culture, the Zulu people resisted.

According to the latest Census (Statistics South Africa, 2001:3) conducted by Statistics South Africa, the province of KwaZulu-Natal has the largest population of 9 426 017. At the moment the number since the last Census has risen to over 10 000 000 (ten million) people living in KwaZulu-Natal. In terms of percentage this translates to just over twenty two per cent of the South African population.

In public administration and management, leadership is in the form of elected officials or traditional authorities, whose duty is to make political decisions and render services to the electorate or community. Leadership is, therefore, a result of social influence processes whereby a leader uses non-coercive influence to direct and co-ordinate the activities of organisation or the community toward goal accomplishment actively and successfully. As far as transformation goes, KwaZulu-Natal is still lagging behind the rest of the country. In this province, the old is still colliding with the new. The old is refusing to die while the new is struggling to be born.

The failure of development in rural KwaZulu-Natal is due to a number of factors, among which leadership plays a role. The old in this case refers to traditional authority structures and the new refers to the new dispensation structures. Therefore the strengths and weaknesses of leadership styles and management will be looked into and the paper will include recommendations on the preferred leadership style for rural areas in South Africa.

KwaZulu-Natal province accounts for approximately one-fifth of South Africa's population. The largest population group is of African descent, of which ninety per cent (90%) is Zulu. Almost ninety per cent of the White population is English speaking. The total number of the white population according to Statistics South Africa is 483 448 (11.3 per cent). There is a sizeable Asian or Indian community, which forms 8.5 per cent in KwaZulu-Natal and a small section of the Coloured population comprises of only 1.5 per cent (Statistics South Africa, 2001:38).

The main political groups in the province are the African National Congress and the Inkatha Freedom Party. Although there are other political groups such as the Minority Front (MF), United Democratic Movement (UDM), African Christian Democratic Party (ACDP), and the Pan Africanist Congress (PAC), the research will focus mainly on the Inkatha Freedom Party and the African National Congress as main political actors. However, the importance of smaller political organisations in the province of KwaZulu-Natal cannot be under-estimated. For instance, during the recent elections (that is, Elections 2004), these small political organisations had the final decision as to who must rule the province. These organisations unanimously voted for the African National Congress, given that both the African National Congress and the Inkatha Freedom Party failed to gain total control of the province by winning with clear majority.

In his outline of the present situation in the developmental process of change taking place in decentralised government and on the role of traditional leadership in Africa, Pasteur (1996:31) identifies the following historical periods:

- a) the pre-colonial period: by which he understands indigenous self-rule under various forms of traditional kingdom;
- b) the colonial period including the apartheid era: traditional rulers were associated with the colonial power in a system of indirect rule at local level particularly in the rural areas, while in the urban areas fledgling municipal structures were established on modern lines;
- c) the period of preparation for independence: positive moves to establish democratic local government with significant responsibilities and resources in rural and urban areas; and
- d) the present new dawn phase (dating in some cases from the mid-1980s and in others like South Africa more recent).

2.3 Overview of how traditional authorities work

One of the fundamental arguments against the legitimacy of the institution of traditional leadership is the relationship between the institution itself and government. Within the context of this study, a differentiation between the concepts elected office-bearers, hereditary and appointed officials form the core of this study. Broadly understood, the word 'legitimacy' denotes the legal status of a person or an entity. The 'legitimacy' of traditional leaders has been challenged by civic organisations, political rivals and others who argue that any system of inherited rule by *Amakhosi* is illegitimate, undemocratic and undesirable. Ray (1996:14) does not endorse a political role for traditional authorities. According to Ray (1996:14) *Amakhosi* and the state draw their 'legitimacy' from two separate sources. Traditional authorities derive their claims to 'legitimacy', authority and sovereignty from their pre-colonial roots, while the contemporary state is a creation of the imposed colonial state. It is crucial to understand that the concept is generally used in its ideological connotation.

Ray (1996:15) further concedes that this co-existence has raised a number of political, developmental, and conceptual problems, which have not been adequately addressed,

let alone resolved. One of the problems is the paradox that people are simultaneously citizens of the state and subjects of the traditional authorities.

On the one hand, this is the level of acceptance of a constitution, government and legal system by the people. Put differently, legitimacy refers to the faith of the population in a system or situation. According to Botha (2005:8), 'legitimacy' refers to the subjective consciousness of justice in a community. On the other hand, Botha further maintains that 'legitimacy' also refers to the formal (that is, objective) legality of a legal system. Following this definition, 'legitimacy' of traditional leadership may be viewed from two political perspectives namely the liberal perspective and the consecutive one, this by implication means that the legitimacy of the institution of traditional leaders solely depends on the individual, this is why it is difficult to arrive at a consensus with regard to the same. Ray (1996:18) further argues that the colonial and post-colonial states' modification of traditional authorities have not adversely affected the pre-colonial basis for the 'legitimacy' of the institution.

The researcher holds a conflicting view from that held by Ray, on the 'legitimacy' of traditional leadership. If Ray's position was true, we would not be sitting with the problem we are currently faced with on the legitimacy of traditional leaders in South Africa. For the researcher both the apartheid system and the colonial rule distorted the 'legitimacy' of the institution of *uBukhosi*; by appointing (promoting) their own people to be traditional authorities without taking into consideration the complexities of how the system operated. The problem we are facing in terms of the 'legitimacy' of traditional leadership was brought about by this historical fact of people who were appointed to the position by other people who had not right to appoint. Those traditional leaders appointed in this way lacked 'legitimacy', no matter the extent of their objectivity and leadership qualities.

Ninety per cent of *Amakhosi* interviewed as part of this research maintained that a large part of their 'legitimacy' hinged on their capacity to deliver services to their respective communities. However, they felt that the transformation process and the subsequent introduction of councillors had diminished their role. To complicate matters further,

Amakhosi are still not certain of their role and competencies in the new government structures.

The clearly defined role and powers of traditional leader within government structures will effectively underline the relationship of traditional leaders and their counterpart in a form of elected local government structures. The institution of traditional leadership in rural areas did establish councils acting as a forum for articulation of specifically African (Black) grievances thereby linking the traditional African rural community to the political process. Yet traditional leaders acted as mechanisms of social control by attempting to enshrine the political marginality of the traditional African rural Blacks by identifying the established political process as unwilling to sponsor issues of concern to rural communities. Therefore, the institution of traditional leadership was ineffective because it was removed from the main political arena.

Effectiveness and 'legitimacy' are associated; their ineffectiveness reduced their 'legitimacy'. This is a fact in comparison with other areas governed by the former apartheid government in South Africa. Furthermore, the same fact was observed and reiterated by a certain Mr. Themba Mabaso of the Zulu tribe outside Melmoth under the tribal authority of *iNkosi* Thandazani Zulu. According to Mr. Mabaso, there are a number of developmental infrastructure that has taken place since South Africa adopted a more transformational political approach to governance, these includes introducing electricity in the area, clean running water and building toilets for local communities. However, Mr. Mabaso also pointed out that these infrastructures were not equally distributed.

One would like to borrow from Nabudere (2004:45) who came to a conclusion that in order to understand a worldview, we need to deeply look into the internal structures of specific culture if we are to understand its viability or solidity, True the same goes for understanding how the institution of traditional leadership particularly in KwaZulu-Natal. A comparison of governing style of the traditional institution of *uBukhosi* (chieftaincy) with corresponding understanding of the same from a Western perspective differs or involves a methodological problem. The Western democratic style of governing on one hand,

tends to be guided by the legal and political principles, (this is also guided by rationality). The African style, on the other, is itself an amalgam of worldviews which are readily transparent. It basically draws from cultural historical background, and in this case values and morals form the most important part. Therefore in nature the two approaches adopt different styles.

Differences and similarities between the traditional African worldview and the Western (liberal) worldview can be seen in all facets like socio-political, economical and religious functions. They are also observed in other significant dimensions, such as status allocation, authority systems and levels of education. In general the African worldview is generally known as *ubuntu* worldview. *Ubuntu* worldview embraces moral codes and its philosophy inculcates discipline and respect in society. Further more, *Ubuntu* as a worldview encourages the sound relationship between a traditional leader and his/her community and beyond.

In theory, many observers characterise the institution of *uBukhosi* as autocratic because of the enormous powers they wielded. In Weber's theory traditional leaders are guided by mores, values, history, culture and tradition. However, Shamase (2001:10) argues that traditionally, in the day-to-day administration and legislation, an *iNkosi* rarely made policy. Contrary to a deliberately fostered impression, the personal word of the *iNkosi* was not law. His official word, on the other hand, is the consensus of his council, and it is only in this capacity that it may be law. If the village has a social problem, an *iNkosi* would raise the issue with his inner council and then his council of elders for proposals and debate. Traditionally, an *iNkosi* would normally remain silent during the debate and would assess the different positions before taking a decision. Consequently, it was discovered during the interviews conducted for the purposes of this study that in some tribal areas there are a few opinionated *Amakhosi*, who have the audacity try very often with success to impose their will on a council.

The role of traditional leaders in the Republic of South Africa has remained a controversial issue over the past few years. The continuing dialectical clash between

proponents of modernity for development and the persistent strength of traditional leaders (especially in KwaZulu-Natal) is still an issue in the country. Traditional authority constitutes a form of local government in terms of indigenous law. Furthermore, traditional leadership in South Africa still represents institutions that are vibrantly portraying the enormous culture of this nation. Noted, societal challenges that have indirectly and directly affected the role and function of traditional leaders are political, modernisation and democracy.

The existence of traditional leaders in most African tribes depends on the tribal loyalties. However, we cannot underestimate the hardships the institution have gone through that kept them disorganised and confused and distracted them from matters of importance. Consequently, the life span of traditional leaders is characterised by a severe and untrustworthy political transformation. Traditionally, in KwaZulu-Natal, the King also referred to as *iNgonyama* and the *iNkosi* acquire their positions through hereditary succession along the male line. The law of succession of each traditional community also informs succession (Goodenough, 2002:5). However, in 1994 the power to appoint traditional leaders was assigned to the Premier of KwaZulu-Natal or the delegated member of the council.

Abraham (1962:77) points out that in Africa; *uBukhosi* was more a sacred office than a political one. Abraham further maintains that the office of the *iNkosi* was sacred because an *iNkosi* was supposed to be a link between the living population and their ancestors, who were supposed to supervise human interests. The traditional leader or *iNkosi* is regarded as the father figure in a clan. The *iNkosi* was also considered as the symbol of unity of the tribe and thus fulfilled a variety of ceremonial functions.

Traditionally male, the *iNkosi* and his administration carry out a range of responsibilities. Included among these responsibilities is land administration. They serve as political, spiritual and cultural leaders and were regarded as custodians of the values of society. They looked after the welfare of their people by providing them with land for their subsistence needs through agriculture and grazing. While the traditional leader is the

central figure in the traditional authority system, an inner council of advisors assists him, sometimes referred to as the *iNkosi-in-council* (Goodenough, 2002:5). If these facts are borne in mind, it becomes apparent that the council was strongly representative with respect both to the nature of its composition and the content of its decisions. Therefore, decision-making was at all levels by consensus. Mbigi (1997:20) asserts that it is important to create political empowerment of African society by emphasising African democracy through traditional consensus.

Decision-making in traditional African life and governance was, as a rule, by consensus. There is considerable evidence that decision by consensus was often the order in African deliberations (Wiredu, 1998:375). The definition of the term consensus simply refers to collective opinion rather than majority view. Therefore, consensus in this study refers to a general agreement. For instance, in order for a consensus to be reached in a traditional African society, issues were discussed until a general agreement was reached. In this sense, consensus in an African traditional society was not a political phenomenon but reflected a social interaction.

The idea of consensus ensures that every person gets a chance to speak up until some kind of agreement or group cohesion is reached. Louw (2006) opinionated that a worldview '*ubuntu*' underscores the importance of agreement or consensus (<http://www.bu.edu/wcp/papers/Afri/AfriLuw.html>). Teffo (1994a:4) points out that democracy in the traditional African setting, society does not simply refer to majority rule. Busia (1967:28) maintains that traditional African democracy operates in the form of discussions.

Adherence to the principle of consensus was a premeditated option. It was based on the belief that ultimately the interests of all members of society are the same, although their immediate perceptions of those interests may be different. It is important to note that the pursuit of consensus was a deliberate effort to go beyond decision by majority opinion. It is easier to secure majority agreement than to achieve consensus.

Therefore, it is generally acknowledged that the traditional system of *uBukhosi* did have a democratic flavour to it. They inspire unity among their people. Each *iNkosi* owes allegiance to the Zulu King and collectively the chiefdom form the Zulu nation.

A territorial division, called chiefdom is governed by *iNkosi*, while the *iNkosi's* clan predominates in his or her own territory, other lineage clans may also be represented as a result of, for example, intermarriage. A territory of an *iNkosi* may be subdivided into smaller units called homesteads (*imizi*), each under the immediate authority of an appointed Headman whose position is not hereditary; should he fail to perform his duties adequately, he can be replaced. Furthermore, the traditional authority area is divided into a number of *wards* or *izigodi* in *isiZulu*. The *izigodi* have an appointed *Headman* or *iNduna* as extensions of the *iNkosi's* authority. The function of the *uMnumzana* is to represent his ward at the tribal council, to allocate land to new residents (who had been accepted by the *iNkosi*-in-council and accepted by the existing community members), to collect taxes and to maintain law and order in a given area (Ngubane, 1977:13).

iNkosi Mangosuthu Buthelezi (2001:1) argues for a system, which gives traditional leaders at least an equal say in local government to elected bodies. *iNkosi* Buthelezi argues that they do so in the name of preserving traditional Zulu customs and heritage. While the African National Congress argues that entrenching the position of the *Amakhosi* entrenches apartheid. However, this assertion has never been tested; it is generally uttered as a political statement

In spite of historical interferences, tribal structures retain the support and respect of most of their subjects. My observation also proved this to be true. Besides, despite many difficulties, traditional authorities have always been the providers of services in their communities. They have done it either by getting funds from the state (particularly when the old KwaZulu government was still operative) or, and mostly by mobilising their communities to raise funds from their own non-existing and scarce resources such as schools, clinics, community halls, access roads and other essential amenities have been constructed under the leadership and guidance of traditional authorities.

Sometimes the term traditional is usually confused and used interchangeably with the concept indigenous. Masoga (2005:22) discusses the difference and the tension between these two concepts. Masoga argues that the concept tradition refers to the handed knowledge system. Handed knowledge according to Masoga does not necessarily have to originate from the embedded context or space but could be from outside. The best definition of the concept indigenous comes from the World Council of Indigenous People, which defines 'indigenous people' thus:

Indigenous people are such population groups who from ancient time have inhabited the lands where we live, who are aware of having a character of their own, with social traditions and means of expression that are lined to the country inhabited from our ancestors, with a language of our own, and having essential and unique characteristics, which confer upon us the strong conviction of belonging to the people, who have an identity in ourselves and should be thus regarded by others (Masoga, 2005:22).

In so far as this definition is concerned, indigenous people is described as distinct and deserving respect by contrast to previous disrespect and disregard. The question remains: how better should societies enforce such a recognition and respect other than by maintaining our indigenous means of governing in the form of traditional leadership?

The institution of traditional leadership as an old form of governance is now-a-days being attacked from all sides; other forms of governance are 'robbing' this institution of its serious and important functions. According to Weber in Haralambos and Holborn (1995:502) authority in the case of traditional leadership rests upon a belief in the rightness of established customs and traditions. This implies that those in authority command obedience on the basis of their traditional status, which is usually inherited.

There are three ways by means of which traditional authorities assume their leadership position. These are as follows:

- a) Inheritance;
- b) appointed; or imposed; or
- c) elected.

Depending on the circumstances the above mechanisms are the only three by which traditional authorities gain their power. In KwaZulu-Natal, traditionally there was a difference between traditional leaders who gained power through their right to succession (that is, those who inherited authority) and those who were either imposed or elected. These are generally referred to as *iZiphakanyiswa*. Those who fall under Weber's category as rightful successors are usually referred to as *Amakhosi*, all others are called *iZiphakanyiswa*, (Goodenough, 2002:29). *iZiphakanyiswa* refers to *Amakhosi* not of the royal blood.

The researcher argues that the dispute surrounding this relationship could be looked at from three different perspectives and those are as follows:

- 1) A factual dispute, which is about facts and this kind of dispute can be resolved by establishing the facts using concrete observation or doing research such as this one. Factual disputes are also factual problems; these are problems that arise because involved parties do not know enough facts.
- 2) A value dispute, this type of dispute is about evaluations or attitudes and can be resolved by seeing things in a different light or a change in attitude. This often requires putting oneself in another's shoes or position, which some people find difficult given their political ideologies, therefore the researcher holds a view that value disputes are almost impossible to resolve and such is largely the case when it comes to the relationship of traditional leadership and elected government structures.
- 3) A verbal dispute, this is a dispute that arises out of ambiguity in language as is the case in almost all government policies with regard to the relationship between government structures and the institution of

traditional leadership. This kind of dispute, the researcher argues can be resolved by clarifying the meaning of concepts by defining them as precise as possible as is often the strategy used in this study. Value disputes are also philosophical in nature in a sense that problems of this nature arise when we use concepts without being aware of all their implications. An apparently verbal but genuine dispute at first looks like a verbal dispute because of ambiguous language. When the ambiguity is cleared up, then a genuine dispute about the evaluation of something usually surfaces, as would be seen in a chapter dealing with what the ruling party perceives as the weaknesses of the institution of traditional leadership.

Therefore in a way the adopted theoretical framework will help us better understand the core conflict about the topic of this study. According to Thornton (1988:22) culture functions to maintain society and culture is historical and changes with time often in relation to changes that affect a society. Thornton's observation suggests that a culture from whatever perspective one understands it must encompass the ability to change. This could be vaguely interpreted wrongly, as saying culture could be abundant or rejected as the postmodern view suggests. A closer observation of the understanding of culture either from a traditional perspective or a postmodern view suggests one thing, that a society is influenced by culture and culture is also influenced by changes in a society including political transformation. In a way this also emphasises the idea that culture is not static, it develops. It is in this spirit, this research suggests that political transformation in South Africa was to be accommodative of culture and how both are interwoven with each other. This suggests that the political framework must be informed by cultural practices in order for culture to be transformed by the political or legal framework. In so doing, service delivery would not be compromised by either of the two frameworks.

The researcher evaluates the recognition of traditional leadership since it is not possible to discuss or argue the constitutional recognition of the institution of traditional leadership without referring to their role as a basis for such a discussion and argument.

It is therefore imperative to discuss and critically assess the Constitution and other government policies in the light of what has been said above and in order to come to a conclusion whether the institution of traditional leadership has a place in South Africa's democratic dispensation and political transformation that is taking place. Governance and political transformation as a discipline is different from political science in a sense that transformation also involves policy implementation.

From Gramsci (1985) we learned that culture is the way we live, what we do, and social and political transformation, including the relational positions within society, (relations of domination). Thus culture is a tool for introducing change rather than static phenomena. In Gramsci collective actors are agents of social and political change.

2.4 Place of public policy in the legal framework

The main purpose of the programme on governance and political transformation is to bring about change in administrative matter. Such change must also be evident in the implementation of public policy. Anderson (1975:3) gives a concise definition of policy. According to Anderson policy is: "A purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern". A number of points are made from Anderson's definition of policy. First, following Anderson's definition it becomes clear that policy is regarded as implementation, that is, a purposive course of action. Policy proposals transform the lives of individuals when it is properly implemented. Therefore in the programme for governance and political transformation the emphasis is on implementation as opposed to proposed policy. Second, Anderson's definition requires a clear identification and specification of a problem, the resolution which requires policy intervention. Therefore by definition, public policy as a vehicle of the legal framework ensures problem solving actions that are undertaken by government.

In principle, good governance and good public policies are those that involve all political stakeholders and were not a top down imposition when these policies were formulated. Public policy is usually concluded by government (top) approach; however, this does

not necessarily imply that policy formulation must be exclusively dominated by politicians or government. The democratic principles of *Batho Pele* are in place to ensure that the ordinary people participate in policy formulation and other public matters of their interests.

2.5 Conclusion

This chapter first introduced the main theoretical frameworks for the entire thesis, but a special focus was on the cultural framework, the aim of which was to give a clearer picture of how the system of traditional leadership works in KwaZulu-Natal. Basically, in this chapter the political dimension of the institution of traditional leadership was discussed. The attempt to legitimise the institution of traditional leadership is an important political process; however, this must be informed by the cultural practices of a given society and takes into consideration the existing cultural background, although the informed dialogue must bring about desirable outcomes for both the cultural framework and political perspective. This was also followed by clarifying the traditional democratic use of consensus in political decision-making among Africans. The importance of the African culture or worldview was ascertained.

South Africa like the rest of Africa has experienced the political transformation as a result of both contact with the West and the influence of liberal democracy, the change had impact on the psychological and socio-political life. Suddenly, because of the influence Western liberal politics and democratic principles and ideologies, particularly of the political elites (most of whom came from exile); South Africa was now moving towards a complete adoption of doing things the Western way. The same political elites were no longer prepared to adopt anything traditional, for reasons known to politicians alone. The liberal democratic ideology could not take place without destroying the socio-political and cultural structures of the traditional African including the institution of traditional governance in the form of traditional leadership. The chapter also highlighted the fact that the institution of traditional leadership is like all other systems a complex one. Two areas of the complex nature of the system which were briefly discussed are the fact that the system is diverse and usually adapts to the unique historical

background of the people, thus each system of traditional leadership is similar to the rest but yet different. Another dimension of the complex nature of the institution of traditional leadership discussed in this chapter was the concept traditional leader itself and its many manifestations.

In an attempt to explain the cultural worldview, *ubuntu* philosophy was looked at as embracing the totality of the African culture. In this way the traditional system of governance was required to promote *ubuntu* in such a way that *ubuntu* was central to indigenous government system.

Cultural diversity needs to be understood, acknowledged, approached with sensitivity and accepted where it makes sense to do so. Granted there are incidents where culture is misused for a variety of reasons including political reasons and personal gains this problem needs to be addressed.

The next chapter focuses on the legal framework, covering both the apartheid era and the period leading towards the new democratic dispensation. The legal framework paves the way for what is also understood as the political framework, where political ideologies play an important role in the shaping of the country and in the relationship among main political actors. The legitimation of the institution of traditional leadership in South Africa seems to naturally follow the political framework, which must create an enabling environment for both institutions to co-exist peacefully and deliver services effectively.

CHAPTER THREE

3 LEGAL FRAMEWORK

As was explained in the previous chapter, there are two main conceptual frameworks on which the study departs, that is the cultural framework which was discussed in the previous chapter and the legal or political framework which will be the basis on which this chapter concentrates. These two conceptual frameworks consist of theories and issues in which the study is embedded. The legal framework explains the relationship between traditional leaders and elected political representatives.

Without a vibrant and meaningful legislature and legislative process, all discussions about the role and function of traditional leaders are a waste of time. The attempt to legitimise the institution of traditional leadership in South Africa is informed by the political/legal framework and was initiated by democratic negotiation technically referred to as CODESA and by a number of government official documents. Early attempts to put the institution of traditional leadership on the par with (democratically) elected bodies are up-until-now unsuccessful. In chapter two we looked at the general frameworks that serve as the basis of this research, whereby all theoretical frameworks were introduced and briefly discussed. Chapter two discussed in a detailed manner the cultural framework and came to a conclusion that the legal framework must transform (and not destroy) the cultural framework and thus create an environment where the two institutions could co-exist.

This chapter focuses on one of the main frameworks namely the legal framework. In a simple sense, the legal framework is about the point of departure as it is captured by the law. The legal framework also encompasses all legislation and policies enacted as a means of providing guidance in matters of governance. Here the legal political documents and the interaction of political parties towards these are critically discussed. Such documents include government documents under the previous apartheid regime, policy documents of the now defunct KwaZulu Government, policy documents since the

new dispensation was negotiated, which include the Constitution of 1993, herein referred to as the Interim Constitution, Government Acts, the Constitution of the Republic of South Africa, also referred to just as the Constitution and other documents will all be subjected to scrutiny and analysis.

The nature of the relationship of the institution of traditional leadership and elected political structures is grounded in the Constitution and other policy documents of the government. The researcher argues that in essence all legislative and policy documents proposed by the government is the attempt to establish a working relationship, however, good these may be, will exacerbate the tension unless there is implementation. Such policy documents must also be agreed upon by all political actors including traditional leaders.

3.1 Introduction

Public policy and policy analysis form an integral part of political transformation and administration and it provides the necessary environment for improving the levels of efficiency in service delivery. In order for us to gain more information and understanding of the statutes regulating the role and function of traditional authorities, it is imperative to look at the legislation of South Africa, before the beginning of democracy. Therefore, this section will focus on the following documents: the Black Administrative Act 1927, (Act 38 of 1927); the Black Authorities Act 1951 (Act 68 of 1951), 'Interim' Constitution (IC) of 1993, the Constitution of the Republic of South Africa 1996, (Act 108 of 1996), the White Paper on Local Government and Traditional Leaders (1998), Traditional Leadership and Governance Framework Act 41 of 2003, KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005; the KwaZulu *Amakhosi neZiphakanyiswa* Act 1990 and the *iNgonyama* Trust Act of 1994. Briefly the legal framework looks at the political dilemma of including the traditional leadership structure of governance into the new system of governance. The legal system also regulates the democratic principle of accountability from within the organs of state, the institution of traditional leadership included. Therefore finding a meaningful role for the institution of traditional leadership

in government is a key to political stability in KwaZulu-Natal and in the rest of South Africa.

Therefore as a theoretical point of departure for this chapter, it is necessary to briefly define the concept policy. According to Ervin (2000:40), most definitions of policy amount to more or less any overall plan or course of action adopted, as by the state or political party, designed to influence and determine immediate and long-term decisions or actions. For de Jongh (2006:8) policy-making and implementation are clearly more than political processes; they are also socio-cultural. De Jongh further contends that the rules, intentions and aims of policy are always ideological. The truth of what de Jongh suggests is investigated in this chapter. In other words, this chapter examines the above-mentioned policy documents with the intention of ascertaining theory and praxis.

Traditional leaders, in the form of *Amakhosi* still have the powers and functions afforded to them under colonialism and apartheid, as contained in legislation. The most important of these for the purpose of this work are the *Black Administration Act 38 of 1927*, the *Black Authorities Act and the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service of Chiefs and Headmen No. 110 of 1957*. The Black Authorities Act established a system of hierarchical local government in rural areas based on traditional organization but with statutory powers and functions. Two or more areas for which tribal authorities have been established constitute an African (Black) regional authority. Its powers and functions under the Black Authorities Act include the power to provide for:

- 1) the establishment, maintenance, management and conduct of education institutions;
- 2) the construction and maintenance of roads, bridges, dams and any work ensuring satisfactory water supplies;
- 3) the maintenance and operation of dipping tanks;
- 4) the establishment, maintenance, management and operation of hospitals and clinics; and

5) the improvement of farming and agricultural methods generally.

In terms of section 5(2) of the Black Authorities Act (1951), regional authorities also have the power to make by-laws; this included the prescription of fees for services rendered or rates payable by any specified class of persons in respect of services provided. Given that the *Amakhosi*, *izinduna* and *abanumzana* constitute the regional authority, this implied that an unelected body had powers of taxation.

There are extensive powers which under the Constitution are the responsibility of the national and provincial governments and which may be assigned to municipalities under section 156 of the Constitution. This is where the conflict arises in that the powers and functions of traditional leaders overlap with those of elected local government.

In KwaZulu-Natal, the House of Traditional Leaders was formed in terms of the House of Traditional Leaders Act 1994, (Act No. 7 of 1994), which was passed in the KwaZulu-Natal Legislature. According to this Act, the House must deliberate and give advice to the government on matters relating to traditional leadership and their communities, indigenous and customary law and must make proposals on any proposed legislation or executive action. The Act states among other things that the House has these powers with special regard to:

- a) the status, powers and functions of traditional authorities;
- b) organisation of tribal and traditional communities;
- c) indigenous land tenure system and all related matters;
- d) Zulu traditional and customary law on inheritance, families and marriages;
and
- e) tribal courts and the system of jurisdiction, enforcement and/or sanction of Zulu traditional and customary law.

The effectiveness of the House, however, depends significantly on the relationship between the House of Traditional Leaders and the government. Legislation and policy

on the functions and roles of traditional authorities are often contradictory, vague and unclear. That reflects a political tension on what the appropriate role is for an institution that appears to contradict democratic principles. The White Paper on Local Government and Traditional Leaders 1998, issued by the Ministry for Provincial Affairs and Constitutional Development also struggles to define an acceptable role for traditional authorities. The role outlined is essentially advisory and very local which was predictably deemed to be unacceptable by *Amakhosi* and their proponents around the country and not only in KwaZulu-Natal.

3.2 Conceptual framework

Part of the political conflict exists because of disputes which cannot be resolved given different meanings people attach to concepts about which the whole debate hinges. Concepts are perceptions and therefore their meanings vary noticeably from individual to individual. In this way, concepts are subjective impressions; their understanding does differ from person to person. Therefore the use of the concept without clarification of the interpretations of it becomes one open to misuse and consequently, assertions being a meaningless concept. Since it is the purpose of this study to discuss the theme of governance relationships in South African understanding; certain words which are central to the theme, warrant a definition and to some extent an elaboration. According to Young (2000:18), each collaborator must have the same understanding of the concepts if the collaborative data are to be similarly classified. Some concepts are discussed and carefully examined as a way of establishing rules of the game in the debate about the role of traditional leaders in the democratic dispensation. It is the view of the researcher that no progress can be made in the attempt to establish a working relationship between traditional African system of governance and the constitutional democracy unless the conflicting parties understand that agreement first has to be reached on the meaning of democracy and other words accompanying it. A number of concepts that will be clearly defined form part of this chapter, these include: state, democracy, democratisation, policy-analysis, policy-development, governance, transformation and power.

The legal system requires power and organisation, that is, a state or government to enforce it. The state calls itself the representative of society. Article 1 of the Constitution of South Africa, Act 108 of 1996 states as follows: “The Republic of South Africa is one sovereign democratic state [...]”. Therefore for the purpose of this research, it is important to first look into the meaning of the concept state in order to understand and grasp the meaning and political understanding of this particular concept.

The concept *state* has multiple meanings. Looked at from a political philosophical perspective, Gonsalves, (1985:353) maintains that Plato derived his concept of the state from the people’s economic needs. For Plato a state comes into existence because no individual is self-sufficient. Whereas Loxton, (1993:30) argues that the state does not exist for itself, but it exists in order to provide each individual with the opportunity to live a “life of natural perfection”.

According to Bekker (1994:50), an entity will be recognised as a state by the international community only if it complies with the following juridical requirements: it must have its own territory, own population, own government and sovereignty. Put differently, a state is a government structure, usually sovereign and powerful to enforce its writ. Haralambos and Holborn, (1995:503) define a state from a sociological point of view as a human community that claims monopoly of the legitimate use of physical force within a particular territory.

Ali Mazrui (2001) one of the notable African scholars and remarkable author suggests that African democracy was largely reflected by the idea of consensus democracy as discussed in the previous chapter. However, Mazrui concerned about the signs of a non-existent democracy in Africa asks a question “Who killed African democracy?” Looking at the question whether the institution of traditional leadership is democratic or not, perhaps it is imperative that we begin by defining the different understandings of the concept democracy and thus define the parameters within which the concept is engaged in this study.

The concept democracy is derived from the two Greek roots *demos*, which mean 'people', and *kratos*, which means 'authority' (Jackson and Jackson, 1997:76). However, for the purpose of this research, the definition of the concept democracy in its simplest form, which refers to a rule of people-by-people, would be (Roskin et al., 1997:64). Lawson (1993:91) argues that 'democracy'¹ describes the relationship between citizens and government. According to Roskin et al., (1997:64) the concept democracy is defined as follows:

A political system which supplies regular constitutional opportunities for changing the governing officials, and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office (Roskin et al., 1997:64).

The working definition of democracy in this study is a modified one. Democracy in this study means the rule of people by permission of the people. This is derived from a Lockean understanding of the social contract. In terms of this definition, Roskin et al., (1997:64) argue that competition between contenders for office must result in the granting of effective authority to one group and the presence of an effective opposition in the legislature as a check on the power of the ruling party. According to the above stated definition, the term democracy cannot be avoided in the discussion about certain aspects of governing. Undoubtedly, traditional leadership is a form of governing; therefore this system of governing can also be evaluated in terms of democratic principles. Therefore, whenever the term democracy is used it will be in conjunction with the definition according to Locke's understanding.

On the other hand Ranney (1993:67) defines 'liberal democracy' as a form of democratic rule that balances the principle of limited government against the idea of

¹ It must be noted that this definition is a liberal definition and it is restricted in a sense that it excludes other forms of democracy such as the traditional or indigenous African system of governance which is highly democratic in its own right. The liberal restricted definition of democracy as argued here is not all embracing and cannot be a measure through which all other democracies are measured. This also brings in the idea of cultural diversity and perhaps the debate on cultural relativism. There is no one standard or definition that must be considered universal.

popular consent. Ranney further argues that 'liberal democracy' is more commonly used to describe a particular type of regime. One of the most basic signposts of liberal democracy is citizens' participation in government. Participation is the key role of citizens in democracy. Citizen participation builds a better democracy.

Democracy is a political system based on the individual. The individual must never be intimidated or victimised in a democracy. He or she must be free of fear. The secret vote is necessary to protect the individual from any person or political party coming to that person after the election and victimising them for the way he or she voted. Democracy also demands the widest possible distribution of power and authority, between legislative, judicial and administrative powers and different strata of government, for example, central, provincial and local government, so that effective control will be in as many and as different hands as possible, so that the will of one dictator or an elite, privileged class, that is, oligarchy, racial or ethnic group will not dominate or oppress the people.

Furthermore the concept democracy is generally used as an ideology, in its usage as an ideology the concept democracy is open to abuse. It will therefore be argued that in its 'liberal sense' democracy is supporting the existence of power relationships that are inevitably disadvantaging the African traditional understanding of participatory democracy. For the purpose of this research, a distinction between the liberal definition of democracy and African participatory democracy would be made. In other words, ideology is operative in the usage of the term democracy.

Another process that has had an impact on the way in which world politics operate is democratisation. According to Heywood (1997:28), democratisation refers to the advance of liberal democratic reform, which implies the granting of basic freedoms and the widening of popular participation and the choice of the electorate. The idea of popular participation is brought into the traditional system of governance as some challenges are based on this idea that the system of traditional leadership is not

democratic in that it excludes the majority since popular participation is an absent value in this system. For Duvenhage democratisation is defined thus:

Democratisation may be regarded as a specific type of change and implies the transformation of a non-democratic dispensation in order to meet the requirements set for a multi-party democracy. Non-democratic dispensations may assume a variety of forms, including absolute monarchies, dictatorial dispensations, military regimes, totalitarian dispensations, one-party states and various forms of oligarchies (Duvenhage, 1998:2).

Therefore, for Duvenhage, the distinction between the two terms democratisation and democracy is very clear. For him democracy is the product of democratisation. The question is, does democracy simply mean: "One man one vote in a unitary state?" or does democracy mean much more than this? In other words, can the liberal democratic dispensation accommodate the institution of traditional leadership as an important organ of state? Is there only one definition of democracy which is intended to fit all situations? The answer to some of these important questions, particularly the first three must be on the affirmative, if South Africa must progress towards a partnership (coexistence) with the indigenous system of governance. However, the fourth question cannot be taken lightly, there cannot be only one meaning of democracy that is intended to fit all situations. Teffo (2002) points out that in the case of the word such as democracy, there is no agreed definition and the attempt to make one such definition will always meet with resistance from other sides.

The word democracy must therefore be understood within a historical and cultural context within which it operates. The researcher therefore aligns with Sindane (1994:4) when he writes:

The least we can expect from democracy is that it should be a process of decision-making which involves the people, especially those who will be affected by those decisions (Sindane, 1994.4).

Thus democracy in principle means representative and participatory and in this way democracy is all embracing. Consequently, rather than just being construed as an idea, democracy should be conceived and perceived as a process. Finally democracy must also be perceived as diverse. In this way democracy will differ from one country to the other both in conception and in application.

In Haralambos and Holborn (1995:501) Max Weber defines power as follows:

The chance of a man or a number of men to realise their own will in a communal action even against the resistance of others who are participating in the action (Haralambos et al., 1995:501).

Looked at from Weber's perspective power consists of the ability to get your own way even when others are opposed to your wishes. Among his classifications and types of authority, Weber in Haralambos and Holborn (1995:502) includes traditional authority.

The explicit view of power behind this defines it as the ability to make decisions that are intended to be binding on issues over which there is some conflict of interest (Lukes, 1974:15). Put differently, it is through the articulation and aggregation of issues that certain groups come to exercise power, and after the decision-making process have played itself through; the groups retire leaving the centre stage occupied by other groups on further issues. Therefore, power is not solidified in one group, but is issue-based.

Power as Goldberg (1995:13) argues is exercised in the promotion and execution of the exclusions, whether intended or not. Similarly it is a well-known fact that in a society the relations between groups are constituted as relations of power. In other words, the dominant hegemonic group invariably excludes and subordinates other groups as was, and still is, the case in South Africa.

