

University of the Free State

**The Role of Traditional Leadership in  
Democratic Governance**

by

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## Abstract

**'Post-apartheid South Africa provides an intriguing case study for looking at changing position of chieftaincy, culture and custom. Not only is there the starkness of the contrast between the abhorrence of legislation based on cultural difference in the past and its enthusiastic embracement in the post apartheid era'  
(Oomen 2005:235)**

One of the challenges of the post-apartheid South African democracy is the incorporation of an old age institution of traditional leadership into democracy that seems to be in contrast to its principles. From the dawn of democracy, South Africa has been carrying this unresolved burden of ensuring that the institution of traditional leadership being part of new political dispensation. However, those against traditional leadership having a role to play in democracy have cited several concerns which are valid to an extent. These include the institution being aristocratic and chauvinistic in its treatment of women. In addition, they highlights that unlike in democracy, the ascendancy into its leadership is being flawed with discrepancies. Yet, the institution is in the heart of many who value culture and tradition. in the process, it carries an appetizing constituency for the political parties who intend to win its favour towards votes.

The post-apartheid era, therefore, has been attempting to incorporate such an institution. One of the justifications has been, democracy has to find a way of making a compromise not to undermine nor alienate an institution that has a pre-colonial history, survived the onslaught of colonialism and apartheid, which people still embrace it. In the process, legislations have been passed including adopting a legal pluralist constitution. Yet, despite all the implemented legislations, traditional leadership has remained an impasse mainly because none clearly define an active and tangible role that traditional leadership has on democracy. This has brought confusion and doubt as to whether traditional leadership indeed can participate in democracy. In the light of such quandary, studies have been made in an attempt to resolve the role of traditional leadership in democracy. Despite numerous recommendations towards incorporating traditional leadership in democracy, the government has been cautiously and at times reluctantly taking such suggestions. The main reason being that South African Constitution has heaped praises as being the most progressive.

Any amendments, therefore, are frowned at as posing a threat to the image created. Even then, there is no denying of the power that traditional leaders have to a formidable part of South African society.

Therefore, it is important to find a way of ensuring that democracy does not exclude these communities. Moreover, in the light of service delivery, development and good governance, traditional leadership has to be equipped to ensure that it doesn't contravene nor hinder the benefits of democratic dispensation.

Therefore, the study intends to address the crucial concerns while forging a direction of truly identifying the role of traditional leadership in democracy. The reservations of the pure democracy advocates are objectively assessed and addressed. On the other side, traditional leadership is being analyzed to identify if there is a breakthrough towards having a clear role in democracy.

### **Dedication**

To my late father, Joseph Ncube, who passed on during the later stage of this study, though death denied a chance to witness this, however, it is dedicated to you Mzilankatha. May your soul rest in peace.

**DECLARATION**

I, Bhekithemba Derrick Ncube, declare that the Master's Degree research dissertation or interrelated, publishable manuscript/published articles, or coursework Master's Degree mini-dissertation that I herewith submit for the Master's Degree qualification Governance and Political Transformation at the University of the Free State is my independence work, and that I have not previously submitted it for a qualification at another institution of higher education.



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Signed

23 November 2017

Date

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## **CHAPTER 1: Overview of the study**

### **Introduction**

In the new political order of South Africa, there is 'a strong continuity of (traditional) authority running from pre-colonial times, through the years of imperial rule, right to the modern era' (Thomson 2000:85). However, the inclusion of traditional leadership has posed a challenge in the democratic South Africa. Among the debates raised by scholars and politicians is the peculiar and contrary that traditional leadership to democracy as 'the core of the debate is the compatibility of traditional leadership with democracy and human right' (Sithole 2009:41). The study will look at this assertion in a bid to assess the role of traditional leadership in democratic governance.

This chapter aims to introduce the study about the role of traditional leadership in democratic governance in South Africa, through the rationale, clearly defining the aim and objectives as well drawing the roadmap towards achieving the answers to the research question.

### **1.2. Background to the Study**

In many parts of the world, especially in post-colonial states, customary forms of governance remain salient, deeply rooted in local institutions. However, such institutions are immutable and over many decades have been in continued interaction with the colonial powers. This included Western states in a range of ways, and to varying effects. It is increasingly recognised that institutional multiplicity and competing claims to social and political legitimacy need to be taken seriously within the hybrid legal system. When the South Africa's Interim Constitution of 1993, introduced a new political order which came into being following the country's first non-racial elections in April 1994' (Spitz and Chaskalson 2000:2), the country had to accommodate indigenous institutions in its new political order as it made its transition.

Development is predicated on 'inclusive political settlements and encompasses a variety of elite interests that in turn are in tune with the needs and aspirations of significant popular constituencies' (Vorster, Van Der Walt & Whelpton 2003). In South Africa's transitional political context and under conditions of considerable fragility, coalitions of traditional and other leaders became a key factor in determining how indigenous institutions evolved and were articulated within the plural institutional landscape.

Traditional leadership has been a feature of African tribes in South Africa for centuries. In the recent past, it has existed side-by-side with colonialism and apartheid. From 1994 to date, traditional leadership exists next to democracy. While South Africans are divided in so far as the necessity of its continued existence, traditional leadership enjoys acceptance and loyalty from sizeable sections of South African society. This has prompted the government though initially 'ambivalent about traditional leadership, it has grown to embrace the idea of integration of traditional leadership into the constitutional system' (Sithole 2009:41). The institution of traditional leadership represents an early form of societal organisation. It embodies the protection of culture, traditions, customs and values. During the pre-colonial era, the institution of traditional leadership was a political and administrative centre of governance for traditional rural communities in South Africa.

### **1.3. Rationale of the study**

The institution of traditional leadership was the form of government with the highest authority. This is because it was the only authority with deep-seated cultural and heritage components. The leadership control of traditional leaders changed when the colonial authority and rulers introduced their authority on the landscape of traditional governance. Traditional leadership, to an extent, was used by both colonial and apartheid rule to reinforce its control and domination of the indigenous people. This study is important in as far as it will help clarify the role of traditional leadership in light

of the fact that South Africa is a constitutional democracy. The first decade of freedom created the opportunity for the recognition and restoration of the dignity of traditional leaders; it also gave meaning to the fact that they are leaders by birth. It is asserted that there are 'about 10000 traditional chieftains in South Africa who exercise a substantial influence and material patronage over communal tribal land' (Venter 1998:9) As part of restoring the dignity lost during colonialism and apartheid, the institution of traditional leadership and the role of traditional leaders are recognised in Chapter 12 of the Constitution (RSA 1996).

The Republic of South Africa adopted a constitution that elevated democracy and human rights. The principle of respect for the rule of law underpins our constitutional democracy. Most of the laws that emanate from the South African Constitution are in conflict with the influence of traditional leadership and seem to overlook the role of traditional leadership. Moreover, there is a clash between the seriousness attached to cases tried by traditional leaders, compared to cases tried in regular courts.

#### **1.4. Problem statement**

In the past 20 years of democratic power, the role and political significance of traditional leaders in South Africa has risen considerably. Sithole argues that 'current policies seem to indicate that government is seriously considering an integration of traditional leadership within the South African system of governance' (Sithole 2009:50). While the Constitutional Court has sought to deal with Customary Law in a flexible, philosophical and creative fashion, lower courts have tended to apply this law in the correct fashion, often out of step with the Bill of Rights and constitutional rights of communities. Therefore, the incorporation of traditional leadership in South Africa seems to pose a challenge to the principles of democracy.

The study will focus on KwaZulu-Natal, where one of the recognised institutions of traditional leadership is found in King Goodwill Zwelithini. Three municipalities will be studied where stark differences are evident, showing the influence of traditional leadership in the light of the emerging democracy. The context will provide the necessary impetus to assess how the communities are responding to traditional authority and leadership, while also showing those outside the influence of traditional leadership, thereby addressing the role of traditional leadership. These municipalities are:

- UMkhanyakude Municipality, which is strongly rural, with a very strong traditional leadership influence.
- Mhlathuze Municipality, which has a balanced share of traditional leadership and municipality-controlled areas.
- ILembe Municipality, where the role of traditional leadership has dwindled drastically.

One cannot ignore the role party politics plays in service delivery, the creation of jobs, and the provision of water, sanitation and electricity. For political organisations to secure constituencies 'accountability and representation are far more important than the simple mechanism of holding elections' (Thomson 2000:223). Yet, for the purposes of this study, such amenities will be examined in terms of the roles of traditional leadership in influencing people's living conditions, either positively or negatively.

Just as it cannot be denied that traditional leadership was used by both the colonial and apartheid powers to exert their influence of oppression, equally so the respect of this institution was damaged and 'is seen as a form of governance that has pre-colonial roots but which has been tampered with by colonialism' (Sithole 2009:41). In the post-apartheid era, is it possible to redeem the image and power that traditional leadership once enjoyed? How will it rebuild the morale of the communities that once viewed it as a collaborator with the oppressors? In the light of a democratic state, is traditional

leadership still relevant and, if so, how will it balance itself with the dynamics of a democratic state.

### *Problem Statement*

In the light of the above analogy, the problem statement for this study is; what is the role of traditional leadership? All deliberations will revolve around this problem statement as the study look at the history of traditional leadership, debates about its role in democracy as well as providing the direction based on findings towards defining the role of traditional leadership in democracy.

### **1.5. Aim and objectives**

The aim of this study is to determine the role of traditional leadership in the context of South Africa being a democratic state. The following objectives underpin this study:

To explore the legal framework that pertains to traditional leadership;

To examine the perceptions of community members on the usefulness of traditional leadership; and

To inquire into the strategies that could be used to make traditional leadership more effective in its legally allocated role.

### **1.6. Methodology**

The researcher must decide on the research methodology to be selected for the particular study. Methodology is the systematic, theoretical analysis of the methods applied in the field of study. It comprises the theoretical analysis of the body of methods and principles associated with the branch of knowledge. Typically, it encompasses concepts such as paradigm, theoretical model, phases, and quantitative or qualitative techniques. A methodology does not set out to provide solutions; it is not the same as method.

Such processes constitute a constructive generic framework and may therefore be broken down into sub-processes, or their sequence changed. A paradigm is similar to methodology in that it is also a constructive framework. In theoretical work, the development of paradigm satisfies most or all of the criteria for methodology.

#### 1.6.1. Mixed method approach

This study will follow the mixed method approach. According to Creswell (2008:10), 'mixed method is both the method and methodology for conducting research that involves collecting, analyzing and integrating quantitative and qualitative research in a single study or longitudinal program of enquiry'. In this particular study, this approach will give the researcher both the statistics and analysis that the research aims to achieve. Mixed-method design is ideal for this study because 'it is unusual for qualitative researchers to report participants perceptions of, or emotional reactions to, various experimental treatments' Ormrod and Leedy 2005:97). Therefore, even though qualitative method may seem ideal, it tends to bring about assumptions alongside when conducting research with participants.

The study will need to gather the statistics of those for and against traditional leadership. However, it will also provide the analytical perspective of the challenges encountered by defining the role of traditional leadership in a democracy. Therefore, the mixed method approach will be the manner in which this research will be conducted, based on providing both statistics and analysis.

In the conventional view of statisticians, qualitative methods produce information only on the particular cases studied (e.g. ethnography studies paid for by government funds, which involve research teams), and any more general conclusions are considered propositions (informed assertions). Quantitative methods can then be used to seek

empirical support for such research hypotheses and 'seek explanations and predictions that will generalize to other persons and places' (Leedy Ormrod 2005:95). In contrast, a qualitative researcher holds that understanding comes from exploring the totality of the situation (e.g. phenomenology), often has access to large reams of hard data, and begins with propositions proceeding in a scientific and empirical way throughout the research process. It is for this reason that 'qualitative research is found in many academic disciplines, including anthropology, sociology, psychology, biology, history, education and medicine' (Leedy and Ormrod 2014:141). Such factors are of great considerations in approaching this particular study.

This study will employ both qualitative and quantitative research approaches. Critical in-depth research on documented information will be done to determine what scholars have identified as the role of traditional leadership in democratic governance. The findings and controversies uncovered will then direct the study to the field where the community and personnel will be observed, interviewed and analysed to quantify all the information gathered from the texts. Subsequently, the data collected from such quantitative research will be analysed in the light of the background, context and underlying factors that inform it. In brief, the mixed method approach will be applied.

The mixed method involves 'philosophical assumptions, the use of qualitative and quantitative approaches and the mixing of both approaches in a study' (Creswell 2013:4). Based on this, a thorough study will be conducted on the three municipalities to determine why they fair differently, in terms of different scales, in light of the presence of traditional leadership; thus, such information will prove directional in the field.

#### 1.6.2. Research design

The researcher has to have a research design, which simply put is planning since it entails the 'overall structure for the procedures the researcher follows' (Leedy & Ormrod

2005:85). Research designs are 'plans and procedures for research that span the decisions from broad assumptions to detailed methods of data collection and analysis' (Creswell 2009:3). From this we gather that research design entails clearly defining the research study, but most of all the procedure of conducting it. The research, methodology and literature review has been explained above. Now, the process will be outlined.

The research will specifically look at traditional leadership roles in three districts, namely, Mhlathuze, ILembe and UMkhanyakude. This will include defining traditional leadership during the pre-colonial era, during colonialism and apartheid, and in the post-1994 era. This will be encompassed by, and aligned with, the study's aim and objectives, consulting the literature available to highlight the reasoning in favour and against traditional leadership in a democracy. The following aspect of the procedure will include site visits/fieldwork in the communities where this study is located. The aim will be to gather the communities' insights and views regarding the role of traditional leadership in a democracy. In order to do this, a series of well-structured interviews will be conducted with these communities with the aim of collecting data to address the research question, problem statement and research topic, and provide relevance to the study.

### 1.6.3. Data Collection and Fieldwork

As mentioned above, interviews will be conducted. The interview questionnaire will offer critical views and answers that will provide the researcher with ample data to analyse and assess the role of traditional leadership in a democracy, with specific focus on the three districts. Quantitative approach 'is a means of testing objective theories by examining the relationship among variables' (Creswell 2009:4). This means that the interviewer, beyond the formalised scripts of interviews, must also consider the social context of the interviewees to ensure maximum eliciting of information and objective analysis of the data collected. This implies that the interviews and the analysis of the socio-political and economic context have to be intertwined in the manner of conducting the interviews and the subsequent data analysis. The data will be documented by

utilising a recorder, photographs and on answer sheets to ensure that maximum information is collected and properly documented to assist in the data analysis, critique and evaluation.

Participants are crucial for the research because it is through them that the researcher gathers data. Though the process of participants' selection can be tricky, however basics of a good sample entail 'representative in the sense that characteristics of interest in the population can be estimated from the sample with a known degree of accuracy' (Lohr 2010:2). Thus, the researcher will ensure that data is collected from the relevant people or sources towards achieving the aim of the study. For the purpose of this study, ethnography will be used during data collection. The researcher chose ethnography because it is the only research design that allows for immersion into the natural setting of those being studied. The word ethnography means a people or nation and the term 'graphy' mean field of study. Ethnography is the systematic study of people and cultures. In doing this, the issue of validity and reliability will be addressed, as required by the research process.

