

Hlukanisa Prince Mashele

**Department of Political Studies
Rhodes University**

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**Locating the institution of traditional leadership within the institutional
framework of South Africa's new democracy.**

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Supervisor: Professor. R. Ajulu

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---Abstract---

This study looks into the role of the institution of traditional leadership in post-apartheid South Africa. It seeks to critically engage the debate on how to locate the institution within the new politico-constitutional framework. This is done with the main objective of proposing an alternative to the current state of affairs vis-à-vis traditional leadership and governance in South Africa.

In order to clear the ground, the study first deals with the important question of democracy in relation to the institution of traditional leadership. In this regard, the study unearthed that the institution of traditional leadership is fundamentally undemocratic in character, as it is largely based on heredity and devoid of principles of democracy such as equality, accountability, etc.

In order to put matters into perspective the study also delves into the history of the institution of traditional leadership with the aim of getting to the role that traditional leaders played in various epochs of South Africa's political development. This investigation reveals that the denting of the integrity of the institution of traditional leadership began with the advent of colonialism and worsened by successive apartheid regimes. It is at these stages of development that the institution was subordinated to a higher authority that sought to use the institution as an instrument of domination and oppression of the black majority.

Considering this role, it would seem that the place that the space that the institution occupies in the post-apartheid South African governance framework is a compromise. The institution plays an advisory role at all levels of government – with their houses in both national and provincial legislatures, whilst traditional leaders sit as ex-officio members on local councils. However, traditional leaders fiercely contest this position as, in their view, this limits their powers.

The main argument of this study is that for traditional leaders to be given an advisory role in the current and future governance framework of the country is a step in the right direction, as that serves to insulate the institution from active politics. For that reason, the study recommends that the institution of traditional leadership should occupy a cultural space in society – meaning that it should be responsible for the preservation of African customs and culture. This, therefore, means that the institution is better-placed to advise government on cultural and customary aspects of development. Whilst playing this role, the institution of traditional leadership should also be brought into line with democratic ways of governance.

---Introduction---

The role of the institution of traditional leadership has constantly been changing in the various epochs of South Africa's political development. Prior to colonialism, African societies were organized into small units led by traditional leaders. There was no other authority above traditional leaders in terms of the leadership of African polities. The system of leadership was very close to the people, connecting from the head of the kraal, the induna (headman), to the chief, etc. (Rutsch, 1995: 11). Traditional leaders had numerous roles to play, which included taking care of economic, security, legal, and social issues in relation to their respective polities. They were basically entrusted with the responsibility of ensuring the well-being of their people.

The advent of colonialism heralded a process of transformation that saw traditional leaders being subordinated to the colonial state. Act No. 38 of 1927 placed the institution of traditional leadership firmly under the control of the Governor-General. According to Rutsch (1995: 11), the Governor-General "had the power to appoint, recognize and depose amakhosi and izinduna". It can thus be argued that the Act made the Governor-General the supreme traditional leader of South Africa and thereby transformed the institution of traditional leadership into an instrument of colonial subjugation and oppression.

The emergence of the apartheid government in 1948 concretized the instrumentalisation of the situation of traditional leaders by ushering in a system of Bantustans, which were

meant to compartmentalize the African majority along the lines of ethnicity. Building on the foundation laid by the architects of colonial domination, Bennett (1998: 14) argues that the apartheid government in 1951 grafted new local authorities into existing tribal structures in order to give rise to a Bantustan system of government. The main objective of apartheid masterminds was to intensify the oppression of the black majority, and the basic role of traditional leaders (as government minions) thus remained unchanged in the Bantustan system.

The advent of democracy in South Africa inevitably had far-reaching implications for the institution of traditional leadership. The country was faced with the challenge of redefining the role of traditional leaders in the new politico-constitutional dispensation – a dispensation aptly defined by Muthein (1999: 1) as one characterized by,

... a large-scale transformation from a racially exclusive apartheid regime to a democratic system premised on constitutionalism, rule of law, the protection of civil rights and liberties, institutions of accountability, and the construction of a new state with a transformative agenda.

The government's position with regard to the position of traditional leaders is expressed in the constitution, where Section 212 (1) (a) provides that a "National legislation may provide for the establishment of houses of traditional leaders". It is worth noting that these houses have advisory powers, and that at local government level traditional leaders have an ex-officio status, which places them in a position to advise local councils on matters relevant to their (traditional leaders) terrain.

Predictably, the new dispensation has provoked controversies from different quarters of society. McIntosh (1995: 65), for example, argues that the fact that traditional leaders' role is limited to an advisory one is a step in the right direction. While Ntsebeza (2000: 23) dismisses the constitutional provision as being vague, the Congress of Traditional Leaders of South Africa (Contralesa), representing the majority of the country's traditional leaders, thinks that the constitution limits the power of traditional leaders and therefore they argue that traditional leaders' role should be strengthened.

It is against this background that this study engages the debate about the role of traditional leaders in the new South African democratic institutional framework. The aim of this research is, therefore, to make a contribution to the debate about the role that the institution of traditional leadership should play in a democratic South Africa. The main goal of the research is to propose a way forward that could disentangle politicians and traditional leaders from the conflict that has almost become a central characteristic of their relationship in post-apartheid South Africa. The research further explores ways in which the institution can be strengthened as a powerful source of cultural unity within communities.

The fact that other scholars have made contributions to this field of research is of resourceful importance to this research. It is for that reason that the research draws on the work of scholars contained in secondary material such as books, papers, and journal articles.

The research largely relies on two schools of thought, viz. the modernist and the communitarian. The essence of the modernist methodology is that society is always in a state of constant development towards a more modernized form and, as such, the adoption of new social values and ways of life is ineluctable. In the context of the debate on traditional leaders, Keulder (1998) defines modernists as those scholars who call for a major transformation of the institution of traditional leaders to meet the requirements of a modern democracy. As indicated above, the researcher moves from the idea that the existence of the institution of traditional leadership is necessary, but that a modified role for this institution is required. Alongside the modernist approach, the researcher utilizes the communitarian approach so as to avoid being dismissive of anything associated with the institution of traditional leadership. Mamdani (1996: 3) defines the communitarian approach as one that calls for “a return to the source” or the “defense of culture”. Guided by these two theoretical approaches, it is hoped that the study is as objective as possible.

The study is structured into five chapters. Chapter one provides a discussion on the concept democracy vis-à-vis the institution of traditional leaders. The discussion in this chapter lays the theoretical foundation for subsequent chapters by interrogating the compatibility of the institution of traditional leadership with democracy. This is followed by some reflection, in chapter two, on the role that the institution has played in various stages of the country’s political development. This historical context provides a background to chapter three, which discusses the position that the institution currently occupies in the democratic framework of the country. Problematic areas in relation to the location of the institution of traditional leaders are also discussed in this chapter.

Chapter four discusses different propositions made in relation to the role that the institution of traditional leadership should play and thereby makes recommendations in that regard. The study is, in whole, summarised in chapter five wherein a more precise response is given to the question of how should the institution of traditional leadership be located within the institutional framework of South Africa's new democracy.

---Chapter 1---

Democracy and the institution of traditional leadership

1.1 Introduction

Much of the debate on the role of the institution of traditional leadership in a democratic system is informed by different perceptions about the relationship of the institution of traditional leadership itself and the concept of democracy. A lot is often said about this relationship, but an agreement does not seem to emerge. The question however remains: is the institution of traditional leadership compatible with democracy? This chapter attempt to respond to this vexing question. Some brief reflections on the concept of democracy will be made with a view to providing the basis for evaluating the institution of traditional leadership.

1.2 The concept democracy

As Birch (1993: 47) informs us, "*the word 'democracy' democracy comes from the Greek and literally means rule by the people*". However, definitions of the term are multifarious. For Frank Michel, democracy implies "*self-rule*" (Chapman and Shapiro, 1993: 169). Schweikert (1995: 211) defines democracy as "*a system in which a universal electorate is active and unobstructed by a privileged minority class*". It is important to note that democracy can take different forms and manifestations, hence the multiplicity of its types, e.g. participatory democracy, deliberative democracy liberal

democracy, etc. These versions of the concept notwithstanding, there are certain principles that any democratic system cannot eschew, e.g. equality before the law, freedom of expression, accountability, etc. it is for this reason that Bennet (1998) concludes that:

Whatever meaning democracy carries in a particular constitution, the word generally implies that the nation should be allowed to exercise final control over its government through elected representatives, with the corollary that officers of government are accountable to the people.

