

Traditional Leaders

A KwaZulu-Natal Study
1999 to 2001



The Independent Projects Trust (IPT)

Founded in 1990, the Independent Projects Trust is a facilitation, training and research organisation which seeks to help organisations, both public and private, that are undergoing transformations owing to political, social and economic changes.

The IPT is staffed by a diverse group of associates with a wide range of experience, who over the last 10 years have developed a methodology which ensures effective consultative and collaborative problem solving processes within the target organisations.

A primary focus of the IPT's work is on building and strengthening interpersonal and intergroup relationships. This is achieved through facilitation and training.

The IPT has worked with rural communities especially on the coast of KwaZulu-Natal, both north and south of Durban. Experience on the ground has taught the organisation that rural development can only be achieved if all sources of tensions are identified and worked on constructively by the parties involved.

Uncertainty about the role of traditional leaders has contributed to tensions between government and traditional leaders. The ones who have suffered most are residents of rural communities who desperately need to benefit from local economic development. Instead, the tensions delay development.

For this reason, the IPT, through funding from the Charles Stewart Mott Foundation, has conducted research to examine ways for both traditional leadership and local government structures to work together to improve lives in rural communities. Our primary goal has been to contribute ways to harmonise the two institutions because both are significant and defining elements in South Africa.

Acknowledgements

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Glossary

Inkosi = chieftain or head of the traditional authority

Amakhosi = the plural of inkosi

Ubukhosi = the institution of chieftainship

Undlunkulu = inkosi's wife

Induna = the headman or traditional councillor for a village or a ward in the traditional authority

Induna yezinsizwa = the leader of a group of the traditional young man

Nndunankulu = senior induna

Isigodi = ward/ village

uMuzi = homestead

Ngezamuzi = cleansing ceremony. It is the penalty paid by a boy when a girl gets pregnant before marriage.

Iziphakanyiswa = chiefs not of royal blood

Imbizo = gathering of the traditional people called by Inkosi

Ingonyama = lion, used as sign of respect to the king of the Zulu nation.

Summary

Issues relating to the role and responsibilities of traditional leaders have received much attention since South Africa's first democratic government came to power in 1994, and particularly over the past two years as the country has held a general election and a local government election. So much so that the local government election eventually held in December 2000 was delayed in an attempt to address the concerns of traditional leaders.

While there is an idealised historical model of traditional authorities, the institution of traditional leaders does not remain static and has undergone significant changes. Nevertheless, it incorporates a way of life that is fundamental to African values and cultures and there is evidence that amakhosi are still influential, particularly in rural areas of KwaZulu-Natal.

The history of traditional authorities is useful in attempting to understand a role for the institution today. Many writers and researchers observe that the institution is essentially undemocratic but also point out that the nineteenth century was a period of great flux and change in African societies. The twentieth century saw the Black Administration Act, which gave the colonial and apartheid governments immense powers to appoint traditional leaders and to change their areas of jurisdiction. It is therefore difficult to talk about how these systems work in the present because they have been so distorted. These distortions continued and were magnified under apartheid rule through the Bantu Authorities Act, during which time traditional leaders became "paid servants" of the state which made it difficult for them to resist government policies.

Traditional leaders are recognised in South Africa's Constitution, although there are no roles and responsibilities clearly defined in this legislation. A discussion document on traditional leaders and a white paper on local government both produced by the government have also attempted to reach some clarity on the role of ubukhosi. An Act passed originally in the former KwaZulu self-governing territory legislated the role, functions and remuneration of traditional leaders in KwaZulu. It has been the subject of a constitutional court challenge and found to be not inconsistent with the national Constitution. It is therefore recognised in the province of KwaZulu-Natal, although certain amendments have been made in recent years. Attempts in KwaZulu-Natal to draft a provincial Constitution also stalled on the constitutionality of the role of traditional leaders.

Ambiguity as to the precise role that traditional leaders should play in local government resulted in the intense discussions and politicking around the issue in the run-up to the municipal election, which was held on December 5, 2000. This report provides details about this process in the form of a chronology that highlights events over a two-year period.

As part of the process leading to these elections, local government was restructured and boundaries of councils were redrawn. The process was not without controversy and was resisted by many traditional leaders from the start. Traditional authorities complained that public hearings organised by the Municipal Demarcation Board were poorly advertised and that their submissions were ignored. The Board counters that some traditional leaders simply refused to discuss matters of demarcation until the question of functions and powers had been resolved.

However, such debates around demarcation and the legitimacy of traditional leaders may seem largely irrelevant in rural areas where many traditional leaders have been accepted, out of respect and sometimes out of fear, as the authority on issues of development. Local government is usually regarded as closest to the people and therefore most capable of negotiating development via representatives who are elected and accountable to the people. This usurps the role that many traditional leaders would see as theirs. As a result of these tensions and difficulties development, which is particularly vital in rural areas, often falters.

Development is often dependent on the personality and initiative of an individual leader in an area – whether that person is a traditional leader, chairperson of the development committee or a councillor. In the two areas where intensive research has been conducted as part of this study – Khula Village and Nzimakwe Traditional Authority – individuals who are not fiercely aligned to specific political parties spearhead development. There are also areas where individuals are connected with centres of power in various hierarchies and are able to access resources through these connections. Nevertheless, service delivery is ultimately dependent on the initiative of the individual.

A debate that is often linked to development issues, is concerned with a particularly sensitive matter for amakhosi: The issue of land. Many amakhosi consider the control of land to be a primary responsibility. Even if traditional leaders are unable to perform a number of other roles with which they are

currently concerned, the allocation of land is a central responsibility that most amakhosi are determined to keep.

Another function that traditional leaders perform which is of significant importance is concerned with the operation of customary courts. Such courts are usually located next to or near the house of the local inkosi. The procedure followed by the courts is customary procedure, which is generally regarded as simple, informal and flexible. This has resulted in many considering customary courts to offer an ideal mechanism for dispute resolution that could be duplicated elsewhere. However, others argue that customary courts are conservative and not able to deliver justice in the modern world.

Another area where ubukhosi is considered by some to be conservative is concerned with issues relating to gender. Questions are raised about traditional leaders and gender, particularly in light of the Bill of Rights in the Constitution, which states that no one may be discriminated against on the basis of gender. The institution of traditional leadership is considered commonly to exclude women from decision-making positions and to limit their participation at traditional gatherings. This is viewed as being inconsistent with provisions of the Constitution. It needs to be noted though that inequality has more to do with rituals of power that reinforce subservience rather than being treated differently, particularly where women themselves claim to have chosen the roles they perform.

It is widely acknowledged that in order to keep pace with a changing environment institutions in South Africa need to achieve an internal shift in mindset to keep pace with the transformation process. It is also widely accepted that training and exposure to new ideas and thinking are critical if this shift is to take place. Such education and training needs to be seen as part of a culture of life-long learning, rather than a single workshop being the 'solution to a problem'.

Several organisations have been given funding to conduct training programmes with traditional leaders in KwaZulu-Natal and there is a great need for these to be evaluated. Traditional leaders also need to be part of the process in which criteria for future training are defined. Future training initiatives must also consist of modules that are designed according to the needs of the traditional leaders and their communities. Material should also be provided in the own language of the participants to ensure that it can be understood. It is imperative that traditional authorities are consulted throughout the process of the formulation of training material.

Solutions to the debate about the relationship between local government structures and traditional authorities need to be worked out on a very local level. They should involve individuals from both structures holding discussions to determine their respective roles and functions in an effort to develop co-operative and constructive relationships that support rural development. This clarity would also provide the basis for both mutual accountability and training needs assessments.

This solution will by no means be regarded as acceptable by a number of traditional leaders and is likely to be rejected by some municipal officials. However, pragmatic approaches to the delivery of development at a local government level in areas where traditional leaders perform an important function should inform day to day relationships so that rural communities are not impacted on while awaiting policy resolutions.

1. The system of traditional leadership

This section considers how traditional authorities have worked and the influences that have affected those workings.

It first considers an idealised historical model in order to pull out elements that are to be found in most traditional authorities today. It then looks at the justifications of proponents of the institution of traditional authority, which are that it is fundamental to African values and culture. Their concerns are that it is at risk of disappearing in societies governed by western systems and values. However, sceptics note that culture and society are not static and that elevating traditional authorities may result in discrimination against other cultures. The history of traditional authorities is useful in attempting to understand a role for the institutions today. Many writers and researchers observe the essentially undemocratic nature of the institution but also point out that the nineteenth century was a period of great flux and change in African societies. The twentieth century saw the Black Administration Act, which gave the colonial and apartheid governments immense powers to appoint traditional leaders and to change their areas of jurisdiction and nations. It is therefore difficult to talk about how these systems work in the present because they have been so distorted. These distortions continued and were magnified under apartheid rule through the Bantu Authorities Act, during which time traditional leaders became "paid servants" of the state which made it difficult for them to resist government policies.

The section then considers the structures and remuneration of traditional leaders. The structures include a number of bodies representing leaders at different levels of society. Nationally there is the National House of Traditional Leaders with provincial structures called Provincial Houses of Traditional Leaders in six provinces - KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, Northern Province and the North West. In addition to these legally constituted structures, African National Congress aligned amakhosi around the country have also organised themselves into the Congress of Traditional Leaders of South Africa (Contralesa). The issue of remuneration is an emotional one, partly due to the disparities that until recently existed in the payment of amakhosi. These developed because of the policies of the various homeland governments. Disparities still continue to exist in the payment of traditional kings. There have also been legal disputes about whether the competence to pay amakhosi is a national or provincial one. This has been of specific concern to the KwaZulu-Natal provincial government.

1.1. Overview of how traditional authorities work

The inkosi or traditional leader is regarded as the father figure of the clan. Traditionally male, the inkosi and his administration carry out a range of responsibilities. These may include dispute resolution in the community, administration of justice through customary courts, carrying out of certain traditional and ceremonial functions, including presiding over traditional marriages and officiating during various ceremonies. Land administration functions including subdivision of land, boundary and rights holder disputes and more recently membership or property registers. Any meetings held in the traditional authority should be called by the inkosi. Traditionally these were attended only by senior men and other respected individuals within the given clan.¹

Describing the function of traditional leaders, Inkosi Mzonjani Ngcobo says:

"The inkosi also acts as a judicial officer in his tribal court. He presides over and finalises all the cases brought to his court and if there is no agreement and solution to the case he then refers such a case to a magistrate. The inkosi also deals with land, both residential and fields, and also holds in trust for his people the grazing lands. In brief, therefore, the duty of an inkosi is to create harmony in his community."²

While the traditional leader is the central figure in the traditional authority system, he is assisted by an inner council of advisors, sometimes referred to as the chief-in-council. Sibongile Zungu writes:

¹ Discussion document prepared by Sipho Sibanda and Edgar Mthuli: July 4, 1996.

² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Mzonjani Ngcobo from Qadi Traditional Authority, Qadi Traditional Court, July 4, 2001.

“These positions were given to elders who had a proven record of wisdom and bravery. Membership was not limited, but was drawn mainly from the inner circle of the chief’s relatives and personal friends who may have included influential members of the community.”³

The traditional authority area is divided into a number of wards (*‘izigodi’*) and izinduna are appointed in each area as extensions of the inkosi’s authority. One induna is appointed as the head induna. The traditional leader, who should act on the advice of his advisors, appoints izinduna. As such the appointment is made on the basis of choice and the position of induna is not hereditary. The induna may also be removed at any time if his performance is unsatisfactory. Zungu writes:

“The induna’s function was to represent his ward at the tribal council, to allocate land to new residents (who had been approved by the chief-in-council and accepted by the existing community members), to collect taxes, maintain law and order as well as the trying of minor cases that if unsettled would be referred to the chief.”⁴

The ward council, which is similar to the chief-in-council, would assist the induna in performing these duties. Zungu states that each ward also has several functionaries who perform tasks on behalf of the inkosi.

“For example, there was an *induna yezinsizwa* who would be responsible for training and exercising young warriors. He would be answerable to the chief and from time to time would be called on to present his men to the chief.”⁵

This authority system continues down to the unit of the nuclear family, which consists of a ‘head’ who has final authority, according to Zungu. Tasks are handed out according to the age, capability and accepted practices within the particular traditional authority. After the sons married they would not leave their father’s house, but would become part of the homestead or *umuzi*. As an *imizi* grew with time, it would develop into a settlement where clusters of the clan would be found.⁶

1.2. Traditional leaders as custodians of culture, customs and tradition

Supporters of the institution of traditional leadership argue that the institution should be retained because it safeguards African value systems. The publication *epoliticsSA* states that bodies such as Contralesa question the wisdom of abandoning traditional institutions in favour of government systems that were imposed by the West.

“They (bodies such as Contralesa) point out that abandoning cultural values, norms, traditions and customs has led to the disintegration of morality and the loss of respect for human life and dignity...They argue that traditional leaders play an extremely important and positive role in many communities. In fact, in African customary law the traditional authority is required to act at all times in the interests and according to the wishes of the people.”⁷

Such attitudes are contained in an article written by Contralesa’s Inkosi Phathekile Holomisa. He states:

“Ubukhosi, the cultural values, norms, traditions and customs, all combine to ensure that, even in the midst of extreme poverty, there shall be respect for human life and dignity,

³ Sibongile Zungu: “Traditional leaders’ capability and disposition for democracy: the example of South Africa,” *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ *epoliticsSA* published by the Institute for Democracy in South Africa (Idasa) Issue Ten February 21, 2000.

each person shall not sleep out in the open due to poverty, there shall be respect for law and order, and that whatever food there is shall be shared by all. This is the way of life that traditional leaders want to retain for their people. The present struggle is not about the retention of power for its own sake, it is for the retention of power so that it can be used to safeguard the African value systems which are the bedrock of society.”⁸

Traditional councillor Ndunankulu B. Nzimakwe says that a cultural revival is being spearheaded by the inkosi of the Nzimakwe Traditional Authority. He says that Inkosi Nombuso Nzimakwe, who is the traditional leader of the area on the South Coast, has encouraged old ladies to revive virginity testing.⁹

“There were some who were talking about the Constitution and how these young girls were going to react. They were shocked to discover that it is actually the girls themselves who are pressurising their parents to allow them to join these testing sessions. Most of them are very proud that they are still virgins. They talk about it and are happy.”¹⁰

Ndunankulu Nzimakwe describes virginity tests as being “part of our culture that was practised by our ancestors from time immemorial”.

“We have a lot of problems now because of our failure to keep our culture. We have many children who are suffering because children are loose. They lack respect and some of them are impregnated by old people, as old as their fathers. Even little children as young as 14 years are getting pregnant and you can imagine what kind of society we are going to have in the near future if we let our children destroy themselves like this...Also these days you have this big problem of Aids. Our children are dying at a very early age because of this new disease. But you can see if they avoid having sex and remain virgins until they get married they would not be dying like this.”¹¹

However, research undertaken by a non-governmental organisation’s fieldworker, Sizani Ngubane, suggests that girls are often blamed for failing the virginity tests even in the case of incest, rape and sexual abuse.

It is impossible to generalise about the personality, behaviour and motivations of traditional leaders. The chairman of the Municipal Demarcation Board, Dr Michael Sutcliffe says that while some traditional leaders are the embodiment of their people, many are not.¹²

The Democratic Party’s Wessel Nel argues that cultural diversity may be encouraged and even facilitated by the government. However, he says that this should not be on the basis that Zulu culture should benefit while, for example, Indian cultures are excluded.¹³

Nevertheless, Deputy President Jacob Zuma emphasises that social life is fluid and new traditions are constantly developing.

“We must not be afraid of this. We need to see change as something positive. We need to take that which is good from our traditions and cultures and incorporate that which will improve our lives. This is not a new phenomenon. It is something that has been happening for as long as humans have been in existence.”¹⁴

⁸ Inkosi Phathekile Holomisa: “Ubukhosi the bedrock of African democracy” *Mail and Guardian* February 11, 2000 accessed on the web <www.sn.apc.org/wmail/issues/000211/NEWS36.html>.

⁹ For more on virginity testing see Chapter 7 on gender.

¹⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Ndunankulu B. Nzimakwe, traditional councillor, Nzimakwe Traditional Authority, July 25, 2001

¹¹ *ibid.*

¹² Interview conducted by Cheryl Goodenough with Dr Michael Sutcliffe, chairman of the Municipal Demarcation Board, Westville August 8, 2001.

¹³ Wessel Nel: “Traditional payoff dishonest: The government must own up to the fact that traditional authority is inconsistent with democracy” *The Mercury* March 24, 1999.

¹⁴ Address by Deputy President Jacob Zuma at the opening of the National House of Traditional Leaders in Cape Town on May 8, 2000, available on the South African government website, <www.polity.org.za/govdocs/speeches/2000/sp0508.html>, accessed April 3, 2001.

1.3. The influence of the past on the present

Much has been written about the historical role of traditional leaders from pre-colonial times through the colonial and apartheid eras. This will not be considered in great detail for the purposes of this report. However, of some concern is the influence that such issues have on the current debate.

A number of writers claim that while pre-colonial traditional leaders were answerable to their community and its structures, post-colonial amakhosi became, in the words of Sibongile Zungu, “the instruments of state policy charged with carrying out instructions from the state”.¹⁵

Chris Tapscott states that in pre-colonial times decisions that affected the traditional community were usually made by the traditional leader who consulted with councillors who represented the interests of the community.

“People showed their disapproval of unpopular chiefs by ‘voting with their feet’, that is, by moving to the areas of the more popular leaders. In other regions, unpopular chiefs were deposed or were killed.”¹⁶

Tom Lodge points out that the 19th century was a period of dynamic political changes and that what was understood as traditional or customary “was in fact fluid and undergoing alteration”.¹⁷ According to Lodge, as political units became larger they became more authoritarian and less consensual.

“Even relatively intimate political communities such as those which existed in the Eastern Cape were not democracies. Consultation by rulers excluded all women and at most included only the heads of households rather than all the male adults living within them. Discussion at councils and wider assemblies was restricted by the protocol that arose from hierarchy: the chief spoke first, his important advisors next, and others followed. In such circumstances opposition was likely to be cautious. Decisions tended to be made in the smaller advisory forums and endorsed in the wider assemblies. The requirements for consensus and unity imposed their own constraints on opposition and criticism.”¹⁸

1.4. The colonial era and the Black Administration Act of 1927

Writers also concur that traditional leaders were used and often manipulated by colonialists. The colonial administration arbitrarily replaced hereditary amakhosi who did not act in ways approved of by the colonialists. This was part of the colonial strategy of governing with few resources an indigenous population that had been defeated militarily. Writers have also noted that traditional leaders and institutions responded differentially and strategically to the colonial strategies, although within serious constraints.

Speaking at the opening of the National House of Traditional Leaders in Cape Town in May 2000, Zuma said that traditional systems of government were in place in most of South Africa prior to the arrival of the colonialists.

“As colonisation advanced, these traditional societies were either systematically destroyed or subjugated and their lands seized. In this context, traditional leaders played a

¹⁵ Sibongile Zungu: “Traditional leaders’ capability and disposition for democracy: the example of South Africa,” *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

¹⁶ Chris Tapscott: “The institutionalisation of rural local government in post-apartheid South Africa *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa* Konrad-Adenauer-Foundation. October 1996 p 292.

¹⁷ Tom Lodge: “Commission on provincial government; workshop on traditional leaders and the new South African Constitution.” April 20-21, 1995.

¹⁸ *ibid*.

key role in the struggle against colonialism. Many suffered untold hardship and made the ultimate sacrifice.”¹⁹

Zuma said that because the colonialists were unable to eradicate the traditional leadership systems, they found ways to weaken the institution.

“Traditional leaders were forced to become part of the colonial local government administration. They were, however, isolated in their tribal areas, reporting only to the local magistrate. Meetings of traditional leaders on a scale broader than the district were forbidden. This resulted in traditional leaders seeing local issues as the be all and end all and losing focus on issues of national importance. It was in this way that the government of the day was able to divide and rule. This isolation ensured that they did not interact and raise issues affecting their situation as an institution in a collective manner.”²⁰

Researcher Lungisile Ntsebeza says that after the promulgation of the 1913 Land Act, traditional leaders were effectively restricted to the homelands, their role was considerably redefined and their powers were reduced to traditional civil issues.

“They were paid by the government and answerable to the magistrates and no longer their people, thus becoming instruments of colonial rule. For example, it was through them that unpopular measures such as land rehabilitation, which was meant to check overstocking and erosion, were implemented. This made them unpopular.”²¹

Ntsebeza says that not all traditional leaders allowed themselves to be instruments of colonial rule, but that there were only a few who did not and that their influence was insignificant.

The Black Administration Act (No. 38 of 1927) was concerned with “the better control and management of black affairs”. It enabled the Governor-General to recognise or appoint any person as a traditional leader and to “make regulations prescribing the duties, powers, privileges and conditions of service” of amakhosi. The Governor-General could also define the boundaries of the area of any traditional authority or traditional settlement and “may divide any existing tribe into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe, as necessity or the good government of the blacks may in his opinion require”.²²

About this legislation Christiaan Keulder writes:

“The provisions of the Act are generally in line with most colonial policies implemented throughout the continent. The outcome of the policy in South Africa is accordingly similar to that experienced by many other countries, the hereditary principles of appointing traditional leaders to their stools and positions were ignored and consequently non-traditional leaders (government minions) were appointed to rule various communities on behalf of the oppressive government. These individuals ruled without much legitimacy, having their power base in the system that granted them extensive powers to rule, quite often by means of naked coercion rather than consent.”²³

¹⁹ Address by Deputy President Jacob Zuma at the opening of the National House of Traditional Leaders in Cape Town on May 8, 2000, available on the South African government website, <www.polity.org.za/govdocs/speeches/2000/sp0508.html>, accessed April 3, 2001.

²⁰ *ibid.*

²¹ Lungisile Ntsebeza: “Traditional authority and land tenure in South Africa” paper prepared for training course organised by the School of Government, Programme for Land and Agrarian Studies, University of the Western Cape, East London, July 14-27, 1996.

²² Black Administration Act of 1927.

²³ Christiaan Keulder: “Traditional leaders and local government in Africa: lessons for South Africa.” HSRC Pretoria. 1998: p 307.

1.5. National Party rule and the Bantu Authorities Act of 1951

The apartheid government subsequently adopted a conciliatory stance towards traditional leaders, according to Inkosi Holomisa.

“Under the pretext that they (the apartheid government) were according them (traditional leaders) due recognition as rulers of their own people, these masters used traditional leaders to communicate and implement their policies and laws of oppression. It was, of course, a carrot-and-stick kind of policy in terms of which those who collaborated would be rewarded with better salaries and/or political positions, while the recalcitrant would be punished by demotion, imprisonment, banishment, exile, torture and even murder.”²⁴

Inkosi Holomisa says that the co-operation by traditional leaders with colonial and apartheid governments was an act of betrayal against their own people.

“However, due to the fact that our people have always understood the predicament in which traditional leaders found themselves, there was never a call of any serious nature, during and after apartheid, for traditional leaders to be done away with.”²⁵

As part of its apparent attempt to resuscitate traditional authorities, the National Party, after it came into power in 1948, put legislation into place that introduced a system of indirect rule where traditional leaders were moved to bureaucratic structures.²⁶

Govan Mbeki wrote in his book *The Struggle for Liberation in South Africa: a short history* that the apartheid government revived chieftainship under the Bantu Authorities Act. He wrote:

“Verwoed drew a picture of chieftainship restored to its ancient glory before the arrival of the white man, and assured putative chiefs that the government would empower them with authority that was theirs by divine right to rule over their people. To show how serious the government was, it immediately appointment a large number of recognised chiefs, and raised their stipends to levels undreamt of before.”²⁷

According to Mbeki, the traditional leaders were drawn in by the government as ‘baas boys’ to implement apartheid. He wrote that the traditional leaders tried and convicted in bush courts those who fell foul of apartheid regulations.²⁸

Mbeki also describes a more sinister role played particularly by the headmen and sub-headmen who served under the traditional leaders on various levels.

“These sub-headmen were the eyes and ears of the government and since they were permanently resident in their wards, they knew who were normally resident in their wards and who were strangers. They were thus perfect spies. Moreover, the government installed telephones at every trading station in the reserves. These telephones were used by the headmen to inform the police whenever strangers were sighted in the villages or whenever unrest occurred in their wards.”²⁹

Broadcaster Dr Thokozani Nene described how traditional leaders and their communities were treated if they were not favoured by the government of the day.

“I remember very well one day when I was in Eshowe, where my mother was working at the hospital, somebody arrived in the evening badly bleeding from stab wounds. Because

²⁴ Inkosi Phathekile Holomisa: “Ubukhosi the bedrock of African democracy”.

²⁵ *ibid.*

²⁶ Lungisile Ntsebeza: “Traditional authority and land tenure in South Africa”.

²⁷ Govan Mbeki: *The Struggle for Liberation in South Africa: a short history*. Mayibuye Centre: Bellville 1992 p 66.

²⁸ *ibid.*

²⁹ *ibid.* p 89.

this person came from a traditional leader that had refused to join the government, he was told he could not be treated in that hospital. I begged the African clerk who was on duty that day. I begged him to use my mother's address and my name just for this fellow to receive treatment before it was too late. I told him to write that he was our relative and that helped and he survived. You see this guy came from Nkandla and the authorities had banned anybody from there because amakhosi from Nkandla area had resisted and fought against white rule."³⁰

Tapscott found that the popular legitimacy of amakhosi decreased during this time because they were forced to implement unpopular policies.

"The extension and strengthening of the tribal authority system was coupled with other measures of separation, including influx control. The homeland system and the incorporation of the institution of chieftainship into the state machinery by the Bantu Authorities Act laid the foundations for autocratic rule in the homelands. The attempt to place all Africans under the control of traditional leaders, however, was also an attempt to undermine the political power of the ANC and PAC, which were starting to show their muscle in the 1950s."³¹

Tapscott concludes:

"The tribal authorities in their reconstituted form lacked the consensual base which was a hallmark of traditional administrations. Chieftainship was no longer strictly a hereditary right, and the appointment of all new chiefs had to be ratified by the homeland governments. In addition, traditional principles for the appointment of tribal councillors were discarded, in that some were elected and the remainder (usually the majority) were appointed by the chief himself. The outcome of this state of affairs was that the tribal authorities lacked the subtle checks and balances that had traditionally moderated the power of the chiefs in the pre-colonial era."³²

During the mid-1980s when the struggle against apartheid policies was gaining momentum, many traditional leaders were caught in the middle. Their powers were derived from the state, which was threatened by the opposition of the majority of South Africans.

While most commentators accept that not all amakhosi willingly connived with the National Party government, Ntsebeza says that "the fact that they owed their appointments and salaries to the apartheid government meant that they had to play along".³³

In a submission to the provincial and local government portfolio committee's public hearings on traditional leadership and institutions, the Environmental and Development Agency Trust wrote that the credibility of traditional institutions has been severely damaged and undermined by colonialism and by apartheid. The trust quotes a community representative who felt that traditional leaders had been used as a tool to oppress their own people. The submission recommends that amakhosi and the institutions of traditional leaders should be situated in a democratic framework where they are accountable to the people on whose behalf they are speaking.³⁴

³⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Dr Thokozani Nene, broadcaster, Lamontville, October 8, 2001.

³¹ Chris Tapscott: "The institutionalisation of rural local government in post-apartheid South Africa *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation October 1996 p 293.

³² *ibid.* p 294.

³³ Lungisile Ntsebeza: "Traditional authorities rule ok?" *Land and rural digest* November/December 2000

³⁴ Environmental and Development Agency (EDA) Trust submission to Provincial and Local Government Portfolio Committee public hearings on traditional leadership and institutions June 7, 2000.

1.6. Bodies representing amakhosi

There are a number of bodies representing traditional leaders at different levels of society. At national level there is the National House of Traditional Leaders with provincial structures called Provincial Houses of Traditional Leaders in six provinces – KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, Northern Province and the North West. In contrast to these structures which were established in terms of legislation, African National Congress aligned amakhosi around the country have also organised themselves into the Congress of Traditional Leaders of South Africa (Contralesa).

1.6.1. National and provincial Houses of Traditional Leaders

The Council of Traditional Leaders Act of 1994 (Act No. 31 of 1994) provided for the establishment of a body that was concerned with issues relating to traditional leaders. This legislation was subsequently replaced in 1997 with the Council of Traditional Leaders Act (Act No. 10 of 1997). The Council of Traditional Leaders Amendment Bill, approved by the National Assembly in September 1998, was the first private member's bill to be passed under the final Constitution. It changed the name of the council to the National House of Traditional Leaders, and provincial councils became known as the Provincial Houses of Traditional Leaders.

According to the 1997 Act, the objects and functions of the council are as follows:

- (a) "to promote the role of traditional leadership within a democratic constitutional dispensation;
- (b) to enhance unity and understanding among traditional communities; and
- (c) to enhance co-operation between the Council and the various Houses with a view to addressing matters of common interest".³⁵

The 18-member Council was formed to advise the national government and make recommendations on matters relating to traditional leadership, the role of traditional leaders, customary law, and the customs of communities observing a system of customary law. The Council may also investigate and make available information on traditional leadership, traditional authorities, customary law and customs.

The Act does not further elaborate on the role of the House of Traditional Leaders and does not oblige the national government to inform the House on issues that directly affect amakhosi.

The National House has six sub-committees that comprise six members from each provincial House. The sub-committees are the Constitutional Development Committee, Internal Arrangements Committee, Management Committee, Rules Committee, Social Development Committee and the Traditions, Customs and Culture Committee.³⁶

The question of whether a Council of Traditional Leaders fitted into the spirit of the new South Africa was raised by President Nelson Mandela who spoke at the launch of the Council in April 1997. Journalist Susan Segar wrote:

"Among the questions that constitutional experts, politicians and traditional leaders themselves are debating is whether thorough-going democracy is inherently inimical to traditional institutions."³⁷

Speaking at the launch President Mandela said:

"But we dare say that consultation, transparency and equity were the cornerstones of the early societies from which we come. We dare issue the challenge that on matters such as gender equality, tradition – good and bad, then and now – cannot be seen as static. Our views on all these and other issues is that old and new mores were accepted by

³⁵ The Council of Traditional Leaders Act (Act No. 10 of 1997).

³⁶ National House of Traditional Leaders Annual Report to Parliament 2000/2001 available on the Provincial Monitoring Group's website, <www.pmg.org.za/appendix/010515Traditional.htm>, accessed June 5, 2001.

³⁷ Susan Segar: "Council of traditional leaders: Is it democratic?" *Natal Witness* April 30, 1997.

communities as such, because they regulated relations of their times. And so it should be now; so that tradition is seen not as a sentimental attachment to the past, but as a dynamic force relevant to present-day realities.”³⁸

Inkosi Holomisa said that the Council does not necessarily conflict with the tenets of democracy.

“The element of election in the western form of democracy is merely one of other elements which are crucial to democracy. A democracy is about a government being based on the will of the people according to the wishes of the people and in the interests of the people. Whether it is an elected or non-elected government, it has to ensure that the people are satisfied with the kind of leadership they have; whether their interests are being taken into account and being promoted, whether their wishes are being respected and whether the leadership is acting according to their will.”³⁹

Zuma described the objectives of the National House of Traditional Leaders when he opened the House in Cape Town in May 2000. He said that the objectives of the House are primarily to promote the role of traditional leadership within a democratic constitutional dispensation. The deputy president said that the House was also tasked with enhancing unity and understanding between traditional communities and co-operation between the National House and the provincial Houses. The House was required to advise government on various issues relating to traditional leaders and to conduct investigations into matters relating to the institution of traditional leadership.

“The opportunity to advise on matters affecting traditional leaders is now a right and not a privilege as it was in the past. It brings them together and back into the mainstream away from the small corners to which they had been confined. It brings back dignity and respect. They now have the opportunity to come together in this House which is representative of traditional leaders in the provinces and speak with one voice. They are able to share their views in a collective manner and engage the government in a structured manner.”⁴⁰

Zuma questioned whether traditional leaders were engaging government and making full use of opportunities afforded by the constitutional dispensation.

“Is this House discussing sufficiently and rigorously, legislation affecting traditional issues that is before Parliament? Is Parliament briefed about discussions in this House? This House needs to fully perform the functions expected of it. It needs to do this so that all people can appreciate its relevance and importance in modern day South Africa.”⁴¹

Six out of nine provinces – KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, Northern Province and the North West – have Houses of Traditional Leaders.⁴² KwaZulu-Natal’s House of Traditional Leaders was formed in terms of the House of Traditional Leaders Act (Act No. 7 of 1994), which was passed in the KwaZulu-Natal legislature. The Act states that the House must deliberate and give advice to the government on matters pertaining to traditional leadership and their communities, indigenous and customary law and must make proposals on any proposed legislation or executive action.⁴³

The Act states that the House has these powers with special regard to:

³⁸ Address by President Nelson Mandela at the inauguration of the National Council of Traditional Leaders in Cape Town on April 18, 1997, available on the South African government website, <www.polity.org.za/govdocs/speeches/1997/sp970418.html>, accessed April 3, 2001.

³⁹ Susan Segar: “Council of traditional leaders: Is it democratic?” *Natal Witness* April 30, 1997.

⁴⁰ Address by Deputy President Jacob Zuma at the opening of the National House of Traditional Leaders in Cape Town on May 8, 2000, available on the South African government website, <www.polity.org.za/govdocs/speeches/2000/sp0508.html>, accessed April 3, 2001.

⁴¹ *ibid.*

⁴² *epoliticsSA* published by the Institute for Democracy in South Africa (Idasa) Issue Ten February 21, 2000.

⁴³ Budget speech made by Minister of Traditional and Local Government Affairs Inkosi Nyanga Ngubane in the Pietermaritzburg legislature, March 29, 2001.

- (a) the status, powers and functions of traditional authorities;
- (b) organisation of tribal and traditional communities;
- (c) indigenous land tenure system and all related matters;
- (d) Zulu traditional and customary law on inheritance, family and marriage;
- (e) tribal courts and the system of jurisdiction, enforcement and/or sanction of Zulu traditional and customary law;
- (f) taxation by traditional authorities and in tribal and traditional communities; and
- (g) Zulu customs and traditions, or any other matter having a bearing thereon.⁴⁴

The workings of the House depend significantly on the relationship between the Houses and the government. The legislation is not explicit but it does place responsibilities on both the Houses and the government to ensure that the Houses play the role that they were intended to play. While government should refer matters to the Houses, the Houses in turn must ensure that government performs this function. The Houses should discuss matters pertaining to the institution of traditional leadership, but they should also ensure that the outcome of such discussions is made known to government. A member of the KwaZulu-Natal House conveyed difficulties it faces to Musa Cebisa. The member said that some bills are not even referred to the respective Houses for their contributions. In some cases they are sent very late requiring emergency sittings which are often a failure.⁴⁵ Such difficulties can understandably cause frustration for members of the Houses, they also have a responsibility to ensure that they keep informed of pending matters.

Within the ranks of the traditional leaders, the Houses are generally held in high regard. Induna David Ntombela, who is also a member of the KwaZulu-Natal legislature, said during an interview that the protocol of the House of Traditional Leaders did not allow him to speak on any issue relating to traditional leaders. He said that only certain leaders had the mandate to speak on the issues.⁴⁶ However, traditional leaders do not all support the Houses. One said that the problem with the KwaZulu-Natal House was that it was composed of members of only one party.

“It has been used only to safeguard the political party (IFP) interests and policies. It is being used to promote the individual powers of KwaZulu-Natal politics.”⁴⁷

The Democratic Party stated in its position on traditional leaders dated April 1997 that the national and provincial Houses of Traditional Leaders were appropriate means of providing a formal interface between democratically elected government bodies and traditional structures. The party proposed that such bodies should only have an advisory function on matters affecting the tradition and culture of the people concerned and that they should be elected or nominated by the traditional structures that they are to represent.⁴⁸ The document states:

“It must be stressed that such national council of traditional leaders or any Houses of traditional leaders in the provinces should be bodies which meet only occasionally and briefly on matters of specific relevance. These bodies are not to become state-funded councils in perpetual session at taxpayer’s expense. Rather the structures are a privilege accorded traditional communities but not extended to other cultural groups and can only be justified as long as they are cost effective and of practical use in the promotion of effective administration of the country.”⁴⁹

⁴⁴ KwaZulu-Natal Act on the House of Traditional Leaders (Act No. 7 of 1994)

⁴⁵ Musa Cebisa: “The Houses of traditional leaders in South Africa: comparison and assessment”, Institute for Democracy in South Africa (Idasa), January 2000.

⁴⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

⁴⁷ Musa Cebisa: “The Houses of traditional leaders in South Africa: comparison and assessment.”

⁴⁸ Democratic Party position on traditional leaders dated April 2, 1997.

⁴⁹ *ibid.*

1.6.2. Congress of Traditional Leaders of South Africa

The Congress of Traditional Leaders of South Africa (Contralesa) was formed as an African National Congress-aligned organisation of traditional leaders in September 1987 in Johannesburg. Broadcaster Dr Thokozane Nene said in an interview conducted as part of this research:

“Contralesa was an attempt by South Africans to try and remind the new government that there are traditional structures that have governed this country for time immemorial and that the majority of the people still cared about them. It was meant to remind who-so-ever is in power that traditional leaders are there and they are the cells by which the South African society exists today.”⁵⁰

Inkosi Holomisa says that Contralesa is in favour of the democratisation of rural local government.

“Contralesa believes that the elective form of democracy does not have to replace the African form of democracy as epitomised by the institution of traditional leadership.”⁵¹

Inkosi Holomisa says that a hybrid institution formed from a mix of traditional leadership and elected representatives could create local governments for rural areas.⁵²

1.6.3. Coalition of Traditional Leaders

According to the 2000/2001 annual report of the National House of Traditional Leaders, it was decided on February 16, 2000 to form a body of traditional leaders called the Coalition of Traditional Leaders. This was done at a meeting of all traditional leaders which was convened by the National House “upon realising the consequences of the demarcation process in areas under the jurisdiction of traditional leaders”.⁵³ (See 3.5 for further information on demarcation.)

The report states that the meeting had several aims, including the consolidation of views from all stakeholders in an effort to present watertight documents. Another aim was to inform government about the desired municipalities in areas that were under the jurisdiction of traditional leaders.

The Coalition is made up of three members from each provincial House of Traditional Leaders, the National House, the Royal Bafokeng and the Congress of Traditional Leaders of South Africa (Contralesa). Membership from KwaZulu-Natal included the head of the provincial House of Traditional Leaders Inkosi Mangosuthu Buthelezi and provincial Minister of Traditional Affairs Inkosi Nyanga Ngubane, as well as three other traditional leaders.

The Coalition compiled a written submission on traditional leaders after a meeting between President Thabo Mbeki and traditional leaders on May 23, 2000. This was done largely by a smaller technical committee formed because of the rather big coalition. The submission contained proposed amendments of the Constitution and details about the type of municipalities that traditional leaders desired to be formed in rural areas.

This submission prompted President Mbeki to form a committee of four Cabinet Ministers and the leadership and legal experts from the Coalition. The president assigned Zuma to work with the committee to ensure that the grievances of traditional leaders were addressed.⁵⁴

⁵⁰ Interview conducted by Jerome Dube and Edmund Mthuli with Dr Thokozane Nene, broadcaster, Lamontville, October 8, 2001.

⁵¹ Phathekile Holomisa: “Ubukhosi the bedrock of African democracy”. *Mail and Guardian*, February 11, 2000, accessed on the Mail and Guardian’s website at <www.sn.apc.org/wmail/issues/000211/NEWS36.html>.

⁵² Phathekile Holomisa: “The role of traditional leadership in communal tenure”. Paper presented at the Department of Land Affairs’ Land Rights Conference, Durban, November 2001.

⁵³ National House of Traditional Leaders Annual Report to Parliament 2000/2001.

⁵⁴ *ibid*.

1.7. Funding traditional institutions and leadership

The issue of remuneration is an emotional one, partly due to the disparities that until recently existed in the payment of amakhosi. These developed because of the policies of the various homeland governments. Disparities still continue to exist in the payment of traditional kings.

1.7.1. Payment of amakhosi

The various homeland governments used different criteria to pay traditional leaders. In KwaZulu, for example, amakhosi were paid according to academic qualifications irrespective of whether the role they played was the same or not. Musa Cebisa of Idasa wrote in a report in 2000 that the payment of traditional leaders who operated in the former KwaZulu areas depended on whether the traditional leader had a matriculation, tertiary or post-graduate qualification. Traditional leaders living in the former Natal area of the province were paid according to whether they had land within their control or not.⁵⁵

Cebisa questioned the holding of academic qualifications as a criterion for payment of traditional leaders:

“...academic qualifications are alien phenomena within the institution of traditional leadership and for that matter [should] on no account be taken as determinants of how much a traditional leader should be paid...What does a BA or B Com degree have to do with customs or tradition or rather with the work of a traditional leader? One therefore finds it critical to guard against diluting the legitimacy of the institution of traditional leadership with seemingly impertinent matters, albeit important in other domains, like academic qualifications...academic qualifications are foreign within the institution of traditional leadership and should under no circumstances be considered as determinants in the payments of traditional leaders.”⁵⁶

Some attempts were made to rectify the discrepancies by the passing of the Payment of Traditional Leaders Act shortly before the July recess in 1995. This legislation provided the norms and standards of payment of traditional leaders and sought to abolish provincial government control over the purse strings of traditional leaders.⁵⁷

However a constitutional court ruling given in July 1996 entitled KwaZulu-Natal to pass legislation that gave the province the sole power to pay traditional leaders. *Business Day* journalist Farouk Chothia wrote at the time:

“The ruling opened the way for KwaZulu-Natal to promulgate its own legislation, which the ANC and DP blocked last year after fierce rows with the IFP in the provincial legislature.”⁵⁸

However, Chothia wrote that the court did not rule that the Remuneration of Traditional Leaders Act, which empowered central government to pay traditional leaders should fall away.

“The court president Arthur Chaskalson seemed to suggest in his ruling that central and provincial government should compromise on the issue, saying conflicting legislation affecting traditional leaders should be avoided. Traditional leaders could best serve the interests of their subjects if they were not perceived to be dependent on either central government or the provincial legislature, said Chaskalson.”⁵⁹

⁵⁵ Musa Cebisa: “The Houses of traditional leaders in South Africa: comparison and assessment.” Institute for Democracy in South Africa (Idasa), January 2000.