3.3 Statutory powers and functions of traditional leaders

The Oxford English Dictionary defines a legislature as “a body of persons invested with the power of making laws of a country or a state”. Simple as this definition looks, it also addresses the broad spectrum of activities and responsibilities performed by a legislature. Given this definition, it suffices to conclude that the dual governance system by traditional leadership and the constitutional dispensation, that is, elected or political leadership needs to be recognised more formally and visibly by the legislature. The absence of specific roles for traditional leaders in the democratic South Africa poses difficulty as to how the country must move forward, particularly in rural areas.

3.4 The ‘Interim’ Constitution

Constitutional experts Rautenbach and Malherbe (2003:270) maintain that one of the main reasons traditional leaders enjoy the constitutional recognition is the historical fact that the system of traditional leadership existed before colonialism and apartheid and that it never completely disappeared despite the attempts of these European structures to abolish it. The ‘Interim’ Constitution made some attempts to link the institution of traditional leadership in South Africa to the government and thus created an enabling environment for the meaningful role of traditional leaders in government institutions. However, the ‘Interim’ Constitution does not contain any further particulars in this regard. The ‘Interim’ Constitution divided South Africa into nine new provinces in order to:

- i. Foster effective governance and smooth running of periodic elections;
- ii. inculcate participatory democracy in the citizens of South Africa;
- iii. facilitate nation-building; and
- iv. place the country on the path toward long-term national and economic development.

The Constitution of the Republic of South Africa 1993 (Act 208 of 1993), otherwise referred to as the ‘Interim’ Constitution serves as our point of departure because it

clearly made provision for a more legitimate body than those found in the final Constitution. Traditional leaders' participation in governmental issues was identified. But the 'Interim' Constitution says very little about this important aspect of traditional leadership in the new democratic dispensation. The National Council of Traditional Leaders was to serve as part and parcel of policy making. That Council was also to serve as a forum of traditional leaders of the various tribes of South Africa who were forced to live apart from one another under the Homeland policy. Despite the efforts of Congress of Traditional Leaders of South Africa, tribalism does still pervade the many perspectives of traditional leaders. The traditional Council was to serve as an instrument of unity amongst the African language groups of the country.

In terms of section 183(1) of the 'Interim' Constitution of 1993, the legislature of each province, in which there are traditional authorities, and their communities, shall establish a House of Traditional Leaders consisting of representatives elected or nominated by such authorities in the province. Furthermore, the 'Interim' Constitution also stipulates some basic principles concerning the establishment, composition and function of the House of Traditional Leaders. Traditional authorities under this constitution are recognized as primary unit of traditional leadership, as the house consists of representatives emanating from traditional authorities.

The 'Interim' Constitution further indicated that all provincial Bills pertaining to traditional authorities, indigenous law, or such traditional customs, or any matter related to it, had to be referred to the house for its comments before it could be passed by a provincial legislature. That implies that rural development projects, are suppose to work in conjunction with the house of traditional leaders, which will advise the provincial government on the prioritisation of the development needs and coordination of delivery plans.

The 1993 Constitution, chapter 11 section 182(1) provides that traditional authority of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government referred to in chapter 10, shall ex-officio be

entitled to be a member of that local government, and shall be eligible to be elected to any office of such local government. The constitution further provides a compulsory representation of the traditional leader in the local government structure within his area.

According to the Constitutional Court's interpretation of section 182, that is, (granting *ex officio status* to serve in municipal councils) this is an important constitutional entitlement for traditional leaders whose customary authority and role were being affected by transition to democracy. The South African Law Report, (1998:1) puts it as follows:

Section 182 means that traditional leaders are entitled to *ex officio* representation on local government in their areas. This ensures that traditional leaders are entitled to representation on a council without having to stand for election. It also ensures that for the period of transition the traditional leaders who had previously been exercising the powers and performing the functions of local government will be represented on the newly established institutions which would now be responsible for those functions (The South African Law Report, 1998).

It is clear from the above interpretation that within the broad scenario as outlined; an important role does exist for traditional leadership of this country. However, the 'Interim' Constitution and the Local Government Transition Act, do not confront the issue of how customary law and its practitioners fit into the new democratic system. According to Ewing, (1995:5) provision for a House and a Council of Traditional Leaders with an advisory role, and for the inclusion of unelected *Amakhosi* in local government, amounts to grafting the traditional system onto democratic government, with the risk that neither will produce green shoots.

There is a close link between the legislative process and the interpretation process. Since legislation is the outcome of a broader political process, the way in which a political or legislative process is understood will influence the way in which legislation is interpreted. For instance, where politics is understood and practiced as an all-or-nothing clash between competing interest groups and parties (as is the case in KwaZulu-Natal, between the African National Congress and the Inkatha Freedom Party) in their struggle

to gain control and support of traditional leadership and their tribal territories, all political decisions will be an expression of power. Therefore all political decisions will solely be a question of strategy. That approach to politics is usually referred to as the strategic or pluralist conception of politics and democracy. Because politics is nothing more than a power game, as such it is clear that the purpose of the 'Interim' Constitution was mainly to set up the tone or establish the enabling environment from which the Constitution of South Africa would operate. The next part deals with the recognition of traditional leaders in the constitution of South Africa.

3.5 The Constitution of the Republic of South Africa

Basically before political transformation took place in South Africa in the early 1990s, parliament was considered as the supreme ultimate law in this country and because of this, the constitution was subject to the decisions of parliament. However, with the advent of political transformation, the Constitution is now the Supreme Law of the country. It is therefore important to critically look at the recognition of the institution of traditional leadership in the South African Constitution and its significance. The question is: What is the real significance of the constitutional recognition of the institute of traditional leadership?

Chapter 2 of the 1996 Constitution of the Republic of South Africa recognises the equal human rights of all, and it also recognises the rights of cultural, religious and linguistic communities. Furthermore, the Constitution makes provision for the recognition of the role of traditional leaders. The Constitution therefore recognises rights and institutions that may potentially be in conflict with one another, and in particular, as far as cultural rights and the powers of traditional leadership are concerned, this is of particular concern for the declared equal rights of women. However, such recognition of traditional leader by the Constitution is subject to the condition that the institution is not inconsistent with the Constitution.

Great strides have been made since 1994 in recognising the equal rights of South African women. A range of legislation aimed at equalising the position of women has

come into effect, combined with the presence of unprecedented numbers of women in politics, the economy, and the academy, which means that the position of women in South Africa is “more equal” now than at any other time. However, these changes have not permeated the lives of all in South Africa. Rural women remain among the poorest and most marginalised, with the least access to resources, education and power. Quisumbing *et al.* (1995) maintain that in women in rural areas generally have lower levels of education, assets and other resources and social support than men. On the other hand, Ellis (2000) describes the most vulnerable households as those that are both highly prone in adverse external events and lack assets that could carry them through difficult times.

New legislation entrenching the powers of traditional leaders in the form of the Traditional Leadership and Governance Framework Act 2003, and the Communal Land Rights Act 2004, will directly impact rural women. There are two main areas of concern: the equal rights of political representation and participation at local government level (which is a significant area of overlap in power between elected local government authorities and traditional authorities); and equal rights of access to, and ownership of land. The government and the drafters of this legislation insist that its effects on rural communities will be positive and that it finally lays to rest colonial and apartheid forms of oppression, disenfranchisement, and land administration. However, objections have been raised to both pieces of legislation in terms of the political implications that they have for democracy (and the equality that democracy necessarily entails); and the economic and power implications for the distribution of resources, most importantly land.

The accommodation of the claims of traditional leadership and the recognition of traditional communities in South Africa pose a great challenge to democracy and human rights. In so far as the equal rights of rural communities are concerned, and in particular women within them, the attainment of a workable balance between the powers of traditional authority and the democratic rights of the people in the communities over which they preside could constitute either one of the greatest failures or one of the

greatest achievements of the post-apartheid dispensation. It is a matter of critical national concern that this balance be achieved, as it is integral to the achievement of the rights and well-being of rural women, as well as the peace and stability of the communities in which they reside. The South African Constitution recognises political, social, economic (individual) rights and cultural (corporate or group) rights. Nancy Fraser (1997) suggests that the different types of remedies are required for different kinds of problems. According to Fraser the remedy required to redress questions of identity, is political recognition.

Human (1998:85) argues that South Africa cannot expect the old apartheid structures to deliver new services. Most of these structures still have their roots in a system designed to serve the minority and control the majority, whereas the new government aims at serving the whole population. When the new democratically elected government of the African National Congress came into power in 1994, their main task was to make corrections and adjustments to the traditional institutions in the country. Chapter 11 and 12 of the Constitution makes provision for full recognition of the traditional leaders but at the same time, the same pieces of legislation fail to clarify exactly what their role and function are in their respective communities.

Chapter 12 of the South African Constitution provides as follows on the role of traditional leaders and local government:

- a) Section 211(1): the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- b) Section 211(2): a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those terms.
- c) Section 211(3): the courts must apply customary law when the law is applicable, subject to the constitution and any legislation that specifically deal with customary law.

- d) Section 212(1): national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- e) Section 212(2): to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and customs of communities observing a system of customary law.

It is logical to believe that the Constitutional provisions are meant to establish general principles by means of which political transformation of the institution of traditional leadership is grounded and clearly articulated. Thus these provisions of the Constitution, as outlined above, had an effect on the institution of traditional leadership. Given the new political dispensation in South Africa, it is clear that the institution cannot be restored to its pristine pre-colonial form but has to adapt to change. What is worrying about Chapter Twelve of the Constitution is that it is the shortest of all chapters of the Constitution. This spells out disaster in the sense that there are outstanding issues of concern for indigenous traditional system of governance and its place in modern democratic political dispensation.

The Constitutional Court has interpreted the implication of the above-mentioned provisions thus:

In a purely republican democracy, in which no differentiation of status on grounds of birth is recognised, no constitutional space exists for the official recognition of any traditional leaders, let alone a monarch (The South African Law Report, 1998).

In addition, page 1323 of the same report is interpreted as follows: “The New Text (NT) of the Constitution complies with Constitutional Principle XIII by giving express guarantees of the continued existence of traditional leadership and the survival of an evolving customary law. The institution, status and role of traditional leadership are thereby protected. They are protected by means of entrenchment in the New Text and any attempt at interference would be subject to constitutional scrutiny”.

Therefore the Constitution has entrusted to traditional leadership all functions that are customary in nature. However, the Constitution left specifics relating to how such leadership should function in the wider democratic society to parliament. Given this omission, there exists a socio-political problem which needs to be addressed. In Wittrock and Baehr (eds.), Hoogerwerf states that:

A problem exists if there is discrepancy between a goal or some criterion and the perception of an existing or expected situation (Wittrock and Baehr, 1981:31).

Therefore despite these constitutional provisions, the relationship between local authorities and traditional leaders was never normal. In the case of the relationship of traditional leaders and democratically elected local government structures, it is necessary to begin with a clear indication of the roles the government associate with each of these state organs from their relationship with each other.

According to a great number of those who were interviewed, eighty per cent (80%), both from the community, local government officials and traditional leaders in KwaZulu-Natal, that relationship is so complicated because of the Constitution that they are unable to identify the duties of traditional leaders in a local council and cannot fully explain it. That is one major part of the Constitution that still remains not clear and therefore creates confusion and tension in some areas involving traditional authorities and local government structures.

Contrary to the politically distorted truth that only traditional leaders aligned to Inkatha Freedom Party have a problem with the Constitutional provisions with regard to the role and function of traditional leaders within the local government structures, traditional leaders aligned to the African National Congress elsewhere also challenge the Constitution in this matter. The only difference is that animosity between the two organisations and the fight for power (political control) of the KwaZulu-Natal province is too serious. Mapazi (1997:204) quotes the President of the Congress of Traditional

Leaders of South Africa, *iNkosi Phatekile Holomisa* as saying “[...] government attitude towards traditional leaders is distasteful”. It is also important to mention the fact that not only Zulus coming from or living in the tribal rural areas owe their allegiance to *Amakhosi*, every Zulu wherever they may be are subjects of the *iSilo samaBandla*.

Diescho (1996:8) points to the sad truth that “no country in the world has succeeded in quashing ethnic or tribal differences. Such differences turn to be immune to political machinations”. South African situation is not experiencing a unique problem in the issues surrounding the relationship between traditional system of governing and local government authorities. The country should not be discouraged by the inevitable problems between the local government structure and traditional authorities.

South Africa is a society diverse in terms of language, ethnic distribution, cultural specificities and historical experiences. These have been given very little expression in the newly formed democratic dispensation. The few episodes in KwaZulu-Natal province where traditional leadership locked horns with the National government over land issues were signs of what could happen if newly established provinces feel threatened by the national government and sense that the people’s interests are not respected.

Traditional leaders of all political persuasions are dissatisfied with their constitutional and legal position with regard to governance. They argue that the Constitution should have spelled out their powers and functions as it did for municipalities. Therefore traditional leaders are demanding that traditional authorities be recognised at the primary level as the local government and not as part of municipalities. According to the White Paper on Traditional Leadership and Governance, one of the roles to be played by the institution of *uBukhosi* is to “promote socio-economic development, good governance and service delivery”. To fulfil this vital role, the White Paper proposes that the government should put in place mechanisms to ensure an integrated, structured and coordinated involvement of the Houses of Traditional Leadership in the various policy developments and programmes. Following this clearly specified role in the White Paper,

traditional leaders demand that the necessary infrastructure be provided to enable them to deliver services in their communities.

As a result of that confusion, service delivery is hampered especially in the rural KwaZulu-Natal. The conflict arises as a result of the fact that elected councillors and traditional authorities occupy the same area and are expected to carry out certain functions, which are much the same. It is for these reasons that the contents of the Constitution have come under severe criticism of traditional leaders throughout South Africa but more so by traditional leaders in KwaZulu-Natal and by the outspoken president of the Congress of Traditional Leaders of South Africa, (CONTRALESA) *iNkosi Phatekile Holomisa*. In his latest critic to President Khalema Motlanthe's state of the nation address of the 6th February 2009, Mr. Phathekile Holomisa states that the government's treatment and handling of the position of traditional leaders in South Africa is despicable. Mr. Holomisa also stated that he was disappointed that in his speech, President Motlanthe had nothing to say about the role of traditional leadership in government.

Finally, the Constitution highlights the criteria for good governance in section 195, which introduces the basic values and principles governing public administration. Democratic governance is also committed to the notion that all people are treated equally.

3.6 The White Paper on Local Government and Traditional Leaders 1998

The above stated White Paper addresses the relationship between traditional leadership and local government. Chapter 4 of the White Paper (p.75) recognises that the relationship between traditional leadership and elected rural local government requires clarification. Furthermore, the White Paper states that there is no doubt that traditional authorities should continue to play an important role in the development of their communities. According to the White Paper (p.75) traditional leaders are responsible for a number of functions, which includes the following functions:

- a) Acting as head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers.
- b) Presiding over customary law courts and maintaining law and order.
- c) Consulting with traditional communities through *imbizo* or *lekgotla*.
- d) Advising government on traditional affairs through the Houses and Council of Traditional Leaders.
- e) Convening meetings to consult with communities on needs and priorities and providing information.
- f) Being the spoke-persons generally of their communities.
- g) Being custodians and protectors of the community's [sic] customs and general welfare.

However, the White Paper (p.76) further states as follows:

However, where Chapter 7 of the Constitution allocates a function to a municipality, the municipality has sole jurisdiction over the matter. On issues such as development, for example, a cooperative relationship will have to develop. Tensions, which arise in this respect, will have to be addressed through dispute resolution mechanisms. These mechanisms are being applied to certain communities (WPLGTL, 1998).

The White Paper in practical terms proposes a '[...] co-operative model for rural governance'. It states that any model would have to be consistent with the Constitution, while also recognising the positive contribution that elected structures and traditional authorities could make in the development of traditional areas and communities.

The White Paper was criticised by the Inkatha Freedom Party President *iNkosi Buthelezi*. According to *iNkosi Buthelezi*, the White Paper makes no provision for local government powers of traditional authorities and "[...] mentions traditional leaders only marginally, almost as an afterthought" (Goodenough, 2002:39).

3.7 Traditional Leadership and Governance Act 41 of 2003

The White Paper also outlines the ruling government's policy on the role of traditional leadership in a democratic dispensation. It stipulates that traditional leaders should be custodians of tradition and culture. It further adds that the role of traditional leaders in government must be advisory, supportive and promotional but advisory in matters relating to tradition and culture. The document opens by emphasising that the institution of traditional leadership occupies an important place in the rest of Africa and in the history of the body politic of South Africa. Key issues addressed in the White Paper primarily concern the place and role of the institution of traditional leadership in the newly democratic dispensation in South Africa. The contents of the document can be summarised as follows:

The document re-evaluates how a number of countries in the world generally, and in Africa particularly, have managed the questions of traditional leadership and the diverse legal and constitutional mechanisms that have been developed in order to accord traditional leaders an appropriate role within the democratic government.

Consequently, the document also outlines the government's vision for the transformation of the institution of traditional leadership and the principles guiding such transformation. However, this raises some serious concern as to the genuine motives of the government. As history has shown, both the colonial powers and the apartheid regime had their own hidden political agendas regarding the institution of traditional leadership.

Touraine points out the significance of societal movements for political transformation, thus providing a strong argument for political transformation he writes:

The main point is that it is impossible to divorce the foundation of [political] societal actors, and therefore societal movements, from the political mediation. The last such central an indispensable element of democracy (Touraine, 2000:117).

For Touraine political mediation is at the centre of democracy or democratic politics. Touraine further criticises political parties as weak for the functioning of the democratic system. Touraine (1988) puts it thus:

What makes the present situation serious is that it is more difficult now than it was earlier to build a representative democracy, precisely because the new social movements are less directly political than the old (Touraine, 1988:152).

Social movements according to Touraine (1988) can influence the transformation of politics and democratic systems. For Touraine new political movements are undemocratic.

Undoubtedly, that political decision by both the colonial powers and the apartheid government effectively changed or transformed the institution of traditional leadership and in the process also managed to discredit it among the people it was meant to serve. Therefore, the big question is, how can South Africans be sure that there is no hidden political agenda on the government side to completely annihilate the institution of traditional authorities in South Africa?

The White Paper further consolidates government's view that traditional leaders should act as custodians of tradition and culture and play an advisory role to government, particularly in matters relating to African tradition and cultural activities.

After the completion of the document, the President of the Congress of Traditional Leaders of South Africa, (CONTRALESA) *iNkosi* Phathekile Holomisa (2003:5) remarked as follows about the document:

This is a most welcome development as it brings about some certainty on the governments intentions for the future of the institution of traditional leadership. The question whether or not the policy satisfies the hopes and expectations of the institution and those who believe in its efficacy is another matter. The reality though is that the government policies were never expected to meet all

expectations of all those, whose interests may be [adversely] affected (Holomisa, 2003:5).

However, nothing significantly has happened since that particular White Paper was published. It is the opinion of the researcher that the document was also vague in so far as the role of traditional leaders is concerned within the democratic dispensation. The nature of language used in the document is euphemistic. A close examination of the document points out that the language used in that particular document is a political strategy to make people believe that the government seriously intends to remedy the situation and make the relationship between all government structures work. One such way of remedying the situation is encouraging co-existence between all government structures including the institution of traditional leadership.

3.8 Act 5 of 2005 KwaZulu-Natal legislature

As a necessary step, the province of KwaZulu-Natal has its own promulgated Act in order to contextualise and effectively put into practice the government policies on co-existence of the institution of traditional leadership and the provincial Ministry of Local Government and Traditional Affairs. On thorough examination of the provincial Act it was found that the document is clearly structured in a manner that favours the political system only. It was absurd to learn that the House of Traditional Leadership in KwaZulu-Natal was not involved in the draft of the document. The language also suggests that the document is partial and thus serves the interests of the ruling party in KwaZulu-Natal. The document is a clear indication of a lack of political will on the part of the ruling party to accommodate the institution of traditional leadership in the province of KwaZulu-Natal.

De Jongh (2006:8) rightly puts it that effective policy assumes that a thoughtfully directed political and social action can lead and must lead to desirable outcomes. We can deduce from de Jongh's statement that bad or rushed policies, at least in principle, could result in undesirable circumstances.

There are other interventions that were initiated in KwaZulu-Natal, which on paper are brilliant ideas but when it comes to implementation of those ideas it is a complete different ball game, which then raises a question: who is fooling who? The difficulty is born out of a number of issues among which we can mention the following: a lack of the political will to restore order, failure to recognise traditional leaders and their status as indigenous rulers in rural or tribal areas; dilemmas of real interests and party politicking. Among other supporting legislative documents in the province of KwaZulu-Natal one can refer the reader to the following documents: The Premier's ProvTradLog Project and *uBambiswano*² Project. Both these documents are products of the national legislation on Traditional Leadership and Governance Framework Act 2003 (Act 41 of 2003) and the KwaZulu-Natal Traditional Leadership and Governance Act 2005 (Act 5 of 2005). Briefly both these documents aim at restoring the dignity of Traditional Leadership (*uBukhosi*) and traditional leaders (*Amakhosi*). They further aim at defining the role and position of the government and the Department of Local Government and Traditional Affairs within political transformation in KwaZulu-Natal province.

When one analyses these two projects together with the KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005, apparently it becomes obvious that these documents fail dismally to meet their required aims and objectives. This failure is caused by a number of facts; firstly, these initiatives exclude *Amakhosi*. Therefore there is a top-down approach and that is always rejected by *Amakhosi*. Secondly, what is also evident is that these documents serve a certain political agenda namely severe deprivation of the interests of traditional leaders. Thirdly, all the mentioned documents produced by the Department of Local Government and Traditional Affairs in KwaZulu-Natal are structured in such a way that they are partisan, and prescriptive on what is expected of the *Amakhosi* by the government.

² Literally the term *uBambiswano* refers to working together, unity or cooperation.

3.9 Traditional leaders under Municipal Structures Act

Basil Davidson (1996:101) evokes and invokes the theme of a culture of restoration of Africa's self-development, a perspective grossly underplayed in the grand theories of the mighty nation-state. Davidson (1996) further suggests that local self-government in the form of traditional leadership is undermined by the ubiquitous defenders of the national government, often at the expense not only of development but also of people and their lives. The Municipal Structures Act 1998 (Act 117 of 1998), changes the nature of participation of traditional leaders in the municipal government. It says nothing about membership of traditional leaders in the council but rather section 7.4.3 provides as follows:

Traditional authorities that traditionally observed a system of customary law in the areas of a municipality may participate through their leaders, identified in terms of sub-section (2), in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council (Municipal Structures Act, 1998).

'Attend and participate' is understood not to include voting rights since these are the rights of the elected members of the council, which is a significant reduction in the status of traditional leaders in the councils. Another significant aspect of participation of traditional leaders in municipal councils is the number of traditional leaders who may attend and participate. Under the 'interim' Constitution, any traditional leader in the area of the municipality was eligible to be an *ex officio* member. Therefore, the number was unlimited. This position was confirmed in the *African National Congress v Minister of Local Government and Housing (KZN)* 1998 (4) BCLR 399, in which the African National Congress was arguing that only one traditional leader in each municipality, was entitled to attend and participate in the council. In this case, the court held that all traditional leaders who qualified in terms of section 182 of the interim Constitution were eligible to be appointed as *ex officio* members.

It was probably as a result of this ruling that steps were taken in the Municipal Structures Act to limit the number of traditional leaders on municipal councils. In the original Act,

section 81(2) (b) provided that the number of traditional leaders that may participate in the proceedings of a municipal council may not exceed ten per cent (10%) of the total number of councillors in that council. During the interview with *iNkosi* Vusi Zondi³ at iSibonelo, the researcher was made aware that after the ten per cent offer was rejected by *Amakhosi*, the government increased the number to twenty per cent (20%), and this too was also rejected by traditional authorities. The *ex officio* number of traditional leaders allowed participating in local government structure evidently points to the idea of the Mozambican option as tabulated by Matthew Phosa before the 1994 general elections in South Africa.

The nature of political leadership in local government has a bearing on the capabilities of councils and their effectiveness in so far as service delivery is concerned. Therefore, it is imperative that provincial government, municipalities and traditional leaders meet to discuss matters of common concern and to ensure that service delivery in rural KwaZulu-Natal is provided in a coherent, integrated and coordinated manner. Historically, in the rural areas there was no local government or municipal structures beyond the informal role played by traditional authorities. With the establishment of wall-to-wall municipalities with wide-ranging powers and functions under the Constitution, tribal authorities will, therefore, be starved of funding, will be unable to carry out any development and the traditional leaders will consequently lose most of their authority and influence.

Traditional leaders themselves have extensive statutory powers, duties and functions besides those they assert under customary law. The Regulations Prescribing the Duties, Powers, Privileges and Conditions of Services of Chiefs and Headmen, No. 110 of 1957, lists numerous and varied duties, powers and functions. Among these are the following:

³ On my follow up interview with *iNkosi* Vusi Raphael Zondi in January of 2008, I learnt that the *iNkosi* formerly a member of the Inkatha Freedom Party has since then crossed the floor and joined the African National Congress. Reasons for the defection of the *iNkosi* were not discussed; I suspect that like in most cases of floor-crossing, the main reason is for nothing more than a political survival. I arrived at this conclusion after I have found out that there is no significant change in the beliefs and political position he held in our previous interviews.

- a) to promote the interests of his tribe or community, support and actively encourage, and initiate measures for the material, moral and social well being of the people;
- b) maintain law and order in his tribe or community;
- c) report any condition of unrest or dissatisfaction or any other matter of serious concern to the government;
- d) hear and determine civil cases and punish criminal cases; and
- e) detain and impound stock brought into the area under unlawful or suspicious circumstances.

The truth of the matter is that there is no reason why some of these powers and duties cannot continue to be exercised by traditional leaders. However, the local government under the Constitution now exercises some of the powers and duties, and conflict is about to arise unless more guidance is given under a new law (Ray, 1996:18) on traditional leaders. Participation of communities and business as emphasised in the White Paper (1998:33) is mandated in four main ways: as voters to ensure democratic accountability, as citizens who through a variety of stakeholder organisations can contribute to policy processes, as consumers and end users who can expect “value for money” and affordable services, and as organised partners engage in resource mobilisation for development objectives.

The concept of active citizen is neither a new invention nor one that can be taken for granted even where the most favourable democratic conditions have been established. In his exploration of the complexities of grassroots participation within three transforming and democratic contexts Heller (2001:133) suggests that a favourable political alignment be maintained but that a delicate and workable balance between the requirements of institution building and grassroots participation is also struck. With Sklar (1994); Ray (1996:185) concedes that at the practical level, competition and tensions do exist.

3.10 INgonyama Trust Act

Land is an important commodity without which development cannot take place. Apart from the active role traditional authorities want to play within the local government structure and the demarcation problem, the distribution of land also constitutes one of the main problems in the relationship between traditional leadership and elected local government structures. The traditional authorities have their particular system of allocating land to individuals. Broadly speaking, the allocation procedures are simple and affordable.

In KwaZulu-Natal a large percentage of the communal land falling under the jurisdiction of traditional authorities is *iNgonyama* Trust Land. The *iNgonyama* Trust is a corporate body established by the *iNgonyama* Trust Act, 1994 (Act 3 of 1994) to hold the land, which was owned by the former KwaZulu Government, for and on behalf of the tribes and communities of the traditional authorities. His Majesty the King is the sole Trustee.

The former KwaZulu Government intended to transfer in title all traditional authority lands to their respective traditional authorities. However, due to lack of financial resources to undertake such a task, it was impossible to do so until the KwaZulu Government was phased out in 1994 when the new political dispensation was ushered in. Before the KwaZulu Legislative Assembly was phased out, it passed a law known as the *iNgonyama* Trust Act, which established a Trust with an objective of holding onto the land on behalf of the tribes and communities with a view to ultimately transferring it to the respective traditional authorities.

The present developmental local government model is premised on the recognition of the primacy of linkages between development, service delivery, and local citizen participation, defined as the organised effort to increase control over resources and regulative institutions by groups and movements, especially for those excluded from such control. The argument is that because of the number of people living in rural areas for most of their lives, depending on the services they received free from their rural traditional leaders, most of these people do not possess the attitude and skills required

to survive under the new situation where they will be required to pay for services when there is no one employed in their households.

According to Lodge (2002:32) local governments are responsible for aspects of administration, which affects the everyday life of the citizens such as health, housing, education and water. Lodge (2002) also argues that when people give judgment about the government's success in making a better life for them, they are evaluating, mainly in terms of the performance of the local government.

Land issues are central to South Africa's past, present and future, and land ownership is indeed an emotional issue and before every election, many promises are made about land redistribution. Therefore, land issue as a political development in South Africa, reflects one of the core aspects of politics. A background of serious skewed land distribution in South Africa indicated the need for a new far-reaching land policy. Land occupation and allocation were unequal, largely because of dispossession in terms of the Natives Land Act of 1913, and the Native Trust and Land Act of 1936.

Ten years after the first democratic elections in South Africa the conditions in the rural areas remain, by and large, unchanged. Land administration and management have in some areas virtually collapsed, while in others it is contested who has the power to allocate land. At the heart of the problem are the unresolved roles, functions and powers of traditional authorities in the new democratic dispensation in South Africa. Disagreements and conflicts arise between individuals and groups in any society because of the attempts to satisfy their desire to obtain the scarce resources. It is, therefore, imminent that an adjudicator, such as an elected government or traditional authority, decides about the allocation of limited resources. In this regard, politics is the resolution of disputes and conflicts about the allocation of resources (Jackson and Jackson, 1997:7). The main problem regarding the current Communal Land Rights Bill is the fact that the African National Congress government, Inkatha Freedom Party and traditional leaders hold conflicting views as to who must distribute the so-called ancestral communal land.

Traditionally in the rural South Africa, land distribution was one of the main responsibilities of traditional leaders. In other words, in terms of customary law, it is recognised that traditional authorities have the power to control land use and allot portions to members of their community. In practice this implies that traditional authorities were custodians of the land before democracy. Land administration and the rights pertaining thereto, were entirely at the discretion of traditional authorities. Therefore there is an uncertainty among most traditional leaders, (especially those who are supporters of the Inkatha Freedom Party) that the Land Restitution (Act 22 of 1994), transfers this privilege to the elected local government authorities and thus leaving them without powers over the land and the people. Perhaps we are dealing with the question of legitimate expectation on the part of traditional authorities.

3.11 Elected local government structure and challenges for development

The extent of the country's service backlogs often becomes the starting point for development. Since this study is concerned about the well-being of all South Africans, particularly those that live in the rural tribal areas, the researcher is fully aware of the challenges confronting the government of South Africa in developing rural communities. Yet the multifaceted nature of the challenging space (land) politics, institutional, financial and other issues call for a more considered assessment of South Africa's realities. This chapter, therefore, highlights a number of socio-economic and political realities pertinent to the role of infrastructure in development in South Africa.

In the past, local governments only operated in towns or urban townships. In the rural areas the traditional authorities were left to provide local government, traditional leaders were in a sense part and parcel of any developmental projects in their areas of jurisdiction. Under the new dispensation, however, the area of jurisdiction of local councils has been increased to include rural areas and former tribal authority areas. The present developmental local government model is premised on recognition of the primacy of linkages between development, service delivery and local citizen participation, defined as the organised effort to increase control over resources and regulative institutions by groups and movements, especially those previously excluded

from such control. Therefore, Sutcliffe (2000:3) argues that the problem is a constitutional one. Sutcliffe (2000:3) further justifies the demarcation process as aiming at correcting decades of skewed planning along the apartheid ideological line, bridging the gap between the rich and the poor, urban and rural in terms of development and service delivery.

Human (1998:86) is of the opinion that the new South African governments, national and provincial structures, are finding themselves torn between two equally tricky tasks. These tasks are transformation (which means setting up new structures and implementing new policy directives) and maintenance, (which means keeping all current services going). Therefore, service delivery in rural areas of KwaZulu-Natal must still be carried-out, however, the question is, how to transform services while simultaneously maintaining current service levels or improve them to suit the needs of the rural communities? The danger of neglecting current basic services as presently the situation in the rural tribal areas in KwaZulu-Natal then these services can easily collapse.

The worse case scenario is one in which the services provided by traditional leaders collapse before new services can be set up to replace the old ones. The deterioration of the infrastructure in most African countries according to Human (1998:86) after independence was essentially the result of failing to maintain services already in place.

The role of traditional leaders in governance and development has been receiving ongoing attention since 1993. The 1996 Constitution introduced a new constitutional arrangement for the whole of South Africa and assigned governmental functions across the three spheres of government. In the post 1994 democratic dispensation it was intended that elected local government structures should extend to all areas of South Africa including those under traditional leaders. The signing of the new Constitution in 1996 announced the adoption of local government as the epicentre of the government delivery system and at the heart of poverty eradication initiatives. Section 151(1) of the Constitution on the one hand provides as follows: "The local sphere of government

consists of municipalities, which will be established for the whole of the territory of the Republic”.

On the other hand, the White Paper on Local Government and Traditional Authorities, (1998:33) stipulates that:

Building local democracy is a central role of local government, and municipalities should develop strategies and mechanisms to continuously engage with citizens, business and community groups (WPLGTL, 1998).

The objects of the newly established local governments in South Africa can be outlined as follows:

- a) to provide democratic and accountable government for local communities;
- b) to ensure the provision of services to the communities in a sustainable manner. This is intended to extend public services such as water supply, electricity, and sewage removal to rural areas where they are currently mostly needed;
- c) to promote social and economic development;
- d) to promote a safe and healthy environment; and
- e) to encourage the involvement of communities and community organisations in matters of local government.

Evidently, it is impossible for the two entities to be ascribed the same legal powers and functions and the government should create incentives for municipalities to become part of the solution.

In addition, section 156 of the Constitution outlines the executive powers and functions of municipalities by referring to their rights to administer the matters listed in Part B of

Schedule 4 and Part B of Schedule 5 and other powers assigned by national or provincial legislation.

The importance of the local tier of government is determined by the following considerations:

- i. a large number of people are enabled to participate consistently and directly in both local and national government;
- ii. problems are not central problems, and they require decision at the place, and by persons, where and by whom the incidence is most deeply felt;
- iii. participation at local level as a public official or as a voter is good experience for later participation at the national level;
- iv. for practical reasons, the absence of the local government would compel the central government to create uniformity in standards, policy and organisation for all local areas, which in turn will destroy individuality and identity of these areas; and
- v. the most important function of the local government is the provision of services, such as clean water and electricity, refuse removals, sewerage, basic health services, ambulance and fire-fighting services and the maintenance of roads.

3.12 Transformation of state organs

According to Human (1998:85) the orientation of a revocrat government (such as the African National Congress) in South Africa is towards the future and its task is to lay the foundations for a new society. However, Human (1998) further argues that this does not necessarily mean that structures that are already in place should be dismantled. Therefore, given the fact that the study is conducted within the discipline of Governance and Political Transformation, it makes sense to refer to the transformation of state organs or government institutions and processes. South Africa is in a transformational period therefore transforming structures and processes by means of which government operates is imperative, therefore transformation of structures

includes transforming policies that govern state organs, which includes the institution of traditional leadership. The basis of this reason is that the government must ensure that there is a meaningful partnership which exists between different levels of government (that is, national, provincial and local). Although the institution of traditional leadership is not a government department, it is an organ of the state, which provides services for rural communities.

Transforming structures and processes would create an enabling environment for a better life for people living in rural areas which are still underdeveloped. Furthermore, in the rural KwaZulu-Natal traditional leaders are important and recognised as legitimate and accountable to rural communities, it is for this reason the agents of transformation in the democratic dispensation also recognise this and the policies made.

The term transformation alludes to the understanding that processes of change in general are not linear and predictable. Berdahl (2000:2) writes: “transformation is change into something new and unknown”. Now, the brave move by politicians to transform the entire political system of South Africa and the institution of traditional leadership in particular means results of such a change cannot be predicted.

To highlight the unpredictable process of change Verdery puts it thus:

I believe the post-socialist change is a problem of reorganisation on a cosmic scale, and it involves the redefinition of virtually everything, including morality, social relations, and basic meanings. It means a reordering of peoples' entire meaningful worlds (Verdery, 1999:35).

This reorganisation as Verdery points out goes beyond the institutional reorganisation of the institution of *uBukhosi* and involves making sense of malleable terms such as democracy and conceptualising the relationship between elected government structures and the institution of traditional leadership.

Given the meaning of 'transformation,' policy makers need to answer the following difficult questions: What is to be changed about the institution of traditional leadership? Which problem issue is to be transformed? Why is this transformation wanted? What ideological assumptions lie behind support for the particular transformation?

In his argument and rationalisation why we have policies, Parsons (1995) writes:

To have a policy is to have a rational reasons or arguments which contain both a claim to an understanding of a problem and a solution (Parsons, 1995:15).