The democraticness of any society, therefore, is dependent on whether or not such society does have control over its government. This means that government in a democratic society is an instrument of people's rule. It is for this reason that Birch contends that:

...a democratic society ... is one without hereditary class distinction, in which there is something approaching equality of opportunities for all citizens ... not a form of government.

Thus, an evaluation of the extent to which institutions or governments are democratic does not necessarily need to emphasize the form of such institutions, but the extent to which the institutions uphold the values of equality and non-discrimination. This means that the institutions must be owned by and serve the people on whom the institutions impact. The implication of this, therefore, is that government and its institutions have to be legitimate. It is important to deal with the issue of legitimacy, at some length, as it is one of the crucial principles of democracy.

1.3 Legitimacy

Max Weber was one of the leading authorities on the concept of legitimacy. What earns him this status is the fact that he was among the few scholars who defined the concept with greater clarity and some measure of precision. As a result, most scholars wrote in response to his conception. Weber identifies three types of legitimacy:

1. **Traditional Legitimacy** — is the legitimacy enjoyed by tribal chiefs, princes and kings. In this kind of regime the essential factor that ensures compliance with the orders and laws of government is personal loyalty to the chief or king or ruling family.
2. **Legal-rational Legitimacy** — is that enjoyed the by governments of most modern states. In this kind of regime loyalty is given not to a person or a ruling family but to an impersonal set of institutions, the powers of which are defined ... by written constitutions ... Public compliance with the orders and laws of government is not based on loyalty to persons but on general acceptance of the procedures by which these orders and laws are produced.
3. **Charismatic Legitimacy** — depends on the personal qualities of a political leader who appears as a kind of hero or saint and inspires his followers to accept his rule. (Cite in Birch, 1993: 33-4)

Of all the kinds of legitimacy delineated above, the key factor is “general acceptance”. This implies that no government can rightfully claim to be legitimate without it being generally accepted by the people ruled. Therefore, it is necessary that there be a mechanism to determine the general acceptability of government among the people under a particular government. Perhaps the question should be: how feasible it is to determine the acceptability of governments in the three frameworks conceptualised by Weber? Would it make sense for a chief to claim legitimacy on the basis of the fact that his subjects follow a particular tradition? Analyse closely, It does not seem logically convincing to argue that a government is legitimate because it is based on the tradition of

its people, as some people may respect their traditions generally while not accepting their government - no matter how traditionally rooted such a government may be. There could be multifarious reasons for this. It could be that people feel that their government is repressive or unresponsive to their needs. In this case, it would appear that tradition is not a proper mechanism for gauging the general acceptability of government.

Charismatic legitimacy does not seem to be unproblematic, as Birch (1993) observes, authority may die when the charismatic leader dies. Moreover, it may not be possible to ascertain the legitimacy of certain decisions taken by a popular leader if there are no clear guidelines in terms of what the people want. Sometimes a charismatic leader may take certain decisions that are not necessarily in line with the interests of the people, thus if people do not actively disagree, or if the governance system does not cater for a mechanism for registering dissent, it could mistakenly be concluded that the decisions taken are legitimate even if they are actually not.

Weber's conception of legitimacy in its modern context seems cogent as it is based on general acceptance of institutions that are clearly defined and codified. In this context, the will of the people is written down to serve as a clear framework within which the government should operate. So, if one wants to assess whether or not the government of the day or its decisions are legitimate, one would examine the extent to which such a government respects the will of the people as written down. Whenever the government deviates from the interests of the people, it thus becomes easy to determine that the government's decisions are not legitimate. The codification of the general will of the

people also include the procedure by which a government assumes and relinquishes power and this reasonably serves to clarify the legitimacy of any government.

Scholars are sharply divided over the question of the legitimacy of traditional leaders, especially with regard to modern-day societies. Some argue that the institution of traditional leadership is legitimate while others argue to the contrary. Peter Rutsch (in Myers, 1999), for example, passionately believes that traditional leaders in South Africa continue to enjoy support and thus he argues that the existence of the institution of traditional leadership should be beyond question. However, this argument is not without its flaws. Its problem is that it is not backed by empirical evidence. It seems to be based merely on the fact that traditional leaders in fact do exist in society today. In what appears to be some evidence strengthening this argument some scholars refer us to the fact that about 40% of South Africa's population still live in areas that are ruled by chiefs (Tapscott, 1997; Van Kessel and Oomen 1997). It is this observation that seems to have led many to believe that the institution of traditional leadership is legitimate. Sydney Mufamadi, minister of provincial and Local government, is among those who believe that in the rural areas of South Africa people "*continue to owe allegiance to the institution of traditional leadership*" (*A Draft Discussion Document Towards a white Paper on Traditional Leadership and Institutions*, 2000 p.3).

What appears to be a major flaw of those who take the percentage of people who live in areas that are still under chiefs as proof of the legitimacy of these leaders is that they do not seem to realise that the people who live in such areas do not necessarily need to leave

those areas to demonstrate their lack of support for traditional leaders. Furthermore, if one happens to reside in an area that is under a traditional leader without supporting such a leader it does not follow that such a resident must actively (or even passively) demonstrate such lack of support. Unfortunately, the argument that relies on statistical information of people who are resident in a place under the jurisdiction of a traditional leader appears to include even a person of the nature described above as one the supporters of the traditional leader concerned. It would appear that it is this sort of approach that leads Oomen (2000: 63) to conclude that the support of traditional leaders in South Africa “*does not seem to have dwindled with the dawning of democracy*”.

On closer inspection, the issue of legitimacy vis-à-vis the institution of traditional leadership does not appear to be as less complicated as most commentators would think. It is for this reason that it is even harder for most politicians to camouflage their reservations, no matter how hard they try not to offend traditional leaders. Sometimes politicians express their reservations by making insinuations like this: “*Of course we all understand that this institution does not have an elective base and will not have one*” (Thabo Mbeki, 2000). This highlights awareness of the difficulty in arriving at the definite conclusion that traditional leaders are legitimate. This difficulty is similarly expressed by Myers (1999) as he challenges those who simplistically exhort us to believe that culture legitimises traditional leaders. He has the following to say:

The advocates of traditional authority present us with lengthy explanations of the cultural legitimacy of chieftaincy, but can we ever know that it is this and nothing else that fills the consciousness of all rural villagers? Can we be certain that there is never a moment of doubt, duplicity, or disrespect in

the minds of a chief's subjects? ... the proof of cultural legitimacy becomes the political scientist's equivalent of the philosopher's proof of god.

It is empirically not easy to sustain an argument that by virtue of a traditional leader being “*the custodian of culture*”, therefore, all who practice the culture see him as legitimate. This matter is not as easy as testing the legitimacy of the ANC in South African society today; where one could simply look at the number of people who voted for the ANC in the latest election and thus conclude convincingly that the ANC enjoys the support of about 66 percent of the South African population. Testing the legitimacy of traditional leaders becomes even more perplexing considering that:

The problem around legitimacy includes the fact that some traditional leaders who illegitimately came into power for instance by appointment via colonial rulers since then have ... created their own “legitimacy” which is not based on historic traditions or hereditary practice (Naudascher and Kgatlanye, 1997).

As it is known, the legitimacy of traditional leaders is believed to be derived from tradition. How then does one use tradition as a barometer in this context considering the above reality? Maloka(1999) argues that the Bantustan system has eroded the legitimacy of chieftaincy in most parts of South Africa. It is not very easy to refute this claim given the somewhat questionable role that traditional leaders have played in South Africa's painful past. The fact that the legitimacy of traditional leaders is disputable makes it difficult to sustain the argument that the institution of traditional leadership is undisputedly democratic. It has been shown earlier that the principle of legitimacy is part of the arteries sustaining the heart of any democratic system

1.4 Customary law

Like Voster (2001) this study takes customary law to mean "... *the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those people*". The choice of this definition does not mean that the other existing definitions are less important, but the observation is that this particular one does attempt to capture the essence of customary law.

The principle of natural justice, *inter alia*, requires that there must be fairness in the manner in which the law applies to all citizens of any polity. Thus equality before the law is one way of ensuring fairness. The democratic character of any system of governance rests, among other things, on the protection of these norms. It means therefore that the law is an important pillar of democracy, which suggests that one can tell whether a particular society is democratic or not by looking at the manner in which the law is applied.