#### 1.6.4. Sampling

Sampling involves the selection of a number of study units from a defined study population. When drawing a sample, a researcher first needs to 'decide which population s/he intends to study' (Leedy & Ormrod 2009:145). This depends on the research objectives and questions. Sampling strategies need to be defined as one can rarely cover every person in the selected population. In qualitative studies, researchers aim to identify information-rich cases or informants. Information-rich cases are those from which 'one can learn about issues of central importance to the purpose of the research, so the term purposeful sampling is used when such people are selected' (De Vos 2003:334). For example, when understanding is needed of how infertile women cope, in-depth interviews should be conducted with women who experience infertility. Probability sampling typically depends on a larger population. The purpose of such sampling methods is not to gain in-depth understanding of an issue, but to be able to

generalise findings. Such sampling can be stratified to ensure that all groups of interest are included.

In light of this, this study will sample the communities under traditional leadership for observation and interviews. Therefore, this study will mainly employ the purposive sampling method because it is about using the sample that specifically suits the study's aim and objectives. This is because site selection and sampling criterion is related to and 'appropriate for the research problem and design' (MacMillan & Schumacher 2006:327). In addition, the research objectives provide the researcher with criteria to select study sites. A sample thus 'comprises the element of the population considered for actual inclusion in the study' (Strydom & Venter 2002:199).

### **1.7. Literature Review**

A crucial aspect of any research study is literature, which has been researched, analysed and documented by other researchers. The purpose of a literature review is to 'look again (re+view) at what others have done in areas that are similar, though not necessarily identical to, one's own area of investigation' (Leedy & Ormrod 2005:64). The researcher therefore interacts, compares, analyses, uses and challenges such literature towards the attainment of the aim and goals of the research study. The literature can be in the form of 'books, journals, newspapers, government publications, conference presentations, and Web sites' (Leedy & Ormrod 2005:65).

### **1.8. Literature**

This study examines traditional leadership in a democracy. Therefore, it will begin with defining and clarifying crucial terms associated with traditional leadership and democracy. Some people support the incorporation of traditional leadership in a democracy, highlighting the importance of this form of administration. Others, however, disagree, highlighting the contradiction raised by incorporating traditional leadership in a

democracy. The literature therefore will balance both views. Among the literature whose stance is against traditional leadership's incorporation in a democracy, we can count Govan Mbeki's *South Africa: The Peasant Revolt*, Ntsebeza's *Democracy Compromised* and Mokgoro's journal article, *Traditional Authority and Democracy in the Interim South African Constitution*. This study will critically engage such literature against literature that is pro-incorporation of traditional leadership in a democracy. This includes Barbara Oomen's *Chiefs in South Africa*, Motshekga's *Traditional and Local Governance in a Democratic South Africa – A Non-Governmental Perspective*, Mathibela's journal article, *A Sociological Study Investigating The Interface Between The Governance of Democracy and Traditional Leadership in Rural Development*, and others.

The study will further employ sources of literature that seek to offer compromise and direction towards clearing the impasse. Among the books to provide this perspective will be *Introduction to Legal Pluralism* by Rautenbach, Bekker and Goolam (2010), which explains how the legal pluralist constitution works. Other literature that brings more clarity to the issue will also be used.

#### 1.8.1. Reliability and Validity

Among the challenges facing researchers is the reliability and validity of the sources of literature. Literature, especially media sources, could be biased due to political meddling in a democratic environment. Consequently, the researcher is faced with the challenge of identifying the authenticity and objectivity of each piece of literature that they come across in conducting the research. In this regard, Creswell (2013:190) argues that 'the researcher checks for the accuracy... by employing certain procedures'. In addition, the researcher must avoid adopting a certain political stance during the study. In similar vein, preconceived ideas should not prevent the researcher from accessing new insights on the research. The researcher should work tirelessly to interview people most relevant to the study, rather than accepting those who are easily available, yet have nothing tangible to contribute to the study. If the researcher masters this and avoids the

influence of those funding the research, the investigation and findings should be balanced and unbiased.

Since the study is to employ a mixed method approach, it is crucial to assess all the data collected for validity, as required with the qualitative approach. In doing so, the researcher will use the guidelines outlined by Creswell (2013:191), which entails 'triangulating, member checking, rich and thick description, clarifying bias, peer debriefing, etc.'. In addition, the literature will be viewed critically and objectively using the evidence to examine the role of traditional leadership in a democracy.

### **1.9. Timeframe**

The anticipated time to be spent on this study is six weeks. Data collection is planned to last three weeks.

### **1.10. Chapter division**

Chapter one provides a background to the study. The rationale that forms the basis for this study is outlined. Chapter one further discusses the problem statement, as well as outlines the sub-questions. The research aim and objectives are tabled and stated in Chapter one. This chapter also discusses the literature review. In addition, the research method and design to be used in this study is discussed in Chapter one; as are the sampling, data analysis, ethical issues and limitations.

Chapter two consists of the conceptual framework. The framework will outline traditional leadership, providing a definition thereof, and the concepts will be explained as they apply to this study. Traditional leadership will be studied as it applies worldwide, as well as how it applies to South Africa.

Chapter three provides a theoretical perspective for the study. This chapter will examine democracy and traditional leadership and human rights. Furthermore, it will discuss customary law versus common law, as well as the Bill of Rights, in the light of traditional leadership.

Chapter four focuses on data collection and its different aspects, as well as the processes, which include designing questionnaires, interviews, site selection, variables and documentation of the collected data.

Chapter five consists of the restatement of the research objectives. Data analysis will also be tabled in this chapter. Thereafter, the statement and interpretation of the results will be provided, which will be followed by the research conclusions and recommendations. The researcher will also offer prospects for future research. Ultimately, the chapter will provide a summary of the entire study.

### **1.11. Conclusion**

Traditional leadership has its own significance, as it is part of the lives of millions of South Africans. It is seen by many as the symbolic stature of the traditions, culture and history of indigenous South Africans. While the legal system and indigenous law seem to repel each other, traditional leadership, as the custodians of indigenous law, cannot be denied as it has a role to play in the South African governance sphere. Therefore, more needs to be done by all spheres of government to find ways of working closely with traditional leadership, in an amicable and respectful way.

## **CHAPTER 2: Historical and Cultural Perspective**

### **2.1. Introduction**

The previous chapter mainly outlined the research topic, rationale, problem statement and research aims. Consequently, this chapter will advance from there to attain the research aim. It will look at the features that are crucial for this study. As part of Chapter two, key concepts associated with the study will be defined to bring an understanding of the language related to the study. The chapter will also look at other variables, such as the historical and cultural background. It is important to examine these aspects to understand how they are instrumental in the impasse that traditional leadership finds itself in, in the democratic era. Several pieces of legislation have been passed, each influencing the role of traditional leadership in a democracy. The chapter will also delve into the legislative framework surrounding traditional leadership as a way of locating the core of the current situation.

#### **2.2.1 Traditional leadership**

Reddy and Mkaza (2007:1) argue that traditional leadership is 'an integral part of African society and is the oldest institutions of governance on the continent'. However, it cannot be denied that traditional leadership also existed and still exists worldwide, perhaps under different terminology. The ascendance into leadership varies from being hereditary, appointed by the colonial and apartheid regime (in the South African context), and *inkosi* choosing his or her successor, since if the *inkosi* is about to die, he or she can choose a successor and 'the wish of a deceased is not opposed' (Rautenbach et al. 2010:152). Traditional leadership is one of the 'oldest institutions of government, both in Africa and the rest of the world' (DPLG 2000:4). For the purpose of this study, traditional leadership in the South African context will be examined in depth,

since 'Section 211 of the Constitution recognises the concept of traditional authorities' (Venter 1998:207).

### **2.2.2. Traditionalism**

Traditionalism means 'handing down ideas, beliefs, faith etc to the next generation and when this process continues generation to generation that forms the core of traditionalism' (Nitisha 2017). It is important to consider how such a strong belief could have been resisted, threatened and dismantled by both the colonial and apartheid rule in South Africa prior to being resurrected, albeit in a compromised fashion, in the new democratic dispensation.

### **2.2.3. *Inkosi* and *izinduna***

Traditional leadership has the *inkosi* as the custodian of all authority. In countries like Botswana the *inkosi* is referred to as *kgosi*. The ascendance to kingship has 'mainly been hereditary' (Ntsebeza 2007:57). However, in South Africa, during colonial rule and the apartheid era changes were made to the system and the government was able to appoint *amakhosi* in accordance with its desired missions. Even though in traditional leadership the ultimate power is vested in an *inkosi*; however, as a way of assisting in governance, the *inkosi* will appoint a formidable team to support him or her. This team is called the Council. The Council will advise *inkosi* on various issues, including the election by members of the community of *izinduna*, who will sub-govern areas under the *inkosi's* jurisdiction. *Izinduna* are tasked with implementing the jurisdiction of the *inkosi* in different areas under his or her jurisdiction. Thus, they are the eyes of the chief.

### **2.2.4. Democracy**

According to The Oxford Concise Dictionary (2015), democracy is 'a form of government in which the people have the voice in the exercise of power, typically through elected representatives'. The crucial component of democracy is 'the right to

choose one's leaders' (Ntsebeza 2005:35). This form of rule is in contrast with the principles of traditional leadership in the sense that traditional leadership is hereditary. Traditional leaders during colonial times and in apartheid South Africa were imposed on the people by the government; in some instances, *amakhosi* were able to appoint their successors.

This, in itself, contains a bone of contention. Keulder (1998:3) argues that 'politics is at the heart of the struggle between the civics (where democratic governance flourishes) and the traditional leaders'. This means that the succession to leadership, using democratic methods, contradicts the manner in which it is done in traditional leadership. The emergence of democracy posed a challenge regarding leadership appointment and selection. Sithole (2009:47) argues that 'many African countries have dealt with the question of integrating traditional leaders in post-liberation governance systems' into a democracy. According to Oomen (2005:31), in ensuring 'good governance in Africa, three 'D's'- democratisation, decentralisation and development' - were crucial in the post-colonial era'.

#### **2.2.5. *Isigcawu***

*Isigcawu* is an IsiZulu term meaning 'assembly'. This is where matters are discussed that pertains to the challenges and issues relating to the administration of the areas under traditional leadership. It is the equivalent of Botswana's 'kgotla'.

#### **2.2.6. Municipality**

The municipal sphere is a sphere of government tasked with administration on a lower level of governance. It is directly involved with communities, and administers communities directly. The South African Constitution Section 151 Chapter 7 stipulates that 'the local sphere of government consist of municipalities' (Venter 1998:202), and municipalities have 'the right to govern on its own initiative the local government affairs

of its communities' (Venter 1998:202). This is relevant because it forms the basis of the study, since municipalities are meant to play the role previously played by traditional leadership.

## **2.3. Historical Background**

### **2.3.1. Traditional Leadership – Global History**

In his book, *Chiefdoms: Power, Economy and Ideology*, historian Timothy Earle traces the history of traditional leadership in the Neolithic period, which is also referred to as the New Stone Age. According to Earle (1991:6), the period necessitated strong control mechanisms. This was necessary as there was ownership of animals, which was a change from hunting, and the economic trade. The need to control resources led to the emergence of chiefdoms all over the world under the *amakhosi*, who became the administrators of the tribes. According to Earle (1991:6), the phenomenon was visible in African countries, such as the African Saenz chiefs. It is notable to mention that traditional leadership was passed down from family to family; thus, royalty emerged or the family was entrusted with administrative duties within a given jurisdiction.

It emerged that *amakhosi* could not have jurisdiction, in an effective manner, without the assistance of other leaders, thereby emerged the *izinduna* in an African context. Each tribe developed their own traditions and norms, all aimed at ensuring that the administration of the emerging tribes was properly conducted. In Africa, the Bokgosi of Botswana, the Zulu Kingdom and many other kingdoms are evidence of how each tribe had its own traditions and culture, with traditional leadership being the custodian of such cultures and traditions. This trend was entrenched in the people's minds, and the role of traditional leadership was clearly defined. To this day, traditional leadership still exists in many countries, despite its evolution and the changes that have occurred over time.

### 2.3.2. Traditional Leadership - Colonialism and Apartheid

The colonisation of South Africa began when 'Jan van Riebeeck arrived at the Cape of Good Hope on the afternoon of 5 April 1652' (Marais 1989:17). According to Marais (1989:17), the plan was not the conquest, but the setting up of 'a victualling station for the trading fleet of the VOC (Dutch East India Company) halfway between the Netherlands and the East Indies'.

Prior to colonialism, traditional leadership enjoyed not only jurisdiction, but also 'oversaw planting, harvesting, trade, community affairs, and the allocation of land as well as brides wealth to males in their domain' (Waetjen 2004:37). As noted by Waetjen (2004:39), concerning Zulu *amakhosi*, 'homesteads worked to provide not only subsistence for themselves and surplus for the chiefs but to support the Zulu royal house and its armies'. However, dramatic changes occurred in regard to the role and influence of traditional leadership during the colonial period. Apart from the colonial powers grabbing their land, which previously was appropriated by the traditional leadership, the indigenous kingdoms resisted the threat to their supreme jurisdiction. In South Africa, such kingdoms found themselves as subordinates of the colonial rule. Consequently, the power dimensions shifted as the colonial powers exacted their power.

The discovery of diamonds and gold necessitated major control mechanisms and the need for labour to work in mines caused a tremendous shift in the lives of those people under traditional leadership. Many people flocked to the urban areas to work. Land, which was the prerogative of traditional leadership, not only was expropriated by the colonisers, this issue also threatened the power and dignity that traditional leadership had enjoyed since time immemorial. Waetjen (2004:42) argues that 'class rifts between chiefdoms and homesteads dramatically widened, and men who lived far from urban areas became impoverished as taxes and inflation rose'. Colonial rule resulted in people

selling their cattle, as cattle ownership was taxed heavily. Moving to urban areas became commonplace and appealing to people, and, in a way, life under the *amakhosi* was undermined.

The Bhambatha Rebellion of 1906 was the revolt that resulted from the traditional leaders taking a stand against heavily taxation and British rule. Inkosi Albert Luthuli '(was) deposed by the Apartheid government for refusing to resign from the African National Congress (ANC) and to refrain from participation in the defiance campaigns of the early 1950s' (Motshekga 2007:189). In *Workers and Warriors* (2004), it is said that '(direct rule) required the appropriation of land from indigenous peasants, the destruction of their communal autonomy, and their integration into the institutional context of semiservile and semi capitalist agrarian relationships' (Waetjen 2004:33). The colonial power's direct rule was problematic and ineffective. The situation compelled 'the British to seek the intervention of traditional leaders to attain its mission' (Waetjen 2004:33).

Therefore, the traditional leadership found themselves being used to further the goals of the colonisers because to directly rule the colonies was not an easy feat and the colonialists required the services of the traditional leadership to succeed in their goals. 'This was part of the colonial strategy of governing with few resources an indigenous population that have been defeated militarily' (Goodenough 2002:9). Several *amakhosi* attempted to resist colonial rule and to cling to power. This is explained by Crais (2003:27) when he writes about the murder of Hamilton Hope in 1880. Hope was murdered and his blood used for *muti* to strengthen the chief warriors, while the chief went to sit in his magistrate chair. This symbolises that the chiefs viewed themselves as the custodians of authority, despite being robbed of their power. In a nutshell, 'as a strategy, colonial powers removed and exiled those traditional leaders who opposed white supremacy' (Koenane 2017:170).