⁵⁶ *ibid.*

⁵⁷ Political correspondent: “Court backs KZN legislation on salaries for chiefs.” *The Mercury* July 19, 1996.

⁵⁸ Farouk Chothia: “ANC warns of second court bid on chiefs’ issue.” *Business Day* July 9, 1996.

⁵⁹ *ibid.*

The Steyn Commission, which was chaired by Mr Justice Jan Steyn, investigated the payment of government representatives and included recommendations on South Africa's traditional leaders. It recommended that the traditional leaders be paid R72,000 annually, while headmen should receive R13 000, according to the commission. According to a report in *Business Day*, such payments would double the salary bill for South Africa's traditional leaders to R50 million.⁶⁰

With regard to the 18-member national House of Traditional Leaders, the Steyn Commission recommended that the chairman should receive a daily allowance of R600 and a R360 daily subsistence allowance. The vice-chairman, according to the Commission, should be paid R540 a day, plus a subsistence allowance of R360 when the national council is sitting. Transport support was to be determined by the Department of Transport. It was recommended that the remaining 16 members of the House receive R420 a day and a subsistence allowance of R360 a day when the body is sitting in Cape Town. The Commission advised that members of the provincial Houses of Traditional Leaders should be paid R350 a day during sittings.⁶¹

The Remuneration of Public Office Bearers Act (Act No. 20 of 1998) authorises the president to determine the remuneration to which traditional leaders, members of the National House of Traditional Leaders and members of the Provincial House of Traditional Leaders shall be entitled.

In the *Government Gazette* of March 30, 2001 President Mbeki announced that traditional leaders would be paid R81,356 per annum. In addition, members of the National House of Traditional Leaders would receive R475 per day for attending meetings, the chairperson of the House would receive R678 per day and the deputy chairperson R611. The chairpersons of the provincial Houses of Traditional Leaders were entitled to R565 per day, the deputy chairperson R508 and members R395.⁶²

As a result of the decision by the national government to pay certain members of the House of Traditional Leaders a rate for full-time employment, several committees of the KwaZulu-Natal legislature discussed new amendments to the Remuneration of Public Office Bearers Act in 2000. The changes would mean that a traditional leader who holds more than one public office simultaneously would only be entitled to the salary of the office for which he earns the highest income. This meant that traditional leaders who were also full-time members of the House of Traditional Leaders, local councils or the provincial legislature would receive one salary instead of two.⁶³

Remuneration is regarded as a particularly important issue for traditional leaders. According to Contralesa chairman Inkosi Holomisa, traditional leaders are public office bearers and should enjoy the privileges that go with their position. In response to salary increases, Inkosi Holomisa said that he was happy. However, he noted that there were still issues that needed to be resolved. These included medical aid, retirement packages and allowances for traditional leaders.⁶⁴

1.7.2. The kings

According to the *Government Gazette* of March 30, 2001, kings and paramount chiefs would be paid an annual salary of R338,940.⁶⁵ This had been increased from R322,000 which was set out in a presidential proclamation which became effective from April 1, 1999. The salaries were said to be in recognition of the special status of the kings and paramount chiefs. As was the case with traditional leaders, remuneration for monarchs had varied substantially.⁶⁶

However, of the kings recognised in South Africa, the Zulu King enjoys a far larger budget. Inkosi Holomisa said that this is historical and dates from the old administration "that used to treat the King the way others are supposed to treat their own royalty". The government could not lower the perks of the Zulu King for understandable political reasons, he says.⁶⁷

The budget for Zulu King Goodwill Zwelithini which comes out of the KwaZulu-Natal government coffers is the subject of some contention, particularly by the opposition parties during the budget debate almost every year. The Royal Household was allocated R20,684 million for the 2001/2002

⁶⁰ Farouk Chothia: "Traditional leaders to get equal salaries." *Business Day* March 15, 1999.

⁶¹ Donwald Pressly: "Chairman may get R1,000 a day." *The Mercury* June 13, 1997.

⁶² *Government Gazette* Vol. 429 No. 22182 March 30, 2001.

⁶³ Sibani Mngadi: "Traditional leaders due one salary only." *Natal Witness* May 15, 2000.

⁶⁴ Sapa: "Parties criticise timing of chiefs' salary increases." in *Business Day* April 12, 1999.

⁶⁵ *Government Gazette* Vol. 429 No. 22182 March 30, 2001.

⁶⁶ Estelle Randall: "SA monarchy to cost R42-million." *The Independent on Saturday* April 3, 1999.

⁶⁷ Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

financial year. This was a R4,3 million increase from the previous year. The budget for 2001/2002 includes R1,618 million for the king's farms, R12,5 million for the maintenance of the royal households, R6,4 million for "support services" and a once-off R2 million to buy new cars for the household. The grant-in-aid for the Royal Household falls under the Department of the Premier of KwaZulu-Natal.⁶⁸

1.7.3. A provincial or national competence?

A central issue relating to remuneration is whether salaries of amakhosi and the monarchs should be paid for from national or provincial budgets. The national African National Congress government has described the decision to pay traditional leaders directly as a move to standardise payment and conditions for all traditional leaders throughout South Africa. The Inkatha Freedom Party, however, views the move as an attempt to break its grip on amakhosi in KwaZulu-Natal.⁶⁹

Inkosi Ngubane elaborated on this view in a meeting between then Deputy President Mbeki and amakhosi from KwaZulu-Natal in 1997. He said:

"Amakhosi believe that the central government should respect the legislation of KwaZulu-Natal requiring that all payments of amakhosi should come from the province rather than central government. Accordingly the relevant budgetary financial allocations should be made in favour of the provincial budget. We believe that this arrangement is consistent with the Constitution which limits the competency of the National Parliament ... to the determination of a framework for remuneration."⁷⁰

The Pan Africanist Congress have sided with the African National Congress on this issue with the party's Deputy President and member of parliament Dr Motseko Pheko saying that it is better to pay traditional leaders from the national government structures "to avoid differences between regions with one area paying more than another"⁷¹

The salary of the monarchs, including the Zulu King which is not of particular concern for the purposes of this report, is also an issue when it comes to the debate on whether salaries should be paid by provincial or national structures. Zungu writes that the payment of the monarchs' salaries from the national budget means that his salary is "drawn from all South African tax payers, not just his subjects in KwaZulu-Natal".⁷²

1.7.4. Funding of the traditional structure

Although much of the debate around remuneration has centred on payment to traditional leaders themselves, consideration also has to be given to the structures that support the institution of ubukhosi.

A researcher, Alastair McIntosh, said that few resources are available to service the structures that amakhosi need to administer their areas.⁷³ McIntosh and Anne Vaughan wrote in 1998:

"With a few exceptions, traditional authorities as local institutions have obtained little funding. The stipends of traditional leaders remained modest, and fiscal transfers to traditional authorities were usually limited to a secretary's salary, and once-off grants for infrastructure such as courthouses. Where local revenue raising abilities have been limited, traditional authorities have remained very modest institutions. They have often been unable to fulfill even their traditional functions adequately, let alone the

⁶⁸ Zwelihle Memela: "Stop funding king's farms, urges DA." *Natal Witness* 29 March 2001.

⁶⁹ "Defusing tension." *Financial Mail* December 22, 1995.

⁷⁰ Presentation by Nyanga Ngubane, Minister of Traditional and Environmental Affairs at a meeting with then Deputy President Thabo Mbeki June 27, 1997.

⁷¹ Interview conducted by Chiara Carter with Dr Motseko Pheko, Pan Africanist Congress deputy president and member of parliament, Cape Town, October 2001.

⁷² Sibongile Zungu: "Traditional leaders' capability and disposition for democracy: the example of South Africa." *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

⁷³ Interview conducted by Jenni Irish with Alastair McIntosh, Durban North, July 13, 2001.

development and service delivery functions provided for in the legislation of the old homeland legislatures.”⁷⁴

Vaughan and McIntosh warn that difficulties relating to payment, both for traditional leaders themselves and the related infrastructure, may compromise the integrity of traditional leaders and encourage them to seek political authority and wealth through participating in the party political arena.

“In many cases, political affiliation occurred through automatic membership of legislatures. In other cases, membership of parliament was contested between traditional leaders. Whatever the mode of access to power and resources, this derived from party loyalty, and compliance with the broader apartheid project of separate development, and was not rooted in a legitimacy and credibility derived from fulfillment of a local service delivery role.”⁷⁵

McIntosh suggests that if the state recognises the role of traditional leaders, then it must look at what is affordable and what is not.

“Political deals need to be made between the municipalities and traditional authorities. The government needs to look at social means by which resources can be managed. Self-management structures need to look at sustaining their structures and the resources involved in this.”⁷⁶

A member of the KwaZulu-Natal legislature from the Democratic Party, Wessel Nel has also raised concerns about the failure of either provincial or national governments to fund structures apart from traditional leaders:

“This increasing trend of underfunding traditional structures and thereby eventually destroying their capacity to deliver, whilst on the other hand feathering the personal nests of traditional leaders, is doing a major disservice to tradition and will contribute to the undermining of the credibility of traditional leaders in the eyes of the people they serve.”⁷⁷

Professor Thabo Sabela of the University of Zululand says that the Department of Traditional Affairs does pay a small incentive of about R300 to those izinduna who have excelled in their responsibilities.

“But with time I think the government is going to pay them, like, for example, amakhosi are being paid now. You know izinduna are too many, therefore money has to be found and it takes time. The tribal levies are not sufficient to pay them.”⁷⁸

1.7.5. Payment in future

It has been suggested that consideration could be given to paying traditional leaders according to the different services provided by the inkosi. For example, the Department of Justice could pay a traditional leader for performing a judicial function by chairing the council of the local traditional court. Other government departments could also pay for specific services at a negotiated rate.

The question, however, is raised as to whether traditional leaders should be paid for performing a cultural role. One view is that this is discrimination against cultural groups that also have their own language, tradition, culture or religion and receive no money to further their causes. Such structures are

⁷⁴ Anne Vaughan and Alastair McIntosh: “The role of traditional leaders in land development.” Paper prepared for the National Development and Planning Commission October 9, 1998.

⁷⁵ *ibid.*

⁷⁶ Interview conducted by Jenny Irish with Alastair McIntosh, Durban North, July 13, 2001.

⁷⁷ Wessel Nel: “Traditional payoff dishonest: The government must own up to the fact that traditional authority is inconsistent with democracy.” *The Mercury* March 24, 1999.

⁷⁸ Interview conducted by Jerome Dube with Professor Thabo Sabela, University of Zululand, August 23, 2001.

funded by voluntary contributions from members of the public who have a direct interest in their preservation and who wish to contribute.

While Inkosi Holomisa rejects the suggestion of amakhosi being paid for specific services saying that traditional leaders deal with everything, several people from communities outside Durban suggest that the relationship between the amount that traditional leaders are paid and their performance warrants further consideration. The key issue here is one of accountability for public funds. Where an elected office bearer can be voted out of power and an appointed official can be dismissed, a traditional leadership position is acquired through birth. Systems of monitoring and evaluation would therefore need to be developed and put in place to deal with a paid position that is acquired by birthright.

A 23 year old woman from Nene Traditional Authority said that historically amakhosi were paid by their people and that they should be paid according to their performances. A male of the same age from Embo Traditional Authority said that traditional leaders should be paid less than what they receive at present because “they don’t perform very well in the community”.⁷⁹

This view is not accepted by all, however. Another respondent from Embo said that amakhosi should be paid more because of their performance in service delivery.⁸⁰

The issues surrounding payment are particularly complex and sensitive and do warrant additional consideration. However, they are closely interlinked with the role that traditional leaders ultimately perform in communities in South Africa.

1.8. Conclusion

Debates about the history of traditional authorities are important in identifying areas of tension between democratic and hereditary institutions of governance and their place in South Africa's future. Contributors to these debates point out the role of traditional authorities in sustaining traditional African values of mutual support and assistance, which are important for a society battling with poverty. The institution is also fundamental to African culture, which is threatened by the imposition of systems, values and cultures derived from the west. On the other side, however, commentators point out that traditional authorities are not static institutions, but have been powerfully influenced and manipulated by colonial and apartheid governments. These affects have radically altered traditional authority institutions and leadership, such that it is not easy today to draw clear conclusions about their legitimacy.

Nevertheless, these debates can also obscure the fact that traditional authority institutions are deeply embedded in our society and system of governance. Laws have been passed that establish traditional authority bodies as statutory entities and traditional leaders continue to be paid by the state. The post-apartheid government has also made attempts to rationalise remuneration in order to eliminate inequalities in payment and criteria. This reality raises serious questions about what role precisely should traditional authority institutions play in a democratic South Africa and what should they be paid for. A number of proposals and suggestions are made but key to these is that there should be a relationship between performance and payment. This suggests that thought needs to be given to how performance in a hereditary system can be monitored and evaluated and what training traditional leaders may need in order to perform their functions competently. Likewise, this implies that a clear function can be agreed upon and defined. This is considered further in the next chapter on law, policy and politics.

⁷⁹ Answers to research questionnaires compiled by Independent Project Trust completed in Nene on September 7, 2001.

⁸⁰ Answers to research questionnaires compiled by Independent Project Trust completed in Embo on September 7, 2001.

2. Law, policy and politics - the interaction of traditional authority and democratic governance since 1990

Legislation and policy on the functions and roles of traditional authorities are often contradictory, vague and unclear. This reflects a political tension on what the appropriate role is for an institution that appears to contradict democratic principles. The existence of traditional authorities cannot be ignored politically, however, since they continue to play a key role in rural areas that the state would struggle to displace even if it had the resources to do so.

The role, functions and remuneration of traditional leaders in KwaZulu-Natal is legislated by the KwaZulu Amakhosi and Iziphakanyiswa Act (Act No. 9 of 1990), which also prescribes how traditional leaders can be appointed, disciplined, dismissed and retired. This law has been the subject of a constitutional court challenge and found to be not inconsistent with the Constitution. The Constitution, while recognising the existence of traditional authority institutions, is vague on a precise role, as has been pointed out by both proponents and critics of the institutions. Attempts in KwaZulu-Natal to draft a provincial Constitution as provided for in the Interim Constitution also stalled on the constitutionality of the role of traditional leaders. Despite all seven parties in the provincial government passing the draft Constitution, the constitutional court subsequently disallowed it mainly because it allowed traditional authorities in some places to substitute for democratically elected local governments. The White Paper on Local Government issued by the ministry for provincial affairs and constitutional development (March 1998) also struggles to define an acceptable role for traditional authorities. The role outlined is essentially advisory and very local, which was predictably deemed to be unacceptable by amakhosi and their proponents around the country. The White Paper does point out, however, both that the role of traditional leaders extends beyond local government issues in judicial and land administration and that the Constitution spells out a very clear scope for local government functioning. These functions are further defined in three laws governing local government, namely, the Municipal Demarcation Act, the Municipal Structures Act and the Municipal Systems Act. Together these laws create wall to wall local government and redefine local government boundaries, its operation and structure. Once again, the role of traditional authorities is vague and undefined although there is room for community involvement and traditional leader representation on local government structures.

Attempts to deal with this vagueness is at the heart of a Discussion Document Towards a White Paper on Traditional Leadership and Institutions developed by the Department of Provincial and Local Government. Unfortunately, the policy remains undeveloped, which is indicative of the difficulties. This section concludes with a description and analysis of the political tensions and processes surrounding the role of traditional authorities in terms of local government that includes a chronology and a debate about whether traditional leaders should affiliate politically or not.

As the discussion makes clear, the waters remain murky on these issues.

2.1. The KwaZulu Amakhosi and Iziphakanyiswa Act (Act No. 9 of 1990) and subsequent amendments (KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 9 of 1991, KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 3 of 1992, KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No 7 of 1993 and KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No 19 of 1993)

The Amakhosi and Iziphakanyiswa Act was passed by the former KwaZulu Government in 1990. It deals with various matters relating to amakhosi and iziphakanyiswa in what was previously the self-governing territory of KwaZulu. The Act formed part of the law in that part of the KwaZulu-Natal province when the interim Constitution of 1993 came into force on April 27, 1994.

The lengthy full title of the Act summarises its purpose as follows:

“To consolidate and amend the laws relating to amakhosi and iziphakanyiswa; to provide for the recognition, appointment and conditions of service, discipline, retirement, dismissal and deposition of amakhosi and iziphakanyiswa; to empower the Cabinet to summon an inkosi or isiphakanyiswa; to provide for the conferment of civil and criminal

jurisdiction on amakhosi and iziphakanyiswa; to provide for the establishment of tribal and regional authorities; and to provide for matters incidental thereto.”⁸¹

Issues dealt with in the legislation include:

- Tribal and community organisation;
- Establishment of tribal, community and regional authorities and their powers, functions and duties;
- The auditing of books and accounts of tribal, community and regional authorities;
- The acknowledgement and appointment of amakhosi and iziphakanyiswa and the appointment of traditional councillors;
- The recognition and appointment of successor to hereditary inkosi;
- Duties, powers, authority and functions of amakhosi and iziphakanyiswa;
- Remuneration and allowances payable to amakhosi and iziphakanyiswa;
- Suspension of amakhosi or iziphakanyiswa;
- Inquiry into misconduct
- Hearing of criminal actions by the amakhosi and iziphakanyiswa;
- Appeals in civil and criminal cases, including procedures where fines cannot be recovered and reviews of proceedings.⁸²

Alastair McIntosh, Anne Vaughan and Thokozani Xaba stated that the amakhosi Act vested executive powers of any traditional community in the inkosi and isiphakanyiswa who should act on the advice of the traditional council.

“In general terms, the Act places responsibility on the tribal authority for the general well being of the community, both in terms of adherence to traditional laws and customs, the maintenance of law and order and also with regard to the advancement of the people in the area. Broadly consistent with past practice is also the provision made for the representation on regional authorities by tribal authorities (three from each tribal authority including the inkosi).”⁸³

According to McIntosh, Vaughan and Xaba, the Act departed from past practice with regard to the role in regional councils. In addition to its previous functions of advising the government on matters affecting the interests of the people within its jurisdiction, the regional councils were required to provide for service delivery functions in regard to aspects of education, road maintenance and construction, health and agriculture.

“In this sense, the intention appears to have been to create a body which could render what are, in effect, local government services. This appears to make sense where smaller units of service delivery would probably not have the economies of scale required to provide such services economically, although it has been pointed out to us that there are certain regional authority areas which may be too large for this purpose (comprising 15 or 20 traditional authority areas).”⁸⁴

In the court matter presided over by Judge Chaskalson, African National Congress members of the KwaZulu-Natal legislature challenged the constitutionality of particular provisions of the KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Bill, as well as the Payment of Salaries, Allowances and Other Privileges to the Ingonyama Amendment Bill. The speaker of the KwaZulu-Natal legislature referred the matter to the constitutional court.

⁸¹ KwaZulu Amakhosi and Iziphakanyiswa Act No. 9 of 1990 as amended.

⁸² *ibid.*

⁸³ Alastair McIntosh, Anne Vaughan and Thokozani Xaba: “The Rural Local Government Question in KwaZulu-Natal: Stakeholders’ Perspectives.” Institute of Social and Economic Research, University of Durban-Westville. Commissioned by Regional Consultative Forum on Rural Development February 1995, pp 38-39.

⁸⁴ *ibid.*

According to a summary of the decision given in the constitutional court in July 1996, challenges were made to new provisions of the Amakhosi Act, as well as to the Ingonyama Act. In terms of the provisions, the Zulu king and other traditional leaders were prohibited from accepting any remuneration other than in terms of the Acts. If any such remuneration was accepted, the recipient had to deposit the money into a provincial revenue fund. The summary states:

“The court held that because laws dealing with the appointment and powers of traditional leaders were within the competence of the provinces, legislation providing for the payment of remuneration to such leaders was also within this competence, as it was part and parcel of their appointment.”⁸⁵

Although our concern is more specifically with the content of the legislation, it should be noted that the judge subsequently found that the two pieces of legislation were not unconstitutional on any of the grounds that were advanced by the petitioners.

KwaZulu-Natal’s Minister of Traditional Affairs Inkosi Nyanga Ngubane said in March 2001 that his department had completed a new amakhosi and iziphakanyiswa Act, which should be submitted to the legislature during 2001.⁸⁶

2.2. Constitution

The Constitution of the Republic of South Africa (as adopted by the Constitutional Assembly on May 8, 1996 and as amended on October 11, 1996) contains a chapter on traditional leaders. Chapter 12 consists of two sections on the recognition and role of traditional leaders. Section 211, which is concerned with recognition, states the following:

- (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
- (3) The courts must apply customary law when that law is applicable subject to the Constitution and any legislation that specifically deals with customary law.⁸⁷

Section 212 relating to the role of traditional leaders states:

- (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law –
 - (a) national or provincial legislation may provide for the establishment of Houses of Traditional Leaders; and
 - (b) national legislation may establish a council of traditional leaders.⁸⁸

The contents of the final Constitution have come under severe criticism by traditional leaders. The president of the Congress of Traditional Leaders of South Africa’s Inkosi Phathekile Holomisa says that the document “has treated ubukhosi shamefully”.

⁸⁵ Summary of the decision handed down in the constitutional court on July 5, 1996. Summary by members of the Wits Law School faculty, available on the Wits Law School website.

<<http://sunsite.wits.ac.za/law/judgements/kwzblsum.html>>, accessed July 1, 1999.

⁸⁶ Budget speech made by Minister of Traditional and Local Government Affairs Inkosi Nyanga Ngubane in the Pietermaritzburg legislature, March 29, 2001.

⁸⁷ Constitution of the Republic of South Africa, 1996.

⁸⁸ *ibid.*

“It does not accord the kind of respect which would normally be expected from a legal document meant to give legitimacy to a liberated African state.”⁸⁹

Inkosi Holomisa compares the final Constitution to the interim Constitution, which was approved in 1993, which he says “accorded far better respect and certainty to the institution”. This he attributes to the active involvement of traditional leaders in the drafting and adopting of the interim document, while he says that the final Constitution was drafted and adopted in the absence of traditional leaders.⁹⁰

The interim Constitution stated in Chapter 11 that a traditional authority which observes a system of indigenous law and is recognised by law immediately before the commencement of that Constitution should continue as an authority and continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs. This was subject to any amendment or repeal of such laws and customs by a competent authority. The Interim Constitution stated that traditional leaders were entitled to be *ex officio* members of local government structures and eligible to be elected to any office of local government. The Interim Constitution made provision for the establishment of a provincial House of traditional leaders and a council of traditional leaders. The role of each of these bodies was outlined in the document.⁹¹

KwaZulu-Natal Minister of Traditional Affairs Inkosi Nyanga Ngubane also stated in his budget speech of 1996/1997 that the “initial encouraging acknowledgment given to the role of traditional leaders in the interim Constitution...has not been perpetuated in the new Constitution” which was at that time under consideration by the constitutional court. Inkosi Ngubane said:

“This diminishing of the role of traditional leaders in the constitutional structures of our country has been noted with alarm and regret by both the House of Traditional Leaders and by the amakhosi as a group. The amakhosi have met in great gatherings on a number of occasions and on those occasions have expressed their deep concerns at the erosion of traditional leadership...However, at least that there are traditional leaders is acknowledged, although sometimes we think, very grudgingly.”⁹²

Inkosi Holomisa criticises the final Constitution which, he says, allows for the establishment of Houses of Traditional Leaders at national and provincial levels “if the government of the day feels so inclined”, but does not state precisely what the Houses are to do.

“Traditional authorities are themselves under threat of abolition because they are to exist subject to the relevant laws and customs setting them up and liable to be amended and/or repealed. The chapter in the Constitution dealing with local government does not make any reference to the existence and the possible role of traditional leaders.”⁹³

The national House of Traditional Leaders also expresses concern in its annual report for 2000/2001 about the “glaring issue of the non-proviso of the Constitution about the role of traditional leaders in local governance”. The report states that an amendment of certain parts of the constitution was required if traditional leaders hope to play a proactive and central role in local governance.⁹⁴

Former President Nelson Mandela attempted to address such concerns during the inauguration of the National House of Traditional Leaders in Cape Town in April 1997. He said that the final Constitution did not oblige the government to set up the national house, unlike the interim Constitution.

“Some saw this as backtracking on the part of political parties; others interpreted it as a refusal on the part of these parties to acknowledge the unique African setting within which the universal ideals of democracy and justice should find expression...The respect and recognition of the institution of traditional leaders require more than fine-sounding

⁸⁹ Inkosi Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.”

⁹⁰ *ibid.*

⁹¹ Constitution of The Republic of South Africa, Act 200 of 1993, Chapter 11.

⁹² Minister of Traditional and Affairs Inkosi Nyanga Ngubane, budget speech 1996/97.

⁹³ Inkosi Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.”

⁹⁴ National House of Traditional Leaders Annual Report to Parliament 2000/2001.

declarations in a constitution. They should reside in our hearts and the launch of this Council today is one vivid expression of that. We believe that, in many ways, the fact that both the constitution and the law establishing the council, do not set out rules and regulations in detail is an opportunity to be exploited rather than a disadvantage to decry. In the first instance, working out all the details would have taken an inordinate time, with complex negotiations to try to balance among many conflicting interests. Secondly, the new institutions would have been presented with a *fait accompli* regarding a system that is, to all intents and purposes, a novel undertaking which should evolve creatively in the blast furnace of concrete experience.”⁹⁵

However, Chris Tapscott writes that the final Constitution was deliberately “extremely vague about the powers and functions” of traditional leaders because of ambivalence within the African National Congress over the future of traditional structures.

“Many (African National Congress members) recognised the role that traditional leaders could play in mobilising rural communities for political ends and for the implementation of development programmes. Just as certain civics were calling for their abolition, others were calling for the retention of traditional structures in modified form.”⁹⁶

Sections relating to the position of traditional leadership and customary law were among the issues that were stated to be unconstitutional when the draft of the final Constitution, which had been referred to the constitutional court for certification, was referred back for amendment in August 1996. Tapscott writes:

“The [constitutional] court’s concern over the limitations of the powers of the provinces and the status of traditional leaders was seen by the Inkatha Freedom Party as a victory for its position. As a consequence the party returned to the Constitutional Assembly in late September 1996 (having boycotted earlier sessions), only to leave again a week later, ostensibly over differences of opinion on the status of traditional leaders.”⁹⁷

Speaking at a meeting of amakhosi and local government councillors from the Inkatha Freedom Party in April 2001, party president Inkosi Mangosuthu Buthelezi said that amakhosi had participated in the consultative process organised by the Constitutional Assembly from May 1995. He said that amakhosi had detailed a two-tier local government model which would enable traditional authorities to continue to exercise their powers and functions.

“They clearly identified that the position of traditional authorities in local government had to be spelt out in the Constitution, or that the Constitution had to be so designed as to allow legislation to preserve local government powers of traditional authorities.”⁹⁸

Inkosi Buthelezi continues to raise the issue saying that the institution of traditional leadership is the backbone of KwaZulu-Natal and that President Mandela promised to resolve outstanding constitutional issues when he and President FW de Klerk signed the Agreement for Reconciliation and Peace.

The Constitution is, however, not criticised by all traditional leaders. Inkosi Zibuse Mlaba of KwaXimba says that the Constitution is very clear on the role of traditional leaders.

“It also emphasised that the traditional leaders must transform in order to fit in the new democratic structures. That is why some of us saw that it was progressive. The truth is

⁹⁵ Address by President Nelson Mandela at the inauguration of the National Council of Traditional Leaders in Cape Town on April 18, 1997.

⁹⁶ Chris Tapscott: “The institutionalisation of rural local government in post-apartheid South Africa” in *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation October 1996 p 302.

⁹⁷ *ibid* pp 302 – 303.

⁹⁸ Speech by Inkosi Mangosuthu Buthelezi at a meeting of amakhosi of KwaZulu-Natal and Inkatha Freedom Party municipal councillors, Ulundi April 20, 2001.

that it is only those who are radical traditionalists who see danger and are afraid to transform.”⁹⁹

2.3. KwaZulu-Natal’s constitutional process

The KwaZulu-Natal government attempted to pass a Constitution as provided for in the interim Constitution. The process leading to this attempt began after the 1994 general election. Although the provincial Constitution was passed in March 1996 with the approval of all seven parties in the provincial legislation, it was subsequently disallowed by the constitutional court.

Journalist Farouk Chothia wrote in March 1996 that the dispute during all night talks to pave the way for the unanimous adoption of the provincial Constitution were parts of the chapter on the monarchy. The African National Congress feared that the Inkatha Freedom Party would use the clauses to regain control over the Zulu King.¹⁰⁰

The constitutional negotiations were greatly preoccupied with the rival claims and statuses of the monarch and amakhosi, as was the provincial act for the setting up of a House of Traditional Leaders.¹⁰¹

KwaZulu-Natal’s Draft Constitution dated March 11, 1996 contained a chapter on the monarch, traditional authorities and related matters. It stated that the monarchy should be the constitutional monarch of the province and that all actions of the monarch should be countersigned by the Premier and, when appropriate, by the competent Minister.

Regarding traditional leaders the document stated:

“The autonomy of the traditional leaders, as the primary local government administrators of their respective communities, shall be guaranteed and protected in terms of traditional and customary law, subject to this Constitution.”¹⁰²

The national government and African National Congress opposed the subsequent application to the constitutional court by the KwaZulu-Natal government for approval. The African National Congress argued that the constitution was an attempt by KwaZulu-Natal to confer greater powers on itself and traditional authorities than allowed by the interim Constitution.¹⁰³

In another report about the constitutional court process, journalist Carmel Rickard stated:

“Another concern of the judges was about a clause making traditional leaders the ‘primary local government’ in some areas, organised under customary law but with the same status as municipalities or local councils. They questioned whether it would be appropriate for traditional leaders to administer electricity and schooling, when their positions were hereditary and they could not be removed if they did a bad job. Judge Johann Kriegler added: ‘In some areas you would have a council of amakhosi only, without any suggestion of accountability. Of representative democracy there would be no sign.’”¹⁰⁴

KwaZulu-Natal’s constitutional debate continues to be revived periodically. The African National Congress and the Inkatha Freedom Party resolved in 1999 to draft a new provincial Constitution but the process stalled. A newspaper report published on May 16, 2001 stated that it was hoped that a meeting on that day would solve differences. African National Congress provincial chairman S’bu Ndebele said that a provincial constitution would solve some of the current problems regarding traditional leadership.¹⁰⁵

⁹⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Zibuse Mlaba, member of parliament and inkosi of KwaXimba Traditional Authority, Inchanga Constituency Offices, July 17, 2001.

¹⁰⁰ Farouk Chothia: “Constitution ‘breakthrough only end of beginning.” *Business Day* March 18, 1996.

¹⁰¹ *KwaZulu-Natal Briefing* published by the Helen Suzman Foundation. Number 1. March 1996.

¹⁰² KwaZulu-Natal’s Draft Constitution dated March 11, 1996.

¹⁰³ Susan Russell: “KwaZulu ‘may not subvert principles’.” *Business Day* June 28, 1996.

¹⁰⁴ Carmel Rickard: “Judges slam plan ‘to secede’.” *Sunday Times* June 30, 1996.

¹⁰⁵ Phindile Makwakwa: “Talks over KZN constitution.” *Mercury* May 16, 2001.

Further newspaper reports in June 2001 stated that no progress had been made on the provincial constitution.¹⁰⁶

2.4. The White Paper on Local Government issued by the Ministry for Provincial Affairs and Constitutional Development (March 1998)

The White Paper on Local Government spells out the framework and programme in terms of which the local government system existing at the time would be radically transformed. It was designed to establish the basis for a system of local government that was centrally concerned with working with local citizens and communities to find sustainable ways to meet their needs and improve the quality of their lives.¹⁰⁷

With regard to traditional leaders the White Paper states that traditional leaders have responsibility for a number of functions, including:

- Acting as head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers.
- Presiding over customary law courts and maintaining law and order.
- Consulting with traditional communities through imbizo/lekgotla.
- Assisting members of the community in their dealings with the state.
- Advising government on traditional affairs through the Houses and Council of Traditional Leaders.
- Convening meetings to consult with communities on needs and priorities and providing information.
- Protecting cultural values and providing a sense of community in their areas through a communal social frame of reference.
- Being the spokespersons generally of their communities.
- Being symbols of unity in the community
- Being custodians and protectors of the communities' customs and general welfare.

Their role in the development of the local area and community includes:

- Making recommendations on land allocation and the settling of land disputes.
- Lobbying government and other agencies for the development of their areas.
- Ensuring that the traditional community participates in decisions on development and contributes to development costs.
- Considering and making recommendations to authorities on trading licences in their areas in accordance with law.¹⁰⁸

The White Paper also refers to the white paper process on traditional affairs that was underway and states that a number of issues would be dealt with during that process. In addition, the Department of Justice was looking at the establishment of community law courts and the Department of Land Affairs was looking at various options for land tenure.

The White Paper states:

“Some of the functions set out above do not overlap with the constitutional functions of local government. Local government does not, for example, lend itself to judicial functions, nor can it speak on traditional affairs or act as the custodian of customs and culture. In some respects, however, the current responsibilities of traditional authorities

¹⁰⁶ Sipho Khumalo: “IFP preconditions set to delay constitution.” *Daily News* June 8, 2001 and political reporter “No progress on provincial constitution.” *Natal Witness* June 8, 2001.

¹⁰⁷ Ministry for Provincial Affairs and Constitutional Development’s “White Paper on Local Government”, March 1998, p v.

¹⁰⁸ *ibid.* pp 75-76.

and municipalities do overlap. This has been a source of tension and has hampered development in certain rural areas.”¹⁰⁹

The White Paper states that there is no doubt that traditional leaders should continue to play an important role in the development of their communities.

“However, where Chapter 7 of the Constitution allocates a function to a municipality, the municipality has sole jurisdiction over the matter. On issues such as development, for example, a cooperative relationship will have to be developed. Tensions which arise in this respect will have to be addressed through dispute resolution mechanisms. These mechanisms are being applied to certain communities.”¹¹⁰

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

“It is proposed, in accordance with the Constitution, that there will be elected local government in all areas falling under traditional authorities. Traditional leadership should play a role closest to the people, and their role should therefore be defined principally in relation to Category B municipalities, although larger Kingdoms covering an entire district will clearly require similar relationships with district governments. Their role will include attending and participating in meetings of the Councils and advising Councils on the needs and interests of their communities. In this regard traditional leaders will have representation on such Councils. Whether traditional leaders should exercise voting rights alongside the elected councillors, as well as other matters relating to this model, needs to be determined after further consultation and research into constitutional provisions.”¹¹¹

The White Paper was criticised by the Inkatha Freedom Party's President Inkosi Buthelezi during a meeting of amakhosi of KwaZulu-Natal and the party's municipal councillors in April 2001. Inkosi Buthelezi said that traditional leaders had made a detailed submission during the consultative process in November 1997 and that government had indicated its willingness to accommodate traditional leaders.

“On the contrary, the White Paper which was produced makes no provision for local government powers of traditional authorities and mentions traditional leaders only marginally, almost as an afterthought.”¹¹²

Similarly, a senior official in the Inkatha Freedom Party, Sipho Ngwenya argued that the White Paper said little about amakhosi “in order to string them along”.¹¹³

However, the head of the Institute for Democracy in South Africa (Idasa) Paul Graham said in response that the White Paper was full of references to the ways in which traditional and community leaders could and should interact with local municipalities to promote the development of communities. Urging communities to make use of these opportunities, Graham was quoted in Idasa's publication *Khanyisa* as saying:

“What the White Paper does say is that traditional leaders will attend and participate in meetings of councils and advise councils on the needs and interests of their communities. But whether this representation will include voting rights must still be discussed. This is a complicated matter which many countries struggle with, not because they are opposed to

¹⁰⁹ *ibid.* pp 76-77.

¹¹⁰ *ibid.* p 77.

¹¹¹ *ibid.* pp 77-78.

¹¹² Speech by Inkosi Mangosuthu Buthelezi at a meeting of amakhosi of KwaZulu-Natal and Inkatha Freedom Party municipal councillors, Ulundi April 20, 2001.

¹¹³ Institute for Democracy in South Africa (Idasa): “Traditional leaders ‘excluded’.” *Khanyisa* October-December 1998.

traditional leadership – far from it, if they were they could just ignore it – but because they want to include traditional leaders while at the same time encourage democracy and urban development.”¹¹⁴

2.5. The Municipal Demarcation Act, No. 27 of 1998

The Municipal Demarcation Act enabled the demarcation of municipal boundaries for the whole of South Africa ahead of the local government election, which was held in December 2000. The act was seen as a powerful tool to transform apartheid city planning and design because it was aimed at introducing uniformity in government structures. Of course, this had a significant impact on traditional authorities because local government structures had previously played little if any role in most traditional authorities.

The Municipal Demarcation Act and the Municipal Demarcation Board decided on the categorisation of municipalities and reduced the number of municipalities in South Africa from 843 to 284. This created more powerful local governments that had more administrative control over their areas. The decrease in the number of municipalities clearly had an impact on the powers of traditional leaders, according to writer Ansuyah Maharaj.

“The demarcation of municipal areas and wards has reduced the number of municipalities from 843 to 284, cutting across rural districts and tribal land This creates more powerful local governments that have more administrative control over their areas.”¹¹⁵

The legislation required the formation of an independent Municipal Demarcation Board that was tasked with the demarcation process. The board is made up of between seven and 15 members who are appointed by the president from a list drawn up by a selection panel after inviting nominations from the public.

The Human Rights Committee states in a report on local government that the Municipal Demarcation Board must take into account areas of traditional rural communities and the need to rationalise the total number of municipalities within different categories.

“The effective determination or re-determination of a municipal boundary is subject to prior publication, public participation and consultation with the Electoral Commission. If the determination or re-determination affects the boundary of a magisterial district or of a traditional authority, the proposed determination must also be sent to the magistrate concerned or to the provincial House of Traditional Leaders.”¹¹⁶

The board’s objective must be to establish an area that would enable municipalities to fulfil their constitutional obligations relating to the provision of sustainable services; provide effective local government and have a tax base that is as inclusive as possible of users of municipal services.

2.6. Local Government: Municipal Structures Act (Act No. 117 of 1998); Local Government: Municipal Structures Amendment Act (Act No. 58 of 1999) and Local Government: Municipal Structures Second Amendment Bill

The Municipal Structures Act defined the structures of local government by providing for the establishment of municipalities and defining the types of municipalities that may be established. The Act also provides for a division of functions and powers between the categories of municipalities. It came into effect on February 1, 1999.

In terms of the types of municipalities, the Act defines which areas should have category A, B and C municipalities and describes the various types of municipalities within those categories. Other issues covered by the legislation include the election and functions of officials such as the mayor and speaker, the establishment of ward committees and the appointment of municipal managers.

¹¹⁴ *ibid.*

¹¹⁵ Ansuyah Maharaj: “Govt response falls short of traditional leaders’ demands.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

¹¹⁶ Human Rights Committee. *Local Government: The first five years*. Quarterly Review. October 2000.

In defining the functions and powers, the legislation states that functions and powers must be divided in the case of a district municipality and the local municipalities within the area of the district municipality. The Act states:

“A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by –

- (a) ensuring integrated development planning for the district as a whole;
- (b) promoting bulk infrastructural development and services for the district as a whole;
- (c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
- (d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.”¹¹⁷

The Act also contains a list of the functions and powers of a district municipality. These are as follows:

- (a) integrated development planning for the district municipality;
- (b) bulk supply of water and electricity;
- (c) bulk sewerage purification works;
- (d) waste disposal sites serving the district area;
- (e) regulation of passenger transport services;
- (f) municipal health services, fire fighting services and municipal airports, serving the district area;
- (g) promotion of local tourism; and
- (h) imposition and collection of taxes, levies and duties as related to these functions.¹¹⁸

The Act also states that a local municipality is required to carry out general local government functions as defined in the Constitution, excluding the functions and powers that are allocated to the district municipality within which it falls.¹¹⁹

The relevant provincial minister may, however, adjust the division of functions and powers between a district and a local municipality.

With regard to the participation of traditional leaders in municipal councils, Section 81 of this Act states that “traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders...in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council”.¹²⁰ According to the same Act traditional leaders were not allowed to exceed 10 percent of the council. This was subsequently increased to 20 percent in an amendment to the Act. The traditional leaders have no voting rights, but must be consulted about matters that relate to traditional affairs. If there is a traditional leader but there is no traditional authority, the traditional leader cannot participate because only traditional leaders that represent a traditional authority can participate.¹²¹

The provincial minister has a role to play and is required to identify traditional leaders that would occupy the 10 or 20 percent allocation of seats on the district or local council concerned. The traditional leaders identified by the minister must hold the supreme office of authority in the particular traditional authority and must be ordinarily resident in the municipal area in question. If more than 10 percent are identified, the provincial minister can determine a rotation system allowing all the traditional leaders to participate. The minister is expected to identify the traditional leaders on the recommendation of the provincial House of Traditional Leaders. However, the House merely makes a recommendation. The minister is bound by law to identify the most senior of the traditional leaders.¹²²

¹¹⁷ Local Government: Municipal Structures Act (Act No. 117 of 1998).

¹¹⁸ *Local Government Law Bulletin* published by the Community Law Centre of the University of the Western Cape in association with South African Local Government Association (SALGA), Volume 1 Number 3. September 1999.

¹¹⁹ *ibid.*

¹²⁰ Local Government: Municipal Structures Act (Act No. 117 of 1998).

¹²¹ *Local Government Law Bulletin* published by the Community Law Centre of the University of the Western Cape in association with South African Local Government Association (SALGA), Volume 2 Number 4. November 2000.

¹²² *ibid.*

The provincial minister can also regulate the participation of traditional leaders and prescribe a role for traditional leaders in the affairs of the municipality. In addition:

“Before a district or local council takes a decision that affects the area of a traditional authority, the leader of that authority must be given the opportunity to express a view on the matter.”¹²³

An article in the *Local Government Law Bulletin* says that it appears that the Act expected another way of soliciting the view of the traditional leader rather than simply allowing the traditional leader to express his or her view during the council meeting where the matter is considered. In terms of the Act, the provincial minister may prescribe a broader role for traditional leaders in the affairs of the municipality.

“Participation means that one could address a meeting; the traditional leader is therefore not merely a silent observer of proceedings. She/he may, subject to the rules and orders of the municipality and any regulation of the MEC...therefore participate in any debate on a matter if she/he is a councillor. This would include the right to submit motions, make proposals and ask questions. Her/his participation in a council meeting is not limited to the matters directly affecting the area of the traditional authority.”¹²⁴

However, traditional leaders cannot vote and are not remunerated by the municipality.