In the light of the forgoing background it is therefore necessary to interrogate whether or not customary law serves as an instrument of democracy. Like many other aspects of traditional leadership, customary law is also a subject of fierce disagreement among scholars. This pertains to its capacity to enhance or curtail democracy. However, the existence of disagreement does not mean that it is impossible to arrive at a logically convincing conclusion on this issue. Actually, the disagreement serves to provide the

basis for further interrogation of the issue, as it is out of further engagement that a more refined explanation can emerge.

Out of the existing literature on customary law, there is notable body of scholars who begin the analysis of customary law from the point where traditional leaders were under colonial control. Central to this body of literature, is the argument that:

The shape of official customary law is largely the product of the way in which it was recognised under apartheid, whose cornerstone was the reinforcement of difference (Oomen, 2000: 67).

The point that this literature attempts to drive home is that what is currently said to be customary law is in actual fact a product of some redefinition and restructuring done by either the colonial state or the defunct apartheid government. The intended purpose of this point is to make analysts understand that customary law as it is today reflects attempts by these regimes to make traditional leaders accountable to the state instead of their people (Mamdani, 1996:63). What follows from this explanation is that as it stands, customary law is fundamentally distorted.

Flowing from this is the idea that customary law in its pristine form was not bad in as far as the promotion of fairness in society is concerned, but has been corrupted by the external forces. One cannot stop asking the question: how true is this claim? This question takes us to the other segment of the literature on customary law, which seeks to respond to the very question. Unlike the version of literature discussed above, this one attempts to give an account of customary law prior to colonialism. This therefore means

that we can rely on the information provided by this literature as it presents the subject dealt with herein in the form that is not tempered with by forces of distortion, colonialism and apartheid.

It must be mentioned, however, that the body of literature that claims to present an untempered version of customary law is, on its own, divided into two segments. The first version actually serves to corroborate the position discussed above, i.e. customary law in its pristine form was a good instrument to regulate social relations based on the principle of natural justice. Hammond-Tooke's (1993:71) account hereunder represents this version:

There existed among all his subjects a clear perception of fairness and justice, a concept of how a 'reasonable' chief should behave – and a chief exceeded these bounds at his peril. The ultimate sanction was rebellion, or the moving away of a section of the population under one of his brothers. ... political arrangements included a series of checks and balances to limit chiefly tyranny and to provide for wider participation in the decision-making process.

It is further asserted that, "*The procedure followed by the courts is customary procedure, which is generally regarded as simple, informal and flexible*" (Independent Projects Trust, 2002: 116). This version of the literature paints a picture that "customary law proper" (proper is conveniently used by the researcher to merely distinguish between the tainted version of the law and the pristine one) was/is good and fair with well-known boundaries that guide the actions of traditional leaders. Looked at from this angle, it would be difficult to find any thing that renders customary incongruent with democracy as checks and balances and fairness are basically among the principles that strengthen

democracy. What gives more credit to customary law here is the claim that customary law created an environment that allowed for broader societal participation. The said simplicity and flexibility of customary procedure is another factor counting in favour of customary law as described by the version of literature under discussion. There is nothing in any form of democracy that justifies the prohibition of simple and flexible procedures in society. Actually, a democratic system becomes even enhanced when most, if not all, participants in such a system can easily understand its procedures.

However, the problem with this version of literature is that there are flaws and loopholes in the data presented as evidence. It is these loopholes that make it even difficult to take the thrust of what is presented as credible. Consider, for example, the very account given by Hammond-Tooke above, he writes that the instrument that people could use to punish a traditional leader who disregarded the law was rebellion or the moving away of a particular section of the disgruntled society. This is squarely antithetical to democracy. It actually nullifies Hammond-Tooke's very argument that customary law proper provides for checks and balances. In a system where there are checks and balances, a leader cannot have a room to disregard the law. If a leader does so, the law in such a democratic system ultimately prevails – meaning that no section of such a society would have to break away as such a leader would be brought before the law. If it means that when a leader has transgressed the law it is the people who should run away from their land, it therefore becomes clear that there is no democracy in such society, but rather absolute dictatorship. As Bobbio points out, democratic forms of government require that the laws be made by the people to whom they apply (Post in Chapman and Shapiro, 1993: 169-170). So the

scenario portrayed by the scholars who argue that customary law proper is fair and good does not seem to meet this criterion as it is said that customary provides that if you are not amenable to the traditional leader's vagaries you simply have to leave his territory. In this sense, it would appear that under customary law the people have no final say over their lives, but it is the traditional leader who does. Furthermore, the land is reduced to a mere property of the traditional leader, as the citizens have no rights over the land on which they reside. Thus the only way through which they can maintain their stay on the land is by keeping in tune with the their leader even when the leader rides roughshod over their interests. The implication of customary law in this case is that it legitimises the dictatorship of the traditional leader.

The loopholes that are found in the evidence adduced by the first version of the scholars who attempt to give an account of customary law in its pristine form, as discussed above, seems to corroborate the second version of the literature. What earns this version of the literature some distinctiveness is the denial of the notion that customary law proper is fair and good. Here we are persuaded to believe that customary law is basically used in most cases to further the interests of traditional leaders and that the concept of checks and balances is foreign to customary law. The following passage aptly represents the scholars of this ilk:

True, the poor man found an easy access to the courts; but if he chanced to be in conflict with a friend of the favourite 'of the court', the die was always heavily loaded against him ... (Bryant, 1949: 462)

It is worth noting that traditional leaders serve both as the executive and the judiciary at the same time in as far as customary law is concerned. So when Bryant says 'the court' he refers to a customary court headed by a traditional leader. It would appear from the evidence that customary courts are prone to biasness in cases where the interests of traditional leaders are at stake. The system makes it improbable for a poor fellow to make it if he happens to be up against anyone attached to the royalty. What this means is that the system creates conditions for people to make underhand connections with the royalty so as to ensure that the law is always on their side. Where is the principle of natural justice here? Where is the principle of equality before the law? Clearly, principles like these can never exist in a system where the law treats some people with speciality. This kind of a situation is not only incongruent with a democratic system, but contributes to a negative perception about customary law itself among the people it is supposed to serve. This is evident in a recent study done by Oomen (2000) where most respondents indicated their resentfulness of customary courts for their unfairness. Mzala (1988) underscores the major flaws of the customary legal system when he argues that, "*even in cases where chiefs were themselves a party to the dispute of charge, they could still preside as judges in matters where they had an interest*". It would appear that this kind of a system is not unproblematic.

As demonstrated above, there are conflicting accounts of customary vis-à-vis democracy. On the one hand, there are those scholars who argue that customary law proper is fundamentally in line with good governance while at the same time there are those who dispute this view. However, a closer analysis reveals that the evidence adduced by those

who contend that customary law does comply with principles of fairness does not seem to be watertight. It would appear reasonable, therefore, to conclude that although there are a few positive things that can be said about customary law proper, such as its accessibility, generally it is not a good instrument to advance democracy as it has serious loopholes that make it easy for traditional leaders to abuse it.

1.5 Traditional leadership and gender

Democracy does not promote the discrimination of people on the basis of sex. Male or female people are considered equal regarding their participation in the politics of society. This includes, among other things, taking part in the leadership of society. Any system of governance that is said to be democratic can be tested, *inter alia*, on the extent to which it excludes or includes woman. When subjected to this criterion, the institution of traditional leadership does not seem to score any point as it is reputed for being a terrain of males, except in a few cases where some nations accommodated women in the leadership structure (Hammond-Tooke, 1993:75).