The traditional leadership who revolted against being 'used' met with vicious suppression and stood to lose their *ubukhosi*. Goodenough concurs with this when he says, 'The colonial administration arbitrarily replaced hereditary *amakhosi* who did not act in ways approved of by the colonialists' (2002:9). Thus, the traditional leaders found themselves between a rock and a hard place as they were losing their traditional grip of power and were becoming a tool used by the colonial British Empire.

Shortly after the formation of the Union of South Africa in 1910, it became evident that the colonial powers did not recognise the natives since they were excluded from parliament. In fact, the alienation of Blacks had started as early as the British conquest and 'the British even established separate legal and educational systems, separate health care institutions, as well as separate occupational areas for different races' (Marais 1989:108). Despite the pressure exerted by colonial rule, the *amakhosi* continued to hold onto the domination of their people. It is no surprise that in 1912 the South African National Native Congress was formed, which later became known as the African National Congress (ANC). This saw the traditional leadership working with the African exempted elite to defend the power of indigenous Africans, and to attempt to cling to their power. Mathibela (2004:27) states, 'When the ANC was formed, traditional authorities opposed to the 1910 Union of South Africa were amongst its founding members'. *Inkosi* Albert Luthuli represented the continued resistance to political dynamics, which continued to rob the powers of traditional leaders, as was seen with him urging them to boycott the Zulu Territorial Authority (Waetjen 2004:21).

In 1948, the National Party won the elections in South Africa and it 'introduced what it called separate development' (Shembe 2014:9). Many laws were passed, including the banning of resistance political parties like the South African Communist Party, the ANC, and others. Separate development was introduced through the Bantu Authorities Act of 1951. The Bantu Authorities Act 'provided for the establishment of tribal and territorial authorities which became the basis of separate development of African People'

(Motshekga 2007:189). The Bantustans, also known as Bantu Homelands, were semi-independent states created to control the indigenous people through self-governing.

Traditional leadership was thrown a lifeline in reinstating its control of its people with the Bantustans, even though eventually they had to do it within the confines and in accordance with the government. Many chiefs favoured Bantustans since 'chieftaincy could be considered the cornerstone of rule in these Bantustans' (Oomen 2005:41). Bantu Homelands, in a way, gave *amakhosi* back their authority, dignity and influence. In addition to being given jurisdiction to enact their rule in the Bantustans, 'traditional authorities appointed and paid by the government were also given all the necessary legal, administrative, financial and military support to act as autocrats within their own jurisdiction, though within the confines of the state bureaucracy, on the one hand, and of what was acceptable to their subjects, on the other' (Oomen 2005:41). Thus, the role of traditional leadership was redefined based on the goals of the government.

Just as exiled resistance organisations did not approve of Bantustans, some traditional leaders also saw it as not in line with the total liberation of the oppressed masses in South Africa. Notably was KwaZulu Inkosi Mangosuthu Buthelezi 'who was opposed to independence for the KwaZulu Bantustan in the 1980s' (Oomen 2005:46). Though he was working within the Bantustans confines, Buthelezi, in a turnaround, established the Inkatha political party in an attempt to replace the ANC. He viewed the void created by the absence of the ANC and his influence among the people of KwaZulu-Natal as an opportunity to rally support. While it is debatable whether Buthelezi served as a political activist or a power-seeking individual in the absence of the ANC and other exiled resistance organisations; however, through Inkatha, he positioned himself as a traditional leader who was also a freedom fighter.

### 2.3.3. Traditional Leadership – Democratic Dispensation

In the late 1980s, the apartheid regime of the National Party faced a major onslaught caused by the armed struggle, international pressure, urban unrest and sanctions. Finally, it succumbed, and there was the ushering-in of a new political dispensation. Banned organisations were unbanned, long-serving political prisoners were released, and as Venter (1998:3) states, 'Nelson Mandela was finally sworn in as South Africa's first democratically elected black President on 10 May 1994'. Negotiations commenced towards democratic rule and the first democratic elections.

The prospects of democracy, though progressive, posed a new challenge for the traditional leadership. Democracy is based on party politics and an elected government. Its principles are contradictory to traditional leaders and it seemed that it was not going to restore the authority previously enjoyed by traditional leadership prior to colonialism. The onus was upon the traditional leadership to negotiate their role in the emerging democracy.

It can be said that democratic governance is at loggerheads with the system of traditional leadership. Goodenough (2002:29) says that legislation and policy on the functions and roles of traditional authorities reflect political tension on what the 'appropriate role is for an institution that appears to contradict democratic principles'. This analysis precisely sum up the crisis that the traditional leadership found itself in with the advent of democracy.

However, the challenge was not only of traditional leadership, it also applied to the new government after 1994. The government, understanding traditional leaders as being the custodians of culture, traditions, norms and values, found itself in an equal predicament of incorporating them into the democratic government. Since previous governments had

failed to address the issue in a satisfactory and sensitive manner, the ANC government had to tread carefully, considering that people in the rural areas were under traditional leadership and were part and parcel of the electoral constituencies.

The ANC government was well aware of the contradictions posed by autocratic traditional leadership versus the democratic government. An ANC stalwart, Govan Mbeki, was firm in his opposition of incorporating traditional leadership in democratic governance. In his book, *The Peasant's Revolt*, Mbeki (1964:47) argued, 'If Africans have had chiefs, and it was because all human societies have had them at one stage or another. But when people have developed to a stage which discards chieftaincy', it was 'not liberation but enslavement'. Such sentiments laid the foundation against traditional leadership within the ANC. 'There were those, such as Inkosi Luthuli and Nelson Mandela who supported the traditional authorities who were critical of government policies' (Mathibela 2004:27). They saw that traditional leadership had a huge role to play, not only as the custodians of tradition, values, norms and cultures, which the masses closely identified with, but moreover, as an avenue to fight the oppressive regime of colonialism and apartheid.

The debate went on through the era of Bantustans and apartheid into democracy post 1994. In the process, two fronts emerged, namely, the modernists, who advocated for a fully-fledged democracy without traditional leadership, and the traditionalists. Oomen's (2005:107) analysis of the dress code at the opening of parliament with 'MPs and their spouses arrived adorned in meticulously woven Zulu beads, wide Muslim robes, flowing embroidered West African kaftans, Xhosa dresses or Hugo Boss clothes, with leopard pelts around their shoulders or feathered Boer hats shading grey-bearded faces' may have represented a so-called Rainbow Nation, yet on another level it could be seen as the traditionalists and modernists flaunting their opposing stance when it comes to traditional leadership.

The post-apartheid era continues to have the issue of the role of traditional leadership as an unresolved plague. During the presidency of Thabo Mbeki the passing of a law, which would clarify traditional leadership and its role, was delayed; highly likely due to the ongoing disagreement over the issue. Oomen (2005:109) argues that Mbeki 'never once referred to traditional leadership as a constitutive element' despite 'spearheading the African Renaissance'.

Meanwhile, Inkatha Freedom Party (IFP) leader *Inkosi* Buthelezi was strongly advocating for the independence of the Zulu Kingdom. It is asserted that IFP positioned itself as having 'conservative and capitalist-orientated one, with some symbolic Zulu nationalism added, disguised in the form of allegiance to the Zulu monarchy' (Venter 2001:8). The ANC viewed this as a threat. If the Zulu Kingdom was going to break away from South Africa, it was going to set an example for other *ubukhosi* to break away from the country as well.

Nowadays, political parties do their best to win the hearts of traditional leaders as they have realised that they hold the electoral constituency who respect this type of leadership. The strategy towards achieving this has seen political parties trying to align themselves closely to traditional leaders. In KwaZulu-Natal, King Goodwill Zwelithini has been torn between the liaisons of Inkosi Buthelezi and the Provincial Leadership of the ANC, and many attempts have been made to lure him one way or another. Towards the first democratic elections 'the IFP laid down conditions for its participation in a TEC, such as a federal form of government, the seating of the Zulu king in Codesa, and veto over the Codesa process' (Spitz and Chaskalson 2000:25). Such has also become the trend among many local chiefs who have been approached to politically influence their people so as to sway their political allegiances to certain parties, in a bid to win elections. The role of traditional leadership in the actual governance of the country remains vague. This, even after the passing of a bill relating to traditional leadership in 2003.

#### 2.3.4. Traditional Leadership in other African states

As is the case in South Africa, other African states have also experienced their own history of traditional leadership and the challenges it poses in the post-democratic era. Therefore, the South African dilemma is neither peculiar nor distinct.

Prior to colonialism, Botswana, like South Africa, which comprised of Zulus, Xhosa, Sotho and Tswana, was 'divided between the Setswana-speaking tribes – the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa – and the non-Setswana speaking tribes and groups' (Keulder 1998:96). The most important political institution in pre-colonial Botswana was that of kingship (Bokgosi), which is similar to the institution of *ubukhosi* amongst the Nguni people. In many aspects, the pre-colonial era of many African states was similar in the sense that indigenous leaders were in charge of administration, and governance served as the ultimate authority.

The South African context, was not peculiar to those experienced by other African states like Namibia and Zimbabwe where traditional leadership was used by the colonial powers to maintain social and political control over the (African) rural population and to oppose the nationalist movement. In Zimbabwe, the fate that befell South African traditional leadership was also experienced there, whereby 'chiefs and headmen became the government-appointed and salaried officials' (Keulder 1998:154). This did not render them as puppets of the colonial powers, but greatly damaged their reputation as leaders of the people.

In the post-colonial era, African states had diverse experiences regarding traditional leadership. In some states, it was revived, while in others it totally collapsed with the emergence of democracy. Oomen (2005:11) attributes the collapse of traditional

leadership to weakened states, but also acknowledges that 'Zimbabwe, for instance, re-welcomed traditional leaders to Parliament and reinstated the customary courts: Zambia established a House of Chiefs; Uganda officially revived the Buganda Kingdom'. Sharma (2007:78) concurs that 'the traditional institution of chieftainship and related traditional structures were retained in Botswana after independence and the chieftainship law provided a cornerstone for the recognition and functioning of the traditional institution'.

In Zimbabwe, the image of traditional leadership was dented by their assistance of the colonial regime. Consequently, they faced rejection in the post-colonial era. 'They were eliminated not only because of their support for the oppressive administration, but also because the ruling party wanted to maintain as much political and social control as possible over the peasantry, which is the dilemma that the ANC found itself in during the post-apartheid era' (Keulder 1989:182).

## **2.4. Cultural Framework**

Culture is defined as 'values, ideas, beliefs, and attitudes held in common by a population' (Grigsby 2002:56). This definition clearly suggests that people have a sense of belonging to a particular group. If culture is something that makes a population distinct from another, it is crucial to observe how cultural aspects based on tradition are in conflict with democracy. In light of this study, it is important to use culture in evaluating the role of traditional leadership. Since culture is seen as attached to traditional leadership, it will be important to indicate how democratic principles touch the aspects of culture.

### **2.4.1. Women**

In African culture, women are respected and have leadership roles that are not based on Westernised notions of liberty. They participate in the upbringing of children and

make a valuable contribution in the use of land. Motshekga (2007:198) argues that women 'concern themselves with fundamentals such as the basic needs of their children, security of their families and development'. This suggests that culturally, women were always significant in communities. Yet, the principles of democracy and the liberal perspective undermine the cultural nature of African communities and often declare them as oppressive and not in line with democracy. Basing her analysis on Westernised liberal ideas, Mokgoro (1994:7) argues that traditional leadership's 'customary law is biased against women in its regulation of gender power relations' Mokgoro (1994:7-8) demands that 'women must be included in all levels of traditional authority'. Notably in this perspective is the conflict that exists between culture and democratic principles. Traditional leadership, which serves to uphold culture, inevitably find itself incompatible with democracy.

#### 2.4.2. Ceremonies and Rituals

Traditional ceremonies and rituals are an integral part of traditional communities. According to Motshekga (2007:195), 'these rituals and ceremonies inculcated values which ensured environmental protection'. The livelihood of traditional communities relies on these rituals and ceremonies to develop a strong bond of belonging as the community.

However, conflict arises when such rituals and ceremonies are observed by general democratic legislation and liberal principles. Ceremonies and rituals, such as the reed dance, traditional circumcision and the slaughtering of cattle are some examples in this regard. According to Motshekga (2007:199), 'new pieces of legislation on children's rights, virginity testing and suppression of witchcraft, which will be hardly enforceable, will further distract government attention from democracy and development'. Two major points can be identified in this statement. One is that laws will be 'hardly enforceable', which means that they (the laws) will meet resistance from the traditional leadership, which had previously been overseers of such. Secondly, that the legislation of the rituals

and ceremonies has to be done by democratic institutions, and be taken away from the original creators and embracers.

#### 2.4.3. Smaller Grouping

In her book, *Chiefs in South Africa*, Oomen (2005) highlights the reality of the existence of diverse cultures in the South African context. Traditional communities in South Africa are divided into many groups, like the amaXhosa, the amaZulu and Northern Sotho people. This constitutes groups that are not homogenous, having different languages and norms from one another. It is argued that during the colonial and apartheid era, the existence of many divided tribes was instrumental in control exerted by the colonizers as well as during the apartheid era. It is asserted that 'the imperial conquerors, it was critical to destroy the power of the chief and with it, that of the tribe' (Brown, Giyose, Petersen, Thomas and Zinn 2017:82). In the post-1994 era, the democratic government inherited this situation which made it a challenge and created a complex scenario to the democratic process as these tribal authorities had to be bound by one constitution. Therefore, such a collective grouping does not sit well with the traditional leadership and makes democracy face difficulty in its implementation.

#### 2.4.4 Land

One of the responsibilities central on traditional leadership has been the land allocation and administration. It is asserted that, 'historically, the land in South Africa has been occupied by and belonged to African societies, tribally organised and governed by chiefs' (Brown, Giyose, Petersen, Thomas and Zinn 2017:82). Land meant power to the traditional leadership. It should also be noted that people supported the traditional leaders and community rules so as to own piece of land. Ntsebeza argues that even in the post-1994 era 'the functions of land administration and local government in the office of traditional authorities' (Ntsebeza 2005:14).

Since land contributed to the acceptance of traditional leadership, anything that threatened this required a fight. In the new democracy, land allocation was part of the responsibilities of municipalities and, as a result, faced resistance from traditional leaders.

After the formation of the Union of South Africa, the Land Act of 1913 was introduced 'that effectively relegated black South Africans to less fertile reserve lands while preventing them from purchasing lands outside these reserves' (Waetjen 2004:44). Land being central to traditional leadership, such an act and its impact had dismal consequences for the authority of traditional leaders. The Nationalist Party brought 'mass displacement, relocation and containment of African People' (Waetjen: 2004:49). With many subjects displaced by the Bantu Authorities Act of 1951, the traditional leadership was left 'with changing functions and their defined role of distribution of land to his subjects' (French 1994:23). Their powers were reduced to an inferior level.

## **2.5. Legislations on Traditional Leadership**

In the past, traditional leaders were 'full sovereigns, with powers limited under their jurisdiction' (Introduction to the White Paper to Local Government). In a democratic South Africa, it is expected that traditional leadership exercise its role alongside the democratic structures of governance. Therefore, it is of the utmost importance to scrutinise the legal guidelines and their challenges in defining the role of traditional leadership. The White Paper provides the historical legal background, as well as the laws pertaining to the role of traditional leadership in a democratic South Africa.