Parsons implies that to rationalise about policies the government make is to develop and implement problem solving mechanisms that are based on a premise that an analysis of the problem was thoroughly made and understood and that a way forward or strategies to address the problem properly worked out thoughtfully to solve the problem. Fraser (1997) argues that different problems require different solutions or remedies, thus the remedy suggested for policy makers with regard to the issue of traditional leadership is of a political nature, namely political recognition and redistribution, which will bring to rest questions about legitimacy of traditional leaders and questions surrounding the role of traditional leaders in the democratic South Africa. Thus bridging the relationship between government and the institution of traditional leadership is the only way to go.

3.13 Conclusion

Every country's political/legal framework develops and transforms according to its historical realities, socio-cultural background and political challenges. Therefore South Africa has a history unique to itself, thus must not try to emulate another country's political system onto its own, this rarely works. The formal steps to give recognition to traditional leaders in South Africa were taken during the formation of the 'Interim' Constitution in 1993 and consolidated in the final draft of the Constitution of the Republic of South Africa (Act 108 of 1996). To have a constitution is not enough for a working democracy. Good governance is here presumed to be the ideal and pragmatic

solution to institutional obstacles, in order to foster good governance, political disagreements on the role of traditional leaders must come to an end. The 'Interim' Constitution and a number of White Papers provide the best framework for democracy and orderly co-existence. But these documents are only a guide, the details of which must be fulfilled in by deliberate acts of those who want our democracy to grow and who desire justice.

The constitution and the many other documents listed above all made allowance to the position of traditional leaders in South Africa, but do not go all the way to spell out what the role of traditional leaders in the political dispensation is. Traditional leaders are still left in the cold in terms of what their function in governance is. Although chapter 12 of the constitution is devoted to the institution of traditional leadership, there are a number of worrying factors and these include: the fact that chapter 12 of the constitution on the institution of traditional leadership is the shortest in the constitution, the role and status of traditional leaders is not specified and all government policy documents on traditional leadership are vague and ambiguous and ideological. Good and lasting cooperation depends on shared interests towards mutual benefits.

Broadly, a lot of ground work has been covered in the attempts to establishing a workable relationship in the dual governance systems of South Africa, namely the political dispensation which is largely founded on the western liberal democratic principles and the traditional system of governance, which is largely cultural. However, policy-making and implementation are much more than only a political process, they are also socio-cultural, it means that policies must take into account the social aspect of rural people's lives. Effective praxis in policies affecting traditional communities and traditional leaders must involve both traditional leadership and ordinary people. Active participation of traditional leaders in planning and decision-making is essential and there must be a political will to facilitate that active participation takes place.

This chapter assessed the legal and policy framework of South Africa on the role of traditional authorities in relation to local government. It is clear that the law and policy have generated clear procedures and guidelines for local government functioning, however, these guidelines have not been translated into action. It is also clear that the policy of the country has remained ambiguous on the role of traditional authorities. And this causes political conflict. Unless this ambiguity is resolved, rural areas (particularly in KwaZulu-Natal) will not be developed. Consequently, the idea of rural development will be nothing more than just a political slogan.

Diescho (1996:8) opinionated that without a solid constitutional basis to guide the local government and traditional leadership relationship, these two structures is likely to collide in the dark as is the case currently. It is unfortunate that democracy in South Africa, particularly in KwaZulu-Natal is characterised, in most cases, by political intolerance and a refusal to concede that groups or individuals could have opposing views, which should also be heard. Therefore, while the prerequisites for establishing a true democratic system are present, the leaders failed to grasp the opportunity and allowed democracy to slip away.

The White Paper on Traditional Leadership and Governance strategically uses euphemistic language. Euphemistic language is often used in order to create the impression of being more impartial, objective and high-minded than would be the case if more emotional language were used. Instead of sounding opinionated and biased, a politician appears to be objective. A politician often prefers that in order to defend the indefensible, to blur outlines, to cover-up details and to create the impression of compassion and sincerity. That is obvious in the case of this particular White Paper on Traditional Leadership and Governance Framework. That is what Thompson (1990:11) referred to as the manipulation of meaning.

In the end, it is not a choice between the local government structure and the traditional leadership, South Africa needs both since the two perform complementary roles. But it is important to demarcate roles in order to avoid grey areas and duplication of functions

that could be provided by the institution of traditional leadership and elected municipal authorities. South Africans need to watch both, each through the other and need to nurture both simultaneously. Individual and collective relationships with both these structures will determine the success or failure of the country's grand experience of nationhood, democracy and self-rule.

A new understanding has to be developed that in the end, would give the people of South Africa a common idea of what the country's needs are, and how these needs could be met gradually and with cooperation of all sectors of the country, particularly between the local government structure and the institution of traditional leadership.

There is a reason to worry about the amount of intentional misrepresentation, like deliberate lies in an attempt to deceive the public. Such deliberate misrepresentation causes concern with regard to the political stability of the province of KwaZulu-Natal and the relationship between the ruling party and the institution of *uBukhosi*. The situation in KwaZulu-Natal is a typical example where on paper everything looks optimistic, as good and nice but reality proves differently.

In a transparent democratic system, legislatures take a variety of forms. One main way in which legislature can differ concerns their relationship to the overall political system or governance. By accommodating cultural dimensions of governance, that is, the institution of traditional leadership and historical realities, the South African government would allow the institution of traditional leadership within the democratic system, but yet also provide stability and depoliticise service delivery. As a result, the rural populace can also benefit from the fruits of democracy and political transformation in their respective areas.

In conclusion, the legal framework must thus legitimise the institution of traditional leadership, so that the institution could feel that it has something positive to contribute towards the democratic dispensation in the country. From this detailed analysis of the legislative and policy framework, it is apparent that the legislature is necessary

ingredient for democratic governance in the complex society such as South Africa. South Africa has witnessed convergence in terms of institutional direction in the legislature; it must at the same time maintain a distinct characteristic that influenced its history, culture and the character of the citizens it represents. What is important to keep in mind is that while the legislature as a body entrusted with making policies, has a crucial role to play in order to maintain political stability in the country, the legislature is not entitled to dominate the government and destroy other organs of the state. This can only be achieved if and when there is a political will to bring about results, that is, implement the excellent policies the government produces about the relationship between the two systems of governance. Policy-development and implementation are just much more than processes, they are also socio-cultural, (Ervin, 2000:43). The intentions and objectives of the legal framework are also aimed at promoting and supporting political ideologies.

Finally, the legal/political framework bears the mark of a blueprint; therefore, policy-makers and the political elites must make sure that the legislative framework always gives clear direction in order to avoid anarchy in the state. Having discussed and established the legal framework of governance and the institution of traditional leadership in South Africa, the focus of the next chapter is turned on comparative study.

CHAPTER FOUR

4 COMPARATIVE ANALYSIS OF THE ROLE OF TRADITIONAL LEADERS

The previous chapter, focused on the legal framework and policy issues guiding the two systems of governance. In this chapter, it is ascertained that the institution of *uBukhosi* is not a unique phenomenon to the South African political situation only. A number of countries in Africa and abroad experienced similar difficulties in their attempts to transform the institution, some with success and other with little success or no success at all. Therefore, the situation in South Africa must not be isolated from all other African countries with similar challenges. The fundamental question of discussion in this chapter is this: "What can South Africa learn from other African states in its challenges to transforming the institution of traditional leadership in such a way that traditional leaders contribute meaningfully to a democratic dispensation and thus ensuring good governance in rural areas?"

4.1 Introduction

As South Africa is struggling to establish the role of the institution of traditional leadership, it is important to remember that South Africa although a sovereign country, it cannot be isolated from the rest of Africa and the world. In the comparative method, four cases (that is Botswana, Swaziland, Zimbabwe and England) are compared in order to determine what similarities and differences exist among the countries and to look for possible explanations for those similarities and differences. The reason why this section was included is that the researcher is concerned about the status and future of democracy in South Africa. It is the belief of the researcher that a study of the struggle for democracy elsewhere in Africa would inform his views on the matter and understanding as well as contributing something positive toward the debate on the role of traditional authority in the democratic South Africa. However, such a comparison will not only be limited to African states, England will also be mentioned although in passing just as a way of supporting the argument that the institution of traditional leadership in that country also underwent the same experience as is the case elsewhere in the world.

4.2 The institution of traditional leadership in Africa

In several African countries, there is a new recognition that traditional leadership has a role to play in development at the community level. In Reddy's (1999:1) view some of these improvements suggest a growing trend away from foreign institutional models to structures more suited to conditions of Africa. The role of traditional leadership differs considerably from one country to the next. In some African countries such as Ghana, Kenya, Tanzania and Namibia the role of traditional rulers is limited to customary and tribal affairs and does not seem to be expanding in the area of relationship with the governmental structures. Basically that is the approach the African National Congress government wishes to adopt.

Ray (1996:184) argues that in Ghana, sacred authority is constantly used to legitimise authority of the traditional rulers; to such an extent that certain aspects of chieftaincy were not allowed to come under the control of the Ghanaian state in the form of parliament. On the other hand, in other countries such as Botswana, Swaziland, Uganda and Zimbabwe traditional leaders still have significant links with the administrative and development machinery and there are signs that their role is growing rather than declining (Pasteur, 1996:52).

A focus will be given to four countries of interest for the sake of a comparative analysis with the South African situation. These countries will include Botswana, Swaziland, Zimbabwe and England. The reason for the choice of these four countries is simply because since independence, these countries have demonstrated political stability in the manner by means of which they accommodated traditional leaders into their local government structures. Perhaps South Africa can also learn some lessons from these countries.

In his Book entitled "Capitalist Nigger" Onyeani (1990) points to the so-called truth that rather Africans address their problem, we resort to blaming others for our misfortunes. South Africans blame colonialism, apartheid and even the institution of traditional leadership for collaborating with the apartheid system for failing to secure and build on the

foundations established by the oldest institution of governance ever. It is time Africa and South Africa take responsibility and act in such a way that appropriate steps are taken to recognise the institution of traditional leadership for what it is and allow traditional leaders to work together with elected local government structures.

4.2.1 Traditional authorities in Botswana

The position of traditional leaders in Botswana has been less undermined than in most other African countries and the legitimacy of the leaders was largely intact at independence. This was partly because instead of using traditional leaders as instruments of oppression, the British had co-opted the leaders by means of an indirect rule policy, leaving them to govern the African people as always, as long as they delivered taxes and ensured law and order in the communities (Sharma, 1995:1-19).

In Botswana the Constitution provides for a House of Chiefs, which is an advisory body to the National Assembly and the Executive. The House does not have legislative powers but must be consulted on certain specific bills. There are also land boards, which are constituted by, among others, traditional leaders.

Traditional leaders were the ultimate decision makers on all judicial and political issues (Hitchcock and Holm, 1993:305). Augmenting this multifaceted authority was great popular respect arising from the mass perception that the *Dikgosi* have very powerful ancestors who stood ready to intervene in temporal affairs. Furthermore, the social structure of the *Tswana* society was built around traditional authorities. Conflicts within the royal families were endemic but most factions united to support the persistence of the existing *Tswana* political structure. Outside of this structure of traditional authority little existed in terms of religious or civil society or any sort of autonomous economic life.

Kgosi or a traditional leader in the case of an individual community or ward was the final authority in the making of rules and the enforcing thereof, but there is room for communal advice. On important political decisions A *Batswana Kgosi* goes to *kgotla*, a public assembly of all adult *Tswana* males. At the conclusion of the consultation

process, the *Kgosi* announces his perception of the communal consensus. The more effective *Dikgosi* are able to forge and when necessary, modify community opinion formation on a regular basis.

According to Sharma (1995:34) the institution of traditional leaders in Botswana is credited for facilitating better understanding of state policy by the ordinary rural population. Just like in South Africa, in Botswana traditional leaders were reluctant to surrender their powers and influence to the new structures and relations between the two remained conflictual.

Nabudere (2004) argues that unlike most African states, Botswana has not experienced a major constitutional crisis and is generally regarded as a stable state in Africa and yet Botswana managed to have the modern political system and the institution of traditional leadership co-existing. *Kgosi* Lenchwe acknowledges that one of the most important factors, which contributed toward political stability in that country, was the incorporation of both the traditional leadership system of governance and the modern democratic system of governance in the Constitution. The move to protect the rights of both institutions serves as a practical case of checks and balances. On the question of perception of the *Batswana* nation about the nation's preference between traditional leaders and political leaders, *Kgosi* Lenchwe⁴ maintains that the *Batswana* people still rally more behind their traditional leader than behind the political leaders. But this claim is contested (as expected) by politicians who claim the opposite. However, given the distance between KwaZulu-Natal and Botswana, the researcher could not validate any of these claims with empirical evidence.

⁴ *Kgosi* Lenchwe was interviewed by the researcher on the 26th October 2007 during the International Conference on Global Perspective on Traditional/Indigenous Leadership in Durban (ICC).

4.2.2 Traditional authorities in Swaziland

In Reddy (1999:225) the creation of the system of traditional leadership in the form of *Tinkhundla* in 1978/9 is credited to King Sobhuza II. The reason for the reconstruction of the *Tinkhundla* was according to Sabelo that in King Sobhuza's mind it was evident that the British colonial imposed system of governance failed to provide relevant and effective machinery for good governance in Swaziland. *Tinkhundla* therefore was established to decentralize local authority and elevate the status of traditional leaders in that country. Under Swaziland Urban Government Policy of 1996, no action will be taken that are inconsistent with the principle of traditional leadership system, technically referred to as *Tinkhundla*. According to Professor Sabelo (in Reddy, 1999:233), the following conditions will prevail when elected officials are in office:

- a) The current 'dualism of authority' is recognised as appropriate, but will be modified with respect to gazetted urban area. Traditional responsibilities of *Tinkhundla* for defined functions of local authorities in urban areas will cease to exist, being replaced by city or town councils or town boards as the sole official representative bodies for defined local government affairs. It is also mandated that the elected officials recognise the role of traditional authorities in the governance of urban areas and cooperate with such authorities in their mandated roles;
- b) traditional authorities in urban areas will cede specified administrative powers but retain traditional executive, cultural and ceremonial authority.
- c) traditional powers as they affect urban areas shall be codified in order to further formalise roles and responsibilities, and
- d) the urban authorities will not interfere with *Tinkhundla* as constituencies for central government functions and electoral purposes.

As much as it sounds so optimistic, the system of traditional leadership in the form of *Tinkhundla* in Swaziland also has its shortcomings that have led to the system ineffectiveness to work as desired. These shortcomings are outlined as follows by Sabelo in (Reddy, 1999:226):

- i. Greater participation by rural communities in local government matters has not worked as anticipated,
- ii. *Tinkhundla* allows the King absolute power, which is against the spirit and principle of democracy,
- iii. there was no clear direction as to how the system of *Tinkhundla* would raise revenues to support its projects,
- iv. most *Tindvuna* lack formal education, they are ineligible for positions on account of their relationship to the institution of traditional leadership in Swaziland, and
- v. like in KwaZulu-Natal, women are excluded from the structure of traditional leadership.

Sabelo also contends that in Swaziland the political system alleges that *Tinkhundla* does not have means to deal with issues of corruption within itself. In both Swaziland and Botswana, in their attempt to create new organisations, they were also aware that the new organisation should respond to the needs of the people, which mean that the government will have to learn from the community (Reddy, 1999:229). This is in line with what Human (1998:5) proposes, where he maintains “[...] we will have to discover the real needs and dynamics within society before we can design effective organisations”. Furthermore, the Botswana government maintained traditional leaders in rural areas and this seem to have worked effectively; however, the opposite is true about Swaziland with its controversial absolute monarchy system.

The institution of traditional leadership in Swaziland is a controversial one and is not the ideal example except for reasons of demonstrating that the institution is diverse and takes different forms from country to country. Mzizi (2005:94) strongly feels that in Swaziland the institution of traditional leadership must transform from being an ideological domination to that of shared value system which is informed by realities of a modern democracy.

Khumalo (1996:13) argues that there is an obvious tension between the dual systems of governance in Swaziland. According to Khumalo, King Sobhuza II appointed a commission which crafted a philosophical framework taking due regard of history, culture and a way of life of the Swazi people and the need to harmonise the Swazi culture with modern democratic principles. Commenting on the tension of the dual system of governance Khumalo asserts:

One reason for the escalation in the nature of the constitutional tensions arising from the dual system operating in Swaziland since the introduction of *iTikhundla* in 1978 has been the manner in which this system attempts to consolidate traditional authority structure within a predominantly modern system of governance. Prior to the repeal of the constitution in 1973, the traditional structures were given recognition, but at a separate level of the administration. In this way, although some tensions were inevitable, they were much more confined than they have been since 1978. The question which arises, therefore, is how can we address the tensions in view of the fact that there will always be some interaction between the traditional and modern sectors? (Khumalo, 1996:13).

The dilemma about the institution of traditional leadership in Swaziland seem like right from the beginning the King's intention was to put in place a strategic team whose purpose was to ensure that the monarch had absolute powers. In this way the system of check and balances which regulates the institution was in essence compromised. According to Khumalo (1996:9) in order to determine how much support the monarchy had in Swaziland was an issue that needed to be debated and determined by the people, but this was not the case.

Swaziland needs to revisit its own traditional structure; in particular the unlimited powers bestowed on the monarchy and thus pave a way for an environment where the two institutions of governance work in harmony, without one dominating the other. The idea of collaboration and co-existence is meant to avoid situations where there is a dominant system of governance. It is for this reason that the case of Swaziland can be a valuable lesson for South Africa. It is not dominance the study is advocating for but recognition and co-existence.

4.2.3 Traditional authorities in Zimbabwe

According to Makumbe in Reddy (1999:277), soon after Zimbabwe received its independence in 1980, the government decided to dismantle the inherited legal dualism to create what was described as a single unit, politically united and *non-tribal* nation. Traditional leaders were stripped of their judicial functions and remained explicitly only as symbolic cultural figureheads. Consequently, this decision was reversed in 1993, and the current situation is that the Zimbabwean Constitution provides for a National Council and Provincial Houses of Chiefs. Traditional leaders are also represented in rural district councils. Traditional leaders are further more eligible to stand for election to parliament on party political tickets.

Makumbe in Reddy (1999:290) further maintains that in Zimbabwe traditional leaders participate through popular demand in matters relating to development. This came about as people revolted against what they perceived as top-down approach in policy formulation and the Zimbabwean government came to a realisation that the top-down approach that excluded traditional leadership structure does not work. The situation in Zimbabwe is different at the moment, the two institutions of governance, that is, the modern political dispensation and the institution of traditional leadership work together particularly in matters related to rural development. The extent as to how far these institutions work in harmony is a matter for another research, at the moment it suffices to say there is a kind of harmony between them.

The case of Zimbabwe is an interesting one for the purpose of this study, at the International Conference on Traditional Leadership held in Durban recently, Zimbabwean President Mr. Robert Mugabe did not attend but managed to send a message that the Conference was important and that he would like to endorse that the system of traditional leadership is an important aspect of governance for Africans and that African states must not make a mistake of sidelining it.

Vilakazi (2003) contends that the crisis of the state in the hole of Africa has been the failure to bring about the synthesis of liberal or Western and traditional African norms and institutions of democracy. Perhaps the reason for this is because the two systems (that is, the liberal and traditional systems of governance) are different from each other. Instead of learning from each and thus enrich each, the Western values are imposed on Africa, Western norms are also regarded as superior to those of African and thus must completely replace African systems and norms. For traditionalists this is absurd state of affairs.

As a norm, traditional African societies were dominantly governed by traditional leaders, in such a way that the state never occupied a dominant role in this political system. The *imbizo* was the key political institution (government) in traditional African setting.

4.3 Turning focus to England

Teffo (2002) finds it strange that in South Africa most people who are opposed to the system of traditional leadership 'revere' the monarchical system of Britain. The West has a history of traditional leadership and countries in the West also experienced some problems trying to reconcile traditional leadership or what is generally termed Royalties with modern systems of governance. Vilakazi (2003:29) establishes that from the 17th Century until the 19th Century there were two historic blocks, particularly in England. These two historic blocks were the aristocracy or traditional land-owing class and the bourgeoisie. Vilakazi (2003:29) in details explains that both the aristocracy and the intellectual elites were equally powerful. There may have been instances when these two powerful classes tried to annihilate or destroy each other and that there was a stalemate.

In the opinion of the researcher it was such a stalemate that was a blessing in disguise. A stalemate forced both sides to negotiate and reach some compromises. Both sides decided to accommodate each other and acknowledged the right of each side to exist. It was under these compromises that the British parliament is constituted of the House of

Commons which also recognising the right to exist of the House of Lords. Again the two institutions were regarded and recognised as the two different sides of the same coin.

The situation in South Africa between the institution of traditional leadership and government must take the same form and dealt with problems facing governance in this country and reach a compromise. The government needs to take into account the unique situation and historical background of the country into account. Diverse political theories were taken into consideration in other African states as these states struggled to find a way of bringing together the two systems of governance. Teffo (2002) maintains that these countries suffered from the identity crises and thus South Africa stands a chance to break new ground in the creation of a better system of democracy informed by its political history.

The question of identity is interrelated to roles one plays in a community. In this way one's role in the community also defines the individual's identity. Identity is not fixed, it is continually renegotiated through defining roles, and the same applies to the situation of traditional leader in South Africa. Lack of clear definition of the role implies their identity is compromised; they cannot define who they are in the community. Politically, a clear definition of what one does, serves also as a form of identity for the individual. Taylor states as follows:

My discovering my own identity does not mean I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others. My own identity crucially depends on my dialogical relations with others (Taylor, 1992:32).

From the above Taylor statement, it emerges that identity is constructed; this also includes institutional recognition of the roles individuals play in the community.

4.4 Conclusion

The aim of this chapter was to compare countries with a view to discover differences and similarities between the four countries in question. An attempt was made to discuss these differences and similarities with reference to historical and socio-political background. In general it may be argued that other African states struggled to get the combination right in terms of bringing the two systems together but one can also argue that where there is a will there is always a way; it is in this spirit we have witnessed some kind of co-existence in other African states between the institution of traditional leadership and modern political or liberation movements. In these countries, both the modern political system of governance and the institution of traditional leadership proved sceptics wrong and demonstrated that the possibility of interpersonal relationships between these two institutions are effective only when the other institution is willing to acknowledge the legitimacy of the other. The relationship between traditional leader and politicians if nurtured correctly, could determine the direction political transformation takes in the rural KwaZulu-Natal. In both Swaziland and Botswana the local government system have been quite stable since independence. In these two countries, there is recognition that in the rural sector there have been no local government structures beyond the informal role played by traditional authorities. The essence of the traditional leadership role is leadership of rural communities at grassroots level based on tradition, respect and community solidarity.

South Africa must learn from other countries where the institution of traditional leadership has worked well with the government of the day. This country must also be aware that an attempt to get the institution of traditional leadership anywhere else in Africa and in some other parts of the world failed, and in some countries, it resulted in unforeseen political problems that if the institution was allowed to operate could have been avoided. The institution of traditional leadership is a tried and tested institution which must be allowed to govern people in rural areas and thus *Amakhosi* must also be recognised in their own right not as though they exist only because the modern democratic dispensation allows it as a kind of favour.

In Botswana since there was from the beginning a 'political will' to recognise the institution of traditional leadership, a kind of competition such as that which exist in South Africa was never experienced. That was brought about by implementing what the Botswana Constitution and policies recommend. Therefore in Botswana modern democratic political system and the institution of traditional authorities co-exist and both institutions trust each other and share power in order to promote good governance in that country.

In this chapter a number of countries in Africa, (Botswana, Swaziland and Zimbabwe) and Britain (England in particular) on how the institution of traditional leaderships was democratised were compared. It was also established that the institution of traditional leadership is diverse, that is, there is no uniform way the system works, and it depends on each country and its unique and dynamic cultural environment. The next chapter focuses on the African National Congress and the traditional authorities in historical perspective.

CHAPTER FIVE

5 THE ANC AND TRADITIONAL AUTHORITIES IN HISTORICAL PERSPECTIVE

The previous chapter dealt with the comparative analysis of the institution of traditional authority with a view of learning from other countries. This chapter looks at the relationship of the dual system of governance in South Africa from a historic perspective. The historical perspective is intended to inform us of the reasons why it is as difficult as it is in South Africa to come to a compromise. The two principal and diametrically opposing schools of thought are “traditionalists” and “modernists” inform the arguments provided by those that promote either view. Modernists refer to those that individuals and groups that are over influenced by Western democracy to the extent that they want the institution of traditional leadership to be dominated by Western democracy and succumb to it completely. Therefore proponents of this theory hold a view that everything associated with the institution of traditional leadership is undemocratic and lacks legitimacy. The opposite pole is that of traditionalists; whose position is that modern democracy must recognise the traditional African system of governance and incorporate it into the modern system. The relationship between tradition and modernism is a debate that captures the interest of social groups, political organisations, religious groups, anthropologists and everyone in the street who air their views about what the nature of the relationship should be.

However, the relationship between culture (that is, tradition) and the political framework must be understood in terms of guidance. Nevertheless, culture functions not only as guidance but also as a framework and human attitudes differ according to that framework. It is for this reason that for traditionalists, democracy is more than a ‘one man, one vote’ or ‘a majority rule’ principle; it is getting everyone to agree about something, it is consensus. The ongoing debate about the proper role of traditional leaders in the modern democratic dispensations is a complex one and many-sided. This chapter reviews the broad contentions of the controversy. The significant point of

contention here is the question whether the institution of traditional leadership is inherently democratic or undemocratic.

The two schools of thought (that is, traditionalists and modernists) hold different views. In addition, the cause of disagreement here is on meaning of concept 'democracy'. The chapter and its content is very significant in Governance and political transformation in a sense that for political transformation to take place, terms of reference must be understood clearly unambiguously by all political actors.

5.1 Introduction

Modern philosophers such as Locke, Habermas, Lincoln, and others spent their time defining what democracy is and some what democracy is not. From their work it is obvious that it is impossible to come up with one definition of what democracy is or what it is not. In other words, we cannot give a perfect definition of democracy except saying that democracy is multifaceted and that democracy is not perfect. Therefore, whatever constitutes democracy for the African National Congress cannot and does not necessarily suggest a definite standardised way which everybody must apply to define democracy. In this way, it is possible to talk about democracies. The basis of the ambiguity of the position of African National Congress on the role of traditional leaders is focused on whether the institution of traditional leadership is democratic or not.

There are perceptions that the institution of traditional leadership is inherently undemocratic. The African National Congress' position on traditional authorities has always been ambivalent. The social systems and levels of development of diverse South African communities also reflect the full political spectrum. Chris Tapscott (1996:302) writes that the final Constitution was deliberately 'extremely vague about the powers and functions of traditional leaders' because of ambivalence within the African National Congress over the future of traditional structures:

Many African National Congress members recognise the role that traditional leaders could play in mobilising rural communities for political ends and for implementation of development programmes. Just as certain civics are calling for their abolition, others are calling for the retention of traditional structures in modified form (Tapscott, 1996:302).

When the African National Congress was formed, traditional authorities opposed to the 1910 Union of South Africa were among its founding members. As the African National Congress radicalised from the 1940s onwards with strong pressure from its Youth League and a growing alliance with communists, two broad streams began to emerge. There were those such as *iNkosi* Albert Luthuli and Nelson Mandela, who supported the traditional authorities who were critical of government policies, and those, clearly under the influence of communists, who argued that the institution of traditional authority belonged to a previous feudal era and needed to be replaced by democratic structures. Mbeki argued from the point of view that traditional leaders occupied their office by virtue of their hereditary claim rather than by elections. Govan Mbeki represented the latter:

If Africans have had chiefs [*Amakhosi*], it was because all human societies have had them at one stage or another. But when a people have developed to a stage, which discards chieftainship, when their social development contradicts the need for such an institution, then to force it on them is not liberation but enslavement (Mbeki, 1984:47).

For Mbeki there was no chance that the institution of *uBukhosi* must be accepted as a democratic structure, while for Mandela the institution is completely democratic. Clearly the two leaders did not understand democracy in exactly the same way. Mbeki's position clearly demonstrates an element of intolerance for traditional leaders; in this case the tolerance competed with democracy. The African National Congress was, however, inclined to continue its strategy to persuade progressive traditional authorities. In the rural areas the African National Congress was considerably weaker and never had a coherent programme to build alternative democratic structures there (Motlhabi, 1984:30). Even Mbeki (1984:142) at times, did not seem consistent on the question of

discarding traditional authorities. Mbeki (1984:146) argues that if traditional authorities fail, 'the peasants', would seek new ones, which means the peasants would not discard traditional authorities. What eluded Mbeki is that the institution of traditional authority, insofar as its incumbents are hereditary leaders and thus unrepresentative, and inherently undemocratic. Its subjects are not given the chance to choose their leaders.

The role of traditional authorities in the liberation struggle received renewed attention from the African National Congress and its alliance partner the South African Communist Party (SACP) when traditional authorities such as *iNkosi* Mangosuthu Buthelezi accepted tribal authorities in the 1950s, and the debate continued after political organisations were banned in 1960 (Mbeki, 1996:34). Mbeki, was the leading figure in cautioning against working with traditional leaders operating within the system. Mandela, on the other hand, was the leading proponent of the strategy of working with Bantustan leaders such as Buthelezi.

According to Mbeki (1996:92), the exiled members encouraged Buthelezi to establish a political party in the homeland along the lines of *iNkosi* Victor Poto Ndamase's Democratic Party in the Transkei. It appears from Mbeki that the exile members' position met with strong opposition from members in Natal. The exile members' position compelled Mbeki to make the following powerful observation:

The African National Congress in exile seems to have seriously underestimated the capacity of government-created institutions to fulfil their intended role. They continued to believe that people who were not affiliated to the African National Congress could be trusted to fight apartheid from inside the apartheid created institutions. The confidence led to the situation in which MK cadres who were being infiltrated into the country were instructed to call on Buthelezi. But the chief [*Amakhosi*] minister of the KwaZulu Bantustan was playing a different game from that of the African National Congress in exile (Mbeki, 1996:92).

Koenane (2008:90) argues that "the fact that the African National Congress did not have a stronghold in rural areas drove it to seemingly desperate measures". Oliver Tambo confessed:

We have not done and are not doing sufficient political work among the millions of our people who have been condemned to Bantustans (Mbeki, 1996:95).

As debate on Robben Island and in exile continued, the United Democratic Front (UDF), widely regarded as the internal wing of the African National Congress, found itself drawn in. United Democratic Front evolved a radical position on traditional authorities when it began to target rural areas in 1985. When Mosiuoa 'Terror' Lekota⁵ a leading exponent of UDF policy on rural affairs and publicity secretary of UDF, was interviewed in 1985, he categorically and ambiguously stated that 'chieftaincy is a dying institution' (Van Kessel, 1995:173). The United Democratic Front reiterated this position later when commenting on the rural struggles of the mid 1980s; it declared, "Tribal authorities are being replaced by democratically elected village councils" (Van Kessel, 1995:170).

Unlike the United Democratic Front, the African National Congress was not keen to write the traditional authorities off, preferring to categorise them into 'progressive' and 'collaborating'⁶ traditional leaders. The African National Congress had relied on 'progressive traditional leaders' as their rural organisers, but what the role of traditional authorities would be in a liberated South Africa was not always clear in the African National Congress' policy. What is clear, however, is the struggle for power between the African National Congress and the Inkatha Freedom Party in KwaZulu-Natal. Now that we have democracy in South Africa, political power should be seen for what it is. Political power is often more about control than change. In this way, the ruling African National Congress party wants to be in full control (that is, in a position of power) of the institution of *uBukhosi* and on the other hand, *Amakhosi* also want to remain in control of rural areas. Politics therefore exists for the sake of making or creating or forcing one's

⁵ Mr. Mosiuoa Lekota has since 1994 occupied strategic positions within the African National Congress. He has recently turned his back against the ANC (and some of its policies) including the role and status of traditional leaders from whom he is seeking support for the forthcoming election for his new party the Congress of the People, COPE in short.

⁶ When Mbeki referred to 'progressive' and 'collaborating' *Amakhosi* then it was not known who he was referring to, however, with the formation of CONTRALESA here is no doubt, now that those *Amakhosi* who are aligned with CONTRALESA are also politically affiliated to the African National Congress. The question is "are these what Mbeki referred to as 'progressive' and 'collaborating' *Amakhos*?"

will on another, without destroying another; because if another was destroyed then there would be nothing to dominate.

During the run up to the 1994 general elections in South Africa, Matthew Phosa (now National Treasurer of the African National Congress and the then legal leader of the same party), referred to the Mozambican option.

5.2 Mozambican option

Briefly the Mozambican option refers to the option where *Amakhosi* were forced and even threatened to join the African National Congress or loose their powers (Teffo, 2002). The Mozambican option means the option where the powers of traditional leaders in that country were nullified. For what it is worth, let us recall the words of Matthew Phosa then:

The Mozambican option was just one of the options we thought of, but we opted to keep the chiefs. We might find a way of making them ex officio members of local structures. But the chiefs must not call a bluff and claim to have a large following. There is no way they are going to be represented in the constituent assembly because their influence has always been limited to a tribal level. The chief has no option; he remains a chief if he runs for election. If he loses, he must accept the result he lost to a commoner (Teffo, 2002).

Evidently, strategists such as Matthew Phosa of the African National Congress and other are finding it difficult to recognise the institution of uBukhosi for what it is and would like the institution to exist only on so far as it adheres to the demands of the African National Congress without questioning them. This is against the politics of redistribution and recognition (Nancy Fraser, 1997). Apparently, it was evidence that enabling grounds where a memorandum of understanding was not to be. The institution of traditional leadership as history has informed us was fighting for its survival against all odds. In a sense, Black elites strongly wanted the institution of traditional leadership to completely surrender or face de-stooling. The institution was threatened but miraculously survived.

Level (2001:28) is of the opinion that modern democratic institutions are lacking the ingredients of democracy. Level is highly concerned about the level of undemocratic behaviour between some democratic countries and institutions about what he identifies as the gap between democratic institutions and appropriate democratic behaviour. The evidence of undemocratic behaviour is perfectly demonstrated by Matthew Phosa and some individuals aligned with the African National Congress. Intimidation is viewed as opposed to democracy, Phosa's position represents high level of intolerance and resorts to intimidating traditional leadership to oblige with the African National Congress or else, they will lose their position.

5.3 COSATU

The acronym COSATU stands for the Confederation of South African Trade Unions and it is the biggest the Trade Union in South Africa with a number of different trade unions under it. Further more, COSATU is a partner in the Tripartite Alliance with the African National Congress and the South African Communist Party (SACP). The COSATU falls under what in the political system is referred to as the interest or pressure group. According to Jackson and Jackson (1997:327) we can differentiate between two interest groups organised and unorganised.

In 2002 before the Draft Bill on Traditional Leadership and Governance Framework was gazetted, public comments on the drafts were encouraged and among those that submitted their comments and criticisms of the Draft Bill was COSATU. Given that COSATU is in an alliance with the African National Congress, the researcher considered their submission adding value to the African National Congress' dilemma about the role and function of traditional leaders in the new dispensation.

In a nutshell, COSATU opposed the Draft Bill on several aspects arguing that the notion of a "dual sovereignty whether executive, judicially or legislative", was unacceptable in a democratic state. Thus for COSATU, constitutional recognition of the institution of traditional leadership was opposed to democratic principles. In principle, COSATU did not provide any additional information as to why according to the organisation traditional

leadership must not be constitutionally recognised. COSATU reiterated the same reasons put forward by those among the African National Congress who were opposed to the institution in general. However, the main objective of COSATU was a clause in the Draft Bill [Chapter 3 3.3], that allowed governmental powers and functions to traditional leaders, arguing that the delegation of executive powers to traditional leaders was unconstitutional in terms of the provisions of section 238 on the Constitution.

Existing conflict between freedom fighters and Amakhosi is better described by two Zulu expressions which in Zulu are self explanatory but which need explaining for the benefit of non-Nguni speaking people. The two words are *umbusazwe* and *umbangazwe*. The expression *umbusazwe* literally refers to governing the country. This implies that for traditional leaders the most important element was the advancement and development of the community through governance. This expression is an every day vocabulary of traditional leadership in any African setting, particularly in matters of governance and social development. On the other hand, the word *umbangazwe* is a negative word associated with freedom fighters and it literally means 'fighting for the country'. In this way the term *umbangazwe* can also be understood as power struggle for governance, whereas *umbusazwe* is strategies to govern the country effectively. Governing strategies as suggested by *umbangazwe* include strategies for rural development. The ideology behind these two expressions is different. As indicated the one denotes something positive and the other something negative. This means that South Africa is still faced with the challenge of changing the mindset. Changing of the mindset from negative connotations to positive ones. The concepts people use have a deep meaning in the manner they influence people.

5.4 Weaknesses of the traditional leadership system

Traditional leaders in South Africa are confronted with two different sets of challenges or moral standards. On the one hand they are confronted with the moral culture that is largely not regulated, that is spontaneous African cultural behaviour where certain practices are considered as normal. On the other hand, every thing traditional leaders

do is looked at under a microscope and judged by Western standards or interpreted negatively by political opponents in order to discredit the institution.

In keeping with the democratic principles enshrined in the Constitution and various legislations, the post 1994 South African state aims at establishing new democratic and accountable structures with significant community participation, for land administration and management. During the period of this research, one of the discoveries was that the record of transparency and accountability by some traditional leaders is very poor. For example, there are times when large amounts of money are collected by the *iNduna* at the order of the *iNkosi* from each family for specific projects, which never got off the ground. People were never told how much has been collected and where the money is kept.