However, the issue of gender vis-à-vis traditional leadership needs to be understood within the broader context of African culture where women have been/are still systematically subjected to different forms of discrimination in the activities of society. In most communities women are given a lower status as compared to their male counterparts and thus are excluded from certain social processes, roles and responsibilities. For example, Mamdani (1996: 64) points out that women in most

African cultures can “*neither inherit nor bequeath*”. This patriarchal cultural principle has far reaching implications in relation to women and leadership. It means that women are completely excluded from the system of leadership as they cannot inherit nor bequeath leadership. The following words are important to amplify this point:

If a daughter takes ubukhosi, it will create problems when she goes out to get married to another family. It won't be acceptable ... 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 in the foreseeable future I don't see that changing (a chief cited in IPT, 2000: 134)

As the colonial government passed legislation to control traditional leadership it also codified “The minority status of African rural women in the Native Administration Act of 1927(Van Kessel and Oomen, 1997: 574). This served to legally concretise the exclusion of women from important issues of society including leadership by law. However, it is necessary to point out that it is not objective to argue that the colonial government must shoulder the entire blame here as it basically codified something that had been upheld by most African cultures. Although some strides are being made to raise the status of women, there are still very few female chiefs in South Africa today and the institution of traditional leadership still continues to be rigid in terms of allowing women to be leaders as well. This is neither the result of colonialism nor apartheid, but a direct consequence of cultural conservatism on the part of most male traditional leaders. For example, chiefs reject the inclusion of women saying that:

... We are in Africa and we remain in Africa. We are not prepared to give up and sacrifice our Africanism, ... the whole impact of equality was having an

impact on the lobola {bridewealth} custom ... Who must lobola whom, if we are all equal? (cited in Maloka, 1996)

This shows how deeply rooted and complicated the issue of women vis-à-vis traditional leadership is. Considering this, it would appear that bringing the institution of traditional leadership into line with democracy – especially as it concerns gender issues will not be an easy exercise. The exclusion of women in this regard is rooted in the culture of society and thus given further expression in the leadership structure.

1.6 Some further reflection on traditional leadership and democracy

Broadly speaking, the question of the compatibility of the institution of traditional leadership with democracy is a subject of contestation. Some scholars argue that the institution of traditional is not inimical to democracy while there are also those who contend that it is. Claude Ake (2001: 34), for instance, argues that traditional African political systems in their pristine form were infused with democratic values. This, according to Ake, was the central feature of African political systems regardless of the difference in their manifestation. Ayittey (1991) further articulates this view by contending that, “*Authority from the people was needed to rule*”. The problem with this line of argument is that is too general. It appears to be lacking in detail and it oversimplifies matters. This oversimplification is problematic, in that it eclipses the significance of institutional manifestation in determining the extent to which a particular system is democratic or not.

It is worth stressing that issues related to institutional manifestation are crucial in analysing the democraticness of institutions. If evidence were to be adduced strengthening the claim that the institution of traditional leadership is democratic, such evidence would need to be rigorous in its proof that the institutions of traditional leadership are democracy-friendly. Inevitably, this would need to also address itself to issues of power relations between leaders and their subjects as well as the issue of authority in the system - identifying the loci of power - whether it resides with traditional leaders or the people. It is interesting to observe how following passage attempts to shed some light on these critical issues:

On closer examination we will discover that those public figures designated by modern scholars as chiefs and kings were not politicians strictu sensu and the institutions they embodied were not political institutions, and even less political systems. Certainly, we can speak of centralised decision-making, but decisions of leaders were subject to various rules and limitations imposed by the populations which they were supposed to lead. (Scalnik, 1996:111).

This sounds like a response to the criticism levelled at the institution of traditional leadership that it does not meet democratic standards. What this kind of response manages to do is to attempt to make a distinction between politics in the modern sense of the word and traditional leadership. But the attempt cannot provide any justification that the institution of traditional leadership should be absolved for not being democratic. Actually, that is not the issue. The issue is whether or not the institution is democratic. On this specific question Scalnik also falls into the same trap that other scholars find themselves in, that is, going too general and say that under traditional leadership the

subjects do impose some limitations on their leaders. The how part of it seems to be left unattended to.

The lack of clarity on issues of institutional manifestation makes it hard to refute the argument that the institution of traditional leadership is generally not democratic. For example, Kuper(1986: 33) observes that nepotism is a rampant phenomenon in the leadership of the Swazi people and that “*power radiates from the king to other members of the royal lineage*”. Actually, this is no peculiarity of the Swazi people, it is something that many scholars talk about as being prevalent in most African communities that observe the system of traditional leadership. Power resides only in the royal family. Clearly, this is not in line with democratic tenets were every member in society can stand for election to be a leader of such society. As Bennett (1998) observes, election is not a criterion for assuming office under a traditional system of leadership. It is heredity that determines this and it is only restricted to the royal family. If the lottery of birth has thrown one outside the royal family, it means that such a person can never be a leader for life. The question is: is this kind of system reconcilable with democracy?

It would seem that a society that cherishes democratic values would find it very hard to accept the hereditary system of governance as appears to exclude other people from leadership while reserving a special place for others. Inherent in a traditional system is the assumption that people are not equal and as such some are not fit to hold positions of leadership. The “lottery of birth” principle does not seem to take into consideration issues related to the capacity and potential for some individuals to rule. It is either you are in or

out of the “fortunate family”. This is fundamentally in conflict with democracy – whatever form it may take.

The system of traditional leadership also emphasises personality instead of institutions. This is due to the fact that in a traditional system leaders are born. Thus it is known before hand as to who will be the successor of a particular leader. As a result, the prospective successor is groomed so that he develops certain personal qualities (Mason, 1956: 139). It is neither bad nor anti-democracy for a leader to have good personal qualities, but the problem with the system of traditional leadership is that it is highly centred on personality than on institutional strength. This subjects the whole population to the mercy of a leader than institutions and thus reducing the certainty of their lives. The corollary of this is that if a particular leader is personally despotic, society is in danger like in the case of king Shaka Zulu (Bryant, 1949). On the contrary, democratic systems have institutional mechanisms to curb the abuse of power by leaders and thus empowering the electorate.

1.7 Conclusion

This chapter sought to discuss the concept of democracy in relation the institution of traditional leaders. Out of the discussion, it is clear that although democracy can be defined differently, there are certain values that are central to all democratic systems such as the rule of law, equality, accountability, etc. It is this that makes it possible for any system of governance to be evaluated so as to determine whether it is compatible with

democracy or not. Subjected to this test, the institution of traditional leadership appears to be lacking in many respects.

The legitimacy of traditional is derived from traditions. These traditions have been tempered with in many ways by the colonial and apartheid regimes, such that, it is no longer easy to tell if they are really in place.

The fact women are culturally accorded a low status in most African societies has some adverse implications for women vis-à-vis traditional leadership. Although there are few communities that accommodate women in their leadership structures, most traditional systems of governance completely exclude women from issues of leadership, thus rendering the institution of traditional leadership an exclusive domain of men. This therefore, discards the principle of equality from the system, which does not augur well with democracy.

On the whole, the institution of traditional leadership appears to be incompatible with democracy as it is based on a system that is centred on personality and hereditary procedure of ascendancy to power.

----Chapter 2----

The South African institution of traditional leadership in historical context

2.1 Introduction

This chapter investigates the evolution of the institution of traditional leadership. The investigation will start from the pre-colonial period to the apartheid era. The pre-colonial era will be looked at within the broader context of the African continent, as the South African society is not necessarily unique in its pre-colonial form. This approach will also be employed in the discussion of colonialism, as the country is one of the many African countries to which the British policy of indirect rule was applied. Given the significance of the African National Congress (ANC) in past and present politics of South Africa, the chapter will also reflect on the historical relations of the organisation and the institution of traditional leaders. As it will be demonstrated in the chapter, these relations have a bearing on the current state of affairs in relation to the position of traditional leaders.

2.2 The pre-colonial era

Every society has its past. History helps societies not only in making them aware of their past, but it is also crucial in aiding new generations deal with current challenges. In the same vein, the colonial era's importance does not lie only in the fact that it enables South

Africans to know their origins, but also presents some important lessons for the understanding of the evolution of the institution of traditional leadership.

Historical data reveal that in pre-colonial Africa there were over 10 000 little “states, kingdoms, ethnic unions and federations” (John Matshikiza, *Mail & Guardian*, 17 to 23 May 2002). These polities were fragmented and largely based on kinship lineages. Hamond-Tooke (1962: 166) reflects the nature of these polities in the context of the Bhaca society:

... society is organised on the criteria of kinship and territorial distribution into structural units. Homesteads, neighbourhood units, lineages, all possess considerable solidarity and form distinct social groupings, conscious of their own unity and opposing disruption and absorption by other groups. The whole society is segmented on this basis.