### **2.5.1. Bantu Authorities Act No. 68 of 1951**

In tracing back to the root of the current dilemma, the Bantu Authorities Act No. 68 of 1951 may provide the answer. The Act made provision for the creation of Bantustans. The powers given by the Act is the fundamental bone of contention since, as highlighted

above, democracy seeks to apply governance based on democratic principles, while accommodating traditional leadership. To an extent, traditional leaders felt that the Act reinstated their grasp of governance since they had authority over the allocation of land, resolving disputes and having general governance authority.

#### 2.5.2. Amakhosi and Iziphakanyiswa Act No. 9 of 1990

In 1990, just before the dawn of democracy, the KwaZulu Amakhosi and Iziphakanyiswa Act No. 9 was passed by the National Party. The Act aimed to '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 (Act No. 9 1990:1). The Act reinforced the situation where traditional leadership was entangled in politics since the Minister had the authority to determine the overall operations of *amakhosi* in their respective spheres of administration and influence. Biyela (2007:200) makes it clear that the Act regulated 'the involvement of Amakhosi in the dispensation of justice'. This further implies that the Act did not give full powers to the *amakhosi*, and such rested with the government.

#### 2.5.3. The Interim Constitution of South Africa Act No. 200 of 1993

As part of achieving its nationalist and unitary ambitions, the ANC government 'committed itself to the establishment of a democratic, representative and accountable form of governance throughout the country, including the rural areas' (Ntsebeza 2005:14). Consequently, traditional leadership was part of the deliberations towards a constitution for South Africa. In 1993, the Interim Constitution of the Republic of South Africa Act 200 of 1993 was introduced, which according to Shembe (2014:24) was 'very vague in articulating his or her (traditional leadership) role within the Municipality, except being an ex officio member'.

#### 2.5.4. KwaZulu-Natal Ingonyama Trust Act No. 3 of 1994

Another piece of legislation that is relevant to the role of traditional leadership was the KwaZulu-Natal Ingonyama Trust Act No. 3 of 1994. In the dawn of democracy, traditional leadership seemed to have formidable support needed by the political parties. Consequently 'part of the last-minute deals in 1994 to ensure that IFP participation in the elections entailed assurances that the Zulu king would be constitutional monarch of the new province of KwaZulu Natal' (Venter 2001:8). This came into being through F.W. de Klerk and Inkosi Buthelezi introduced the KwaZulu-Natal Ingonyama Trust Act in 1994. The Act 'vested large powers in the Zulu King Zwelithini, putting 93 percent of the former KwaZulu under his trusteeship and ruling that this land could not be alienated or leased without his permission' (Oomen 2005:71). One can argue that Inkosi Buthelezi was solidifying his political influence on the eve of the multi-party democracy, knowing that such a move would strengthen his influence among the traditional leadership as a fighter for them in a democratic South Africa. Shembe (2014:25) viewed the Act as a 'major victory for traditional leadership in KwaZulu-Natal and the Inkatha Freedom Party'.

#### 2.5.5. The Constitution of the Republic of South Africa

Chapter 12 of the Constitution of South Africa stipulates:

The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. A traditional authority that observes that 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 customs. The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

The ANC however 'had no intention of relegating South Africa's traditional leaders to the dustbin of history' (Oomen 2005:45). The traditional leadership also did their best in negotiating their place in the process of drafting of the Constitution. The traditional leadership with a bargaining power of many people under their administration pressed 'for a greater role in government and in the control of funds at local level' (2001:9). However, the process was difficult and complicated as 'the newly elected democratic government had to contend with the imperative for the establishment of an integrated democratic system of government in which the institution of traditional leadership is historically an integral part' (Sithole and Mbele 2008:17). The threats of withdrawing from the CODESA made by Inkosi Buthelezi pressured the incorporation of traditional leadership as fears of the violence between IFP and ANC supporters were also rife. The Congress of Traditional Leaders of South Africa were also 'not admitted, as this would make space for other interest groups such as business and labour' (Oomen 2005:47).

The South African Constitution was a result of many compromises. The implication of this was a constitution that tried to accommodate everyone. An example of this is that in Section 211(1) it becomes contradictory, merging customary law with the democratic principles of the Bill of Rights. The fact that customary law is recognised, subject to the Constitution, is vague and contradictory. Previously, legislation around traditional leadership was either provincial, or subservient to the government of the day. Such laws were not totally erased in the new democratic dispensation. So, despite the Constitution being heralded as a miracle, the legacy of apartheid, such as the subservient role of traditional leaders, even after 1994, remains a reality. This is highlighted by Oomen (2005:39) who says 'former privileges were retained, if not consolidated'. This also applies to the role of traditional leaders.

#### 2.5.6. The White Paper on Local Government

In 1998, the White Paper on Local Government was passed. While the Constitution only recognised traditional leadership, it did not clearly define the role of traditional leaders in

governance. The White Paper on Local Government aimed at clarifying such a role. Among the stipulations of the White Paper on Local Government were:

Acting as head of the traditional authority, and as such exercising limited legislative power and certain executive and administrative powers.

- Presiding over customary law courts and maintaining law and order.
- Consulting the traditional communities through *imbizol lekgotla*.
- Assisting members of the community in the dealings with the state.
- Advising government on traditional affairs through houses of traditional leaders.
- Being the spokespersons of their communities.
- Being custodians and protectors of the community's customs and general welfare.
- Protecting cultural values and instilling a sense of community in their areas.

The White Paper stipulates that traditional leaders could preside over customary law courts, has a right to consult traditional communities, could advise government on traditional affairs through the Houses and Council of Traditional Leaders, and are responsible for protecting cultural values and being the custodians and protectors of the community's customs and general welfare' (Republic of South Africa 1998).

While this recognition seemed like a victory for traditional leadership, it was not. The right to preside over customary courts, for example, is comparable to the laws passed by the apartheid regime. As Oomen (2005:78) points out, according to Section 211(3), 'the courts must apply customary law when that law is applicable, subject to the Constitution'. This meant that traditional leaders did not have absolute power, but the Constitution did. The mere fact that traditional leaders had a right to 'advise' did not constitute decision-making.

Since the Constitution had 'not spelled out the powers and functions of traditional leaders' (Biyela 2007:202), the White Paper on Local Government was a necessity. Biyela (2007:22) argues that the White Paper 'further recognizes the need to transform the institution from an undemocratic, unrepresentative and unaccountable system of government in accordance with democratic principles of the Constitution'. This stipulation of the White Paper further shows that the role and nature of traditional leadership was not going to be based on its original nature and its subsequent roles. The defining of the role of traditional leadership in the White Paper on Local Government was a progressive step towards traditional leaders being role players in the democratic dispensation. Yet, as highlighted above, such recognition smacked of lip service and trickery. To be able to disperse 'information on such issues as development, crime prevention and voter education' (Oomen 2005:121), did not constitute having the authority on issues of development, crime prevention and voter education. It implies being messengers, or simply being a mouthpiece of the Constitution.

#### 2.5.7. Traditional Leadership and Governance Framework Act No. 41 of 2003

Deliberations for traditional leaders to have clear roles also saw the passing of the Traditional Leadership and Governance Framework Act No. 41 of 2003. As Biyela (2007:206) states, Chapter 5 of the Act 'makes provision for the roles and functions of Traditional Leadership'. Among the provisions of the Act was the establishment of Traditional Councils to oversee the matters of traditional communities, as stipulated in Section 8(1), which states that Traditional Councils had 'to administer the affairs of traditional community in accordance with customs and traditions'.

#### 2.6.1. ILembe

ILembe District Municipality is situated on the east coast of KwaZulu-Natal and is the smallest of the province's district municipalities, Mandeni, KwaDukuza, Maphumulo and Ndwedwe. The characteristic of the Municipality is that it is has a relatively smaller

jurisdiction of traditional leadership compared to the other municipalities. Situated next to the EThekweni Municipality, which is urban, the ILembe Municipality has influence over most of its areas under its control, rather than the traditional leaders. Its dynamics, according to the local government (KZN Provincial Government Communication 2016) are:

- Population under 15: 33.80%
- Piped water inside dwelling: 23.70%
- No schooling: 15.40%
- Youth unemployment rate: 37.20%

Based on such statistics and observations during site visits, the study will attempt to clarify the role of traditional leadership in democratic governance.

### **2.6.2. UThungulu**

UThungulu District Municipality, which is now called Inkosi Cetshwayo District Municipality\*, is situated on the north-eastern coast of KwaZulu-Natal. The Municipality offers a good platform for the study. This is because the Municipality, despite having areas that are remotely rural like Nkandla, Umlalazi, Mthonjaneni and Mbonambi, which are predominantly under the jurisdiction of traditional leadership, it includes towns like Richards Bay, Empangeni and Eshowe, which are mainly under the administration of municipalities. These demographics, as provided by the local government and political dimensions are evidence of such a balance (KZN Provincial Government Communication 2016).

### **2.6.3. UMkhanyakude**

UMkhanyakude Municipality has five local municipalities, namely, Mtubatuba, Jozini, Hlabisa, UMhlabuyalingana and False Bay. The UMkhanyakude Municipality is mainly rural and a large part of it is under the influence of traditional leadership. One of the characteristics of the Municipality is that it is a battleground for the electoral fight for

votes between the ANC and IFP, and lately, the IF breakaway party, the National Freedom Party. Major divisions are seen in the way the role of traditional leadership varies. Myeni's (2005:125) evaluation that 'out of seven traditional authorities under Jozini Municipality, each has its peculiar way of spearheading development activities', serves to reflect a municipality torn in the battle for governance.

Polunic (2000:369) further states that service delivery is badly affected by these fierce battles; 'IFP councillors are vehement not only because they think the ANC want to be seen as delivering. The issue of who delivers is politically contentious because the parties want to win the electoral battle, but also because it touches one of the policies advocated by the IFP.' Thus, it can be said that politics plays a role in determining the role of traditional leadership. The heart of traditional leadership is at the crux of such a battle since most of the people who live in the Municipality fall under its administration.

It will be crucial to observe how the traditional leaders' juggle with the political electoral battle influences or hinders development, in order to clarify the role of traditional leadership in democratic governance. The situation then throws in a crucial question: What is the role of traditional leadership in democratic governance? The institution, which now is a mere shadow of its former past, once more finds itself in a tricky scenario with democracy. This is mainly because it, by its very nature, contravenes the principles of democracy, yet it also contains a precious heritage that Africans pride themselves on, including being the custodian of culture, tradition, values and norms.

## **2.7. Conclusion**

The role of traditional leadership in a democracy is unclear due to its evolution over centuries and its contradiction of democratic principles. However, it is clear that this is an aspect of governance that a country like South Africa cannot do without, based on the country's history of traditional leadership. Since traditional leadership is about

administration and governance, the study to be conducted on three municipalities, namely, iLembe, uThungulu and UMkhanyakude, will delve deep into the role of traditional leaders in dealing with the grassroots challenges of people under their jurisdiction, service delivery and conflict resolution. In light of democratic municipalities' right to decide whether traditional leadership is an outdated institution, or whether there is a good way to incorporate it in democratic governance, the relationship between traditional leaders and municipalities is significant, just as is the role played by political parties whose intention is to win the hearts of those under traditional leadership. The impact of all legislation pertaining to traditional leadership will also have to be examined in terms of service delivery to determine whether the legislation provides guidelines and direction on the role of traditional leadership in a democracy.

## **CHAPTER 3: Literature Review**

### **3.1. Introduction**

In this chapter, issues at the core of either incorporation or rejection of traditional leadership in democratic governance will be discussed. Central to the conflict about the role of traditional leadership in a democracy are the theories of traditionalism and modernism. In assessing democracy, as a governance option, the influence of such theorists and theories affect such divisions. In tracing the history of traditionalist and modernist theories, Mathibela (2004:27) states, 'As the ANC radicalized from the 1940s onwards, with strong pressure from its Youth League and growing alliance with communists, two streams began to emerge'. Definitions and arguments relating to these theories will be delved into in this chapter. The chapter will further examine traditional leadership in the legal and cultural framework with a view of clarifying the role of the institution in a democratic dispensation.

### **3.2. The era of modernism**

It is crucial for this study to trace the origins of modernism. This is to help understand the emergence of the modernist and traditionalist debate on the role of traditional leadership in a democracy. Modernity cannot be discussed without reference to history. In global history, there were events that sparked the theory of modernism. These include the Renaissance, the French Revolution, Industrialisation, the Russian Revolution and World War 1, as detailed by Christopher LCE Witcombe in *The Roots of Modernism*. Although these events happened over time, they resulted in new ways of thinking. The twentieth century saw many theorists challenging the status quo, such as Max Weber, David Emile Durkheim and Karl Marx. This new way of thinking was termed 'modern', which included 'modern tradition; the Modern Age; the Modern Century; the Modern Temper; Modernism' (Bradbury & McFarlane 1976:21). The assertion derived from this is that modernity was not based on politics only, but involved art, literature and culture, as long as it was a revolution from traditional thinking and the traditional way of

doing things. In a nutshell, 'modernists defined themselves by creating distinctive groups and by contrasting their practices with those of a previous generation' (Whitworth 2007:39).

While modernism was a global phenomenon, South Africa was not excluded from it. In the previous chapter, historical phases in South Africa, including pre-colonial, colonial, apartheid and the democratic dispensation, were detailed. In light of democracy being one of the liberal governance approaches, it is important to look at how modernism played its part. Since modernism came about because of the failure of traditional methods and responses to the changing political climate, its influence can be placed in post-apartheid South Africa.

The ANC became a ruling party after the 1994 democratic elections and, according to Attwell (2005:3), 'it (ANC) was always in possession of a code of modernity that would eventually be triumphant'. This means that when the ANC government took over the reins in 1994, it aimed at implementing democracy, which is an integral part of modernity. However, it carried with it the history of traditional leadership. Attwell concurs by arguing that a 'non-racial democracy was established, representing the point at which these various postcolonial histories have begun to coalesce, at least in the legal sense' (Attwell 2005:2). The situation resulted in modernism and traditionalism being brought together in the post-apartheid era. Consequently, this led to the dilemma regarding the institution of traditional leadership in a democratic dispensation. The postcolonial histories mentioned include traditional leadership and, as a result, it was included in a legal sense of the Constitution since South Africa adopted a constitution with legal pluralism, which meant a combination of diverse legal systems. These are common law and customary law.

### 3.3. Traditionalists

Traditionalists are those who advocate for the inclusion of traditional leadership in a democracy. The main reason for their inclusion is based on traditional leaders being regarded as 'true representatives of their people, accessible, respected, and legitimate, and therefore still essential to politics on the continent' (Logan 2008:iii). Such a view about traditional leadership invites a thorough perusal of what traditional leadership theoretically entails. In an effort to analyse the theory of traditional leadership, the focus will be on the following: selection/appointment, composition and decision-making.