However, one needs to be careful not to generalise because not all traditional leaders lack accountability. Another example is that, when a new person is given a piece of land, a certain amount is required part of which goes to the *iNkosi* and part to the *iNduna*. This amount is referred to in Zulu as *khonza*⁷ fee; ultimately some *Amakhosi* claim that there is an official amount of R200 gazetted, the researcher checked the document, and the amount is not stipulated.

When one leaves the tribal area to live in another area, there is an unstipulated amount of what is technically called *valelisa*⁸ fee. The investigation of the researcher with regard to *khonza* and *valelisa* fees is that there is certainly no mention of any amount in the Act. The Act dealing with such payments is called “*KwaZulu Amakhosi and iZiphakanyiswa Act 1990, (Act 9 of 1990)*”. Although the Act refers to both *khonza* and *valelisa* fees, it leaves the matter open to the discretion of the *iNkosi* concerned.

⁷ The term *khonza* is the Zulu literally denoting greeting. Therefore *khonza* fee is recognised in the above stated Act and it is payable by a person who wishes to owe allegiance to a particular *iNkosi*.

⁸ *Valelisa* is the Zulu word for farewell. The farewell in this case relates to a person leaving a tribal area for another area.

However, *valelisa* fee like *khonza* fee is also official, but again there is no amount stipulated in the Act mentioned above, (Act 9 of 1990). *INkosi* T.K. Sibiya of Pongolo, who was interviewed as part of this research maintains that as a practise he does not ask for *khonza* fee but requires *valelisa* fee. The reason he gives is that by the time people leave his tribal area they would have used his people's resources. Although this is a normal procedure for one to own a piece of land, there are no receipts given as proof for payment.

Furthermore, many traditional leaders do not account for the livestock and the monetary penalties they impose towards their subjects. The monetary penalty and the livestock traditional leaders receive in their capacity as local government authorities are not personal belongings but are community assets, and this implies that communities must hold traditional leaders accountable for these assets.

This is obviously against the principle of transparency and accountability. In South Africa, the notion of accountability is entrenched in section 195(1)(f) of the Constitution. One of the traditional cornerstones of democracy is the fact that each councillor, municipal official and traditional leader is subject to accountability. This implies that they should all give account in public of their activities. As Gildenhys (1997:17) puts it, "It is generally accepted that councillors and municipal officials should display a sense of responsibility when carrying out their official duties". In the same way traditional leaders must also be held responsible and account for their activities as well.

During the interview with *iNkosi* V.R. Zondi, he stated that in so far as *khonza* and *valelisa* fee, some traditional leaders abuse the system as some ask large amount of money, sometimes amounting to R600 or R700. This is true as it was confirmed with five respondents from different areas who paid an amount of between R700 and R800 respectively in order to be allotted a piece of land. What was strange about the five people who were asked to pay *khonza* fee by traditional leaders in their respective areas; three of these were born and bred in the same areas they paid for.

In other words, these were not strangers who came to live in the area. The only difference is that they moved out of their parents' residential homes to build their own homes. *iNkosi Zondi* of iSibonelo revealed that he asks only R60 for *khonza*, however, he did not reveal how much he asks for *valelisa*. Some individuals in his area also confirmed the R60 *khonza* fee that *iNkosi Zondi* asks. From what could be gathered, the amount required by *iNkosi Zondi* is the lowest for *khonza*. However, whatever, the amount individual *Amakhosi* collect, they must be held accountable since these funds are placed under their control.

Without promoting or trying to justify acts of corruption done by some traditional leaders (be it in person or through their agents or any person authorised by them), it must be mentioned here that before the central government took over the remunerations of traditional leaders, in KwaZulu-Natal traditional leaders were not remunerated properly and equally. Some traditional leaders received from the former KwaZulu government as little as R600-R800 per month. The headmen were excluded from the low salaries mentioned herein. It is for this specific reason that the democratically elected government revised the remunerations of traditional leadership throughout South Africa.

The official National government Act revising the remuneration of traditional leaders was promulgated in December of 1995, the Act is referred to as 'Remuneration of Traditional Leaders Act, 1995'. In his assessment of the relevance of traditional leadership in South Africa Oomen (2002) suggests that eighty percent of people living in KwaZulu-Natal still support and acknowledge traditional leaders. However, this study further established that although government in principle support and recognise the institution of *uBukhosi*, material and financial support remains low, this support does not match high support the institution enjoys among rural communities.

According to Gildenhuys (1997:17) true democracy calls for absolute transparency for all local government financial transactions, the same applies where traditional leadership system is operative. Furthermore, although some traditional leaders gave the impression that *khonza* and *valelisa* fees were gazetted and specified, none of these

produced a document supporting their claims. In addition, it seems that not all traditional leaders are clear as to the reason why do new comers pay whatever amount for *khonza* and *valelisa*.

According to one *iNkosi*, moneys collected in respect of *khonza* and *valelisa* went to the purse of the *iNkosi* concerned, part of it to the *iNduna* as part of the remuneration. However, some, about seventy per cent, maintain that part of this money is used for community development projects and part of it went to the *Ingonyama* Trust Fund. It must be taken into account that, these respondents were not going to be entirely honest as to what amounts do they themselves ask for. They were not honest also about how much of the money they collected went into their own pockets.

However, the African National Congress holds a view that receiving gifts in terms of *ukukhonza* and *ukuvalelisa* amounts to corruption. This is because, none of the traditional leaders can clearly explain the exact amount that should be paid, and there is no transparency as what development projects are accomplished by these moneys. The community is not informed of the total amount that was collected or on what it was spent. Furthermore, rural communities are not involved in decision-making, nor are they informed about developments taking place in their area.

The *khonza* and *valelisa* fees are for most African traditions and cultures an acceptable practice. Presenting a traditional leader with a gift as a token of appreciation for affording a person a residential place in his or her territory is regarded among most Africans (not only among the Zulus) as an act of decency. However, opponents of the traditional structures particularly in KwaZulu-Natal view this gesture as accepting a bribe and therefore as being corrupt. It is very difficult to conclude as to whether this gesture amounts to corruption or not. The answer to this difficult question solely depends on an individual's understanding of the African philosophy and also on the individual's political ideology. Given this as the case may be, John Waliggo writes:

African pre-colonial societies were less corrupt than colonial ones. The post-independence African societies have surpassed the colonial societies in their level of corruption. Pre-industrial societies are less corrupt than industrialised ones. This worrying pattern seems to suggest that corruption follows the pace of modern history. Industrialisation, colonisation, Christianisation, formal education, new financial and economic skills and strategies seem to accelerate corruption rather than control it (Waliggo, 1996:118).

According to Shamase (2001:9) *ukukhonza*, 'court fines' and other payments; be it in the form of cattle or any other form were not personal belongings of the *iNkosi*. Shamase (2001:9) argues that these belonged to the larger clan or community. The *iNkosi* only served as the main repository of wealth. These tributes were meant to assist members of the clan who were in need. They were also meant to treat visitors to the traditional leader's residence in a chiefly fashion. These tributes also assisted the traditional leader to supply food and drinks to all those who were at his residence on official business (that is, members of his council or regiments of his army that had been called up).

Nwabuzor and Mueller (1994:135), define corruption as a situation where a public official accepts money or money's worth for doing something that he is under obligation to do anyway. The difficulty with the definition of corruption as defined in the above statement, with regard to the institution of traditional leadership, as we knew it before the new Constitutional era, is that traditional leaders were not strictly speaking forming part of the public officials, since they were not paid by the government. In areas such as the former KwaZulu traditional leaders were paid very little, sometimes as little as R300-00 per month. However, this money dependent on them paying allegiance to *iNkosi* Minister Dr. Mangosuthu Buthelezi. There is no proof that this allegation is true, this may as well be an *ad hominem* attack on the person of *iNkosi* Buthelezi. There are many other allegations levelled against both Inkatha leader and the party such as the one by Munro (2001:296) where he alleges that Inkatha Freedom Party is opposed to the democratic dispensation.

The above statement does not necessarily justify acts of corruption, but only intends to give a descriptive analysis of facts as fair as possible. Perhaps one can argue that most traditional leaders (particularly in the former KwaZulu province) applied the principle of 'bread first, morals later. Rossouw (1994:11), points out that the first cause of unethical conduct is a combination of scarcity and the enormous competition among people in obtaining these resources. This is very true in the case of traditional leaders who had to survive from very little if anything at all. Therefore when survival is at stake it is only human to satisfy personal needs before tending to those of others. Put differently, it becomes a case of bread first, morals later.

There are some notable and heroic exceptions to the rule, given the environment which traditional leaders operated under; it is not irrational to secure ones' own survival before entering into altruistic or moral expectations.

It came to the attention of the researcher that it is practically difficult to ascertain the level of corruption in rural tribal areas. It can be argued that the proliferation of a confusing mass of regulations puts those affected at the lowest level by corruption, (the ordinary, relatively poor people) at a considerable disadvantage when faced by petty traditional leaders. More often than not illiterate, they have little chance of understanding whether or not what is demanded of them is demanded rightly or corruptly.

McMullan (1961:184) argues in terms of what he refers to as understanding the 'climate of corruption.' The importance of the 'climate of corruption' must not be underestimated, this is the underlying fundamental cause of corruption or at least it can also be referred to as the abetting its continuance. McMullan notes as follows:

There is a continuous interaction between the willingness of people to pay bribes and the willingness of officials [traditional leaders] to receive them (McMullan, 1961:184).

Therefore, the argument that traditional leaders are corrupt sounds more like a generalisation, the contribution of the people also encourages such behaviour. Corruption is widespread and that is a fact, but the effects of corruption on social and political development are often debated on ideological grounds. From the ethical point of view, clearly defined roles and responsibilities of traditional leaders will bring about some idea of the ethical obligations of a traditional leader or any person in a leadership role. In this way knowing the role determines the ethical obligations and a line that must not be crossed. Another aspect of criticism by modernists of the institution of traditional leadership is the unfair discrimination of women in the system, which will be the focus of the next section of the study.

5.4.1 Exclusion of women as traditional leaders

South Africa entered a new phase in which the rights of all people are protected by a charter of fundamental human rights. This obviously means that discrimination on the grounds of sex is abolished. According to the project of the government to promote equality for women, all discriminatory provisions against women were abolished with the coming of the democratic dispensation. However, a constitutional declaration advocating for equality of status and non-discrimination, does not necessarily make women equal in practical terms. Very often the role of women in public and political life has is ignored. Throughout the years opportunities for women as traditional leaders were non-existent except in cases where such women could only stand as regents, but it is slowly beginning to change.

The traditional leadership system excluded women from decision-making. Because of this, gender issues play a major role in the debate about democracy of the institution of traditional leadership. Therefore, in this study, gender refers to social relations between and among women and men, usually asymmetrical division and attributes, connoting relations of power, domination and rule. Therefore for liberal democratic ideologies, gender refers to a relation of domination (Meena, 1992:22). The African National Congress interpreted this as undemocratic. Furthermore, decisions tended to be made in smaller advisory forums and endorsed in wider assemblies (*izimbizo*). In the Northern

KwaZulu-Natal there has been some new developments, over eight years ago a woman by the name of Ms. Lilly Mpungose was appointed as an iNkosi at Mlalazi area outside Eshowe for Mpungose tribe. There are developments and although things are moving slowly, women are slowly being offered posts as traditional leaders. Therefore opposition was likely to be cautious.

For opponents of the institution of traditional leadership, the exclusion of women from permanent positions as *Amakhosi* amounts to discrimination that is based on gender, consequently this is against the principles of non-discrimination as outlined in the Constitution. It is for this reason in particular that the government in the White Paper on Traditional Leadership and Governance also attempts to integrate the institution towards the mainstream. It also attempts to harmonise the institution with the Bill of Rights. In the White Paper, women are guaranteed at least a third of the membership of traditional council.

In contrast to the view that the institution of traditional leadership is patriarchal and oppressive of women and young people, change has occurred in many traditional structures around KwaZulu-Natal and in other provinces in South Africa. This is as a result of transformation; the only problem is this is happening slowly. From a practical transformational point of view, it does not make sense to simply dictate that by such and such a period there must be thirty percent of women in strategic traditional leadership structures, this decision must be made by concerned traditional structures as they attempt to position the institution strategically within the constitutional democratic dispensation.

According to Ntsebeza (2001:45), traditional leaders were often used and manipulated by the apartheid regime. Ntsebeza further maintains that the apartheid government arbitrarily replaced hereditary traditional leaders who did not act in ways approved by the system. According to Ntsebeza, after the promulgation of the 1913 Land Act, traditional leaders were effectively restricted to homelands, their role was considerably redefined and their powers were reduced to traditional civil issues. Therefore, Ntsebeza

refers to traditional leaders as “instruments of state policy charged with carrying out instructions from the state”. For this reason Ntsebeza does not believe that traditional leaders have earned themselves a legitimate right to govern the people they claim to represent.

The African National Congress also questioned the legitimacy of those traditional leaders who were appointed by the state after deposing a recognised heir to the throne. Therefore, the extent to which traditional leaders is legitimate is according to the African National Congress highly disputed. Legitimacy in this context denotes a moral or ethical concept, which involves perceptions of what, is right. The question of legitimacy is not resolved with regard to the institution of traditional leadership and the question of land redistribution for communal land in South Africa. As Fraser (1997) suggests, both cultural and political remedies of recognition and redistribution seem necessary to resolve the tension.

Furthermore, the democratic principles were extended to local government. The Constitution (1996) requires that municipalities, consisting of elected representatives be established in the whole of South Africa, including the rural areas of former Bantustans, previously ruled by traditional authorities. Although, these changes must be viewed against the background of the legacy of colonialism and apartheid in rural areas, these changes also contributed towards weakening the Inkatha Freedom Party in many ways.

In KwaZulu-Natal the African National Congress had hoped that through these changes, progressive or comrades traditional leaders as Classens (2001:26), refers to them would embrace its policies of democratising rural areas, and accept the non-political ceremonial role they were offering traditional authorities in the post 1994 democracy. However, to the African National Congress’ surprise, traditional authorities including those in the Congress of Traditional Leaders of South Africa (CONTRALESA)⁹ were

⁹ *CONTRALESA* was formed in 1987 in order to articulate the interests of traditional leaders and also acted as an extra-ordinary parliamentary opposition party to the apartheid government. Since 1994 the movement served as a reminder to the African National Congress government that the institution has

united in rejecting this role (Ntsebeza, 2001:77). On the contrary, traditional leaders wanted to constitute the primary structures of local government and land administration in rural areas. Ntsebeza (2004) is far from happy that traditional leaders are given constitutional powers for land distribution. She laments that this is too much of a compromise of democracy and democratic principles. Ntsebeza is of the opinion that traditional leaders can abuse the powers they have of distributing communal land. It is not surprising that Ntsebeza holds this view because she departs from the point of view that the system is inherently undemocratic and thus with no legitimacy. Ntsebeza (2004) needs some assurance that there will be a system of checks and balances to ensure that there is no abuse of power in the distribution of communal land.

5.4.2 Checks and balances in the traditional leadership system

The idea of traditional African governance through the institution of traditional leadership was to enhance community responsibility, respect for human dignity and the right to freedom of expression as entrenched in the Constitution. In terms of this ideal, the philosophy of *ubuntu* is central to indigenous governance system. Granted, every system of governance can be manipulated, it is however, essential to reduce the chances of manipulating the system and preventing corruption, that a system of checks and balances be put in place. Shamase (2001:10) argues that there were two main factors that made it unthinkable for the *iNkosi* to impose his will on his people or to act despotically. Shamase argues that the institution of *uBukhosi* as the repository of ancestral spirits was sacred. The *iNkosi* could not oppress his subjects and then expect the blessing or co-operation of his ancestral spirits. This position is generally held by traditionalists who maintain that although heredity is often the basis by means of which traditional leaders occupy their positions; most African systems had means for “de-stooling” or displacing a traditional leader(s) who did not meet with the community’s approval (Ayittey, 1991:135-139) and (Osabu-Kle, 2000:18).

served as a system of governance in this country for time immemorial and that the majority of people still wanted this institution to serve within the democratic government.

Ayittey blames the elites for the absence of democracy in Africa and goes on to say these political elites are also responsible for doing away with the structures and values that held Africa together. Some respondents maintain that the institution of traditional leadership is still valuable in modern democracy; however, they were concerned that the reciprocal relationship between traditional leader and their people is disappearing. They believe that in the past, rural people needed traditional leaders and traditional leaders needed the people but in the modern times, this relationship between traditional leaders and the people is no longer existent because of a deterioration or collapse of the system of checks and balances within the institution. These respondents claim that there were instances, when some traditional leaders had extended their authority beyond what was proper to enrich themselves and not the people.

Inappropriate acts cannot be ruled out completely and Shamase (2001:12) acknowledges that although there is a system of checks and balances, some traditional leaders find a way of cheating the system. However, Shamase also maintains that such tendencies would bring shame to the lineage. A member of the founding lineage might be provoked to replace the traditional leader who acted dictatorially. Besides if these two measures of maintaining fairness on the part of the traditional leader failed, the inner council of advisors would monitor public opinion and pass information onto the traditional leader for him to behave or act properly. Otherwise, the traditional leader, who is not prepared to change his ways as the community demands, is risking having no people in his area, because people are free to leave a traditional leader who fails them if they are not satisfied with the way he conducts his affairs and relate to them. Consequently, it becomes evident that the *iNkosi* needs the people as much as the people need an *iNkosi*, the relationship is mutual and reciprocal.

Political participation encompasses not only rights but duties as well. The political system must have built-in reward, as well as punishment, mechanisms with which wrong is distinguished from right, taking into consideration the utilitarian approach of what is good for the greater number of people.

The question of succession to the traditional leadership became an issue also with the Venda tribe of Masia. De Beer (2004:103) maintains that the conflict is perpetuated by the ambivalence in a legislative transformation in South Africa. According to De Beer the Constitution on the one hand recognises the institution of traditional leadership and its concomitant customs and values and on the other hand, enforcing the fundamental value of gender equality as entrenched by the Constitution, Act 108 of 1996. De Beer further reports that a succession dispute among the Venda of Masia is an example of how untenable the application of gender equality principle in the Constitution and in the Promotion of Equality and the Prevention of Unfair Discrimination Act, (Act 4 of 2000) is, with regard to succession to traditional leadership in this tribe.

5.4.3 Traditional leaders and party politics

Changes in political powers structures generally affect any society in which it takes place. Political transformation brings about a mixture of hope for others and fears for some. In South Africa political transformation was inevitable and traditional leaders are always frustrated for not knowing their role in the new South Africa. One of the most basic questions to be asked is whether it is proper for traditional leaders to align with a certain political party. Most traditional leaders have a close association with political parties, particularly in KwaZulu-Natal where the majority openly support Inkatha Freedom Party and are card-carrying members of the same political organisation. A number have also been actively involved in mobilising rural people against the African National Congress. However, there are some traditional leaders in KwaZulu-Natal who have supported the African National Congress, either indirectly or by openly aligning themselves with CONTRALESA, which is aligned to the African National Congress. Undoubtedly, these traditional leaders have compromised the integrity as leaders. One of the characteristics for any person who fills up a role of traditional leadership is for this particular individual to be a person with integrity. Integrity, in turn requires fairness, reasonableness and honesty in dealing with the community.

In many ways this situation has presented some difficulties to the African National Congress. The African National Congress has always been aware that in order to penetrate rural areas and win the province of KwaZulu-Natal, which has traditionally been the stronghold of the Inkatha Freedom Party; it has to garner the support of *Amakhosi*.

It must be clearly understood that both the African National Congress and Inkatha Freedom Party have equally benefited from traditional leaders who openly joined either party. In most provinces except KwaZulu-Natal, the African National Congress has a greater number of traditional leaders affiliated to it, including the president of CONTRALESA, *iNkosi* Phatekile Holomisa.

In addition, in KwaZulu-Natal a small number of *Amakhosi* are aligned to the African National Congress. In KwaZulu-Natal African National Congress loyalists believe that traditional leaders must not align with party politics. In practical terms, in KwaZulu-Natal because the traditional leaders who are affiliated to the Inkatha Freedom Party are in the majority, the African National Congress is blaming the Inkatha Freedom Party for manipulating traditional authorities.

Respondents who were asked the question whether *Amakhosi* should be aligned with a political party, came up with interesting responses. Some believe that a traditional leader should not be aligned with a political party, because even people who are not necessarily affiliated to the same political party would feel at ease with him if they knew that he was not aligned to a particular political organisation. The majority of those that were interviewed endorsed King Zwelithini's attempts to elevate traditional leaders above party politics. Most respondents believe that traditional leaders have no place in the political environment and that the Constitution and financial structures of the state should reflect this. It is important to note that it is facile to suggest that political activity must be excluded from the traditional structures arena but the scope and impact must be carefully considered.

The active role that many *Amakhosi* currently play in politics has meant that it has become increasingly difficult to draw a distinction between *Amakhosi* who are aligned to the Inkatha Freedom Party and the political party itself because they perform these roles simultaneously. The situation is similar to the *Amakhosi* who are aligned to the African National Congress.

However, CONTRALESA seem to enjoy more freedom as they criticise the African National Congress openly when it comes to policies relating to the institution of traditional leadership. Apparently, this is not the case with the Inkatha Freedom Party-aligned traditional leaders. Some of the traditional leaders talk the party line, while others often remain deferring questions to senior party leadership¹⁰.

The view that traditional leaders should give up their traditional position if elected to any government structure is a popular one. The view is that traditional leaders should be above party politics. Another popular view held by different people is that traditional leaders must be perceived to be apolitical. It is feared that a traditional leader who is involved in politics cannot make impartial decisions for the entire community.

The government should also acknowledge the influence of cultural and political factors on rural community development, which is only possible if and only if *Amakhosi's* role is recognised and are equal partners in decision making processes. In general traditional leaders claim that they in principle accept the policies government initiates on their relationship with democratically elected government structures but have a problem if and when these policies are limiting to their role (traditional leaders) to advisory on matters of custom and tradition only. It is not acceptable to traditional leaders that their role is confined to these issues only.

¹⁰ This was observed during the interviews with some traditional leaders and *izinduna* in the selected areas of research.

5.5 Political power bases and perceptions

Political culture and the attitudes it embodies have an impact on the political behaviour of individuals and groups of individuals. It also influences our decisions to participate in politics as well as how and when we wish to participate. Further more, political culture largely determines our political expectations, that is, what we regard as politically right or wrong. Hague et al., (1998:39) maintain that political culture includes the political customs and practices and even the nature of the political system. Political culture determines our political attitudes, orientations or opinions. Every aspect of culture is a response to a problem. Thus, the power base of each party refers to the resources, both material and non-material that each can draw upon to develop their spatial plans. Popular support, institutional capacity, credibility, and territorial control are the structural foundations of a party's power. They also tend to be the elements that are attacked and undermined by the opposition. In so far as the power base strategy goes, the objectives of the two principal political players are transparent. The Inkatha Freedom Party seeks a recognised power base in the only province that it won in the 1994 and 1999 elections, while the African National Congress wants its party to have majority control in the same region. In other words, among the African National Congress loyalists, the party must gain control of all nine provinces in South Africa.

From the Inkatha's own documentation (1991, 1995a and 1995b), it is evident that this party seeks a wide range of autonomous powers for the province of KwaZulu-Natal. This includes obtaining a 'Kingdom of KwaZulu' and autonomous powers commensurate with that enjoyed by regions in a federal state such as Germany or the United States of America. From the African National Congress documentation, it is obvious that the opposite objectives are being sought; maximise power at the central level of government, minimise provincial powers and expand the African National Congress political control within the two provinces that it lost during the 1994 elections. The African National Congress also seeks to stop what is perceived as the development of ethnic-based territorial powers (African National Congress, 1991, 1992 and 1995).

Until recently, in so far as the province of KwaZulu-Natal is concerned, the African National Congress successfully mobilised support mostly in urban centres. It is in these areas where much development is evident. Rural areas, however, are ignored except for when election time approaches.

In presenting an argument for the relevance of 'the institution of traditional leadership', Zuma criticised the Mbeki position that the institution had outlived itself, arguing that it "...could cause a lot of political problems for us" (Zuma, 1990:75). Zuma argues that Govan Mbeki's position did not take into account the political consciousness of the rural people. Zuma (1990:75) maintains that there are many popular traditional leaders in South Africa today who together with their people are taking part in the struggle. Zuma (1990:74) holds a view that the institution should be allowed to exist in the future but under 'our control', ('our') in the opinion of the researcher suggests democratic people's power.

Oomen (1996:101) has argued that traditional authorities have never been officially denigrated in the African National Congress documents, quoting Mandela on the occasion of his release from prison on 11 February 1990:

I greet the traditional leaders of our country; many of you continue to walk in the footsteps of great heroes like Hintsa and Sekhukhune (Oomen, 1996:101).

According to Oomen (1996:101) by 1991, it was common to hear traditional authorities mentioned by some African National Congress leaders as part of the coalition of forces struggling for national liberation, which are along-side Black workers, students, the rural people, professionals and Black business people. An attempt to clarify the role of traditional authorities was, however, made in 1992, when the African National Congress formulated its policy guidelines:

The institution of chieftaincy has played an important role in the history of our country and chiefs will continue to play an important role in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of chiefs shall always

be exercised subject to the provisions of the Constitution and other laws. Provision will be made for an appropriate structure consisting of traditional leaders to be created by law, in order to advise parliament on matters relevant to customary law and other matters relating to the powers and functions of chiefs. Changes in the existing powers and functions of chiefs [*Amakhos*] will be made by parliament after such consultation has taken place (Oomen, 1996:103).

To sum up, the guidelines were clearly informed by the notion of co-existence of democratic and traditional authority structures. The future powers of traditional authorities were defined, and their participation limited to giving advice, the traditional authorities would thus lose substantial powers they enjoyed, under the apartheid regime in particular. The guidelines also spelled defeat for the Mbeki position on traditional leadership. Mbeki had consistently been sceptical of the role that *Amakhosi* and *iNkosi* Buthelezi in particular, could play in the liberation struggle. Vilakazi (2003:35) suggests that in order to preserve the wisdom of African culture, South Africa must consider having a Legislature with two chambers, one elected and the other non-elected but with equal powers at all levels of government.

Some African National Congress members, such as Albie Sachs (also a constitutional expert and judge in the constitutional court) never envisaged that traditional leaders, as hereditary authorities, would have a primary role in local government. Sachs (1992) suggested that there would be a growing tendency towards creating democratically elected councils to work with traditional leaders in local administration. In other words, the role of traditional leaders would be subordinate to that of elected representatives. How this arrangement would be operationalised was never spelt out.

However, there were sceptics also. Writing in the South African Communist Party (SACP) organ, the *African Communist*, Maloka warned that although there are 'genuine and dedicated' traditional leaders who might play an advisory and ceremonial role in elected local government structures; there are others who survive on the fringes of our society through clientalism and coercion (1995:43). Maloka, though did not provide any

evidence of who the genuine and dedicated *Amakhosi* are, and on what he based his claim.

Keulder argues that the system of traditional leadership is highly democratic; this is how he puts it:

For traditionalists' perspective, the institution of traditional leaders and its procedures is not only a simpler form of governance, but also a more accessible, better understood, and a more participatory one. It is more accessible because it is closer to the subjects than any other system of government, subjects have more direct access to their leaders because they live in the same village and because any individual can approach the leader and ask him or her to call a meeting...; a decision making is based on consensus, which creates greater unity and harmony (Keulder, 1998:11).

This is just another point that best demonstrates the polarised views on the system of traditional leadership.

Corruption is multi-dimensional in nature, at the level of the individuals. Corruption is often defined as the abuse of public power for private gain. There is also corruption in the private sector. But corruption is also a structural problem. When society, economic system or the political system (for instance, the traditional leadership) operates in a way that allows for an abuse of power and is itself an abuse of power for the benefit of the few at the expense of the majority, that system needs to be cited as corrupt. Weaknesses in financial management for some traditional leaders are caused by the fact that most of the *Amakhosi* have inadequate financial management capacity. Therefore as a result of these accounting practices, credit control and financial reporting systems are weak.

Ismail (1999:1) on the other hand, accuses South Africans who address the issue of the role of traditional authorities before 1994 of merely making what he termed [...] platitudinous statements regarding the future role of *Amakhosi* without making any concrete suggestions. According to Ismail (1999:1), the general trend has been the

dramatic marginalisation of traditional authorities and their traditional roles or what he refers to as '[...] a mere symbolic retention of the institution'. Ismail (1999:2) puts forward a model, which he considers to be effective and realistic, that would engage traditional leaders and some aspects of indigenous governance in liberal democratic governance. Ismail (1999:4) proposes that 'indigenous governance' has democratic culture among the African people. According to him, that kind of engagement could lead to the democratisation of the institution of *uBukhosi*.

The position of traditional authorities is likely to be strengthened further by what is perceived to be the failure of the African National Congress to deliver in rural areas. The observation of the researcher was that there was hardly any support given to elected rural councillors. Some of these elected rural councillors are living in inaccessible villages due to lack of roads. Recently, on the 13 October 2005, the researcher was informed of Mr. Bheki Cele the Member of the Executive Council for Safety and Security and Transport in KwaZulu-Natal, visit to Mbongolwane for the first time during his term in office.

Local communities gathered in big numbers to hear what the MEC had to say to them. As usual he elaborated on his department's intention to build better roads leading to the hospital that caters for all these communities. For the purpose of this research, the author was one of the audiences to the Member of the Executive Council's address. A great number of people interpreted this particular visit and political promises made as a political strategy to campaign for the forthcoming local government elections for his party the African National Congress. However, people in Mbongolwane area would keep their eyes opened to see if these promises are fulfilled or not.

The issue of party politicking for traditional leaders is a complex one. It is basically impossible for traditional leaders not to affiliate to a political party of their choice. It is the view of the author that traditional leaders like all South Africans also have the right to be members of a political organisation of their choice. However, when it comes to policymaking, it is essential that in the interest of their communities must support those

policies and development projects that will assist their areas, irrespective of the position of their political organisation. In other words, they must only support projects that would develop the people they represent. However, there are certain actions by some traditional leaders that are forbidden whether one is a traditionalist or a modernist. Neither theory would permit traditional leaders to violate the basic ethical principle. The principle is formulated thus: put the interests of the people ahead (*Batho Pele*) of your own interests or political party. All traditional leaders are thus urged to avoid conflict of interest.

The reality of the matter is that in cases where a traditional leader is a strong member of a particular political organisation, there usually is what is technically referred to as a conflict of interest. In Bowie and Werhane (2008:4) there are two prominent definitions of conflict of interest and those are as follows:

A person has a conflict of interest if, (a) he/she is in a relationship of trust with another requiring her/him to exercise judgement in the other's service and, (b) he/she had an interest tending to interfere with the proper exercise of that judgement (Bowie et al., 2008:4).

There is no doubt, however, that it is not always easy for traditional leaders to avoid the occurrence of a conflict of interest. In addition, in becoming party political members, traditional authorities must distance themselves from acts of violence and any acts that would give the impression that they are intolerant of their subjects who align with an opposition political organisation. As party political members, traditional leaders must be exemplary especially with regard to political tolerance. In deciding cases, traditional leaders must be leaders with integrity and must not take sides (they must be impartial). Traditional leaders must always be a father figure for their communities. However, in KwaZulu-Natal the institution of traditional authority is closely associated with the Inkatha Freedom Party and this call for concern among the general population. The institution of traditional authority must remain an independent entity.

The fact is that in order for the tribe to survive, mechanisms of collecting tax have to be devised. Generally tax was collected by means of accepting people into the tribe, for

this they had to pay. Furthermore, court fee or penalties were in the form of cattle. It is worth noting that wealth that was collected by the *iNkosi* did not belong to him as a person, but to the institution or the office of chieftaincy. The traditional leader held the tributes in trust for the clan and could not use them recklessly or to enrich himself. Given that the system has changed today, most traditional leaders use tax to enrich themselves, which amounts to corruption. The African National Congress challenges these acts of corruption, and it is for this reason that the African National Congress wishes to see the institution transformed.

Perceptions about the institution of traditional leadership and elected government officials are also an indication of a polarised society. It is worth noting that most young and better educated South Africans (respondents) living in rural areas of KwaZulu-Natal are inclined to criticise traditional leaders and prefer elected government structures. In this way the individual level of education influenced the position one adopted in this matter. However, for most adults the contrary was true, adult respondents (less educated comparatively speaking and less informed politically) are inclined to favour traditional leaders and trust them more than they do to elected politicians.

Politically, the question of 'trust' is an important one in order to arrive at any political compromise. The thesis has established that there is a lack of trust between the institution of traditional leadership and elected government officials to an extent that both institutions believe they can do without the other. Trust and tolerance are keys to any chance of the two systems to reconcile their differences and decide on service redistribution and roles between themselves. Further more, looking at the question of trust from another perspective, is that for a number of political organisations such as the African National Congress and their alliance partners believe the institution of traditional leadership has lost its integrity and trust.

Consequently, the 21st century is perceived as the century of governance, therefore it is of vital importance that the institution of traditional leadership transforms to meet the expectation of the century. The point that most government policies on traditional

leadership is often an attempt to restore trust in the institution, it is imperative that the institution of traditional leadership position itself in such a way that it aligns itself with transformation interventions.

5.6 Testing hypotheses

The study built on a number of hypotheses. It is thus imperative that I explain what a hypothesis is. But before one defines what a hypothesis is, one needs to explain that data analysis and interpretation requires that some limitations in analysing data be addressed. In the interpretation of collected data, the researcher must be aware of the sources of information since what people reveal or decide not reveal is most of the time influence by their political interests. There are many definitions of a hypothesis, among these are the following:

A proposition that is stated in a testable form and that predicts a particular relationship between two (or more) variables. In other words, if we think that a relationship exists, we first state a hypothesis and then test the hypothesis in the field (Bailey, 1978:35).

Another definition of a hypothesis is one given by Grinnell and it is formulated thus:

A hypothesis is written in such a way that it can be proven or disproven by valid and reliable data – it is in order to obtain these data that we perform our study (Grinnell, 1988:200).

From these two definitions of a hypothesis, it is clear that a hypothesis has specific functions in any study. According to Kumar (2005:75) functions of a hypothesis are as follows:

1. The formulation of a hypothesis provides a study with focus. It informs the researcher of specific aspects of a research problem.
2. The construction of a hypothesis enhances objectivity in a study and
3. A hypothesis may enable the researcher to add to the formulation of a theory.

The above information gives the idea that a hypothesis is a process and the process is first a formulation of a hypothesis, followed by gathering data and finally analysing the collected data to draw conclusions about the hypothesis as true or false.

The question of the relevance of the institution of *uBukhosi* in the democratic era needs to be assessed within the context of the socio-political and cultural background of South Africa. The issue of relevance of the institution of traditional leadership in the democratic South Africa was discussed in details on page 139. However, caution must be the guiding principle since South Africa is part of Africa and also part of the global community with its liberal democratic demands. In examining the relevance of the institution of traditional leadership in South Africa, one needs to come to a realisation that South Africa is not an isolated country and thus must in the light of this also serve the interest of the global village. Ntsebeza (2004) holds a view that the institution of traditional leadership undermines democratic principles in terms of the fact that traditional leaders are not elected, they inherit leadership, and she claims that *Amakhosi* are accountable, the institution is still very much male-dominated and thus disregard the provisions of the Constitution by discriminating against women. For Ntsebeza traditional leaders are also despotic. In general these are the same reasons those among the African National Congress who are opposed to the institution would give. This then for anyone opposed to the democratisation of the institution of traditional leadership and inclusion into the democratic system of governance, it is almost like mixing two opposed systems, namely one a democratic system and another an inherently undemocratic institution. In short, for these individuals the two systems are irreconcilable.

The problem though about the above position is that its proponents do not provide valid reasons for holding this position. Those opposed to the institution of traditional leadership included in government structures believe that the institution of traditional leadership and elected government officials stand for contradicting principles. Ntsebeza writes:

While the initial collaboration was around local government, it is clear that the main issue that brings traditional authorities together is their opposition to the notion of introducing new democratic structures. They would be happy to be the only primary structure in rural areas and insists on preserving the concentration of functions they enjoyed under apartheid, in particular land administration. Not only are they opposed to the idea of separation of powers, they are also opposed to any attempt to introduce alternative structures that would compete with them. For example, in the case of local government, traditional authorities reject the introduction of municipalities in their areas. They argue that they should play a central role in rural development, and by implication, they reject the democratic principles upon which post 1994 developmental local government is based (Ntsebeza, 2004).

Ntsebeza (2004) further claims that rural citizens are excluded in decision making process and thus do not participate meaningfully in political decisions affecting them. If this is true this is obviously against the principle of *Batho Pele*, which encourages participation of local communities in governmental decisions that have direct impact on their lives.