Some scholars use the term “acephalous” while others utilise the concept of “headless” to define and describe this type of social organisation that characterised the African continent prior to the advent of colonialism (Skalnik, 1996). The use of this terminology is an attempt by present-day scholars to shed light on the difference between the pre-colonial African polity and the modern state. The pre-colonial African polity is presented in contrast to the current manifestation of the state - where the state is much larger, thereby transcending kin-based identities with the head of state in the form of the president, the prime minister, etc. What is interesting to observe is the influence that the modern state has in the analysis of pre-colonial African politics. So conspicuous in the analysis is the fact that the modern state is used as the barometer on the basis of which the stateness or statelessness of the pre-colonial African polity is analysed. Bennett

(1998) argues that, "... *the typical African polity was poised halfway between being a state and centrifugal state*". It is clear here that this definition does not present the pre-colonial African polity as a state in the modern sense of the word. However, there are other scholars who argue that pre-colonial African polities were veritable states. Hammond-Tooke (1993), for example, contends that these polities were states as they had institutionalised political authority. All these conceptual differences notwithstanding, what is clear is that a pre-colonial African polity was in many ways distinct from a modern state. This difference, for example, expresses itself in the size of the polity, the basis of the unity of its population, etc. perhaps this point could be articulated with more clarity if the issue of leadership is considered.

The pre-colonial African polity was led by what we today refer to as traditional leaders, kings or chiefs. The question is: who is a traditional leader? Weber (cited in d'Engelbronner-Kolff, Hintz and Sindano, 1998: 4) argues that traditional leadership refers to the authority that is based on the belief in '*sacred traditions in force since time immemorial*', and the legitimacy of those who are called to govern by said traditions. As it can be seen, this definition also evokes issues related to legitimacy. These issues have been dealt with in the preceding chapter but, for now, attention should be focussed on the fact that this definition presents the concept of 'tradition' as the basis of leadership. Tradition includes a "... *whole range of inherited culture and way of life; a people's history, moral and social values and the traditional institutions which survive to serve those values*" (Oomen, 2000: 12). It can be said, therefore, that traditional leaders are leaders who rule and govern their societies on the basis of traditional practices and values

of their respective societies. These are the leaders who governed pre-colonial African polities. In agreeing, Mofamadi has the following to say:

Prior to the introduction of colonialism, social organisation in South Africa was characterised by a number of tribal regimes based on patriarchy and ascriptive norms. Each tribe ... had a traditional leader who was the central feature (Department of Provincial and Local Government, 2000).

What is important to note from the above citation is the mention of the traditional leader as the highest authority over a tribe. This therefore makes it clearer that there was no other authority above traditional leaders during the era under discussion. Cementing this view, in the context of the Zulu people, Bryant (1949) argues that the King was the ‘*captain of the ship*’. This expression describes the position of traditional leaders, then, with a higher degree of clarity – that they were the authority at the highest level of their polities. This led Narman (1998) to conclude that traditional leaders were “*leaders, not appendages, to bureaucratic systems*”.

These leaders permeated almost all spheres of their subjects’ life – from political to economic, and from religious to cultural. Table 1.1 below shows the kind of responsibilities these leaders had.

Table 1.1: Powers and Functions of traditional leaders prior to colonialism.

Powers of traditional leaders before colonial rule	
Political Functions	<ul style="list-style-type: none"> • Sovereignty: Safety and security, protection • Relations to “outsiders”
Economic Functions	<ul style="list-style-type: none"> • Land allocation and distribution/Custodians of land • Facilitator of and economic and environmental matters

	<ul style="list-style-type: none"> and development • Facilitator of infrastructure and services • Tax collecting powers
Social Functions	<ul style="list-style-type: none"> • Courts decisions and implementation • Judicial administration, law-abiding societies • Health systems, traditional healers
Cultural Functions	<ul style="list-style-type: none"> • Sacred and spiritual leadership • Custom and tradition, cultural matters

SOURCE: Naudacher K. and Kgathanye N. (1997) Report of the Regional Conference on traditional Leadership, South Africa: Friedrich Ebert Stiftung.

As it can be seen from the table above, traditional leaders performed a wide variety of functions and had all-round powers vis-à-vis their societies in pre-colonial Africa. It is for this reason that traditional leaders are viewed as having been responsible for the well-being of their communities. There is hardly an aspect in the life of their subjects over which they did not have authority. This what has led what has led many scholars to liken the relationship between traditional leaders and their subjects to that of father-to-children relationship. This shows that a traditional leader, then, occupied the highest office in his community as a father does in a typical African family. This is clear in Hammond-Tooke's (1962) observation:

The chief is not merely the most important and most powerful member of the tribe, he is the tribe, the embodiment of all the attitudes, emotions and values that ensure its solidarity. He is the symbol of tribal unity.

This reinforces the point made earlier that traditional leaders permeated almost all aspects of their subjects' life. The question is: what was the procedure for ascendancy to a position of leadership? As pointed out earlier, traditional leaders ruled by tradition in pre-colonial Africa. Tradition also applies to ascendancy to a position of leadership. It is

tradition that determined this process. Ascendancy to leadership was a function of heredity. The main principles here are “*primogeniture*” and “*agnation*” (Hammond-Tooke, 1962). These are the principles that that guided communities in as far as the issues of ascendancy to leadership is concerned.

2.3 Colonialism and traditional leadership.

The process of colonising the African continent had far-reaching implications for the lives of the African peoples and their leadership. This process was uneven in the way it impacted on African countries. In their colonies, for example, the French pursued a policy of assimilation while the British, as it will be demonstrated below, pursued a different one. South Africa is one of the many countries that fell under the colonial grip of Britain. Like other coloniser-countries, Britain found most African societies living under the leadership of traditional leaders. Obviously, the task of colonising required that the intruders take over the leadership in the land of the colonised. This challenge could not be tackled without having to deal with traditional leaders as the people who led African societies prior to the arrival of the colonialists. For the colonisers, the question was: how best to assume leadership of the indigenous people of Africa? What do we do with their leaders, traditional leaders?

In response to this question, the British then engineered a policy of indirect rule. This policy meant that the British would take over the leadership of the colonies without getting rid of traditional leaders. The strategy was to find a way of dominating the lives

of the African native people with minimal revolt from them. This would be achieved by ensuring that traditional leaders are also part of the broader colonial leadership structure. The realisation by the British was that if traditional leaders were completely done away with it would not be easy to secure the support of the African masses for the colonial system to be stable and sustainable. Nwomonoh (1994) captures the philosophy behind indirect rule:

The underlying belief behind indirect rule was that every system of government, if it is to be permanent and progressive, must have its roots in the framework of indigenous society.

Clearly, the British forces realised that they could not successfully govern the indigenous African people without the use of traditional leaders, as they were foreign to the native people. It is understandable therefore, that the British saw traditional leaders as a critical link between them (the British) and the indigenous people, or as an instrument of legitimisation. It is against this backdrop that Temple (cited in Nwomonoh, 1994) argues that:

If European governments destroy, directly or indirectly, the powers of traditional rulers, they will have wiped out the only voluntary basis upon which Africa can be administered.

This argument exposes the intensions and the attitudes of the colonialists towards the institution of traditional leadership. The institution was viewed as a strategic vehicle for the Europeans to take themselves into a position where Africans could accept them. This

then makes it clear as to how traditional leaders are linked to the whole colonial edifice of domination.

In South Africa, the British policy of indirect rule was first introduced in Natal as early as the mid-nineteenth century. Sir Theophilus Shepstone is one of the first colonialists in South Africa who worked arduously to impose indirect rule on the Zulus of Natal (Zungu, 1997). But, as Mamdani (1996) points out, the application of the policy was, at this stage, basically a "trial and error" exercise. It came into full and perfect force with the passage of the Native administration Act No. 38 of 1927, some seventeen years after the formation of the Union government. This Act gave the Governor-General the powers to appoint and destool traditional leaders as he deemed it necessary and thus making him the supreme traditional leader of the land. It would appear that the British were fully aware that, although they needed to maintain the institution of traditional leadership, they desperately had to have effective control over it. It was not unclear to them that the institution would not serve as a good colonial instrument outside the grip of colonial rule. It is for this reason that the Act gave the Governor-General such unlimited powers over the institution of traditional leadership.