#### 3.3.1. Selection/Appointment

In dealing with this aspect, it is important to note the phases that are synonymous with traditional leadership, namely, pre-colonial, colonial, the apartheid era, and post-apartheid. In focusing the study, it is crucial to examine appointment or ascendancy into traditional leadership. Prior to colonialism, 'ascendance to kingship has mainly been hereditary' (Ntsebeza 2007:57). During the colonial and apartheid era, the colonial and apartheid government appointed a number of chiefs as 'chiefs were then made the extension of the colonial administration and important figures in the implementation of Divide and Rule strategy' (Motshekga 2007:189). In the democratic dispensation after 1994, the ANC-led government attempted to reverse and address the colonial and apartheid era discrepancies by appointing the Nhlapho Commission in 2007. The mandate of the Commission was to authenticate the rightful traditional leadership.

In the light of these changes, those who advocate for traditionalist political thought are of the view that the pre-colonial approach to ascendancy to traditional leadership is legitimate, and must be implemented as such. Evidence of approval of reverting to the pre-colonial approach to leadership is revealed in an interview where CONTRALESA admitted to knowing that 'traditional leaders were affected by the manipulative colonial

government and being aware of the sensitivity of the matter of appointments to traditional leadership and colonially-engineered disputes' (Sithole & Mbele 2008:41). If CONTRALESA advocated for the review of the current traditional leadership, it means that it acknowledges the impact that colonialism and apartheid had in distorting succession to traditional leadership positions. For modernists it is a point of dispute since they view pre-colonial appointments to leadership as undemocratic and unrepresentative.

### 3.3.2. Structural Composition

One of the shortcomings of the modernist approach is the total neglect of the composition of traditional leadership. They focus on it being hereditary, therefore unrepresentative. However, if one thoroughly assesses the composition of traditional leadership, there are aspects that can allow one to argue otherwise. In traditional leadership, there is a chief, council, headman and even smaller representations in the *induna yezinsizwa* and *amaqhikiza*. All these components forms traditional leadership and play a role in governance.

The chief played the role of the overseer of the administration. Whether hereditary or appointed, the functions of administration were not entirely vested in him. He had to have councils, as highlighted by Motshekga, who argues that 'all spheres of governance had a royal council that was chaired by the king, queen or proxies' (Motshekga 2007: 193). Then there were headmen. Each region under the chief had headmen to assist in the administration. In the South African context, such headmen are elected. Others inherit the position from their fathers, while 'some form part of the local council' (Oomen 2005:140). This contrasts with the perception held by modernists that traditional leadership is not representative.

Though there is limited literature available on the *izinduna zezinsizwa* and *amaqhikiza*, it is common knowledge that they represented the chief authority to the youth, and vice versa. This means that even at the lowest level and on each particular aspect of the area under chief jurisdiction, there was some form of representation. In many ways, traditional leadership subscribes to Grint's assertion (1997:159) that 'the first function of democratic leadership is the distribution of responsibility'.

### 3.3.3. Decision-making

As for whom and how a decision is made is a crucial aspect of leadership. There is a general perception amongst modernist that decision-making is authoritarian in traditional leadership. It must be noted that each theorist is subjective, irrespective of any effort to be objective. Perhaps such statements arise from exceptions, yet are used as a fact about traditional leadership.

There is evidence that some leaders were autocratic as asserted, however, 'such leaders faced secessions' (Ntsoane 2007:43). This means that there were measures in place in traditional leadership institution of dealing with such cases. Therefore, it can be said that the argument held by those against traditional leadership focuses on the actions of the targeted leader and fails to look at the consequences of their actions. The existence of chiefs' advisers and traditional council played such a role.

The presence of the Council and the gathering for *imbizo* are examples that indicate that traditional leadership in its very nature was democratic concerning decision-making, apart from the autocratic leaders who were highlighted by the critics of traditional leadership. In the journal article, *Harnessing Traditional Governance in Southern Africa*, it is stated that 'power was traditionally exercised only through Council, which negates absolutism' (Kargo 2007:3). Apart from their inclusion in the democratic dispensation, traditional councils are recognised by the KwaZulu-Natal Traditional Leadership and

Governance Act No. 5 of 2005 (Biyela 2007:206). Among the functions of the Act is 'to assist, support and guide traditional leaders in the performance of their functions' (KwaZulu-Natal Traditional Leadership and Governance Act 2005). This further confirms the role of decision-making for the Council, which is part of traditional leadership.

### **3.4. Modernists**

Modernists view traditional leadership as a 'gerontocratic, chauvinistic, authoritarian and increasingly irrelevant form of rule that is antithetical to democracy' (Logan 2008: iii). It is their view that democracy must be implemented without the inclusion of traditional leadership. It is vital for the purpose of this study to peruse the argument of modernists in relation to traditionalists, and overall, traditional leadership in democracy.

While contesting for the modernist approach to democracy, ANC leader Govan Mbeki likened the leadership to a growing baby who at one stage can do without certain elements of its infancy stage. Mbeki (1964:47) argued that 'if a child is properly fed, its body completes the normal process of growth and in due course the child grows and develops into a healthy adult'. In the process he made a statement that became the fundamental basis of the modernists when he declared that 'if Africans have had Chiefs, 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 1964:47). Although Mbeki was referring to the Bantu Homelands that the National Party introduced in 1951, many modernists interpreted the statement to mean that the time was ripe for a fully-fledged democracy that did not need the inclusion of traditional leadership.

### 3.4.1. Selection/Appointment

Modernists advocate for a fully-fledged democracy that has no traces of any other form of governance approach. It is their view that traditional leadership dents this aspiration. The argument of modernists is that the important aspect of democracy is to elect leadership, which 'implies periodic and popular elections, while traditional leadership is inherited. Election was never a criterion for assuming the office of traditional ruler' (Rautenbach et al. 2010:149). The mere fact that traditional 'leaders claim their right to rule out of birthright rather than elections' (Ntsebeza 2007:57) renders traditional leadership undemocratic. The assertion that traditional leadership is undemocratic implies that it is autocratic and imposed on the people.

One of the arguments against traditional leadership is that the succession to the throne offers incompetent and ineffective leaders. This is implied in the analysis that highlights that the 'seniority principle is certainly a primary consideration' (Rautenbach et al.2010:152). Another factor about succession is 'that the deathbed wish of a traditional leader should be taken into account...the wish of a deceased is not opposed' (Rautenbach et al. 2010:152). Such factors are some of the arguments that modernists cling to in their opposition to incorporating traditional leadership in a democracy.

When one goes back to the emergence of democracy in South Africa, one can argue that, contrary to common belief, democracy was imposed rather than traditional leadership. When the ANC was formed, 'traditional leaders were part of its formation' (Mathibela 2004:27). This statement insinuates that traditional leaders supported democracy and its principles, which includes elected leadership. It was a compromised resolution to the ongoing onslaught of colonialism and apartheid; democracy was the imposed compromised leadership approach.

There are examples that prove that traditional leadership is not imposed, but that it is the choice of the people. In Botswana after independence, Seretse Khama, who was a traditional leader, attained 81 percent of the votes. This, according to Shembe (2014:49), signifies 'the respect and importance of traditional leaders in Botswana'. In the first democratic elections in South Africa, Inkosi Buthelezi and the Inkatha Freedom Party won the province of KwaZulu-Natal. Such cases, despite the distortion of facts by modernists, prove that communities do not view traditional leadership as imposed. The achievements by such leaders make the argument of modernists, that traditional leaders are not the people's choice, not hold water.

#### 3.4.2. Structural Composition

Parliament is an integral part of democracy and the South African Parliament has three powers 'separated into the legislative, executive and judicial powers of state, and this separation of powers is protected in the Constitution' (Taljaard and Venter 2000:21). Laws are passed by the parliament. Burns (1998:48) details that the 'executive power of the Republic vests in the president, who exercises power together with the other members of the cabinet'. The nature and powers of the president and cabinet can be compared to the chief and council. The sticking point for modernists has been that the president has the ultimate power vested in him or her in a democracy; there is no space for traditional leaders. The concern of modernists was that traditional leadership would undermine this aspect of democracy.

#### 3.4.3. Decision-making

In democracy, three branches of power are observed, namely, the executive branch, the legislative branch and the judicial branch. These branches bind together to ensure that all the aspects of the country are addressed.

The Executive – This branch refers to the body in a state responsible for executing the laws of parliament' (Venter 2001:58). It constitutes the Presidency, the national executive, the provincial executive and local government. In brief, it covers all aspects of administration from the highest level to the lowest. In a typical democracy, there is no space for any other administration, such as traditional leadership. This is one of the reasons that make the role of traditional leadership vague in a democracy.

The Legislature – It is responsible for 'making laws for the whole country while local government legislatures make by-laws for matters within their jurisdiction' (Burns 1998:7). If such a democratic structure is available, it makes the role of traditional leadership hard to be incorporated.

The Judiciary – The judiciary 'resolves disputes arising between members of society on an authoritative basis by the application of the proper rules of law' (Malherbe 2001:85). In execution of this duty, the judiciary comprises of the Constitutional Court, the Supreme Court of Appeal, the High Courts, the Magistrate's Courts and 'special courts'. The composition of such a judiciary makes it difficult for traditional leadership to have a role to play in its conventional manner of resolving disputes. This is one of the reasons why modernists argue against its inclusion in a democracy.

### **3.5. Bill of Rights versus Customary Law**

#### **3.5.1. Customary Law**

Prior to colonialism, apartheid and, lastly, democracy in South Africa, communities were under traditional leadership, which exercised customary law. According to Rautenbach et al. (2010:7), the terminology and definition are problematic due to the 'debate regarding the correct terminology for describing the group of people to whom customary law apply'. Oomen (2005:78) attributes the confusion to the segregation policy and

coined 'official' and 'living' customary law. For Oomen (2005:78), living customary law 'relates to the social practices of communities all over South Africa'.

However, for the purpose of this study, customary law will be used as the set of behaviours and rules that diverse people apply as a law to be adhered to. In the customary law of African and Nguni groups, traditional leadership had sovereign jurisdiction and administration powers. It should be noted that it was not written down, but communicated and passed down from generation to generation. The Constitution is a written-down document, yet 'recognizes the customary law as a system of law' (Burns 1998:39). The challenge is that it creates a loophole for citizens to juggle between both laws, and this causes conflict.

Another challenge with customary law is that despite its recognition, it falls under common law, as stipulated by the Constitution. This poses limitations and causes confusion. Difficulties that customary law poses are the following: 'What if the defendant is resident in one area and employed in another? What if he or she is resident in one area but has a closer attachment, such as a domicile, with another?' (Rautenbach et al. 2010:38). This implies that the demarcations and boundaries make the application of customary law challenging.

### **3.5.2. Bill of Rights**

The Constitution, in Section 7(1), stipulates that the 'Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the right of all people in our country and affirms the democratic values of human dignity, equality and freedom' (The Constitution of the Republic of South Africa 1996:60). In Section 8(1) the Constitution stipulates that the 'Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of the state' (The Constitution of the Republic of South Africa 1996:60).

The Bill of Rights is based on the values of freedom, respect and tolerance. The question then is, since it is applicable to all laws, how does it relate to customary law? On this Ntsebeza (2005:15) argues that 'upholding a Constitution that enshrines democratic principles in the Bill of Rights, whilst acknowledging a political and developmental role, or roles, for un-elected and unaccountable traditional authorities, as the two pieces of legislation referred to above do, is inconsistent and contradictory'. It is like putting two bulls in one kraal, as aptly put by Oomen (2005:59). There are some points of conflict when the Bill of Rights and customary law are thrown together.

Women – Since the Bill of Rights advocates for the freedom of individuals, the issue of women has become a contentious issue. As highlighted by Oomen (2005:48), 'From the onset of the negotiations, the traditional leaders had demanded that culture be exempted from the Bill of Rights, in particular the equality clause'. Gender equality, in many ways, is in direct contrast to the role women played and their status in traditional leadership. This point has become one of the arguments for those against traditional leadership. They argue that the nature of succession and 'its exclusively male character has to change' (Mokgoro 1994:8). What these advocates of equality fail to understand is that generally women are discriminated against worldwide. 'Women are especially underrepresented in leadership roles that provides substantial authority over other people' (Antonakis, Cianciolo & Sternberg 2004:280). This includes countries with democracy as the only approach of governance.

In the study conducted by Oomen (2005), it was found that contrary to the assertion that women are discriminated against, women felt they were not discriminated against by traditional leadership. They stated that their non-involvement in *kgoro* (courts) 'is not discrimination; it is just culture' (Oomen 2005:189). This means that women under traditional leadership weigh the issue of culture in the light of equal rights.

Culture – The issue of culture is also a contradictory issue if the Bill of Rights and customary law are combined. In the introduction to *Legal Pluralism*, Rautenbach and Bekker argue that to begin with there is the absence of a definition of culture in the Constitution (Rautenbach et al. 2010:19). It must be noted that South Africa encompasses and embraces many different cultures; customary law is embedded in culture. This includes brides' wealth, inheritance, and family and children's wellbeing. If the Bill of Rights is applied to those under the jurisdiction of customary law, it infringes on their cultural rights because it interprets their behavioural patterns not as culture; instead, it is interpreted in the light of fundamental rights.

Legal Pluralism – The fact that the Constitution recognises both common law and customary law in one country makes South Africa a legal pluralist country. The challenge with this is which law is above the other and what implications arise from practicing both legal systems. South Africa's Constitution's 'recognition of a system based on cultural distinctiveness and group-based rights immediately raised questions concerning the relation between chiefly sovereignty and individual rights and between communalism and equality' (Oomen 2005:77). In an effort to address this, many amendments have been made to the Constitution, yet the truth remains that customary law and common law contradict each other. Any compromise is equivalent to not practicing the law.

### **3.6. Conclusion**

The chapter covered the traditionalist and modernist perspectives with regard to traditional leadership. In the process, it also highlighted the areas of disagreement. In addition, the Bill of Rights and customary law were discussed to further emphasise the challenge faced regarding the role of traditional leadership in a democracy. Notably, the above highlights the contradictions and challenges in incorporating the institution of traditional leadership in a democratic setting. However, with the institution being a formidable force, perhaps it is important to look at how it can play its role alongside

democracy. Legislation is constantly bended to accommodate it. Yet, the practicality of such attempts can only be measured in the effectiveness in service delivery and the general views of those at grassroots level.

## **CHAPTER FOUR: Research Design and Methodology**

### **4. Introduction**

After the previous chapter looked at the legislations, cultural and theoretical aspects that pertain to the role of traditional leadership, this chapter will then look at the design and methodology towards answering the research question. Therefore, the chapter will discuss in detail the research design, methodology, population, sample, data collection, interviews, and validity, reliability and ethical considerations. The research requires the enquirer to have a clearly defined methodology and design to ensure that the purpose of the study is accomplished. It is important to understand that though the design and methodology are inter-dependable. This means that the researcher always have on mind on what s/he intends to enquire about. However, the research also needs a set of tools as an approach to achieving the design. The set of tools used in an enquiry is called methodology.

### **4.1. Research Design**

Every study comes as a result of the enquirer wanting answers to a particular subject. Research design 'focuses to the end –product: what is being planned and what kind of results are aimed at' (van Wyk 2016:13). The research design then is driven by the research question. As to how the researcher is going to achieve what s/he aims to study falls under methodology which is discussed below.

This particular study therefore is driven by the conflicting arguments raised by scholars and politicians. The arguments are on whether traditional leadership still has the role in democratic governance. That being the question, the study will through the methodology applied search for the answer to the research question. Some people see traditional leadership as having run its course while others argue contrary by perpetuating for the relevance of traditional leadership in democratic governance. By

the end of the enquiry, the research will have the answer to the research question whether traditional leadership still has a role or not in democratic governance.