It was also established that there are no agreement between proponents of modernity and those of traditionalism about the meaning of 'democracy'. In each school of thought democracy meaning something different from that which the other holds it to be. In each case proponents attaches meaning to democracy which the other criticises as undemocratic. Whatever the situation and meaning different people attach to the meaning of democracy, there is not doubt that the debate represents a hybrid between different positions held by modernity and tradition.

The above argument has some logical flaws. This is generally referred to as logical fallacies. The purpose of logical fallacies is to expose some inconsistencies in an argument which is what the researcher intends next.

The essential missing link in the claims stated above is lack of empirical evidence to support these claims. Evidently, the above statements are mere generalisation and in the next section, an attempt would be made to expose some logical fallacies in the reasons given for excluding the institution of traditional leadership in the democratic governance system. However, in order to be able to expose these fallacies, one first needs to explain what a fallacy is. For Copi and Cohen (1998:161) a fallacy is a type of argument that may seem to be correct, but that proves, on examination not to be so. From this definition, a fallacy is persuasive on face-value but is deceptive because on close inspection, it turns out that there is some logical flaw hidden in it, which people have not noticed at first glance. Therefore, in this study a fallacy is understood as an argument, which is logically invalid but is still persuasive, mainly because of some trick usually of a psychological nature, and it is used for the purpose of manipulating people. There are a number of fallacies that render some of the arguments invalid, among these some are more prominent than others, it is for this reason the researcher will focus on the ones he believes expose fallacious argument in the debate about the role of traditional leadership in the democratic South Africa.

One of the methods to validate the claims made by opponents of the institution of traditional leadership can be disproved by understanding the 'straw man' fallacy. According to Moore and Parker (2007:177) we get a straw man fallacy when a person (or group of persons) purposefully distort, exaggerate or misrepresent an opponent's position. This study has exposed some of the exaggerated viewpoints in the system of traditional leadership and its governance strategies. Therefore given that the position and wrongs such as undemocratic attributes associated with the institution of traditional leadership are made of straw and they do not necessarily characterise the institution and must therefore be rejected. Opponents of the institution of traditional leadership are guilty of using the fallacy of a slippery slope. Moore and Parker (2007:182) further maintain that the fallacy of a slippery slope is committed if and when two unconnected claims are made to support each other. For example, the claim that because the institution of traditional leadership is hereditary it follows that it is therefore illegitimate. There is no connection at all. The same goes for claiming that because some traditional

leaders were used by both colonial powers and the apartheid government, therefore the institution is undemocratic. The slippery slope fallacy in this case is bringing together two issues that are not logically connected. It is almost like when one thinks about actions of the apartheid government, it leads to one thinking about the institution of traditional leadership, the argument does not follow. Finally, there is also a fallacy of generalising. Evidence of this fallacy was thoroughly discussed in the issue of corruption and lack of accountability of some traditional leaders, which led to opponents of the institution of traditional leadership to argue that the institution is inherently corrupt. We cannot on account of isolated corrupt activities of certain individuals conclude that the entire system is corrupt.

However, in some cases it was difficult to prove the hypothesis right or wrong. For instance it was not easy to come to a conclusion as to whether the institution of traditional leadership is considered democratic or not. The main problem was that democracy for most people, particularly young people, means one-man-one-vote. In other words, most young people do not appreciate the complexities surrounding the principle of confidentiality. Further more the difficulty was also influenced by the mere fact that the emphasis of principles of liberal democracy is different from the constructs of traditional African democracy. The study established that majority of people living in tribal rural areas trust their traditional leadership more than they do elected political leaders, who are mostly seen when they campaign for elections.

On the other hand, the hypothesis that traditional leaders are losing support from their rural communities was also difficult to test. Basically, this hypothesis is partially true. This is partially true, in a sense that among young people, traditional leaders are losing their support. This can be caused by a number of factors most young people do not see value in the existence of traditional leaders particularly when traditional leaders do not bring about meaningful change into their lives. In addition, most of the young generation find work in urbanised areas and choose to stay in the cities in this way losing their rural connections. On the other hand, elderly people who still believe in and support the institution of traditional leadership are slowly dying. As indicated in the study the

perceptions of senior rural citizens and the younger generations about traditional leaders are polarised.

5.7 Conclusion

There are many ideas and practices within the institution of traditional leadership which have proved questionable for its critics including the African National Congress. The most common among these is the fact that in the traditional setting, leaders are born not made or elected through a ballot paper. The other assertions being that the institution was used for apartheid agendas as an oppressive tool, in this way collaborating with the apartheid regime and that the institution disregard the principle of equity as it excludes women in its succession practice. Thus, the institution lost its legitimacy and relevance in the democratic era. However, for those whose simplistic thinking is that the divisions that is experienced between the institution of traditional leadership and elected government structures can be resolved by suppressing or killing the institution of traditional leadership, must think again. It is important to gain insight into the fact that it will take more than refusal to recognise the institution of traditional leadership to make people trust elected government officers.

The view that the conflict between the African National Congress and Inkatha Freedom Party about the role and strategic position of traditional leaders in South Africa is characterised by two opposite sides: one side being the African National Congress and its struggle to establish democracy, freedom and Western modernity and the other side being the Inkatha Freedom Party and labelled as undemocratic and championing cultural divisions is a simplistic one and must be rejected with contempt. Sympathy for the institution of traditional leadership and the role of traditional leaders within government has received support even within the highest structures of the ruling party with people like Mandela and Zuma to mention but a few. CONTRALESA is another example that the above stated argument is weak and must thus be dismissed. CONTRALESA is largely made up of traditional leaders who hold the same views as Inkatha Freedom Party about the roles accorded to traditional leaders by government. However, it is also true that the debate about the meaningful role of traditional leaders

and whether or not they have a role to play has dominated the African National Congress circles for a long time and people within the African National Congress are polarised about the issue. The debate on traditional leaders is much more complex than Munro (2001) wants us to believe.

In terms of both *valelisa* and *khonza* fees, it was established that the practise of such payments is official since it is gazetted. However, the system is open to corruption since the amount payable is left at the discretion of the *iNkosi* concerned.

As a general norm, given the fact that South Africa is currently a constitutional state guided by democratic principles, democracy should prevail, however, not at the expense of the destruction of the institution of traditional leadership. Put differently, democracy should not thrive by destroying traditional African leadership system. The opposite is also true, in order for the institution of traditional leadership to survive in the rural areas; it cannot be at the expense of elected local government structures. In terms of democratic principles, constitutional mechanisms must be applied to promote good governance by traditional leaders and by government officials respectively. Traditional leaders are also bound by law to be transparent and accountable to their communities. Governments are today operating in a rapidly changing political environment and are facing increasing public scrutiny and rising demands from citizens at the same time. Governments and public entities such as traditional authorities are compelled to adopt new ways of conducting their business focusing on efficiency and effectiveness but most importantly also focusing on the ethical and moral code of conduct.

In so far as these changes are concerned, the institution of traditional authorities also needs to be innovative. They are trustees of public resources and are accountable to communities falling under their jurisdiction for the manner in which they operate. Sound financial management demands sustainability of traditional programs and projects necessary to transform the South African society.

In this chapter we also established that the institution of *uBukhosi* is not about the individual person holding office, it is a collective phenomenon and it is an institution of leadership at a completely different level to that of an elected political leader, its democratic nature is founded on consensus. The next chapter establishes a socio-economic demographic background, methodology adopted to collect data and empirical data interpretation.

CHAPTER SIX

6 SOCIO-ECONOMIC DEMOGRAPHIC CHARACTERISTICS OF THE STUDY POPULATION

This chapter highlights the setting, it gives a description of the areas where the research was conducted in KwaZulu-Natal province. These include political parties involved, and the community in which the study was conducted. The chapter further highlights the salient characteristics of all the above, this can also be referred to as the setting. The purpose of the setting is to give a general descriptive overview of the socioeconomic demographic characteristics of the study population. The question of whether the institution of *uBukhosi* is relevant or not in a democratic South Africa remains difficult to establish with certainty because most people who are opinionated about the debate are people who do not live in rural areas and in some instances have not set their foot in the rural areas under *Amakhosi*. However, the research proved that in the rural KwaZulu-Natal, the institution still commands lot of respect, trust and influence and rural communities believe *Amakhosi* are very much important in the democratic dispensation.

6.1 Introduction

The areas covered by this research together historically forms a small part of the former KwaZulu province. These areas are generally rural in the true sense of the word and are poverty stricken. The areas in the central North are characterised by the natural resources such as the Indian Ocean at *Qabukweni* (near Gingindlovu). The Indian Ocean extends to areas around *Mthunzini* and RichardsBay. It must be stated that during the apartheid era, blacks were denied access to enter or visit the sea at RichardsBay and were only allowed access in 1990. Besides the ocean, other natural resources include the aloe, which is used for a number of medications both traditional and western; a number of well known rivers such as *uMhlathuze*, *uThugela*, *uMlalazi*, *uMzingwenya* (home of crocodiles) and *uMfolozi*. The areas covered by the study are also characterised by many natural forests among which we can mention these two; *Ngoye*, (covering quite vast square meters) and *Dlinza* in Eshowe forests.

6.2 Dependence on agriculture and tourism

The importance of these sectors is not only in terms of its significant contribution to the economy of the district but in its potential to contribute to rural livelihoods and its general potential to stimulate local economic development by virtue of the backward and forward linkages associated with the agricultural sector. Statistics given in the Census 2001 by Statistics South Africa suggests that in the rural KwaZulu-Natal, agricultural sector is the primary occupation for seventy percent to eight percent of the rural population, with the exceptions of relatively industrialised areas such as Richards Bay. This study established further that agriculture is more significant for the poor than any other group. It is a primary source of livelihood for the majority of people living around areas selected for this study.

This part of the now KwaZulu-Natal can be described as very rich in its natural resources, although access to these natural resources is limited for the poor. These resources include the following: fruits such as bananas, pineapple, mangoes, litchis, oranges, grapefruits, avocados, pawpaw, sugarcane and guava all these subtropical fruits are produced in areas where research was conducted. These are the most commonly produced fruits and are canned for later use. Guava is almost considered a wild-fruit since it grows almost everywhere. The sugarcane produces sugar for the whole country and also exports sugar to neighbouring countries and internationally. Livestock farming is also one of the main sources of income in the rural KwaZulu-Natal. Ngome (the area outside *Nongoma*) produce a range of different kinds of best tea the country ever seen. Nongoma logistically falls under Zululand Municipality. Nongoma is also where *Ingonyama* lives or has his royal homesteads. Areas under investigation have great potential to develop due to the natural resources and the rich cultural history of the province. Rural areas in KwaZulu-Natal are relatively under-developed with a wealth of opportunities in the poorer rural areas to use tourism as employment and income generator.

UThungulu district is a paradox of two different worlds in a sense that it is a vibrant economy driven by industry, agriculture and tourism on one hand, the other comprise a vast rural landscape characterised by subsistence farming, a lack of basic water and sanitation and worrying levels of unemployment and poverty. This part of the province also has a high level of unskilled labour force.

6.3 Geographical areas covered by uThungulu District

The geographic boundary of the topic under investigation is largely around uThungulu district within KwaZulu-Natal. Further the focus is on the South African policy in terms of the institution of traditional leadership. Situated on the north eastern regions of the KwaZulu-Natal province, the district comprise of six local municipalities, those are:

- i. Mbonambi
- ii. Mhlathuze
- iii. Mlalazi
- iv. Mthonjaneni
- v. Nkandla and
- vi. Ntambanana.

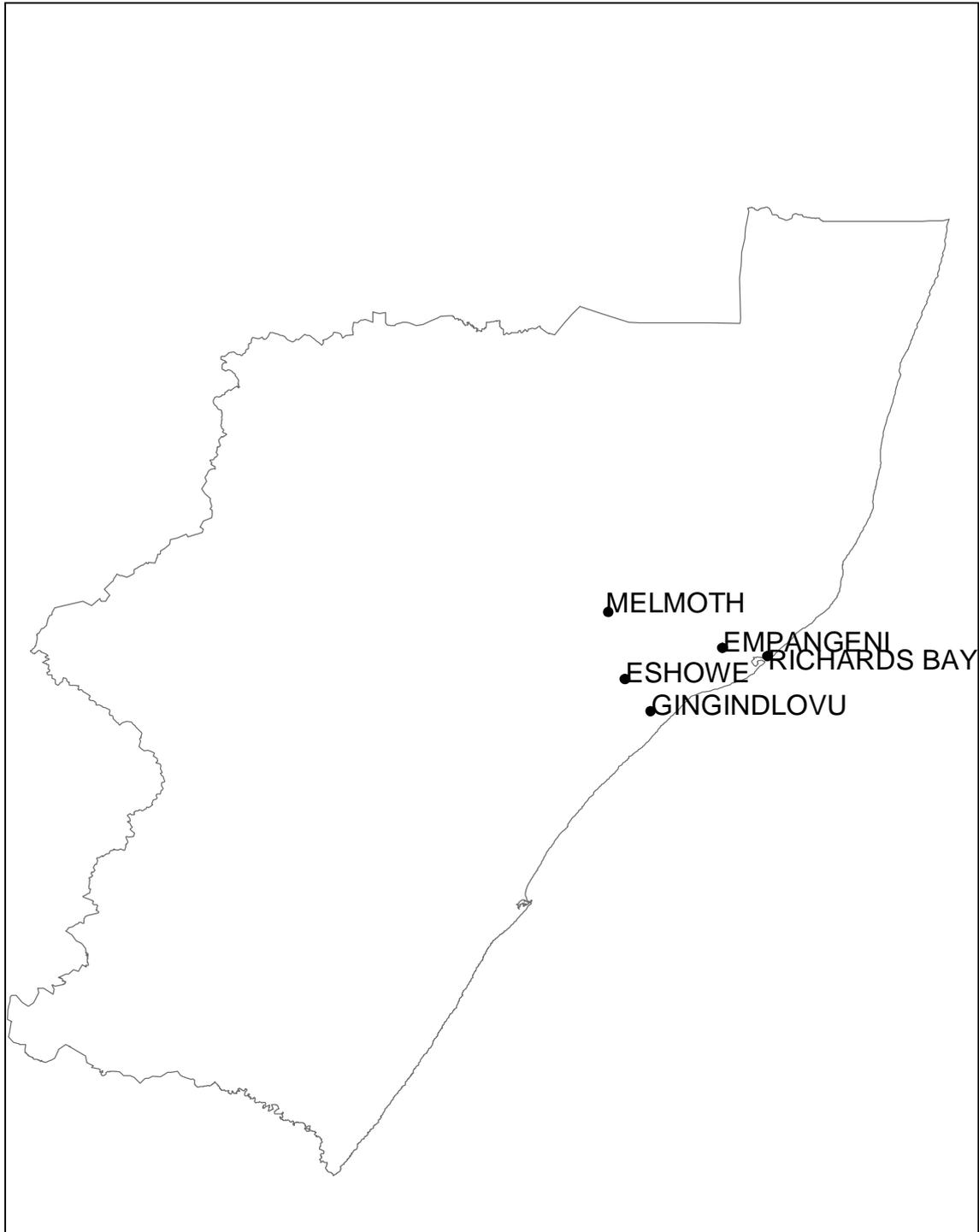


Figure 1 The Map of KwaZulu-Natal: (UThungulu District, towns only)

6.4 Population distribution

The uThungulu has the third highest population of about 888 872 people in the province after eThekweni Metro with 32.9% and uMgungundlovu with 10.4%. The population distribution of uThungulu district as in the uThungulu District Municipality Annual Report 2006/2007 could be presented as follows:

- a) **Mlalazi 25%**
- b) **Mbonambi 12%**
- c) **Nkandla 15%**
- d) **Mthonjaneni 6%**
- e) **Ntambanana 10%**
- f) **Mhlathuze 32%**

The chart below page represents a slice of a pie in terms of population distribution of areas under uThungulu District Municipality.

UThungulu District Municipality (Population, 888 872)

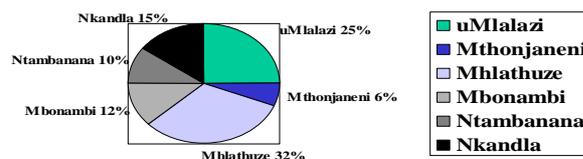


Figure 2

Source: UThungulu District Municipality Annual Report, 2006/2007

6.5 Water

Access to clean water is a basic human need that is taken for granted by most people living in urbanised and developed areas. In the rural KwaZulu-Natal the situation is different. Banyard (2006:6) rightly argues that: "Lack of clean water is the single biggest cause of human illness and death in the world". One of the United Nation's Millennium Development Goals is to halve the proportion of people lacking access to clean water and sanitation by 2015. But, while the technology underpinning water and sanitation in developed countries has been understood for nearly a century, it is proving difficult to transfer it to developing and transitional countries. This section examines the evolution of water supply and sanitation in rural areas and compares the rural situation to the situation in urban and semi-rural areas in KwaZulu-Natal and identifies the challenges they are facing. Most people in the areas selected for this study do not have piped water, thus access to clean water is a big problem in some of these areas.

Challenges about water supply differ in urban and semi-rural areas of the country, such challenges including ever-increasing demands for higher quality standards, the need to replace ageing assets and demands for sustainability. It then questions how much of this is relevant to urban areas, where 'sustainability of water supply' simply means what is available today will continue to be available tomorrow. Water is a resource without which people (animals and the natural habitat) can survive. As this study progressed, it was observed that for people in urban and semi-rural areas (where water is easily accessed), it became so obvious how much people take water for granted. This becomes more evident when people leave their taps are not regularly serviced and thus water runs extravagantly.

Respondents were asked to prioritise the issues that needed to be addressed in their communities. Water was by far the most common issue mentioned, followed by electricity, housing and roads. This came out as a strong reflection of the fact that over sixty per cent of residents in Mbongolwane rely on rivers, streams or dams for their water and less than thirty per cent have access to electricity. This is also supported by

Statistics South Africa 2001. The data reflects the real need in rural KwaZulu-Natal as a whole for access to basic services and infrastructure.

The period between August 2000 and February of 2002 was a difficult one, for large areas designated for the purpose of this study, due to the outbreak of cholera that spreads rapidly. A range of theories were forwarded to explain the rapid spread of the disease and some of these theories failed to take into account the socio-political situation of rural KwaZulu-Natal. However, what is obvious is the fact that the outbreak happened as a direct result of the government's failure to provide communities with clean water. The significant number in the areas could not afford water services that had previously been provided free. Since then until now, the outbreak developed into the most serious epidemic in KwaZulu-Natal.

In an interview with respondents at eNseleni, eMbongolwane, eNgwelezane, eMatshana, eNkandla, KwaMbonambi, hundred per cent (100%) of community members stated that before the implementation of the new water policies, the old KwaZulu Homeland government provided communities under its service jurisdiction with free water, including in the areas then worst affected by the Cholera outbreak. Therefore, on the basis of this investigation, it is concluded that a relationship existed between the cholera outbreak and the government's new cost recovery water policy, which entailed terminating free water supply.

The White Paper on Sanitation and the Water Services Act 1997, (Act of 1997) outlines the government's commitment aiming at making access to clean water and sanitation a reality for millions of South Africans in particular those living in the rural areas. The two stated policy documents are noteworthy pieces of legislation intended to redress the country's skewed water distribution and consumption legacies. Furthermore the Reconstruction and Development Programme committed itself to providing every person with an adequate supply of water by instituting a national tariff structure.

It could, therefore, be argued that there is a massive under-development backlog in rural areas and informal settlements. The lack of infrastructure is, therefore, a challenge to the local government. KwaZulu-Natal could ill afford continued political challenges, which complicated the task of establishing effective local government structures in rural areas.

It was observed during visit to areas selected for research that there is by enlarge no running water in most of these areas except very few community erected pumps, which very often are not serviced and thus become quenched. Communities depend on rivers and dams for water. Water from these dams and rivers are the main source of sustenance since they are used for drinking, washing, cooking and animals also drink from these sources. This is a typical case of limited resources shared by human beings and animals. People use the river water and get water from other sources, however filthy this water is. The problem of water extends to sanitation also. Therefore, put in simple words, people in the deep rural areas get their water from rains. Generally, toilets also do not have running water and people built deep toilets as regular places to relieve themselves.

6.6 Recreational facilities

Generally, recreational facilities are reserved areas and those that are not reserved are not easily accessible therefore there is a shortage of such facilities around uThungulu particularly in previously disadvantaged places where most blacks reside. We can safely conclude that rural areas do not have these facilities at all. Lack of recreational facilities become evident in summer when children would swim in deep rivers and dams, thus exposing themselves to drowning and diseases such as bilharzias and cholera. However, a shortage of such facilities has failed to discourage the people from becoming innovative; this proves that the Zulu nation is a resilient nation. The popular sport in rural areas is soccer, although there is a lack of properly constructed soccer fields in rural areas.

The Zulu people are described as a nation very proud of its culture. In general there are no recreational facilities, however, this reality does not necessarily prevent people from recreating, and the traditional Zulu dance (traditionally known as *'indlamu'*) could be cited as the example of the creativeness of the people. *'Indlamu'* forms part of every activity, which reflects joyfulness. The significance of *'indlamu'* is that it is a dance everybody partakes in men and women, young and old, children and adults.

Sticks and shields that are used by the Zulu nation are symbols of the Zulu culture and inheritance, contrary to what the African National Congress would have many believe that these well decorated sticks and shields are traditional weapons.¹¹ To refer to these symbolic and cultural items, as traditional weapons is discrediting cultural symbols for a political game. Stick fighting is another popular formal sport among the Zulu people with a trained referee who decides on a win following the rules of that sport.

6.7 Education and employment opportunities

This section focuses on the relationship between education and employment and the implications of not getting 'right education' or not getting any education at all. The term 'right education' in this case is used to refer to a kind of education that can get a person a good job or a kind of education from which a person can develop the most needed skills demanded by the market. The research reveals that there is high level of illiteracy in areas under investigation.

Coleman (1990) discusses social capital within the context of education. For Coleman education is the key to power. In this way education is power since through acquired knowledge and skills one gets access to social networks. Stone and Hughes (2004:32) found rural communities to have low levels of education. Undoubtedly, in order for people to survive and find jobs, they need some form of formal education. In this getting education and chances of finding a job are two interrelated phenomena. Using

¹¹ During the political turmoil in South African these cultural symbols were referred to as traditional weapons. The term traditional weapons served as a political ideology to create an impression that served political agendas. Since the political agenda for that period is not longer of essence today, the term disappeared completely from political vocabulary but these symbols still exist among the Zulu people.

education as covariate affecting employment, research identified that respondents whose education levels were lower than high school education were in the majority thus suggesting that chances of employment are slim.

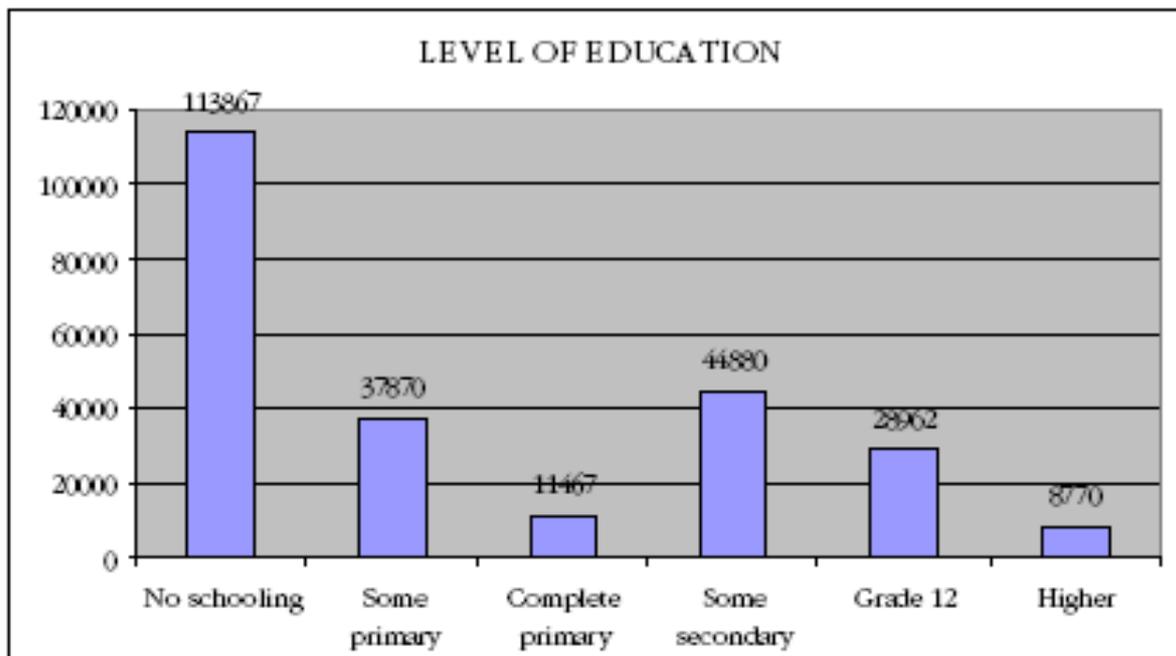


Figure 2.1 Source: uThungulu Annual Report 2007/2008

Although there is a university built for educating the poorest people around Northern KwaZulu-Natal, one can safely say that in general the majority of people in KwaZulu-Natal are not highly educated, people are semi-illiterate. Levels of education, however, differ from one place to the next. For example, in the twenty one areas of the Mpungose tribe, a high percentage of young people, that is people ranging between 22 and 45 years of age have a post matriculation qualification, be it a College, Technikon or university degree. A worrying factor is that most young people after acquiring higher education from institutions of higher learning such as universities and universities of technology it is still difficult to find jobs. Those that are lucky to find jobs are expected to provide for unemployed members of their family, relatives and sometimes even friends. In actual fact for this reason, they still remain poor.

Among the few that were lucky to get a tertiary education, many of them studied inappropriate degrees that are not needed by the market. In other words, their education is irrelevant in terms of the law of supply and demand. Education has implications in both one's social life (with regard to Maslow's hierarchy of needs) and economic development to sustain one's dependents. For example, an educated woman with a good job and who does not depend on her husband for survival can also make her own informed decisions about her reproductive life. Whereas the same cannot be said about an uneducated woman. Power relationship between the educated and uneducated is asymmetric; those without education are generally disadvantaged and jobless. They are vulnerable.

The importance of the city of Richards Bay cannot be overlooked since it provides for a large number of households around areas selected for this research. There are large private companies employing a large number of skilled workers, mining companies Richards Bay Mining (Copper mine), Alusaf Aluminium, Ticor Africa, Sugar Mills (for example, Hullels and Tongaat), Paper Mills (such as Sappi) and few others. However, most people work for different governmental departments. The unemployed also form a large percentage. Generally, there is high level of unemployment, which also contributes to people leaving rural areas to work in industrialised places such as Gauteng and Durban.

The emigration of people to urbanised areas contributes to the plight of HIV/AIDS, since the majority of those who go to seek for work in industrialised areas are married men. These men go to industrialised areas but leave their wives back home, in most cases these people also find concubines in Gauteng and in Durban. Furthermore, such people stay in Gauteng for a long time and when they come back, they are either sick or infected with HIV. This fact is better explained by Koenane (2000:28), where he argues that HIV/AIDS is unevenly distributed in South Africa and indicates that in KwaZulu-Natal statistics reveal that the province has a large percentage of people infected and those that are ill and dying of Aids-related illnesses. Koenane (2000:56) further puts it that

poverty is also not evenly distributed in the country and again adds that poverty affects people negatively and also contributes to HIV/Aids infections.

The table below illustrates a number of people working per family and their dependents. Information gathered during the interview with *iNkosi* Lilly Mpungose of the Mpungose tribe outside Eshowe and uMlalazi Municipality and *iNkosi* Ntuli of the Ntuli tribe in Mbongolwane.

Municipality	Households with a Number of Members Employed	Dependents P/P Employed
Mbonambi	51.22%	8
Mthonjaneni	83.64%	35
Nkandla	79.26%	22
Ntambanana	76.15%	19
Mlalazi	34.87%	4
Mhlathuze	55.04%	9

Table 1 Source: uThungulu District Municipality Annual Report (2007/2008)

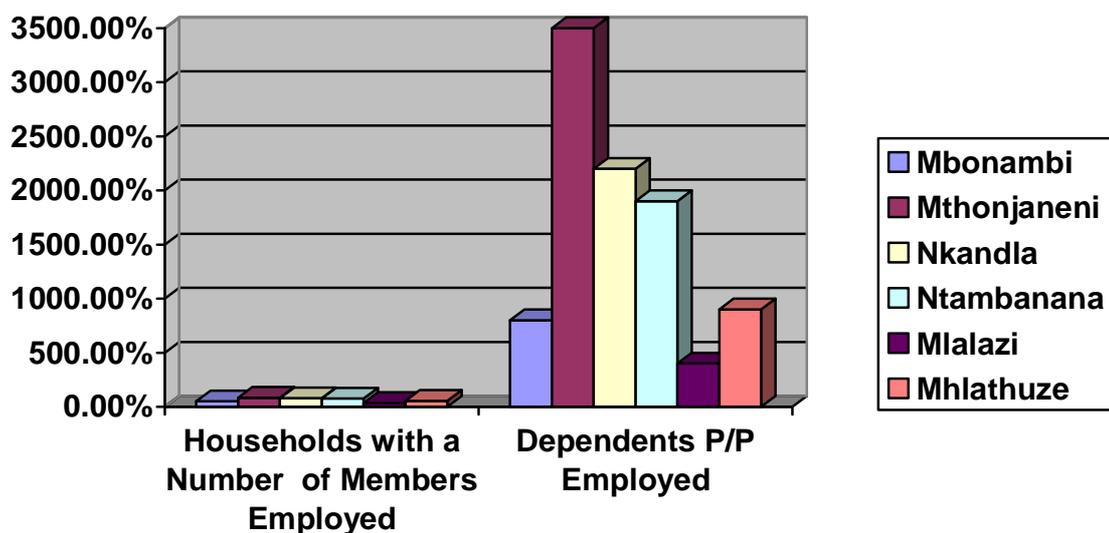


Figure 2.3

The above tables detail information on the levels and distribution of income within households in the rural areas. In most case, however, the poor are found living alongside the rich. Therefore, the socioeconomic system operating in rural areas is often hostile to the objectives of rural development through the institution of traditional leadership, thus serving to reinforce exclusion of the institution of traditional leadership from modern democratic governance and frustrate efforts to democratise the institution and align it with democratic principles.

A summary of backlogs for sanitation supply to Reconstruction and Development Programme standards is presented in the following table, which gives percentages of households at uThungulu District Municipality. Check the table below.

Table 2

	2004	2005	2006	2007
Mbonambi	82.4%	79.5%	75.9%	67.5%
Ntambanana	94.1%	91.5%	84.9%	80.5%
Mlalazi	75.9%	74.2%	80.2%	75.7%
Mhlathuze	0.00%	0.00%	0.00%	0.00%
Mthonjaneni	88.9%	81.4%	79.9%	62.0%
Nkandla	61.2%	59.6%	56.8%	52.8%
Uthungulu	77.1%	74.6%	73.5%	68.0%

Sources: Uthungulu District Municipality Annual Report 2006/2007

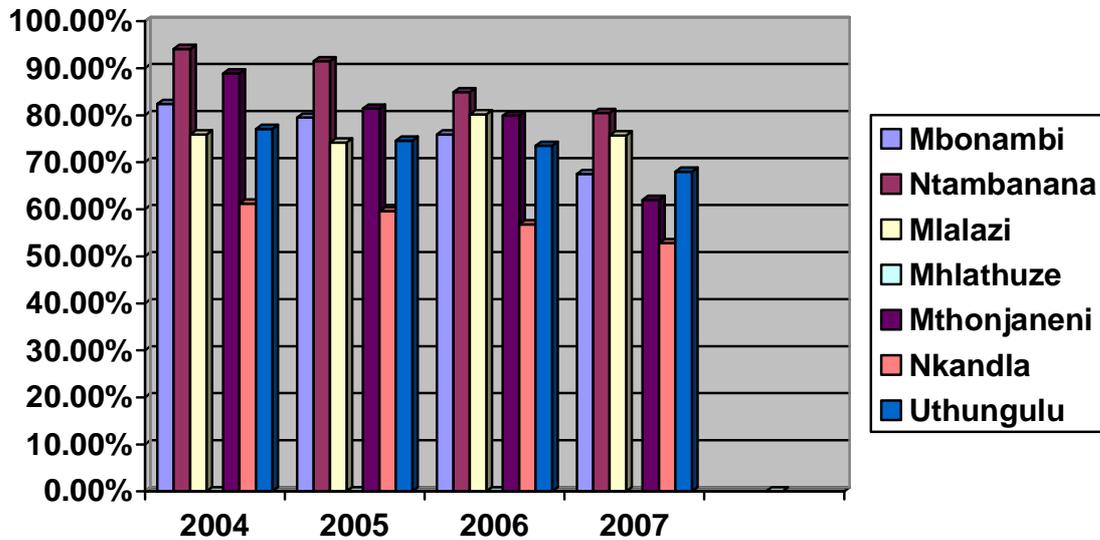


Figure 4

It is important to mention that all areas mentioned above are areas which formerly belonged to the former KwaZulu government jurisdiction governed by the Inkatha Freedom Party. If the above breakdown and targets by local authorities are accurate, then service delivery is actually happening, however, the pace through which it occurs is a slow pace and thus worrying for the majority of people living in rural areas. The researcher observed that the above figures are not a true reflection of the truth in terms of service delivery since it was ascertained during observation that nothing is happening to improve poor sanitation. The lack of service delivery is certainly a concern for traditional leaders in the areas of study and observation. People in the grassroots believe that determinants for such a failure results from a number of reasons including the lack of the political will to transform traditional tribal areas for political purposes.

The other reason, some respondents believe that as soon as political leaders are elected to fill up positions as ward councillors, they practically go and live in urbanised areas where they will enjoy urban benefits and stop worrying about their constituencies. Further more there are those who maintain that floor-crossing is one other determining factor. Through floor-crossing legislation people could cross the political floor and give

whatever party an unfair advantage and yet keep their seats, thus there is no accountability among elected political leaders. This is where a majority of people preferred traditional leaders to elected political leaders. In some areas people believe that political transformation is more evident and elected local government structures are effective. This came out during the interviews conducted at Melmoth from the Zulu tribal authority where *iNkosi* Thandaza Zulu is a traditional ruler. People in this area spoke with ease, although they recognise the developmental changes brought about by the newly established local government structures some were aware that such developments differ from one place to another (that is from one ward to another), within the same tribal area. I inquired about the reason for such discrepancies.

The local communities believe that the discrepancies correlate to the political support-base for the operating elected local government officer in the area. For example, I was informed that if one area supported an Inkatha Freedom Party elected counsellor during local government elections; and such candidate wins the elections, he/she will focus his/her developmental plans where his/her support-base was strong and less attention would be focus on areas with little or no support for a candidate or a party. Although there are some worrying elements of political intolerance, the general view of the people is that the situation has changed enormously since 1994 when there was an absence of political tolerance.

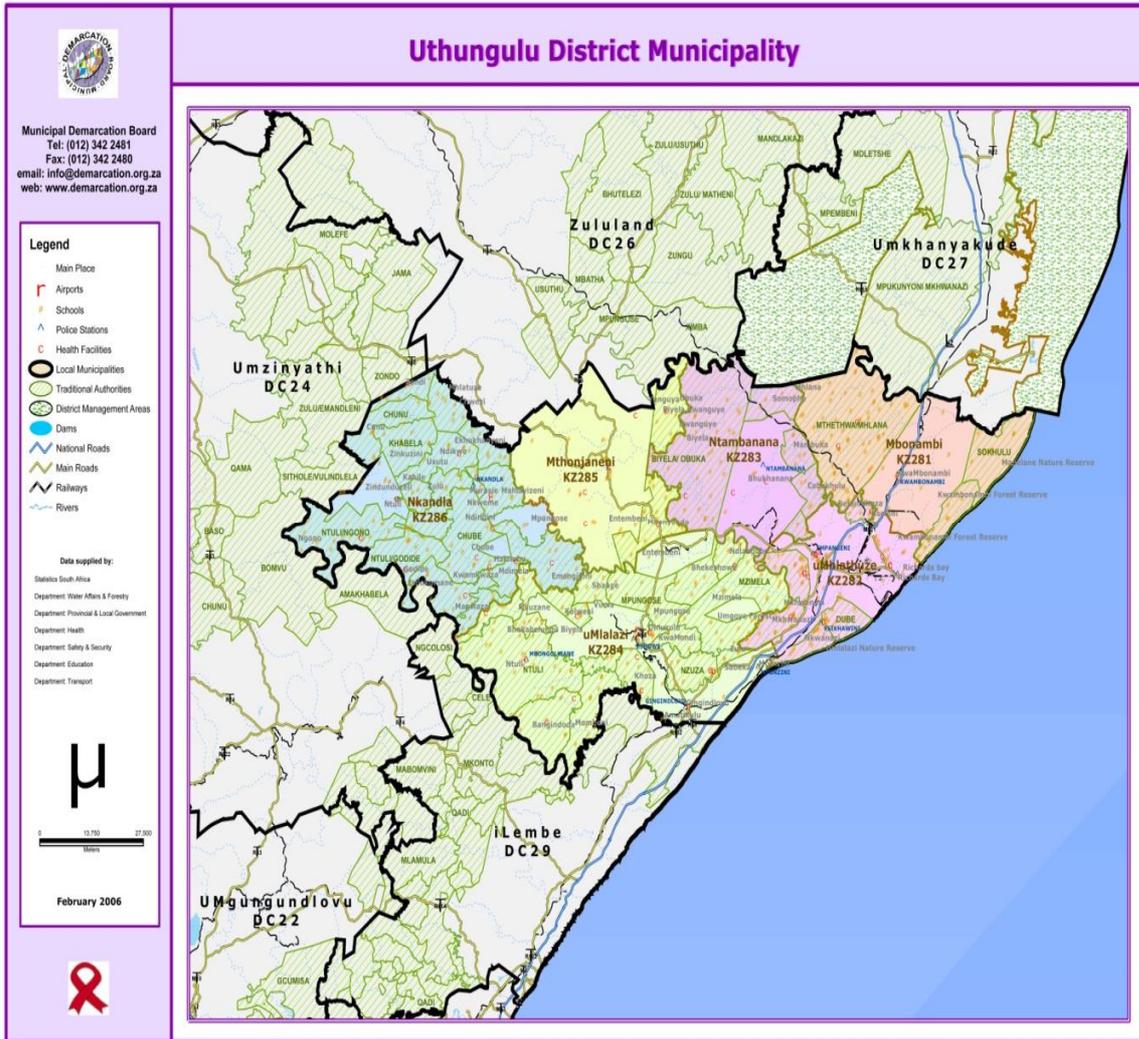


Figure 5. The uThungulu District map with six Municipalities (Geographic illustration of study areas).