The question that remains to be answered is: what implications did the Act have for the institution of traditional leaders? The fact that the Governor-General was given powers to appoint and depose traditional leaders at will, clearly shows that traditional leaders were now compelled to be accountable to the colonial government. It meant that these traditional leaders had to act in a manner that gratified the Governor-General as a

representative of the colonial establishment. The ultimate aim was to systematically convert the institution of traditional leadership into an extension of the colonial government in black communities (Mzala, 1988: 42). Traditional leaders were now expected to act as eyes and ears of the central colonial government. What this means is that a gulf was now being created between traditional leaders and their people by making them account to the colonial government instead of their people.

The incorporation of traditional leaders into the system of colonial governance saw most traditional leaders swimming in a pond of frustration. They were conscious of the fact that they had an obligation to serve their people but, at the same time, the colonial government required them to minister to its interests. Hammond-Tooke (1962) aptly captures this dilemma:

In many ways the headman is in a difficult position. On the one hand he is linked by ties of kinship and political office to the people of his location and is expected to look after their interests and well-being. On the other hand he is a paid official of the White administration, under the immediate control of the commissioner and subject to disciplinary action if he fails to obey the latter's lawful instruction.

As it can be seen, traditional leaders had tough choices to make under colonialism. Those who chose the side of the people were deposed and those who chose to dance to the tune of the colonial government saw the light of day. This had far-reaching implications for the integrity of the institution, in that the persons who were appointed to replace non-compliant traditional leaders were not necessarily appointed on the basis of tradition, but on the indication of readiness to co-operate with the colonial government. Inevitably,

this forced those traditional leaders who complied with the system to cross swords with their own people as the aspirations of their people were not always in accord with the objectives of the '*foreign infidels*'. This system created a room for some traditional leaders to abuse power and fertilised the ground for corruption to thrive, as that would not threaten their positions as long as it did not fall out of tune with the colonial government (Ayiittey, 1991). It can be said, therefore, that the advent of colonialism did not only have adverse implications for the integrity of the institution of traditional leadership, but also victimised the African people.

It is important to further demonstrate how the advent of colonialism served to bifurcate the administration of the colonised societies. The Europeans viewed the way of life of the Africans as barbarian. This means that Europeans did not retain the institution of traditional leadership because they believed that it was good, but because it would be instrumental in furthering their interests. They thus had their own leadership and administrative arrangements in their own exclusive areas while Africans had theirs on the other side of the racial divide. This gave birth to two systems of administration and leadership within one country – a system that Mamdani(1996) calls the '*bifurcation of the state*'. Furthermore, it served to legitimise, entrench and concretise racism.

On the whole, colonialism represents the first dent to the integrity of the institution of traditional leadership, in that this was the first time that some higher authority was imposed above traditional leaders in the leadership of African polities – an authority that corrupted and radically changed the institution of traditional leadership.

2.4 Apartheid: deepening the instrumentalisation of traditional leaders

The year 1948 represents a major turning point in the history of South Africa. It is the year in which the National Party (NP) finally managed to fully gain control of the state. The accession of the NP brought about a new philosophy of socio-political relations in the country – an ideology of apartheid. This ideology was engineered to give rise to a society of deepened racial disintegration in South Africa. It was based on the cherishment of racial differentiation by the Afrikaner government. Hill captures the theoretical premise of apartheid thus:

The theory goes on that the Republic's Africans compose not one but many national groups. Ethnic divisions, it is said, are so fundamental and deeply felt that they could not possibly be overcome to allow all groups to combine in a single political entity... (Hill, 1964: 1).

So it was presented as a matter of necessity for black people to be separated along ethnic lines. Actually, apartheid, as Hill (1964: 1) observes, was a “*system of social differentiation and deprivation of political rights for almost all non-whites*”. Thus apartheid was in fact based on a staunch belief in white supremacy. However, the government had to coach this programme of white supremacy in a language that sounded palatable and innocuous to the black people. It was therefore portrayed as a programme meant to promote separate development (Quinlan, 1986). The question is: how did the then government give practical expression to apartheid and how did that affect the institution of traditional leadership?

The practical institutionalisation of apartheid came with the passage of the Black Authorities Act No. 68 of 1951. This Act provided for the balkanisation of South Africa into a system of Bantustans meant to compartmentalise Africans along the lines of ethnicity. As Bekker (1993) points out, in creating this system the National Party was obsessed with chiefs and tribes. The government saw chiefs as the leaders of these newly created tribal entities. It is important to mention that this was a threefold strategy on the part of the National Party - viz. social, political and economic.

On the social front, the strategy was to create institutional barriers that would prevent interaction between African people from different ethnic groups and between white and black people. This would then ensure that the better social status of white people remains untempered with by nonwhites. The achievement of this goal would then facilitate the attainment of the National Party's political objective – preventing the unity of the African people, which was viewed as dangerous (*swart gevaar*) to the political interests of the Afrikaner community. On the economic front, the Bantustans were seen as a strategic reservoir for cheap labour (Van Kessel and Oomen, 1997). The question is: where does this boarder apartheid strategy leave traditional leaders?

The apartheid government realised that the chiefs were better-placed to be used as leaders in the homelands to facilitate the achievement of its goals. It is for that reason that the Black Authorities Act provided for the homeland governments to be led mainly by chiefs with a few elected members. The dominance of traditional leaders was tactically

orchestrated for the apartheid government to be able to control the Bantustans. As Mamdani (1996:72) points out, the apartheid government did not basically change or abandon indirect rule vis-à-vis traditional leaders, but rather intensified their instrumentalisation.

Under the Act, traditional leaders still were to be appointed by the central government through the department of Native Affairs. This reflects a tactical continuity from the colonial era where the Director-General appointed chiefs. The apartheid government still needed this to be used as a lever through which traditional authorities could be controlled. Essentially, traditional leaders were still representatives of the government. Referring to the provisions of the Act, Unterhalter (1990) argues that, "*Those regulations require a chief to act as an all-round public servant, subject always to the power of the government to whom he owes his office*". Just like the colonial era, traditional leaders who dared to oppose apartheid were deposed. In the Transkei for example, about 30 chiefs were destooled in the period between 1955 and 1958 for refusing to dance to the tune of the apartheid government (Maloka, 1996). This created a situation where many chiefs cooperated with the apartheid government. When the homeland legislatures were formed, chiefs consented to the apartheid government's idea that elected representatives must be in the minority in all the homeland legislatures. Table 1.2 below reflects the number of seats occupied by both elected representatives and traditional leaders in the homeland legislatures:

Table 1.2: Seats occupied by traditional leaders and elected representative in homeland legislatures.

Homeland	Traditional	Elected members	Total
1. Transkei	65	45	110
2. Bophutatswana	48	24	72
3. Ciskei	35	20	55
4. Lebowa	60	40	100
5. Venda	42	18	60
6. Gazankulu	42	26	68
7. Qwaqwa	40	20	60
8. Kwazulu	81	55	136
9. Swazi	-	-	-

Source: Breytenbanc, W.J. (1975) "Chieftainship and political development in the homelands" in Bulletin of Africa Institute of South Africa, No 9 & 10 (eds) p.330.

The apartheid intellectuals argued that the homeland system was a good way of syncretising traditional mode of leadership and modern democracy as it combined both elected representatives and traditional leaders. Professor Julius Jeppe (cited in Breytenbanc, 1975), for example, praised this kind of an arrangement as a unique form of government that synthesized Western representative democracy and indigenous hereditary leadership in one body and as such, he argued that, it was a model of great possibilities

Analysed critically, the argument of apartheid architects was misleading as in reality the homeland legislatures and governments were tailored to give traditional leaders more influence so that they could serve the apartheid system. Maloka (1996) captures the reality of the homeland system when he says:

... the position of ... chiefs ... was strengthened vis-à-vis that of commoners, as the former gradually came to rely on their alliance with the ... government, rather than popular support, to remain in power.

This alliance served to deepen the instrumentalisation of traditional leaders by the apartheid government. They were used, as pointed out earlier, as the rural policemen of the government, having to ensure among that, *inter alia*, there was stability in the homelands by guarding against any form of anti-government political activities; ensuring the effective implementation of a welter of influx control measures designed by the apartheid government, etc (Myers, 1999).