## **4.2. Research Methodology**

The researcher has to decide on the research approach that is aligned to the enquiry. There are a number of research approaches that at the disposal of the research; namely; quantitative method, qualitative method and mixed method.

### **4.2.1. Qualitative.**

One of the tools methods that can that the researcher can apply is the qualitative method. It is a 'means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem' (Creswell 2009:4). Qualitative approach entails finding the in-depth explanation of human behaviour and exploring the analytical perspective of a phenomenon. According to Creswell, in qualitative method 'the researcher tests a theory by specifying narrow hypotheses and the collection of data to support or refute the hypotheses'. It is therefore for the researcher to truly to apply this method if doing qualitative study because 'qualitative studies usually aim for depth rather than "quantity of understanding" (Henning, van Rensburg and Smit 2004:3). It is expected that at the end of the study, findings explains certain behavioural patterns since qualitative method 'uses qualifying words or descriptions to record aspects of the world' (Bless, Higson-Smith and Kagee 2006:43). Therefore, through applying this approach the researcher can ascertain explanation based on how the hypothesis was tested.

### **4.2.2. Quantitative**

Quantitative approach as the word shows, it is all about the statistics and numbers. The researcher may apply this method as a means to ascertain impact in numerical terms rather than in-depth explanation. Peer explains quantitative approach as a 'quantitative

analysis involving using scientific or mathematical data to understand a problem, such as analyzing surveys to predict demand' (Peer 2016). In conducting the quantitative approach, the researcher needs to have a number of variables mainly because it 'relies on measurement to compare and analyze different variables' (Creswell 2009:43). These variables had to be well-calculated when chosen. What determines the selection of these variables is that they, when combined, direct the researcher towards answering the research question. As Creswell put it, quantitative approach 'is a means of testing objective theories by examining the relationship among variables' (Creswell 2009:4). Quantitative method works best when one is doing surveys that aims at getting the information on something through numbers or statistics. Normally, it is used where perhaps a product is to be introduced or to gauge its use without probing into the depth.

#### 4.2.3. Mixed Method

Mixed method is 'an approach to enquiry that combines or associates both qualitative and quantitative forms' (Creswell 2009:4). Some researches demand the implementation of both quantitative and qualitative approaches to fulfil the need of the research. Data of only one approach may not be enough to attain the aim of the study. Therefore, aspects like triangulation become part of the research process e.g. analyzing why a particular sector responded in a particular manner. One example is when researcher wants to find out if the government is effective in service delivery, numerical projects are calculated yet they had to be contextualized.

The study will use the mixed-method approach since it seeks to get the statistics and balance them with an in-depth explanation of traditional leadership role in democratic dispensation.

#### 4.3. Population

Each research is based on people or object(s). A set of objects or people 'which is the focus of the research and about which the researcher wants to determine some

characteristics is called the population' (Bless, Higson-Smith and Kagee 2006:98). This is also confirmed by Neuman who argues that 'a target population refer to a pool of cases that the researcher wants to study' (Neuman 2000:201). In this regard, the population for this study is the community under traditional leadership, traditional leaders and all the stakeholders that are closer to the research topic. The target population for the study are the districts of ILembe, Mhlathuze and UMkhanyakude.

#### **4.4. Sample**

A sample is 'the subset of the whole population which is actually investigated by a researcher and whose characteristics will be generalized to the entire population' (Bless, Higson-Smith and Kagee 2006:98). There are many different types of sampling. These include probability sampling, convenience sampling, snowball sampling. Each has its perks and relevance. The nature of the study determines the applicable and appropriate sampling method mainly because 'qualitative and quantitative researchers approach sampling differently' (Neuman 2000:195).

In selecting the participants to form the sample, their insight about traditional leadership and positions in society played a major role. Therefore, the sampling method chosen is purposive sampling. Purposive sampling is a technique of identifying people who are most relevant for the study and may give it the in-depth investigation. When applying this technique, the researcher 'looks towards the people who fit the desirable participants' (Henning, van Rensburg and Smit 2004:71). From the population, this sample was drawn as participants to be interviewed.

Gender	Males		Females	
	17		13	
Age	16– 35	36 – 50		51 – 70
	14	6		10
Period in the area	1–5 years	6 - 15 years		Lifetime
	1	3		26
Social Status	Employed	Unemp loyed	Self- employed	Pensioned
	9	8	4	9

Table 4.4.1

#### 4.5. Data collection

Data collection is the crucial component of any research because through the data collected, the researcher has the information and knowledge to answer the research question. Moreover, it forms the basis for the findings about the research topic. It is important to acknowledge that data for research can be found in many sources i.e. the researcher may conduct interviews or have an observation as a means of collecting data. If it is an observation, the researcher 'considers what they observe and refine or focus ideas about its significance' (Neuman 2000:36). There are many sources of data namely; 'people, organizations, texts, settings and environments, objects, artefacts,

media products, events and happenings' (Mason 2002:52). The major decision that the researcher has to make is the careful selection of the data sources for the study. The mentioning of the plural sources is not an error and is aligned with qualitative study. The researcher must identify these sources 'to ensure that the phenomenon has been investigated by means of different sources of information, thus giving data variety' (Henning, van Rensburg and Smit 2004:6).

#### 4.5.1. Variables of Data Collection

Different people respond differently to any questionnaire. This can partly be attributed to variables. According to Leedy and Ormrod (2014:40), a variable is 'any quality or characteristic in a research investigation that has two or more possible values'. This means that in conducting the interviews some respondents may have more values based on their characteristics; for example, an unemployed youth may have a particular perspective on those values based on being a youth and being unemployed.

Olsen (2012:22) categorises variables into structural, institutional and personal factors. Davies (2007:113), in turn, focuses on what he termed 'key variables', namely, gender, age, social class, ethnic identities and religion. Harkness et al. (2003:101) describe these as background variables and argue that they 'present a diverse assortment of information on the social, economic, cultural, geographical, and biophysical settings in which the respondents live and act'.

#### 4.6. Questionnaire

In collecting data, the researcher has to decide on the research instrument. There are many research instrument that are available to the researcher i.e. questionnaires, interviews, readings etc. The particular study will employ the interviews as an instrument. The questionnaire will contain questions that will address the research aim.

Questions to be asked in the interviews with respondents are aimed at achieving the research aim and goals. Otherwise, it will be senseless to conduct the interviews. This

necessitates that the researcher has to 'spend time composing/designing/checking/revising questionnaires' (Davies 2007:88). A well-designed questionnaire is therefore a prerequisite. Goddard and Melville (1996:47) stress the importance of a well-designed questionnaire when they argue that 'effectiveness requires planning beforehand to ensure that data can be objectively analyzed afterwards'.

This study was not only a survey, but needed an analytic perspective on the role of traditional leadership in a democracy. The questionnaire was designed in an open-ended manner to bring forth engagement, which was to address both the quantitative and qualitative approaches of the study. Below are the questions that were asked to the 30 respondents:

- Define the relationship between *amakhosi* and municipalities. Is it good, bad or unclear?
- What projects within the municipality are administered by traditional leaders and by the municipality?
- What aspects of community administration ought to be in the hands of traditional leaders?
- How is traditional leadership enhancing or hampering women's rights?
- Are there any structures that are inbetween the municipalities and traditional leaders to facilitate smooth operations and conflict management? What is being done to remedy the relationship between traditional leaders and municipalities?
- Is the institution of traditional leadership important and relevant in a democracy?

Even though these questions served as the core of the questionnaire, follow-up questions were always asked, either for clarity or elaboration. In the book, *Cross-Cultural Survey Methods*, it is argued that the researcher must at times consider adoption and adaptation approaches in questionnaire designs because 'new questions provide greater opportunity to identify suitable wordings, wordings that can be tested and altered to enhance suitability' (Harkness et al. 2003:29). Therefore, core-adapted questions provided a more suitable structure, while eliciting more engagement with the respondents and delving deeper into the issues pertaining to the study. Adoption and

adaptation approaches helped in addressing respondents according to their social standing in the communities, namely, traditional leaders, municipal officials and the general community.

#### **4.7. Interviews**

The most crucial aspect of any study is the interviews, which is the process of gathering data from the ground. The process of interviews involved identifying the interviewees who could ensure that the research questions and aim were attained. It was therefore crucial to have a balanced pool of respondents to ensure objectivity and impartiality. Consequently, municipal officials, traditional leaders, izinduna, women, elders and youths were interviewed. The researcher ensured that each interview was uniquely conducted bearing in mind that each person's social conditions and status determined their responses. Interviews in qualitative study are 'either open-ended or semi-structured, in the latter case revolving around a few central questions' (Ormrod and Leedy 2005:146). Entry was negotiated through the different officials in the municipalities of ILembe, UThungulu and UMkhanyakude. While the questionnaire was designed as the compass, interviews were oral conversations. In the process, responses were both written and recorded to maximise proper capturing of data.

#### **4.8. Validity**

Validity refers to 'the issue of whether an indicator (or set of indicators) that is devised to gauge a concept of really measures that concept' (Bryman 2012:171). This means that an instrument must be valid in relation to what it ought to achieve. It is asserted that validity has to do with 'what does the instrument actually measure' (Bless, Higson-Smith and Kagee 2006:156).

The chosen research instrument of interviews and guided by open-ended questionnaire is valid for the study at hand. It will give the researcher an in-depth interaction with the participants that are relevant to traditional leadership. The interviews will be conducted

one-on-one arrangement, thereby, giving the participants an opportunity to express themselves freely without any need to compromise the data that interviews will yield.

#### **4.9. Reliability**

Reliability is all about the consistency and stability of the research instrument. The questionnaires, interviews and observation that are going to be used are ideal to provide such attributes in the collection of data for this study. The questionnaires and interviews for an example will be directed to all the participants in a similar manner to ensure that the responses are aligned with the intention of the researcher's approach to collecting the intended data. The understanding of LED, derived from the readings will be compared with the practical behaviours observed in this landfill site. In this way, reliability will be attained throughout the data collection process.

#### **4.10. Ethical considerations**

One of the crucial elements of any enquiry is ethics. Researchers are 'professionals hence, research ethics as a branch of applied ethics has well established rules and guidelines that defines their conducts' (Akaranga and Makau 2016:2). The conducts of researcher that has to be ethically considered are; academic freedom, fabrication, funding and plagiarism.

The study will be conducted with academic freedom of ensuring that any factors hindering such freedom are eliminated in the best possible manner. Researchers, in the light of workload and having hidden agendas also tend to fabricate and falsify data. Through adequate recording which involves audio as well as written responses to the questionnaire, the study will adhere to providing genuine findings. What will also makes it easier, is that the researcher is not subjected to financial funder who may demand a subjective findings. Finally, many researchers tend to use other people works as their own, which is called plagiarism. The guidelines of proper and suitable referencing help the researcher to acknowledge the work of others and open themselves to assessment

of their work. In this way, the researcher will present their original work and acknowledge the work that has been used to support the study in an ethical manner.

## **Conclusion**

The chapter showed the actual process that was undertaken to obtain the data essential in clarifying the role of traditional leadership. It entailed the designing of a questionnaire, entry into communities, the consideration of socio-political aspects, the different variables of the interviewees, and the detailed responses that people closely linked to the subject shared. It is the data collected from this fieldwork that, through the process of analysis, determined the role of traditional leadership in a democratic South Africa. Through the process of analysing the data collected, remedial suggestions and recommendations will now be determined and given.

## **CHAPTER FIVE: Data Collection, Data Analysis and Findings**

### **5.1. Introduction**

The previous chapter detailed the process of data collection. The process entailed designing a questionnaire, identifying the relevant interviewees, and conducting the interviews towards achieving the aim of the study. In addition, it provided the data collected in the fieldwork. However, collected data and its process need to be analysed towards eliciting the in-depth perspectives towards answering the research questions in a detailed manner. According to Patton (2002:432), 'analysis transforms data into findings'; therefore, this chapter will sift through the collected data to reach the findings that address the aim of the study. It is futile to do only the data analysis without giving the answers. In this regard, Hardy and Bryman (2009:1) argue that 'most of us are interested in a particular research question and trying to formulate as systemic and persuasive an answer as possible'.

### **5.2. Overview of the study**

This chapter will focus on the variables that were considered towards making the conclusions about the collected data so as to ensure objectivity. After the analysis, the chapter will detail the conclusions elicited from the analysis. From them, it will offer suggestions for other researchers and stakeholders on the role of traditional leaders in a democracy so that they will have a frame of reference to work from in the future. Therefore, the chapter will answer all the questions with relation to the role of traditional leadership in a democracy based on this particular research process.

In the process of data analysis, it is logical to revert to the critical research questions of the study. They were: What is the role of traditional leadership in respect of rural communities? What is the legal mandate of traditional leadership? How effective is traditional leadership? How does traditional leadership relate to democratic

governance? This chapter will use these questions as a template for the data collected in the previous chapter. It should be noted that the questionnaire used in the fieldwork centred on answering these critical research questions.

### 5.2.1. Approach to Data Analysis

The process of data analysis requires that the researcher apply certain techniques lest the analysis fails to yield the necessary results. It will be improper to restrict the data to only writing about it without applying the following aspects: 'data management, data reduction and conceptual development' (Lindlof & Taylor 2011:243). While tackling these aspects of the data, triangulation will be incorporated.

#### 5.2.1.1. Data Management

Data management is the transcription of data. In the process of the fieldwork, data was recorded through the answers provided on the paper questionnaire; it was also tape-recorded. The fact that the study applied a mixed method approach and the manner in which the data was transcribed allowed the researcher to obtain in-depth answers to each question. During the interviews, interviewees tended to go into detail and, at times, follow-up questions were asked. At times, responses involved clarification of both the questions and answers. These transcription methods came in handy to 'allow for a rapid and effective movement back and forth between chronologically and topically organized data' (Lee & Fielding 2009:533). The responses at times diverted to other aspects of the community, since the questionnaire was open-ended. Consequently, other data was collected, not precisely based on the questions, yet valid to the study. Therefore, in the process of analysis all data required to be managed, according to its relevance to the study.

#### 5.2.1.2. Data Reduction

Data reduction entails the sifting of collected data into important summaries. In a qualitative study, data 'need to be reduced and transformed in order to make it more readily accessible, understandable and draw out various themes and patterns' (Berg 2009:54). Prior to analysis, data reduction was applied to ensure that the collected data was arranged and coded according to its relevancy to the study. The interviews offered the researcher detailed responses, some of which tended to veer off the path at times. Therefore, before the analysis could commence, data reduction was done to make it easily accessible for analysis. Since the study was approached in qualitative and quantitative manners, the responses needed to undergo data reduction so that they were aligned to the themes.

#### 5.2.1.3. Conceptual Development

The data collected in this study is subject to conceptualisation towards analysis. It is imperative to codify the data according to conceptual tools. These tools are defined by Lee and Fielding (2009:530) as 'theoretical and methodological approaches routinely developed to solve analytic problems'. While community members, traditional leaders, women and municipality employees responded in a general communication manner, the researcher had to bring their responses into the theoretical perspective and methodology employed by the study. An example is when a male respondent answers a question with regard to women's rights; it is the responsibility of the researcher to codify the response in accordance with the cultural, gender or sociological perspective to ensure that it aligns with the study's approach.