KwaZulu-Natal’s House of Traditional Leaders decided in April 1999 that it intended challenging the Municipal Structures Act in the constitutional court. Inkosi Mpiyezintombi Mzimela said that amakhosi were not happy with the government’s intention to introduce the legislation in traditional areas because this would sideline and erode their powers.¹²⁵

The Amendment Act (No. 58 of 1999) vested power to determine the category of certain municipalities in the Municipal Demarcation Board and removed the power of the Minister to determine guidelines for types of municipalities.

The Second Amendment Bill which was published in the *Government Gazette* of November 3, 2000 for comment was concerned with amending the Municipal Structures Act, 1999 to make provision for the functions of traditional authorities, to make provision for municipal councils to delegate functions to traditional authorities and to make provision for the role of traditional leaders in certain community matters. The Bill defined the functions of traditional authorities as follows:

- (a) to collect and administer all fees and charges which are, according to custom, payable to the traditional authority within the traditional area of that traditional authority;
- (b) to receive fines and fees collected with regard to the exercise of customary law;
- (c) to administer any funding allocated to it from any source;
- (d) to make recommendations in connection with the appointment of headmen;
- (e) to perform such functions as may be delegated to it by a municipal council;
- (f) to provide direction and leadership in cultural activities;
- (g) to be the custodian of culture and customs;
- (h) to attend to matters relating to witchcraft and divination within its communities;
- (i) to carry out all orders given to it by competent authorities;
- (j) to make known the requirements of any new laws to the community;
- (k) to convene meetings of community members;
- (l) to promote the interest and well being of residents in its traditional area;
- (m) to control the holding of initiation ceremonies;
- (n) to facilitate the gathering of firewood;
- (o) to co-ordinate first fruit ceremonies;

¹²³ *Local Government Law Bulletin* published by the Community Law Centre of the University of the Western Cape in association with South African Local Government Association (SALGA), Volume 1 Number 2, July 1999.

¹²⁴ *Local Government Law Bulletin*, Volume 2 Number 4.

¹²⁵ Pule Molebeledi: “KwaZulu chiefs to challenge constitutionality of municipal act.” *Business Day* April 9, 1999.

- (p) to co-ordinate rainmaking ceremonies; and
- (q) to co-ordinate the clearing of fields to ensure good harvests.¹²⁶

The role of traditional leaders in community affairs, according to the legislation, includes the following:

- (a) officiating at the opening and closing ceremonies of municipal councils;
- (b) presiding over the opening of customary proceedings;
- (c) liaising with communities on behalf of municipal councils in respect of matters which affect the communities concerned;
- (d) presiding over traditional customary and wedding ceremonies;
- (e) participating in burials;
- (f) mediating during ancestral worship; and
- (g) presiding over the inauguration of headmen.¹²⁷

The amendment bill was subsequently withdrawn because of a procedural problem and discussions around the amendments continue in late 2001.

However, the chairman of the Municipal Demarcation Board, Dr Michael Sutcliffe describes the municipal structures legislation as revolutionary and one of the most flexible pieces of local government legislation in the world. He says that the legislation enables powers to be delegated to councillors, officials and even ward committees, where 10 out of 11 members are not elected.

“They can be given the power to approve certain levels of planning decisions. They cannot deal with the budget, for example, but the traditional authority in the area could deal with certain things. In this way the municipality can become people-driven or centred.”¹²⁸

2.7. Local Government: Municipal Systems Act (Act No 32 of 2000)

The Municipal Systems Act, which was tabled in the National Assembly on May 5, 2000, regulates key municipal organisational, planning, participatory and service delivery systems.

The long title of the Act states that it is to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all. The Act is also designed to provide for the manner in which municipal powers and functions are exercised and performed; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts.

In summarising this introduction, the *Local Government Law Bulletin* published in September 1999 stated:

“The focus of the Bill is mainly on the internal systems and administration of the municipality and it establishes the basic principles and mechanisms to give effect to the vision of developmental local government as espoused by the Local Government White Paper.”¹²⁹

The legislation covers the rights and duties of municipal councils and those of members of the local community. It states that a municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution and that a municipality has the right to do anything reasonably necessary for, or

¹²⁶ Local Government: Municipal Structures Second Amendment Bill, 2000 *Government Gazette* November 3, 2000.

¹²⁷ *ibid.*

¹²⁸ Interview conducted by Cheryl Goodenough with Dr Michael Sutcliffe, chairman of the Municipal Demarcation Board, Westville, August 8, 2001.

¹²⁹ *Local Government Law Bulletin*. Volume 1 Number 3.

incidental to, the effective performance of its functions and the exercise of its powers. Municipalities are required to encourage and create conditions for the local community to participate in the affairs of the municipality. The Act also contains codes of conduct for councillors and municipal staff members.¹³⁰

This legislation is important because it emphasises the involvement of the community in local government processes. This opens the way for proactive traditional leaders to ensure that the local community is part of the goings on in the municipality in which they live. However, this legislation is also a matter of contention for amakhosi because it places emphasis on the role that elected councillors will play in local government issues and service delivery. Any role envisaged by traditional leaders is not mentioned in this legislation.

2.8. A Discussion Document Towards a White Paper on Traditional Leadership and Institutions

The main objective of the Department of Provincial and Local Government's discussion document of April 11, 2000 was to engage South Africans in a dialogue regarding the traditional leadership institution. The document called for comment and input by June 30, 2000.

Provincial and Local Government Minister Sydney Mufamadi states in the forward to the discussion document that the document is not concerned with "whether or not to recognise the institution of traditional leadership".

"Rather it is to determine the precise way in which the institution will promote constitutional democracy."¹³¹

The document has sections that cover:

- an historical overview of functions;
- the structure of traditional leadership in various provinces;
- the appointment or recognition of traditional leaders;
- the removal of traditional leaders from office;
- the role of women in traditional leadership;
- the status of youth or minors in traditional communities;
- party political affiliation;
- remuneration of traditional leaders;
- co-operative governance;
- role and functions of statutory bodies representing traditional leaders;
- traditional communities and issues having trans-provincial implications;
- traditional communities, national borders and trans-national implications.

According to a presentation made at the Midrand conference on traditional leadership in August 2000, 67 group submissions were received in response to the discussion document. These were concerned with a range of issues including the reviewing of criteria for being a king or queen, the role of headmen, the development of policy of 'landless chiefs', the participation of traditional leaders in rural local government, co-operative governance, the participation of women in traditional leadership structures, the equity clause in the Bill of Rights and the legitimacy of some traditional leaders.

The discussion document was intended to be part of the second phase of the White Paper process on traditional leadership. This process was to deal in a comprehensive way with the role, status and future of traditional leadership. The first phase consisted of a national audit on traditional leaders. This focussed on issues such as the collection of all pieces of legislation, especially from the former homelands, by which traditional leadership institutions were established, the collection of data relating to the number of traditional leaders throughout the country and the collection of data relating to remuneration, the role of women and the youth and cross-border matters.

¹³⁰ Local Government: Municipal Systems Act (No 32 of 2000).

¹³¹ Department of Provincial and Local Government: "A Discussion Document Towards a White Paper on Traditional Leadership and Institutions." April 11, 2000 p 3.

Phase two, which was concerned with the launch of the discussion document, was expected to culminate in the production of a White Paper. The final phase was to focus on the implementation of the policy framework as approved by government.¹³²

This White Paper process is described in the 2000/2001 annual report of the National House of Traditional Leaders as occurring at “a snails pace while other processes have been fast-tracked and have since been completed”¹³³. Such processes include the demarcation process and the establishment of municipalities.

“The pace of the White Paper process has held the institution of traditional leadership to ransom as the Department is always referring traditional leaders to the unfinished process and thus traditional leaders are expected to wait until the process is finished and their roles are defined before their grievances could be listened to and policy issues could be attended to. The National House approached the Department and requested to have a representation of the House involved in the drafting of the White Paper process. To this request and after numerous follow-ups, the Department did not respond. The House was very disappointed to learn that the process is over without its involvement with regard to drafting and writing.”¹³⁴

The document was received with mixed feelings. Some officials saw it as long overdue and an opportunity to speed up the process towards policy on traditional leadership. Some amakhosi, however, viewed the document as an insult to the institution of traditional leaders.

2.9. 1990 to 1999

Lungisile Ntsebeza says that the negotiation process beginning in the early 1990s had a strong urban bias. He refers to the Transitional Local Government Act which “was silent on the form local government would take in rural areas”. The clause in the interim Constitution that recognised the institution of traditional leadership was added on the eve of the first democratic election of April 1994.¹³⁵

During the preparation process ahead of the 1995/1996 local government elections transitional local councils were formed in an effort to combine formerly segregated areas in cities and towns. Issues around traditional leaders were significant in delaying the holding of local government elections in KwaZulu-Natal. While most other provinces held elections in 1995, those in KwaZulu-Natal were delayed until 1996.

The Minister of Local Government and Housing at the time, Peter Miller said the issue of whether or not traditional leaders were entitled to ex-officio representation on regional councils had been divorced from the proclamation that makes provision for the holding of elections in rural areas of KwaZulu-Natal.¹³⁶

Miller said that it was his interpretation that eligible amakhosi were entitled to representation on regional councils, while representatives from the African National Congress found that amakhosi were not entitled by right to serve on such bodies.¹³⁷

Mary Galvin wrote that there was no history of local government in rural areas and no structures to be transformed. She contrasted this situation with urban areas where racially defined authorities were combined to create transitional local councils (TLCs). Traditional authorities played a role in many of the rural areas. According to Galvin, the traditional leaders played a role in community governance, but “any service delivery was often used for political ends”.¹³⁸ Galvin wrote:

“A two-tier local government system was introduced. District Councils would serve as the upper tier or secondary level, and the lower tier or primary level would be comprised

¹³² *ibid* p 5.

¹³³ Annual report of the National House of Traditional Leaders 2000/2001.

¹³⁴ *ibid*.

¹³⁵ Lungisile Ntsebeza: “Conference on the role of traditional leaders in the new South Africa: an Eastern Cape perspective.” Umtata July 4-5, 1996.

¹³⁶ Media release issued by PM Miller, Minister of Local Government and Housing, March 27, 1996.

¹³⁷ *ibid*.

¹³⁸ Mary Galvin: “The impact of local government on rural development in South Africa.” *Transformation: critical perspectives on Southern Africa* (40) 1999 pp 87 to 111.

of TLCs for urban areas and Transitional Rural Councils (TRCs) for rural areas. Both levels would be directly elected, however each lower level would send a few representatives to the upper level. Once again KwaZulu-Natal proved to be an exception in this regard. TRCs were not formed, so rural areas were referred to as 'remaining areas' and District Councils were called Regional Councils."¹³⁹

Galvin says that there was confusion about the rural local government system, particularly in KwaZulu-Natal where no TRCs were formed. Traditional leaders, who could serve as ex-officio members on the TRCs, were allowed to become part of the District Councils, which in KwaZulu-Natal were called Regional Councils. This resulted in the formation of vast Regional Councils, which in some areas included nearly 300 members, according to Galvin.¹⁴⁰

Sibongile Zungu said that black town councils had been given new authority through the Local Government Transition Act, but that traditional authorities had been left behind.

"Local government negotiating forums set up to establish transitional councils did not exist for rural areas and primary local councils therefore only existed in urban areas. During the interim period, the responsibility of providing local government services to the rural areas will rest with regional councils."¹⁴¹

But a number of traditional leaders had fundamental criticisms of the process of electing councillors into local government. Inkosi Xolo of the south coast of KwaZulu-Natal said that in his traditional authority the local people did not know the elected councillors and that it was difficult to hold them accountable for their actions and omissions. He complained that some councillors did not recognise traditional structures and that it was very difficult for him as inkosi to try and work with them. He suggested instead that amakhosi should be empowered to appoint councillors in their own areas. In this way amakhosi could hold councillors accountable to traditional communities.¹⁴²

After the 1995/1996 local election tension continued to mount between the Inkatha Freedom Party president Inkosi Buthelezi and South Africa's Deputy President at the time, Thabo Mbeki. This was particularly evident in speeches that Inkosi Buthelezi made during the run-up to the 1999 general election. One newspaper reported that Inkosi Buthelezi had chastised the deputy president for not acting in response to the request that had been made by the Inkatha Freedom Party for traditional leaders to be recognised in local government structures. Inkosi Buthelezi was quoted as saying:

"Deputy President, to be quite candid, the amakhosi of KwaZulu-Natal are extremely unhappy with the way they have been treated by our national government, starting from the day we met with you and the President as members of the delegation which was led by the then Premier of the province, Dr Frank Mdlalose... We need to do something to get amakhosi to have confidence in us as the national government of the country."¹⁴³

Inkosi Buthelezi voiced similar sentiments some months later during the campaign around the general election in 1999. He described moves to restructure the role of traditional leaders in local government as a "disaster" and said that "chaos would ensue" if one removed the role of traditional leadership. He argued that traditional leaders resolved disputes, maintained stability and were involved in the development and upliftment of their communities.

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ Sibongile Zungu: "Traditional leaders' capability and disposition for democracy: the example of South Africa." *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996 p 169.

¹⁴² Interview conducted in Zulu by Zwelihle Memela and Dingani Mthetwa with Inkosi Everson Xolo, Xolo Tribal Authority, July 12, 2000.

¹⁴³ Xolisa Vapi: "Buthelezi slams hollow promises." *Independent on Saturday* November 21, 1998.

“Neither the IFP nor any traditional leader I know has rejected the need to evolve. Nevertheless, we have denounced over and over again the plan of government to transform traditional leaders out of existence.”¹⁴⁴

As a result of all the difficulties Deputy President Jacob Zuma met with representatives of the national and provincial Houses of Traditional Leaders at the Union Buildings in Pretoria in November 1999. The meeting aimed to discuss the status of traditional leaders and the new municipal structures to be developed as part of the transformed structures that would be elected during the December 2000 local government election.

Although traditional leaders were given a role to play in local government after the 1995/1996 local government elections, it was councillors and elected representatives that, some sectors argued, were mandated to bring social development and service delivery to rural communities. The elected representatives were expected to be accountable to the electorate. In many areas their apparent functions overlapped those that had been performed particularly by enthusiastic and active traditional leaders. This certainly did contribute to amakhosi feeling that the new system of governance diminished their powers. In some instances elected representatives have overlooked traditional leadership in their quest for social development, which has aggravated the uneasy relations between some councillors and amakhosi.

2.10. Chronology of events in 2000 and 2001

The run-up to the local government election, which was held on December 5, 2000, was filled with intense discussions and politicking around the issue of the institution of traditional leadership. As a result of their importance to the current debate the details are provided here in the form of a chronology which highlights events over a two-year period.¹⁴⁵

JANUARY 15, 2000: Amakhosi hold a protest imbizo in Umlazi to oppose the new municipal boundaries in KwaZulu-Natal, the subdivision of their land and a representation of only 10 percent on elected councils.

JANUARY 27: Zulu King Goodwill Zwelithini meets President Mbeki to discuss the concerns of amakhosi and to call for a showdown in the demarcation process. King Zwelithini later claims he never received a response.

MAY 17: President Mbeki and Provincial and Mufamadi meet representatives from the National House of Traditional Leaders and the provincial Houses of Traditional Leaders, Contralesa and the Bafokeng Royal Nation as well as a delegation from KwaZulu-Natal. Government undertakes to redefine the role of amakhosi and review existing legislation.

MAY 17: President Mbeki invites traditional leaders to make submissions in response to the Department of Provincial and Local Government's discussion paper on the role and institution of traditional leadership in South Africa.

JUNE 5: After discussions with traditional leaders, the Municipal Demarcation Board decides to investigate a number of municipal outer boundaries in traditional areas in KwaZulu-Natal.

JUNE 22: In a scathing attack on government Inkatha Freedom Party leader and chairman of the House of Traditional Leaders in KwaZulu-Natal, Inkosi Buthelezi warns that the "way of life of traditional leaders" is under threat.

JULY 13: Secretary-general of the African National Congress, Kgalema Motlanthe says in a mid-term report that the African National Congress must urgently address its matter of handling relations with the KwaZulu-Natal amakhosi head of the elections. Motlanthe says that contact with amakhosi is handled on an ad hoc basis rather than as a programme of action.

¹⁴⁴ Venilla Yoganathan and correspondents: "Phasing out chiefs 'a disaster'." *Daily News* April 26, 1999.

¹⁴⁵ This chronology was compiled by Charmaine Pretorius from a number of newspapers and South African Press Association reports, as well as media statements and speeches.

AUGUST 4: Mufamadi meets KwaZulu-Natal traditional leaders in Ulundi.

AUGUST 17: Government officials and traditional leaders hold a conference in Gauteng to discuss submissions made in response to the discussion document on traditional leadership.

AUGUST 28: KwaZulu-Natal amakhosi are reported as saying that the local government elections will not be free and fair if their problems with demarcation are not resolved.

AUGUST 30: After a series of meetings President Mbeki again re-assures traditional leaders that the government recognises their important role.

AUGUST 30: Independent Electoral Commission chairwoman Brigalia Bam expresses concern over the lack of knowledge among the rural electorate about the demarcation process.

AUGUST 30: President Mbeki increases the participation of traditional leaders in local councils from 10 percent to 20 percent, but he does not give in to a demand by amakhosi that they be allowed to run rural areas.

SEPTEMBER 8: Inkosi Buthelezi tells Zulu traditional leaders that there is no purpose in further discussions with President Mbeki after the president rejected their proposals on the Discussion Document towards a White Paper on Traditional Leadership.

SEPTEMBER 8: Inkosi Buthelezi lashes out at President Mbeki for treating traditional leaders as non-entities. He says that the institution of traditional leadership had gone "a long way to seek compromise conceding that up to 50 percent of the traditional councils could be elected".

SEPTEMBER 21: The Municipal Systems Bill and the Municipal Structures Amendment Bill is adopted by the National Parliament.

SEPTEMBER 21: United Democratic Movement leader Bantu Holomisa warns that ignoring amakhosi did not augur well for future peaceful development in rural areas.

SEPTEMBER 21: During a debate on the Municipal Structures Amendment Bill Mufamadi warns traditional leaders that government will not allow the derailment of the municipal elections.

SEPTEMBER 24: King Zwelithini expresses concern over the lack of understanding between traditional leaders and government on the issue of demarcation in areas under amakhosi.

SEPTEMBER 30: Government and amakhosi agree to establish a nine-person technical committee to determine whether the establishment of municipalities in rural areas would diminish the powers of traditional leaders.

OCTOBER 1: KwaZulu-Natal Premier Lionel Mtshali adds his voice to the concerns that have already been expressed by traditional leaders and warns government that failure to resolve the amakhosi issue could lead to anxiety and violent confrontation.

OCTOBER 2: Amakhosi meet government and traditional leaders at the Union Buildings in Pretoria to try and resolve their differences over municipal demarcation.

OCTOBER 2: The joint technical committee on traditional leadership is established to determine whether the establishment of municipalities in traditional authority areas would diminish the powers of traditional leaders and what could be done to remedy the situation if the powers of traditional leaders will be diminished.

OCTOBER 6: The Coalition of Traditional Leaders discusses concerns over demarcation during its annual general meeting in Potchefstroom.

OCTOBER 9: As a result of the stand-off between government and traditional leaders over the municipal elections Mufamadi postpones the announcement of election date for a third time.

OCTOBER 10: The technical committee on issues relating to traditional leaders reports to President Mbeki that the powers of traditional leaders would be diminished by the new local government structures. The report proposes a number of options to deal with the matter.

OCTOBER 10: Mufamadi announces that the election will be held on December 5, 2000.

OCTOBER 10: Amakhosi accept an undertaking by President Mbeki to act on proposals to preserve their powers and functions in the new local government structure.

OCTOBER 21: Traditional leaders and their subjects converge on the Union Buildings in Pretoria to express serious reservations about the local government process.

NOVEMBER 5: Amakhosi are dissatisfied with proposed amendments to the Municipal Structures Act and the Pan Africanist Congress warns over looming crisis between traditional leaders and government.

NOVEMBER 6: Traditional leaders again gather in Pretoria to protest draft amendments to the Municipal Structures Act. Inkosi Buthelezi says that the initial legislation had nothing to do with the problem and "was an insult to our intelligence and demeaning of the role and functions of traditional leadership". He says that it contained no concessions.

NOVEMBER 8: Cabinet sets up a ministerial task team to improve the Local Government Municipal Structures Second Amendment Bill.

NOVEMBER 9: Government increases efforts to try and accommodate dissatisfied amakhosi.

NOVEMBER 13: Zuma meets the Coalition of Traditional Leaders in Cape Town to discuss the Local Government Municipal Structures Second Amendment Bill. Inkosi Buthelezi complains that the Bill "could be regarded as marginally better than the first, but which, in the opinion of others, is as bad as the first Bill, if not worse".

NOVEMBER 17: The Local Government Municipal Structures Second Amendment Bill is withdrawn because of a procedural problem.

NOVEMBER 25: Government undertakes to finalise a white paper on the status of traditional leaders by June 2001 as part of the process to replace the Municipal Structures Second Amendment Bill. President Mbeki and Zuma again try to reassure amakhosi that their concerns would be met after the elections on December 5.

NOVEMBER 27: Zuma and a special Cabinet committee meet traditional leaders in Pretoria to discuss their powers in local government. A joint committee is established to look into issues of concern.

DECEMBER 1: Government representatives and traditional leaders sign a statement of intent, paving the way to the participation of traditional leaders and their supporters in the municipal elections. The statement of intent confirms the seriousness of both parties and commits them to a constitutional solution.

Joint Statement of Intent of the South African Government and the Coalition of Traditional Leaders Regarding the Role of Traditional Authorities in Local Government.

"This Statement of Intent seeks to regulate the role of traditional authorities in local government. In order to ensure that the powers and functions of traditional authorities in local government are not eroded Parliament has laid down the procedures to be followed to pass the Local Government Structures Second Amendment Bill. Relevant sections of Chapter 7 and 12 of the Constitution will be amended to provide for the powers and functions of traditional authorities in local government. In dealing with these matters, government and traditional leaders will be guided by the principle of respect for, and recognition of, the critical role of traditional leaders in the system of governance in our country, particularly among the rural communities. The government and traditional leaders will seek to codify this role in accordance with the Constitution, as amended. This Statement of Intent will be presented to Cabinet at its next meeting on Wednesday 6 December 2000, for its consideration and necessary action. Government and Traditional Leaders have agreed to continue to work together to take forward this matter, critical in the evolution of our democracy."

DECEMBER 3: More than 300 traditional leaders from KwaZulu-Natal accuse government of betraying them and treating them as enemies of the state during an imbizo in Durban. At the same event Inkosi Buthelezi blames former President Mandela for the problems facing amakhosi.

DECEMBER 5: On election day traditional leaders and their supporters across the country turn up in large numbers to vote in the municipal elections, but others refuse to vote.

DECEMBER 11: The Coalition of Traditional Leaders calls for the implementation of the Municipal Structures Second Amendment Bill as soon as possible.

DECEMBER 13: Cabinet meets to discuss traditional powers and amendments to the Constitution.

JANUARY 6, 2001: Inkosi Buthelezi urges amakhosi to avoid conflict.

JANUARY 25: Traditional leaders vow not to participate in the new local government structures until legislation restoring their powers is implemented.

FEBRUARY 18: Traditional leaders from KwaZulu-Natal threaten to stop all municipal activities in their areas if President Mbeki does not respond to their grievances.

FEBRUARY 21: Opposition parties berate the African National Congress-led government for failing to resolve the amakhosi issue.

FEBRUARY 23: King Zwelithini expresses his support for amakhosi who refuse to participate in the new municipal structures.

FEBRUARY 26: Premier Mtshali says that "amakhosi have been betrayed" and announces that he will take measures to resolve the clash between the powers of municipalities and traditional authorities to make up for the indecision of the national government.

MARCH 19: A boycott of local government structures continues amidst the failure by government to amend legislation.

APRIL 6: Mufamadi meets traditional leaders to discuss the progress that has been made to ensure that their powers are not eroded by the new local government structures. Traditional leaders call for recognition of nearly 80 traditional regional authorities as second-tier municipalities in areas under their control.

APRIL 10: Traditional leaders warn that the gap between them and government is widening after indications that government is only willing to amend the Municipal Structures Act and not chapters 7 and 12 of the Constitution.

APRIL 22: Inkatha Freedom Party councillors in KwaZulu-Natal again threaten to disrupt and boycott local government structures in rural areas if the issue of traditional leaders remains unresolved. This time they give an ultimatum saying that the government has 30 days to resolve the issue.

APRIL 25: The Democratic Alliance says the Inkatha Freedom Party and traditional leaders cannot expect traditional leaders to have the same rights as democratically elected representatives and that they should not be allowed to hold the government to ransom.

APRIL 26: The government releases a discussion document on the role of traditional leaders. It proposes that amakhosi sign performance contracts as a condition for receiving remuneration from government – some 778 amakhosi are paid by government at an annual amount of R58 million. Countrywide hearings are conducted on the paper, which will culminate in a white paper on traditional leaders.

APRIL 30: Traditional leaders challenge President Mbeki to come out and clearly state if he intends to abolish the institution of traditional leaders.

MAY 10: Public Protector Selby Baqwa says he may investigate President Mbeki's alleged failure to respond to traditional leaders' queries on their role in local government. He urges King Zwelithini to make an official request for an investigation.

MAY 20: Church leaders in KwaZulu-Natal step in to avert a showdown between Inkatha Freedom Party councillors and the national government over traditional leaders as the 30-day deadline for a threatened boycott approaches.

MAY 21: The intervention of the church leaders manages to avert a municipal strike by Inkatha Freedom Party councillors in KwaZulu-Natal. A meeting to be attended by church leaders, traditional leaders and government is set for June 8.

MAY 23: King Zwelithini confirms that he had officially requested the Public Protector to investigate President Mbeki's office for its alleged failure to respond to concerns over the status of traditional leaders.

MAY 27: Archbishop of Cape Town Njongonkulu Ndungane accuses government of treating traditional leaders worse than they were treated by the British colonialists or the apartheid regime.

JUNE 1: Six months after amakhosi stepped aside and allowed the December 5 municipal elections to go ahead, the amakhosi regard the promises made by President Mbeki as unfulfilled.

JUNE 5: Mufamadi announces that government will look into the legitimacy of traditional leadership by investigating disputes and claims to chieftainship.

JUNE 26: The United Democratic Movement warns that the success of government depends on the recognition of traditional leaders' roles in all spheres of government.

JULY 7: A day ahead of their meeting with government and amakhosi, church leaders are optimistic that outstanding issues will be resolved.

JULY 9: The Inkatha Freedom Party national conference gives full backing to traditional leaders and condemns government for failing to honour promises by President Mbeki to the Coalition of Traditional Leaders. The party also supports threats by local councilors to render ineffective the delivery of services in rural areas until the demands of traditional leaders are met.

JULY 13: African National Congress Secretary-General Kgalema Motlanthe says relations between the KwaZulu-Natal amakhosi and the party must be addressed as a matter of urgency. Contact with amakhosi was handled on an ad-hoc basis rather than as a programme of action.

JULY 17: Former President Mandela warns the country's traditional leaders not to demand too many constitutional powers from government. Traditional leaders who demanded too much power would not survive.

JULY 19: The KwaZulu-Natal department of traditional affairs launches an intensive campaign to prepare traditional leaders in the provinces to meet the challenges facing them in the 21st century.

JULY 31: Mufamadi announces the appointment of a commission of inquiry to look at matters of succession, disputes and other issues affecting traditional leaders. The commission will only deal with proposed laws.

AUGUST 4: Government considers establishing a commission to resolve the impasse between it and traditional leaders over the role, status, functions and powers of traditional leaders in the new municipal structures. President Mbeki blames colonial legacy for the fact that some traditional leaders are seen as imposters.

OCTOBER 11: Traditional leaders warn government that should it continue to ignore their concerns, they could be forced to form their own political party. The National House of Traditional Leaders says there has been no progress in negotiations with government on the powers and functions of amakhosi within the country's new municipal structures. Traditional leaders were excluded from the drafting of a white paper on their functions, barred from holding meetings at Parliament and the presidency and Mufamadi are not serious about addressing their concerns.

OCTOBER 18: The Institute for Democracy in South Africa (Idasa) offers to broker agreements to resolve the impasse between amakhosi and government on the powers and functions of traditional leaders. A meeting with representatives from the presidency, the department of provincial and local government affairs and traditional leaders is tentatively scheduled for November 1. Idasa plans a two-day conference on the powers of traditional leaders later this year in KwaZulu-Natal.

OCTOBER 21: A media report claims that KwaZulu-Natal Premier Lionel Mtshali is blocking a R6 billion development project. This is seen as a culmination of earlier threats by the Inkatha Freedom Party to halt service delivery in rural areas if government ignored the clash of traditional leaders' powers with those of elected municipal councillors. Premier Mtshali denied the allegations.

OCTOBER 29: Amakhosi vowed to start lobbying rural voters across the country to back political parties sympathetic to the quest of amakhosi to have their powers restored. The Coalition of Traditional Leaders also calls for Mufamadi's dismissal because he is considered to be unwilling to meet their concerns about the new municipal dispensation usurping their powers in traditional areas.

2.11. Political affiliation

Many traditional leaders have a close association with political parties, particularly in KwaZulu-Natal where a majority of them openly support the Inkatha Freedom Party. A number have also been involved in actively mobilising rural people against the African National Congress. However, there are some traditional leaders in KwaZulu-Natal who have supported the African National Congress, either indirectly or by openly aligning themselves with the Congress of Traditional Leaders of South Africa, which is aligned to the African National Congress.

In some ways this situation has presented some difficulties for the African National Congress. The party is aware that in order to win the province of KwaZulu-Natal, which has traditionally been a stronghold of the Inkatha Freedom Party, it has to garner the support of amakhosi. The African National Congress does not want to lash out at traditional leaders who form a strong constituency base for the

Inkatha Freedom Party. In addition the African National Congress does not want to make comments that will jeopardise the coalition agreement between itself and the Inkatha Freedom Party.

Some members of the African National Congress have appeared at times to be of the view that there was no place for traditional leaders in the modern era. However, this stance has somehow largely changed as the African National Congress appears to recognise amakhosi, while simultaneously trying to make them ineffective as a political tool for the Inkatha Freedom Party.

The active role that many amakhosi currently play in politics has meant that it has become increasingly difficult to draw a distinction between amakhosi who are aligned to the Inkatha Freedom Party and the political party itself because they perform these roles simultaneously. The situation is similar for amakhosi who are aligned to the African National Congress. However, Congress of Traditional Leaders of South Africa members seem to enjoy somewhat more independence as they do criticise the African National Congress openly when it comes to certain policy issues, particularly relating to ubukhosi.

This is, however, not the case with the Inkatha Freedom Party-aligned traditional leaders. While some of the traditional leaders talk the party line, others often remain silent deferring questions to senior party leadership. In addition, it is likely that several of these traditional leaders who are illiterate are influenced by a lack of understanding of how government operates. The history of political confrontation in KwaZulu-Natal is also still fresh in the minds of people and the life-threatening dangers of free political activity are well known in many areas.

With the change in local government structures, traditional leaders have found that councillors who are elected as the representatives for wards in their area are not necessarily from the same political party. Alternatively the councillor may be politically aligned while the traditional leader does not actively support any party.

Issues raised in Chapter 5 of this report on historical matters of course impact on the perceptions that people have of traditional leaders. Some sectors are of the view that some amakhosi have been perpetrators of violence between the African National Congress and Inkatha Freedom Party by taking a particular party political line. Dr Siphos Sibanda and Edgar Ntuli say that this has compromised the role of amakhosi as arbitrators in matters of conflict and maintainers of law and order and peace.

“Some of the chiefs in the eyes of the public have been perceived as part and parcel of the political conflict and confusion in the rural areas of KwaZulu-Natal. The involvement in violence by some of the chiefs has therefore tarnished the image of the chiefs in the eyes of the public.”¹⁴⁶

2.11.1. The arguments against

During a focus group on issues relating to traditional leaders, an inkosi compared the position of traditional leaders to that of the church. He said that everybody, irrespective of what political party he or she supports, is the subject of an inkosi in a particular area. The inkosi said that when politics brings violence to an area, political solutions are needed. However, amakhosi have to take a stand and side with those who stand for peace against those who perpetuate violence.¹⁴⁷

The view that traditional leaders should give up their traditional positions if elected to any government structure is a popular one. The view is that traditional leaders should be above party politics. It is feared by some that a traditional leader who is involved in politics cannot make an impartial decision for the community as a whole.

To ensure that they were objective in delivering services, traditional leaders should not be affiliated to any political party, according to a 25 year old male from Vumukwenza Traditional Authority in the Umbumbulu area in response to the Independent Projects Trust questionnaire. He said that amakhosi who are affiliated may favour their own strongholds.

Another man from the same area, who is aged 51, agreed saying that traditional leaders who support one political party may display a negative attitude towards members of other political persuasions.

¹⁴⁶ Discussion document prepared by Dr Siphos Sibanda and Edgar Ntuli. July 4, 1996.

¹⁴⁷ Focus group conducted by Jerome Dube and Edmund Mthuli, Mtubatuba, September 18, 2001.

A 37 year old man from Embo said that inkosi should not be an active member of a political party because he must be “a leader for all people”.¹⁴⁸

The Integrated Rural Development White Paper for KwaZulu-Natal advances the view that traditional leaders should be seen as playing a non-party political role and that they should instead “express the views of traditional communities as accountable leaders”. The White Paper also proposes that traditional leaders should not be directly responsible for development, while still having a role in assisting in the promotion of local development activities.

“Assuming responsibility for delivering development resources may force traditional leaders to assume a party political profile, and therefore undermine their capacity to express the common view, or articulate a traditional perspective. Moreover, non-delivery is likely to undermine the legitimacy of customary systems.”¹⁴⁹

Pan Africanist Congress deputy president Dr Motseko Pheko also supports the view that traditional leaders should not be politicians.

“Traditional leaders should be neutral in party politics and play a role in unifying and uniting. For example, in KwaZulu-Natal, Azapo, PAC, ANC and IFP members all owe allegiance to King Goodwill [Zwelithini]. Traditional leaders who decide they want to be politicians must abdicate.”¹⁵⁰

African National Congress member of parliament Yunus Carrim says that if traditional leaders are going to fulfill some of their core responsibilities, they should perhaps consider not belonging to political parties.

“Also it seems to me that one of the very important roles they play is securing unity among the people whom they lead, a unity that transcends political divides. And if they are going to play their developmental role, I think they’d be more effective if they are not linked to political parties.”¹⁵¹

Even the president of the Congress of Traditional Leaders of South Africa Inkosi Holomisa, who is also an African National Congress member of parliament, says that ideally traditional leaders should not be members of political parties. However, he says that under the current circumstances it would not be wise to abandon party politics because “the decisions, our future, is still to be decided by a parliament made up of political parties”.

“Of course, we have the National House [of Traditional Leaders] and the provincial Houses which are supposed to be the forums where we participate as traditional leaders but there are problems in that regard as well because their powers are still not properly defined and there are shortcomings.”¹⁵²

2.11.2. The arguments for

Carrim does point out that he appreciates that traditional leaders might argue that because their needs, interests and concerns have not been addressed, they have no choice but to either join the majority political party or to join other parties which can bring pressure to bear.

Carrim states that two issues arise out of this argument:

¹⁴⁸ Answers to research questionnaires compiled by Independent Project Trust completed in Vumukwenza on September 8, 2000 and Embo on September 7, 2001.

¹⁴⁹ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal*. December 2, 1998.

¹⁵⁰ Interview conducted by Chiara Carter with Dr Motseko Pheko, Pan Africanist Congress Deputy President and member of parliament, Cape Town, October 2001.

¹⁵¹ Interview conducted by Chiara Carter with Yunus Carrim, African National Congress member of parliament Cape Town October 2001.

¹⁵² Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

“One, they could lobby. They even have a National House of Traditional Leaders and six provincial Houses that they could use as an institution for lobbying government. Their concerns might even have a certain degree of credibility if they came through an institutional structure like the House of Traditional Leaders, which is non-party political. Secondly, what happens is because people get linked to political parties, it becomes difficult to separate what are the objective concerns of traditional leaders from party political issues and traditional leaders can become the object of jockeying between political parties.”¹⁵³

Several people who responded to the Independent Projects Trust questionnaire had no concerns with traditional leaders being actively involved in politics. A 29 year old male said that amakhosi should be able to participate as active members of political parties because “they have rights and are citizens of the country”.¹⁵⁴

Induna and provincial politician David Ntombela also supports the view that amakhosi can be politically affiliated. He says that there is no way that traditional leaders can be prevented from becoming involved in political activities.

“That is very impossible because by virtue of their position amakhosi are political leaders. Ubukhosi has always been a political position and it will never change and nobody can separate amakhosi and politics. In the first place, nobody is apolitical. The fact that you are alive, you are politically affiliated.”¹⁵⁵

United Democratic Movement leader Bantu Holomisa expresses the view that there is nothing wrong with a traditional leader becoming a member of a political party.

“Take for instance, Phathekile Holomisa, who is now an ANC member. If the ANC rank and file are happy that he is in line with ANC policy and the people are happy with him being in the ANC then what is wrong with that? But if traditional leaders want to be politicians then they must not think they are going to be full-time chiefs at the same time.”¹⁵⁶

2.11.3. The main issue

The issue of politicisation of traditional leaders draws strong responses both for and against. However, Professor Thabo Sabela suggests that it is unlikely that politics will be removed from the institution of amakhosi.

“It is complex because if you as a ruling party try to leave traditional leaders out of politics, some parties go for them and use them against you. They even promise them bigger powers if they take over. It is very difficult, especially in Africa to say to traditional leaders ‘you remain neutral, do not participate in politics’. It could be easy in Britain, but in KwaZulu-Natal it is really difficult because amakhosi have always had political power over their subjects.”¹⁵⁷

¹⁵³ Interview conducted by Chiara Carter with Yunus Carrim, African National Congress member of parliament Cape Town October 2001.

¹⁵⁴ Answers to research questionnaires compiled by Independent Project Trust, completed in Vumukwenza on 8 September 2001.

¹⁵⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

¹⁵⁶ Interview conducted by Chiara Carter with Bantu Holomisa, Cape Town, October 2001.

¹⁵⁷ Interview conducted by Jerome Dube and Edmund Mthuli with Professor Thabo Sabela, University of Zululand, August 23, 2001.

2.12. Conclusion

This chapter assesses the law and policy on the role of traditional authorities in relation to local government. What becomes clear here is that while law and policy have generated clear procedures and guidelines for local government functioning, they have remained vague on the role of traditional authorities. However, the Constitution and various laws and policies do recognise the existence of traditional authorities but this combined with imprecise definitions about roles creates ambiguity and contradiction that is difficult to resolve. A key cause of these tensions appears to be political uncertainty about how to proceed. Elected representatives at national and local level, acting in terms of legislation passed through legitimate procedures, have tended to usurp the role of traditional leaders, at least in law. This is often accompanied by arguments that demonstrate a concern about how to amalgamate such fundamentally different institutions of governance. In practice, however, traditional leaders continue to exert considerable influence over areas and people under their jurisdiction but are unclear about how to relate this to a political framework that remains obscure about their role. It is this that political figures who advocate for a clear, extensive role for traditional leaders focus much of their attention on, together with a push for a greater role.

There is little politically or in law and policy to suggest that these tensions will be resolved easily or quickly. Many of the issues appear intractable. At the same time, they do play out in arenas that threaten to paralyse both institutions of governance, particularly at local level. This suggests the possibility that attention should be focussed on resolving roles and responsibilities at local level rather than waiting for policy and legal guidance from national government.

3. Local Government Issues

Although traditional authorities fulfill a number of roles locally, governance is central in terms of the tensions between these institutions and the elected system of government. This tension exists because there are overlaps and duplications in functions at local government level that have arisen particularly since new legislation put in place wall to wall democratically elected local government. Areas that never before had any system of local government now found themselves under a structure responsible for planning, development and service delivery.

As noted in the previous chapter, demarcation was key to the establishment of new local government. But demarcation also threatened traditional authorities who were concerned at the prospect of having areas under their jurisdiction carved up and allocated to multiple local government areas. However, those responsible point out that demarcation had to deal with unrelated issues such as landless amakhosi and land claims while many amakhosi did not engage with the demarcation processes, although amakhosi claim they were not informed in sufficient time. A second point of dispute is responsibility for delivery of development and services. Traditional leaders often mobilised collective community action to provide services and perceive local government as treading on their terrain. However, local government policy and law focus on efficiency, which includes decision-making by elected representatives. Both structures have an interest in the legitimacy that accompanies service delivery, which means they are likely to compete over the resources for services.

This section also notes that the particular relationship between a traditional leader and the local government structures around development depends on the attitude of the leader. While policy defines a role in labour provision and development management for communities under traditional authorities, fulfilling this role depends on it being negotiated with the traditional leader. What is clear, however, is that a relationship between local government and traditional authorities at local level must be negotiated in order to deliver services to rural areas, and that rural representatives (amakhosi or others) probably need to fight for this negotiation. A useful way of categorising types of relationships is to describe them as 'blocked' (councillors or traditional leaders block work or consultation), 'cooperative' (locally elected leaders work closely with amakhosi), agreed 'division of roles' or 'open conflict' (the question of authority is contested).

The section concludes noting two key issues. First, traditional authorities have been central to local power structures in the past although they are undergoing changes with the introduction of local government. Experience from other sub-Saharan African countries has shown that attempts to exclude traditional authorities often backfire and many countries are now adopting a more pragmatic response and are formulating plans to involve traditional authorities. The second issue is the view that traditional authorities cannot change because tradition or custom doesn't change. The reality is that tradition is always in flux and is constantly being re-figured enabling opportunities to identify elements that can be maintained, and others that are more open to change. This mix of pragmatism and opportunity needs to be worked with at local level around development issues.

3.1. Demarcation

As part of a process of the restructuring of local government, boundaries of councils were redrawn, the number of councils was reduced and a new tier of government – the 'unicity' – was introduced ahead of the local government elections in December 2000. The process, which occurred in terms of the Municipal Demarcation Act, 1998 (see 3.5) was not without controversy.