6.8 Poverty in rural KwaZulu-Natal

The phenomenon of poverty is defined and understood differently depending on an individual using the concept. For the purpose of this work, poverty could be simply understood from two-dimensional perspectives, the lack of income (mostly due to unemployment), which enables participation in the modern economy and lack of basic services. These two dimensions of poverty serve as focus areas on which key government policy and service delivery must be concentrated. Poverty in rural KwaZulu-Natal is much deeper than just a shortage of material resources. Poverty in the rural KwaZulu-Natal is also a syndrome which includes low status in the community, lack of influence, economic and political dependence, insecure or irregular sources of income, a limited range of economic and social opportunities (perceived or actual), little communication with or understanding of the world beyond rural community and mistrust of representative. According to Haralambos and Holborn (1995:124) poverty implies the undesirable state and a social problem. The poverty referred to is evident in this building structures and living conditions of some rural families in KwaZulu-Natal. See the following illustrations below.



Figure 6.1



Figure 6.2



Figure 6.3

The three pictures depicted above in Figures 6.1; 6.2 and 6.3 are illustrations of poverty even in the kind of housing and conditions that rural people live in. As shown by the pictures above, in the rural KwaZulu-Natal most houses are informally constructed buildings without basic services. These are traditional and even shack dwellings. Data is given on the type of housing units, sources of water supply and electricity if any and other facilities. The fact that people build mud structured dwellings is related to the fact that there is no other alternative given that most people in rural KwaZulu-Natal are unemployed. The risk involved in living in such dwellings is life threatening. Mud structured buildings are easily washed and collapse under heavy rains, it is for this reason KwaZulu-Natal tops the statistics when recording victims of floods every year. The robust debate must not focus on whether the institution of traditional leadership is democratic or not but on improving the lives of ordinary South Africans. Most houses in the rural areas are mud structures with thatch roofing as shown above. Thatched roof

serves two purposes: the first of these is warmth when it is cold and second is cooling when it is too hot. Again, this provides us with some sense of Indigenous Knowledge System in terms of survival. Almost all households have only one of the two types of toilets. Some toilets are improved pit latrine (i.e. chemically maintained) and traditional pit latrine. There are few houses that are constructed by blocks (sometimes even bricks) with tile roofing; however, this is often an indication that there is a member of the family who works at a more formal kind of employment. Houses built by bricks and tiled roof are generally an exception rather than a rule. Most of these households do not even own a fridge, or television set in this way, access to basic needs such as food, education and health is for most people just a dream.

The researcher interviewed respondents on their perception of needs. The question was formulated thus: What in your opinion is most important issue that needs to be addressed in this area? Respondents said nothing about the political issues surrounding the institution of traditional leadership and its relation to elected government structures. Respondents prioritised properly build houses, access to running water and toilets as their most important needs. Younger respondents were also concerned about job creation and employment opportunities.

Traditional Indigenous buildings differ from Western structures. Putting the difference into perspective, one respondent informs us that round-structured building characterise Africans. These round-structured houses are part of traditional African culture; they are part of African heritage. The round-structured buildings tell the story that single out traditional Indigenous people from Westerners, they define Africans and their philosophy of life. This respondent further argues that one of the reasons why traditional leader and traditional communities reject or distance themselves from building structures such as community halls, traditional courts that are provided by government is the fact these buildings do not resemble the traditional buildings. On the other hand, they remind them of colonisation and apartheid. For traditional rural communities and their traditional authorities, these structures serve as an ideology whose purpose is to change them and destroy what is left of their culture.

Now the big question is: Does this suggest that rural people do not want proper brick houses build for them? In my opinion the answer is obviously negative. What this suggests is that the government's initiatives to improve on traditional structures is appreciated, however, there must be an indication that government is willing to build similar type of housing like we see in traditional setting. In other words, buildings must not be seen to separate communities from their culture; they must be seen to promote the culture of the people and their way of life. Rural traditional courts must give a passer-by an idea of what it is.

6.9 District context and basic infrastructure

The study of rural communities around uThungulu District highlight that the possession of certain basic services and the district context in which different communities exist, will affect how they develop and employ their social capital in response to the same economic stimuli. UThungulu as a district has done enough to build hospitals and schools most of which were build by the apartheid government and in rural areas by the former KwaZulu government and retained them for the past fifteen years. This is a circumstance which substantially improves the rural communities' ability to retain its community resources and other physical facilities. Having these resources provides rural communities with a sense of independence and the ability to insulate themselves from the external factors.

From recent research undertaken by the Brooks et al., (2006) it was identified that even where rural communities experienced economic hardships with all the infrastructures such as schools and hospitals there was a gap in their levels of social capital which affected their ability to adapt to their changing environment. The variance in their ability to adapt in each case related specifically to the relationship of traditional leaders and elected local government structures, thus a need to developing bridging gaps and linking relationships between the dual systems of governance.

The research suggests that despite the effect of infrastructure and district context, the difference in the background and experience of elected local government officials and a particular *iNkosi* has been a noteworthy factor in the response of these communities to economic pressures experienced by most rural communities under traditional leadership structures. Therefore the infrastructure may be one factor affecting rural communities response to economic downfall and on the other side, the knowledge, experiences of traditional leadership and their relationship with elected councillors is an equally influencing factor on the development of their areas. Equally important for me, is grassroots participation in decision making processes by rural communities. This is also within the context of linking relationships that these rural communities have access to, which equally requires co-operation and active participation by government and other external parties such as non-governmental organisations and churches. In this way, the economic development of rural communities remains dependent on the active engagement by government, non-governmental organisations, traditional leaders and community members.

6.10 Analysis of empirical data and interpretation

The natural political will to create an enabling environment where such recognition is effectively given a chance to operate must also be created. It became clear that collected data needed to be analysed and interpreted. A computer programme SPSS was used to analyse and interpret data with the assistance of the Institute of Democracy in South Africa (IDASA) and the State University of Michigan's Afro Barometer, Working Paper 93 by Carolyn Logan (2008), interpretation of data was achieved with relative ease. It is important at this stage to remind ourselves of the main objective of the study namely: to research on "the institution of traditional leadership and its relation to democratically elected local government structure in KwaZulu-Natal". The topic leads to many other questions which the study investigated. Related questions included determining whether the institution of *uBukhosi* is the true representative of their rural communities, accessible, respected and legitimate and therefore still important to the democratic system of governance? Whether the institution is democratic in its own? Are these two systems of governance compatible or incompatible?

Tough questions about the relationship between the traditional African system of governance and the modern Western system of governance must be asked. This must be followed by a robust debate about the differences between these two systems. The debate about the relationship between traditional African practices culture and its western counterpart have been characterised by the two mainline streams as argued above. The answers to above questions varied with two mainline streams which the researcher referred to as traditionalists and modernists' views competing with each other. The two streams are characterised by one stream doing all it can to isolate the other and another fighting for its survival. According to a traditionalist Ndlovu-Gatsheni (2005:449) in his criticism of the modern view, "the Westerners' arrogance and belief that democracy can simply be exported from the North to the South is the starting point of the debate about the African system of governance". The two schools of thought seem to hold fast on their respective views and do not surrender to each other. The results of the research seem to suggest that although the two institutions of governance seem to contradict each other, they are both two sides of the same coin.

A mere fact that that the legal frame work in South Africa recognises and acknowledges that traditional leaders have a meaningful role to play in South African politics means that such a move understands that to be a partner in governance does not exclude non-elected institutions of governance. This further means that according to our Constitution (the basis on which our democracy is established and founded on which is also the core of the political framework), traditional leaders are public representatives and the institution of traditional leadership is an organ of state. Therefore governance through the institution of *uBukhosi* is also democratic. A strategy for rural governance and development aimed at improving government services and economic growth implies greater interaction between the modern and traditional leadership, more so in the form of political tolerance.

The debate about managing governance through the institution of *uBukhosi* its democratisation and transformation in South Africa is an important one. Therefore the focus about how to arrange the relationship between traditional leaders and elected local government structures better require a special attention. The issues of the role of traditional leaders in South Africa remain important, but the government task of managing change and democratising the institution is also complicated. Therefore for us in South Africa the ability to manage change and understand institutional change is also important if the transformation of the institution of *uBukhosi* is to be managed effectively and efficiently.

One major problem that is causing transformative initiatives to fail in South Africa is that these initiatives are undertaken with unrealistic assumptions that the political organisational design in terms of structure, authority and relationships will remain the same or untouched.

The attempt to make the institution of *uBukhosi* is not a unique South African problem, such attempts failed in other African states and succeeded in others. Attempts to give traditional leaders an equal status with democratically elected government structures received mixed reactions from different schools of thought, but these attempts largely failed for various reasons. The political status of traditional leaders in South Africa and elsewhere and their authority remains a difficult issue, because ordinary people are polarised about their role in the liberal democratic dispensation. For this reason, it is difficult to come up with a clear, simple set of meaningful and definite roles for traditional leaders in the modern democratic dispensation.

Thus, the finding suggests that respondents' views on the constitutional recognition of the roles of traditional leaders in the new political transformation in South Africa were by far that such recognition is appreciated. However, respondents added that in order for this to be effective, traditional leaders must also be willing to transform the institution and make it possible for the institution to be democratised. The basic idea here is that modern politics need the wisdom and guidance of the institution of traditional leadership

as much as the institution needs modern politics. The relationship must be reciprocal and mutual in nature.

On the question: whether traditional leaders must still play part in the democratic South Africa or not? In other words is the institution of traditional leadership relevant in a democratic dispensation? This proved a difficult question for some but for others not. A huge number of respondents answered on the affirmative. Collected data indicated that *Amakhosi* are believed by ordinary people to still have an important role. People mentioned the fact that *Amakhosi* are always closer and accessible in their everyday lives unlike politicians who are only seen by rural communities only when they canvas for elections. Therefore on the overall perception of the ordinary people, traditional leaders are valued more positively than their elected counter parts. Traditional leaders are recognised by the people as having connections to the people and their culture in ways that elected government officials are not. However, respondents also expressed a view that the two systems of government can co-exist. Among the young people between the age of 19 and 25 the feeling is different these young people hold a different view from that of their elders; they do not believe that traditional leaders have a role to play in the democratic society.

The situation in the rural KwaZulu-Natal reveals that despite the democratic promises and a better life for all promised by the ruling African National Congress government, still ignores the pressing needs to address problems of rural communities by engaging the institution of traditional leadership, the institution that is closely connected to the community. Poverty in the rural KwaZulu-Natal is the order of the day.

Some information supporting the need to maintain the institution of traditional leadership was gathered during the International Conference on Indigenous Leadership in 2007. The next part of the study gives a detailed summary and analysis of the conference.

6.11 Report on the International Conference on Traditional Leaders

The main question the study is attempting to answer here is whether the institutional of traditional leadership has a role within the democratic dispensation. The Conference was organised by the Department of the Local Government and Traditional Affairs under the Minister Mr. Mike Mabuyakhulu. On the surface, the aims of the Conference seemed attractive, as it appeared like there was a 'political will' on the part of the government to work with the institution of traditional leadership. The important lesson that was to be learnt from other African political and traditional experienced was the diverse experiences that characterised governance in the institution of traditional leadership. Every traditional community had a different system of governance, to the extent that it was widely accepted that there was no universal standard that was followed as the only way to govern.

The conference was well attended by Kings, Queens, and traditional leaders from around other Provinces in South Africa and from all over the world, *Amakhosi*, *izinduna*, politicians, academics of note, scholars, researchers and historians. Among the dignitaries were also *iSilo* King Goodwill Zulu of the Zulu nation, who was accompanied by *iNkosi* Mangosuthu Buthelezi the official spokes person for the King who is also the Chairperson of the House of Traditional Leaders in KwaZulu-Natal, *iNkosi* Phathekile Holomisa and later on the then Deputy President of the African National Congress Mr. Jacob Zuma¹² who hails from the Nxamalala tribal authority in Nkandla region.

The significance of mentioning these few names of dignitaries is simple. *iNkosi* Phathekile Holomisa, the President of the Congress of Traditional Leaders of South Africa presented a paper (and rightly so), on behalf of his organisation and on behalf of the institution of traditional leadership in the Eastern Cape. Also on the podium was *iNkosi* Mangosuthu Buthelezi the Chairperson of the House of Traditional Leaders in the Province of KwaZulu-Natal, on the other hand was not even on acknowledged as all other dignitaries who sat on the podium with him.

¹² Jacob Zuma is currently the President of the African National Congress and is also a presidential candidate for the African National Congress in the forth-coming general elections.

Prince Mangosuthu Buthelezi was also not given the opportunity to read a paper. Although he ultimately read the paper for the conference, he was not scheduled to do so; he took the opportunity to read his paper as a preliminary step before introducing His Majesty *iSilo saMabandla*, King Zwelithini of the Zulu nation. That was observed by every one attending the conference and left disturbing and tense situation evidently at the podium. There is a tendency in KwaZulu-Natal to purposefully leave out *iNkosi* Mangosuthu Buthelezi in proceedings in which he should be part. The intention to Prince Buthelezi at the International Conference was evident although it did not work, that incident was not the first most probably not the last where attempts such as those would likely occur. The author believes that there is an inconsistency here or lack of political will to recognise some traditional leaders including *iNkosi* Buthelezi of *Mphindangene* homestead, whose position both as a traditional leader, a statesman of note, experienced politician of stature and the King's Official Prime Minister cannot be ignored.

Recognition of traditional leaders must not rely on what Mbeki earlier on referred to as progressive *Amakhosi* who must exist under our control. Such recognition must be authentic, since the institution of *uBukhosi* pre-existed modern democracy. We do not need to like our political opponents in order to recognise their contribution toward uniting the nation and evidently that task was efficiently played by *iNkosi* Mangosuthu Buthelezi in South Africa and in the province of KwaZulu-Natal respectively.

6.12 Researcher's executive report

The researcher learnt to appreciate the dilemma surrounding the politics of the institution of traditional leadership in South Africa's modern political transformation. The debate is characterised by difficulties in demarcating the role of traditional leaders in the modern transformed South African politics. Adding to the complex situation is the fact that there are those who worsen the debate by juxtaposing the two systems of governance; in such a way that their similarities and differences are obscure thus leading to a conclusion that these two structures are incompatible. There were eight

commissions each with between 60 and 70 people. Each commission looked at a different issue around issues affecting governance and traditional leadership and their relationship with modern democratic dispensation.

These commissions worked hard to debate issues and came up with suggestion on topics including the following: Co-existence between traditional leadership and modern democratic political dispensations, succession, gender issues, party politicking, the role of traditional leaders in governance and economic development of traditional communities. The issue of legitimacy and how democratic is the institution of traditional leadership was also the aspect of investigation by the commissions.

On the one hand, some without questioning accept the legitimacy of the authority of traditional leaders and on other hand; some have difficulties accepting the legitimacy of traditional leaders given the fact that there are no elections for the position of a traditional leader. Some argue from a point of view that traditional leadership system had the interference of both colonialism and the apartheid government and thus perpetrating the system of divide and rule. Because of this interference it is concluded that the system is illegitimate. The next part of the study focuses on some outcomes on issues surrounding the relationship of traditional leaders with elected government structures.

6.13 General outcomes of Commissions

Outcomes are results or implementable goals of any proceeding or project whose intention was reached a certain achievable deliberation. In my view, these specific outcomes are tools by means of which government policy is measured. This suggests that government policy on traditional leadership can be attractive on paper but if it does not translate to actual achievable results it is failing. Thus government policy is measured not by its intentions but by results. These are results people want to see with regard to policies involving the relationship of traditional leaders and elected government structures.

- a) Traditional leadership must be recognised and participate fully as equal partners in issues of governance, including policies that guide the relationship of the institution of traditional leadership.
- b) Such recognition must be authentic and must not rely on the willingness from the political powers there is.
- c) Traditional leaders must be fully supported financially and remunerated fairly (this include *izinduna* or Councillors of traditional leader since the also form part of the traditional leadership system).
- d) Traditional leaders must be part of decision-making processes in matters of governance and no decision must be taken about traditional leaders without their input.
- e) Houses of traditional leaders must be represented from all level of government, that is, national, provincial and local.
- f) Traditional leaders must also assist in conflict resolution even political conflict around the continent.
- g) Traditional leaders must not be seen as politically affiliated to any political organisation as that compromises impartiality in their deliberations.
- h) The institution must position itself strategically so as to meet the changing political environment and global challenges.
- i) It was also recommended that sensitive gender issues must be addressed appropriately by respective tribal structures. Women must have rights to succession equally to those of men. However, this must take into consideration the sensitivity of every given traditional community.
- j) The system of traditional leadership must embrace democratic principles and involve the youth in their decision-making structures and there must be transparency.
- k) Traditional leaders must be fore-runners in matters of economic development such as tourism, agriculture and others.
- l) The institution of traditional leadership and governance is legitimate and democratic, particularly when the term democracy also includes the element of consensus.

- m) The institution of *uBukhosi* and modern political system of governance must not compete with each other but compliment each other.
- n) The Eurocentric approach to governance must not attempt to kill and bury the institution of traditional leadership that means cultural diversity must be taken into consideration.

It is evident that not all issues discussed by different commissions are in this report but these represent the main ideas and topics different commissions deliberated on. Furthermore, not all resolutions are noted since the researcher relied on memory given that reports back by commissions were done rapidly. Other African countries warned South Africa to be aware of the Eurocentric form of democracy, which intends ignoring the real roots of traditional African system of governance in favour of super-imposed modern governance.

The protocol of traditional leaders and the respect their subjects give is unquestionable. However, their role, legitimacy and all that go with it remain challenged by modernists. Their relationship with other democratically elected structures also remains ambiguous and an issue of debate and will remain a debatable issue or even unresolved issue for years to come.

According to Mazrui (2001:18-27) African democracy is collapsing because African political elites borrowed governing skills from the West, without ensuring the suitability of these Western models, and logically Africa plunged into the abyss of anarchy and tyranny. Mazrui writes: 'Anarchy was too little control; tyranny was too much (Mazrui, 2001:20). Evidently, Mazrui is criticising what most traditionalists criticised political elites for, namely importing Western democratic models as they are.

Ayittey (1991) believes the political elites in Africa must bear the responsibility for destroying the continent. Let us briefly look at why both Ayittey and Mazrui point blame towards the political elites. What is it about the political elites that these scholars cannot tolerate? Political elites are the ones in strategic government positions and other

positions of leadership. They have monopoly of resources and administrative powers are concentrated on them. These elites were educated outside their culture and cultural values, which they now consider irrelevant and undesirable. In short, the elites are the most 'Westernised' and thus alienated from their origins. They are in a better position to influence policy, it is for these reasons the buck stops with them.

6.14 Researcher's observation

It was observed that when the Minister for Local Government and Traditional Affairs took centre stage to read out the recommendations of the commissions, he was reading the different version from those recommended by the commission. That left all of those attending the conference with suspicions that what Minister Mike Mabuyakhulu read was rather predetermined conference resolutions. That also confirmed a top-down management style of the political system in KwaZulu-Natal. Some people commented after the conference that they were being made rubber-stamps of the hidden political agenda. Therefore it became clear that there is still competition between these two systems of governance. At the conference one got an impression that the entire system of traditional governance or the traditional institution of traditional leadership was united against the government tyrannical policies seeking to impose severe deprivation and destruction of the institution of traditional leadership. The unity and solidarity among traditional leaders including those that are politically aligned with the African National Congress was obvious.

Although in general there was unity and solidarity among politicians and traditional leaders in the International Conference held in Durban, it must be made clear that influential individuals who were absent from the conference particularly those whose taking of the dual systems of governance as irreconcilable may cause delays in moving forwards and viewing the two systems as two sides of the same coin. The essence of the argument is that, in order to move forward and make the relationship between the institution of traditional leaders and elected government structures is avoiding juxtaposing the institution of traditional leadership with liberal democratic system, as though the two were mutually exclusive.

A more outcome based problem oriented debate is the only way to get to the solution of problems surrounding the debate on the relationship of traditional leadership and elected government structures. Getting to the bottom of the above questions is the basis of getting an enabling environment and put structures in place that will ultimately benefit ordinary rural communities.

6.15 General expectations

There are two main trends in the South African political system, one is wants to be seen as focusing on political transformation within the South African context and another wants a definition of its role in the new transformational dispensation. Therefore, there is some frustration among traditional leaders in South Africa for failing to influence policy and gain access to the formal political system. Those present on the last day of the conference expected that the conference commissions will report back and time for questions and additional points would be made particularly by those who were in other commissions. That is an essential element of having commissions; however that was lacking for reasons unknown to all of us. In simple wording, the most essential part of what informs resolutions and recommendations of the different commissions was lacking and reasons for such a major omission was not explained.

6.16 Conclusion

In this chapter a focus was turned on the setting and the chapter highlighted some of the salient characteristics of the areas under study. Basically by means of provided statistics it was concluded that rural areas of uThungulu, are poverty stricken areas and under both the elected local government authorities and still under the local *Amakhosi*, since both *Amakhosi* and local government structures are expected to deliver services, it becomes difficult to know who should deliver what services. This makes it difficult to deliver services effectively as the two structures of leadership are diverse. All areas under investigation are primarily rural districts with a large number of people living in dispersed rural settlement but surrounded by few urban areas. Firstly, without any financial assistance or budget allocation for *Amakhosi* to improve infrastructures in rural

areas, it is virtually impossible to expect *Amakhosi* to do anything. Secondly, without clearly specifying what role *Amakhosi* must play in modern democratic dispensation, people in rural areas are likely to experience more hardships and lack of service delivery.

All rural settlements falls under the jurisdiction of both *Amakhosi* and newly established local government structures of governance. Given that the government has failure to clearly demarcate the dividing line in terms of who should provide what services, these areas are neglected and have become 'grey areas'. Grey area in this thesis refers to a confusing situation where the government blames the traditional leadership for lack of service delivery and where *Amakhosi* also point at the government's intentional failure to bring the matter to clarity in order for development to penetrate rural areas in the province of KwaZulu-Natal. Therefore all these districts experience high levels of poverty and have high incidences of HIV/AIDS pandemic. Another problem is poor accessibility to basic facilities and services. All areas covered in this study have limited economic bases, but there is potential for growth in two sectors namely: tourism and agriculture. Finally, it goes without say that the lives of the ordinary people living in the rural KwaZulu-Natal still need to be improved in order for them to experience the fruits of democracy and the best way to do this is by creating the enabling environment where the agencies of governance and policy makers can put aside their political conflicts and focus on transforming service delivery.

In this chapter a detailed mental picture of the area, the profile of selected areas and the population of the study and its setting was elaborated on. The need to resolve the existing conflict between the institution of traditional leadership and the ruling African National Congress government and arrive at a compromise is a matter of urgency. Transformation of structures and policies is suggested as a move towards a right direction and must be supported by all parties involved. Parties must have the political will to negotiate a settlement in good faith and deliver on the agreements made.

The chapter further elaborated on the social profile of the community and other issues of relevance to the central theme of the study, these included lack of infrastructures and poor administrative structure and how these disadvantage rural communities and gave a summarised version of data analysis and interpretation. The purpose of such an exercise was to expose facts as are and to establish that rural areas are ignored when it comes to transformation and development. I then argued that it is for these reasons *Amakhosi* must be part of political transformation that is taking place in South Africa and remain part of government in rural areas. The chapter also gave an illustration of a map of KwaZulu-Natal with areas of study clearly demarcated.

The move to organise an International Conference on Traditional Leadership was in my opinion a wise one, a move which afforded South Africa an opportunity to learn from other African countries which had the same challenges as South Africa at the time they got their freedom. In other words, the opportunity to consolidate presented itself in a form of the well timed Conference. However, South African political system did not take full advantage of the situation but used the conference for its hidden political agenda. The opportunity to express and translate political will to recognise traditional leadership as a legitimate system of governance through recognising traditional leaders like *iNkosi Mangosuthu Buthelezi* was missed. Consultation with *Amakhosi* was not done sufficiently and in future a conference of this magnitude must include traditional leaders. It became quite obvious that what politicians preach is different from what they do. Put differently, there is no relationship between the written policy and praxis.

The outcome of the Commissions were in the opinion of the author a way forward in bringing about transformation and improving governance in the rural areas and in South Africa as a whole. Commissions were strongly opposed to all attempts to involve traditional leaders in party politics. According to the commissions, party politicking compromises the integrity of the institution and the principle of fairness in their adjudication.

Figure 11 Bridging and linking structure (Ideal structure of mutual relationship between government and traditional leaders). The structure of mutual trust

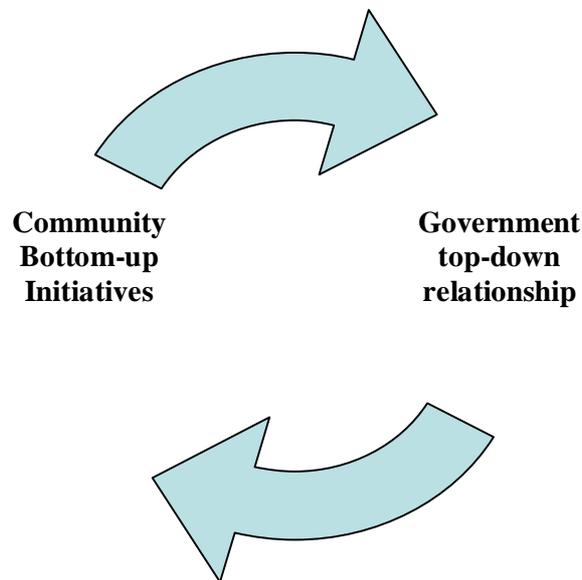


Figure 7 is an illustration of a mutual relation structure that indicates that to some extent, it is expected of government to have a top-down approach (asymmetric power relations), however, the structure also reflects a system where grass-roots can and must influence government decisions. In this structure there is a reciprocal relationship.

The research indicates this scenario to be more effective in bridging the gap between the institution of traditional leadership and government. As one of the democratic principles, this structure is suggested as a better structure that must be supported by government.

To conclude the top-down approach when it comes to dealings with *Amakhosi* needs to be halted with immediate effect and *Amakhosi* must be taken seriously not only as *ex officio* members who do not have a vote in developmental deliberations. *Amakhosi* must take part as equals in decision-making as their elected political representatives. Policy becomes effective and can be improved only if it is put into practice, recommendations put forward by the commissions must be put into practice and give representative

democracy a chance. Evidently, most people's expectations on the International Conference on Traditional Leadership were not met, which is unfortunate for good governance which at the moment it would seem the political dispensation pays lip service to. It is for this reason that the researcher is more and more convinced that there is no political will on the part of some politicians to reconcile the two systems of governance and improve on service delivery. Both structures agree on the need to form strong government and make their relationship work, however, they both do not agree on how this must work. Both systems of governance want to see coexistence and believe that the two structures must not compete with each other; they all believe that the two systems are compatible.

The fundamental point of discussion is whether it is possible to reconcile the modern political system of governance (liberal democracy) and the traditional African political system of governance? The researcher also concentrate on asking the vital questions about the relationship of the institution of traditional leadership towards its modern democratic system of governance. To answer this question appropriately, relevant information was collected from different sources including the International Conference on Traditional Leadership and Governance.

The study mostly relied on relevant policy documentation, other literature review, selected interviews as well as discussions with academics and relevant stakeholders. All collected data and any relevant information was critically analysed to identify issues, gaps constraints and challenges affecting the relationship of traditional leaders and their elected counterparts.

Chapter six established socioeconomic demographic setting and it further explained how data was collected and analysed. The next chapter concludes this research project and thus comes up with recommendations regarding the troubled relationship between traditional leaders and elected government structures.

CHAPTER SEVEN

7 GENERAL CONCLUSIONS AND RECOMMENDATIONS

In the last chapter the focus was on the socioeconomic demographic background and the geographical setting of the areas of study. The chapter further elaborated on the methodology employed to collect and analyse data. This chapter addresses two main aspects. Given the fact that the study is undertaken within the discipline of Governance and Political Transformation, the aim is not to further politicise the relationship between traditional leaders and elected government structures. The aim is to explore how best the relationship can be improved in such a way that the two systems can accept each other as the two sides of the same coin. First, the chapter proves the hypothesis that the institution of traditional leadership is no longer relevant in the democratic dispensation wrong. Then it concludes this study by summarising the main findings of the research as guided by the research questionnaires, literature, policy and the topic of this research. In a nutshell, the conclusions describe what the results of the findings mean for the unpredictable relationship of traditional leaders and elected government structures and the role of traditional leaders in the democratic dispensation. Second, the chapter outlines recommendations based on the results of the study and experience of the researcher.

7.1 Chapter-by-chapter summary of the study

Consequently, this thesis is primarily concerned with the institution of traditional leadership and its relation to elected democratically local government structure. The primary concern of the study is outlined in chapter 1. Chapter 1 further introduced the hypothesis of the study, objectives and aims of the study. This chapter also defined the nature of the problem and the scope of the study in its entirety.

Chapter 2 introduced the theoretical framework of the study and further explained that the study is founded on two theoretical frameworks namely the cultural framework and the legislative/political framework. Chapter Two, pages 12-13 it was established that the cultural framework relates to issues of how the institution of traditional leadership works.

This overview of how the system works was brought in as an attempt to ensure that the reader understands the traditional African system of governance within its context. The chapter further elaborated on the cultural framework as a distinct operational conception and concluded that in order for the institution of traditional leadership to remain effective, the cultural system of governance must keep up with the times and learn to adjust and align itself with the demanding political changes taking place in the country. Therefore cultural system of governance and the institution of traditional leadership with all its structures must be assimilated into the mainstream social and political processes. Failure to do this would only isolate the institution of traditional leadership further. The chapter also elaborated on the system of checks and balances as it affects the institution of traditional leadership see page 21.

It was further established that the traditional African worldview and the Western worldview are inherently distinct to each other and are sometimes opposed to each other. *Ubuntu* was a catch-phrase for capturing the basic idea of an African worldview, (see page 24). It was concluded that in the traditional African worldview, democracy means something different from the liberal conception of the same see page 26 for more clarity on this. In an attempt to understand the dispute surround the cultural institution of traditional leadership and its relation to democratically elected local government, it was established that there are three perspectives from which disputes can be ascertained. Three types of disputes identified (see pages 29-30) in this chapter were factual disputes, which as the name suggests are disputes about facts. In such disputes neither of the involved parties have enough facts about the nature of the problem in question. The second type of disputes are value disputes, again as the name suggests are disputes involving evaluations or attitudes and can be resolved by changing attitude or by seeing things from another's perspective, and the researcher suggested that this is recommended in so far as the relationship between the dual institutions of governance is concerned. Finally, the researcher also referred to verbal disputes which are generally disputes caused by ambiguity or lack of clarity in concepts. I suggested that such disputes can be avoided by both the institution of traditional leadership and elected government structures by clarifying concepts and giving these

concepts meaning that excludes ambiguity. It was then concluded that the cultural framework forms one side of the coin and on its own is not enough to enhance a democratic society in South Africa.

Chapter 3 looked at legislative framework and it was thus concluded that the Constitution and other supporting legislative documents must be specific about the role and function of traditional leadership in South Africa. In page 34 the legal framework was introduced as the other side of the coin. Literature review of relevant policy documents was consulted and analysed with a hope that these policy documents will guide, inform and foster a working relationship between the dual systems of governance. The good intentions outlined in the constitution, namely a co-existence and mutual understanding between the two institutions, must therefore translate into praxis and cooperation. It was thus concluded that there should be political willingness on the part of the ruling party to create enabling environment for traditional leadership to govern side-by-side with democratically elected local government structures. The purpose of chapter 3 was basically to assess what the legal framework proposes as the effective working relationship between the institution of traditional leadership and elected local government structures. Among others the following documents formed the backbone of the chapter 'Interim' Constitution, 1993; the Constitution of South Africa 1996; KwaZulu *Amakhosi neZiphakanyiswa* 1990, Traditional Leadership and Governance Framework Act 2003; KwaZulu-Natal Traditional Leadership and Governance 2005.

It was established that as a principle, all these documents promote a meaningful role for traditional leadership involvement in governance of rural people in particular (see page 35). However, the research also elaborated on the fact that although policy is structured in such a way that traditional leaders can contribute meaningfully to democratic governance it is only on some given conditions traditional leadership rejects. The main gap in terms of the role of traditional leadership remained since policy does not translate into practice or implementation (see page 36).

In pages 38-40, the chapter further defined the term democracy and differentiated democracy as understood in traditional African setting as it relates to consensus; and the liberal concept of democracy which is limited to one-man-one vote. On the other hand, consensus goes much deeper than the notion of majority rule. It was thus concluded that the legal framework forms the other part of the coin, in such a way that both the legal framework and cultural framework are two sides of the same coin. Furthermore, the meaning of the term transformation was given, but it was also stated that it remained difficult to ascertain which aspects of traditional leadership system need changing (see page 66). It was thus concluded that the dual system of governance is still needed in South Africa with the two structures working together and not as competing systems but as two sides of the same coin.

Chapter 4 focused on a much broader and comparative approach in an attempt to understand how the institution of traditional leadership was democratised in other countries. This chapter looked outside the boundaries of South Africa for answers given that South African democracy is still in its infancy (see pages 74-82). The institution of royalty in England was also under investigation. It was also discovered that a number of factors both internal and external contribute in making the system of traditional governance a complex system. Among those factors one can single out the following (see page 82):

- The institution of traditional leadership is diverse from country-to-country and culture-to-culture; this makes it more difficult to come up with a uniform set of rules that must guide everyone;
- Recognition of traditional leadership and its legitimation is enacted in all these countries Constitutions and it is protected by law;
- In these countries the constitution also recognises the existence of traditional leaders by specifying their roles. In the nutshell, this is what recognition and redistribution refers to.

The institution of traditional leadership has historical and cultural meanings that should not be viewed as static if the institution is to fit in today's system of governance. At the same time strengths of the institution of traditional leaders must be taken into consideration with a hope of putting in place sustainable institution that will continue to facilitate rural development in a manner that does not contradict the constitutional dispensation. The role of traditional leaders is still relevant today as it was in the past.

Chapter 5 discussed the African National Congress and traditional authorities in historical perspective. In addition, this chapter aimed at breaking down the existing tension between the African National Congress and the institution of traditional leadership, particularly in KwaZulu-Natal (see page 86). The debate was discussed under two diametrically opposed theories namely 'traditionalists' and 'modernists.' It was also confirmed that the leading figure for 'modernists' was Govan Mbeki whose views vehemently opposed the institution of traditional leadership as inherently undemocratic, (pages 88-89). For these politicians there was no room for traditional leaders in the democratic society except for progressive and collaborating traditional leaders. The idea was further embraced by Mosiuoa Lekota of UDF (see page 90) and later on by Matthew Phosa in his Mozambican option (page 91). On the other hand, other African National Congress prominent figures such as *iNkosi* Albert Luthuli and the former President Nelson Mandela held a different view about the institution of traditional leadership. These leaders always held a view that traditional leaders have a role to play in the democratic governance system (see pages 88-89). In other words the African National Congress had an ambiguous role when it comes to traditional leadership structure. This ambiguous position of the ANC did not help resolve or define clearly the role of traditional leaders in a democratic South Africa.

Thus some of the conclusions arrived at in this chapter included the following: that the African National Congress' position on traditional leaders is ambiguous, that issues of political affiliation of traditional leaders (see page 105); debates surrounding relationship between traditional leaders in KwaZulu-Natal in particular and democratically elected local government structures are generally dominated by party politics of both the African

National Congress and Inkatha Freedom Party. Therefore, for the common good and in order for a traditional leader to remain a unifying figure, it was concluded that traditional leaders must be seen as beyond politics. Most importantly, it was established in this chapter that 'trust' and 'tolerance' are essential ingredients needed to facilitate a working relationship between these two institutions.