#### 5.2.1.4. Triangulation

In the qualitative approach of research, the oral response of interviewees is not sufficient to provide enough insight for analysis. Therefore, the researcher observed

other factors, such as the observation of time and place, and the interviewee alongside the data collected. Triangulation therefore is the 'use of multiple lines of sight' (Berg 2009:5). Though this is part of data collection; however, it is more relevant when it comes to analysis. During data collection, details about the interviewees were listed on the questionnaire/answer sheet; yet the researcher also made notes about the context to broaden the scope of data. Data analysis, therefore, will include details beyond the oral responses and written answers to the questions. It will also define the interviewees, their contexts and all other factors that are instrumental in making a thorough assessment and analysis. In approaching analysis, the variables such as employment, social status, age, place and time are critical in analysing the responses. The people who are involved in projects, those close to traditional leadership, and the responses of those employed by the municipality all had to be viewed in the light of their individual context.

### **5.3. Findings from the literature review**

The literature that served as the template for the study reveals dissimilar perspectives on the role of traditional leadership in democracy.

There are those who vehemently oppose the idea of incorporation of traditional leadership in democracy. Researchers like Ntsebeza in his *Democracy Compromised* clearly object to the inclusion citing traditional leadership being contravening democracy. Ntsebeza argues as titled in his book that democracy is being compromised by the institution and using the case study of the land dispute in Xhalanga, Ntsebeza concluded such scenario raises 'crucial questions about the role of traditional authorities in democracy not only in South Africa, but on the African continent' (Ntsebeza 2005:298). Other researchers like Mokgoro, also argues that in terms of human rights, traditional leadership is oppressive to women therefore not compatible with democracy.

However, Barbara Oomen in her book, *Chiefs in South Africa*, takes a stand that is pro-traditional leadership inclusion in democracy. Despite the challenges that exist in bringing the smooth co-existence of two diverse forms of governance, she argues that traditional leadership cannot be 'thrown in the dustbins of history' (Oomen 2005:45) due to their support behind it. Then, in *Introduction to Legal Pluralism* by Rautenbach, Bekker and Goolam (2010), one has the sense of the feasibility of merging the two forms of governance.

#### **5.4. Findings from the empirical research**

After weeks of both observations and interviews, the researcher was able to gather data relevant to the study. The data was recorded using a camera and an audio recorder, and it was documented on paper. The respondents interviewed responded with the responses mentioned below to the set of questions in the enquiry.

**Define the relationship between traditional leaders and municipal councillors. Is it good, bad or unclear? Explain.**

The responses to this question varied. More than half of the respondents stated that the relationship between the traditional leaders and municipalities is good. It was argued by some that shortly after democracy, there was confusion as to what had to be done by the traditional leaders and what fell under the responsibility of the municipal workers. Despite this, they attributed the ease of this relationship on the notably decreased political tension between the ANC and the IFP.

One of the respondents said that the relationship was so good that 'when there is a project that is going to happen in the community, it is a must that the councillor introduces it to the traditional leader and *izinduna* first before it is started. Also, when there are chances of employment by any project, the councillor and *induna* they do it together'. This assertion was made by a ward councillor, G.R. Mchunu, in Hlabisa Municipality. An 18-year-old member of the community, among many other respondents, agreed that the relationship between the *amakhosi* and councillors is

good. The respondents mentioned that the traditional leaders attended municipal meetings and were engaged in deliberations towards service delivery.

However, other respondents argued that the relationship between the traditional leaders and councillors is not good, though these respondents were in the minority. The reasons they highlighted included party politics where councillors and traditional leaders have different political allegiances. Consequently, service delivery is hampered. *Inkosi Bhekisizwe Ngcobo* of Madlanduna in ILembe cited political interference as the major factor in the discordant relationship between traditional leaders and councillors. Felokwakhe Nxumalo, a community member from King Cetshwayo, agreed, saying: 'Hologa, Nkiligi and Mtilombo, are the areas dominated by ANC and they have developments of housing, road construction and lights'.

A handful of respondents also argued that there was no relationship at all. They viewed the institution of traditional leadership as a separate body that has nothing to do with the municipality. These respondents were interviewed in the predominantly rural areas of Intshukangikwale, Ozweleni and Msane. Their assessment seemed to be based on a lack of understanding of the two institutions, as well as a resistance to democracy.

### **What projects within the municipality are administered by chiefs and by the municipality?**

It was important for the researcher to elicit the respondents' views on the separate roles played by traditional leaders and the municipality involved. The responses to the question varied considerably.

Many respondents said they were not certain of the distinction in role allocations between the municipality and traditional leaders. Out of the 30 interviews, 25 said that they only got to know about the role allocation as the projects commenced. This, they opined, caused confusion as people did not know who to approach to partake or to seek employment in the projects. According to the responses, traditional leadership was used only for the accumulation of land for municipal projects. Municipal councillors approached traditional leaders to allocate land, which is under the jurisdiction of traditional leaders. In addition, the traditional leadership served as a mouthpiece to

introduce projects to communities. Yet, according to the responses, when it came to implementation, they were sidelined.

Some traditional leaders were of the opinion that the government must give them equal powers to municipal councillors. They argued that there were certain projects that were delivered to them to benefit communities. Yet, when it came to decision-making, budget allocations and remuneration they were excluded. In many ways, traditional leadership felt that it was an unjust scenario, mainly because when it came to implementation, they were placed at the forefront, but without any backing and support.

### **What aspects of community administration ought to be in the hands of traditional leaders?**

The question aimed to gather the views of the respondents on the relevancy of the institution of traditional leaders. From the responses, it was found that the traditional leaders have ample administration aspects that they need to be in charge of. More than 90% of the respondents, young and old, leaders in the municipality and in the traditional areas and women all mentioned different aspects that they felt should be assigned to traditional leaders.

#### *Local Disputes*

Respondents were of the opinion that traditional leaders should be in charge of disputes as they were respected at grassroots level. This is stressed by Bizana-Tutu, who argues that 'traditional leaders interact on a daily basis with their communities; they know who qualifies better than other people' (Bizana-Tutu 2008:34). One of the traditional leaders argued that, if local disputes such as assaults, theft, family and neighbour feuds and quarrels over land were handed over to the administration of traditional leaders, the legal system would ease its burden and reduce the cost of cases that go to magistrate's courts. In the process, the capital used could be diverted to developmental initiatives.

#### *Community Projects/LED*

After 1994, there was a need for economic development after years of sanctions during apartheid. Subsequently, the National Development Plan (NDP) was introduced in 1998, laying the foundation for economic development from the local level through to Local Economic Development (LED). However, the responsibility of LED fell under the control of municipalities since the Constitution stipulated that 'a municipality must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community' (The Constitution 1996).

Apart from those working in municipal offices, community members who did not understand the conceptualisation of LED, argued that community projects should have been assigned to traditional leaders. Ninety-eight percent of the community members said that the traditional leaders have very close relationships with the communities and are aware of their plight. They cited tourism, agriculture, roadworks and development initiatives as the projects that should be handed over to traditional leaders, based on their familiarity with the need in their communities.

However, the respondents who either were councillors or employed by a municipality argued otherwise. They felt that traditional leaders should be limited to settling disputes over fields and livestock grazing, and minor disputes over land between neighbours. In substantiating their arguments, they said that projects needed skills and expertise that traditional leaders did not possess. There was general agreement among them that even they, themselves, battled with the implementation of projects due to the lack of the advanced skills needed. In a nutshell, when it comes to community projects/LED, they undermined the suggestion that 'local leadership is critical and essential for LED success' (Meyer 2003:10). If this is the case, then municipal workers do not recognise traditional leaders as local leadership.

### **How is traditional leadership enhancing or hampering women's rights?**

One of the issues raised against traditional leadership is its role when it comes to women's rights. Mokgoro (1994:7-8) argues that traditional leadership's 'customary law

is biased against women in its regulation of gender power relations', and demands that 'women must be included in all levels of traditional authority'. These sentiments are shared by Bizana-Tutu (2008:31) who argues that 'generally speaking, men enjoy a dominant position over women traditionally'. The question was then raised to the respondents regarding traditional leadership and women's rights.

Firstly, it must be noted that from the information gathered in all three districts, namely, UMkhanyakude, UThungulu and ILembe, only six women were responsible for the highest level of traditional leadership, *induna*. If viewed from a representation perspective, it was dismally low. However, the respondents argued that it was often a tradition to have a male leading the traditional authority. The respondents pointed that when women happened to be traditional leaders, it was because of some special reason, including holding the position for the young upcoming *induna* or/and because she possessed special qualities that could not be ignored. Yet, generally, it is males who are the chiefs. *Inkosi* Musa Ngema of King Cetshwayo mentioned that in his area, there was one female who was an *induna*, based on her lineage, especially because she proved to be capable of leading the traditional authority, emphasizing that special considerations were weighed for a female *induna* to be instated. Mama Musa Ngema argued that in no way was traditional leadership discriminating; instead, it had its way of administration that needed not to be compared with that of a democracy.

Regarding the issue of positions, 80% of those interviewed argued that in traditional leadership women had specific roles in line with tradition and culture. Thus, they were represented adequately in the traditional institution, in accordance with tradition. When asked to explain the roles, one interviewee stated that 'men can decide on the demarcation of land, yet women decide, in most cases, as how a particular land is to be utilised, either for planting, doing washing or a specific community project'. In describing more roles, the upbringing of girls and household maintenance were mentioned. The roles allocated to women in traditional leadership have nothing to do with subjecting them to oppression or discrimination; instead it is a matter of following tradition. Even men do not interfere with such roles, since they are allocated specifically to women in

terms of tradition. In addition, a few respondents highlighted that traditional leadership has structures that ensure the representation of women and their concerns.

Then, the main question of whether traditional leadership advances or hampers women's rights was raised. The respondents answered the question in different ways. Eighty-seven of the respondents replied that the term 'women's rights' is foreign and a Western concept. The follow-up questions to this led to the assertion that traditional leadership does not oppress women. Instead, their roles within the institution are clear and in line with the tradition and culture of the African people. In brief, they felt it was inappropriate to ask such a question, since it was not applicable.

However, some interviewees felt that traditional leadership was suppressing women's rights. The conclusion was derived from the number of women who have leading roles in the traditional institution, and the overall patriarchy that they associated with the institution. Thabo Magagula, who is from Ward 3 at UMhlabuyalingana, argued that if women were not adequately represented in leadership, it amounted to hindering their rights. He cited the example of UMhlabuyalingana Municipality where nine women were municipal councillors, compared to 26 males. He argued that, although this was still not enough, however, it was far better than the traditional institution. According to the other interviewees, who shared similar sentiments, they argued that the traditional institution perpetuated the idea of patriarchy where women became the subject of male domination.

### **How are the traditional leaders assisted by the municipalities to capacitate their administration of communities?**

Democracy brought with it challenges of infrastructure building, service delivery and developmental initiatives. The communities in the sphere of traditional leadership also want to benefit from the fruits of democracy. In dealing with the democratic era's challenges, 'it is therefore contended that the legitimacy and survival of the institution of traditional leaders will in future depend on the service and quality thereof which they can provide and their impact on the lives of those whose interests they claim to represent'

(Bizana-Tutu 2008:36). In the light of this, interviewees were asked about capacity building initiatives that empower the traditional leaders towards ensuring good administration in the democratic era.

According to the data collected, the traditional leaders are not assisted with any capacity building skills. One of the traditional leaders opined that this might be because the municipality assumed that they would not be used in the implementation of development programmes. In addition, it was mentioned that municipalities were not keen to involve the traditional leaders in their structures. Consequently, if traditional leaders are to be trained, it will threaten the status quo that exists between the two bodies.

**Are there any structures that are inbetween the municipalities and traditional leaders to facilitate smooth operations and conflict management?**

The Constitution is considered as legal pluralism by allowing the practice of common law and customary law simultaneously. This raises the possibility of conflict in the application and implementation of the law. Thus, the interviewees were asked about measures that existed to resolve any disagreements that arose regarding administration. The question was most applicable to those who were at the forefront of the issue, namely, traditional leaders and municipal officials. However, it was also directed at the community members to understand whether they held any views, comments or suggestions.

The data collected indicated that there were no specific structures provided to ensure that the municipalities and traditional leaders collide. However, the Municipal Structures Act makes provision for their representation in municipal executive committee meetings. Even then, when these meetings are held, the representation of traditional leaders must not exceed 20% of the meeting. In addition, the traditional leaders are only allowed to be present in such meetings, without voting rights and powers to engage in the deliberations.

### **What is being done to remedy the relationship between traditional leaders and municipalities?**

As traditional leaders are significant in communities and have a vital role to play, it is fair to put measures in place to ensure that these leaders' interaction with municipalities is positive. This raised another question on the measures being taken to facilitate an ideal environment between municipalities and traditional leaders.

The respondents who worked in the municipalities stated that the House of Traditional Leadership and the Municipal Executive Committee meets on a regular basis to iron out any differences that may have arise. In this way, they have a continual conflict management structure to ensure that the relationship between the traditional leaders and the municipality is good at all times.

Is the institution of traditional leadership important and relevant in a democracy?

In the light of the challenges that exist with traditional leadership, the interviewees were asked if traditional leadership is still relevant in the democratic era. It was interesting to note that all the interviewees agreed unanimously that the institution of traditional leadership is relevant in a democracy. All of the interviewees said that traditional leadership was needed more than ever in South Africa's democracy. The interviewees went on to explain their justification of their approval of the institution.

### *Freedom*

About 80% of the respondents argued that traditional leadership represents the freedom from racial oppression and liberation from colonialism. It was the belief of all the respondents that traditional leadership is the real essence of which they are as Africans, therefore, any effort to erode it, is tantamount to oppression. They argued that democratic rule is a Western phenomenon that they embrace since the world is evolving. However, democracy had to adequately accommodate traditional leadership as a way of showing respect for other people's tradition and cultures.

### *Identity*

According to the interviewees, the institution of traditional leadership is precious to them. It is an institution they identify closely with, when compared to democratic municipalities. They opined that for them traditional leaders were like family. If there is a problem, the first person they think of is an *induna*. Similarly, if their community has an idea, the people they think of getting approval from are the chiefs, mainly because they are close to them.

### *Accountability*

It was the general view of the people interviewed that unlike municipal councillors; traditional leaders are more accountable to the people. When asked to explain, the interviewees said that councillors are accountable to their political organisations and the national government. However, traditional leaders served the interest of the communities under their administration.

### *Competiveness*

Some of the interviewees argued that the presence of traditional leaders kept councillors on their toes in terms of service delivery. According to them, the councillors felt that if they did not deliver or ill-treated community members, they faced losing support from the traditional leaders, who, unlike them, had authority over their people.

### *Impartiality*

One of the factors that led to the endorsement of traditional leaders in a democracy is their ability to be impartial. Despite political meddling, traditional leaders are far better when it comes to resolving matters impartially. This is in contrast to councillors who allowed their political party allegiance to interfere with matters in communities that required impartiality.