3.1.1. The 'new look' local government structure

As a result of the demarcation process, six metropolitan areas were identified in South Africa, as well as secondary cities. Provincial and Local Government Minister Sydney Mufamadi said that 50 percent of the people of South Africa and a very high proportion of job opportunities were found in these metropolitan areas and secondary cities.

“This means that these areas will continue to constitute our country’s productive base. However, the demographic reality of these areas will make them indefinitely harder to manage.”¹⁵⁸

The amalgamation of small local authorities aimed to provide more and better services at the levels of government that are closest to the people, according to Mufamadi. Ansuyah Maharaj wrote in *Khanyisa*:

“The Demarcation Board aimed through the new boundaries to bring together areas with both functional linkage and those municipalities without, with the aim to promote resource sharing and better service delivery and to ensure financial sustainability.”¹⁵⁹

Factors that were considered in covering the whole of South Africa with municipalities, according to the chairman of the Municipal Demarcation Board Dr Michael Sutcliffe included social and economic functionality, viability and the ability to deliver services.¹⁶⁰

3.1.2. Demarcation and traditional leaders

The Municipal Demarcation Board claimed that 277 traditional authorities in KwaZulu-Natal were officially recognised as well as 186 in the Eastern Cape, 12 in the Free State, 47 in Mpumalanga, 189 in the Northern Province and 62 in the North West. The traditional authorities cover about six percent of South Africa’s surface area.¹⁶¹

Sutcliffe says that the demarcation process in fact extended the realm of influence of amakhosi. Their influence increased from six percent to between 24 percent and 40 percent of the land and in terms of economic power it increased from about one percent to 30 percent or 40 percent. He says that up until 2000 their authority and area of influence was limited to the traditional authority areas whereas in the new political system they have representation on municipalities that cover a wider geographical area. Their influence is therefore no longer confined to the most undeveloped areas. As a result, they now have the potential to play a role in influencing development in a broader geographical area, including places such as Durban.

“In Durban, for example, it is the first time that traditional leaders can have an influence.”¹⁶²

The demarcation process led to a political crisis in six of the nine provinces because traditional leaders felt that the process encroached on their powers because their areas had been incorporated into local authorities run by elected officials, according to Idasa’s publication *epoliticsSA*.¹⁶³

Sutcliffe says that in covering the whole of South Africa with municipalities, the Board considered the boundaries of traditional authorities. This was done despite there being an incomplete record of all recognised traditional authority areas, difficulties around the legal description of each traditional authority, some traditional communities extending into state and privately-held land, and some traditional authorities consisting of separate pieces of land.¹⁶⁴ In addition, there are some landless traditional leaders, there are

¹⁵⁸ Speech by Minister Sydney Mufamadi at the National Council of Provinces June 13, 2000.

¹⁵⁹ Ansuyah Maharaj: “Govt response falls short of traditional leaders’ demands.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

¹⁶⁰ Michael Sutcliffe: “Logical steps: new system of local government.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

¹⁶¹ David Pottie: “The traditional leader debate.” *Local Government in South Africa Elections 2000 ebook* (CD Rom) Electoral Institute of South Africa.

¹⁶² Interview conducted by Cheryl Goodenough with Dr Michael Sutcliffe, Municipal Demarcation Board chairman, Westville, August 8, 2001.

¹⁶³ *epoliticsSA* publication of Idasa number 25 November 2, 2000.

¹⁶⁴ Dr Michael Sutcliffe: “Logical steps: new system of local government.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

some amakhosi who argue that their area of jurisdiction extends beyond the proclaimed area and there are a number of land claims that have not been settled.¹⁶⁵

The Municipal Demarcation Board maintains that it tried not to split traditional authorities, but was required to incorporate traditional areas into councils that would be able to provide improved services to traditional areas. In KwaZulu-Natal 44 local councils covered areas in which there are traditional authorities while eight councils have no traditional authorities following the demarcation.¹⁶⁶ Throughout South Africa 30 out of 47 district municipalities have traditional authorities within them, while 114 out of 231 local municipalities contain traditional authorities.¹⁶⁷

Says Sutcliffe:

“While the board has tried to ensure that the outer boundaries of municipalities do not divide traditional authorities, there are local disputes over land that are not related to demarcation. The decision to combine rural and urban areas was based on the rationale that traditional rural communities cannot be seas of poverty surrounding an island of development.”¹⁶⁸

3.1.3. Disputes around demarcation

Of course, demarcations that make new political arrangements across an entire country and within each province are bound to involve considerable debate and conflict. Representations are often made that exaggerate circumstances to the benefit of the storyteller. Nonetheless, the perceptions around any process impact on claims to legitimacy. In short, those who feel left out of political processes often do not accept the results or mandates.

The Human Rights Committee wrote in October 2000 that the demarcation process was perceived by some to be an attempt to change the traditional way of life and to undermine the authority of traditional leaders.

“There is fear that the situation would follow a similar route to that of Umlazi (a township near Durban) which had been under the leadership of a traditional leader prior to being incorporated into a municipality and where now that traditional leader is not consulted for anything.”¹⁶⁹

As a result the whole process of demarcation was resisted from the start. There was much speculation that few amakhosi participated in the public hearings during the ward delimitation process – some said that they were not given proper notice – and the vast majority argued that the demarcation process should not include rural areas since the role of traditional leaders in future local municipalities had never been legally defined.

However, Sutcliffe wrote in the annual report of the Municipal Demarcation Board that over 100 consultations were held with traditional leaders, individually or in their organised formations. Further meetings were held with traditional leaders throughout the country when the president requested that the Board re-look at alignments of traditional areas. However, Sutcliffe wrote:

“Unfortunately, the traditional leaders fell into two groups. The first group simply continued to argue that until the President addressed the question of functions and powers of traditional leaders vis a vis municipal governance they would not discuss the question of demarcation. This group was relatively small but no changes could be made to their

¹⁶⁵ Submission by Dr Michael Sutcliffe and Khosi Ramovha at the public hearing on the Local Government Municipal Structures Second Amendment Bill (No. 71 of 2000), Cape Town, November 16, 2000.

¹⁶⁶ David Pottie: “The traditional leader debate.” *Local Government in South Africa Elections 2000 ebook* (CD Rom) Electoral Institute of South Africa.

¹⁶⁷ Submission by Dr Michael Sutcliffe and Khosi Ramovha at the public hearing on the Local Government Municipal Structures Second Amendment Bill (No. 71 of 2000), Cape Town, November 16, 2000.

¹⁶⁸ Dr Michael Sutcliffe: “Logical steps: new system of local government.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

¹⁶⁹ Human Rights Committee. *Local Government: The first five years*. Quarterly Review. October 2000.

area as they did not provide any suggestions. The second group approached the Board.”¹⁷⁰

Sutcliffe said that the Board changed the outer boundaries of more than 20 municipalities to ensure traditional areas were aligned and fell within a single jurisdiction. A number of wards were also changed including 48 wards in KwaZulu-Natal.

In some cases demarcation disputes, however, led to litigation, according to Maharaj. It was argued that in some cases the new municipal boundaries cut across traditional tribal land.

“Traditional authorities had always exercised local government powers before 1994 and the creation of local municipalities in areas traditionally ruled by chiefs would amount to removing those powers from traditional leaders, especially on land allocation.”¹⁷¹

Of course, others argue that historically traditional leaders did not exercise local government powers. They were not directly concerned with the provision of water, electricity and sanitation, for example.

Some of the allegations about the demarcation process that have been made by traditional leaders during interviews by the Independent Projects Trust include:

- poor advertising of public hearings, which were held at short notice leading to poor representation from traditional authorities;
- written representations to the Municipal Demarcation Board were generally ignored;
- the demarcation came before all the other necessary legislation (regarding the role of traditional authorities, rates and tax structures and the Financial Systems legislation, for example) was in place so that rural people could not evaluate its probable impact;
- demarcation maps lack detail which meant that traditional authorities and rural people could not see how the demarcation would affect them on the ground;
- most of the objections that were made at public hearings were ignored and not followed up; and
- many traditional areas were incorporated into urban municipalities without broad consultation.¹⁷²

Tensions were enhanced by speeches made by several prominent provincial politicians around the demarcation process. KwaZulu-Natal’s Minister of Social Welfare and Population Development, Prince Gideon Zulu launched a scathing attack on Sutcliffe, whom he described as “a white Communist chosen by a black government to do dirty work among the amakhosi”. The minister accused the Demarcation Board chairman of having neither consulted with nor listened to the views of amakhosi.¹⁷³

Regarding land and the splitting of traditional authorities, Congress of Traditional Leaders and member of parliament Inkosi Phathekile Holomisa was emphatic that the Municipal Demarcation Board should ensure “at all costs” that no traditional authority territorial area was divided between more than one municipal council.

“Should such division occur it will be seen as a diminution of the tribal land concerned and an addition to another traditional authority territorial area. We take as nonsense the suggestions that municipal boundaries will not affect the jurisdiction of traditional authorities even where they straddle tribal boundaries.”¹⁷⁴

¹⁷⁰ Quotation from the annual report of the Municipal Demarcation Board as contained in an email from Dr Michael Sutcliffe, chairman of the Municipal Demarcation Board, dated November 19, 2001.

¹⁷¹ Ansuyah Maharaj: “Govt response falls short of traditional leaders’ demands.” *Khanyisa* newsletter of Idasa’s KwaZulu-Natal Democracy Project November 2000.

¹⁷² Various interviews conducted by Zwelihle Memela and Dingani Mthetwa in during 2000.

¹⁷³ Bongani Mthetwa: “Prince’s racial outburst.” *Natal Witness* 20 January 2000.

¹⁷⁴ Inkosi Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.” *Mail and Guardian* February 11, 2000 accessed on the web <www.sn.apc.org/wmail/issues/000211/NEWS36.html>

Inkosi Holomisa said that a traditional leader was responsible for “every square inch of his people’s land” and, as a result, if the land was to fall under a municipal council, the whole of it must fall within the boundaries of the council intact.¹⁷⁵

Inkosi Mpiyezintombi Mzimela argued that the existing boundaries of traditional communities were one of the elements that the Demarcation Board should take into account when deciding on boundaries for new municipalities. He said that the terms of the Municipal Demarcation Act the boundaries of municipalities were not compelled to reflect the boundaries of traditional authorities.

“In many instances, rural community boundaries have been established after centuries of conflict. Traditional leaders requested that new municipal boundaries not be allowed to split existing traditional communities or to group several communities together. This request has been completely ignored, with the result that several rural communities have been split into different municipalities and many smaller communities have been amalgamated into larger municipalities.”¹⁷⁶

Inkosi Mzimela also criticised the Municipal Structures Act, which established ‘unicity’ councils. The inkosi said that in such councils the inclusion of traditional communities became particularly pernicious to the survival of their traditions and societal structures.¹⁷⁷

On the outskirts of Durban’s new unicity boundaries the Qadi Traditional Authority complained that its area had been split between Durban and the King Shaka District Council (formerly known as the Ilembe Regional Council). Inkosi Mzonjani Ngcobo said that he could not “talk to (his) people with one voice” as a result of the area being divided into two.¹⁷⁸ However, Sutcliffe said that the land of the Qadi Traditional Authority consisted of six different pieces and little could be done to incorporate them into a single municipality.¹⁷⁹

Inkosi Thandizwe Gwala from Maphephetheni in the Ndwedwe area says that he is affected to a great extent by the new boundary of the Durban unicity.

“I am seriously frightened by what is going to happen to my father’s land and people. You see what makes me afraid is that we were never consulted. This is a new thing and as a leader in my area I am confused because I don’t know my role in the unicity.”¹⁸⁰

Some amakhosi said that the proposed demarcations would hamper development in some areas. However other traditional leaders refuted this. One, Inkosi Bhengu of KwaNgcolosi, said that development would not in any way be hampered in his area. He complained instead that the Demarcation Board did not consult traditional leaders and that a top-down approach had made it difficult for amakhosi to make valid input.¹⁸¹

Public hearings were held to take account of public objections.

According to the *Local Government Law Bulletin*, however, comments about the demarcations had to reach the Board before September 1, 1999, but exceptions were made for areas where the notice calling for submissions had arrived late. In response to more than 350 submissions the Board established 25 investigation teams to investigate the draft boundaries and consider the submissions. The teams completed their work on September 17 and presented their findings to the Board. The Board proclaimed its final decisions on the district and metropolitan boundaries on October 6, 1999, but again called for any one who

¹⁷⁵ *ibid.*

¹⁷⁶ Inkosi Mpiyezintombi Mzimela: “The impact of the demarcation process on traditional leadership.” Konrad-Adenauer-Stiftung Seminar Report *Local Government Elections 2000: From transition to consolidation* No 4 2001 p 29.

¹⁷⁷ *ibid.*

¹⁷⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Mzonjani Ngcobo, Qadi Tribal Court, July 4, 2001.

¹⁷⁹ Venilla Yoganathan: “New municipal boundaries an historic leap forward.” *The Mercury* February 10, 2000.

¹⁸⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

¹⁸¹ Zwelihle Memela: “Spotlight on chiefs’ role.” *Khanyisa* publication of Idasa’s KwaZulu-Natal Democracy Project April – May 2000.

objected to the boundaries to make submissions within 30 days. The Board said that it would consider the objections at a meeting in mid-November after which it would confirm, vary or withdraw its determinations.¹⁸²

The demarcation process in KwaZulu-Natal was hampered by a number of difficulties, according to the Demarcation Board. Sutcliffe said that in May 2000 that the Demarcation Board was concerned about the lack of co-operation from certain traditional leaders in KwaZulu-Natal. At that time the Board had received no demarcation submissions from the KwaZulu-Natal House of Traditional Leaders despite numerous requests.¹⁸³

During the debate around the demarcation process traditional leaders warned that there would be conflict if their concerns about the demarcation process were not met. This threat of violence was firmly criticised from many sectors. The Human Rights Committee stated that this threat was a negotiating tool. In a report on local government the organisation said that traditional leaders are subject to the Constitution and have an obligation to “contribute constructively towards social justice and constitutionalism”.

“As such their opposition to the demarcation process, a movement aimed at creating countrywide democratic local government could be viewed as undemocratic...the Constitution cannot be held hostage. Traditional leaders are subject to the Constitution and as such must honour and protect it.”¹⁸⁴

There was also some resistance to demarcation at ground level. This was particularly due to rural people associating municipalities with the repressive tax policies of the apartheid regime. This resulted in concerns that they would have to pay additional taxes on services or opportunities that they already had as a result of communal life. Inkosi Gwala said that the community was frightened about the issue of rates because they knew “that in townships like Umlazi and KwaMashu people pay a lot of money for rates”.¹⁸⁵ Some traditional people felt that the establishment of councils covering the whole of South Africa would result in rural life being tarnished by crime and other problems common in townships, while destroying cultural roots.

A participant at a general meeting of amakhosi in Ulundi in April 2001 expressed similar concerns.

“Now in the towns we hear that people are told to pay money within a few days. If they don’t they are dispossessed of their belongings. I am saying these same people are trying to get into areas of amakhosi and make money from your poverty. We do not need new leaders. We have our own inherited leaders.”¹⁸⁶

Inkosi Ngcobo outlines a range of issues that arose during discussions about the demarcation:

“We are all afraid of what the city council will do to us in the future, especially given the fact that most of the people here are not employed. Besides paying for rates and services, another issue is about subsidy houses. These houses are going to be built on inkosi’s land. What we therefore want to know is whether the owners of the houses will be free to sell to anybody, including Indians and Whites. This will cause a lot of confusion because the land where these houses are being built is owned by inkosi on behalf of his people. So I will not accept everybody from everywhere to come to my land just because they have the money to buy these little houses built by the government.”¹⁸⁷

¹⁸² *Local Government Law Bulletin* published by the Community Law Centre of the University of the Western Cape in association with South African Local Government Association (SALGA) Volume 1 Number 3. September 1999.

¹⁸³ Sapa: “Amakhosi threaten poll boycott.” *Natal Witness* May 6, 2000.

¹⁸⁴ Human Rights Committee. *Local Government: The first five years*. Quarterly Review. October 2000.

¹⁸⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

¹⁸⁶ Open discussion during general meeting of amakhosi in Ulundi on 20 April 2001)

¹⁸⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Mzonjani Ngcobo, Qadi Tribal Court, July 4, 2001.

However, not all traditional leaders were opposed or objected to the demarcation process. Inkosi Zibuse Mlaba, who is also a member of the provincial legislature, said that some amakhosi's objections were politically motivated and were mostly around the lack of consultation. Zwelihle Memela writes in *Khanyisa*:

"Mlaba, therefore, refutes perceptions about amakhosi resistance to demarcation, also pointing out that a series of meetings of the House of Traditional Leaders were held to discuss this issue. At one meeting held in Ulundi, which he attended, many questions related to demarcation were asked."¹⁸⁸

Inkosi Mlaba's area KwaXimba was given the option in 1996 of whether to join the Durban Metropolitan Council or to remain part of a regional council, according to the inkosi. He says that they decided to try the new system because the old KwaZulu government had not helped the community. He dismisses the concerns raised by others:

"We also carried out some research in order to identify any possible problems that could arise against ubukhosi, like introduction of rates and dispossession of lands and we discovered that those were unfounded fears. So our experiment paid out because you will realise that since 1996 KwaXimba was the only place that managed to develop in a tangible way, boasting of tarred roads and running private water system. Clinics, crèches and even schools got a lot of help from Metro funding."¹⁸⁹

As a result of the disputes around demarcation, the initial election date (November 28, 2000) was postponed and government appointed a commission of inquiry to find possible solutions. For more on this see 3.10 which details the processes around the local government election in 2000.

The core of the debate around traditional leaders and the demarcation process, however, is not specifically the process but rather the wider debate of the role, powers and functions of traditional leaders. The Human Rights Committee states:

"The issue is how traditional leaders see their institutional role in a democracy. It is an extension of the tug of war evident in parliament between traditionalists and democrats."¹⁹⁰

This is also evident in a statement made by Inkosi Holomisa in February 2000:

"The present problem around the demarcation does not lie with the Demarcation Board *per se*, but it is in the Constitution and the laws which flow from it."¹⁹¹

3.2. Service delivery¹⁹²

The debates at the national level around the origin and legitimacy of traditional leaders remain unresolved, but may seem largely irrelevant in rural areas where many traditional leaders have been accepted, out of respect and sometimes out of fear, as the authority on issues of development. However, the continued debate and the lack of resolution has also led to a wide variety of outcomes as traditional authorities respond to changing circumstances in their own way.

¹⁸⁸ Zwelihle Memela: "Spotlight on chiefs' role." *Khanyisa* publication of Idasa's KwaZulu-Natal Democracy Project April – May 2000.

¹⁸⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Zibuse Mlaba, Inchanga Constituency Offices, July 17, 2001.

¹⁹⁰ Human Rights Committee. *Local Government: The first five years*. Quarterly Review. October 2000.

¹⁹¹ Inkosi Phathekile Holomisa: "Ubukhosi the bedrock of African democracy." *Mail and Guardian* February 11, 2000 accessed on the web <www.sn.apc.org/wmail/issues/000211/NEWS36.html>

¹⁹² A large part of this section on service delivery is written by Mary Galvin. It is based her on experience working with a membership-based non-governmental organisation involved with rural communities in KwaZulu-Natal from 1992 to 1997 and conducting research interviews in rural areas and with other development stakeholders from 1999 to the time of writing.

The central idea behind developmental local government is the acknowledgement that local government is closest to the people and most capable of negotiating development via representatives who are elected and accountable to the people. Naturally this usurps the role in which many traditional leaders would see themselves.

The need for development is particularly vital in rural areas. Statistics published by the Municipal Demarcation Board stated that between 60 percent and 80 percent of the backlog of provisions of services such as water, electricity, telephones and sanitation occurs in traditional authority areas of KwaZulu-Natal.¹⁹³

3.2.1. A changing environment

Prior to the first democratic general election in 1994, all development in rural areas took place through the auspices of traditional authorities. Work was done through the KwaZulu government departments, which fully recognised and promoted the legitimacy of traditional authorities. Non-governmental organisations also tended to seek a 'blessing' from the inkosi before working in various areas. In many cases, this was simply a case of recognising the authority of an inkosi rather than having any significant bearing on the development work itself. Even during this period, the involvement of amakhosi in service delivery varied significantly. At a minimum, they were consulted about proposed projects prior to their inception. Such consultation would often entail meetings at the level of the regional authority.

After the 1994 elections, the Reconstruction and Development Programme was launched, but no one really knew what it meant for development. It clearly meant an influx of resources for development, and the White Paper stated the importance of principles such as democratic, people-driven development. Moreover, communities were encouraged to form committees and to apply for funds. In some cases, Reconstruction and Development Programme principles and approaches were interpreted as working in opposition to amakhosi or even trying to undermine them. There was no apparent effort to include the agents of development that were involved at the time, including amakhosi. The Reconstruction and Development Programme began to be referred to as an 'African National Congress programme' and it was questionable whether rural areas in KwaZulu Natal would participate. Most amakhosi wanted to deliver services to 'their people', but also wanted to be seen as the ones who were in charge and responsible for delivery, rather than allowing this credit to go to the African National Congress-led government.

In KwaZulu-Natal the programme was under the control of the province's director general and the executive council. Serious questions have been raised, and continue to be debated, by the public accounts committee and members of the provincial legislature about the way in which this funding has been spent and the programme conducted.

In fact, local people began to expect amakhosi to deliver development services. This was complicated by the shift from demand-based development to supply-based development. It was not simply a matter of amakhosi being active in seeking development projects, but various bodies, particularly government departments and local governments, were selecting areas to receive projects based on their assessment of need and other factors. Hard working and well-intentioned amakhosi may have been seen by their people as not pursuing development when, in reality, there was little scope for them to affect decisions of where to focus development projects.

In most cases traditional authorities received little funding apart from the remuneration of traditional leaders, a secretary's salary and occasional one-off grants, according to rural development authorities Alastair McIntosh, Anne Vaughan and Thokozani Xaba. They write:

"Where local revenue-raising capacities have often been negligible, traditional authorities have remained very modest institutions, often finding it difficult to fulfill traditional functions, let alone the development or service delivery functions which is provided for in terms of existing legislation."¹⁹⁴

¹⁹³ Dr Michael Sutcliffe: "Logical steps: new system of local government." *Khanyisa* newsletter of Idasa's KwaZulu-Natal Democracy Project November 2000.

¹⁹⁴ Alastair McIntosh, Anne Vaughan and Thokozani Xaba: "The Rural Local Government Question in KwaZulu-Natal: Stakeholders' Perspectives." Report commissioned by Regional Consultative Forum on Rural Development February 1995 p 17 – 18.

Despite these difficulties, traditional authorities have always been the providers of services in their communities, according to Inkosi Holomisa.

“This they have done either by getting funds from the state or, and most importantly, by mobilising their communities to raise funds from their own non-existent sources. Schools, clinics, community halls, access roads and other essential amenities have been constructed under the leadership and guidance of traditional authorities.”¹⁹⁵

Inkosi Holomisa is disparaging towards those who argue that amakhosi have not provided services:

“The National Party machinations and designs on traditional authorities notwithstanding, it is nauseating to an African traditional leader to hear self-appointed experts on the institution blandly and pontifically stating that traditional leaders have never contributed to the well-being of their people.”¹⁹⁶

Inkosi Holomisa’s comments are directed at the fairly common belief that “the traditional leaders were in government in the bantustans and therefore should have done something for their natural ‘constituency’ in terms of development”, according to Sibongile Zungu. In response to this common belief, Zungu states:

“This line of reasoning fails to recognise the fact that all structures of government – locally, provincially and nationally – were used, not for the purpose of developing the people they were supposed to serve, but in order to ensure the continued subjugation, division and impoverishment of the blacks.”¹⁹⁷

A lot of the traditional leaders are proactive when it comes to development initiatives, according to the former chairman of the Ingonyama Trust Board, Owen Greene. He goes further, saying that the board often thinks that traditional leaders are signing certain rights over to other bodies “too easily” and are not getting a good deal. He provides the following example:

“In a cotton project in the north of the province they are not getting rent. In return for this, 20 years later they will inherit the infrastructure of the project. We need to investigate and see whether they are getting a good deal. The project is on 6000 hectares of land.”¹⁹⁸

The transformation process that emerged after the local government elections in December 2000 led to the introduction of elected representatives whose task it was to promote development and service delivery in their respective areas. In rural areas this task was already the domain of traditional leaders and resulted in a great overlap in the roles amakhosi were accustomed to fulfilling and those that had been assigned to councillors. These created some points of friction and resulted in the balance of power shifting to elected representatives.

Many amakhosi interviewed as part of this research argued that a large part of their legitimacy hinged on their capacity to deliver services to their respective communities. However, they felt that the transformation process and the subsequent introduction of councillors had diminished their role. To complicate matters further, amakhosi are still not certain of their role and competencies in the new government structures.

¹⁹⁵ Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.” *Mail and Guardian*, February 11, 2000, accessed on the Mail and Guardian’s website at <www.sn.apc.org/wmail/issues/000211/NEWS36.html>.

¹⁹⁶ *ibid.*

¹⁹⁷ Sibongile Zungu: “Traditional leaders’ capability and disposition for democracy: the example of South Africa.” *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

¹⁹⁸ Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

3.2.2. Development committees

Development committees are structures set up in rural areas sometimes under the authority of inkosi to deal with a range of issues. However, development committees differ and in only some areas have traditional leaders played a role in these committees, according to researcher and academic Shahid Vawda.

“In some cases these development committees have worked well with the traditional leader and in some others they have not. Also in some areas the inkosi is well-organised and in others he is badly organised.”¹⁹⁹

According to Vawda, the involvement of traditional leaders in development committees and the effectiveness of the committees depended on a range of factors. These included the political dynamics of the traditional authority at the time, the extent to which the structure was part of the African National Congress, whether the area was part of a council (particularly the metropolitan council) and had access to services and resources, whether the local inkosi was acting as a regent or was a legitimate inkosi and the level of organisation displayed by the individual inkosi.²⁰⁰

Nevertheless, the formation of development committees was regarded by many as a positive sign for service delivery in rural areas. Typically each area falling under an inkosi has an umbrella development committee to which all other committees in the area, such as water and health committees, report. In essence, the sectoral committees become sub-committees of the development committee. In some areas, ward-level committees operate under izinduna and also report to development committees. The development committees were created as a way to cope with the myriad of committees formed at the behest of government departments and non-governmental organisations. Some, did however, exist before the transition as an arm of regional authorities.

To the outsider, the formation of development committees seemed to signal a relaxation of the control exerted by traditional authorities. However, the actual impact of development committees has been complex. On one hand, development committees simply allowed for the appearance of wider participation, while remaining directly accountable to the traditional authority and extending the reach of the inkosi into development matters. On the other hand, development committees did create opportunities for certain individuals to gain the trust of the inkosi and to become active in development, as long as they did not act without the approval of the inkosi. Over time this has the potential of widening involvement in development.

KwaZulu-Natal’s Minister of Agriculture Narend Singh has applauded the role played by development committees.

“As a department we are working closely with development committees, which have proved in the past to be very effective in implementing rural development. I believe it is urgently necessary that this [dysfunction between the traditional authorities and the newly installed local authorities in rural districts] be addressed. Development committees, which are part of the traditional structure, need to be kept in place and a sound relationship built between them and local government.”²⁰¹

The need for communities and community organisations to contribute labour and management skills to service delivery initiatives is emphasised in the Integrated Rural Development White Paper for KwaZulu-Natal. The document states that it is not possible for government to provide many services without substantial local labour because of the far higher costs involved of bringing in labour from elsewhere. According to the paper, it is also through community organisations that it becomes possible to integrate indigenous knowledge and preferences into the way that government services are delivered.

“Professional service providers and developers often fail to recognise indigenous value systems and knowledge. This lack of understanding alienates communities from the

¹⁹⁹ Interview conducted by Jenni Irish with Shahid Vawda, University of Durban-Westville, June 11, 2001.

²⁰⁰ *ibid.*

²⁰¹ Budget speech delivered by KwaZulu-Natal Agriculture Minister Narend Singh, Pietermaritzburg legislature, March 23, 2001.

formal delivery system and development process, and undermines possibilities for community mobilisation around the provision of services. Professionals in all sectors need to be sensitised to indigenous value systems and knowledge to enable them to interact meaningfully and positively with traditional communities. Development interventions should be based on the principle that it is easier to involve communities when they see that their culture and sense of identity are understood and respected.”²⁰²

The establishment of ward committees, a structure that has been formed as a result of the new form of local government following elections in December 2000, has led to some consternation on behalf of traditional leaders. Inkosi Ngamizizwe Madlala says that the traditional leaders see the establishment of ward committees as competition to the development committees:

“Ward committees are seen as invading the turf of traditional leaders. But the problem is that both parties want to claim glory at the end of the day. The African National Congress-led government wants to show off its delivery record, while the chiefs want to prevent questions like ‘what have the traditional leaders done for us?’”²⁰³

Similarly, traditional leaders attending a focus group in Port Shepstone agreed that the introduction of ward committees was causing tension. They said that the conflict arose because the committees have a right to call meetings and come up with decisions on their own without consulting inkosi.²⁰⁴

3.2.3. The role of the individual inkosi

When it comes to development and service delivery a lot depends on the approach of individual amakhosi. At one extreme is the inkosi who is keen to engage in development activities himself or is happy to give interested community members his ‘blessing’ to participate (usually requiring a regular report back) or to act on his behalf. At the other extreme is the inkosi who considers development activities threatening and tries to block them completely. It seems that the majority of amakhosi fall between these extremes and welcome development, as long as it does not challenge their authority. Few, if any, simply refuse to allow development in their areas. Instead they are concerned about how the development takes place and want to play a role in discussions rather than being undermined.

Broadcaster Dr Thokozane Nene says that the English and the Afrikaners tried to use delivery of services as a way of dividing a traditional leader and his people. He says that amakhosi and their people were denied services because they refused “to yoke their people as a condition” to receive the services.²⁰⁵

Many people point to differences in the personalities of traditional leaders. However their education, background, previous experience with development projects, and general mindset toward development are perhaps more effective characteristics to assess differences between amakhosi.

The provision of services in rural areas brings individual problems as opposed to those encountered in urban areas. Inkosi Gwala says that many people from his undeveloped area in Ndwedwe have moved to Inkosi Mlaba’s area west of Durban. The latter fell within the boundary of the Durban municipality prior to the demarcation process. Inkosi Gwala says that in Inkosi Mlaba’s area “the roads are tarred and all homes have electricity”.

“My area is big and most of it is not developed. One thing that you must realise is that the homesteads are scattered over a wide area, and it is difficult to move people together because most of them are not prepared to move. Most of those who have moved only

²⁰² Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal* December 2, 1998.

²⁰³ Xolani Xundu: “SA’s forgotten leaders.” *Business Day* obtained from website <www.bday.co.za/bday/content/direct/1,3523,862974-6078-0,00.html> June 04, 2001.

²⁰⁴ Focus group facilitated by Jerome Dube in Port Shepstone, September 17, 2001.

²⁰⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Dr Thokozane Nene, broadcaster, Lamontville, October 8, 2001.

move towards the (Inanda) dam because they can get a little bit of employment from the activities emanating from the dam.”²⁰⁶

Inkosi Mlaba acknowledges that development has occurred under the unicity, but describes it as having occurred “here and there”.

“For example, we have housing schemes that are going up, the first in the country to follow the urban housing scheme. The reason we do so much for our people is because we do not want to give empty promises to our people. We do not want to run around campaigning. People must see and know what they are voting for.”²⁰⁷

Inkosi Mlaba attributes a large portion of the finances for development in KwaXimba to funding from the private sector. He says that indirect funding from companies that have branches in KwaXimba is encouraged.

“For example, we have encouraged most of the garages and ‘ultra cities’ [petrol stations] that are sprouting in our area to give the community shares and also help in training people in this area for management positions in the sector. I am also involved in job creation exercises and uniform recruitment of people from all areas under my jurisdiction. We also force a situation whereby all companies that come to KwaXimba recruit from this area, especially for non-specialised jobs. Of late we are moving very fast into the tourism sector, and in conjunction with the African-Americans try to help people of KwaXimba to access the USA market with artifacts and handcrafts. The agreement also includes skills development funding.”²⁰⁸

The political affiliation (or perceived affiliation) of the individual inkosi may also play a role in the difficulties faced in development initiatives. Inkosi Gwala of Ndwedwe says that some youths, especially those aligned to the African National Congress have complained that only the interests of the Inkatha Freedom Party supporting people are looked after. Inkosi Gwala, however, denies this saying:

“But this is not the case because I look after all the people on my father’s land.”²⁰⁹

Similarly, some traditional leaders attending a focus group in Mtubatuba said that the problem between many amakhosi and elected councillors was caused by affiliation to different political parties. Some said that young councillors often act as if they rule traditional areas and that this has caused conflict between amakhosi and councillors. The traditional leaders said that amakhosi feel that young people intentionally undermine their authority.²¹⁰

Junaid Seedat writes in *Khanyisa* that many rural activists are concerned that traditional leaders are intolerant of different views – “this for an electorate that is for the most part dependent on the traditional authority for land and access to services”. He writes:

“The only option open to such an electorate is to tow the line of the traditional authority, the only way to ensure access to their rights. The unspoken threats of eviction from the traditional authority land is a real fear that must be addressed in order for the rural electorate to be offered a chance at free choice of political representation.”²¹¹

²⁰⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

²⁰⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Zibuse Mlaba, member of parliament and inkosi of KwaXimba Traditional Authority, Inchanga constituency office, July 17, 2001.

²⁰⁸ *ibid.*

²⁰⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

²¹⁰ Focus group conducted by Jerome Dube and Edmund Mthuli, Mtubatuba, September 18, 2001.

²¹¹ Junaid Seedat: “Can local government address challenges of rural areas?” *Khanyisa* publication of Idasa, November 2000.

Some amakhosi are criticised at times and accused of not doing enough to ensure that their community has access to services. As a result, "they have lost both legitimacy and authority as well as the ability to perform their traditional functions effectively," write McIntosh, Sibanda, Vaughan and Xaba.²¹²

One of the reasons for traditional leaders not being effective as service providers, according to Christiaan Keulder, is that they have neither the resources nor the capacity. Keulder also suggests that an element of corruption in the form of nepotism may arise because "in times of scarcity they (traditional leaders) may also be inclined to allocate services to members of their immediate families first". Keulder does accept, however, that traditional leaders could be successfully employed as supervisors of development projects and other community activities, for example.²¹³

Inkosi Ngcobo from the Ndwedwe area north of Durban says that it is unfair that traditional leaders are labeled as "out of fashion, incompetent and obstacles to the development of their subjects".

"Let me underline to you that this is not true because traditional authorities through their organised structures play a major role in the service delivery as long as they are supported with financial and material resources. With their better understanding of the real needs of their people it is for amakhosi to develop their areas."²¹⁴

Some traditional leaders who took part in a focus group held in Mtubatuba said that amakhosi depend on the government for funds for development, but that the government has now brought in councillors who control the money. A suggestion was raised for councillors to come with the government money to the local inkosi and for an agreement to be reached on the development projects that would assist the community.²¹⁵

Inkosi Ngcobo says that the lack of financial resources is a result of the limited payment that the traditional institution receives from government. However, his community has made efforts to obtain funding for themselves. As a result of these efforts, the community has achieved a significant amount.

"For example, the year 1999/2000 saw the completion of a lot of projects, which include community halls, many classrooms in schools and preschools, and also we financed the development of sports fields. At the present moment we have launched new projects to develop tourism in the area as a way of attracting tourists to our scenic area. For the immediate benefit of our community we have started an agricultural project near the Inanda Dam. We have managed to get a certificate to build a sports ground and we hope to raise about R14 million to prepare ourselves for the 2010 soccer World Cup if our country wins it."²¹⁶

Inkosi Ngcobo accepts that not all of these achievements were attained without the assistance of government. He says that the community received computers and fax machines, which have gone a long way to assist with communications with development stakeholders. Some of the money the community has obtained was received as compensation for the Qadi people who were displaced due to the building of the Inanda Dam. Following a court battle the community accepted an offer of R5.6 million, some of which has been used for these projects. Inkosi Ngcobo could be faced with other difficulties in this regard, however. He says that current court action is considering whether individuals from the community should receive portions of the compensation money.²¹⁷

It seems that recognition of amakhosi and their role in the planning and approval of projects is a critical element. Otherwise there is scope for other community leaders to play a central role in projects. A

²¹² Alastair McIntosh, Siphos Sibanda, Anne Vaughan and Thokozani Xaba: "Traditional authorities and land: The position in KwaZulu-Natal." Institute for Social Economic Research and Association for Rural Advancement May 1995.

²¹³ Christiaan Keulder: "Traditional leaders and local government in Africa: lessons for South Africa." HSRC Pretoria. 1998: p 319.

²¹⁴ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Mzonjani Ngcobo from Qadi Traditional Authority, Qadi Traditional Court, July 4, 2001.

²¹⁵ Focus group conducted by Jerome Dube and Edmund Mthuli, Mtubatuba, September 18, 2001.

²¹⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Mzonjani Ngcobo from Qadi Traditional Authority, Qadi Traditional Court, July 4, 2001.

²¹⁷ *ibid.*

common problem that is often overlooked by outsiders debating the role of traditional leaders is that alternative leadership options are often limited in rural areas. Many local people either do not consider themselves capable or are wary of engaging in development because they do not want to challenge the authority of the inkosi. People who do play a leadership position often end up gaining formal employment outside of the area and are no longer available. In short, the potential to harness the authority of amakhosi and provide training for them to play a positive role in development needs to be explored in more depth.

The Integrated Rural Development White Paper for KwaZulu-Natal also emphasises the need for training. The paper states that one of the reasons why traditional leaders have found it difficult to engage with the development process is that they have not been well-informed about the development environment, and have not known how to engage with it.

“Traditional leaders have not been empowered to participate in development by the government departments which have been responsible for them. Lack of appropriate education and training, poverty and lack of access to development resources have compounded the problems that traditional leaders have experienced in relating to development initiatives.”²¹⁸

3.2.4. Local government and development

The unresolved issue of the role of amakhosi in local government structures has clearly caused confusion and tension at the local level. With no local elected structures, district councils are left to operate by using sub-committees in an effort to break down a large geographical area and to reach local areas. Since local areas do not have a direct voice in the council, especially since councillors do not necessarily come from a rural constituency and do not cover all rural areas, the link with local areas has become more tenuous.

This is significant for two reasons. First, it affects whether local areas will receive development projects and, second, it affects how councillors work in local areas. There is no question that district councils tend to prioritise projects in urban areas. When considering projects in rural areas, they consider the relative need of areas. However, councillors who come from or lobby for certain areas are also effective. This personal linkage to specific rural areas appears more important than party politics, especially since amakhosi and councillors often share the same party affiliation. Of course, if the electoral system were not based on proportional representation, independent development parties may have emerged that could have altered the present situation.

Second, since councillors are distant from local areas, their attempts to exert authority in local areas sometimes means that their interventions are inappropriate to local needs. This reinforces the perceptions expressed by some amakhosi and rural people about the ineffectiveness of local government as a whole and about the need for amakhosi to play a role in development to represent ‘their people’s needs’.

As a result of feeling challenged and potentially displaced by local government, many amakhosi are wary of working hand in hand with councillors. In addition, uncertainty about the role of amakhosi has created a sense of competing mandates and interpretations of who ‘represents the people’. Although some amakhosi clearly want to be recognised as delivering development, they also argue that they know the needs of ‘their people’ and consider it essential that they be consulted in planning development initiatives.

Induna David Ntombela, who is also a member of the KwaZulu-Natal legislature, is adamant that amakhosi must be consulted. He suggests that in cases where this is not done there may be an ulterior motive on behalf of the government officials.

“There are some people who are still bent on leaving amakhosi out of rural governance, or in some cases as amakhosi we have seen that some government officials are trying to undermine us in the eyes of our people. For example, some government officials try to bring money or development projects to the rural people without consulting inkosi or asking his permission. Such action is done by officials who want people to see that amakhosi are useless. It is like an alien man who comes to your starving children and wife when you are not at home and feeds them and tells them that he will always feed

²¹⁸ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal* December 2, 1998.

them when they are hungry. After that what can you tell your wife and children? Nothing because you are useless to them.”²¹⁹

Ntombela says that Mufamadi should “tell his councillors that when they want to implement their projects they must go through inkosi in the area”. Ntombela says that the inkosi will in turn call his people and tell them what the project is all about.

Former academic and current Department of Traditional Affairs official Vusi Shongwe describes the conflict between traditional leaders and local government, as it relates to service delivery:

“...municipal authorities will have to exercise control over pieces of land and, of course, over services they render within the area that owes allegiance to traditional leaders. On the other hand, traditional leaders must be seen to have a role to play in the provision of services. This, therefore, suggests that there should be a clarification of roles that will enable traditional leaders to see themselves as part of change and as playing a significant role at the same time as other changes are taking place to bring development to people.”²²⁰

Local government councils are assuming key constitutional functions such as water supply and are preparing integrated development plans. In many cases, councils are not involving stakeholders such as amakhosi or civil society organisations in their planning. Instead they tend to approach development in a top-down manner by deciding on priorities with no consultation and simply contracting private sector firms to implement projects. Amakhosi and community members feel alienated when private sector consultants suddenly appear in their area to implement a project. This immediately undermines the likelihood of instilling a sense of ownership, which is broadly accepted as key to project sustainability. It is ironic that amakhosi, who are frequently considered to function in a top-down and not truly consultative way, may be perceived by local people as operating in a more desirable manner than elected local government councillors.

In short, the absence of formal role definition for councillors and amakhosi in development has meant that local areas have found their own solutions. Looking at these solutions could be very instructive to policy makers and a way of moving past ‘all or nothing’ thinking. Four types of situations have arisen at the local level. The first situation may be termed ‘blocked’. This situation occurs when councillors are prevented from working in the area or, alternatively, they work in the area without recognising or communicating with amakhosi. Both are detrimental to development activities. The second situation may be termed ‘cooperative’, in which well-known and trusted individuals are elected to local government structures. These councillors work closely with the inkosi and forge new informal relationships. The third situation is one in which there is a ‘division of roles’. Implicitly the inkosi and the councillor delineate the roles they will play in the area and, although they have limited interaction, they respect each other’s turf. The last situation, ‘open conflict’, is one in which the question of authority is unresolved and contested and different groups in the community end up taking sides.

Inkosi Gwala says that his community, of which part falls under the Durban Unicity since the demarcation process, is attracted to the Unicity because it sees that areas under the Unicity are developed. He also describes other benefits of being involved with the municipality.