Clearly, this role that the apartheid government designed for traditional leaders inevitably had to lead to a serious dent on the integrity of the institution of traditional leadership, in that traditional leaders were expected to implement very unpopular policies of the apartheid government. Adding to this unpopularity this system fostered rampant corruption by traditional leaders:

Bantustans 'citizens' were forced to carry membership cards of ruling parties in order to get access to government goods and services, especially houses and employment in the civil service. For their part, chiefs charged fees for access to village resources, especially land. ... this corruption varied from one Bantustan to another. In Sekhukhune, for example, from the 1960s ... chiefs expected their subjects to raise money to buy them cars, to build them houses ... (Maloka, 1996)

Conscious of the fact that they were protected by the apartheid government, traditional leaders felt that committing atrocities of this magnitude against their people was not a problem as long as that was not against the interests of the government. So, what we see here is the widening of the gulf whose development was initiated by the colonial government through the Native Authorities Act. Under apartheid, traditional leaders strengthened their ties with the government through the homeland system and thereby

weakening the nexus between them and their people. It is not surprising, therefore, that traditional leaders progressively became one of the targets of anti-apartheid protests in black communities, as they were increasingly seen as a cog in the huge wheel of apartheid.

2.5 The African National Congress and the institution of traditional leadership.

The formation of the Union of South Africa in 1910 served to centralise racism by creating a unitary system of governance and to deepen the exclusion of black people from taking part in the politics of the country. The union was not founded on the principle of universal franchise, but rather on a political framework that only sought to safeguard the participation of white people in the political system. These exclusionary tactics of white people inevitably gave rise to new ways and forms of organisation on the part of black South Africans. The formation of the ANC in 1912 thus represents a strategic reorganisation of black protest against the discriminatory strategies of the colonialists – at this stage, in the form of the newly formed union government.

The ANC showed a high level of respect for traditional leaders at this early stage of its life. Its first constitution adopted in 1919 provided for a structure within the organisation for traditional leaders called the Upper House of chiefs (Mzala, 1988: 39). That the ANC adopted this attitude towards traditional leaders does not come as a surprise as traditional leaders were the only legitimate leaders in African communities. The black people could

not be effectively mobilised without wooing traditional leaders. As Maloka (1996: 179) points out, traditional leaders were assumed by the ANC as representing their tribes. This, therefore, means that the ANC was aware that it could gain access to these tribes through traditional leaders.

Traditional leaders were not only important to the ANC as a gateway to the African tribes, but they were also vital as a source of strategic financial assistance to the organisation. For example, each chief, then, contributed L5 (L stands for shilling) to his province while a paramount chief contributed L25 provincially and L25 to the ANC headquarters (Maloka, 1996: 179). This therefore means that the organisation had to reciprocate the gesture by giving traditional leaders a special place within the organisation.

Over and above, the ANC was fully conscious of the fact that any effective move to counter the government's tactics called for a formidable united front of all African people across all tribes. Thus, bringing the leaders of these tribes together in one forum was, for the ANC, a strategic move to ultimately unite all Africans against one enemy. It can be said, therefore, that the reason why the ANC accorded traditional leaders a respectful status in the early years of its existence is because traditional leaders were better placed for the advancement of the ANC's agenda, i.e. uniting the indigenous peoples of South Africa against the then discriminatory colonial government.

The cosy relationship between the ANC and traditional leaders was clearly a thorn in the neck of the colonial government. Understandably, the government could not fold its arms and watch this relationship flourish. As Mzala (1988) candidly points out:

From the perspective of the South African government, this alliance of the people with the chiefs in various ANC campaigns, on such issues as land, the franchise, labour, education, civil appointments, passes, liquor, etc., had to be confronted and crushed since it radicalised the chiefs. The government felt that a way had to be found to 'put the chiefs in their rightful place' – by this was meant that they were to become servants of the government.

It was a matter of political necessity for the government to do everything in its power to create a cleavage between traditional leaders and the ANC. The strategy by the government to consult with traditional leaders before implementing the Bantu Administration Act was thus a calculated move in this direction. The ANC was equally aware of these counterrevolutionary tactics of the union government. The attitude of the ANC towards the government's consultative approach and the broader attempt to turn traditional leaders into government minions is embodied in the words of Walter Sisulu, then Secretary-General of the organisation: "The Africans will not allow themselves to be pushed back into tribalism" (cited in Mzala, 1988: 51). This was a call by the ANC to traditional leaders not to pander to the interests of the colonial government by accepting the Native Authorities Act. It was not unclear to the ANC that if traditional leaders accepted the Act the implications for the unity of the masses of black people would be adverse.

Unfortunately, as pointed out in chapter two, most traditional leaders did co-operate with the colonial government in the implementation of the Bantu Administration Act. This, inevitably, could not go down well with the ANC, as the Act was mainly a political strategy to weaken the ANC's move to unite Africans across tribal lines. So the period around 1927 marks the genesis of what was later to become a major crisis in the relationship between traditional leaders and the ANC.

The partnership that most traditional leaders entered into (in the form of homeland governments) with the apartheid government, as from 1951, served to add fuel to the fire burning the last strings holding the ANC and traditional leaders together. As Hendricks and Ntsebeza (1999) observe, traditional leaders were viewed by the ANC during the homeland system as being integrally part of the apartheid system. Thus they were perceived as being an organ of the enemy. This enmity reigned for the most part of the life of the apartheid system.

Looking at traditional leaders up to this point, it is clear that theirs has been a life of periodically shifting allegiances – from the ANC (in its early years) to the colonial government, and latter to the apartheid system. It is not shocking, therefore, that traditional leaders later formed an ostensibly anti-apartheid organisation in 1987, the Congress of traditional leaders of South Africa (Contralesa). Although the formation of this organisation may also be interpreted as a component of the broader liberation struggle as the organisation also undertook to fight apartheid, it is, to a large extent, a function of opportunism on the part of traditional leaders. Contralesa's statement exposes

this reality: “apartheid has separated us from our people, now we are going back to them” (cited in Maloka, 1996: 180). This statement may partly mean that the gulf between traditional leaders and their people is ascribable to the political engineers of apartheid, but the statement also carries some important truth that traditional leaders themselves also contributed to the development of the gulf by allowing themselves to swim in the pond of apartheid masterminds. Viewed from this perspective, the half-truth that Contralesa is an antiapartheid agent becomes less veiled. The fact that as from 1987 to 1989s the Contralesa’s membership had grown from 38 to about 150 (Maloka, 1996: 181) indicates that traditional leaders were conscious of the need to position themselves well for the future as it was increasingly becoming clear that the ANC was a government in waiting.

What remains puzzling to many observers is the fact that the ANC did not refuse to resuscitate its relationship with the former collaborators of apartheid (chiefs). Quite bizarrely, the initiatives to establish contralesa were enthusiastically welcomed by the ANC. This rapprochement attitude was very much to the chagrin of many young ANC members who had been up in arms against traditional leaders in many black communities.

The position by the leadership of the ANC to realign the organisation with traditional leaders is viewed by Hendricks and Ntsebeza (1999) as being based on political “*expedience*” rather than “*principle*”, as the ANC sought to create a chasm among chiefs themselves and prevent a likely conservative alliance between chiefs and the National

Party. This alliance does not mean that the division within the ANC over this question was over. The division continued[s] to find expression in various official positions of the organisation. In the late 1980s ambivalence about the position of traditional leaders was evident in the ANC. For example, the organisation in its constitutional guidelines issued in 1988 argued that:

The institution of hereditary rulers and chiefs shall be transformed to serve the interests of the people as a whole in conformity with the democratic principles embodied in the constitution (cited in Bekker, 1993).

It is statements like these that served to create an impression that the ANC was going to maintain the institution of traditional leaders after the demise of apartheid – a position that, as Oomen (2000) observes, went counter to the general belief held in struggle circles that “*chiefs would disappear with the apartheid government to make place for the organs of the people’s power*”. The ambivalence of the ANC regarding its thinking about the future of the institution of traditional leadership is clearer from the following passage:

In assessing the role chiefs and traditional leaders can play in the democratisation process they should be viewed as leaders in their communities who are perceived by their fellow villagers as men and women of authority, who have used wealth, heredity or personal magnetism to gain positions of influence. Some of them might have been appointed to their present positions by the apartheid regime and are view by the populace as collaborators lacking any semblance of legitimacy. These will most probably lack the necessary initiative needed in the transformational process before it even begins.