- The institution of traditional leadership is also complex in a sense that the formulation of the entire system includes *Amakhosi, iZiphakanyiswa, izinduna, abanumzane* etc.
- The legitimation of the institution of traditional leadership requires that traditional leaders be above party politics

It is obvious that currently the dominant governance system is that of a liberal state and Western in nature, a system which only allows for democratically elected government leaders. Our value system is also drastically influenced by liberal democratic principles and these are threatening the institution of traditional leadership and all it stands for. It was thus concluded that democracy must not only be understood in limited sense of the word. The exclusion of women in the traditional leadership system was another area of concern for those opposed to its inclusion in the democratic dispensation (see page 100).

The chapter further attempts testing the hypothesis. The definition of a hypothesis was established. It was further argued that any hypothesis is characterised by three elements discussed in pages 114-115. As a method to test a number of hypotheses, the logical tool of exposing fallacies in an argument was used, whereby the following fallacies were identified in the debate about the institution of traditional leadership. These fallacies included straw man fallacy, the slippery slope fallacy and the fallacy of generalisation. In the light of the above, a number of arguments in the debate about the institution of traditional leadership were rejected as fallacious, (cf. pages 117-118). Consequently, page 118 also indicated some difficulties in proving some hypotheses or disproving them. It was established that some hypotheses are partially true.

Chapter 6 detailed the socio-economical, geographical and demographic setting of the study areas (see 123). The chapter further presented the overview of the study and its findings with regard to the relationship of the institution of traditional leadership with rural communities and elected government structures. The chapter exposed poor infrastructure around the area of study, poor recreational facilities and poor service delivery as well as appalling living conditions for the study population (see pages 123-130). This chapter emphasised the importance of improved service delivery which is lacking. This improved service delivery is in a number of specific areas such as supply of clean water to rural communities, better infrastructures like electricity and flushed toilets, creation of job opportunities and many more.

This chapter further looked at education and employment opportunities. The relationship between these two variables was further discussed as having impact on each other. The level of education was established as very poor thus influencing chances of employment or unemployment. Further statics outline the members of households employed as per family and the number of dependents per every employed person (see pages 131-134).

In pages 141-145, the researcher outlined the state of poverty in the study areas and generally poor infrastructures. Page 149 introduced the report on the International Conference on Traditional Leaders and Governance.

7.2 Conclusion

In conclusion, traditional authorities have been central to local power structures in the past. These structures have changed with the introduction of local government but traditional authorities can still be involved but only as long as they adapt to change. If traditional authorities are excluded from the system, they can undermine development efforts. Consequently, if traditional leaders are empowered and their roles and powers clearly defined, they can then play a meaningful role in ensuring good governance and

effective service delivery and development in rural areas. Agreements that the institution of traditional leadership and the government make will seriously determine the impact that political transformation will have on the quality of life of rural communities and the extent to which rural development will become a reality. By the look of things it seems this research has proved that the two institutions are demanded by the South African citizens to co-exist, elected local government structures need the institution of traditional leadership and visa versa. Therefore the idea of inclusive governance system is not a bad one.

It does not look as though the problem of democratising traditional institutions like the institution of traditional leadership in South Africa is successful. Traditional leaders everywhere in South Africa experience the problem; that includes traditional leaders in areas, where the majority of *Amakhosi* are African National Congress aligned. However, the conflict in KwaZulu-Natal is so intense, given the historical animosity between the Inkatha Freedom Party and African National Congress, (both organisations seem to differ considerably politically), that is unlikely to happen. Although the answer is somewhat pessimistic, political indicators suggests that South Africa may be reaching the beginning of the end of an institution that arguably is as old as humankind, that is, the institution of traditional leadership. One may only hope and pray that the unresolved situation does not end up in bloodshed. There is a little hope that the Presidency of Mr. Jacob Zuma will facilitate a better working relationship and definite role for the institution of traditional leadership given his background as a Zulu and Africanist. Perhaps the answer comes to us from the South African National Anthem where it says: “**NKOSI SIKELELI AFRIKA.**”

In the light of the findings and conclusions of this study the following recommendations are put forward:

7.3 Recommendations

All recommendations below are founded on the premise that creating an enabling environment for traditional leaders to function efficiently is the basis of good governance in rural areas. Further more, these recommendations must also be carried out in a manner that supports the spirit of transformation and befitting the principles of the constitution. Specific roles and functions that must be assigned to traditional leaders must be fully agreed upon by those that have a political mandate and traditional leaders, in other words, both parties must come up with a working agreement that will ensure an enabling environment. It is without any doubt the duty of the legislature that is the legal/political framework to give guidance as to what powers to invest in the traditional African institution of governance and how to organise the traditional leadership institutional functions in order for it to contribute effectively towards good governance. Powers of traditional leaders must be clearly specified and directives be given as to how these roles and functions are to be performed. This will enhance good governance and improved service delivery.

- **Financial support for the institution of *uBukhosi*:** As a mechanism to eliminate acts of corruption, the government must compensate *iZinduna* and the entire structure of traditional leadership appropriately. The 'political will' on the part of the ruling party can be demonstrated by full recognition of the traditional system of governance and supporting the institution financially. The government of South Africa must avoid what Nabudere (2004) refers to as the inauthentic relationship with the institution of traditional leadership. Financial support for the institution of *uBukhosi* should be allocated for activities that reflect the importance of culture in community development. For example, research on agriculture has the potential to increase employment by employing local people, to validate the Zulu culture by acknowledging indigenous knowledge of edible and medicinal plants and by supporting other interventions that may contribute towards economic development of rural areas in KwaZulu-Natal province. Such interventions include the ever growing field of tourism.

- **Creation of job opportunities:** It is important for the government to create job opportunities in rural areas to avoid the problem of young people drifting away from rural areas to urbanised areas or metropolitan centres.
- **Complementary not competition:** Traditional leaders operate side-by-side with various forms of non-traditional grassroots or community-based structures and with activities such as village meetings, committees and civic associations. Both enjoy a degree of legitimacy and support and they need to be seen as complementary rather than competitive. The institution of traditional leadership and the government must not compete with each other, these institutions must be complimentary to each other in order to effectively deliver services and improve the lives of rural people. *INgonyama*, House of Traditional Leaders in KwaZulu-Natal and the government have the opportunity to be proactive in approaching the conflicts positively and reaching potential solutions. However, this is possible if all parties involved are sincere and have no hidden agendas. This is also possible if all parties (that is, elected government officials and traditional leadership structures) involved trust one another and negotiate in good faith and in the interest of rural communities.
- **Cultural recognition:** According to Klitgaard (1993:49) when making policy, it is important to take culture into centre stage. Klitgaard goes on to examine the pitfalls and potentials of such “taking culture into account”, especially where change and the need for change is concerned (1993:59). Some aspects of culture and setting practices in a traditional African culture are not compatible with certain principles of modern techniques of governance; however, other elements of the African governing system may serve as a stepping-stone for empowering traditional leaders and their lawful successors. Therefore cultural recognition promotes the idea of cultural tolerance, political tolerance and the opportunity to learn from each other. As part of recommendations, the study takes into account the argument of Monique Deveaux (2003), whose “strategic

interests” approach to assessment poses possible solutions. This approach yields the answer of “maybe”, as while it insists that all parties must be regarded as having an equal say in what their ways actually are, it is not prescriptive of the outcomes of deliberation as a liberal approach would be. So “traditional communities” (as they are referred to in the legislation) could quite feasibly agree on many different arrangements that accommodate the powers of traditional leaders and recognise the rights of women in those communities in choosing their own legitimate way of life. This position hinges on whether one adopts a value pluralist or a relativist approach to human rights yielding either an argument from the perspective of toleration, or alternatively autonomy, which is discussed below (Bentley, 2005:53). The issue of succession needs revisiting particularly where it involves women. To respect the equality clause in the constitution, all cultural issues that discriminate against women must be addressed and remedied through political recognition.

- In addition, Mamdani (1996:34) maintains that post-colonial governments de-radicalised the colonial state but did not de-tribalise and democratise it. Mamdani (1996:32-38) proposes nothing less than dismantling the ‘bifurcated state’. I do not believe that Mamdani is suggesting that the institution of traditional leadership must be completely abolished or replaced by the liberal democratic order. According to Mamdani this would entail an endeavour to link urban and rural and thereby a series of related binary opposites such as rights and customs, representation and participation, centralisation and decentralisation, civil society and community. Put differently, Mamdani strongly argues for the creation of a common citizenship for all, urban and rural Africans.
- **The strategic position of the institution of *uBukhosi*:** Given the outlined existing tension between the provincial Minister for Local Government and Traditional Affairs and the institution of traditional leaders, it is herein recommended that the strategic political placing of the institution of traditional leadership be revisited.

- **Common citizenship and co-existence:** The main challenge facing South Africans is to get to know one another. That is important because South Africans have been separated for a long period. South Africans are a new nation among nations, and the democracy that has been attained need not be politically used as a means to eliminate traditional leadership structures. Again the democratic dispensation cannot do without cultural institutions. It is imperative that South African government formalise the roles of traditional leadership once and for all and thus do away with ambiguity of its position. The modern system of governance and the institution of traditional leadership must recognise each other as two sides of the same coin. Sklar (1994:1) argues for what he calls mixed government, which he defines as “[...] one that conserves traditional authority as a political resource without diminishing the authority of the sovereign state”. The need for democratic change in South Africa is undeniable. It is generally accepted that there are some democratic values that will serve as guiding principles and will become an integral part of local governance.
- **Traditional leadership and party politics:** It has to be recognised that traditional leadership is not necessarily politically neutral and *Amakhosi* have been drawn into alignment with political parties. As a principle traditional leaders must be apolitical. However, where *Amakhosi* become affiliated to party politics, they must either abdicate because it is very difficult to remain impartial and objective. The party political line has to a greater extent compromised the role of *Amakhosi* as arbitrators in matters of conflict and maintainers of law and order.
- **Drawing a divide-line between the institution of traditional leadership and individuals or political parties:** It is of vital importance to draw a divide-line between the institution of traditional leadership and individuals. The value of doing so is that the institution of traditional leadership cannot be personalised. In cases where the institution is personalised, it becomes difficult to distinguish the

institution from personalities in such a way the institution suffers not because of its own blunders but because of political miscalculations of an individual who has personified the institution. Such has been the case in KwaZulu-Natal with the president of the Inkatha Freedom Party personifying the institution and thus being perceived as the face of the institution. My opinion about the matter is that the institution is above any individual and this must be demonstrated by the fact that the institution has stood the test of times for centuries in Africa before the colonisation and apartheid system. On the other hand, the institution must also be separated from association with any political party, for instance the Coalition of Traditional Leaders of South Africa (CONTRALESA), a body of traditional leadership associated to the ruling African National Congress party. In KwaZulu-Natal for many years, the institution of traditional leadership was inseparable from the Inkatha Freedom Party, and as a result politically the institution suffered together with the political party.

- **Development committees:** The basis for developmental local government in South Africa is founded on provisions set out in the White Paper on Local Government and Traditional Leaders (1998), therefore the relationship between traditional leaders and elected local government structures needs improvement in order to avoid politicisation of service delivery. Therefore, to work with the concept of development, which implies change, it is necessary to take into account both the heterogeneity of cultures and the heterogeneity within a culture. Van Staden (1998:22) expresses the opinion that Western development perspectives erred by not taking into account the positive differences between a certain Western worldview and what can broadly be considered an African worldview.

Gumbi (2006) points out that the success of development projects on many issues depends to a great extent on the following:

- i. putting participants at the forefront of development projects;

- ii. the encouragement of active participation and involvement of communities;
- iii. the tailoring or planning and implementation of projects to the needs and capabilities of the beneficiaries;
- iv. a transfer of skills for communities to identify and address obstacles in development process as projects unfold to successful completion; and
- v. the development of capacity for communities to take control over development events.

Development committees according to Goodenough (2002:79) defined as structures were set up in rural areas sometimes under the authority of the local *iNkosi* to deal with a range of issues. However, development committees differ and only in some areas have traditional leaders played a role in these structures. In some cases, these development committees have worked well with the traditional leaders and in some others they have not. The idea of developmental committees is for establishing effective local government structures in the rural areas. Rural development committees further promote participatory democracy by groups within rural communities in order to ensure that such communities find sustainable ways to meet their social, economic and material needs.

- **Training traditional leaders and empowering them with skills:** Basson and Smith (1991:148) hold a view that effective leadership can be trained; this is true for the institution of traditional leadership given that *Amakhosi* are daily required to administer essential services such as justice and land. It is on the basis of this assertion that I believe that training in some aspects of democratic leadership can benefit traditional leadership. One recommendation that can be put forward is for the government to give a mandate to institutions of higher learning to research further on the debate and come up with programs that will enable both traditional leaders and local government officials to accommodate one another and work together in the spirit of developing rural areas. However, such

institutions of higher learning would need to be assisted with funds by the government. That would also help in curbing acts of corruption from both traditional leaders and from elected local government structures.

- Training and educational opportunities must be made available to traditional leaders in order to build on the current capacity of *Amakhosi*. Criteria for future training need to be defined. *Amakhosi* must be part of that process. The aim of policy frameworks on traditional leadership transformation is to ensure that the institution of traditional leadership is to run their in a manner that will promote both democracy, in an efficient, effective and responsible manner.
- In so far as co-operative governance goes, all role-players must focus their attention on resolving roles and responsibilities at a local level rather than waiting for policy and legal guidance from national government. In developing solutions at a local level, traditional authorities and local government structures should hold discussions to determine their respective roles and functions. That should be part of a process to develop co-operative and constructive relationships that support rural development. That role should be identified after consideration is given to the characteristics and strengths of both the municipal and traditional structures in a particular area. Both institutions can learn from each other. Universities must be involved in the training of traditional leaders, initiatives of this training are currently in place at the University of Zululand, University of Nelson Mandela in the Eastern Cape, University of the North, The University of the North-West (Mmabatho Campus) and further more the University of the Free State (Qwaqwa Campus) through the Programme for Governance and Political Transformation can also be a centres where training takes place.

Finally, rather than calling on the government to define a role for traditional leaders, this role should be worked out by communities in conjunction with local government structures and traditional authorities. It is not only through government that development can take place. Once the political system acknowledges the institution of traditional

leadership, then traditional leaders themselves would feel wanted, they would feel that they have contribute meaningfully towards development efficiently and responsibly. The researcher supports any effort aimed at creating an enabling environment for traditional leaders to feel wanted and recognised by government and thus allow them to contribute meaningfully towards development of rural areas and any other issues involving them.

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Summary

The role of traditional leadership in South Africa has remained a controversial issue over the past fifteen years. The focus of this research is to investigate the relationship between the modern political system of governance and the traditional leadership as forms of dual system of governance in South Africa. The thesis raises issues as catalysts for robust debated, to move beyond standard political arguments particularly when it comes to the meaningful role traditional leaders must play in South Africa today.

Debates surrounding the institution of *uBukhosi* primarily polarised the South African society and this is normal as it is the case with all other issues. There seems to be two opposing schools of thought on the subject of traditional leaders, even within the African National Congress' ranks. The thesis also gives a background to these two theoretical schools of thought and attempts to explain the reason why there is some difficulties formulating a policy document that is implemental. In this thesis, the two opposing viewpoints are represented by 'modernists' and 'traditionalists' respectively. The other position is recognising the role traditional leaders played and believe that traditional leaders have a role in the democratic dispensation and must form part of local governance in rural areas. This relationship is examined from the government's documentations, official political statements by politicians and most importantly, how policy (theory) is implemented (praxis) by both government and the institution of traditional leadership.

The argument brought forward in this thesis holds a view that the institution of traditional leadership possesses the ability for understanding how to govern and effectively make people come to an agreement through consensus about social problems that they share and the possible solutions to these problems, rather than depend on political elites and bureaucrats. In this way the system of traditional leadership provides values that are absent in the democratic form of governance.

The thesis also focuses on issues of governance and political transformation that was introduced in the 'Interim' Constitution and further developed in the Constitution. In order to establish good working relationships between the institution of *uBukhosi* and elected government structures, 'trust' is essential between these two systems.

Thus the researcher takes a moral stand that government must demonstrate a 'political will' to remedy the situation and work towards authentic recognition of the institution of *uBukhosi* and African culture. The study further puts forward a view that traditional leaders must be seen to be apolitical in decisions they make. Further more, the institution of traditional leadership must constantly revisit itself and seriously revise its strategies with regard to the position of women in the succession debate for position of leadership as traditional leaders and other aspects that are seen as inherently opposed to the Constitution. In other words, the institution must also transform, it cannot remain static. There must be a 'political will' to come to terms that people on the grassroots want their traditional leaders to remain in authority, therefore traditional leaders' role in governance must be made clearer.

The study provides for a rational involvement of the institution of traditional leadership in the negotiated state. Given the fact that South Africa is currently a constitutional state guided by democratic principles, democracy should prevail, however, not at the expense of the destruction of the institution of traditional leadership. Thus, democracy should not thrive by destroying traditional African leadership system. Finally, this thesis perceives the dual system of governance as two sides of the same coin.

Key words: worldview, transformation, *uBukhosi*, governance, trust, tolerance and democracy.

Opsomming

Die rol van tradisionele leierskap het die afgelope 15 jaar 'n omstrede kwessie in Suid-Afrika gebly. Die fokus van hierdie navorsing is om die verhouding tussen die moderne politieke stelsel van regering en tradisionele leierskap as vorms van 'n tweeledige stelsel van regering in Suid-Afrika te ondersoek. Die tesis roep kwessies as katalisators vir robuuste debat op om verder as die gewone politieke argumente te gaan, veral met betrekking tot die betekenisvolle rol wat tradisionele leiers vandag in Suid-Afrika moet vervul.

Debate rondom die instelling van *uBukhosi* het die Suid-Afrikaanse gemeenskap gepolariseer en dit is, soos in die geval van ander kwessies, normaal. Dit lyk of daar twee teenstellende gedagteganges oor die onderwerp van tradisionele leiers is – en dit is selfs in die geledere van die African National Congress die geval. Die tesis verstrekk ook agtergrond oor hierdie twee teoretiese gedagteganges en probeer om te verklaar waarom daar probleme is om 'n beleidsdokument te formuleer wat toepasbaar is.

In hierdie tesis word die twee teenstellende standpunte respektiewelik deur die 'moderniste' en die 'tradisionalistes' verteenwoordig. Die ander posisie erken die rol wat tradisionele leiers vervul het en glo dat hulle 'n plek in die demokratiese bedeling het en deel van die plaaslike regering in landelike gebiede moet wees. Hierdie verhouding word uit regeringsdokumente en amptelike verklarings deur politici ondersoek asook, en dit is belangrik, hoe beleid (teorie) deur beide die regering en die instelling van tradisionele leierskap toegepas word (praktyk).

Die argument wat in hierdie tesis na vore kom, behels die standpunt dat die instelling van tradisionele leierskap die vermoë het om te verstaan hoe om te regeer en hoe om mense effektief deur middel van konsensus tot instemming te bring oor gemeenskaplike maatskaplike probleme en oor die moontlike oplossing van diesulke probleme, eerder as om op die politieke elite en burokrate staat te maak. Op hierdie wyse voorsien die

stelsel van tradisionele leierskap waardes wat nie in die demokratiese regeringsvorm aanwesig is nie.

Die tesis fokus ook op kwessies rakende regering en transformasie wat deur die Tussentydse Grondwet aan die orde gebring en in die Grondwet verder ontwikkel is. Ten einde 'n goeie werksverhouding tussen die instelling van *uBukhosi* en verkose regeringstrukture te bewerkstellig, is dit noodsaaklik dat daar 'vertroue' tussen die twee stelsels moet wees.

Die navorser neem dus 'n morele standpunt in dat regering 'n 'politeke wil' moet toon om die situasie reg te stel en om te werk aan outentieke erkenning van die instelling van *uBukhosi* en Afrika-kultuur. Die studie stel ook die standpunt dat tradisionele leiers opsigtelik apolities in hul besluitneming moet wees. Die instelling van tradisionele leiers moet ook voortdurend nabetraging hou en sy strategieë ernstig hersien met betrekking tot die posisie van vroue in die opvolgingsdebat om posisies van leierskap, as tradisionele leiers en ten opsigte van ander aspekte wat blyk om inherent in stryd met die Grondwet te wees. Met ander woorde, die instelling moet ook transformeer; dit kan nie staties bly nie. Daar moet 'n 'politieke wil' wees om te aanvaar dat mense op voetsoolvalk wil hê dat hul tradisionele leiers in 'n gesagsposisie bly; daarom moet tradisionele leiers se rol in regering duideliker uitgestippel word.

Die studie voorsien 'n rasonale betrokkenheid van tradisionele leiers by die onderhandelde staat. Gehewe dat Suid-Afrika tans 'n grondwetlike staat is wat hom deur demokratiese beginsels laat lei, moet demokrasie in die verband in swang wees, maar nie ten koste van die vernietiging van die instelling van tradisionele leierskap nie. Demokrasie moet dus nie gedy op sterkte van die vernietiging van die stelsel van tradisionele Afrika-leierskap nie. Ten slotte beskou hierdie tesis die tweeledige stelsel van regering as keersye van dieselfde munt.

Sleutelwoorde: Wêreldbeskouing, transformasie; *uBukhosi*, regering; vertroue; verdraagsaamheid en demokrasie.

APPENDICES

APPENDIX ONE

Questionnaire

What are the sources of income for this household per months?

How many people are employed in this family?

Do you live on pension or government grant?

Is it a sick pension or old age pension?

What type of grant? Is it a welfare grant?

What is the source of water do you depend on for your household?

What type of toilet does your house hold have?

Can you describe your housing material?

Perception

What is your perception of traditional leaders?

Is there a need for traditional leaders in a democratic dispensation?

What roles must traditional leaders play in the community?

Must women hold strategic positions within the institution of traditional leadership?

What is your perception of the elected local government officer?

Which political organisation is dominant in the area?

Is the elected local government officer easily accessible to you when you need him/her?

Which party is holding government powers in your municipality?

What is your perception about the services the local government provide in this area?

Do you pay for municipality services such as water and electricity?

What are the pressing needs of the community?

Who must deliver these services, government or traditional leader?

Compared to years back when your traditional leader was in power, how would you compare services you received then and those that you receive now?

Do you think anything has changed?

What has changed?

What would you like to see changed?

Political Affiliation

Are you a member of a political organisation?

Is your traditional leader a member of a political party?

Do you think traditional leaders must belong to political parties?

Do you feel intimidated by the traditional leader?

What is your perception regarding political tolerance in this area?

Were you ever coerced into voting for a political party at any stage?



PARLIAMENT OF BOTSWANA

TRADITIONAL LEADERSHIP AND GENDER

PAPER PRESENTED AT: THE INTERNATIONAL CONFERENCE ON TRADITIONAL LEADERSHIP

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1 Introduction

This paper addresses the topical issue of traditional leadership and gender. This is a very broad and difficult issue to address, particularly that it is always overshadowed by emotions and often anger on the part of those calling for change in the institution and those in defence of the status quo. The esteemed gathering is therefore implored to approach the debate with openness and great sensitivity.

In this paper, an attempt will be made to focus and narrow down the discussion to gender inequality in the institution of traditional leadership. This approach is motivated by the ongoing debate that the institution of traditional leadership is not sensitive enough to the issue of gender equality.

The gathering might be aware that there is pressure being exerted on our respective Governments to intervene in the policy process concerning the advocacy for the inclusion of women within the institution and that pressure will not simple fade away without the issue of gender inequality being adequately resolved.

4 Gender Representation in Traditional Leadership Structures

Gender representation in Botswana's traditional Leadership structures still reflects the historic gender inequalities of Botswana society. This is still so despite Botswana being a signatory to the 1997 SADC Heads of State Declaration on Gender and Development, which commits the member states to, among others, "ensuring equal representation of women and men at all levels of the decision-making structures, including traditional structures of member states."

Current statistics has revealed that out of total number of eight (8) *Dikgosi-kgolo* (Paramount Chiefs) recognised in Botswana, six (6) are males while only two are females. Representation in *Ntlo ya Dikgosi* (House of Chiefs) also follows the same trend with only four (4) female Members out of a total membership of thirty-five (35).

The same trends are presumably found in most countries in Southern Africa considering that we share the commonality of being a patriarchal society. To provide a solution to this topical issue we need to make broad-based analysis of the traditional leadership selection processes to find out how it has influenced the inclusion of women in the traditional leadership structures. This would also inform us as to whether there is need to adjust in order to create space for the inclusion and participation of women.

5 Customary Inheritance law and the Challenges of Gender Inclusiveness

There is a great distinction between traditional Leadership selection processes and those of modern forms of leadership. The modern form of leadership is rooted in constitutions and electoral processes and therefore obtains its legitimacy from the elections as embedded in the constitutional and legal procedures.

What makes traditional leadership distinctive is that, unlike modern form of leadership, it is not subject to electoral process. Traditional Leadership is based on inheritance or other historical mechanism of leadership selection and its legitimacy is rooted in history and culture, often combined with religious/divine or sacred reference.

This is not to say traditional structures necessarily neglect important aspects and principles of good governance such as responsiveness, transparency, the rule of law etc. However, it should be noted that if the selection process is to be compared with the modern standards without taking due consideration to its uniqueness, other aspects and principles of good governance such as social inclusion of some groups or division of power will remain a big challenge and more difficult to meet by the Traditional Leadership.

Through inheritance, the position of the traditional leader is not subject to a democratic selection process but rather it is based on customary law. This means that traditional leadership is correctly viewed as not being socially or gender inclusive by those who use modern standards to look at it. Under customary law titles and functions of traditional leaders is by inheritance passed on to male successors in almost all our traditional societies.

Consequently, access by women to traditional leadership becomes very limited and this is what has been the source of heavy criticism and influence to the debates about the traditional leadership and gender equality.

Legislative frameworks in most of the countries with traditional structures do recognise the existence of customary and the common approach is that of not being prescriptive to the royal families and the tribe since this is assumed not to be interfering with customary law. The law gives the power to the royal family and the tribe to decide who should be their traditional leader when such a position becomes vacant. Section 6 of *Bogosi* Bill says:

Where there is a vacancy in the Bogosi of a tribe, either by reason of death, deportation, abdication or retirement, it shall be the duty of the tribe assembled in the *kgotla* under the Chairmanship of the senior member of the tribe to designate the rightful successor to the *Bogosi* according to customary law or according to the established norm and practice of that tribe.

This approach is often criticised for not spelling out a specific plan of how women born into the royal families can become *dikgosi* or successors because the customary law or established norm and practice that is referred to here is the inheritance law.

Nevertheless, one would assume that when such an opportunity presents itself both the royal family and the tribe could possibly appoint a female successor. The main challenge we face is whether such an appointment would be in line with customary law or established norms and practices. Further to that is the critical question of whether the customary law today, as affected by social and economic conditions is responsive to allowing females to become successors.

The correct approach would probably be for traditional leaders and their subjects to accept that inheritance rules, as is the case with any other tradition, are transformable and can be changed in such a way that it can allow women to inherit titles. In fact, many tribes in Botswana and some parts of South Africa are increasingly accepting women as traditional leaders. This, again demonstrate that culture should not be seen to be static and an affront to change, but an institution that can adapt to accommodate women to

inherit titles of traditional leadership and still hold the fabric of traditional communities together.

6 Case Study-Bamalete of Botswana

The Bamalete are said to be descendants of the Zulu people and originate from the Transvaal. They are now settled in Ramotswa in the South East District. The total population of the Ga-Malete tribal territory is estimated to be more than 30 thousand.

In December 2001, Balete set precedent when a predominantly male tribal assembly endorsed *Mosadi* Seboko as the first female *Kgosi-kgolo* in Botswana, succeeding her late brother Seboko Mokgosi II. The tribal assembly together with the royal family had considered her birthright and the qualities she possessed as opposed to the established norm of looking at gender as the main determinant when they endorsed her as their tribal leader. The endorsement was hailed as a bold and pioneering decision that could pave the way for other tribes to install women as *Dikgosi-kgolo*.

On the 30th August 2003, the country eventually witnessed the inauguration of the first woman *kgosi-kgolo* in what can best be described as a clear sign of progress and a comprehensive break with culture. Mosadi Seboko (52) was inaugurated the first woman to become the substantive *kgosi-kgolo* of a tribe in modern day Botswana. She was draped in a leopard skin by her uncles Lucas Manyane Mangope and Tshukudu Mokgosi from South Africa at a ceremony attended by high profile dignitaries among them President Festus Mogae, *Dikgosi*, Political Leadership, *Kgosi* Lero Molotlegi, the Bafokeng Queen Mother and representatives of various tribes within and outside the country.

Today the enthronement of *Kgosi* Mosadi Seboko provides us with good reference of how the problem of gender inequality in the traditional structures can be resolved. It further demonstrates that culture and tradition of any particular tribal grouping remains dynamic and can be adapted to suit the socio-economic change for the benefit of the same tribe.

This is not to say such a change can be achieved in other tribal groupings without any considerable resistance from some sections of both the royal family and the tribe at large, but serves to demonstrate that the customary inheritance law can be reformed to accommodate women.

Batawana in the northern Botswana then followed in the footsteps of the Balete by appointing Kealetile Moremi a regent to hold the reign for her brother who has since joined politics. Kgosi Fredah Mosojane is also the substantive *kgosi* of the people of Mosojane in the North East District. Kgosi Shathani Kgakanyane is the substantive headman of arbitration in the village of Sebina. All the four women traditional leaders are currently members of Ntlo ya Dikgosi, with *Kgosi Mosadi* Seboko serving as its Chairperson in 2002.

7 Conclusion

It is clear that a lot more still has to be done with respect to encouragement of the traditional leadership and structures to address the issues of gender equality. The institution of Traditional Leadership is not total late in the process of being gender inclusive. However, we should not lose sight of the fact that it will always be incumbent upon the various royal families and tribal groupings to ensure that this endeavour is successful.

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KWAZULU AMAKHOSI AND IZIPHAKANYISWA ACT NO. 9 OF 1990

[ASSENTED TO BY THE STATE PRESIDENT ON THE 8 JULY, 1991 – ENGLISH TEXT
SIGNED.]

[DATE OF COMMENCEMENT: 1 OCTOBER, 1991]

as amended by

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 9 of 1991

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 3 of 1992

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 7 of 1993

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 19 of 1993

GENERAL NOTE

In terms of Proclamation No. 107 of 17 June, 1994, the administration of Act No. 9 of 1990 has been assigned to this Province.

ACT

To consolidate and amend the laws relating to *amakhosi* and *iziphakanyiswa* to provide for the recognition, appointment and conditions of service, discipline, retirement, dismissal and deposition of *amakhosi* and *iziphakanyiswa*; to empower the Cabinet to summon an *inkosi* or *isiphakanyiswa*; to provide for the conferment of civil and criminal jurisdiction on *amakhosi* and *iziphakanyiswa*; to provide for the establishment of tribal and regional authorities; and to provide for matters incidental thereto.

1. Definitions.—In this Act, unless the context otherwise indicates—

“**allocated officer**” means an officer referred to in section 1 of the KwaZulu Public Service Act, 1985 (Act No 18 of 1985);

“**Cabinet**” means the Cabinet of the KwaZulu Government;

“**citizen**” means any person who is a citizen of KwaZulu in terms of the National States Citizenship Act, 1970 (Act No 26 of 1970);

“**community authority**” means a community authority established in terms of section 5 (1);

“**competent official**” means a magistrate of a district or an officer of the Department of the Chief Minister;

“**councillor**” unless otherwise indicated, means any person who is a member of a tribal or community or regional authority;

“**custom**” unless otherwise indicated means a recognised Zulu custom;

“**Government**” means the Government of KwaZulu;

“**hereditary Inkosi**” means a hereditary *Inkosi* according to Zulu law;

“**imbizo**” means an imbizo in accordance with custom;

“**isekela lenkosi**” means any person who has been appointed by *inkosi* or an isiphakanyiswa to deputize for him in accordance with custom;

“**inkosi**” means any person appointed in terms of section 12, and the word *ibambabukhosi* or *isekela lenkosi* has a corresponding meaning;

“**iziphakanyiswa**” means any person appointed in terms of section 12;

“**khonza fee**” means a fee payable by a person to an inkosi to whom he wishes to owe allegiance;

“**KwaZulu**” means the area for which the KwaZulu Legislative Assembly has been established;

“**Minister**” means the Chief Minister and shall include any Minister authorised thereto by him;

[Definition of “Minister” amended by Act 19 of 1993.]

“**Official Gazette**” means the *Official Gazette* of KwaZulu;

“**prescribed**” means prescribed by regulation;

“**regional authority**” means a regional authority established in terms of section 5 (1);

“**Secretary**” means the Secretary-General for the Department of the Chief Minister;

[Definition of “Secretary” substituted by Act 19 of 1993.]

“**This Act**” also the regulations;

“**Treasury**” means the treasury of the KwaZulu Government;

“**tribal authority**” means a tribal authority established in terms of section 5 (1);

“**Tribal constable**” means any person appointed in terms of section 7 (4);

“**valelisa fees**” means a fee payable by a person to an *inkosi* of a tribe in accordance with custom by a person who wishes to leave such tribe or community;

[Definition of “valelisa fees” amended by Act 19 of 1993.]

“**Zulu law**” means Zulu customary law.

CHAPTER 1

TRIBAL AND COMMUNITY ORGANIZATION

2. Definitions of areas and constitution, division, amalgamation and recognition of tribes or communities.—(1) The minister may, after consultation with the Cabinet, by notice in the *Official Gazette*—

- (a) define or redefine the boundaries of the area of any tribe or community;
- (b) constitute a new tribe or community;
- (c) divide any existing tribe or community into two or more tribes or communities or amalgamate tribes or communities or parts of tribes or communities into one tribe or community; or
- (d) recognise the existence of any tribe or community;

- (e) proclaim a less formal township in respect of the areas referred to in paragraph (a);
[Para (e) inserted by s. 1 of Act 9 of 1991.]

Provided that the provisions of paragraphs (a), (b), (c), (d) and (e) shall not apply unless the Chief Minister or his delegate has consulted the people of the area to be affected by such definition, redefinition, constitution, division, amalgamation, recognition or less formal township.

[Proviso amended by s. 1 of Act 9 of 1991.]

3. Person deemed to be a member of a tribe or community within whose area he permanently resides.—A person shall be deemed to be a member of a tribe or community within whose area he permanently resides: Provided that if a redefinition of the boundaries of the area of any tribe or community results in that a person resides within the boundaries of the area of a different tribe or community, such person shall, for a period of two years from the date of such resides redefinition be deemed to remain a member of his former tribe or community; Provided further that such person may, within the period of two years referred to in the first proviso, exercise an option as to whether he wishes to move to the area of his former tribe or community or to become a member of the tribe or community in whose area he is residing.

4. Resettlement residence.—(1) No person shall—

- (a) settle permanently in the area of a tribe or community of which he is not a member; Provided that a prior permission is obtained from the *inkosi* of his tribe or the *iziphakanyiswa* of his community, as the case may be, as well as the permission of the *inkosi* of the tribe or the *iziphakanyiswa* of the community in whose area he intends to settle permanently: Provided further he pays khonza fee to the *inkosi* or *iziphakanyiswa* of the area he intends settling permanently and also a valelisa fee to the *inkosi* or the *iziphakanyiswa* of whose area he is leaving.

[Para. (a) amended by Act 19 of 1993.]

- (b) commit any act in the area of a tribe or community of which he is not a member unless it is permitted by custom.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R500 or five months imprisonment or to both such fine and such imprisonment.

CHAPTER 2

ESTABLISHMENT OF TRIBAL, COMMUNITY AND REGIONAL AUTHORITIES

5. Establishment of tribal, community and regional authorities.—(1) The Minister may after consultation with the Cabinet—

- (a) with due regard to Zulu law and custom—
- (i) establish a tribal authority in respect of a tribe or two or more tribes;
 - (ii) establish a community authority in respect of a community or two or more communities.
- (b) in respect of any two or more areas for which tribal or community authorities have been established, establish a regional authority:

Provided that no community, tribal or regional authority shall be established unless the Minister or his delegate consults that people in the area in respect of which such authority is to be established.

(2) A tribal, community or regional authority established in terms of subsection (1), is a juristic person.

(3) A tribal authority shall be established in respect of an area or areas assigned to the *inkosi* of the tribe concerned, and a community authority shall be established in respect of the area or areas assigned to the *isiphakanyiswa* of the community concerned.

(4) The establishment of a tribal, community or regional authority and the area or areas in respect of which it has been established, and any modification of such area or areas, shall be made known by notice in the *Official Gazette*, and a copy thereof shall on its mere production in any legal proceedings be prima facie proof, that the authority mentioned in the notice has been lawfully established for the area or areas so mentioned in accordance with the provisions of this Act, or in the case of a modification or any area or areas, that the modification so mentioned has been lawfully effected in accordance with the provisions of this Act.