“We also want development and we can see that the city council has a lot of money. For example, they gave amakhosi tickets to attend the Bafana Bafana game and we enjoyed (that) and we realised that we can get more things if we are close to the council.”²²¹

However, Inkosi Gwala says that the problem amakhosi are faced with when dealing with the council is that they “are not treated by the city council people with the dignity that (they) deserve as amakhosi”.

²¹⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

²²⁰ Vusi Shongwe: “Amakhosi do have a big role.” *Daily News* October 12, 2000.

²²¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

“For example, the Mayor had a meeting, but I did not attend because I know that we will be treated like any ordinary person. We are not recognised, we are not introduced and when it comes to eating we scramble for food like any ordinary person and such things destroy the dignity of amakhosi.”²²²

Inkosi Holomisa emphasises the importance of the relationship between traditional leaders and local government structures. He says that it is common knowledge that service delivery in rural areas went smoothly in areas where government structures had good relations with traditional leaders and that the opposite was true in areas where relations had been bad. However, he warns:

“An erroneous point of departure is the notion that if government resources and services are taken away from traditional leaders and are placed at the disposal of politicians then the people will abandon the former in favour of the latter. Besides anything else it is immoral for people to be made to choose between traditional leaders and service delivery – they deserve and are entitled to have both.”²²³

Greene says that local government structures face unique challenges where large portions of Ingonyama Trust land falls into their area. The council has a legal responsibility to provide services, but does not obtain a rates income from the area. The local authorities want money, because they can't deliver services without it.

In an effort to deal with this problem, Greene suggests that individual consumers could pay for trading services like water and electricity, as could refuse removal in the areas in which it is provided.

“With regard to the tax portion of the rates there will have to be a compromise. We have areas that have no rates base at all. In one case we own 99 percent of the land (KZ 272 in the Umkhanyakude District Council – Ingwavuma area). In the council that stretches from Hilton to Mooi River we own about half of Hilton and Howick. It is difficult to ask the Howick ratepayers to support everyone else.”²²⁴

Describing problems in the Inchanga area west of Durban, the Human Rights Committee suggests that the demarcation may have a great impact on service delivery particularly in rural areas that have been included into the Durban Unicity. The committee's report states that many of the areas that have been incorporated into the council were rural areas that should have been prioritised for rural development. However, by being drawn into a larger local authority they have been prejudiced in favour of more dense areas.²²⁵

Difficulties may also arise due to the experience of some amakhosi in development in their areas, and the relative lack of experience of newly elected councillors. This is particularly of concern in instances where municipal representatives are not from traditional areas. Their need to understand the ways of traditional people, priorities, protocols and forms of communication may well delay development, as well as lead to misunderstandings and conflict. Of course, the reverse is also true, in that rural people do not always share the same values, priorities, beliefs and ways as non-traditionalists.

Vaughan and McIntosh say that it will be very difficult, if not impossible, to deliver affordable services in rural areas without clarity about relationships between traditional authorities and local government in rural areas.

“The cost effective delivery of rural services requires community contributions in the form of management or labour. The cost of reliance on professionals for service delivery in the absence of such contributions is prohibitive. Unless relationships between

²²² *ibid.*

²²³ Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.” *Mail and Guardian*, February 11, 2000, accessed on the Mail and Guardian's website at <www.sn.apc.org/wmail/issues/000211/NEWS36.html>.

²²⁴ Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

²²⁵ Human Rights Committee. *Local Government: The first five years*. Quarterly Review. October 2000.

traditional authorities (or the civic bodies which have replaced them) are forged, there is little chance of securing traditional authority assistance in mobilising communities for service delivery.”²²⁶

While local government structures are regarded as being close to the people, the Department of Agriculture and Environmental Affairs in KwaZulu-Natal has forged close relationships with many traditional leaders with the positioning of 400 technicians who are based in the wards of amakhosi. South West Region Director Kuben Moodley says that these technicians are often the only official government person based in the area. As a result they play a social development facilitation role and are attached to an inkosi in an effort to get a mandate from the community. The visibility of the technicians often results in these officials being targeted in connection with services for which they are not responsible including roads, clinics, water and sanitation. The offices used by the technicians also become hubs for development, according to Moodley.

“Most people go there for whatever assistance is needed. They report cholera cases, disasters such as a bridge washed away or go to use a telephone.”²²⁷

In attempting to work closely with amakhosi, the technicians attend meetings of the traditional authorities and regional traditional authorities. Moodley says that they try to address the regional meetings at least on an annual basis. A service providers' forum, which is part of the regional council, involves all departments and enables government departments to put forward proposals on projects and inform local government structures about their progress with development initiatives.

The manner in which the Department of Agriculture is operating is in line with objectives stated in the Integrated Rural Development White Paper for KwaZulu-Natal, which was published in December 1998. The document encourages links between government departments and traditional leaders. It states that in the past formal delivery systems were provided independently of traditional systems of authority.

“Traditional authorities have generally been excluded from development activities. Government’s development-related field services have by-passed traditional leaders and other local organisations. Exclusion from development activities has made traditional leaders defensive and protective of their powers, especially those relating to land allocation. Mechanisms need to be put in place to enable traditional authorities to play a positive role in local development activities. In the absence of such mechanisms, traditional leaders will be unable to respond in developmental ways.”²²⁸

3.2.5. Payment for services

The concept of a ‘municipality’ has taken on a negative meaning in many rural areas. Rural communities fear that councillors will provide infrastructure as a way of gaining access to rural areas and will then introduce charges for services. They are aware of people in urban areas who are struggling to pay for water, electricity and housing. Although they desire infrastructure, they do not want to pay for services that they have enjoyed historically at no cost. For example, there are cases where communities in rural areas choose to use water from rivers instead of paying for water systems. In one rural area outside Eshowe, a housing organisation met with the development committee and offered to build formal housing. Understandably, the committee was highly suspicious of their agenda.

Furthermore, McIntosh writes that few of the communities within the Ingonyama areas on the outskirts of Durban and within informal settlements in the Durban area could afford services such as reticulated water systems. McIntosh says that the more remote areas rely on protected springs and boreholes that depend to a large extent on voluntary committees to ensure their maintenance and continued

²²⁶ Anne Vaughan and Alastair McIntosh: “The role of traditional leaders in land development.” Paper prepared for the National Development and Planning Commission October 9, 1998.

²²⁷ Interview conducted by Cheryl Goodenough with Kuben Moodley, Department of Agriculture regional director, Hilton, June 8, 2001.

²²⁸ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal* December 2, 1998.

operation. The capacity and authority of these committees depends on the technical support from government structures and on the mandate received from the land or community management structure that exists in the areas.²²⁹

It should be recognised, says McIntosh, that most conventional services, such as housing and reticulated water, are going to remain outside the reach of people residing in these areas.

“If one adopts a new approach to governance in terms of the affordability and sustainability paradigm, different choices will be made about which services should be prioritised, as well as the form that delivery should take. Potentially affordable services include community gardens, wood lots, boreholes and protected springs.”²³⁰

McIntosh says that these types of services require the participation and management of the community and that the mobilisation of communities in rural areas usually requires developing the support and co-operation of traditional authorities in these areas. He suggests that a municipality that wants to provide affordable services should develop close relationships with existing land management administrations and mechanisms that mobilise community support for service delivery.²³¹

Some traditional leaders who attended a focus group in Port Shepstone in September 2001 said that the introduction of municipal structures gave the impression that people would have to pay rates, but it was also associated with the creation of homelessness and landlessness.²³²

3.2.6. Non-governmental organisations and development

Many South African non-governmental organisations were formed during the anti-apartheid struggle. Some of these organisations, such as the National Land Committee affiliates, have been able to continue their work with certain communities by shaping, and then working within, the new policy environment without any substantial reorientation. However most non-governmental organisations have been forced to redefine themselves and to shift from working as activists to engaging in development activities. In many cases, they have taken on a more technical approach as a means of obtaining work from government and responding to funding shortages.

Many amakhosi are suspicious of non-governmental organisations because the organisations are often perceived as being supportive of the African National Congress due to their activist history. In addition, the values of participation and empowerment are often interpreted as challenging the position of inkosi and as treating him as the equal of the people. By working closely with local people, non-governmental organisations are sometimes seen by traditional authorities to be questioning the ability of the inkosi to represent the needs of the people. On the other hand, when non-governmental organisations establish a relationship with the inkosi and attain his trust, then they are often very successful in their work with local people.

Inkosi Gwala, for example, has worked together with non-governmental organisations, including the Valley Trust, in an effort to bring services and development to his area.²³³

3.2.7. Development and Inkosi Madlala

In an article published in *Business Day*, Inkosi Madlala from uMzumbe on the South Coast of KwaZulu-Natal described a water and electrification project that was underway in his area. He was quoted as saying:

“I have been fighting for uMzumbe to be electrified since the days of the then KwaZulu self-governing territory and that dream is only being realised in 2001.”²³⁴

²²⁹ Alastair McIntosh: “Establishing relationships between local government and communities in non-formal settlements in and around Durban.” May 3, 2000.

²³⁰ *ibid.*

²³¹ *ibid.*

²³² Focus group facilitated by Jerome Dube in Port Shepstone, September 17, 2001.

²³³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Thandizwe Frank Gwala, Maphephetheni Traditional Court, July 3, 2001.

Inkosi Madlala is a member of the local development committee, which was chaired by his clerk. Elected ward councillors and members of the community were also represented. The committee met monthly to prioritise development issues in the area. According to the article, government departments and the Ugu District Council, under which uMzumbe falls, had to consult the development committee on projects envisaged for the area. Inkosi Madlala is quoted in the report as saying:

“Development is very important to our people because they want to see their lives getting better. If elected councillors can be allowed to take control of it, then it is only them who will get recognition. People will ask at the end of five years what councillors have done, and they will point out: What about amakhosi? Nothing.”²³⁵

As a result, Inkosi Madlala says people would start calling for the institution of traditional leadership to be abolished and would question the justification for the continued existence of the institution. Inkosi Madlala says that traditional leaders have long been doing development work and want to continue with it under the new local government system. Inkosi Madlala says that it is fortunate that elected local councillors in the Ugu District Council are working with the six traditional leaders in the area. Ward councillors even sit on traditional leaders’ development committees.²³⁶

3.2.8. The contribution of traditional leaders to development

There are two main issues at stake when considering the contribution of traditional authorities to development. First, traditional authorities have been central to local power structures in the past. These structures are changing with the introduction of local government, but traditional authorities can still be involved. Experience from other sub-Saharan African countries has shown that attempts to exclude traditional authorities have backfired. They continue to play a role, whether recognised or not, and can undermine development efforts. Many countries are now adopting a more pragmatic response and are formulating plans to involve traditional authorities. South Africa can learn from this experience, and can work with amakhosi to consider a range of very specific roles for them in the development process. This clearly needs to go hand in hand with the provision of training to widen their access and exposure to development.

The second issue can be discussed in terms of a certain ‘culture’ that has arisen around amakhosi. This is often reflected as being steeped in tradition and being unchanging. The reality is that tradition is always in flux and is constantly being re-figured. It is possible to identify elements that can be maintained, and others that are more open to change. From these reflections, it becomes apparent that one of the main points of ‘tradition’ that amakhosi seek to protect is their authority over rural areas. It is not clear whether additional research might succeed at uncovering the basis of this authority. It is likely to be based on a number of dimensions including respect, trust, loyalty, patronage, fear as well as the delivery of various services such as justice, land administration and the definition of culture and identity. KwaZulu-Natal premier Lionel Mtshali is certain that amakhosi have a role to play:

“Traditional authorities have an essential role to play in the development of our communities. If their role is undermined, development will be severely hampered in all rural areas.”²³⁷

Whether we agree or disagree, it is generally acknowledged that amakhosi have the authority to play an important role in mobilising people, calling meetings and communicating with people, providing input into planning for the area, prioritising needs in certain parts of their area and ensuring that implementing agents are working sensitively in rural areas. Too often the issue of authority remains at an “all or nothing” standoff between traditional authorities and outside agents. This is often a result of

²³⁴ Xolani Xundu: “SA’s forgotten leaders.” *Business Day* obtained from website <www.bday.co.za/bday/content/direct/1,3523,862974-6078-0,00.html> June 04, 2001.

²³⁵ *ibid.*

²³⁶ *ibid.*

²³⁷ Premier Lionel Mtshali’s State of the Province Address given in Ulundi February 26, 2001.

amakhosi feeling a lack of respect and acknowledgement from outsiders, rather than being an actual barrier. In KwaZulu Natal, some amakhosi can trace their lineage back to Zulu warriors that served in the battle of Isandlwana and are understandably proud. If given specified roles and respected, they can clearly play a role in development and can maintain their status alongside local government councillors.

Traditional leaders who were part of a focus group conducted in September 2001 said that service delivery cannot happen in rural areas without the involvement of amakhosi. One said that amakhosi act as community liaison officers for the traditional authority and that nothing can happen without consulting the inkosi.²³⁸

A report in *Business Day* states that traditional leaders seek cooperation and consultation with elected local government. They are aware that development is high on people's priorities and do not want to be seen to be hindering development in their areas.

“This will happen, though, if there is no co-operation between the two structures. Traditional leaders feel betrayed by their own government for not wanting to give this institution a bigger role in matters affecting their people.”²³⁹

It is possible for amakhosi to be involved in development in certain roles and for democracy and empowerment to take place. The so-called traditional and modern are mutually exclusive only in people's minds. Already, new hybrid forms that mix the traditional and the modern are emerging in local areas. These forms should be researched and promoted, rather than imposing a top-down solution on what could otherwise be a natural process of change.

3.3. Conclusion

The previous chapter noted that law and policy have not resolved the tensions between traditional authorities and elected governance structures. Neither are these mechanisms likely to in the short term because of the complexity of the issues. This chapter has looked in much more depth at the tensions and possibilities of co-operation between the two institutions, particularly at local level. This is the area in which development and service delivery are concrete concerns and where tensions between traditional authorities and local government can result in neglect of rural people's needs. What emerges from this chapter is that much development is dependent on the personality and initiative of individuals in particular areas – whether that person is a traditional leader, chairperson of the development committee or a councillor. These individuals are able to spearhead development, sometimes through their connections with the centres of power in various hierarchies from which they are able to access resources. In some areas, however, development is blocked either by the traditional leader who finds the initiatives threatening and undermining or by councillors who fail to consult and work co-operatively with traditional leaders. Some of these relationships deteriorate further into outright conflict over who has authority. Clearly, neither of these situations is conducive to development.

Useful lessons from other African countries are that traditional authorities are difficult to ignore in terms of development and to do so puts development initiatives at risk. Many of these countries have adopted a pragmatic approach to traditional institutions, recognising their existence in the past and foreseeable future. However, this does not mean that the role of traditional institutions is fixed and unchanging. Their history shows them to be amenable to change, but the process must be one that is gradual and negotiated with each traditional authority.

²³⁸ Focus group facilitated by Jerome Dube in Port Shepstone, September 17, 2001.

²³⁹ Xolani Xundu: “SA's forgotten leaders.” *Business Day* obtained from website <www.bday.co.za/bday/content/direct/1,3523,862974-6078-0,00.html> June 04, 2001.

4. Land

Land is a particularly sensitive issue in the debate around the institution of traditional leadership. In many discussions with amakhosi the comment is made that the control of land is a primary responsibility of traditional leaders. Even if amakhosi are unable to perform a number of other roles with which they are currently concerned, the allocation of land is a central responsibility that most traditional leaders are determined to keep.

For years conflict has been recorded between and within traditional authority areas, in particular over boundaries dividing areas ruled by different amakhosi or izinduna. Some of those wars continue even today. In March 2001 the Department of Traditional Affairs continued to be involved in resolving land disputes between traditional authorities and/or individuals, according to KwaZulu-Natal's Minister of Traditional Affairs Inkosi Nyanga Ngubane. The Minister said that as part of this effort the Department had embarked on a survey of traditional authority boundaries to enable any traditional authority to identify its exact area of jurisdiction in an effort to eliminate potential conflicts.²⁴⁰

4.1. The importance of land to traditional leadership

The critical nature of land to amakhosi is detailed in an edited version of a speech made by Inkosi Bonga Mdletshe, a KwaZulu-Natal member of parliament, to the Portfolio Committee of Land Affairs:

“Traditional communities and mores are based on the shared ownership of the land and the role of traditional leadership in its administration. We regard access to land not as a mere property right, but as a fundamental human right. A community and its land are united by a mystical relationship, which ties together past, present and future generations. In our view, traditional leadership remains the final expression and the custodian of this relationship. The shared ownership of land is at the basis of our social communalisms, culture of ubuntu and sense of social solidarity. The essential feature of traditional communities is the self-administration of land assigned by the community, via the action of traditional leadership, to each of its members to meet his or her needs. The institution of communal property and traditional leadership are two sides of the same coin and neither can survive without the other.”²⁴¹

The importance of land to traditional leaders is also influenced by the limitation of the powers of traditional leaders during the apartheid and post-apartheid periods. The most important functions performed by traditional leaders have increasingly become those relating to dispute resolution, customary law and land allocation.

“What this has meant is that attempts to wrest land allocation functions from their control has been viewed by traditional authorities as institutional suicide.”²⁴²

4.2. How is land controlled in traditional authorities?

Traditional leaders who were part of a focus group held in Port Shepstone said that an intense investigation was done before a person was allocated land and that the background of the site applicant and their reason for moving were taken into account. They said that a single person – whether male or female – did not usually get a site because of a Zulu saying which states that there is no home for a bachelor. Some traditional leaders also argue that bachelors usually open up taverns that close very late because there is no family to take care of and this disturbs the peace of the whole community. The traditional leaders said that spinsters also cause problems because they have multiple partners who fight, requiring the intervention of

²⁴⁰ Budget speech by Minister Nyanga Ngubane in the Pietermaritzburg legislature March 29, 2001.

²⁴¹ Edited version of Inkosi Bonga Mdletshe's submission to the Portfolio Committee on Land Affairs published in the *Natal Witness* February 20, 1998.

²⁴² Anne Vaughan and Alastair McIntosh: “The role of traditional leaders in land development.” paper prepared for the National Development and Planning Commission October 9, 1998.

the inkosi. Exceptions were made, according to the traditional leaders, for both men and women who had children and were responsible for whatever happened in the house.²⁴³

President of the Congress of Traditional Leaders and member of parliament Inkosi Phathekile Holomisa says that the traditional authority as a collective controls traditional or communal land in rural areas. He warns:

“Despite the fact that under apartheid laws the state is the legal owner of tribal land, factually and morally the tribes own the land and, unless one is spoiling for a fight, no one can deal with it as he pleases.”²⁴⁴

Under African tribal law, the custody of the land is entrusted to the king as the head of the entire traditional authority and his councillors who, Inkosi Holomisa says, are required to act at all times in the interests of the people. Researcher Lungisile Ntsebeza emphasises that even though households may use the same piece of land for generations it does not mean that they own the land. If such a family left the community, they would forfeit their land rights.²⁴⁵ However, the interpretation of ownership through Roman Dutch law that Ntsebeza uses is not the same notion of ownership that people living in traditional authority areas use to refer to the land that they live on and use. Ownership in a traditional sense is located in the family, not an individual, and is determined by what the household's ancestors recognise as being the family's land. Although this land traditionally cannot be sold, it can be bequeathed and transacted in other ways, such as loaning and transferring ownership.

The usual procedure followed when a family wants land is that the household head approaches a resident (sometimes a relative) who is willing to give it to them. Once an agreement is made, the resident takes the person to the induna who interrogates the person on behalf of the inkosi. If the person is not already a member of the group, the induna then takes the person to the inkosi for his/her approval. As a member, a married man or woman with dependants is entitled to land for residence and natural resources (grazing, thatch etc) and to arable land if it is available. In some cases (such as if the individual is an absolute stranger), a person might approach the induna directly who would then find land, reach agreements with the current user and "owner" and new person around boundaries and then approach the inkosi. The inkosi will ask the induna if there is land available and expects to know where the stranger comes from and why they left the previous traditional authority area. Once the inkosi approves tribal membership, the induna formally demarcates the boundary in front of all the neighbours who serve as witnesses. In some areas, the land is deemed to vest in the new person once they clear the site for building.

Writing about the procedures required to obtain land, Lisa Thorp said her research found that interviewees who held land under the traditional system most often meant that the male head of the household on being married had approached the local induna to request land. Her study found that the community was at times included in the decision as to whether the individual family making the request could be allocated land.

“The induna would then often call a meeting of the men of the area where the man wanted to set up his homestead to discuss the matter. Sometimes the induna could assign land on his own; sometimes it would be necessary to approach the inkosi as well. Some ‘inherited’ land from their parents, but generally had to speak with the induna, at least, before taking possession.”²⁴⁶

Thorp states that in a survey that asked about people's access to maize fields, grazing land, water, thatch and firewood, it was found that a slim majority had free access to all the items. “Almost as many are

²⁴³ Focus group conducted by Edmund Mthuli in Port Shepstone on September 17, 2001.

²⁴⁴ Phathekile Holomisa: “Ubukhosi the bedrock of African democracy.” *Mail and Guardian*, February 11, 2000, accessed on the Mail and Guardian's website at <www.sn.apc.org/wmail/issues/000211/NEWS36.html>.

²⁴⁵ Lungisile Ntsebeza: “Traditional authority and land tenure in South Africa.” Paper prepared for training course organised by the School of Government, Programme for Land and Agrarian Studies, University of the Western Cape, East London, July 14-27, 1996.

²⁴⁶ Lisa Thorp: “Access to land: a rural perspective on tradition and resources.” In *Women, land and authority: perspectives from South Africa* edited by Shamim Meer Oxfam (UK and Ireland) and David Philip Publishers in association with National Land Committee 1997 p 36.

limited in one way or another, usually because of a distortion of the traditional system or because they belong to a traditionally disenfranchised group.”²⁴⁷

Nevertheless, the basis of the traditional system in relation to land is that the rights that tribal communities were given to land were essentially concerned with usage – rather than ownership – rights. This usage took into account the purpose for which land was required and decisions by amakhosi in this regard were in accordance with traditional rules of land use.

Such rules, however, are not always enforced, with serious consequences, according to Anne Vaughan and Alastair McIntosh. Land shortage as a result of accommodating years of eviction also causes problems with enforcement.

“The consequences of this include the increasing allocation of arable land for residential purposes, an increase in disputes arising from livestock overstocking, and the invasion of cattle onto arable land. This has, in turn, led to increasing pressures being placed on the dispute resolution capacity of traditional authorities. There has also been mounting pressure on traditional leaders to support land invasions. In some areas, a further consequence of the administrative weakness of traditional authorities has been loss of control over land allocation. In these instances, land allocation has been taken over by competing structures, for example, ‘warlords’ on the Durban and Pietermaritzburg peripheries, or civic associations, as in the former Ciskei, parts of the former Transkei and ThabaNchu.”²⁴⁸

The rules also determine that if a person is allocated land for farming, but uses it for a different purpose or does not farm for about three years, the land is repossessed and reallocated. But such rules have proved difficult to enforce due to overcrowding and overstocking.

“Problems which emerge include cattle moving onto farm lands and damaging other people’s crops. Instead of engaging in land management, amakhosi spend a lot of time resolving the disputes resulting from overcrowding and overstocking. In the event that cattle damage crops, the induna mediates between the parties involved. If the induna cannot resolve the dispute, the inkosi is brought in, either to mediate, or to make a ruling.”²⁴⁹

In addition to the difficulties experienced by amakhosi in controlling the usage of land, those attempting to obtain land may also be faced with a process that is not always simple or inexpensive, although it is probably simpler and less expensive than acquiring land through formal processes. According to Chris Tapscott:

“Until the 1990s, it was common practice in most homelands that applications for land were accompanied by payments of alcohol, poultry, sheep or even, where competition for land was high, an ox. Whereas there is evidence that the payment of dues to a chief was practised in pre-colonial times, it was not necessarily a precondition for the acquisition of land. The system up until the 1980s, furthermore, undoubtedly lacked the reciprocity of this earlier period. It is certain, moreover, that the practice of payment for land became increasingly more prevalent as land shortages were exacerbated. As the practice was officially prohibited (illegal), there were no guiding rules for setting of rates for the acquisition of plots and amounts charged varied according to the demand for land.”²⁵⁰

²⁴⁷ *ibid.*

²⁴⁸ Anne Vaughan and Alastair McIntosh: “The role of traditional leaders in land development.” Paper prepared for the National Development and Planning Commission October 9, 1998.

²⁴⁹ Alastair McIntosh, Siphosibanda, Anne Vaughan and Thokozani Xaba: “Traditional authorities and land: The position in KwaZulu-Natal.” Institute for Social Economic Research and Association for Rural Advancement May 1995.

²⁵⁰ Chris Tapscott: “The institutionalisation of rural local government in post-apartheid South Africa” in *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation October 1996.

Similarly, Thorp found that sometimes a fee was involved in the acquisition of land. She said that the amount ranged from R50 plus beer and soft drinks for the inkosi and councillors, to R500, to one head of cattle to each of the induna and the inkosi. According to Thorp, the amount sought by the inkosi seemed to be determined by a meeting with men or councillors. Strangers were generally required to pay more than local citizens.²⁵¹

While some aspects of land allocation may suggest that the process may be concerned more about the whims of the local amakhosi, interviews and workshops with amakhosi and izinduna have suggested that traditional tenure was, in fact, largely about a concern for welfare and equity.

“As a consequence of the concern for welfare and equity, all traditional leaders express the view that the ‘inkosi is an inkosi through his people’ and that the inkosi holds the land in trust for the people as a whole. Thus the criteria for allocating existing land, or land which might potentially be made available for the group (tribe), is firstly on the basis of ‘citizenship’ and/or kinship (or how long a person has lived in an area) and thereafter on the basis of considerations of equity. Such criteria are, of course, not strictly egalitarian.”²⁵²

Control of access to land is a source of income to amakhosi and integration threatens that because people will not have to ‘pay’ the traditional leaders for sites, but will be able to get land through procedures set up by local government.

It is also vitally important to bear in mind that the actual practices of amakhosi differ. Tessa Marcus, Kathy Eales and Adele Wildschut say that in reality the practices relating to land allocation are clouded by “corruption, patronage and, increasingly, the influence of market forces as they slip between the traditional and modern systems to sell the land they hold in trust for personal profit and to consolidate their power base”.²⁵³ Their observations are particularly true of peri-urban areas. While true too about many rural amakhosi, the experience of non-governmental organisations in rural areas is also of amakhosi who continue to work in ethical ways to serve the welfare needs of the community as far as it is possible to do so.

4.3. The role of the Ingonyama Trust

Approximately three million hectares or about 40 percent of KwaZulu-Natal is considered tribal land and is under the control of the Ingonyama Trust. This body was initially created by the KwaZulu Government in 1994 as a result of a deal between then leader of the former KwaZulu homeland, Inkatha Freedom Party President Inkosi Mangosuthu Buthelezi and the State President at the time, FW de Klerk. The legislation was pushed through parliament some 24 hours before the 1994 general election.

The KwaZulu-Natal Ingonyama Trust Act No. 3 of 1994 created the Trust. This Act instructed the Registrar of Deeds to transfer land that was vested in the KwaZulu Government to the Trust. It also provided that the Zulu King would be the sole trustee of KwaZulu land, which was estimated to be approximately three million hectares.

The Act was regarded as something of a controversial piece of legislation. Journalist Herb Payne wrote some years later – in 1998 – that the development of the Ingonyama Trust Act resulted in “a dispute that was at the core of the differences between the IFP and the ANC”.

“Parliamentary records reflect that the previous Act [of 1994] – conceived in the last days of National Party rule – was rushed through Parliament so hastily that members of Parliament did not even see copies of the legislation they were approving. The Act placed all tribal land in the former KwaZulu homeland into a trust to be administered by [King

²⁵¹ Lisa Thorp: “Access to land: a rural perspective on tradition and resources.” In *Women, land and authority: perspectives from South Africa* edited by Shamim Meer Oxfam (UK and Ireland) and David Philip Publishers in association with National Land Committee 1997 p 36.

²⁵² Alastair McIntosh, Siphosibanda, Anne Vaughan and Thokozani Xaba: “Traditional authorities and land: The position in KwaZulu-Natal.” Institute for Social Economic Research and Association for Rural Advancement; May 1995.

²⁵³ Tessa Marcus, Kathy Eales and Adele Wildschut: *Down to Earth: land demand in the new South Africa*. Indicator Press and Land and Agriculture Policy Centre 1996.

Goodwill] Zwelithini. One of its stated objectives was the orderly release of land for development. The ANC was aghast at what it perceived to be conspiracy between outgoing President FW de Klerk and IFP leader Mangosuthu Buthelezi to entrench and strengthen the IFP's traditional rural power base and block land reform. For its part, the IFP viewed the ANC's hostility as blatant evidence of central government meddling in provincial affairs so as to weaken Inkatha."²⁵⁴

After numerous acrimonious debates and court challenges around the issue, both Inkosi Buthelezi and the national government conceded that parts of the KwaZulu-Natal Act needed review. The main flaw, according to Herb Payne, was that the monarch did not have the capacity or the infrastructure to carry out functions as required by the Act.²⁵⁵ Another criticism was that the old Act was seen as a stumbling block to development in many areas in KwaZulu. It meant that many people failed to obtain loans from banks or the national housing subsidy because they did not own the land.²⁵⁶

The first Act was repealed in 1996 and the new legislation subsequently passed in 1998. The latter provided for the formation of an eight-member board that was responsible for the administration of the affairs of the Trust. In addition, the King was appointed as head of the Board, although he may nominate someone to serve on his behalf. The other members of the board are appointed in different ways. The Minister of Land Affairs appoints four members *after consultation* with the Zulu King, the Premier of KwaZulu-Natal and the chairperson of the House of Traditional Leaders. A further four members are appointed by the same minister *in consultation* with the Premier of the province, who must consult the Zulu King and the chairperson of the House.²⁵⁷

The members of the Board in April 2001 were:

- Owen Greene (chairman of the Board)
- Glen Thomas, deputy director general in the Department of Land Affairs, Pretoria (vice-chairman of the Board)
- Advocate Robin Raubenheimer, the head of the KwaZulu-Natal Department of Traditional and Local Government Affairs
- B.L. Shabalala, the chief director of Traditional Land Administration and Survey Services in the Department of Traditional and Local Government Affairs
- Frikkie Brooks, the chief director of Development Planning in the Department of Traditional and Local Government Affairs
- Honourable Justice Jerome Ngwenya.²⁵⁸

There were three vacancies on the Board in April 2001 including one that was the result of the resignation of an inkosi. Greene said that he hoped another inkosi would be nominated soon to fill one of the vacancies.

Greene was subsequently removed from his position in October 2001 and King Zwelithini assumed the responsibilities of the office, according to a newspaper report.²⁵⁹

Explaining the work of the Board, Greene said that the structure was mandated by the Act to "administer the Trust for the benefit, material welfare and social well-being of the individual members of the tribes and communities" living on the Ingonyama Trust land. In respect of land use the Board cannot act without the written consent of the traditional authority within whose area of jurisdiction the land falls. This means, according to Greene, that each traditional authority is fully responsible for the management or use of the land within its area of jurisdiction.²⁶⁰

²⁵⁴ Herb Payne: "All the King's Men: The new Ingonyama is born." *Financial Mail* August 14, 1998.

²⁵⁵ *ibid.*

²⁵⁶ Witness reporter: "Ingonyama Trust Act on KwaZulu land gets green light." *Natal Witness* August 4, 1998.

²⁵⁷ Speech by then chairman of the Ingonyama Trust Board Owen Greene at a meeting of amakhosi in Ulundi April 20 2001, our emphasis.

²⁵⁸ *ibid.*

²⁵⁹ Witness reporter: "King boots out Ngonyama chair." *Natal Witness* October 19, 2001.

²⁶⁰ Speech by then chairman of the Ingonyama Trust Board Owen Greene at a meeting of amakhosi in Ulundi April 20 2001.

The consents that the Board could receive from a traditional authority could relate to tenure rights to commercial, mining or residential purposes, as well as other purposes. Greene explains the processes involved in obtaining tenure rights:

“(The Board) will then ensure that the developer meets the requirements of the laws of the land before it processes a lease or Permission to Occupy (PTO). It then collects the rentals payable. The Trust is a registered VAT vendor so it charges VAT on rentals and hands this over to the South African Revenue Services. The rental will then be passed to the traditional authority to be used for the benefit of the individual members of the tribes. The Act allows the Board to retain 10 percent of its income to cover operational expenses. The Board prefers leases to PTOs in major commercial developments, for example petrol filling stations, tourism projects, shopping centres and similar ventures. Only Ithala Bank will bond a Permission to Occupy whilst most financial institutions will bond a lease. However, the Board is aware of other instances where leases might be too expensive particularly for small businesses like driving schools, spaza shops, block making yards and the likes where Deeds Office registration is not necessary.”²⁶¹

While the relationship between traditional authorities and the Ingonyama Trust is an important one, Greene emphasises that it is the duty of the Board to focus on what will benefit individual members of communities, rather than on what will benefit traditional authorities.²⁶²

The work of the Ingonyama Trust Board is funded through the budget of the Department of Traditional Affairs. However, it is housed within the Department of Land Affairs and is staffed by a Secretariat. Of the members of the Board, only the chairman is a full-time employee of the Trust.

While the Board administers the land, Greene emphasises that the work of the Board is carried out in partnership with traditional authorities and that amakhosi need to be empowered with specific skills to carry out their duties in this regard. He said that it is essential for traditional authorities to receive the necessary capacity building to allow them to interact effectively with developers and to understand legal procedures required for development to proceed. Greene said that it was the policy of the Board to encourage capacity building and it has supported several initiatives including sponsoring courses for secretaries of traditional authorities with the University of Zululand.²⁶³

Journalist Deborah Ewing suggests that more training is needed with regard to tenure rights. She quoted Peter Rutsch who said that there was a huge capacity gap. Ewing reported that few amakhosi were aware that they can grant a lease that is conditional to the community receiving certain benefits and few have insight into what benefits they could leverage.²⁶⁴

It is probably partly due to amakhosi generally not being equipped with skills relating to the administration of Trust land that has resulted in the huge potential for development on this land, particularly with regard to tourism initiatives, remaining largely untapped.

The tourism potential is illustrated by the number of well-known tourist attractions that fall within the ambit of the Ingonyama Trust land. Greene says:

“About 25 percent of the Greater St Lucia area is Trust land and several game reserves, including Ndumo and Tembe Elephant Park. A lot of the land is underdeveloped, but there is huge potential. We have all the mechanisms in place. We would lease the land to developers. It is bondable and we have a six-week turnaround time on a lease. We are very accessible. This is provided that the traditional authority is on board.”²⁶⁵

²⁶¹ Speech by then chairman of the Ingonyama Trust Board Owen Greene at a meeting of amakhosi in Ulundi April 20 2001.

²⁶² Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

²⁶³ Speech by then chairman of the Ingonyama Trust Board Owen Greene at a meeting of amakhosi in Ulundi April 20 2001.

²⁶⁴ Deborah Ewing: “Paradise regained?” *Siyaya* published by Idasa Issue 7 Summer 2001 p 35.

²⁶⁵ Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

While many of these areas remained underdeveloped, there are, however, many cases of Trust land being used for commercial purposes without the required Permission to Occupy or leases for these developments. These developers are consequently illegal and do not pay rent. Greene says that the neighbours of illegal developers often object to paying rent as well. As a result the Board receives less money to pay over to the traditional authorities.²⁶⁶

Although there are cases where illegal development is taking place, KwaZulu-Natal's Minister of Housing Dumisani Makhaye said in September 2001 that a few amakhosi were refusing his department permission to build houses on traditional land.

"I will report to Inkosi Ngubane [the Minister of Traditional Affairs in KwaZulu-Natal] all those amakhosi who think they can hold our people to ransom and together we are going to take decisive action against these few individuals. A fraction of amakhosi are still reluctant to make land available to start housing projects."²⁶⁷

Makhaye also emphasised the need for further education saying that he thought that most of the time the unwillingness on behalf of amakhosi was the result of ignorance about how the rural housing programme worked.

4.4. The potential for the abuse of power inherent in land administration

While the administration of land by amakhosi is seen in a largely benevolent manner by some, there are concerns that an inkosi could, if desired, use access to land as a threat in wielding power in his community. There are also concerns of corruption concerned with land administration.

The commitment on the part of many traditional leaders to traditional tenure arises from a genuine concern for welfare and equity.

"[The view of many traditional leaders] is that they hold land in trust for their people. They allocate land to people on the basis of 'citizenship' – which may be kin derived and/or bought – and thereafter give consideration to equity."²⁶⁸

However, the as noted above, Marcus et al warn that the actual practices of traditional leaders are often corrupt, as market influences make it easier for them to sell the land they hold in trust for personal profit. Tapscott has also stated that apartheid laws and influx controls meant that only in rural areas in the homelands could the majority of blacks legitimately lay claim to a piece of land and a home. This left room for abuse.

"While the land available was seldom large enough for a household to survive on, it provided a home for an individual's family and a future place of retirement. Yet the chiefs could decide whether an individual could own land at all, they could charge a high price to acquire it and they could, if they so felt, remove individuals from their land and banish them to other areas. The threat of banishment from the land ultimately represented less of a threat than the more real possibility that an individual's arable plot would be allocated to another on the pretext that it was not being properly utilised. This situation arose, it would appear, as a result of an abuse of power on the part of the chiefs and headmen, and a critical shortage of arable land for new applicants."²⁶⁹

Tapscott stated that amakhosi seldom carried out the reallocation of land if it was not being used or if the taxes had not been paid for over two years, even though they had the power. Instead, "the ruling

²⁶⁶ Speech by then chairman of the Ingonyama Trust Board Owen Greene at a meeting of amakhosi in Ulundi April 20 2001.

²⁶⁷ Sibonelo Msomi: "Makhaye warns chiefs." *Daily News* September 10, 2001.

²⁶⁸ Tessa Marcus, Kathy Eales and Adele Wildschut: *Down to Earth: land demand in the new South Africa*. Indicator Press and Land and Agriculture Policy Centre 1996, p 81.

²⁶⁹ Chris Tapscott: "The institutionalisation of rural local government in post-apartheid South Africa" in *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation October 1996.

was generally applied in an arbitrary and subjective manner, when, for example, an individual plot owner had antagonised either chief or headmen or either stood to gain from the transaction.”²⁷⁰

Ntsebeza also notes that communal and land tenure is extremely insecure.

“They depended on political patronage with little legal protection. It is this insecurity of tenure that was abused by the tribal authorities during the apartheid period. Nowhere was this more evident than in land allocation. Chiefs used land allocation as a mechanism of corruption and control. Shortage of land due to population growth and pass laws which restricted people to homelands created more demand for land. This gave chiefs and headmen more power which, as mentioned, was abused. Some individuals were arbitrarily removed by chiefs who did not want them.”²⁷¹

However, while it is true that the threat of eviction is always present, when researchers ask community members if they know of people who have been evicted, the answer is usually no or an anecdote about an incident from long before. The reality is that evictions are rare. In some respects it is remarkable that evictions and corruption are not more widespread given the control traditional leaders have over a primary resource, which apartheid made very scarce. Inkosi Holomisa adds that:

“It is false to say that traditional leaders allocate land. The whole community does that. If you want land you take this up with the sub headman. He holds a meeting of neighbours and they decide whether or not to give you land. Then the headman confirms and it goes to the tribal authority for endorsement. The head, the chief as he is known, is advised by a council of headmen. He does have the final say, but his authority is not absolute. He would be unwise to insist on something in the face of fierce opposition from his council or the community, very unwise. As for criminal corruption, well, people who are corrupt and breaking the law should be sent to jail just as they have been before.”²⁷²

4.5. Land and rates

Concern has been expressed about the impact that new legislation relating to property rates will have on the Trust land. If the law requires the Trust to pay rates on all the land that it owns, the Trust would be insolvent, according to Greene.

“The Trust would have to ask each traditional authority to collect rates. This will lead to further impoverishment amongst the rural poor. Money will then continue to flow to urban areas.”²⁷³

However, Greene stated that the Minister of Land Affairs is a trustee for land elsewhere in South Africa and that such land cannot be treated any different from the Ingonyama Trust land. He said that the Board is also seeking legal opinion with regard to the State Property Act, which excludes the levying of land in a Trust, to see whether the Trust also fulfils that requirement and is exempt from such levies.²⁷⁴

The Property Rates Bill is to be introduced to parliament by the end of 2001 and will become law early in 2002, according to a newspaper report. However, the draft legislation was the subject of much criticism when attempts were made to bring it into the parliamentary process shortly before the elections in 2000. The legislation is aimed at charging rates in proportion to the market value of property and will take improvements into account, whereas property is currently taxed only on the value of the land.²⁷⁵

²⁷⁰ *ibid.*

²⁷¹ Lungisile Ntsebeza: “Traditional authority and land tenure in South Africa.” Paper prepared for training course organised by the School of Government, Programme for Land and Agrarian Studies, University of the Western Cape, East London, July 14-27, 1996.

²⁷² Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa Cape Town October 2001.

²⁷³ Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

²⁷⁴ *ibid.*

²⁷⁵ Christelle Terreblanche: “Rates Bill to become law.” *The Mercury* September 11, 2001.

4.6. The land debate continues

The Ingonyama Trust Act is seen by some as something of a temporary measure before a process begins to enable land to be returned to traditional communities as communal property. Inkosi Mdletshe told the Portfolio Committee on Land Affairs that amakhosi were committed to ensure that the title to the so-called tribal land vested in traditional authorities and the land was regulated and administered in terms of communal law. This process could begin once the surveying of land, which was necessary for the issuance of titles, was completed.²⁷⁶

The future management of the Ingonyama Trust land must also fit into the broader context of land reform in South Africa as a whole. The White Paper on South African Land Policy, for example, states that tenure reform must allow people to choose the tenure system that is appropriate to their circumstances.

“In particular, it is accepted that both group-based and individually-based ownership systems play valuable roles under different circumstances and the match between the circumstances and the system must be made by the people affected.”²⁷⁷

Sibanda stated that the policy of the Department of Land Affairs is that land must be transferred to the people who qualify for ownership in terms of criteria that show historical rights or well-established *de facto* occupation. Where land rights are group-owned they would be subject to existing group rules, according to Sibanda, which could be changed or amended over time by a majority of rights holders or co-owners.