## **5.5. Findings from the interviews**

### **5.5.1 Democracy defined**

The communities involved revealed that tradition is the core of the relevance of traditional leadership. Each nation is defined by its common tradition, culture and origins. Traditional leadership is at the core of such a definition. In study of the three districts, the traditional leadership received a resounding 100%, based on them being considered the essence of African leadership and tradition. When democracy is defined as rule by the people, of the people and for the people, it means that it is a system of government approved by the people. If traditional leadership receives such approval from its communities, perhaps it makes sense to define democracy in terms of the communities who are under traditional leadership administration, rather than from the point of scholars' interpretations of democracy. The quandary regarding traditional leadership is not traditional leadership as such, but the way South Africa approaches democracy. Sithole (2009:44) outlines the organic democracy argument as follows: to 'see democracy as a system of governance that fulfils different needs for people who understand more than one type of democracy'. The manner in which the communities under study wholeheartedly approved of traditional leadership therefore warrants South Africa to approach traditional leadership as another type of democracy. It is clear that South Africa's approach to democracy has been narrow, as 'the term democracy is notoriously ambiguous' (Ntsebenza 2005:23).

The fieldwork conducted in this study included women, traditional leaders, municipal workers and community members. One could have expected disapproval of some kind of the institution of traditional leadership if it was not the administration of the people, by the people and for the people, in equal line with the general perception of democracy. Contrary to the perception of traditional leadership being undemocratic, the study indicates a 100% legitimisation of this type of leadership. Although it involved different communities, it resonates with a study conducted by Oomen (2005:193) 'where 80

percent of the people in a dusty and remote corner of the country still support traditional leadership'. In democracy, the numbers are critical and, from the study, evidence shows that people endorse and embrace traditional leadership. It is immaterial whether they base their support on tradition, which binds communities together, or the effectiveness of the traditional leaders' rule, traditional leadership receives the endorsement of the people. What one may seek to clarify then will be how this institution interacts with the democratic principles of human rights, freedom, etc.

### 5.5.2. Traditional Leadership and Women's Rights

Democracy in South Africa centres on the Bill of Rights, which promotes human rights, equal rights and individual freedom. An issue that is a bone of contention regarding traditional leadership in a democracy is its nature when it comes to women's rights. Traditional leadership has been dubbed as 'fundamentally patriarchal and discriminatory against women' (Mokgoro 1994:7). This has invited criticism for traditional leadership's incorporation in South Africa's democracy. However, it is important to balance the different views on the matter with the views of the communities to ascertain if they are indeed based on reality.

In the three districts where the study was conducted, women make up less than 2% of leadership positions; thus, of being *amakhosi*. Their roles in communities are seen as submissive and oppressed considering that they are expected to plough fields and do household chores, and their voices are less considered in places like the traditional authority. When such aspects of women's livelihood are approached from the angle of the Bill of Rights and individual liberties, they pile up formidable evidence to the argument that traditional leadership is patriarchal and oppressive.

The study, however, revealed a different angle to the issue of women's rights. To begin with, as highlighted in the previous chapter, South Africa adopted legal pluralism, which

allows both common law and customary law to co-exist within the same Constitution. When such laws co-exist, it is expected that, in line with human dignity promoted by democracy, individuals should respect one another. Most of the critics that lambast traditional leadership seem to overlook this fact. The women interviewed did not label traditional leadership as patriarchal or oppressive. In fact, they indicated that in the Nguni culture women are treated in a particular manner. Culture and tradition precedes any disparagement of those who are fall under customary law. As previously highlighted, culture and tradition in traditional leadership allocates certain specific roles to women. These roles are in line with tradition and culture. In the three districts under study, the point made by Oomen (2005:189) was underlined, namely, that the majority of women did not feel that the status quo is discriminatory or unrepresentative.

In addition, the women in ILembe, UThungulu and UMKhanyakude are wary of how traditional leadership is viewed. These women were of the opinion that anyone who expresses such sentiments does not respect South Africa's democracy or the Constitution that approves of them practicing their culture freely. A total of 13 women from diverse social standing in the communities proved to clearly understand that women's rights is a foreign concept and if entangled with traditional leadership can ignite confusion. Responses to the question on whether traditional leadership enhances or hampers women's rights, unleashed disappointment and vexation. The women concluded that their culture is belittled and disregarded by this point of view.

It is common to internalise oppression, especially if it has been imposed on you over a long period. The discussion that followed the open-ended question on traditional leadership and women's right shed some light as to whether the women have internalised oppression, or they whether were objectively putting their point across. In the discourse, it emerged that the respondents were well aware of the distinction. Some women highlighted that each nation has its own cultures. The way things are, is rooted in that culture and tradition. Only when the women feel uneasy about certain matters,

will they question whether it is oppression or discrimination. Currently, they are content and embrace their situation as it stands.

### 5.5.3. Traditional Leadership and Competency

It is a shortcoming to assess the role of traditional leadership without delving into its administration capacity. South Africa's post-apartheid era posed many challenges as the country sought to develop itself. There was a need for infrastructure development, development in general, service delivery and effective administration. All of these much-needed skills capacitated individuals since it was no longer about the struggle for freedom, but administration. The challenge of possessing administration capacity not only applied to traditional leadership, but also for those working in government. It is asserted that 'Municipalities lacked skilled personnel; had inexperienced staff; suffered high turnover rates and poor recruitment due to relatively low salaries; and the existing pool of skills was unevenly spread out between rural/poor and urban/rich neighbourhoods' (Ndletyana & Muzondidya 2009:29). Development programmes were also needed in communities under traditional leadership since they form a broader South African landscape. For an administration that had been preoccupied with land and family disputes, development was a major challenge.

## 5.6. Recommendations

### 5.6.1. Legislation

It is evident that traditional leadership is here to stay. Even the major onslaughts of colonialism and apartheid failed to write its obituary. However, in the democratic dispensation, it has emerged as a force to be reckoned with. Traditional leaders have the authority, trust and respect of the communities. The only challenge relates to the legislation, which could really cement its relevancy beyond lip service and tokenism. The legislation that exists, from the Constitution, to the Traditional Leadership and Governance Framework of 2003, to the Communal Land Rights Act of 2004, is still not

precise and clear on traditional leadership's role in South Africa's democracy. In a legal pluralism country, to have traditional leadership's role limited only to communities under its administration is tantamount to the separate development of apartheid.

Legislation must be introduced to fully embrace the role of traditional leadership in South Africa's democracy, and not segregate it to the tribal authority areas. Judging from the study, there is discontent, which indicates that while traditional leadership is willing to move with the times through compromise, South Africa's democracy is wary of making similarly compromises. Each small move by the government takes many years because it is deeply concerned with the global approval that comes with having the most democratic constitution in the world. In the process, communities have begun to feel that democracy is denying them a chance of truly celebrating independence from colonialism and freedom from apartheid.

#### 5.6.2. Political Education

One of the pitfalls slowing South Africa's progress is the failure to understand politics in its entirety. While politics is broad and encompasses all aspects of life, knowing the basics will go a long way if we want the country to prosper. Similarly, traditional leaders need to undergo political education on a democratic dispensation. Theirs is the politics of resistance, struggle, opposition and rule. Understanding the concepts related to a democratic dispensation will ensure that traditional leadership takes a stand that is in line with its vision. At this stage, their vision is scattered all over. For traditional leadership there were matters that they had to take up with the existing democratic rule, meaning that they conduct struggle politics. Once traditional leadership triumphs in this regard, it needs to learn the art of administration in a democratic sense.

When it comes to being administrators, traditional leaders need to regress to impartiality. While the Constitution allows all South Africans to have any political

allegiance; however, once one is entrusted with administration powers, it is ideal to embrace that completely by avoiding serving the political organisation of your choice. It is about the people under your administration once you hold such power. In addition, as people who are at the helm, traditional leaders need to avoid serving only those affiliated to their own political organisation. In doing so, they will regain the trust of the people.

Moreover, history has shown how colonial rule and the apartheid regime used traditional leaders for political reasons. It is high time that traditional leadership stands its ground and resist being used for political gain. The democratic dispensation promotes freedom, true freedom, and the traditional leadership need to do its best to enjoy such freedom by recapturing its traditional essence of being a separate form of rule, while forging its way in a democracy. The traditional leaders need to use all channels to secure independence from being politically used, but instead define their position politically.

### 5.6.3. Capacity Building

The challenge of incorporating traditional leaders into a democracy is their lack of capacity to administer projects and effectively deliver services. If the government is honest about incorporating the traditional leadership into the democratic dispensation it needs to ensure that training programmes and workshops in capacity building are offered. Traditional leaders should not only be included in these training initiatives; there also needs to be strategic planning of capacity-building initiatives that consider the background of the traditional leaders. In this way, traditional leadership can initiate, implement and administer projects ranging from LED initiatives to administering their communities in an effective manner.

## **5.7. Recommendations for further research**

In the light of the findings and shortcomings, further research need to be on the following aspects;

### *5.7.1. Capacity Building*

Traditional leadership needed to be equipped with the necessary skills to effectively administer the communities and deliver services. The challenge of development, service delivery and infrastructure building required a great deal of technical expertise. It appears from the data collected for this study that the municipalities sidelined traditional leaders when capacity building was done for them. The capacity building initiatives are 'targeted at both councillors and municipal officials, have had some impact, but this seems limited' (Ndletyana & Muzondidya 2009:36). If traditional leaders were involved as well, they might have gained experience in preparing themselves for service delivery. One municipal employee highlighted that if the traditional leaders were not sidelined, and were drawn in, it would make their work as municipalities easier. Communities expect traditional leaders to spearhead programmes, yet due to the lack of the technical skills required and the impasse in legislation, traditional leaders remain unqualified to manoeuvre in the interest of their communities.

The National Development Plan (NDP) and Local Economic Development (LED) in South Africa were introduced 'to address the disparities of apartheid which were dualism and marginalization' (Trah 2005:1). LED has strategic pillars, including rural development, aimed at bolstering economy at the local level. Although municipalities have been assigned to spearhead LED projects, it cannot be denied that communities will benefit from them. However, if traditional leaders are not equipped nor trained to implement such initiatives, the communities under their administration will miss the initiatives aimed at uplifting communities.

### *5.7.2. Legislation*

It has emerged from the collected data that legislation on traditional leadership is a major challenge concerning the role of traditional leaders. Despite the introduction of crucial pieces of legislation, such as the Traditional Leadership and Governance Framework Act, 2003 and the Communal Land Rights Act, 2004, the legislation is still failing to lay down the foundation for traditional leadership to define its role in South Africa's democracy. In fact, the legislation is considered as 'tokenistic compared to their expectations of engaging a government oriented towards an African Renaissance and open to creating models that include indigenous systems' (Sithole 2009:49).

It is therefore a challenge for traditional leaders to participate effectively in democracy, especially in service delivery, without the ground rules being laid down. From the responses received from the interviewees, it emerged that both traditional leadership and municipalities are frustrated by the lack of clear lines of engagement. The municipal employees often sought the intervention of traditional leaders in approving the use of areas under their leadership. Even this is not a legislated procedure. The legislation only acknowledges the existence of traditional leadership, without precisely describing its involvement in service delivery.

Community members, traditional leaders and even municipal employees at times consider certain projects as supposed to fall under traditional leaders' implementation, due to their nature. Notably, traditional leaders are still very close to communities and unlike municipalities, which are party politics-orientated, the traditional leadership is trusted by the communities. Yet, since everything has to conform to and be done by the rule, traditional leaders are excluded, denying them a chance to use the authority they have to make a meaningful impact on service delivery and the overall administration.

One of the traditional leaders lamented the lack of clear legislation by pointing out that some of the cases that clogged the justice system could have been resolved with ease by the traditional leadership. Similarly, legislation with regard to the powers of traditional leadership hinders service delivery. A typical example of this is the case of Macambini near Mandeni. Former Premier S'bu Ndebele, KwaZulu-Natal Director General, Kwazi Mbanjwa and King Goodwill Zwelithini travelled to Dubai and secured a R44 billion-investment project. However, *Inkosi* Khayelihle Mathaba protested against the project being based in their community, without them being consulted. The undermining of traditional leadership in consultation and the lack of legislation determining the implementation of projects ended up denying the community a project that was to bring development and employment to the area. If the legislation existed and there was an adherence to rules, the North Coast community would have benefitted from this Bukhatir Group project.

### *5.7.3. Party Politics*

South Africa's democracy has been around for slightly more than two decades. Democracy has introduced party politics, which saw KwaZulu-Natal, become a battlefield to win constituencies. This exposed the traditional leadership to the political wrangling of political organisations. In explaining the interest of political parties in traditional leadership, Oomen (2005:103) argues that 'the ANC was quick to realise that it was the rural areas, with their two-thirds to a half of the national population that formed its Achilles heel'. However, it was not only the ANC, but also other political parties such as the IFP and NFP. In this study, it emerged that this political struggle resulted in major setbacks in service delivery and administration by the traditional leaders to a point of hampering it completely. Among the responses, it was stated that certain areas, due to their political affiliation, were not even provided with basic services like water, sewerage and electricity. They blamed the traditional leaders for being captured by political parties and making decisions based on party politics.

## **5.8. Limitations of the study**

In retrospection at the research process, the study encountered very few limitations. These are;

### **5.8.1. Municipal Employees**

In the light of the sensitivity of the research content, the municipal employees were reluctant to give their objective ideas and opinions. The mere fact that they were employed by the municipality and in the light of high rate of unemployment, most of them did not want to risk their employment for the study. Only a few, after being guaranteed confidentiality, were willing to be participants.

### **5.8.2. Community**

There was an assumption that community members are well-vexed on the politics of the day and understood the traditional leadership versus municipality. However, as the interviews were conducted, the researcher ended up spending time clarifying what is traditional authority and municipalities as well as their roles.

Other community members viewed the study as a political game aimed at belittling traditional leadership. Consequently, their responses and contribution was subjective and in defence of traditional leadership rather than contributing objectively in the collection of data through interviews.

### **5.8.3. Party Politics**

While the study was an objective assessment of the role of traditional leadership in democratic governance, party politics is still deeply entrenched in the mind of the people. This may be because of programming, propaganda and allegiances to political parties. It took a lot of effort to explain the neutrality of the study from party politics.

## 5.9. Conclusion

The study conclusively indicated that traditional leadership is needed in a democracy. The communities view it as a trustworthy, effective and impartial administration. In addition, it is a reflection of the freedom achieved after colonialism and apartheid. Moreover, it is entrenched in the communities as a tradition that cannot be erased, even though there is a democracy that caters for the changing times.

However, there are various aspects that need to be addressed when it comes to fully incorporating traditional leadership in South Africa's democracy. These aspects include:

Legislation that will precisely cement its role in the democracy by defining the role that has to fall under traditional leaders in the democracy. The legislation must not be lip service or tokenism, which only recognises traditional leadership, yet fails to fully delineate its role in the democracy.

Traditional leadership, as in any relationship that includes two parties, has to open up to compromises without losing its essence. In a way, it is a give-and-take scenario. In the process, it will open up to having its role clearly defined in the democracy.

Traditional leadership had to push for respect and recognition in South Africa. It must not be seen as the leadership of rural and illiterate communities. Instead, in line with the country's development, it has to be afforded a clear role.

The challenges of South Africa being a developing country include the administration of traditional leaders. The country needs implementation and good governance, which requires special skills. Sidelining traditional leaders in capacity building will only serve to slow the country's progress and development.

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