(5) The Minister may, after consultation with a tribal, community or regional authority, dissolve such tribal, community or regional authority, by notice in the *Official Gazette* and may make any order in respect of the disposal of any assets of the authority concerned as he deems fit.

(6) If a tribal or community government exists within a tribe or community, which functions according to the laws and customs observed by such tribe, or community such tribal or community government, as the case may be, shall, subject to *isiphakanyiswa* (7), be deemed to be a tribal or community government established in terms of subsection (1).

(7) If a tribal or community government in terms of subsection (6) does exist, but it is deemed expedient by the Minister to replace such tribal or community government by a tribal or community government as referred to in subsection (1), the Minister may by notice in the *Official Gazette* direct that a tribal community authority be established in terms of subsection (1).

6. Constitution of a regional authority.—(1) The executive body of a regional authority shall, subject to the provisions of subsection (2) consist of a chairman and an executive council comprising of so many councillors as may be determined by the Minister.

(2) The chairman and the councillors of a regional authority shall be elected or selected in the prescribed manner from amongst the *amakhosi*, *iziphakanyiswa* and councillors of the tribal or community authorities for the areas in respect of which such regional authority has been established: Provided that the Minister, after consultation with the Cabinet, confirms the election or selection of the chairman.

(3) The Minister may, in accordance with the regulations withdraw the appointment of any councillor or any member of a regional authority if he is satisfied that such councillor or member is negligent in the performance of his duties or that the removal of such councillor or member from his office is in the general interest of people residing in the area in respect of which the regional authority concerned has been established.

7. Powers, functions and duties of tribal and community authorities.—(1) A tribal or community authority shall, subject to the provisions of this Act—

- (a) generally administer the affairs of the tribe or community in respect of which it has been established;
- (b) render assistance and guidance to its *inkosi* or *isiphakanyiswa* with regard to the performance of his functions, and exercise such powers and perform such functions and duties, including any of the powers, functions or duties conferred or imposed upon its *inkosi* or *isiphakanyiswa* under any law, as are in accordance with any applicable Zulu law or custom or in the terms of any regulations required to be exercised or performed by such tribal or community authority;

- (c) advise and assist the Government and any regional authority having jurisdiction in any area for which such tribal or community authority has been established, with regard to matters relating to the material, moral and social well-being of persons resident in that area, including the development and improvement of land within that area; and
- (d) exercise such powers and perform such functions and duties as in the opinion of the Minister, falls within the sphere of tribal administration and as the Minister may assign to that tribal or community authority.

(2) Subject to the provisions of any regulation—

- (a) a tribal or community authority shall exercise its powers and perform its functions and duties with due regard to the rules, if any, applicable in the case of similar bodies in terms of the Zulu laws or customs of the respective tribes or communities in respect of which such authority has been established;
- (b) the *inkosi* or *isiphakanyiswa*, in respect of any tribal or community authority shall exercise his powers and perform his functions and duties, including any powers, functions and duties vested in him by virtue of any law, with due regard to such laws.

(3) No judgment, decision or direction given or order made by an *inkosi*, *isiphakanyiswa* or *isekela lenkosi*, in the exercise of jurisdiction conferred upon him by or under any law, shall be deemed to be invalid by reason of it having, in terms of subsection (1) and (2), been given or made by such *inkosi*, *isiphakanyiswa* or *isekela lenkosi* on the advice or with the consent or at the instance of a tribal or community authority and any judgment, decision or direction so given or order so made shall for all purposes be deemed to have been given or made by such *inkosi*, *isiphakanyiswa* or *isekela lenkosi*.

(4) A tribal or community authority may subject to the provisions of this Act appoint tribal constables to exercise such powers and perform such functions and duties as are conferred upon them by any applicable Zulu Law or any regulation made under section 36.

8. Powers, functions and duties of regional authorities.—(1) A regional authority shall have power—

- (a) to advise and make representations to the Government in regard to all matters affecting the general interests of persons within any area under the jurisdiction of such authority;
- (b) subject to the provisions of any regulations, and to the directions of the Minister, to provide for—
 - (i) the establishment, maintenance, management and control of educational institutions, and the advancement of scholastic and other education;
 - (ii) construction and maintenance of roads, bridges, drains, dams, furrows and any works which it may consider necessary for purposes of sanitation or for ensuring satisfactory water supplies or for preventing or combatting soil erosion;
 - (iii) the suppression of diseases of stock by the construction, maintenance and operation of dipping tanks and in any other manner it may consider necessary;
 - (iv) the establishment, maintenance, management and control of hospitals, clinics and other similar institutions;
 - (v) the improvement of farming and agricultural methods generally;
 - (vi) afforestation; and
 - (vii) generally all such matters as in the opinion of the Minister are within the sphere

of regional administration and as he may assign to such regional authority.

(2) A regional authority may make rules in regard to any matter referred to in subsection (1) (b), including rules prescribing fees for services rendered by such authority or rates payable by any specified class of persons in respect of services made available by such authority: Provided that no such rule shall have any force or effect unless it is approved by the Minister and made known by notice in the *Official Gazette*: Provided further that the Minister may, before approving of any rule, refer it back to the authority concerned for consideration and thereafter amend it in such manner as he may deem fit or make additional rules or amend or repeal any existing rules.

(3) A rule which is amended by the Minister before approval thereof under subsection (2) shall be deemed to have been duly made in the amended form by the regional authority concerned, and any additional rules made or amendment or repeal of an existing rule effected by the Minister in giving any such approval, shall be deemed to have been duly made or effected by that authority.

(4) Whenever a regional authority fails to make rules in regard to any matter referred to in subsection (1) (b) or (2), the Minister may by notice in writing direct that authority to make such rules and to submit such rules for his approval in terms of subsection (2), and if that authority fails to make such rules and to submit them for such approval within a period of six months after the date of the notice, the Minister may make such rules.

(5) Any rule made by the Minister under subsection (4), shall be deemed to have been duly made by the regional authority concerned.

(6) A regional authority shall have power to acquire and hold land or any interest in land as it may deem necessary for the purpose of performing its functions and duties.

9. Auditing of books and accounts of tribal, community and regional authorities.—(1) The books and accounts of a tribal, community or regional authority shall be prescribed by the Minister by notice in the *Official Gazette* after consultation with the Auditor-General and shall be audited by the Auditor-General.

(2) The Auditor-General shall as soon as possible after an audit of the books and accounts of a tribal, community or regional authority transmit a copy of his report on the books and accounts of such tribal, community or regional authority concerned to the Secretary: Provided that the Auditor-General may at any time, if he considers it desirable, submit a special report on any matter connected with his powers and duties under this Act to the Minister.

(3) In the execution of any audit in terms of subsection (1) of the books and accounts of any tribal, community or regional authority, the provisions of section 42 (4), (8), (9) (a) and (9) (c) (i) and (10), 45 (2), 47, 48 (1) (a) and 50 of the Exchequer and Audit Act, 1975 (Act No 66 of 1975) and no other provision of that Act shall apply *mutatis mutandis*, and in such application—

(a) any reference in the said section 42 (9) (c) (i) of this section to the Treasury shall be deemed to be a reference to any person or the holder of any office designated, for the purposes of this section by the tribal, community or regional authority concerned with the approval of the Minister; and

(b) any reference in the said section 45 (2) to a Minister shall be deemed to be a reference to the Minister.

10. Amounts to be paid to into treasury of a tribal or community authority.—(1) There shall be paid into the treasury of a tribal or community authority—

(a) all fees and charges which in accordance with the recognised customs of any of the tribes or communities in respect of which such authority has authority been established, or in terms of any regulation, are payable for the benefit of any such tribe or community or of the tribal or community authority;

- (b) all fines and fees collected by the *inkosi*, *isekela lenkosi* or *isiphakanyiswa* in the exercise of any civil or criminal jurisdiction conferred upon him by any law;
- (c) the proceeds of any levy which may be imposed upon any such tribe or community or any of the members thereof in terms of any law other than this Act and every amount collected in respect of a fine imposed for a failure to pay any such levy;
- (d) all amounts derived from any property owned by any such tribe or community;
- (e) any moneys which may be assigned to such authority by the Minister out of any fund held by him for the benefit of any such tribal or community under any law;
- (f) any moneys which the Legislative Assembly may appropriate for the purpose, and any donation made by any person for the benefit of any such tribe or community; and
- (g) all other amounts derived from any source whatsoever for the benefit of any such tribe or community.

11. Proof of certain facts by affidavit.—If in any judicial proceedings it is relevant—

- (a) whether any particular person is or has been a councillor or member of a tribal, community regional authority;
- (b) whether any such authority or any councillor or member of such authority acted in respect of any particular matter in accordance with the law and custom observed by the tribe or community concerned, any document purporting to be an affidavit by any person who in that affidavit alleges—
 - (i) that he is in the service of the Government in a capacity specified in the affidavit;
 - (ii) that he has knowledge of the law and custom observed by the tribe or community concerned and that in consequence thereof he knows that the person concerned is or has been a councillor or member of the tribal or regional authority concerned or as the case may be; or that the law and custom concerned were observed in respect of said matter.

shall on its mere production in the said proceedings be prima facie evidence that the person concerned is or has been a councillor or member of the authority in question, or as the case may be, that the law and customs concerned were observed in respect of the said matter.

CHAPTER 3

AMAKHOSI, IZIPHAKANYISWA AND COUNCILLORS

12. Acknowledgement and appointment of amakhosi and iziphakanyiswa.—The Minister may after consultation with the Cabinet recognise, appoint or depose any person as an *inkosi* for a certain tribe or an *isiphakanyiswa* for a certain community, as the case may be, in accordance with the provisions of this Act.

13. Ingonayama .—The *inkosi* of the Usuthu Tribe is the paramount *inkosi* of the Zulus and is also known as the King of the Zulus, the *Ingonayama* or *Isilo*.

14. Amakhosi or iziphakanyiswa in council.—(1) The executive government of any tribe or community is vested in its *inkosi* or *isiphakanyiswa*, acting on the advice of his tribal or community council, whatever the case may be, and, save where otherwise expressly stated or necessarily implied, any reference in this Act to any action by an *inkosi* or *isiphakanyiswa* shall be deemed to be a reference to an *inkosi* or *isiphakanyiswa* acting on the advice of his tribal or community council.

(2) In the event of a tribal or community council not yet having been established in respect of any tribe or community, whatever the case may be, its *inkosi* or *isiphakanyiswa* shall within 30 days from the promulgation of this Act or the date of the appointment of such *inkosi* or *isiphakanyiswa*, whichever date comes last, constitute a tribal or community council under section 15.

15. Appointment of councillors.—(1) The appointment of councillors shall be made in accordance with the law and custom of the tribe or community and in the absence of any such law and custom, such appointment shall be made in such manner as the Minister may direct in writing: Provided that every *induna* shall, by virtue of his office, be a councillor.

(2) Whenever any *inkosi* or *isiphakanyiswa* fails to establish his tribal or community council, under section 14 (2), the Minister may appoint the members of such council who shall be deemed to have been appointed by the *inkosi* or *isiphakanyiswa* concerned.

(3) Whenever the seat of any councillor becomes vacant it shall be filled as soon as possible and the provisions of subsections (1), (2), (4) and (5) shall *mutatis mutandis* apply with the filling of such seat.

(4) Any *inkosi* or *isiphakanyiswa* in whose tribal or community council a vacancy occurs shall forthwith report such vacancy to the magistrate of the district.

(5) Any *inkosi* or *isiphakanyiswa* shall inform the magistrate of the district of the full names, addresses and other relevant personal particulars of all his councillors within 30 days of his assumption of office or where a seat is filled in terms of subsection (3) the said particulars of such councillor must be furnished to the magistrate of the district within 30 days of the filling of such seat.

(6) Any *inkosi* or *isiphakanyiswa* may, subject to any other law, cancel the appointment of any councillor in accordance with the law and custom of his tribe or community: Provided that any appointment made by the Minister shall be cancelled by the Minister himself.

16. Recognition and appointment of successor to hereditary inkosi.—(1) For the purposes of general succession as in section 81 and of the KwaZulu Act on the Code of Zulu Law, 1985 (Act No 16 of 1985) defined, the heir of a deceased hereditary *inkosi* shall be the person whom the Minister appoints or recognises under section 12 as successor to such deceased hereditary *inkosi*.

(2) Before deciding whom to appoint or to recognise under section 12 as *inkosi* in succession to a hereditary *inkosi*, the Minister may, in the event of any dispute arising or any other circumstance, direct an inquiry to be made by three advisers appointed by him.

(3) The advisers referred to in subsection (2) shall be selected by reason of their special knowledge of the language, customs and laws of the Zulus and shall report to the Cabinet through the Secretary.

(4) The mentioned advisers shall have all the powers conferred by law on a Magistrate's Court for the summoning of witnesses, their cross-examination under oath and to compel any person to produce documents in his possession or under his control.

17. Inquiry to be held in cases of dispute or dissatisfaction.—(1) If it comes to the attention of the Secretary that there is a general dissatisfaction amongst the members of a tribe or community or that there is friction between certain tribes or communities or the *amakhosi* or *iziphakanyiswa* of tribes or communities, he or a person designated by him shall conduct an inquiry into the matter and the findings of such enquiry shall be submitted to the Cabinet.

(2) In the exercise of functions referred to in subsection (1), the Secretary or his designate shall have all the powers conferred by law on a magistrate's court for the summoning of witnesses, their cross-examination under oath and to compel any person to produce documents in his possession or under his control.

18. Duties, powers, authority and functions of amakhosi and iziphakanyiswa.—(1) Any *inkosi* or *isiphakanyiswa* shall—

- (a) enjoy the status, rights and privileges and be subject to the obligations and duties imposed upon his office by the recognised customs or usages of his tribe;
- (b) be entitled, in the due fulfillment of the functions to the loyalty, respect, support and obedience of every resident of the area for which he has been appointed;
- (c) in co-operation with the tribal or regional authority subject to such lawful orders or instructions as may, from time to time, be given to him by or through any competent representative of the Government carry on the administration of his area;
- (d) maintain law and order and report to the Government, without delay, any matter of importance or concern, including any condition of unrest or dissatisfaction;
- (e) exercise within his area, in relation to any resident his powers of arrest, search and seizure conferred upon him in his capacity as a peace officer in terms of the provisions of the Criminal Procedure Act, 1977 (Act No 51 of 1977); and
- (f) ensure the protection of life, persons and property and the safety of *bona fide* travellers within his area, and report forthwith to the magistrate of the district—
 - (i) the death of any person from violence or other unnatural causes;
 - (ii) the outbreak of any contagious or infectious disease;
 - (iii) any person or persons pretending to exercise witchcraft or divination;
 - (iv) any misuse of Government property;
 - (v) any irregular receipt or use of public moneys;
 - (vi) the holding of any unauthorised meeting, gathering or the distribution of undesirable literature in his area;
 - (vii) the commission of any offence which does not fall to be dealt with under his own jurisdiction;
- (g) disperse or order the dispersal of any unauthorised assembly of armed persons or of any riotous or unlawful meeting or gathering;
- (h) make known to the residents of his area the requirements of any new law;
- (i) ensure compliance with all laws and the orders and instructions of a competent authority;
- (j) prevent cruelty to animals;
- (k) detain and, when so required by law, impound any livestock depastured illegally or found straying within, or introduced unlawfully or under suspicious circumstances into his area and report the fact to the competent authority;
- (l) not be or become a member or take part in any activities or in any manner promote the objects of any organisation whose aims are the unconstitutional overthrow of the Government and shall not encourage disobedience to or resistance against any law; and
- (m) generally seek to promote the interest of his tribe or community and of the region and actively support and initiate measures for the advancement of his people.

19. Remuneration and allowances payable to Amakhosi and

iziphakanyiswa.—(1) (a) Any *inkosi* or *isiphakanyiswa* shall, subject to the provision of sections 22 and 23, be paid such remuneration and allowances in respect of his duties at such rate as the Minister may from time to time, after consultation with the Minister of Finance, determine in the *Official Gazette*: Provided that no such remuneration shall be paid to the *ingonyama*.

[Para (a) amended by Act 7 of 1993.]

(b) Any *inkosi* or *isiphakanyiswa* shall, upon retirement from service on account of his age, infirmity or for any other profound reason, be paid a retirement allowance at such rate as the Minister may after consultation with the Minister of Finance determine in the *Official Gazette*. Provided that where an *inkosi* or *iziphakanyiswa* dies before retirement, a death gratuity equal to the amount which he would have been paid as a retirement allowance had he retired shall be paid out to meet the funeral expenses of such *inkosi* or *iziphakanyiswa*: Provided further that any balance remaining after payment of such funeral expenses shall be paid into the estate of such deceased *amakhosi* or *iziphakanyiswa*.

[Provisos inserted by Act 19 of 1993.]

(c) In the determination of any remuneration under paragraph (a) or retirement allowance under paragraph (b) there shall be taken into account every period of satisfactory service, whether continuous or not, rendered by the *inkosi* or *isiphakanyiswa*: Provided that in the determination of a retirement allowance, no period of service in respect of which a retirement allowance or any other benefit whatsoever has been paid, whether before or after the commence of this Act, shall be included.

(d) any *inkosi* or *isiphakanyiswa* if he proceeds on duty to any office of the Government or attends any place outside his area, as the case may be, may be paid such allowances in respect of transport and subsistence expenses as maybe determined by the Minister after consultation with the Minister of Finance: Provided that no allowance in respect of transport or subsistence may be paid to any *inkosi* or *isiphakanyiswa* in terms of this Act, who is entitled to receive such allowances in terms of any other law or directive.

(2) The Secretary may, generally or in any particular case, direct that no allowance or only part of an allowance determined in terms of paragraph (d) of subsection (1), shall be paid.

20. Cession of remuneration or allowances of amakhosi or iziphakanyiswa.—Except with the prior approval of the Secretary, an *inkosi* or *isiphakanyiswa* shall not cede to any person any salary, remuneration or allowances payable to him in terms of this Act or any other law.

21. Absence of inkosi of iziphakanyiswa .—An *inkosi* or *isiphakanyiswa* shall make provision to the satisfaction of the Magistrate of the district for the proper performance of his duties during any absence from the area of his tribe or community, whatever the case may be, without extra cost to the Government and may only absent himself from the area of his tribe or community for a period longer than 30 days with the prior approval of the Secretary.

22. Suspension of amakhosi or iziphakanyiswa.—(1) The Minister or the Secretary if authorised thereto by the Minister either generally or in any particular case, may after consultation with the Cabinet suspend from office any *inkosi* or *isiphakanyiswa* who is suspected of having misconducted himself in any way.

(2) The Cabinet may at any time direct that the suspension of any *inkosi* or *isiphakanyiswa* be cancelled and such suspension shall automatically be cancelled after 180 days from the date of the order of suspension if such *inkosi* or *isiphakanyiswa* has not, by that time, been summoned to appear at an inquiry in terms of section 23.

(3) Any *inkosi* or *isiphakanyiswa* who has been suspended under this section, shall not be entitled to any remuneration in respect of the period of his suspension: Provided that the Minister may for good and sufficient reasons order payment to the said *inkosi* or *isiphakanyiswa* of the whole of portion of his emoluments.

23. Inquiry into misconduct.—(1) Whenever there is a reason to believe that an *inkosi* or *isiphakanyiswa* is guilty of misconduct in that he—

- (a) fails or refuses to comply with any provision of this Act or other law with which it is his duty to comply;
- (b) disobeys, disregards or makes wilful defaults in carrying out a lawful order given to him by a competent officer or by conduct displays insubordination;
- (c) conducts himself in a disgraceful, improper or unbecoming manner;
- (d) uses intoxicants or drugs excessively;
- (e) abuses his powers or extorts, or by the use of compulsion or arbitrary means obtains any tribute, fee, reward or gift;
- (f) tries or punishes any person without being duly authorised thereto by or under any law;
- (g) becomes a member or takes part in the affairs of an organisation or association whose objects are subversive of or prejudicial to the government or law and order;
- (h) is negligent or indolent in the discharge of his duties; or
- (i) has been convicted of any offence; the Minister shall, if the Cabinet has so directed, charge an *inkosi* or *isiphakanyiswa* in writing with such misconduct.

(2) The charge shall contain a direction calling upon the *inkosi* or *isiphakanyiswa* charged to answer in writing within a period specified in the direction, which shall not be less than 21 working days, to a person likewise specified, which written answer shall either be an admission or denial of the charge and may be accompanied by a written explanation of the circumstances surrounding the matter.

(3) If the *inkosi* or *isiphakanyiswa* charged denies the charge or fails to answer the charge referred to in subsection (2), the Minister shall appoint an officer or an allocated officer to inquire into the matter.

(4) The officer or allocated officer who is to hold the inquiry shall fix the date, time and place of the inquiry and shall give the charged *inkosi* or *isiphakanyiswa* reasonable notice in writing of the date, time and place so fixed.

(5) (a) The officer or allocated officer appointed to inquire into the charge may subpoena any person to attend the inquiry and to adduce evidence relating to the charge.

(b) Any person subpoenaed in terms of paragraph (a) who fails to attend the inquiry at the date, time and place as set out in the subpoena, shall be guilty of an offence and may on conviction be sentenced to a fine not exceeding R500 or imprisonment not exceeding a period of six months.

(6) (a) At the inquiry the *inkosi* or *isiphakanyiswa* charged shall have a right to be heard either personally or through a legal representative, to cross-examine any person called as a witness by the officer conducting the inquiry, to inspect any document produced in evidence, to give evidence himself and to call other persons as witnesses.

(b) The officer or allocated officer holding the inquiry shall keep a record of the proceedings of the inquiry.

(c) The failure of the *inkosi* or *isiphakanyiswa* charged to attend the inquiry, either personally or by a legal representative, shall not invalidate the proceedings.

24. Procedure after inquiry.—(1) At the conclusion of the inquiry the officer or allocated officer holding the inquiry must find whether the *inkosi* or *isiphakanyiswa* is guilty or not guilty of

the misconduct of which he has been charged and inform the *inkosi* or *isiphakanyiswa* of his finding.

(2) If the *inkosi* or *isiphakanyiswa* charged is found guilty in terms of subsection (1) the officer or allocated officer holding the inquiry shall forward to the Cabinet the record of the proceedings, a statement of his findings and the reasons thereof, as well as any observations which he might wish to make.

[Sub-s. (2) amended by Act 19 of 1993.]

(3) On receipt of the proceedings of enquiry the Minister may after consultation with the Cabinet—

- (a) impose on the *inkosi* or *isiphakanyiswa* a fine not exceeding R500 which may be recovered from his remuneration in terms of section 19 in such instalments as the Cabinet may determine and shall be paid into the KwaZulu Revenue Fund; or
- (b) suspend the *inkosi* or *isiphakanyiswa* from office without remuneration for a period not exceeding ten years; or
- (c) impose on the *inkosi* or *isiphakanyiswa* any of the two punishments referred to in paragraphs (a) and (b) jointly; or
- (d) dismiss the *inkosi* or *isiphakanyiswa*.

(4) The finding of the officer or allocated officer at the inquiry and the fine, suspension or dismissal by the Minister is final.

25. Powers of cabinet to summon inkosi or iziphakanyiswa.—(1) Notwithstanding the provisions of this Act or any other law, the Cabinet may whenever it deems necessary call upon any *inkosi* or *isiphakanyiswa* in writing to appear before it in order to investigate—

- (i) any matter which is harming or is likely to harm his tribe or community; or
- (ii) any matter of importance or concern which directly or indirectly affects such *inkosi* or *isiphakanyiswa* in his capacity as the representative of the Government; or
- (iii) any other matter likely to prejudicially affect the administration of the Government in the area of his tribe or community.

(2) The Cabinet may, after it has investigated the matter—

- (a) direct the *inkosi* or *isiphakanyiswa* to take certain steps to resolve the problem.
- (b) instruct the Minister to charge the *inkosi* or *iziphakanyiswa* in terms of section 23 whenever there is a reason to believe that such *inkosi* or *iziphakanyiswa* is guilty of misconduct.

[Para. (b) inserted by Act 19 of 1993.]

26. Liability of tribe or community for delictual, contractual other obligations of the inkosi or iziphakanyiswa.—A tribal or community authority is not liable to assist its *inkosi* or *isiphakanyiswa*, whatever the case may be, in the fulfilling of any of his personal obligations arising *ex contractu*, *ex delicto* or otherwise unless such assistance is approved by the Minister as well as the members of each tribe or community by majority vote at an imbizo which is specially called to consider the matter.

[Heading amended by Act 19 of 1993.]

27. Limitations of judicial proceedings against inkosi or iziphakanyiswa, tribe or community in respect of land.—No legal proceedings in regard to the ownership, occupation or acquisition of land in the area of a tribe or community shall be instituted against such tribe or such

community or the *inkosi* or *isiphakanyiswa* of such tribe or community without the written approval of the Minister.

28. Settlement of civil disputes by amakhosi and iziphakanyiswa.—(1) The Minister of Justice may—

- (a) authorise any *inkosi* or *isiphakanyiswa* recognised or appointed under section 12 to hear and determine civil claims arising from Zulu law and custom brought before him by the members of his tribe or community against members of his tribe or community; and
- (b) at the request of any *inkosi* or *isiphakanyiswa* upon whom jurisdiction has been conferred in terms of paragraph (a) authorise in writing an *isekela lenkosi* of such *inkosi* or *isiphakanyiswa* to hear and determine civil claims arising out of Zulu law and custom brought before him by members of the tribe or community of such *inkosi* or *isiphakanyiswa* against members of such tribe or community;

Provided that an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* shall not under this section or any other law have power to determine any question of nullity, divorce or separation arising out of a marriage, or the state of a person's mental capacity.

(2) The Minister of Justice may at any time revoke in writing the authority granted in terms of subsection (1).

(3) A judgement given by such *inkosi*, *isiphakanyiswa* or *isekela lenkosi*, shall be executed in accordance with the recognised customs and laws.

29. Hearing of criminal actions by the amakhosi and iziphakanyiswa.—(1) The Minister of Justice may in writing confer upon any *inkosi* or *isiphakanyiswa*, recognised under section 12, or the *isekela lenkosi* of such *inkosi* or *isiphakanyiswa* at the request of such *inkosi* or *isiphakanyiswa*, jurisdiction to try and punish any citizen who has committed, in the area under the control of such *inkosi* or *isiphakanyiswa*, any offence in terms of Zulu law and custom or statutory law as may be specified by the Minister other than an offence referred to in the First Schedule to this Act.

[Sub-s. (1) substituted by Act 19 of 1993.]

(2) The procedure at any trial by an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* of such *inkosi* or *isiphakanyiswa* under this section, the punishment, the manner of execution of any sentence imposed shall be in accordance with Zulu law and custom: Provided that in the exercise of the jurisdiction conferred upon him under subsection (2) an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* may not impose any punishment involving death, mutilation, grievous bodily harm or imprisonment or impose a fine not exceeding:

- (i) R1 000 or one head of large stock; or
- (ii) R 600 or six head of small stock.

[Sub-s. (2) substituted by Act 19 of 1993.]

(3) The Minister of Justice may at any time revoke in writing the jurisdiction conferred upon an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* in terms of subsection (1).

30. Hearing held in accordance with repealed sections of black administration act, 1927 deemed to be lawful.—Any hearing held in accordance with the provisions of the repealed sections 12 and 20 of the Black Administration Act, 1927 (Act No 38 of 1927) after it had been repealed, but prior to the coming into operation of this Act, shall be deemed to be lawful and any civil judgment so given or criminal sentence imposed shall be executed in the manner prescribed by such repealed sections.

CHAPTER 4

APPEALS IN CIVIL AND CRIMINAL CASES

31. Appeals in civil cases.—(1) Any party to a law suit in which an *inkosi, isiphakanyiswa* or *isekela lenkosi* has given judgement in terms of section 28 may appeal therefrom to any magistrate's court which would have had jurisdiction had the proceedings in the first instance been instituted in a magistrate's court, and if the appellant has noted his appeal in the manner and period prescribed, the execution of the judgement shall be suspended until the appeal has been decided (if it was prosecuted at the time and in the manner so prescribed) or until the expiration of the mentioned prescribed period if the appeal was not prosecuted within that period, or until the appeal has been withdrawn or has lapsed: Provided that no such appeal shall lie in any case where the claim or the value of the matter in dispute is less than R50, unless the court to which the appellant proposes to appeal, has certified after summary inquiry that the issue involves an important principle of law.

(2) If a party appeals to a magistrate's court in terms of subsection (1) the said court may confirm, alter or set aside the judgement after hearing evidence by the parties to the dispute, or which is tendered on request by the court.

(3) Any confirmation, amendment or setting aside in terms of subsection (2) shall be deemed to be a decision of a magistrate's court in terms of provision of Chapter IX of the Magistrate's Courts Act, 1944 (Act No 32 of 1944).

32. Appeals in criminal cases.—(1) Any person who is convicted and sentenced by an *inkosi, isiphakanyiswa* or *isekela lenkosi* in terms of section 29 may in the manner and within the period prescribed, appeal against such conviction and sentence to the magistrate's court in which district the trial took place.

(2) In hearing an appeal in terms of this section, the magistrate shall hear and record all available evidence which is relevant to any question in issue and shall thereupon either-

- (a) confirm or alter the conviction and—
 - (i) confirm the sentence imposed by the *inkosi, isiphakanyiswa* or *isekela lenkosi* and order that the said sentence be satisfied forthwith; or
 - (ii) set aside the sentence imposed by the *inkosi, isiphakanyiswa* or *isekela lenkosi* and in lieu thereof impose such other sentence as in his opinion the *inkosi, isiphakanyiswa* or *isekela lenkosi* ought to have imposed; or
 - (iii) in addition to the sentences referred to in subparagraph (i) and (ii) impose a sentence of imprisonment not exceeding three months which is to be served on default of compliance forthwith with the order or sentence made or imposed under subparagraph (i) or (ii); or
 - (iv) set aside the sentence imposed by the *inkosi, isiphakanyiswa* or *isekela lenkosi* and in lieu thereof impose a sentence of imprisonment not exceeding three months without the option of a fine; or
- (b) uphold the appeal and set aside the conviction and sentence.

(3) The magistrate shall issue in respect of any person sentenced to imprisonment in terms of subsection (2) a warrant for his detention in a prison.

[Heading amended by Act 19 of 1993.]

33. Procedure where fine cannot be recovered.—(1) If a person fails to pay any fine imposed

upon him in terms of section 29 the *inkosi* or *isiphakanyiswa* concerned may cause him to be arrested by the police or any other person who is authorised to do so in terms of section 334 of the Criminal Procedure Act 1977 (Act No 51 of 1977), and shall within 48 hours after his arrest bring or cause him to be brought before the magistrate in whose area of jurisdiction the trial took place.

(2) A magistrate before whom any person is brought in terms of subsection (1) may, upon being satisfied that the fine was duly and lawfully imposed and is still unpaid either wholly or in part, order such person to pay the fine or the unpaid portion thereof forthwith and if such person fails to comply forthwith with such orders, sentence him to imprisonment for a period not exceeding three months.

(3) A magistrate shall issue in respect of any person sentenced to imprisonment under this section a warrant for his detention in a prison.

34. Review of proceedings.—(1) A magistrate of the district, where a hearing in terms of this Act was held, who is of the opinion that a conviction or sentence imposed, a judgment entered or an order made by an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* at such a hearing is clearly not in accordance with the provisions of this Act or in accordance with justice and that the person so convicted and sentenced, or against whom a judgment has been entered or an order made will suffer prejudice may—

- (a) set aside or correct such conviction, sentence, judgement or order; and
- (b) convict and impose such sentence or enter such judgment or make such order as the *inkosi*, *isiphakanyiswa* or *isekela lenkosi* ought to have imposed, entered or made.

(2) The magistrate shall after having acted in terms of subsection (1) notify the *inkosi*, *isiphakanyiswa* or *isekela lenkosi* concerned of his decision.

(3) Any conviction or sentence imposed, or judgment entered or order made by the magistrate in terms of subsection (1) shall be deemed to have been imposed, entered or made by the *inkosi*, *isiphakanyiswa* or *isekela lenkosi* who originally conducted the hearing.

35. Rules.—(1) The Minister may make rules to further regulate the procedure which shall be followed at civil and criminal actions and appeals in terms of this Act.

(2) No rule or any amendment or repeal of a rule comes into operation, unless it is published in the *Official Gazette* at least one month before the date upon which the rule, amendment or repeal is envisaged to come into operation.

36. Regulations.—(1) The Minister may make regulations, not inconsistent with this Act—

- (a) providing for the administration, supervision and control of the treasures and the keeping of the accounts of tribal, community and regional authorities, and for the audit of books and accounts of tribal, community and regional authorities which are not audited by the Auditor-General;
- (b) providing for the recognition, appointment and selection or election of councillors and members of regional authorities and the cancellation thereof;
- (c) prescribing the conditions of office of councillors and the periods and conditions of office of members of regional authorities;
- (d) providing for the calling of meetings of regional authorities, and prescribing the quorum for and procedure at such meetings, including the procedure in the event of the absence of the chairman from any such meeting, the method of voting at such meetings and the exercise of a casting vote by any person presiding at such meeting and the circumstances under which such a vote may be exercised;

- (e) providing for the appointment, conditions of service, discipline, retirement, discharge, pensioning and duties of officers and employees of regional authorities;
- (f) prescribing the times for the payment of rates or fees levied or prescribed under this Act, and the circumstances under which or the conditions subject to which any person may be exempted from liability for the payment thereof;
- (g) providing for procedure to subpoena witnesses at inquiries and civil and criminal hearings in terms of this Act;
- (h) providing for the appointment, conditions of service, discipline, retirement, discharge, pensioning powers, functions and duties of tribal employees;
- (i) providing for the establishment and administration of a less formal township or any other matter related thereto;

[Para (i) inserted by s. 2 of Act 9 of 1991.]

and generally any regulations which he is by this Act required or empowered to make, and any regulations, whether or not relating to any matter specifically mentioned in this subsection, which he may deem necessary in order to ensure the effective operation of this Act.

(2) Different regulations may be made in respect of different tribal, community or regional authorities, or in respect of different areas under the same authority or in respect of matters affecting different tribes or communities under the same authority.

(3) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R100 or, in default of payment, imprisonment for a period not exceeding three months.

37. Repeal of laws and savings.—The laws mentioned in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule: Provided that notwithstanding the repeal of the said laws—

- (a) every person who immediately prior to the commencement of this Act was a chief, headman or chief's deputy appointed under the Black Administration Act, 1927 (Act No 38 of 1927) shall be deemed to have been appointed under this Act as an *inkosi*, *isiphakanyiswa* or *isekela lenkosi* respectively;
- (b) a regulation, rule or order issued, made or given under any such laws shall, in the area in which it was in force immediately prior to the commencement of this Act and so far as it is not inconsistent with the provisions thereof, continue in force until repealed under this Act by the proper authority;
- (c) anything done or deemed to have been done under any provision of any such laws shall be deemed to have been done under the corresponding provision of this Act.

38. Short title and commencement.—(1) This Act shall be called the KwaZulu Amakhosi and Isiphakanyiswa Act, 1990 and shall come into operation on a date fixed by the Minister by a notice in the *Official Gazette*.

(2) Different dates, which may be retrospective may so be fixed in respect of different provisions of this Act.

FIRST SCHEDULE

OFFENCES WHICH MAY NOT BE TRIED BY AN INKOSI OR ISIPHAKANYISWA UNDER SECTION 17 (1):

Treason

Crimen laesae majestatis

Public violence

Sedition

Murder

Culpable homicide

Rape

Robbery

Assault with intent to do grievous bodily harm

Assault with intent to commit murder, rape or robbery

Indecent assault

Arson

Bigamy

Crimen injuria

Abortion

Abduction

Offences under any law relating to stock theft

Sodomy

Bestiality

Bribery

Breaking or entering any premises with intent to commit an offence either at common law or in contravention of any statute.

Receiving any stolen property knowing that it has been stolen.

Fraud

Forgery or Uttering a forged document knowing it to be forged.

Any offence under any law relating to illicit possession of or dealing in precious metals or precious stones

Any offence relating to the coinage

Perjury

Pretended witchcraft

Faction fighting

Incest

Man stealing

Extortion

Defeating or obstructing the ends of justice

Any conspiracy, incitement or attempt to commit any of the above offences

[First schedule amended by Act 19 of 1993.]

SECOND SCHEDULE

LAWS REPEALED

<i>Number and Year</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Act No 38 of 1927	Black Administration Act, 1927	Sections 1, 2, 3, 4, 5
Act No 68 of 1951	Black Authorities Act, 1951	The whole
Act No 8 of 1974	KwaZulu Chiefs and Headmen's Act, 1974	The whole
Act No 16 of 1985	KwaZulu Act on the Code of Zulu Law, 1985	Sections 2, 3, 4, 5, 6, 8, 12, 13
Act No 22 of 1987	KwaZulu Chiefs and Headmen Amendment Act, 1987	The whole
Act No 11 of 1988	KwaZulu Act on Appeals from Courts of Amakhosi and Headmen 1988	The whole
Act No 24 of 1989	KwaZulu Amakhosi and Headmen Amendment Act, 1989	The whole