“We believe that this approach is consistent with customary law in terms of which the land has always belonged ‘to the people’ and never to the chief or tribal authority per se. In terms of our proposals, the co-owners or rights-holders will be able to choose the institution that will administer their ownership rights on a day-to-day basis. We expect that tribal systems that are supported and functional will not be affected in any way. Such systems are highly participatory and in many cases more than adequately meet the constitutional requirements of democracy and due process. In such cases, no new ownership structure will be imposed by government. On the contrary, given the breakdown of land administration systems in many parts of the country, such structures are a major asset. However, in areas where the majority of rights holders no longer support current institutions and decide to manage their joint land asset on a different basis, they will have the right to use any of the current legal options available. Such changes will however require clear majority support.”²⁷⁸

Sibanda states that the House of Traditional Leaders calls for title to traditional land to vest in traditional authorities. He says that this is where the heart of the difference between government policy and the recommendations of the House lie.²⁷⁹

Consideration also needs to be given to the role of local government structures in the integrated development of local communities. The Permission to Occupy system, for example, is currently administered by the Department of Traditional Affairs, but should perhaps be controlled by local government as an agent of the Board of the Ingonyama Trust. Land usage in traditional areas must also form part of the plans drawn up on a local and district level by municipalities.²⁸⁰

Inkosi Holomisa supports the Ingonyama Trust, saying that it is not constituted in a way that undermines traditional leadership.

²⁷⁶ Edited version of Inkosi Bonga Mdletshe’s submission to the Portfolio Committee on Land Affairs published in the *Natal Witness* February 20, 1998.

²⁷⁷ Dr Siphos Sibanda, director of tenure reform Department of Land Affairs, “Chiefs’ agenda is self-serving.” *Natal Witness* March 4, 1998.

²⁷⁸ *ibid.*

²⁷⁹ *ibid.*

²⁸⁰ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal* December 2, 1998.

“We would like to see this kind of trust all over South Africa because it facilitates interests of both traditional leaders and government in protecting land, but because of the history behind it [the Ingonyama Trust], it might be necessary to readjust it here and there because it was introduced on the eve of the elections as a result of a deal between the administration and the National Party government of the day.”²⁸¹

Individuals from local communities express a variety of views that need to be taken into account when considering land reform in traditional authority areas. Thorp wrote about a study in which respondents were asked if the redistributed land should be held under the amakhosi system or with a title deed. They showed an almost two to one preference for title deeds. However, there were some arguments in favour of maintaining the customary system.

“One Msinga man said, ‘I like (it) to be amakhosi because I don’t know what is meant by title-deed’; his view was supported by another Msinga man who believed tenure should be customary ‘because we have our history because of inkosis’. A KwaNyuswa man felt that ‘if amakhosi system (was) allowed (by government) to continue, it must be customary because if amakhosi system continues, it would be a problem if some had title-deed and others did not’.”²⁸²

People in rural areas also feel a certain degree of secure tenure under the traditional system although this is what critics say is lacking, according to Thorp. She said that an Msinga man explained that he preferred the customary system because “if you have no money to buy land, the inkosi will give you land”.²⁸³

The majority of traditional leaders strongly oppose any form of change in the indigenous land tenure system, according to the Inkatha Freedom Party’s Inkosi Ngubane. They believe that the transformation of the customary system into freehold or other types of title and the alteration of administration away from the rules of indigenous and customary law “would set in motion a process which may cause vast segments of the black population to lose their land while disintegrating the traditional way of life based on communalism and social solidarity”. Minister Inkosi Ngubane also said that amakhosi also believe that accelerated development of rural areas can be fostered, while respecting the communal land ownership.²⁸⁴

Ntombela is emphatic about the role of traditional leaders in land administration. He says that the absolute power over land that amakhosi have is not questionable.²⁸⁵

Greene is also wary of changes in the system of land administration in traditional authorities. Asked whether the Trust should be in control of the land, or whether communities or individuals should be able to control the land themselves, Greene stated:

“The Zulu culture is integral in this because of the people’s relationship with the land. It is about use rights rather than ownership rights. If there is a source of water on your land then anyone is allowed to access that water. The new Water Act is now going back to defining water as a community resource. It is the same with thatching grass as well. Once a person has harvested their land other animals can come on to the land and graze. To individualise land ownership would threaten the fundamentals of Zulu culture. If the land is made saleable people will live on it for a year or two and then sell it. Now they have somewhere to live and they have access to some land. Otherwise they would have a meagre livelihood.”²⁸⁶

²⁸¹ Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

²⁸² Lisa Thorp: “Access to land: a rural perspective on tradition and resources.” In *Women, land and authority: perspectives from South Africa* edited by Shamim Meer, Oxfam (UK and Ireland) and David Philip Publishers in association with National Land Committee 1997.

²⁸³ *ibid.*

²⁸⁴ Presentation by Nyanga Ngubane, Minister of Traditional and Environmental Affairs at a meeting with then Deputy President Thabo Mbeki June 27, 1997.

²⁸⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

²⁸⁶ Interview conducted by Cheryl Goodenough with Owen Greene, then chairman of the Ingonyama Trust Board, Pietermaritzburg, May 16, 2001.

Similarly, Vaughan and McIntosh have stated that poor people were offered access to land and resources, which were critical to their survival, through traditional tenure systems.²⁸⁷

The examples of comments made by people from Msinga during Thorp's research as quoted above also emphasise the serious risk inherent in the freehold system. Freehold may guarantee everyone the right to own land but it often eliminates the means, making land prohibitively expensive to most of the poor. However, Thorp also warns that the fluidity of the customary system must not be ignored. She said that her survey found that the differences of younger interviewees were markedly different from the answers of their elders.²⁸⁸ While this is true, other research shows that given realistic choices, the position of the youth is not that different from their parents. In research undertaken by the Association for Rural Advancement, a young woman who wanted to get rid of the inkosi was asked who she would go to if her husband were beating her up. She said that she would go to the induna. When the researchers pointed out that the induna would not be there and she would have to go to the police and magistrate's court, she said that would be difficult because she does not have money and the police do not pay much attention to poor rural people.²⁸⁹

Thorp states that neither the traditional system nor the freehold structure is considered to be perfect, but both have strengths and weaknesses. She recommends that rural land reform policies should try to capitalise on the strengths of each system, while eliminating the weaknesses and limitations. Advantages of the traditional system illuminated by Thorp's surveys included people wanting to retain the communal system of grazing because cattle are better served sharing a large expanse of land with other cattle than by being confined to the small plot that their owners could afford.²⁹⁰ The Pan Africanist Congress's deputy president Dr Motseko Pheko says that his party believes in the equitable distribution of land, but questions traditional leaders who are concerned only with their own powers and not the welfare of the people.

"These people need decent homes and land. While we have tried to protect the rights of traditional leaders, some are not serious about their calling. We support only those traditional leaders who correctly understand their roles. In African law, when a young man gets married, his parents go to the traditional leader and they are given a site to build a home and then, because the couple have children, they are also allocated land to produce food. Is this what traditional leaders have in mind when they say they want to allocate land?"²⁹¹

However, Pheko says that unless traditional leaders have land and the power to allocate it, one "might as well abolish the institution of traditional leadership entirely".²⁹²

African National Congress member of parliament Yunus Carrim says that the Minister of Land Affairs wants to look at land tenure in traditional areas and that she may be moving towards a position that provides for both communal and individual ownership.

"Now individual ownership will offer people the opportunity to secure loans if they want to expand, renovate and improve their homes so presumably it will be welcomed by all including traditional leaders. On the other hand, we have to recognise that custom, heritage and tradition are at issue too. Land is a very central aspect of that."²⁹³

²⁸⁷ Anne Vaughan and Alastair McIntosh: "The role of traditional leaders in land development." Paper prepared for the National Development and Planning Commission October 9, 1998.

²⁸⁸ Lisa Thorp: "Access to land: a rural perspective on tradition and resources." In *Women, land and authority: perspectives from South Africa* edited by Shamim Meer Oxfam (UK and Ireland) and David Philip Publishers in association with National Land Committee 1997 pp 41-43.

²⁸⁹ Comment by Donna Hornby on research she conducted for the Association for Rural Advancement at the AmaHlubi in 1999.

²⁹⁰ *ibid.*

²⁹¹ Interview conducted by Chiara Carter with Dr Motseko Pheko, Pan Africanist Congress Deputy President and member of parliament, Cape Town, October 2001.

²⁹² *ibid.*

²⁹³ Interview conducted by Chiara Carter with Yunus Carrim, African National Congress member of parliament Cape Town October 2001.

4.7. Conclusion

The functions of traditional leaders have been influenced by the limitation of their powers during the colonial, apartheid and post-apartheid periods. Their most important functions have increasingly become those relating to dispute resolution, customary law and land allocation. Land is thus central to the institution of traditional authority and to the function and identity of traditional leaders. It is therefore an area that they are determined not to lose. However, while policy makers and others acknowledge the importance of communal tenure, there is not much agreement on where land rights should vest and who should manage them. Traditional leaders argue that they should be responsible for managing the rights and that ownership (title) should vest with them or the institutions of traditional authority. Critics point out that traditional authorities have never owned land rights but have managed them on behalf of rights holders and that is what legislation and policy should attempt to replicate. Other concerns are that changes in the economy and environment in which communal tenure is practiced has resulted in corruption and land transactions that have benefited particular amakhosi at the expense of the community. There is also concern that communal tenure does not facilitate ownership and thus secure tenure. However, generally there is recognition that communal tenure is a realistic and viable alternative to individual ownership but that an appropriate relationship between rights holder and traditional authority structure still needs to be worked out legally. These issues are yet to be resolved in the policy and law that the Department of Land Affairs is currently drafting.

In KwaZulu-Natal, the Ingonyama Trust owns nearly half of the province on behalf of the traditional authorities and residents in communal areas. Issues that have emerged there are that many amakhosi do not have sufficient knowledge about land administration to exercise choices available to them efficiently. These include tenure options for development purposes. Training in these matters and also in socio-political issues such as women's rights is recommended.

5. Justice and Customary law

Customary law is practised in a number of traditional courts in KwaZulu-Natal. Such courts are usually located next to or near the house of the local inkosi. They were established largely in rural areas under the Black Administration Act No 38 of 1927 and various statutes in the former homeland states.

The procedure followed by the courts is customary procedure, which is generally regarded as simple, informal and flexible.

Traditional courts are perceived largely in two different ways: Either as conservative and not able to deliver justice in the modern world, or as an ideal method for dispute resolution that could be duplicated elsewhere.

At the heart of the customary law court system is the promotion of conciliation between the aggrieved party and the offender. This is in line with the spirit of communalism manifest in many African institutions. However, there are concerns that present circumstances have changed this spirit and some traditional leaders are using their authority to financially exploit rural communities.

5.1. How traditional courts function

Amakhosi chair traditional courts, which are run by local traditional councils. The traditional leaders, however, do not necessarily preside over minor cases. The councillors, who are appointed by amakhosi and sometimes these days elected by the tribe (as in the AmaHlubi) make up the traditional council. In addition, there is a secretary who keeps the records of the cases and a prosecutor who questions the various parties including the complainant, the accused and the witnesses.

The courts are located in almost every traditional authority area, giving most individuals access because almost every village has a court within easy reach.

The role of the secretary differs at the different courts, largely due to the skills of the individuals, according to the South African Law Commission's discussion paper on customary courts. Records have to be kept detailing the parties involved, the claim or charge, the defence of the accused, the judgement and the date of judgement. The record must be signed by the inkosi or someone acting on his behalf and filed with the clerk of the magistrates' court. Further copies of the record are given to the parties and traditional court keeps one copy. In traditional courts where there is no literate person to detail the particulars, the inkosi may provide the information personally or by messenger to the clerk of the magistrates' court who enters them.²⁹⁴

The administrative secretary to the Nzimakwe Traditional Authority, Israel Bhokinkosi Khuzwayo says that cases are registered on a Friday in the Nzimakwe Traditional Court and sentences are usually passed on the following Tuesday. On the Friday evidence is heard from people who are involved in the case.

"It is the day when we register cases and also hear evidence from the people concerned in an open way. In this session everybody has the chance to say what he or she wants to say without fear in front of everybody. Anybody can ask questions and get answers."²⁹⁵

This process in which members of the community are allowed to participate has been criticised, according to the South Africa Law Commission.

"It has been stated that the inquisitorial procedure whereby the chief and his councillors question a party to proceedings in traditional courts, amounts to a presumption of guilt against a person accused of an offence before a traditional court and that such accused had to convince the court of his or her innocence. Thus it is said that the right to silence,

²⁹⁴ South African Law Commission: "The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders." Discussion Paper 82. Project 90 May 1999.

²⁹⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Israel Bhokinkosi Khuzwayo, administrative secretary to the Nzimakwe Traditional Authority, Nzimakwe traditional court, July 24, 2001.

enshrined in section 35 (3) (h) of the Constitution, is unknown in customary law and that a person unable to clearly articulate his or her position may prejudice his or her case.”²⁹⁶

However, traditional leaders generally disagree. Amakhosi attending a focus group held in September 2001 said that there is freedom of speech and democracy in traditional courts. They said that everybody, including women, are given the chance to say their views until the truth comes out. Some traditional leaders said that the participation from the women was the result of men discussing issues with their wives before attending the court hearings.²⁹⁷

However, the Law Commission report also points out that the procedure of allowing everybody to speak does not amount to a presumption of guilt.

“The questioning is aimed at seeking simple truth and is not as rigorous and intimidating as cross-examination by legal practitioners in regular courts.”²⁹⁸

While Khuzwayo says that he writes down everything that is said for the court record, not all records are kept in the same manner as those in the Nzimakwe Traditional Court. The Law Commission report questions whether traditional courts should be made courts of record because the requirement may be unrealistic given the level of education in most traditional courts. The report recommends that para-legals be retained in traditional courts, a procedure that would also assist in recording systems.²⁹⁹

Any party that is not satisfied with the judgement passed down by an inkosi may appeal to the office of the magistrate. Subsequent appeals may be made to the high courts and to the Supreme Court of Appeal.

5.2. Cases handled by traditional courts

Traditional courts preside over cases that are usually regarded as being relatively minor, but may relate to criminal or civil matters. Magistrate John Percievar Mgobhozi from the Ndwedwe Magistrates’ Court says that most of the cases dealt with by traditional courts are “civil cases arising from the daily interaction of the community”. Many have to do with pregnancies of young girls.

“You know if a girl has been impregnated, the boy has to pay for seducing the girl, until he pays lobola. If he is not prepared to marry her then the case goes to the inkosi and it is dealt with traditionally and in most cases he is made to pay a fine called ngezamuzi.”³⁰⁰

He says that cases dealt with by the customary courts include the theft of stock, particularly chickens and goats (the theft of cattle is usually referred to Magistrates’ courts), claims for damages to crops as a result of trespassing stock and common assault.

Khuzwayo says that the Nzimakwe Traditional Court deals with community problems and conflict that is usually concerned with land disputes and livestock.

“Our courts are not allowed to deal with cases that concern rape and murder, those big cases. Although we deal with fighting, if it is GBH [assault with intent to do grievous bodily harm] we call the police. The same as stealing – if it involves a lot of money we bring the police in, especially if it involves armed robbery.”³⁰¹

²⁹⁶ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 4.

²⁹⁷ Focus group facilitated by Jerome Dube in Port Shepstone, September 17, 2001.

²⁹⁸ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 34.

²⁹⁹ *ibid* p 15.

³⁰⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Magistrate John Percievar Mgobhozi, Ndwedwe Magistrates’ Court, October 18, 2001.

³⁰¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Israel Bhokinkosi Khuzwayo, administrative secretary to the Nzimakwe Traditional Authority, Nzimakwe traditional court, July 24, 2001.

However, there are discrepancies in the types of cases handled by different courts. This is exacerbated by the absence of clear-cut rules and regulations that are updated regularly. The South African Law Commission report states that it is common for amakhosi and headmen to exceed their jurisdiction in terms of which offences can be tried by their courts.³⁰²

Nevertheless, it appears from a brief examination of traditional courts that most comply with an addition to the Black Administration Act that lists offences that may not be tried by a traditional leader. The list includes: treason, public violence, sedition, murder, culpable homicide, rape, robbery, assault with intent to do grievous bodily harm, assault with intent to commit murder, rape or robbery, indecent assault, arson, bigamy, *crimen injuria*, abduction, bestiality, bribery, fraud, perjury, incest, extortion, and defeating or obstructing the course of justice.

Traditional courts in most cases do not preside over cases involving the use of weapons and are dealing with fewer and fewer divorce cases since couples are increasingly being married in magistrates' courts, according to Khehla Shubane and Louise Stack. They also found that there had been a change with regard to cases of witchcraft that were dealt with in terms of customary law and that this had had repercussions.

“The authority of tribal courts in cases involving alleged witchcraft is also being eroded, for two reasons. Firstly, under the old customary law, tribal courts referred these cases to sangomas, who were charged with establishing the facts, and determining whether an accused person was indeed a witch or not. But tribal courts are no longer permitted to do so. As a result, they cannot deal with these cases, as evidence of witchcraft is not readily available to civil courtrooms. When people suspect a person of being a witch, they now take the law into their own hands and either have the person killed or drive him or her out of the village. This situation is aggravated by the fact that cases of witchcraft cannot be heard by magistrates' courts, as these courts do not recognise its existence or reality.”³⁰³

The Law Commission advises that monitoring is vital, as are regular reminders to traditional leaders as to the scope of their jurisdiction. In addition, a regular review of the list of scheduled offences is recommended.³⁰⁴

5.3. Sentences in traditional courts

Although traditional courts are largely concerned with reconciling the disputing parties and restoring harmony in the community, compensation and restitution can be awarded. An apology may be ordered where no actual damage or injury is suffered but fines are also a common punishment.³⁰⁵

Khuzwayo says that in the Nzimakwe court, there are two types of fines that may be ordered.

“The first is the damages that are paid to the claimant by the accused if he or she loses the case. The second payment is the fine that is imposed as a sentence on the accused. This is paid to the court and the court issues a receipt. Such funds are sent to the revenue services.”³⁰⁶

The Law Commission's discussion paper states that under the Black Administration Act, a traditional court was empowered to sentence an offender to a fine of R50 or less, two head of large stock or 10 head of small stock. The more recent KwaZulu Amakhosi and Iziphakanyiswa Act of 1990 stipulates that the maximum fine is R1000 or one head of large stock. The Law Commission report states:

³⁰² South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 28.

³⁰³ Khehla Shubane and Louise Stack: “Tribal chiefs should be trained in modern dispute resolution.” *Synopsis* newsletter of the Centre for Policy Studies governance programme, December 1996.

³⁰⁴ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 29.

³⁰⁵ *ibid* p 27.

³⁰⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Israel Bhekinkosi Khuzwayo, administrative secretary to the Nzimakwe Traditional Authority, Nzimakwe traditional court, July 24, 2001.

“If traditional courts are going to be allowed to keep criminal jurisdiction the maximum limit for fines could be raised from R50 to at least R500. Payment of fines in the form of livestock is convenient for the rural poor but should be re-evaluated regularly.”³⁰⁷

However, while fining remains the most prevalent punishment, some argue that many fines are, in fact, never paid. Shubane and Stack write that people are given up to three months to pay a fine. If they do not, the records of the case are transferred to the local magistrates’ court. There they may remain indefinitely without the matter being resolved.

“As fining is the tribal courts’ only means of asserting their authority, and as they have no further powers to ensure that the fines are paid, their powers are largely ineffectual, apart from informing the community of who has done what to whom among them.”³⁰⁸

Traditional leaders attending a focus group in Port Shepstone said that amakhosi can be asked to reconsider the fine if it is more than the offender can afford. They also said that people do pay fines as a sign of respect and agreement and that it is compulsory to pay the fines, even if they are paid in monthly installments.³⁰⁹

However, according to the *Synopsis* report, amakhosi have speculated that poverty and high unemployment could be among the reasons for non-payment of fines, but traditional leaders “acknowledge that there is also a non-compliance or reluctance to recognise tribal authority, a kind of rural rates boycott, it would seem.”³¹⁰

Another punishment that could in the past be ordered by the traditional council was corporal punishment. This would be inflicted on “unmarried males under the apparent age of 30”, according to the Law Commission. The commission’s report on traditional courts warns that amakhosi should be alerted that a sentence of corporal punishment is now contrary to the law. Among the forms of punishment that traditional courts are prohibited from imposing include death, mutilation, grievous bodily harm and imprisonment, according to the Law Commission’s report on traditional courts.³¹¹

A serious concern of the project leader behind the South African Law Commission report on traditional courts related to mob justice and vigilantism. Professor Thandabantu Nhlapo has emphasised that if traditional courts are to remain in place they will not be used as a forum for mob justice and vigilantism. According to a report in the *Independent on Saturday* he said that the Commission wanted to see laws governing these courts and checks and balances put into place to prevent them from degenerating into ‘kangaroo courts’.³¹²

5.4. Traditional courts in the context of the justice system

Historically, the magistrate in the magisterial district in which traditional court operates had a close relationship with the inkosi because amakhosi were working under magistrates. Mgobhozi of the Ndwedwe Magistrates’ Court says:

“It was prescribed that the magistrate must visit the traditional courts regularly so as to look into the way they ran their finances, and the way they maintained their books.”³¹³

³⁰⁷ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 31.

³⁰⁸ Khehla Shubane and Louise Stack: “Tribal chiefs should be trained in modern dispute resolution.” *Synopsis* newsletter of the Centre for Policy Studies governance programme, December 1996.

³⁰⁹ Focus group facilitated by Jerome Dube in Port Shepstone, September 17, 2001.

³¹⁰ Khehla Shubane and Louise Stack: “Tribal chiefs should be trained in modern dispute resolution.” *Synopsis* newsletter of the Centre for Policy Studies governance programme, December 1996.

³¹¹ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 32.

³¹² Melanie Peters: “Affordable justice...or jungle law? They’re not perfect, but our traditional courts may offer some solutions.” *The Independent on Saturday* July 3, 1999.

³¹³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Magistrate John Percievar Mgobhozi, Ndwedwe Magistrates’ Court, October 18, 2001.

Although these magistrates worked closely with amakhosi, they were from the 11 justice departments that served South Africa prior to the 1994 general election. In a number of ways, each had its own operating procedures. In the area that is now the province of KwaZulu-Natal, there were three pieces of legislation that governed the traditional courts: The Black Local Authorities Act, the Code of Zulu Law and the KwaZulu-Natal Amakhosi and Iziphakanyiswa Act of 1990.

The change occurred in 1994 when one justice department was formed, according to Bridget Shabalala of the KwaZulu-Natal Department of Justice. Initially traditional courts were not accommodated within the single department. However, legal status, with criminal and civil jurisdiction, was subsequently granted first to President of the Congress of Traditional Leaders and member of parliament Inkosi Phathekile Holomisa enabling him to run his own traditional court. Other amakhosi were subsequently conferred with the same powers. As a result they were able to run their own traditional courts.³¹⁴

Inkosi Holomisa suggests that the documents for the other traditional leaders were still to be processed. He says that there has also been confusion on the part of government regarding how traditional leaders should be dealt with.³¹⁵

The traditional courts initially fell under the authority of the Department of Justice, but were subsequently placed under the jurisdiction of the Department of Local Government and Traditional Affairs.

Mgobhozi says that since 1994 the magistrate and amakhosi have increasingly had a fairly distant relationship in many areas resulting in a lack of authority exerted by magistrates over amakhosi.

“There was no directive that was issued from above to the effect that magistrates must stop working with amakhosi. No, it was not like that. What happened was that in principle that control just faded away. For example, now there are no visitations and the magistrate does not even attend their bimonthly regional authority meetings except when requested.”³¹⁶

Another Ndwedwe magistrate Siyabonga Ngongoma says that a more distant relationship may be necessary between amakhosi and magistrates because an appeal will be directed to the Magistrates’ Court. He says that some magistrates also provide advice for traditional leaders when requested.

“In order to maintain independence there is no daily formal communication between the two. This is also meant to avoid influencing each other’s opinions on matters at hand in case there is an appeal. The communication that does exist is on court procedure and points of law, especially by a magistrate who is a professional. The inkosi in most cases does not have a legal background.”³¹⁷

Shabalala says that the issue of traditional courts and their relationship with the Department of Justice has been raised on several occasions. In a recent meeting of the National Parliamentary Monitoring Group for Justice, clarity was sought regarding traditional courts. Although the Minister of Justice responded by saying that his department no longer had jurisdiction over the traditional courts, the assistance of the department in offering training, if requested, was offered. The issue was also raised at a justice colloquium held in Pretoria with the aim of looking at restructuring within the department. Concern was recorded at the lack of policy regarding the traditional courts.³¹⁸

Journalist Melanie Peters suggests that there is a relatively close relationship between traditional courts and magistrates’ courts because the former reduce substantially the potential workload of the latter.

³¹⁴ Interview conducted by Jenni Irish with Bridget Shabalala, KwaZulu-Natal Justice Department, Durban, July 19, 2001.

³¹⁵ Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

³¹⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Magistrate John Percievar Mgobhozi, Ndwedwe Magistrates’ Court, October 18, 2001.

³¹⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Magistrate Siyabonga Ngongoma, Ndwedwe Magistrates’ Court October 18, 2001.

³¹⁸ Interview conducted by Jenni Irish with Bridget Shabalala, KwaZulu-Natal Justice Department, Durban, July 19, 2001.

“If all the cases heard in traditional courts were to be heard by magistrates, the country’s court system would grind to a halt.”³¹⁹

Similarly, African National Congress member of parliament Yunus Carrim says that customary courts play a very important role because they can relieve non-customary courts.

“There are many cases that don’t have to go to the state courts but can be dealt with by traditional courts. In many cases these courts can be more just in dealing with these disputes because they apply the values of the local communities, but ultimately of course, these values cannot be inconsistent with those of the other courts that are entrenched in the Constitution.”³²⁰

Traditional courts may also be in a position to play a role in cases where magistrates’ courts are considered to have failed victims, according to Christiaan Keulder. He states that modern legal and policing structures are often underdeveloped in rural areas and are inefficient and far removed from local communities.

“Perhaps the biggest disadvantage of the modern legal system compared with the customary system, is that it makes very little (in some cases no) provision for victim compensation. Theft, especially stock theft, often leaves the victim impoverished, as the state receives the compensation (in case of a fine).”³²¹

The role of dispute resolution courts that have been formed recently also need to be considered in terms of their relationship with traditional courts. It is likely that the traditional courts are playing a similar role to that envisaged for the dispute resolution courts.

The White Paper on Local Government released in March 1998 seems to incorporate this view although uses the term community law courts, referring to the structure that the Department of Justice had indicated its intention to establish. The paper states:

“These courts will take cognisance of the advantages of customary law courts such as the fact that they are cheap, speedy, informal, conciliatory and accessible. Traditional leadership will enjoy special recognition in the new community law courts which will operate in rural areas.”³²²

Inkosi Holomisa has called for what some may regard as a far more radical change. He suggests that amakhosi should be able to handle “petty disputes” that “waste the time of the magistrates’ court”. He calls on government to empower traditional courts in the same way as the magistrates’ courts.

“At the moment people always run to the Magistrates’ courts after they have been tried by these courts, get lawyers for the matter to be heard again, which is an absolute waste of time.”³²³

5.5. Traditional courts in the context of the Constitution

A significant debate around the traditional courts is concerned with whether they are recognised by the Constitution. The South African Law Commission report on traditional courts states that the

³¹⁹ Melanie Peters: “Affordable justice...or jungle law? They’re not perfect, but our traditional courts may offer some solutions.” *The Independent on Saturday* July 3, 1999.

³²⁰ Interview conducted by Chiara Carter with Yunus Carrim, African National Congress member of parliament Cape Town October 2001.

³²¹ Christiaan Keulder: “Traditional leaders and local government in Africa: lessons for South Africa.” HSRC Pretoria. 1998: p 321.

³²² Ministry for Provincial Affairs and Constitutional Development’s “White Paper on Local Government”, March 1998, p 76.

³²³ Lungile Madywabe: “Not a traditional curio.” An interview with Inkosi Phathekile Holomisa, *Land and Rural Digest* May/June 1999.

constitutional court has confirmed that section 166 (e) of the Constitution which refers to “any other court established or recognised in terms of an Act of Parliament” accords recognition to traditional courts via the Black Administration Act. Schedule 6 of the Constitution, which deals with transitional arrangements, states that “every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it...subject to – (a) any amendment or repeal of that legislation; and (b) consistency with the new Constitution”.³²⁴

The Congress of Traditional Leaders of South Africa, however, has called for traditional courts to be specifically entrenched in the Constitution. In its objection to the certification of the 1996 Constitution, Contralesa stated:

“The chapter dealing with courts does not make provision for customary courts that have been in existence from time immemorial. We are of the view that these courts like other courts of the land should be recognised in the constitution.”³²⁵

The Law Commission emphasises in a report on succession that certain principles are clear in the Constitution.

“First, although legislation must continue to respect the African legal heritage, a right to culture and thus customary law is subordinate to the right to equal treatment. Secondly, discrimination on any one of the proscribed grounds laid down in s 9(3) – age, sex, gender or birth – is prohibited, even if the discrimination occurs within the family and is permitted by private law. Hence to the extent that rules of customary law conform to the principle of equal treatment, they can be supported, but wherever customary law discriminates unfairly it must be amended.”³²⁶

Another factor relates to the Constitutional provisions relating to legal representation. Legal representation is prohibited in customary courts and some will argue that it is rightly so. The Law Commission states in its report on traditional courts that litigants in customary courts are often poor and cannot afford legal fees and that the cases are usually not complicated. The report states that legal representatives often use legal jargon, which is likely to confuse a court of lay persons and that they tend to “dwell on technicalities of law and procedure that cause delays”. The report also points out that lawyers may not speak or understand the local language of the community which would require translation which brings with it the possible risk of distortion and additional cost.

The Law Commission report considers the Constitution, which contains a limitation on the right to counsel and makes the following judgement:

“In conclusion, taking all the factors into consideration, the balancing of the right of the individual to legal representation against the interests of an unrepresented party and the general interests of simplicity, informality at the lowest level of the administration of justice would seem to tilt in favour of exclusion of legal representation in a way that is justifiable...”³²⁷

Pheko says that customary courts should be entrenched in the Constitution. The Constitution is supposed to be that of an African country and must reflect the culture of the African people, he says. If the two sets of law are in conflict there must be something wrong with the Constitution, according to Pheko.³²⁸

³²⁴ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 6 and Constitution of the Republic of South Africa 1996.

³²⁵ in South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 7.

³²⁶ South African Law Commission: “Customary law: succession.” Discussion Paper 93. Project 90 August 2000 p 11.

³²⁷ South African Law Commission: “The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders.” Discussion Paper 82. Project 90 May 1999 p 39-40.

³²⁸ Interview conducted by Chiara Carter with Dr Motseko Pheko, Pan Africanist Congress Deputy President and member of parliament, Cape Town, October 2001.

Inkosi Holomisa questions why customary courts are not entrenched. He says that the system that is entrenched is foreign. But Inkosi Holomisa goes further and suggests that customary courts be extended to the cities.

“We have received many requests from people in townships to become involved in their lives because the other systems of justice are failing them. It is very expensive to use these foreign courts with people needing to hire lawyers. We have a system where people are tried by their peers.”³²⁹

5.6. Abuse and corruption

Reports of abuse and corruption in traditional courts are not unheard of. Chris Tapscott describes the corruption and abuse of power as “extensive” and states that amakhosi, in their role as chair of the traditional councils, were afforded the means for personal gain through bribery and had the ability to extend or withhold favourable judgement.

“More pointedly still, chiefs could ensure that certain cases brought for litigation were rejected, or in alternative cases, that comparatively harsh sentences were conferred for relatively minor offences. The implications of this practice were significant; individuals who challenged the actions of the chief or his court might find that as plaintiffs, it was impossible for them to institute proceedings in the tribal authority courts, or alternatively, if defendants, that excessive sentences were meted out to them. Theoretically, the judgements of the chief had to be ratified by his councillors, but it was generally recognised that these officials were largely appointed by the chief himself and lacked the autonomy of the pre-colonial councils of elders.”³³⁰

Similarly, Keulder writes that customary law can be used as an instrument of oppression.

“The coercive side of customary law was strengthened during colonial (or minority) rule as part of the policy of indirect rule. Much of this is still evident in the institution today, partly because of the politicisation of the institution.”³³¹

5.7. Customary law and gender

Much criticism is leveled at traditional courts for their exclusion of women in much, if not all of, the dispute resolution process. Women are usually not allowed to preside over the court or even participate in the proceedings. There are a few exceptions where women are allowed to appear as litigants in which case men assist them. Gender issues as they relate to customary law are considered further in section 7 on gender. However, it must be emphasised here that factors relating to gender need to be seriously considered. Thought should be given to whether traditional courts should have jurisdiction over matters relating to the status of children and women and what realistic alternatives there are.

5.8. Conclusion

In addition to questions relating to gender, a number of issues relating to customary courts could well form further research.

The Law Commission, for example, states in its report on traditional courts that Swaziland and Botswana have set up a traditional courts’ secretariat to ensure the smooth running of traditional courts. The functions of the secretariat include the supervising of traditional courts, dealing with complaints,

³²⁹ Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

³³⁰ Chris Tapscott: “The institutionalisation of rural local government in post-apartheid South Africa.” In *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation October 1996 p 296.

³³¹ Christiaan Keulder: “Traditional leaders and local government in Africa: lessons for South Africa.” HSRC Pretoria. 1998: p 321.

channeling reviews, overseeing the budget and conditions of service of the courts and regulating and protecting the traditional courts.³³² Widespread research should also be conducted into the procedures of customary courts to determine the difficulties experienced and to examine issues relating to the traditional law in the context of the Constitution.

The training and appointment of para-legals is also recommended as a way of improving traditional courts. Training could include customary law, the Bill of Rights and basic elements of procedure and evidence as well as writing summaries of evidence and judgements to be used in appeals or reviews. Additional training proposals include the deployment of law students to rural areas to provide support and impart skills.³³³ Such training should be supported by the Department of Justice to ensure amakhosi understand customary law in the context of the Constitution. This could be through the appointment of training officers who go to the customary courts and provide on the job training with civil and criminal matters.³³⁴

Consideration also needs to be given to the long-term role that customary courts will play in South Africa. This must include their role in light of the establishment of dispute resolution or community courts. It is important to ensure that there is no duplication in the services provided by customary courts and the new facilities established. Where use can be made of facilities that are already in place that should be a priority.

It is essential for customary courts to be brought under the control of the Department of Justice. There is no doubt that such facilities perform a function that falls within the ambit of this department. It would be essential to establish partnerships between the departments of justice and traditional affairs, but the role of the Department of Justice is an essential one in this regard and used in the right context legal expertise can only enhance the traditional courts.

³³² South African Law Commission: "The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders." Discussion Paper 82. Project 90 May 1999.

³³³ Interview conducted by Chiara Carter with Bantu Holomisa, Cape Town, October 2001.

³³⁴ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Magistrate John Percievar Mgobhozi, Ndwedwe Magistrates' Court, October 18, 2001.

6. Gender

Issues relating to gender and traditional leaders have increasingly been questioned, particularly in light of the Bill of Rights in the Constitution which states that no one may be discriminated against on the basis of gender. Gender matters have also been raised increasingly due to discussions around the incorporation of traditional leaders into local government structures and in light of the possibility that traditional leaders may be given additional functions to perform and more powers. The debate is centred on the way in which women are treated by the institution of traditional leadership and whether this treatment is constitutional.

The institution of traditional leadership is considered commonly to exclude women from decision-making positions and to limit their participation at traditional gatherings. This is viewed as being inconsistent with provisions of the Constitution. It needs to be noted though that inequality has more to do with rituals of power that reinforce subservience rather than being treated differently, particularly where women themselves claim to have chosen the roles they perform.

The Constitution states that everyone is equal before the law. Section 9 states:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

No person may unfairly discriminate directly or indirectly against any on one or more grounds in terms of subsection (3) [as above].”³³⁵

Traditional authority is notorious for being in the hands exclusively of men, according to Congress of Traditional Leaders president and member of parliament Inkosi Phathekile Holomisa, but he says that this should not be surprising because societies worldwide are patriarchal, and indeed the formal courts are also dominated by men.

“Our Constitution, however, commits us all to the building up of a non-sexist society. This means that all forms of negative and oppressive practices and customs must be done away with.”³³⁶

And there are some indications of change although these are uneven. For instance, some traditional authorities now elect women as indunas, there are occasional women amakhosi and some women with dependants are getting access to land in their own right.

Sibongile Zungu, however, states that the patriarchal system was not universal but that if traditional leaders are left as they are, the existing patriarchal system will be entrenched.

“Within the Zulu kingdom, Princess Mkabayi ka Jama (King Shaka’s aunt) ran the Zulu state for some time. In the 1990s, women have been appointed to positions of traditional leadership and play a prominent part in tribal development committees.”³³⁷

Broadcaster Thokozane Nene, however, says that ubukhosi does not depend on gender.

“...because, gentlemen, let us be honest, in most cases we discuss issues and then consult our wives, then they give us advice as to how we should have approached the issues. In the following meeting, you find guys very constructive. All the ideas come from their wives.”³³⁸

³³⁵ Constitution of the Republic of South Africa, 1996

³³⁶ Christiaan Keulder: “Traditional leaders and local government in Africa: lessons for South Africa.” HSRC Pretoria. 1998: p 6.

³³⁷ Sibongile Zungu: “Traditional leaders’ capability and disposition for democracy: the example of South Africa.” *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

³³⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Dr Thokozane Nene, broadcaster, Lamontville, October 8, 2001.

Other amakhosi also repeatedly emphasise that even if men attend meetings, the issues are first discussed with wives. Several have said that when men stand up to talk at meetings, they talk not as individuals, but on behalf of their wives.³³⁹ This may be true but the issue is rather what women can do about it if their husbands chose not to canvas and represent their views.

6.1. Women amakhosi and izinduna

Other evidence that the patriarchal system is not universal is suggested by the appointment of women amakhosi in areas of KwaZulu-Natal.

Writing in 1995 Alastair McIntosh, Anne Vaughan and Thokozani Xaba stated:

“Not only have two women amakhosi been appointed in KwaZulu-Natal in the recent past, but there are also instances of certain amakhosi appointing women as traditional councillors on account of specific skills that they have, or of knowledge of community problems, and commitment to addressing them. Women have also been known to play a prominent role in Development Committees which have been established through the traditional authority. What is being suggested here is that traditional authorities are not static institutions whose character will remain frozen over time. Nonetheless, it should be noted that the above examples represent exceptions rather than the rule, and there is some basis for the fear that the more archaic customs and traditions will be reinforced by the positions emerging from the province.”³⁴⁰

At least 11 women amakhosi are now fully recognised by the Department of Traditional Affairs in KwaZulu-Natal and increasing this number is a priority.

One woman traditional leader, Inkosi Nombuso Nzimakwe who is from the South Coast says that women should be given a chance to prove themselves and to show that they have the same potential as men. She told Sicelo Dladla:

“Since coming to power, I have helped my community to build roads, schools, clinics and a training centre which teaches skills such as welding and sewing.”³⁴¹

Inkosi Nzimakwe says that she is respected and valued by male amakhosi and that she is treated as their equal.³⁴² She has the added advantage of being related to King Zwelithini, which has possibly assisted in some regard.

According to a report in the *Daily News*, Inkosi Mzimela from the Zingwenya community near Empangeni chose a mother of eight children, Ntombenkosi Gumede, to be his induna for about 200 residents. The article states that she had been involved in the community since 1989 when she was in charge of cultural education for teenage girls in the area:

“Women of the area selected Mrs Gumede to be responsible for the care of the girls and to teach them how to behave as Zulu maidens. She also had to take the girls to all of the traditional Zulu functions, like UMkhosi WoMhlanga – a [reed] ceremony where the virginity of the girls is tested and where, occasionally, King Goodwill Zwelithini [or the Zulu king of the day] chooses his new young wife. In the same year Mrs Gumede helped the community form a committee to look at the problems encountered by women living in rural areas.”³⁴³

³³⁹ Focus group conducted by Jerome Dube and Edmund Mthuli, Mtubatuba, September 18, 2001.

³⁴⁰ Alastair McIntosh, Anne Vaughan and Thokozani Xaba: “The Rural Local Government Question in KwaZulu-Natal: Stakeholders’ Perspectives.” Institute of Social and Economic Research, University of Durban-Westville. Commissioned by Regional Consultative Forum on Rural Development February 1995, pp 34-35.

³⁴¹ Sicelo Dladla: “Woman chief proves her worth.” *Natal Witness*, first appeared in *Land and Rural Digest* April 11, 2000.

³⁴² Focus group facilitated by Edmund Mthuli in Port Shepstone, September 17, 2001.

³⁴³ Eric Ndiyane: “Female induna makes history: tradition redefined in KwaZulu-Natal.” *Daily News* Date unknown.

Gumede was elected as a councillor that same year. Three years later, when Inkosi Mzimela felt that the induna was not performing his duties effectively, he told the community that Gumede would take over in an acting capacity. Seven years later she was officially inaugurated. However, it has not been an easy time, according to the article:

“Mrs Gumede said that when she first took over as an Induna there was a big problem dealing with men who were very reluctant to accept a woman as their headmen. ‘It took a long time for me to convince the rural men that what I do is more important than who I am, but later they appreciated my position because I worked very hard to develop my area.’”³⁴⁴

Gumede was reported as saying that it was a great honour to be an induna, but that she would double her efforts to improve her community. She said that her biggest achievement had been to arrange for running water taps to be erected in people’s yards.³⁴⁵

In addition to their appointments as izinduna – who the community approaches first in the chain of command to amakhosi – women are also often appointed as secretaries to the traditional authority. Such positions are also significant because the traditional secretary is an important point of contact for an inkosi and induna.

However, University of Zululand head of department Professor Thabo Sabela says that women amakhosi such as Inkosi Nzimakwe are not “genuinely traditional leaders” because they are standing in until their sons grow up. But he says that the issue is far more complicated than it may seem. Sabela says that even in “great democracies like America” one finds that perhaps only a quarter of the government is made up of women. He says that even the likes of the national Minister of Foreign Affairs Nkosazana Dlamini-Zuma believe that there is not a problem relating to gender and the institution of traditional leaders.

“Yes, a few with urban backgrounds grumble, but the majority in the rural areas agree that the system of ubukhosi must remain patriarchal. But again, I think we need to teach amakhosi themselves so that the debate comes from within their midst because if we start from outside and argue with them that they are undemocratic, when they in actual fact don’t understand democracy we might have problems.”³⁴⁶

Inkosi Holomisa says that women can be elected as sub-headmen because it is not a hereditary position. Already some women are being elected, he says, but not extensively throughout South Africa.

“In my own area when I came to office, I went around the villages telling people there is now going to be a new council and I would like you to elect women as well, but not one woman was elected. My mother is the only one. She is an acting headman. The women simply failed or refused to take up responsibilities. It would be good for the community for them to participate in these decision-making forums because they are the ones who are there all the time and the men tend to be in the cities earning a living. The women are the ones who know about bread and butter issues.”³⁴⁷

Virginity testing, which has been revived in KwaZulu-Natal in recent years, has become a topic for fierce debate. Some people and organisations argue that the practice is part of the protection of cultural rights of people. Others say that it is a form of abuse against young women. The Human Rights Commission has argued that there is the potential for many rights to be violated through this practice, such as the right to equality on the basis of gender and not to be discriminated against on the basis of sex or marital status, and the rights to dignity and freedom and security of the person.

³⁴⁴ *ibid.*

³⁴⁵ *ibid.*

³⁴⁶ Interview conducted by Jerome Dube with Professor Thabo Sabela, University of Zululand, August 23, 2001.

³⁴⁷ Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

6.2. Women and succession

The gender considerations around succession involve discussion around whether daughters of amakhosi should succeed their fathers in place of the male line of succession. However, this leads to debate over what would happen to the family name if the daughter who had been appointed inkosi then got married.

Induna and member of the KwaZulu-Natal legislature David Ntombela says that it is difficult to give women full control of ubukhosi because of the issues raised by succession.

“If a daughter takes ubukhosi, it will create problems when she goes out to get married to another family. It won’t be acceptable in the Zulu culture for her to inherit ubukhosi and then take it with her to another house. Ubukhosi is given to the first born son of the chosen house and remains in that line. Everybody knows and accepts it... So the institution can be flexible to the extent that the female can be honorary, but ubukhosi always remain in that line of the ‘wife paid for by the Nation’. So in the foreseeable future I don’t see that changing.”³⁴⁸

Traditional leaders at a focus group in Port Shepstone said that a woman may take over her husband’s role as inkosi when her husband dies and the inkosi’s heir is too young to take over. In this case the son would take over when he is old enough. A woman at times takes over temporarily when inkosi is sick. They said that the daughter of an inkosi can only be appointed if she agrees that she will not have children and that she will not get married.³⁴⁹

While some people argue that problems will emerge if a woman is appointed inkosi and then wants to get married, others say that men and women have different qualities and characters. Inkosi Joseph Jiyane, for example, of Babanango says:

“...it is a taxing task to work as an induna or inkosi because the job is difficult in the sense that you work with people. And when you work with people, you meet a lot of different and difficult characters and that is why we prefer to use men.”³⁵⁰

Some respondents to a survey carried out by Independent Projects Trust gave similar responses. A 22 year old man from Vumukwenza said that women should not be appointed as amakhosi.

“...because most of the women are lazy and stubborn. They don’t do their job properly and a woman can hardly stand at her point or proposal (sic) during the meeting with other amakhosi.”³⁵¹

Similarly, a 51 year old man said that some women are afraid to stand in front of the community and tell them what she wants and a 22 year old man said women “are not that brave to act against males”. A 38 year old man from Embo said that even in the Bible God created males to be superior to females. Several respondents, however, said that women could be appointed amakhosi. A 23 year old woman from Nene said that women are capable of doing exactly the same job as a male traditional leader. A Vumukwenza traditional authority resident aged 29 said that women could be appointed and simply wrote the words ‘gender equality’ on his questionnaire.³⁵²

The issue of succession is also made more difficult because traditionally the issue is not supposed to be discussed until the reigning king or inkosi is dead.

Sicelo Dladla writes:

³⁴⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

³⁴⁹ Focus group facilitated by Edmund Mthuli in Port Shepstone, September 17, 2001.

³⁵⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Joseph Jiyane, Jama Traditional Court, May 16, 2001.

³⁵¹ Survey research carried out by Independent Projects Trust in Vumukwenza, September 8, 2001.

³⁵² Survey research carried out by Independent Projects Trust in Vumukwenza on September, 8 2001 and Embo and Nene on September 7, 2001.

“The death of a chief is a crisis which needs urgent attention to fill the vacuum. But because people who are asked to act on behalf of the young heir usually refuse to relinquish power when their heir is old enough to lead his people, communities are beginning to appoint a wife of a chief to take over.”³⁵³

The South African Law Commission’s discussion paper on succession states that representatives of the Department of Justice were adamant that it was unacceptable to apply a system in which women were routinely barred from inheriting property. The report states that the Houses of Traditional Leaders, however, warned against any attempt to ‘westernise’ the customary law of succession. The issue of succession has raised so many difficulties that a piece of legislation, the Customary Law of Succession Amendment Bill of 1998 was sent back to the Law Commission after being submitted to parliament. The Law Commission report states:

“The Bill met a hostile reaction from traditional leaders, notably those of the Eastern Cape House, who were scathing in their criticism of terms of the Bill and the lack of consultation preceding it. Arguing that laws of succession were inextricably linked with the African concept of family and kinship, the House in a written submission declared itself ‘fundamentally opposed to the Eurocentric approach which is prevalent in (our) country’ and decried the extension of Roman-Dutch law principles to customary law.”³⁵⁴

The discussion document states that in the past, although women could not inherit their husband’s estate, they could expect a “lifetime of support and protection within the generous embrace of an extended family. However, the report states:

“With the decay of the extended family system, however, a weakening of the support obligations owed to women and children becomes inevitable. At the same time, the economic emancipation of women results in wives acting as breadwinners, managing households on their own and playing (voluntarily or otherwise) most of the roles associated with men. None of these changes is apparent in the rules of succession...”³⁵⁵

The South African Law Commission in 2001 continued to drive the process to promulgate the Amendment to the Customary Law of Succession Bill. According to the Provincial Parliamentary Programme, the Bill focused on changing the order of succession in order to provide support for the basic needs of the surviving partner and immediate dependents of the deceased; ensuring that a spouse of the deceased in a customary marriage is allowed to take over the property that belonged to his or her spouse; ensuring that in a case where the deceased had more than one wife by custom, all the surviving wives share equally in his estate; and ensuring that the deceased’s children, irrespective of age and sex, also benefit equally. In finalising the amendment for a second time, the Law Commission was seeking input on its proposals during consultation workshops in all of South Africa’s nine provinces. The KwaZulu-Natal workshop was scheduled to take place at the end of November 2001.

6.3. Women and customary law

Much criticism is leveled at traditional courts for their exclusion of women in the dispute resolution process. Women are seldom allowed to preside over the court or even participate in the proceedings and, in the few situations where they are allowed to appear as litigants, men have to assist them.

A report published by the South African Press Association mentions case studies uncovered by a report compiled by the Centre for Applied Legal Studies, the Commission on Gender Equality and the

³⁵³ Sicelo Dladla: “Woman chief proves her worth.” *Natal Witness*, first appeared in *Land and Rural Digest* April 11, 2000.

³⁵⁴ South African Law Commission: “Customary law: succession.” Discussion Paper 93. Project 90 August 2000 p x-xi.

³⁵⁵ *ibid* pp 24-25.

National Land Committee. The report was presented as a response to the Law Commission's document on traditional courts. The research officer of the report, Constance Yose described traditional justice as highly patriarchal and that women and children were regarded as property "and their abuse is often not even regarded as a crime – unless it results in damaged goods and the family patriarch seeks compensation". Yose said that women and children could not expect justice from traditional law. The report describes two stories that represent cases studies that were uncovered during the research.

"Sibongile Mtiyane was terrified of her husband – he would beat her savagely for no apparent reason. The young woman took her fears to the local tribal court – a traditional court presided over by elders and councillors. No other women were allowed in the courtroom and she had to kneel on the ground before the elders and a large audience while her younger brother presented her case. The entirely male gathering argued the merits of her complaint and then told her that she must go back to her husband and endeavour to be a better wife. She did so and he killed her."

"Dorah Ngubane took a land dispute to a tribal court – her deceased husband's brother was claiming all her property. This time the gathering was near the chief's kraal in her village and she was not even allowed near the proceedings. The kraal is regarded as the gathering place of the ancestors and as a woman, she is unclean. So she asked her cousin to represent her. However, her cousin had been bribed by her brother-in-law and he presented her case so badly that it was immediately dismissed."³⁵⁶

These are tragic stories but it would not be legitimate to draw the inference that the treatment of women is a problem specific to traditional justice systems. The formal justice and policing system also have a long way to go before they treat issues such as rape, child and spousal abuse and child maintenance in ways that truly meet women's needs.

The South African Law Commission states in a discussion paper published in 1999 that there appears to be no reason for women amakhosi not to be appointed to the councils of traditional courts in their own right. However, the document states that traditional leaders on the ground oppose this view because it is contrary to their culture, which is protected by other provisions of the Constitution.³⁵⁷

Factors relating to gender need to be seriously considered and consideration could be given to whether traditional courts should have jurisdiction over matters relating to the status of children and women. According to the Law Commission report, Zimbabwe has excluded from the jurisdiction of customary law courts matters where women are likely to be prejudiced by the patriarchal attitudes of the male dominated traditional courts. Such matters include claims to maintenance, custody or guardianship of minor children, dissolution of marriage and interpretation, validity and effect of wills.³⁵⁸

6.4. Women and land

The debate around women and land in traditional areas centres around the right of women to have individual land rights that are not contingent on marital status.

At present women living in traditional areas are not generally allocated land, according to Vaughan and McIntosh.

"Men are, however, obligated by custom to allocate their wives enough land to farm. In the event that husband and wife become separated or divorced, the husband is still obligated to maintain such provision for his estranged or former wife. Even though access to land is almost always mediated through men, women can, and do become independent producers of both subsistence and commercial crops under traditional systems. Women

³⁵⁶ South African Press Association: "Jacking up the tribal courts." *Natal Witness* August 9, 2000.

³⁵⁷ South African Law Commission: "The harmonisation of the common law and the indigenous law: traditional courts and the judicial function of traditional leaders." Discussion Paper 82. Project 90 May 1999.

³⁵⁸ *ibid.*

can, and do, operate independent farmer enterprises. Of course, where land holdings are very small indeed, there is little scope for intra-household allocation of this kind.”³⁵⁹

However, Vaughan and McIntosh warn that proposals regarding such change should be seriously considered because they may have detrimental consequences for the very women who are expected to benefit. This is largely because it is likely that customary rights within the traditional authorities’ system would be eroded.

“Some women might have less access to land than they do now if rights were to be formally and legally entrenched. Men might be less willing to make traditional allocations to their wives, and, furthermore, the possibilities for flexible arrangements within households would be undermined. This is not to argue for the perpetuation of traditional systems within which women have only mediated access to land. It is, however, to draw attention to the fact that a shift from traditional systems to systems founded on inalienable individual rights entrenched in law will have costs and benefits for rural women, as it will for all rural people.”³⁶⁰

United Democratic Movement leader Bantu Holomisa says that land access for women in traditional authority areas is no longer an issue in the Eastern Cape. He says that “the time when a woman was dependent on a man to sustain her is over”, and that women who have children but not a husband sustain themselves and must be given land.³⁶¹

Similarly, Inkosi Phathekile Holomisa says that land belongs to a traditional community and is used for their benefit. It must be established that people need land, because they have dependents who need to be fed from the produce of the soil, before they will be given any.

“Therefore normally it is the man who would apply for a piece of land because he is the breadwinner because there is his family to feed and clothe and maintain. In the event that a woman is not married, but has dependents, she is equally entitled to get a piece of land so she can look after them.”³⁶²

However, Inkosi Holomisa says that where a widow is supposed to have been provided for by her husband’s brother or elder sons there have been cases where she has been abused.

6.5. Conclusion

While the Department of Traditional Affairs has conducted training for all amakhosi, provincial minister of Traditional Affairs Inkosi Nyanga Ngubane said special attention has been given to women amakhosi in order to identify supportive mechanisms. This is in an effort to ensure that the same respect is afforded to them as to their male counterparts. The provincial minister’s department has also completed the formulation of draft legislation that is due to be circulated shortly. Among other issues, it addresses the role of women in traditional leadership. The Minister reports that this will result in changes to existing legislation and policies that hindered women from effective participation in the traditional system.³⁶³

Inkosi Holomisa has argued that in an effort to build up a non-sexist society, certain measures could be considered:

³⁵⁹ Anne Vaughan and Alastair McIntosh: “The role of traditional leaders in land development.” Paper prepared for the National Development and Planning Commission October 9, 1998.

³⁶⁰ Alastair McIntosh, Sipho Sibanda, Anne Vaughan and Thokozani Xaba: “Traditional authorities and land: The position in KwaZulu-Natal.” Institute for Social Economic Research and Association for Rural Advancement May 1995.

³⁶¹ Interview conducted by Chiara Carter with Bantu Holomisa, Cape Town, October 2001.

³⁶² Interview conducted by Chiara Carter with Inkosi Phathekile Holomisa, Cape Town, October 2001.

³⁶³ Budget speech made by Minister of Traditional and Local Government Affairs Inkosi Nyanga Ngubane in the Pietermaritzburg legislature, March 29, 2001.

“When rural local government is established it must be ensured that all elective posts are open to women. In addition, where possible the wives of amakhosi should be allowed to take up chieftancy duties in the event of the incapacitation of the husband or the minority of the heir.”³⁶⁴

Christiaan Keulder, however, argues that such reform would not go far in ensuring that the institution of traditional leaders became more gender sensitive or that women were empowered through and in the institution. In addition he states that greater representation of women amakhosi and izinduna may not automatically lead to policies that are more gender sensitive.³⁶⁵ While this is true, it needs to be noted that gender is not just a problem in traditional authorities and processes to ensure gender equity in these areas will have to be complemented by real changes in other parts of society.

³⁶⁴ Christiaan Keulder: “Traditional leaders and local government in Africa: lessons for South Africa.” HSRC Pretoria. 1998: pp 6-8.

³⁶⁵ *ibid.*

7. Case Studies

This chapter considers two case studies of areas in which the traditional leaders have engaged in very different ways with local government initiatives around development. Both have had a number of successes and offer illumination on how co-operative relationships at local level might be forged for the benefit of people living under traditional authorities.

The first case study is of Khula Village where the traditional leader emerged from an historical land struggle that he led. The brother of the actual inkosi, this man is now acknowledged and called inkosi and has put into effect a blend of modern and traditional instruments to facilitate and enable development in the village. Many commentators note how successful these attempts have been, which include political tolerance.

The second study is also of an unusual situation in that the inkosi's wife was elected to become the new inkosi after he was imprisoned. The new inkosi has successfully mobilised support for herself through the promotion of development in the area under her jurisdiction, a feat noted by most commentators. She also has ensured political tolerance combined with active advocacy work to achieve development investment in her area.

7.1. Khula Village

7.1.1. Introduction

Khula Village is located on the north coast of KwaZulu-Natal about 10 kilometres from St Lucia Wetland Park and 15 kilometres from the town of Mtubatuba. It is situated to the north of the road between St Lucia and Mtubatuba, while the Dukuduku forest is south of the road.

The village is about 3,500 hectares in size and the current population is estimated to be about 18,000. The village is semi-urban in appearance. Residential stands are clearly demarcated and there are areas of the village that are clearly set aside for business activities. The land is extremely fertile and there are several streams going through the village.

Khula Village is divided into two sections. Prosperous residents occupy the main part of Khula. Evidence of this is the more elaborate houses and the highly developed area. The eastern part of Khula Village known as White City is an informal settlement where there are primarily shacks as well as small houses. Many of these structures are made with planks, which are probably off-cuts from nearby saw-mills. Grazing lands extend away from the high school, on the north of the village.

Gravel roads, many of which are in a bad condition due to erosion, link the various parts of the village, but plans are in place to tar at least some roads. There is electricity throughout and water is provided in every house. There are no street lights.

Some shops can be found in the centre of the village and people have opened spaza shops next to their houses. In the centre of the developed part of the village is an administration area, which includes a community development centre or hall which is next to a creche.

Many of the residents of Khula Village work in Mtubatuba or St Lucia, while some are self-employed, primarily doing activities that are supported by tourists visiting the St Lucia area. These include selling crafts, fruit and vegetables along the roadside.

Crime is almost non-existent in Khula Village.

Before the local government elections in December 2000, the village fell under the Uthungulu Regional Council. Amakhosi were represented on the council, taking up 67 of the 334 positions. In addition, four traditional leaders were on the executive committee of 34 members. Amakhosi worked fairly closely with this council.

Since the election, and the accompanying demarcation process that saw the development of different boundaries for local and district councils, Khula Village has fallen under the Mtubatuba municipality (KZ 275).

The area historically belongs to Inkosi Miniyasi Mzondeni Mkhwanazi. However, his brother, Caiphas Mkhwanazi is regarded as inkosi in the village and when people in the village talk about inkosi they are referring to Inkosi Caiphas Mkhwanazi, who is influential in part because he belongs to the royal family. He also has the powers of inkosi, although he recognises his brother as the true traditional leader for the area. Nevertheless Inkosi Caiphas Mkhwanazi established Khula Village and is regarded by the people living in the village as their leader.

Inkosi Caiphas Mkhwanazi is also the ward councillor for the village area on the Mtubatuba council.

7.1.2. Background

Khula Village was only established in 1995. The land on which the village currently exists was taken from the local people by the government through forced removals in the 1960s. The land was subsequently used for commercial forestry. Some of the people who were removed continued to live in the adjacent indigenous Dukuduku forest, which is part of the World Heritage Site that includes St Lucia. They were also joined later by other people who had lived in other areas.

Khula Village elder, Gcinangaye Khumalo says that he returned after many years to re-settle in the Dukuduku forest in 1988 because “the area has for time immemorial been a place where people have always lived until they were forcibly removed by those who colonised us”.³⁶⁶

The decision to move out of Dukuduku by a section of the community was welcomed by conservation authorities in light of the World Heritage Status of the area, which included the forest.

According to Inkosi Caiphas Mkhwanazi, he started to mobilise people in 1988 to fight for their land in the Dukuduku forest.

“People were arrested and by 1992 things had become so bad that negotiations were started. I realised then that the best way to deal with the issue was to use the courts rather than fight in the bush.”³⁶⁷

Inkosi Caiphas Mkhwanazi said that his people took the case to court, but lost.

“The government of the day offered many places including Richards Bay, but I led my people and we refused those offers because we wanted land that historically belonged to the Mkhwanazi clan.”³⁶⁸

An agreement was eventually made between Inkosi Caiphas Mkhwanazi and a government delegation and the people were given 3 727 hectares. About 12 000 residents moved on to the land in 1995 that subsequently became known as Khula Village. The sites in the village were standardised in size at one acre per household. They are not owned by individuals, but rather follow the traditional system of communally owned land. According to a similar traditional custom, anyone requesting to live in Khula Village is required to pay a small settlement fee to a traditional leader. Usually this is not more than a R100, or alternatively the payee may pay with livestock. Inkosi Caiphas Mkhwanazi said that by the time the agreement was reached, the community had already decided that Khula Village should be neither a township nor an area under amakhosi. He said that giving people individual stands and forming a Section 21 company “put the land outside municipal and tribal authority jurisdiction”.

“In short we wanted to continue living our traditional way of life and at the same time lay a foundation for development. As a result Khula Village is neither a township nor an area under amakhosi.”³⁶⁹

The Section 21 company, although not registered at the time of writing, is considered by many people living in Khula Village to be the body that controls the village in terms of development. However, the Mtubatuba council, on which Inkosi Caiphas Mkhwanazi serves, was hoping to meet with the Section 21 company in order to establish how the two structures would work together.

³⁶⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Gcinangaye Khumalo, Khula Village June 7, 2001.

³⁶⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Caiphas Mkhwanazi, Khula Village, June 6, 2001.

³⁶⁸ *ibid.*

³⁶⁹ *ibid.*

7.1.3. Leadership and System of Governance

Inkosi Caiphas Mkhwanazi says that the community has agreed that Khula Village should fall under the authority of *isigungu sakwaMkhwanazi* – the executive committee of the Mkhwanazi Traditional Authority. As far as he is concerned this committee ensures a very high level of consultation with the people who are represented by *isigungu sakwaMkhwanazi*, and with the councillors who bring in development.³⁷⁰

7.1.3.1. The Section 21 company and Inkosi Caiphas Mkhwanazi as leader

The Section 21 company is considered by most people in Khula Village to be the body that is to govern and control the village, as a local council would in other areas. Gcinangaye Khumalo, for example says that Inkosi Caiphas Mkhwanazi advised that the community should set up the Section 21 company “instead of a full municipality or traditional inkosi system”.³⁷¹

The Section 21 company has a board of directors, with Inkosi Caiphas Mkhwanazi as chairman.³⁷²

Deputy mayor of Mtubatuba, Jamaica Mbatha says that some members of the community were concerned that the new system of government that followed the local government elections in December 2000 could create problems between traditional leaders and the modern council structures. As a result they took preventative measures to try and avoid conflict between traditional structures and the council.

“...we strategised that when we get into the council system, it must harmonise ubukhosi system and modern democracy. What we did was to encourage traditional leaders like Msane and [Inkosi Caiphas] CB Mkhwanazi to contest ward elections and they won. This led to a situation whereby traditional leadership and elected councillors became one.”³⁷³

At the time of writing residents felt that it was difficult to say exactly what system was operating in Khula Village. One said that it was difficult to distinguish the traditional structures from the company administering the area because “all the members of the Mkhwanazi family who form the traditional *isigungu* are the same people who are members of the board of directors of the Section 21 company”.³⁷⁴

However, not all residents agreed with the establishment of the Section 21 company, and in some cases, disapproved of the manner in which it was set up. One resident said that it was clear “to some of us who are enlightened” that the Section 21 company was just for public consumption and that the power lay with the Mkhwanazi family in the form of a traditional structure.

It is alleged that Inkosi Caiphas Mkhwanazi initially had a draft deed of a trust documents drawn up that would have enabled the founding of a structure in which “everybody who is a resident of Khula Village had power”, in the words of one resident. The trust would have consisted of five members of Inkosi Caiphas Mkhwanazi’s family, and eight community members. This would have given the elected residents significant control. However, the Section 21 company was motivated instead by Inkosi Caiphas Mkhwanazi’s lawyer, a situation which some say has enabled Inkosi Caiphas Mkhwanazi to manipulate the people of Khula Village “for his family’s selfish benefits”.

“The Mkhwanazi family are now in charge with complete absolute power, unchecked by all the stakeholders including the youth.”³⁷⁵

This system is in direct conflict with the new democratically elected structures, according to one resident. He said:

³⁷⁰ *ibid.*

³⁷¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Gcinangaye Khumalo, Khula Village June 7, 2001.

³⁷² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Caiphas Mkhwanazi, Khula Village, June 6, 2001.

³⁷³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Jamaica Mbatha, deputy mayor of Mtubatuba, high school principal and Inkatha Freedom Party councillor, Mtubatuba June 7, 2001.

³⁷⁴ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with resident of Khula Village who asked to remain anonymous, Khula Village July 2001.

³⁷⁵ *ibid.*

“As long as the situation is like this nobody will enjoy democracy in Khula Village.”³⁷⁶

Gcinangaye Khumalo has great respect for Inkosi Caiphas Mkhwanazi. He says that the true heir - Inkosi Miniyasi Mkhwanazi - abandoned the community that has now settled in Khula Village and eventually settled on land west of Mtubatuba. Inkosi Caiphas Mkhwanazi, on the other hand, led them in the struggle for land.

“We fought under the leadership of Caiphas Mkhwanazi who is now our village leader. Those were tough days with police always fighting us violently. But through CB’s intelligence we fought through the courts using Mr Mchunu as our lawyer.”³⁷⁷

By far the majority of people in Khula Village, if not all, recognise Inkosi Caiphas “CB” Mkhwanazi for the contribution that he has made to the area. Says one resident:

“What is clear is that CB [Inkosi Caiphas] Mkhwanazi is the one who is in charge here. Especially now, he has consolidated his power very well.”³⁷⁸

However, there are also concerns about the amount of power that Inkosi Caiphas Mkhwanazi has. One member of the Khula Village community said that after the formation of the Section 21 company Inkosi Caiphas Mkhwanazi was completely in charge – “nobody can challenge him even legally”.

The resident described the process undertaken to form the Section 21 company:

“There was a meeting of the whole village over the weekend and a lawyer addressed all the residents of Khula Village explaining to them how the Section 21 company is structured and how it is going to operate. The lawyer explained that the village is going to be run by this Section 21 company, which has seven Board of Directors who will be completely in charge and will take all decisions. Of the seven directors, five are already there and they are all members of the Mkhwanazi family, chosen by the family and CB [Inkosi Caiphas] Mkhwanazi is the chairman of the board. The other two board members are going to be elected democratically by the people of Khula Village. But to tell you the truth, we know who those people are because already they are working with the Mkhwanazi family as what we call isigungu.”³⁷⁹

However, the resident said that although some people are “secretly complaining”, the system was working and the majority did not care as long as there was no threat of violence.

Although Inkosi Caiphas Mkhwanazi is currently a ward councillor, it has been suggested that he will resign in order to run the Section 21 company, which will be protected by a Constitution and enable Inkosi Caiphas Mkhwanazi to consolidate his power.

7.1.3.2. Political affiliation

Discussions around local government and the relationship between traditional leaders and municipal structures also raise issues of political affiliation. Inkosi Caiphas Mkhwanazi says that the Inkatha Freedom Party and the African National Congress are the only dominant political organisations in the Khula Village area. Representatives from the two political parties have agreed that “politics is not the end of life”.

³⁷⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with resident of Khula Village who asked to remain anonymous, Khula Village July 2001.

³⁷⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Gcinangaye Khumalo, Khula Village June 7, 2001.

³⁷⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with resident of Khula Village who asked to remain anonymous, Khula Village, July 2001.

³⁷⁹ *ibid.*

“If you want it, it is up to you, but as a resident of Khula Village, you must realise that you have neighbours and that with your neighbours you must realise that your first obligation is to build and develop Khula Village for the next generation.”³⁸⁰

As a result of Inkosi Caiphas Mkhwanazi’s decision to stand by his people when their true traditional leader abandoned them, he is highly regarded. Although he is a member of the Inkatha Freedom Party, he is respected by elected councillors from the African National Congress as well. In fact, Khula Village has one proportional representation candidate from the Inkatha Freedom Party and another from the African National Congress. Inkosi Caiphas Mkhwanazi also emphasises repeatedly that in Khula Village politics comes after development.

Mbatha gives much of the credit to Inkosi Caiphas Mkhwanazi for discouraging the Khula Village community from “provoking those who have different political views”. People listen to Inkosi Caiphas Mkhwanazi because they have learned where they come from that political fighting does not pay. Mbatha says that although he (Mbatha) belongs to the Inkatha Freedom Party and is free to campaign in Khula Village, even people who belong to other political parties listen to Inkosi Caiphas Mkhwanazi because he works hard to co-ordinate development projects that benefit all the people in his community.”³⁸¹

African National Congress councillor Sipho Zungu never used to tell people which political party he was affiliated to. However, he says that some people could tell because he “always resisted the dictatorial approach that was used as the basis to administer Khula Village.”

“People were never given any chance to air their views on issues that affected them and because of the history of violence that people had experienced where they had come from, most of them were cowed down by fear. As a result of fear people were not allowed to be politically active. Initially I also accepted the maxim ‘development first, politics last’, the argument being that we must create stability first before politics created turmoil. But as we approached the local government elections, I changed completely because I could see that people were being used by some few clever leaders for their own selfish ends. I changed completely and advocated for freedom of expression and political activism so as to enable people to exercise their democratic right to choose who to lead them.”³⁸²

7.1.4. Development and service delivery

As a result of its history, Khula Village is fairly well organised in terms of design and structure. It also has been provided with services such as electricity in what is regarded as a relatively short time. Mbatha, who is also a high school principal and member of the Inkatha Freedom Party, said that as a result of the planning done in establishing Khula Village, the town

“got its electricity supply within three years of its establishment when it has taken more than 10 years for some areas to try to get it. The area is also within walking distance to the coast and two attractive urban centres. The size of the stands are also very big and this makes people feel settled.”³⁸³

Gcinangaye Khumalo concurs. He says that people in Khula Village “have all that any person can want” – “for example, we have houses, clean water and electricity” – and development is continuing.”³⁸⁴

³⁸⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Caiphas Mkhwanazi, Khula Village, June 6, 2001.

³⁸¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Jamaica Mbatha, deputy mayor of Mtubatuba, high school principal and Inkatha Freedom Party councillor, Mtubatuba June 7, 2001.

³⁸² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sipho Zungu, African National Congress councillor, Khula Village, July 19, 2001.

³⁸³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Jamaica Mbatha, deputy mayor of Mtubatuba, high school principal and Inkatha Freedom Party councillor, Mtubatuba June 7, 2001.

³⁸⁴ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Gcinangaye Khumalo, Khula Village June 7, 2001.

The village has had a development committee, but with structures for a Section 21 company having been set up, the previous committee has been incorporated into the company.

Such aspects have given Khula Village a headstart, but Inkosi Caiphas Mkhwanazi continually emphasises that communities must avoid waiting for government.

“We must make decisions and do things for ourselves, so that our children can be improved economically. For example, when we get money, we put it in the bank and then use the interest to fund other projects that help to improve our community.”³⁸⁵

Some of the development in the village has been the result of funds from the international donor community, which have largely been accessed through the efforts of Inkosi Caiphas Mkhwanazi. He says that it is easy to obtain such funding because the collective title deed system protects people from banks and debt collectors. The Section 21 company is also used in fundraising efforts.³⁸⁶

The high school is one of the institutions that has benefited from donor funding, according to the school’s deputy principal, B. Khumalo. He says that the school has become number one in the education district to which it belongs as a result of the benefits of donor funding.

“We are a new school, but if you look around you will realise that we have nearly everything that a school needs to attract good teachers and hence give quality education to the learners. We are the only school that has fax machines, photocopying machines, electricity, computers – we have 38 of them – and quality furniture for both teachers and students. You saw when you entered that we have an electric gate that is lockable and the whole school is completely fenced.”³⁸⁷

At the time of one of our visits the foundations of a library could be seen. B. Khumalo said that this new building was a further result of the donor funding.

The community is also supported through eco-tourism levy royalties, which consists of an annual sum paid by KwaZulu-Natal conservation authorities as a percentage of the income obtained from visitors to the area. Inkosi Caiphas Mkhwanazi said that the recent royalty payment of R125,000 was put in the bank where it earned R25,000 which would be used to build a school library.³⁸⁸

Similarly the primary school has the best educational facilities in the district, largely as a result of donor funding. The school is already equipped with books, computers and office equipment, although there is still work to be done. The deputy head of the primary school N. Hadebe says that attempts are being made to fundraise in order to provide sports facilities at the school.

Social development in the area is centred around elected representatives and headmen with a traditional leader at the helm. There seems to be a good relationship between the traditional leader and elected councillors. This is attributed to a number of things. Firstly, the elected representatives are originally from the area and they have grown up respecting traditional structures and they have an understanding of the historical role of traditional leaders. The leader is the custodian of the land where they can locate development projects, so without his consent no development can take off. According to Inkosi Caiphas Mkhwanazi, elected representatives should function as community-based organisations not as leaders. In this way there would be no tensions regarding the traditional leadership. This has served Khula village well during the transition period.

7.1.5. Tourism and conservation

The Khula Village community benefits to a great extent from tourists visiting the St Lucia area. These benefits come not only from the tourism revenue and the money that tourists themselves spend in the

³⁸⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Caiphas Mkhwanazi, Khula Village, June 6, 2001.

³⁸⁶ *ibid.*

³⁸⁷ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Mr B. Khumalo. Deputy principal of the high school, Khula Village June 8, 2001.

³⁸⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Caiphas Mkhwanazi, Khula Village, June 6, 2001.

area. The donor funding is also often received as a result of tourists who pass through Khula Village.³⁸⁹ Parts of the region have for some time been under the control of provincial conservation authorities. Their role has, of course, become even more important as a result of the World Heritage Site status that has been declared in the area.

Inkosi Caiphas Mkhwanazi's nephew, businessman Phillip Mkhwanazi, who is also the director of Khula Cultural Village says that the provincial conservation service has also assisted in educating people to "understand the economic importance of the forest and other natural resources". Phillip Mkhwanazi says that the conservation service authorities initially taught five children from Khula Village about tourism and the environment. The five subsequently returned to the village to pass on the information to the rest of the community.

"The programme opened everybody's eyes. We decided that we were going to sell both Dukuduku and St Lucia as economic products. We immediately sought a permit and started to organise local girls and boys to practise Zulu dance and music."³⁹⁰

7.1.6. Conclusion and lessons

It is likely that Khula Village will be duplicated in another village, Izwe Elisha, which is to be established in the area to relocate more people who have been living in the Dukuduku forest.

The Mkhwanazis are confident that the Section 21 company system will work well in Khula Village. They say that they feel secure, unlike people living in towns who are living under the municipal system and are controlled by many by-laws. They say that the system prevents interference. They are visiting other areas and promoting the idea of setting up the Section 21 company, believing that it will be beneficial to a range of communities.

However, there is currently no clear division between the role of the Section 21 company and the local council. This has created rather a complicated situation where most residents consider the company in the light of the council. Although the election of Inkosi Caiphas Mkhwanazi as a councillor may assist in preventing confusion there is room for conflict between a structure such as the company and the council.

In setting up the Section 21 company Khula Village has the advantage of being small in size and population. The leadership is also clearly in touch with the large majority of the people, who make up a close-knit community. As a result it is easy for a statement such as 'development before politics' to be followed by everyone. There is greater control over political activities and Inkosi Caiphas Mkhwanazi can gain support for his proposals for measures such as political party rallies only being held in the run-up to the elections and not at other times. The residents of Khula Village also have the advantage of being situated close to a tourism market, which has added to the potential of their local economy.

Khula Village is relatively small with approximately 30 or 40 kilometres of roads to maintain, while electricity and water services have been provided to the village.

In such ways Khula Village is significantly different from other areas in KwaZulu-Natal, particularly those that operate under traditional leadership systems. For this reason it is not possible to recommend that the Section 21 company system can be duplicated in other areas.

However, the efforts of Inkosi Caiphas Mkhwanazi to bring development to his community are notable and are an example to other traditional leaders. He has shown that one cannot simply wait for government structures to provide and has instead taken the initiative and achieved a lot for the village.

It is up to the Mtubatuba council to find a way to incorporate the Section 21 company into the local government system. The company cannot be seen to be performing the role of the council, but some functions that are performed by the council could possibly, in terms of current legislation, be allocated to the company.

A senior officer with KZN Wildlife working in the St Lucia area, Z. Maseko is filled with awe at what has been achieved in Khula in such a short space of time:

"Khula Village is one of the fastest growing modern villages in South Africa. Imagine that it is only five years old, but it is far better than most townships in the country. And

³⁸⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Phillip Mkhwanazi, businessman and nephew of Inkosi Caiphas Mkhwanazi, Khula Village, June 6, 2001.

³⁹⁰ *ibid.*

again you must remember that because of the cleverness of its leaders, it has taken a middle way between a township and tribal inkosi area, and in that way it has attracted a lot of investment. Mr CB [Inkosi Caiphas] Mkhwanazi has sold that place as comprising people who were disadvantaged and homeless and that way he has attracted a lot of international donors who in turn have opened many doors for development.”³⁹¹

7.2. Nzimakwe

7.2.1. Introduction

The Nzimakwe Traditional Authority falls under the Ugu District Municipality. The Nzimakwe Traditional Court is about five kilometres away from the sea, south west of Port Shepstone. The population of the area is about 60,000.

The area and its surrounds are largely rural with a few small agricultural villages and scattered homesteads. The terrain is fairly hilly and particularly scenic. There are only gravel roads in the traditional authority area.

Electricity has been provided to the traditional court which was built by the government recently and to nearby homesteads. Water is also available to the areas close to the traditional court.

The local traditional leader, Inkosi Nombuso Nzimakwe says that poverty and unemployment are serious problems faced by the community. Poverty, she says, results in people resorting to crime.

“For example, there have been a lot of burglaries that have been reported and as an inkosi I can see from the pattern of arrests that these crimes are committed by very young people who are not employed.”³⁹²

Policeman Sipho Nzimakwe, who is not a member of the royal family, agrees and says that it is important for opportunities to be created for youth in the area to develop themselves constructively to divert them from committing crime.³⁹³

Inkosi Nzimakwe also says that many of the people in the area work on nearby farms, but their work is seasonal. As a result, many people who are considered to be employed only work during certain months of the year.³⁹⁴

Other people living in the traditional authority area work in the kitchens or gardens of white residents of Margate, but school principal Hebert Siphahla Dlamini says that they are sometimes paid as little as R150 per month.³⁹⁵

7.2.2. Traditional leadership and Inkosi Nombuso Nzimakwe

A woman traditional leader, Inkosi Nombuso Nzimakwe was installed as inkosi of the Nzimakwe tribal community in 1988. Inkosi Nombuso Nzimakwe is a cousin to the Zulu King Goodwill Zwelithini.

She had been appointed at the age of 20 by her grandfather Inkosi Calalini Madlala to be a secretary in his Madlala tribal authority in nearby uMzumbe. As a secretary she gained an insight into how cases brought by community members were tried. She married the inkosi of the Nzimakwe clan in 1974, who subsequently gained a reputation as being something of an alcoholic. He was not performing his role as a leader and his wife began addressing problems that were brought to her husband that were not dealt with. However, when he was arrested and later convicted of rape, his wife Nombuso Nzimakwe assumed full responsibility for running the tribal court.

³⁹¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Mr Z. Maseko, KZN Wildlife senior office responsible for community co-ordination based in St Lucia, Mtubatuba, June 2001.

³⁹² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Nombuso Nzimakwe, Nzimakwe Traditional Court, July 24, 2001.

³⁹³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sipho Nzimakwe, Nzimakwe Traditional Authority, October 12, 2001.

³⁹⁴ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Nombuso Nzimakwe, Nzimakwe Traditional Court, July 24, 2001.

³⁹⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Hebert Siphahla Dlamini, Ithongasi Primary School, October 11, 2001.

The Nzimakwe executive family committee subsequently voted Inkosi Nombuso Nzimakwe as inkosi. Another candidate for the position was an uncle of Inkosi Nombuso Nzimakwe's husband.

A resident of the Nzimakwe Traditional Authority who is not related to the royal family, Sipho Nzimakwe says that Inkosi Nombuso Nzimakwe was appointed by the Nzimakwe executive family committee, who were very concerned about the credibility of the Nzimakwe kingdom. She was one of three candidates who were nominated and was voted to take over the position. Sipho Nzimakwe says that the people in the community welcomed her appointment because she had already played a good role in the traditional authority and had assisted when her husband was not available.³⁹⁶

After her installation, Inkosi Nombuso Nzimakwe surrounded herself with elders from the family and inherited 10 headmen to work with her.

While Inkosi Nzimakwe is a member of the Inkatha Freedom Party, she has largely moved above party politics. She has even invited the top African National Congress members from KwaZulu-Natal to her area and she is able to deal with them comfortably. In addition, there has not been black on black violence in the Nzimakwe traditional area, which has assisted Inkosi Nzimakwe to remain free of any baggage that may be concerned with political activities. Sipho Nzimakwe said:

"In this area we are living in peace and harmony even in those dark days of struggle or black on black violence caused by political indifference we kept distance of it. In those days many people from our neighbouring traditional authority migrated to this area because of its quietness. There were political parties but Inkosi Nzimakwe ensured that no party troubled other parties. She encourages people to focus on development rather than on politics."³⁹⁷

Dlamini agrees and says that the area remained peaceful even when some places were declared 'no go' areas.

"The reason for that is that people in Nzimakwe area work through co-operation. The culture of peace starts from the top with Princess [Inkosi Nombuso] Nzimakwe down to the people on the grassroots level. For example, when Princess Nombuso took over she called a meeting and brought teachers together. As a result of that landmark meeting all were agreed that as schools, whether primary or secondary, we must always work together, not as independent, individual entities. Now even when there is death, whether of teacher or student, we work together as a bonded Nzimakwe nation."³⁹⁸

The level of tolerance displayed in the Nzimakwe Traditional Authority is also evident when one takes into account the background of Ndunankulu B. Nzimakwe. He has apparently been a member of the African National Congress, Inkatha Freedom Party and Democratic Alliance, but he continues to be respected by the Nzimakwe community.

Inkosi Nzimakwe's husband has returned home after serving his prison sentence and the two remain married. He had no choice but to accept the decision of the executive family committee. They have no children, but he has 13 children from other women. As he is not married to any of the mothers, there is no heir to the Nzimakwe throne.

Meanwhile, the local community continues to support Inkosi Nzimakwe as their leader. A traditional councillor and uncle to the inkosi's husband, Ndunankulu B. Nzimakwe says:

"We are lucky to have her as our leader because she is not only clever, but she is fearless and works hard to help everybody in the Nzimakwe community. She has brought development. You

³⁹⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sipho Nzimakwe, Nzimakwe Traditional Authority, October 12, 2001.

³⁹⁷ *ibid.*

³⁹⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Hebert Siphahla Dlamini, Ithongasi Primary School, October 11, 2001.

can imagine it was the first time that our children have seen us walking and talking with (African National Congress provincial) leaders like S'bu Ndebele and Zweli Mkhize, all because of her.”³⁹⁹

7.2.3. Impact of demarcation

The traditional authority structures in Nzimakwe are unhappy about the impact that demarcation has had on the land under the authority of the Nzimakwe clan.

The administrative secretary to the Nzimakwe Traditional Authority, Israel Bhokinkosi Khuzwayo says that “the white man who was dividing this country for local government has decided to take some of our wards and give them to Inkosi [Everson] Xolo”, who is the traditional leader of a neighbouring area.⁴⁰⁰

Traditional councillor Ndunankulu B. Nzimakwe confirmed this. He says:

“It is painful that our people can do such a thing without even sitting down with us and letting us show them things that we know as elders. You see this white man sat in his office and decided to take our lands Woza under Induna V. Ngeleka, Khomeni under M. Ngeleka and Brema under Induna J. Khowa and put them under Inkosi Xolo without even caring how those people feel. You see our people are peace loving that is why there is no violence now, but such actions by people who have offices in Pretoria is dangerous because it causes izinduna and amakhosi to fight. I hope you can tell them not to do such things because they destroy our country. Now how are they going to solve that problem?”⁴⁰¹

7.2.4. Development and service delivery

Much of Inkosi Nzimakwe's popularity is the result of her involvement in development in her traditional area. Writer Sicelo Dladla describes Inkosi Nzimakwe as being passionate about developing her area. He states that she encouraged the formation of different committees that deal with development. These different groupings are able to hold their meetings in her traditional authority offices.⁴⁰²

Inkosi Nzimakwe says that while she is not satisfied with the development in her area, “it is not that bad”. She says that there are no political problems hampering development and the use of the Nzimakwe Traditional Court as a venue for meetings assists in ensuring that an apolitical environment exists. The building is also used for church services, choir meetings, youth gospel practices and other groups or activities. This gives the community a sense of ownership over the building, which has effectively become a community centre.

In addition, she says:

“We do not have councillors who work against inkosi as we hear is the case in other areas. In this area, all elected councillors report directly to the Nzimakwe Development Board, which is responsible for all development and delivery issues. The development board is divided into subcommittees that are headed by people with skills in those particular fields. We have the Water Project Committee, Housing Committee, Schools Committee, Agricultural Committee, etc. These committees are chosen by people of this area so people identify with them because they know their sole purpose is to help them to improve the lives of their children. This also encourages cooperation and togetherness. The inkosi only presides over the umbrella body.”⁴⁰³

³⁹⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Ndunankulu B. Nzimakwe, traditional councillor, Nzimakwe Traditional Authority, July 25, 2001.

⁴⁰⁰ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Israel Bhokinkosi Khuzwayo, administrative secretary to the Nzimakwe Traditional Authority, Nzimakwe traditional court, July 24, 2001.

⁴⁰¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Ndunankulu B. Nzimakwe, traditional councillor, Nzimakwe Traditional Authority, July 25, 2001.

⁴⁰² Sicelo Dladla: “Woman chief proves her worth.” *Natal Witness*, first appeared in *Land and Rural Digest* April 11, 2000.

⁴⁰³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Nombuso Nzimakwe, Nzimakwe Traditional Court, July 24, 2001.

Inkosi Nzimakwe has been involved in ensuring that schools and crèches are built in the area. She says that they are constantly in touch with the town engineer to service the roads. The first phase of a water project was completed in 2001 and a multi-purpose centre was being built at the time of writing. This centre will enable people to learn skills such as brick-making, sewing, baking and cattle rearing. Inkosi Nzimakwe says that a mealie meal factory was going to be established on a farm that has been acquired and some people who were retrenched from Rainbow Chickens had already started a chicken production project. A housing project was expected to see the building of 1089 housing units.

People living in the area have a high regard for the work that Inkosi Nzimakwe has done to ensure that people in her area have access to services. Twenty-nine year old Vuyisile Phakathi says that people in the area have easy access to water and do not have to collect water from a well anymore.

Sthavia Nzimakwe, who is a princess from the Nzimakwe Traditional Authority, says that Inkosi Nzimakwe works hard to bring development to the area.

“She goes out there and brings big people here to show them what people want. Sometimes her friends bring money and she asks the people what their areas need and, together with her committees, goes to investigate and finalise the plans.”⁴⁰⁴

Similarly, Sipho Nzimakwe says that the only structure that has spearheaded development and service delivery is the traditional structure. He sites as examples the development of schools, roads, sports fields, water and electricity provision.⁴⁰⁵

Dlamini describes the schools in the area as beautiful and says that they are well fenced. However, he says that there are deficiencies. They do not have computers or overhead projectors and there is no library. The few books the school has are kept in an ordinary classroom.⁴⁰⁶

The traditional authority has an induna who is responsible for checking everyday that all the public standing taps are in working order, according to the chairperson of the Nzimakwe water and housing development committee, Alson Fanile Nzimakwe. However, they have requested that the Ugu regional council provides more water facilities because some sections still do not have running water.

“To tell you the honest truth the service from Ugu is very bad. We applied for water phases long ago, but you can be surprised to know that there was no single phase that has been provided to Nzimakwe Traditional Authority since 1999. There has been no reticulation services undertaken by Ugu along the roads to the rest of the population. Service has been done only along the main road. This kind of attitude by the council retards our programme of providing all the people of Nzimakwe with clean water.”⁴⁰⁷

Some of Inkosi Nzimakwe’s work has been involved with Aids orphans. She says that she has been trying to increase her contact with people who are strategically positioned to get funds to help Aids orphans.

“I think you can also help us through your organisation to spread the word that we need even those old clothes to at least have these kids hide their bodies.”⁴⁰⁸

Inkosi Nzimakwe says that very little assistance is provided from national government structures. However, she says that some months prior to the interview the community took African National Congress provincial leader S’bu Ndebele on a tour, and that the community had been talking to African National Congress deputy provincial leader Zweli Mkhize.

404 Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sthavia Nzimakwe, Nzimakwe Traditional Authority, October 11, 2001.

405 Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sipho Nzimakwe, Nzimakwe Traditional Authority, October 12, 2001.

406 Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Hebert Siphahla Dlamini, Ithongasi Primary School, October 11, 2001.

407 Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Alson Fanile Nzimakwe, Nzimakwe Traditional Court, October 12, 2001.

408 Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Nombuso Nzimakwe, Nzimakwe Traditional Court, July 24, 2001.

She expressed concern that some of the local leaders displayed favouritism and nepotism “in the manner they dish out development projects”. Inkosi Nzimakwe said that to avoid disappointment the community had learnt to go directly to provincial ministers. She says “this has helped a lot because we do not continue to get lies and empty promises from people who know little.”

“We discovered long way back that some of the local politicians can be a hindrance to development so for our people to benefit from the national cake, we push straight to the top provincial guys. But again this has been the result of the cooperation and unity as a people of this area.”⁴⁰⁹

Inkosi Nzimakwe says that the community has done a lot of fundraising in an effort to bring development to the area. However, she is trying to discourage “the government’s talk about giving people free things”.

“I don’t believe in free things because it destroys our people by causing over-dependence and laziness. Look at the clinic. It has deteriorated so much because people think it is a government clinic, not their own. I have also been trying to get permission from those above us in order to divert some of the R55 million that we got for the housing project in order to build factories and initiate projects. If we create employment people can build their own houses instead of waiting for government to build for them.”⁴¹⁰

People living in the Nzimakwe Traditional Authority also talk about the need for jobs. Vuyisile Phakathi says that she has children who are attending school, but does not have enough money to pay for expenses.

“I want a job and I don’t think that I will ever get it. I am not the only one. We are many who cannot give their children nice things because we are not working. Sometimes people ask you to help them, but they pay you very little so that you can’t even buy sugar for children to drink tea before they go to school.”⁴¹¹

Similarly, her relative Nontuthuko Phakathi, who is aged 28, says that rather than talking about water, people should talk about jobs.

“If you have a job then you can donate money in order to contribute to a project for water, school or road. So instead of bringing roads and water they must bring jobs so that we can do things for ourselves. Sometimes these water taps break and the engineer comes and collects it and goes with it for days while we walk the same distance to get the water from other areas, but we don’t die. But with jobs we can always contribute money fast to fix any pipe that is broken within one day. We can even buy spare parts to that we are always ready.”⁴¹²

Speaking while collecting water from taps in the Nzimakwe Traditional Authority, 21 year old Sandile Mpisi says that for the young men development is useless because there are no jobs. He finished his studies three years ago and has done a management course at the local training centre.

“I need to get a job so that I can work and buy things that my family needs. I can’t because I don’t have relatives in Durban and other towns who can look after me while I am looking for a job.”⁴¹³

⁴⁰⁹ *ibid.*

⁴¹⁰ *ibid.*

⁴¹¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Vuyisile Phakathi, Nzimakwe Traditional Authority, October 11, 2001.

⁴¹² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Nontuthuko Phakathi, Nzimakwe Traditional Authority, October 11, 2001.

⁴¹³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Sandile Mpisi, Nzimakwe Traditional Authority, October 11, 2001.

Mpisi questions what the newly elected councillors are doing to create jobs. He says that members of community are trying to force councillors to help them to start projects in Nzimakwe.

“But what do they do? They get their money at the end of the month and then forget about us. I know they go around talking about development, but all the things that they are talking about were done by Inkosi Nzimakwe. We want them also to do something because we voted them into positions so that they can bring jobs. Look who is bringing jobs. It is still Inkosi. She runs all over and comes here with different people to help us. But these politicians they are always carrying newspapers and talking about what they will do, but they are doing nothing.”⁴¹⁴

Phakathi, however, says that it is not fair to blame the government now.

“...let us wait for two more years and see what they will do. I heard that day those councillors talking about a lot of things that they are going to do and they were mentioning a lot of money that the government is going to give this place.”⁴¹⁵

African National Congress councillor Mandlakapheli Boyce Majombozi says that there have been a lot of problems in the area. He says that work on roads in the area is a priority.

“People need roads and with roads a lot of problems can be solved. For example, we do not like to see people’s coffins carried by hand for five kilometres just because the homestead is not accessible by car.”⁴¹⁶

But some progress is already being made, according to the councillor. He says that the whole of the Nzimakwe area should be electrified by March 2002 and the councillor is going to focus on agriculture projects.

“People have gardens and we have realised that the potential is great, so we decided to look not for money for individual people, but for such things as fertilisers and an urgent need to build a market from where people can sell their produce. We have also realised that there are a lot of tourists who visit our area and its environs especially during holidays and we are planning to capture that market.”⁴¹⁷

7.2.5. Relationship between traditional leaders and local government structures

Inkosi Nzimakwe says that the relationship with the councillors is good because people work together and have respect for one another.

“It is people not political parties that are a problem. You see in Nzimakwe we have always had a culture of working together as a people in order to develop our area...So the secret, as you call it, is never discriminate against people in your area either on political or religious grounds. The other very important thing is that as an inkosi you must never keep the traditional court closed to the people. Open the court at 7.30 in the morning and close it at 4.30 like any other business office. Do not open it only for court sessions. Let people get used to the court as a place where all community activities take place.”⁴¹⁸

⁴¹⁴ *ibid.*

⁴¹⁵ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Vuyisile Phakathi, Nzimakwe Traditional Authority, October 11, 2001.

⁴¹⁶ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Councillor Mandlakapheli Boyce Majombozi, Nombuso High School, October 13, 2001.

⁴¹⁷ *ibid.*

⁴¹⁸ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Nombuso Nzimakwe, Nzimakwe Traditional Court, October 12, 2001.

Inkosi Nzimakwe's actions regarding development in her area has put pressure on the newly elected councillors. The traditional authority structures and the councillors have a good relationship, but there is a sense of the councillors having to compete with the inkosi because they have to be seen to be doing something. This is noted in a particularly positive light.

The councillors do not have their own offices and instead work from the schools in the Nzimakwe Traditional Authority or from the traditional court. That fosters co-operation between the traditional structures, including the development committees and the councillors.

African National Congress councillor Mandlakapheli Boyce Majombozi is chairperson of the Ithongasi Primary School governing board and on the committee of the Nombuso High School governing board, both of which are in the Nzimakwe area. He says that the relationship between the councillors and the traditional structures were problematic in the past, particularly after the elections. He blames this on people working with Inkosi Nzimakwe, rather than on inkosi herself even though they belong to different political parties.

"Those people were trying to push her away from us, but with her there has never been a problem or any tangible conflict...all in all, she is alright as a leader...The working relationship is good because inkosi likes development, but as I said the only problem is the organisation [political party] that she belongs to. For example, she has allowed the councillors to form their ward development committees comprising of nine people, yet in some areas you know that amakhosi have resisted urging councillors to work within their traditional development structures."⁴¹⁹

Councillor Majombozi says that the ward committees are created to work under him as a councillor to bring services to the people. While these structures do in some ways duplicate the development committees of the Nzimakwe Traditional Authority, the councillor says that he cannot work through a structure that he has not created. However, he has nothing against the traditional development committee, what it stands for or what it is doing.

"Before I became a councillor I worked hard to mobilise funds from local white business people and farmers to bring development to my community independent of inkosi. For example, I managed to organise some computers and photocopiers for the schools, including an electric stove for Ithongasi Primary School."⁴²⁰

There appears to be a high level of tolerance and acceptance of the different structures, particularly between the councillors and Inkosi Nzimakwe. Councillor Majombozi says that he has a good working relationship with the traditional leader. However, he emphasises that although he consults her on many issues, he does not "beg from the traditional leaders" when he wants to organise a meeting.

"I tell them and then organise the meetings myself so that I am not sabotaged by their organisation."⁴²¹

Nombuso High School principal Nhleko Marela says that it is too early to give the councillors credit, but says that it is a good thing that the two structures have been working well together. He says "people are enjoying the peace".⁴²²

7.2.6. Conclusions and lessons

Marela says that the absence of violence in the Nzimakwe Traditional Authority has been important to the current levels of co-operation in the area.

⁴¹⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Councillor Mandlakapheli Boyce Majombozi, Nombuso High School, October 13, 2001.

⁴²⁰ *ibid.*

⁴²¹ *ibid.*

⁴²² Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Nhleko Marela, Nombuso High School, October 13, 2001.

“That on its own led to a situation whereby people of different political affiliations can tolerate each other. Here people can discuss political issues without resorting to violence. And again the level of suspicion is very low compared to what I have seen on the North Coast where people die for the simple reason that they are suspected of belonging to different political parties.”⁴²³

It is certainly evident that there are high levels of co-operation between the local government structures, particularly those working in the Nzimakwe Traditional Authority and the traditional leader structures led by Inkosi Nzimakwe. The co-operation that exists is simply from the various structures agreeing to work closely together and by resolving any disputes that do arise quickly.

⁴²³ *ibid.*

8. Future role and needs

It is evident from the institutional, legal and policy context as detailed in earlier chapters of this report that the role of traditional authorities is not clearly defined. This should not result in a situation where traditional authorities are prevented or are unwilling to perform any functions whatsoever. It is also evident from the earlier chapters that traditional leaders are already playing a significant role in many aspects of life, particularly in rural KwaZulu-Natal.

8.1. The need for training

It is widely acknowledged that in order to keep pace with a changing environment institutions in South Africa need to achieve an internal shift in mindset to keep pace with the transformation process. It is also widely accepted that training and exposure to new ideas and thinking are critical if this shift is to take place. Education and training also needs to be seen as part of a culture of life-long learning, rather than a single workshop being the ‘solution to a problem.

“Attendance at a training course does not guarantee change and is not a measurement of anything other than the trainer's capacity to deliver numbers. A more effective indicator is how skills are utilized on the job.”⁴²⁴

There seems to be general agreement on the need for the provision of training skills for amakhosi. This was emphasised in the Integrated rural development white paper for KwaZulu-Natal that stated that government field services had marginalised traditional leaders in the past and that this had contributed to their “vulnerability and politicisation”.

“Unless traditional leaders are well informed about development issues and opportunities, it is unlikely that they will be able to engage with development in a positive way. A vital prerequisite for accommodating customary systems within a future rural development programme is therefore to undertake a concerted non-partisan programme of capacity-building, training and information dissemination on development for traditional leaders and traditional authorities.”⁴²⁵

KwaZulu-Natal's Minister for Traditional Affairs Inkosi Nyanga Ngubane has said that amakhosi tend to be undermined because of their level of education.⁴²⁶ Vusi Shongwe, then a lecturer in the department of history at the University of Zululand, has also emphasised the need for amakhosi to have knowledge about processes embarked on by the national government:

“Their being uneducated might render them susceptible to being misunderstood by people who have an axe to grind with the government or are out to achieve their own ends. Public servants attend workshops, go to retreats and hold *bosberade* to examine, evaluate and brainstorm about the challenges they face, and come up with possible solutions. This has not been the case with traditional leaders. The only viable and possible way to integrate traditional leaders into the structures of modern democracy is by way of empowering them through capacity-building projects”.⁴²⁷

The need for training is further emphasised by Inkosi Everson Xolo from the South Coast, who says that traditional leaders need to have a certain level of education so that they are in a better position to interact with and lobby government on issues that affect them.⁴²⁸

⁴²⁴ *insight@ipt* Vol 1 No1 publication of the Independent Projects Trust July 1999.

⁴²⁵ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated rural development white paper for KwaZulu-Natal* December 2, 1998.

⁴²⁶ Eric Ndiyane: “Upgrade for amakhosi.” *Daily News* December 26, 2000.

⁴²⁷ Vusi Shongwe: “Amakhosi do have a big role.” *Daily News* October 12, 2000.

⁴²⁸ Interview conducted in Zulu by Zwelihle Memela and Dingani Mthetwa with Inkosi Everson Xolo, Xolo Tribal Authority, July 12, 2000.

Municipal Demarcation Board chairman Dr Michael Sutcliffe also emphasises the need for amakhosi to be up-to-date.

“In the modern world traditional leaders have got to understand the modern world.”⁴²⁹

Sibongile Zungu, writing in a Konrad-Adenauer Foundation publication described one study that found that amakhosi did not understand the new system of local government.⁴³⁰

Similarly KwaXimba’s Inkosi Zibuse Mlaba, who is also a provincial member of parliament and has been involved in efforts to train amakhosi in the Durban area says that training provides a vital role in ensuring that people have access to correct information.

“Our next drive now is to go beyond the leaders and move to the rest of the people so as to give them the correct information about the new structures and consequently push out propaganda and political agendas that distort the truth for selfish narrow reasons.”⁴³¹

Shongwe states that the implementation of projects for traditional leaders would empower amakhosi and accelerate development in some areas:

“It is through this capacity building that traditional leaders would be made to be proactive in terms of appreciating the need for bringing development to their areas.”⁴³²

There appears to be a general consensus that amakhosi would better serve their communities if they had appropriate training in skills which are pertinent to their functions and the tasks that they perform on a daily basis. Also in dire need of skill’s upgrade are the 6,000 izinduna in the province. It must be emphasised that this urgency is based on the fact that they are the frontline in the community and act as land administrators, marriage and family counsellors and are required to provide mediation and conflict management when disputes occur.

In determining the need for training, consideration must be given to the level of training that has already been conducted and to the type of training that has been provided. Most commentators agree that training should incorporate information about government laws and policies as well as the development of skills relating to functions that amakhosi and izinduna perform in their communities. An additional area of training could also include processes to negotiate and reach agreement with elected representatives and municipal structures about respective roles, responsibilities and mutual accountability mechanisms.

8.2. Current training initiatives by the Department of Traditional Affairs

In an effort to meet these needs the KwaZulu-Natal Department of Traditional and Local Government Affairs initiated and implemented programmes aimed at capacity building amongst traditional leaders and their support structures during 2000. Minister Inkosi Ngubane told the provincial legislature on March 29, 2001 that a one-week course was being run at the University of Zululand and a course for izinduna was being designed and was likely to be implemented from June 2001 onwards. The Department has provided financial, organisational and logistical assistance for the programmes.

The course at the University of Zululand was run in September 2000 over four days and the modules, which varied from two to three hours in length covered the following topics:

- History of traditional leadership
- Introduction to conflict resolution

⁴²⁹ Interview conducted by Cheryl Goodenough with Dr Michael Sutcliffe, chairman of the Municipal Demarcation Board, Westville, August 8, 2001.

⁴³⁰ Sibongile Zungu: “Traditional leaders’ capability and disposition for democracy: the example of South Africa.” *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Konrad-Adenauer-Foundation. October 1996.

⁴³¹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Zibuse Mlaba, member of parliament and inkosi of KwaXimba Traditional Authority, Inchanga constituency office, July 17, 2001.

⁴³² Vusi Shongwe: “Amakhosi do have a big role.” *Daily News* October 12, 2000.

- An introduction to the South African Constitution
- Land administration
- An introduction to public finance, leadership and followership
- Community development
- An introduction to judicial function, and
- An introduction to environment administration.

Induna David Ntombela welcomed this training saying that the government should continue with such education programmes.⁴³³

There is also a provincial plan to ensure that the traditional leadership institution is computerised to bring it in line with the technological era where things are done “at the click of a button”.⁴³⁴ To achieve this end the University of Zululand has provided computer training and facilitated office management skills to approximately 175 clerks from 270 traditional authorities.⁴³⁵

Ultimately, as a result of the education and training, Inkosi Ngubane has said that he wants to turn existing traditional courts into community centres where people would receive help and assistance with their problems.

“We want to change the negative perception about our traditional institutions. We want people to have access to those courts and not only to come for a case hearing.”⁴³⁶

Our research and focus groups have clearly illustrated that given the ongoing lack of resources in rural areas, there certainly is merit in Inkosi Ngubane’s proposal. It would serve the needs of the community if a single visit to the community centre could result in the resolution of pension and legal queries and provision of various health services at the same time.

8.3. Training initiatives by non-governmental organisations

Efforts were made by Independent Projects Trust to examine training initiatives by organisations other than the Department of Traditional and Local Government Affairs but it was difficult to get accurate figures, names of participants in workshops or any workshop evaluation or post training assessments.

The organisations that replied to our request to provide details of training courses for amakhosi were the Institute for Democracy in South Africa (Idasa) and Institute for Multi Party Democracy (IMPD).

The Idasa training was kick-started with a conference in 1997 and was said to include all amakhosi and izinduna in KwaZulu-Natal. It provided skills in legislative processes, democracy and constitutionalism in Africa, conflict management, structures for local government, and advocacy and lobbying, as well as traditional leadership and the courts. This programme seems to have been on hold since 1999 though an evaluation is scheduled for 2002.

The IMPD saw their mission as being involved with deepening democracy and the culture of human rights within the structure of ubukhosi. Their training programmes for traditional leaders have been held throughout the province. A noteworthy comment in their response was on the difficulties of incorporating community members in workshops together with amakhosi, the reason being that community members are intimidated by the presence of amakhosi and hesitate to express opinions.

In the course of this research, the Independent Projects Trust held focus groups for amakhosi and izinduna as an information gathering tool in the two target areas – Ugu District Council and Uthungulu District Council. This research found that amongst peers there was little hesitancy to speak out on issues and the ongoing problem was shortage of time for all the discussion and comment.

During the period of this research the Independent Projects Trust conducted focus groups, briefings and held a series of one-on-one meetings with opinion makers and others. The Independent Projects Trust conducted no training between 1999 and 2001, but will commence training in January 2002.

⁴³³ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Induna David Ntombela, member of parliament and induna, Pietermaritzburg, April 9, 2001.

⁴³⁴ Sibonelo Msomi: “Move to empower traditional leaders.” *Daily News* July 19, 2001.

⁴³⁵ Dr CEP Seethal, chairperson Task Team Rural Development Facilitation, at a task team meeting attended by Glenda Caine, held at the Traditional Affairs office, Mayville, Durban, August 7, 2001.

⁴³⁶ Eric Ndiyane: “Upgrade for amakhosi.” *Daily News* December 26, 2000.

8.4. Who should be responsible for providing training?

The Integrated Rural Development White Paper for KwaZulu-Natal states that if the Department of Traditional Affairs is unable to provide training, the function should be contracted out to the private sector.⁴³⁷ This ultimately places the responsibility in the hands of government for they would still have to lead the project.

Sutcliffe is of the view that the government – at national and provincial levels – has an obligation to empower traditional leaders. He emphasised that this should not be done as a ‘vote catcher’, but rather as has been embodied by former President Nelson Mandela when he sponsored some traditional leaders in the Eastern Cape to get an education.⁴³⁸

Other bodies could also play a role in providing training, according to Inkosi Mlaba. He suggested that local economic workshops that would involve all civic structures and specialist professional facilitators could be held to educate amakhosi.⁴³⁹

Inkosi Xolo had what may be regarded by some as a rather novel approach to funding education and training for successors. He suggested that the system of acting amakhosi should be transformed in a manner that would enable the heir to the throne to receive a portion of the salary paid to the acting amakhosi. This income could be used towards the payment of education for the heir.⁴⁴⁰

8.5. Looking to the future

Meetings have been held with the chief directorate of the rural development facilitation section of the Department of Traditional Affairs and institutes of higher learning. The purpose of these meetings was to identify areas for future training for amakhosi. Among the needs identified are financial management, meeting procedures, legislation (with the emphasis on development and local government matters), development administration and computer literacy.

High on the agenda of these meetings is the certification of courses by the institutes of higher learning. While this is admirable and a certificate provides a sense of accomplishment to the participants, far more important are mechanisms that ensure that learning is relevant, takes place and that new skills are being used on a regular basis.

Inkosi Ngamizizwe Madlala, who was one of the first traditional leaders to be enrolled in one of the department’s programmes said that education was a very important tool that would lead to better management of people.

“I see this education programme as nothing else but a way forward. It came at the right time where/when everyone is talking about rural development. We will be now able to tackle matters such as land issues with a more formal approach.”⁴⁴¹

Professor Thabo Sabela from the University of Zululand clearly expresses the need for interaction between traditional leaders from KwaZulu-Natal and those from other provinces because this provides an opportunity for them to “share experiences, including their frustrations and problems”.

“If they are left in that one authority, there is a tendency of having one leader who dominates them, but if you bring to one venue amakhosi from all over the country it really empowers them through exchange of information. They also learn to discuss and deal with common frustrations and problems because in the [mixed] class you can

⁴³⁷ Cabinet of KwaZulu-Natal and the Inter-departmental Integrated Rural Development Workgroup: *Integrated Rural Development White Paper for KwaZulu-Natal* December 2, 1998.

⁴³⁸ Interview conducted by Cheryl Goodenough with Dr Michael Sutcliffe, chairman of the Municipal Demarcation Board, Westville, August 8, 2001.

⁴³⁹ Interview conducted in Zulu by Jerome Dube and Edmund Mthuli with Inkosi Zibuse Mlaba, member of parliament and inkosi of KwaXimba Traditional Authority, Inchanga Constituency Offices, July 17, 2001.

⁴⁴⁰ Interview conducted in Zulu by Zwelihle Memela and Dingani Mthetwa with Inkosi Everson Xolo, Xolo Traditional Authority, July 12, 2000.

⁴⁴¹ Eric Ndiyane: “Upgrade for amakhosi.” *Daily News* December 26, 2000.

identify these different discourses. And another thing that frees them is that we use Zulu as a medium of instruction in these courses.”⁴⁴²

Training courses would provide an ideal vehicle for this interaction and dialogue.

There is an urgent need to include soil management and conservation in new curriculum. Interviewed in the course of this research Dr Motseko Pheko, the deputy president of the Pan Africanist Congress and a member of parliament made a strong case for environmental education saying:

You only have to look at soil erosion and the environment in traditional areas to see the need for training in environmental preservation or areas will become deserts in the next 20 – 50 years.”⁴⁴³

8.6. Conclusion

We cannot emphasise strongly enough the need for skills training and education for traditional authorities. Traditional leadership plays an important role in the lives of the many South Africans who live in rural areas and only with improved knowledge and skills will amakhosi and izinduna have the confidence to play a meaningful role in rural development and the lives of their people.

It is of the utmost importance that an evaluation of all the training that has already been conducted is carried out. This evaluation should consider the appropriateness of the training, how many traditional leaders have already been trained as well as the content of the workshops and training. The Independent Projects Trust has already experienced some difficulty in obtaining such information from organisations that have received funding for such training. However, traditional leaders themselves could assist in this regard by providing information as to whether they have been trained by the various organisations and particularly concerning whether they have benefited from such training workshops. Traditional leaders also need to be part of the process in which criteria for future training are defined. This does not have to be a process which hampers and delays future training initiatives, but could involve single focus group discussions lasting a couple of hours which are held in areas where training is going to be carried out. A full evaluation of the training that has already been conducted would be advantageous and should be considered by the KwaZulu-Natal Department of Traditional Affairs, particularly as the department is engaging in ongoing training processes.

Future training initiatives must consist of modules that are designed according to the needs of the traditional leaders and their communities. Material should also be provided in the language of the participants to ensure that it can be understood. It is imperative that traditional authorities are consulted throughout the process of the formulation of training material.

Although the role of traditional authorities is not clearly defined, it is evident from the research as mentioned in earlier chapters, particularly the case studies, that traditional authorities are playing an important role in many communities in KwaZulu-Natal. This capacity must be built on through any training that is carried out. Training in this context needs to be provided on a very local level. In this regard it would be most suitable for intensive discussions to be held by traditional leaders and the local government structure in a particular area. These facilitations would be concerned with the role that each structure can play in delivering to communities. This role can be identified after consideration is given to the characteristics and strengths of both the municipal and traditional structures in the area. This process is, of course, likely to be extremely time-consuming because it can only take place at very local levels. It may also result in many tense discussions between officials from local government structures and traditional leaders, which could be reduced and resolved through means of conflict resolution. However, it is necessary in order to create an agreed local framework in which respective functions, roles and skills are defined, which would provide a basis for relevant and appropriate training for amakhosi and izinduna.

Local government structures are currently compiling integrated development plans, a process which offers an excellent opportunity for these structures to hold detailed discussions with traditional

⁴⁴² Interview conducted by Jerome Dube with Professor Thabo Sabela, University of Zululand, August 23, 2001.

⁴⁴³ Interview conducted by Chiara Carter with Dr Motseko Pheko, Pan Africanist Congress Deputy President and member of parliament, Cape Town, October 2001.

authorities. In building such relationships local government structures will also be developing a culture of community participation as required by the Local Government: Municipal Systems Act of 2000.

When such discussions have been held and the role of traditional authorities in this regard has been negotiated, specific training needs can be identified. This furthers the argument that any interventions must be concentrated on a very local level. Traditional leaders in one area may play a more advisory role, while in another they may act as a liaison for development issues between the community and the local council. The skills required to maintain and sustain development initiatives will also depend on what services are delivered. The training needs in each case would be different.

9. Conclusion and recommendations

The institution of traditional leadership is a fairly complex structure that consists of far more than the traditional leader. The functioning and role of the structure has changed in numerous ways. This has been in part as a result of legislation passed by the apartheid government, but also simply because communities and ways of life are constantly evolving.

Nevertheless, *ubukhosi* continue to play a significant role in the life of South Africans even in a legal context. Legislation makes provision for national and provincial Houses of Traditional Leaders and ensures that traditional leaders are paid out of the government budget. Documents such as the white paper on local government makes mention of traditional leaders and a discussion document solely on traditional authorities has been compiled and made available to the public for comment. Traditional leaders are also recognized by the Constitution.

Some may argue that none of this documentation goes far enough in allowing traditional leaders to perform a role befitting the stature of *amakhosi*. The opposing argument is that elected leaders are far more accountable to the people. While this argument continues – and this research shows that it has dragged on for years – development is delayed in rural communities, particularly where tensions are evident at a local level between local government and traditional authorities. Residents of rural communities, who are the poorest South Africans, urgently need to have access to basic services such as water, electricity, health facilities and education institutions that cannot be delivered until these acute tensions have been resolved.

Rather than dwelling on the uncertainty, contradictions and ambiguities presented by the institutional, legal and policy context in which traditional authorities operate, solutions can be developed on a local level. Such solutions should involve traditional authorities and local government structures holding discussions to determine their respective roles and functions in order to develop co-operative and constructive relationships that support rural development. This clarity would also provide the basis for both mutual accountability and training needs assessments.

Of course, this solution will by no means be regarded as acceptable by a number of traditional leaders who are determined to ensure that they obtain greater representivity on municipalities, or more mention in the Constitution. Similarly, it is likely to be rejected by some municipal officials who argue that they are now in control and question why they should have to consult with representatives from traditional authorities. These debates are important in order to resolve the impasse at national policy and legislative levels. However, pragmatic approaches to the delivery of development at a local government level in areas where traditional leaders perform an important function should inform day to day relationships so that rural communities are not impacted on while awaiting policy resolutions. These resolutions may be a long time coming since the politicisation of the debate over the role of traditional authorities has made it very difficult for the issue to be resolved whereas local level agreements might find practical solutions to political problems. These solutions may enable breakthroughs in a debate that has reached something of a stalemate, which includes national government being unlikely to change legislation significantly to meet the full demands of traditional leaders.

Rather than calling on government to define a role for traditional leaders, this role should be worked out by the community in conjunction with local government structures and traditional authorities. It is not only through government that development can take place. Traditional leaders need to carve out of a role for themselves. If they continue to wait backstage while the national debate rages on, they are likely to be left there.

9.1. Recommendations

Payment

- Traditional authorities need to ensure that performance in a hereditary system can be monitored and evaluated and consideration needs to be given to the relationship between performance and payment.

Development

- Individuals – whether traditional leaders, chairpersons of development committees or councillors – must take the lead in delivering services to rural communities because development is largely dependent on the personality and initiative of individuals in particular areas.
- Relationships between traditional leaders and local government must be improved to prevent development from being blocked either by traditional leaders who find initiatives threatening and undermining or by councillors who fail to consult and work co-operating with traditional leaders.

Land

- Training in land administration is necessary to ensure that amakhosi have sufficient knowledge to efficiently exercise choices available to them in this regard.

Customary Courts

- Further research that focuses on the functioning of customary courts in KwaZulu-Natal is needed. This should include an assessment of the procedures followed in customary courts to determine the difficulties experienced and to examine issues relating to the traditional law in the context of the Constitution.
- Consideration should be given to setting up a traditional courts' secretariat that would ensure the smooth running of traditional courts. The secretariat could supervise the courts, deal with complaints, channel reviews, oversee the budget and conditions of services of the courts and regulate and protect traditional courts.
- Consideration should be given to the training and appointment of para-legals as a way of improving traditional courts. Their training could include customary law, the Bill of Rights and basic elements of procedure and evidence as well as writing summaries of evidence and judgements to be used in appeals or reviews. Similar assistance could be provided through the deployment of law students to rural areas to provide support and impart skills to customary courts.
- Customary courts should be brought under the control of the Department of Justice and training officers appointed by the department should be deployed to customary courts to provide on the job training with regard to civil and criminal matters.
- The long-term role of customary courts in South Africa needs to be considered in light of the establishment of dispute resolution or community courts to ensure that there is no duplication in the services provided to communities. Where use can be made of facilities already in place that should be a priority.

Gender

- Processes to ensure gender equity in areas under the leadership of amakhosi need to be put in place, but these must be complemented by real changes in all parts of society.

Training

- Training and educational opportunities must be made available to traditional leaders in order to build on the current capacity of amakhosi.
- An evaluation of all training that has been conducted for traditional authorities in KwaZulu-Natal needs to be carried out urgently. This should consider the appropriateness of the training, how many traditional leaders have been trained and the content of the workshops and training.
- Criteria for future training need to be defined. Amakhosi must be part of this process.
- Future training initiatives must consist of modules that are designed according to the needs of traditional leaders and their communities and should be provided in the language of the participants.

Co-operative governance

- All roleplayers must focus attention on resolving roles and responsibilities at a local level rather than waiting for policy and legal guidance from national government.
- In developing solutions at a local level, traditional authorities and local government structures should hold discussions to determine their respective roles and functions as part of a process to develop co-operative and constructive relationships that support rural development.
- Intensive discussions should be followed by training that assists each structure to play a role in delivering to the local community. This role should be identified after consideration is given to the characteristics and strengths of both the municipal and traditional structures in a particular area.
- The process of compiling integrated development plans should be used by local government structures as an opportunity to hold detailed discussions with traditional authorities as part of efforts to develop a culture of community participation.
- By working out specific roles for themselves in particular areas, traditional authorities consisting of proactive, development oriented individuals will play an important role in communities by boosting the capacity of local government, in addition to performing cultural functions.

Annexure**Schedule of Traditional Authorities as contained in the KwaZulu Ingonyama Trust Act, 1994**

COLUMN 1	COLUMN 2
DISTRICT KNOWN AS	NAME OF TRIBE/COMMUNITY
EMNABITHI	CUNU/MCHUNU INGWE KUNENE MABASO
EMNABITHI	MBHENSE NXUMALO SITHOLE
EMZUMBA	BHEKANI CELE M. CELE P. DLAMINI/VUSATHINAMAZULU DUNGE/AMADUNGE EMBO/SIZWE HLANGANANI LUSHABA MADLALA MADZIKANE/SIZWE HLANGANANI MBHELE MJOLI/SIZWE NDELU NHLANGWINI NYAVINI QOLOQOLO QWABE P. QWABE Z THULINI ZIZI-SIZWE/HLANGANANI
ENSELENI	BIYELA/KWAYANGUYE BIYELA/OBUKA CEBEKHULU/OBIZO KHOZA MBONAMBI (MAXWELL) MTHEMBU/SOMOPHO MTHETWA/MHLANA NDHLAZI/MAMBUKA ZULU/NTEMBENI ZUNGU/MADLEBE
EZINGOLWENI	CELE DLAMINI/KWAFODO DUMA/THOKOZANI MADUMISA JALI/NHLANGO MACI/SIBONDA MAVUNDLA/MVUNDLA MBOTHOMAMBO MTHIMUDE NSIMBINI NYUSWA/QINISELANI MANYUSWA NZIMAKE

	SHWAWU/JABULANI BESHWAYO XOLO
HLABISA	ABAKWA HLABISA MDLETSHE MPEBENI MPUKUYONI/MHKWANAZI
HLANGANANI	BATLOKOA/BASOTHO BOMVU/ZASHUKE DLAMINI/BIDLA DLAMINI/ESIPHAHLENI DUMISA/MAGUSWANA KHOLWA/ISIBONELO ESIHLE KHOLWA/VUMIDABA KUZENI/AMAKUZE MADZIKANE/BHACA MEMELA/SIZANANI MKHULISI/VEZOKUHLE MOLIFE/ISIMINZI NDLOVU/VUKANI NGWANE/AMANGWANE NXAMALALA PEPETA/UMACALA GWALA
INGWAVUMA	MA THENJWA MNGOMEZULU TEMBE
INKANYEZI	BANGINDODA ZULU BHEKESHOWE ZULU BIYELA/MOMBENI BIYELA/MVUZANE BIYELA/NDLANGUBO KHOLWENI KHOZA KWAMONDI MATHONSI MPUNGOSE NTULI SHANGE SIKHONYANE
MADADENI	GULE/NYANYADU HLUBI/BUHLE-BOMZINYATHI COMMUNITY AUTHORITY INGWE TRIBE/BUHLE-BOMZINYATHI COMMUNITY AUTHORITY KUBHEKA/BUHLE-BOMZINYATHI COMMUNITY AUTHORITY NKOSI/BUHLE-BOMZINYATHI COMMUNITY AUTHORITY
MAHLABATHINI	BUTHELEZI BUTHELEZI/EMPI THIMPITHINI MBATHA MPUNGOSE NDEBELE NOBAMBA COMMUNITY AUTHORITY

	XIMBA ZUNGU
MAPHUMULO	ABAKWACELE ABAKWAZUBANE AMAMBEDU/MBEDU BOMVU A. BOMVU W. EMBO GCWENSA HLONGWA KHABELA LUTHULI MABOVNINI MLAMULA/NYUSWA MTHEMBU/SITHOLE MTULI/MTULINI NDLOVU/HOHOZO/MKONTO QADI QWABE SITHOLE/MTHEMBU ZULU/NODUNGA
MPUMALANGA	DASSENHOEK COMMUNITY AUTHORITY EMBO FREDVILLE COMMUNITY AUTHORITY ILANGA COMMUNITY AUTHORITY GCUMISA MAPHUMULO MDLULI/MANYAVU SHANGASE XIMBA
MSINGA	BASO BOMVU CHUNU MTHEMBU NGOME QAMU
NDWEDWE	CHILI CIBANE EMALANGENI/LANGA EMBO/KWAKHABAZELA INKUMBA/NYUSWA HLOPHE KHUMALO MANGANGA MTHEMBU NGCOLOSI NGONGOMA/MAVELA NODWENGU PHEPHETHA QADI QINISELANI MAYUSWA QWABE SHANGASE WOSIYANE

NKANDLA

AMAKHABELA
 BIYELA/AMAKHLAYIZENI
 BIYELA/MANGIDINI
 CUBE
 CUNU
 IZIQOZA
 KHABELA
 KHANYILE/IZINDLOZI
 MAGWAZA
 MBHELE/AMAPUTO
 MPUNGOSE
 NTULI/GODIDE
 NTULI/INGONO
 NXAMALA
 SIBISI/CWEZI
 XULU
 ZONDI

NONGOMA

ZULU/KHAMBI
 ZULU/MANDAKLAZI
 ZULU/MATHENI
 ZULU/USUTHU

NQUTU

HLATSHWAYO
 JAMA
 MADLALOSE/HLAHLINDLELA
 MNCUBE/MBOKODWEBOMVU
 MOLEFE
 NGOBESE/KHIPHINKUNZI
 NGWE/MANGWE-BUTHANANI
 NTOMBELA
 SITHOLE/VULINDLELA
 ZONDI
 ZONDO
 ZULU/EMANDLENI

OKHAHLAMBA

AMAZIZI
 DLAMINI
 HLUBI
 EMBO
 MABASO
 MHULUNGWINI
 NGWANE/AMANGWANE
 NGWE/AMANGWE

ONGOYE

DUBE
 MHKWANAZI
 MZIMELA
 CAMBINI
 NZUZA
 ZULU

SIMDLAGENTSHA

DLAMINI I
 DLAMINI M
 MAVUSO-MASIDLA COMMUNITY AUTHORITY
 MTNUNGWA-MASIDLA COMMUNITY AUTHORITY
 MSIBI
 MTHETWA

	NTSHANGASE SIBIYA-MASIDLA COMMUNITY AUTHORITY SIMELANE
UBOMBO	MABASO MANUKUZA/JOBE MSHABANE MNQOBOKAZI MYENI/NWGENYA MYENI/NSINDE NIBELA SIQATHA QWABE/MAKASA ZIKHALE/MBILA
UMBUMBULU	CELE/MANGAZI EMBO/NKASA ISMHALA EMBO/TIMUNI EMBO/VUMAKENSWA LUTHULI/UMNINI TRUST MAKHANYA/SOBONAKHONA MANGANGENI/VUMAZONKE MAPHUMULO TOYANA
VULAMEHLO	BELE/QIKO CELE DUMISA M. DUMISA N. EMBO/KHWEZI LOKUSA EMBO/UKUTHULA MBHELE/KWALEMBE NHLANGWINI/SHIYABANYE NYUSWA ZEMBENI/ZEMBE
VULINDELA	FUZE NXAMALALA XIMBA ZONDI/NADI ZONDI/MPUMUZA