Others might have been removed form office because of their patriotic attachment and participation in the anti-apartheid struggle. Despite that they might still be regarded in high esteem by their communities and considered legitimate. Through them many people’s attitude might be changed and therefore they might be the key to the hearts of millions,

influencing local and regional politics and also the shaping of major decisions while forming a vital link with the people at grassroots level (Skweyiya, 1993: 7).

Here Zola Skweyiya manages to reflect the division within the ANC over the future position of traditional leaders in the new South Africa. Obviously, ANC comrades belonging to the two camps of thought cannot hold a similar position regarding the future of traditional leaders. Against this background of fundamental difference, it is fascinating for the analyst to scrutinise the post-apartheid politico-constitutional dispensation vis-à-vis the institution of traditional leadership

2.6 Conclusion

This chapter sought to look into the role that the institution of traditional leaders has played in historical context. Three epochs of South Africa's political developments have been the primary focus of this chapter, viz. the pre-colonial era, the colonial period and the period epoch of the apartheid regime. The chapter also discussed the relationship of the ANC and the institution of traditional leaders through out these stages.

In pre-colonial era South Africa, like most African polities, dived into smaller polities under traditional leaders. The leaders were responsible for the general well-being of their polities – a responsibility that earned them the status of being fathers of their societies. The bond between the people and traditional leaders was very strong in that traditional leaders touched almost all aspect of the people's lives.

The advent of colonialism dented the integrity of traditional leaders by subordinating them to the colonial government. Thus the bond between the people and traditional leaders was weakened as the colonial government used traditional leaders as an instrument through which they could dominate the indigenous people of South Africa.

The apartheid government deepened the instrumentalisation of traditional leaders by using them as a bulwark for institutionalised tribalism in the form of the Bantustan system of government. This development corrupted the most traditional leaders and thus served to strain relations between the ANC as traditional leaders came to be viewed as part of the enemy (apartheid).

On the whole, the evolution of the institution of traditional leadership - from the pre-colonial era to apartheid - has been a process moving from bad to worse. It is a process that has been characterised by successful attempts to use the institution of traditional leaders to subjugate their own people to a force of exogenous origin. Given this picture, it is important to look at the position of traditional leaders in post-apartheid South Africa.



---Chapter 3---

Traditional leaders in Post-apartheid South Africa

3.1 Introduction

The historic democratic breakthrough that the people of South Africa have scored on 27 April 1994 was bound to have its own implications for traditional leaders in the country. As the institution has spanned different epochs of undemocratic rule and has, as a matter of fact, been used to entrench despotic regimes, it was clear that the institution had to expect fundamental changes in relation to its position and role in the new democratic dispensation. The question however is: what are those changes?

This chapter seeks to discuss post-apartheid South Africa in relation to the position of traditional leaders. It will deal with the legislative framework of the democratic dispensation vis-à-vis the institution of traditional leadership.

3.2 Post-1994: Conflicting opinions on traditional leaders' positions

With the somewhat unflowery role that traditional leaders had played during apartheid and colonialism, it is not surprising for some people to have expected no place for the institution of traditional leadership in post-apartheid South Africa. It is for this reason that Myers (1999) observes "*one could have confidently expected that it would have been speedily done away with by South Africa's first post-apartheid, ANC-led government*".

This line of thought, however, has not been without its critics. Some critics thought this view was extremist and cautioned against the exclusion of traditional leaders from modern systems of governance, especially at local level. In this direction, Ogunna argues that:

Any local government system that fails to take into full account local interests and aspirations and the traditional political organisation of the people is doomed to failure (cited in Nwomonoh, 1994).

The view that traditional leaders need not be done away with also found support in ANC circles, although the need to transform the institution of traditional leaders so as to bring it into line with democratic principles was emphasized. It is against this background that Skweyiya (1993) argued that:

One of the main facets of democratisation will be how to design appropriate institutions which will among other things serve to thwart an array of undemocratic impulses that are likely to bedevil the post apartheid society. At the same time these institutions should command legitimacy among the people they serve.

However, it does not seem clear, from the argument of those who propose that the institution of traditional leaders be retained, as to how it should be incorporated into the governance structures of post-apartheid South Africa. Perhaps this question could be responded to by analysing how the institution is located within the constitutional framework of the democratic dispensation.

3.3 The constitution

The position that the post-1994 constitutional dispensation gives traditional leaders can be understood in the context of the multiparty negotiations of the early 1990s. In this regard, three points flowing from resolution 34 of the National Negotiating Council are necessary for analysis:

- a) *Traditional authorities shall continue to exercise their functions in terms of indigenous law as prescribed and regulated by enabling legislation.*
- b) *There shall be an elected local government which shall take political responsibility for the provision of services in its area of jurisdiction.*
- c) *The (hereditary) traditional leaders within the area of jurisdiction of a local authority shall be ex officio members of the local government (cited in Hendricks and Ntsebeza, 1999).*

These points are crucial to the understanding of the subsequent constitutional provisions that deal with the question of the institution of traditional leadership. The constitutional expression of the first point is embodied in the recognition that the South African constitution of 1996 gives to the institution of traditional leadership. Section 211 (1) reads thus: *“The institution, status and role of traditional leadership, according to customary law are recognised, subject to the Constitution.”* It is clear that this Section flows from point (a) of Resolution 34, as reflected above, in that both of these provisions rest on the recognition of the institution of traditional leadership, but subject to legislation. The subjection of the recognition of the institution to legislation is the sticky part, or perhaps the oversight of traditional leaders at the negotiations. What is interesting to note is the fact that the said legislation to which the existence of traditional leadership

is subjected is no longer a product of a trade-off between politicians and traditional leaders as it was the case at the negotiations, but mainly an affair of politicians. For example, traditional leaders had no veto influence over the parliamentary processes leading to the adoption of the final constitution. Statutorily, politicians were better-placed to take charge of the process leading to the adoption of the constitution as they are the ones who had the final powers to adopt the constitution. It is not surprising, therefore, that Contralesa later challenged the very constitutional provision recognising the institution of traditional leadership, arguing that:

The provisions of customary law and the bill of rights should be placed on an equal footing, which means they should be interpreted in as harmonious a manner as possible. Only when an irreconcilable conflict occurs, should the provisions of the bill of rights be binding on all. The bill of rights should therefore state explicitly that all its provisions should be interpreted in a manner that respects, upholds and furthers the interests and beliefs of customary law. (cited in Keulder, 1998)

Here Contralesa demonstrated greater awareness of the fact that subjecting the institution of traditional leadership to the constitution implies that the whole institution will thus be required to operate subject to the bill of rights – a scenario that would render most principles of customary law unlawful. At issue here is the loci of power in terms of what prevails between the political system, which is based on modern democratic principles on the one hand and the traditional system of leadership based on principles that (as shown in chapter one) are not so congruent with modern democracy, on the other hand. For Section 211 (1) to subject the life of the institution of traditional leadership to the constitution is a clear indication that modern democracy supersede traditional rule. On closer analysis, it would appear that the subjection of the institution of traditional is not

an accident, but an orchestrated move by the ANC to impose transformation on the institution. As observed earlier, the ANC argued for the need to make the institution compatible with democracy. This is also evident in the Department of Local and Provincial Government's vision statement on the institution of traditional leaders. In the vision statement the department, inter alia, calls for the transformation of the institution of traditional leaders into an institution that provides "... for an institution, which is in harmony with the Constitution and the Bill of Rights" (Department of Local and Provincial Government, 2000). Indeed, if the institution of traditional leadership were to be brought into line with the Constitution and the Bill of Rights this would clearly have the effects of democratising the institution, as the Constitution is based on democratic values. Reading from this, it would appear that the subjection of the institution to the Constitution is an attempt to impose transformation on the institution of traditional leaders.

Section 212 (2) (a) of the constitution provides for the creation of houses of traditional leaders at both national and provincial levels. The role of these houses is to advise the legislature on matters relevant to issues of tradition and customary law. The roots of this kind of a set-up seem to be in the early organisational arrangement of the ANC where traditional leaders had their special house within the organisation. What seem to have been adjusted, though, are the powers of the houses - as the then house of traditional leaders in the ANC possessed more powers (Mzala, 1988).

The fact that in the new constitutional dispensation traditional leaders are given an advisory status stands in sharp contrast to the defunct homeland system where traditional leaders used to wield more powers than elected representatives by numerically dominating all the former Bantustan legislatures (Ntsebeza, 2000). It can be said therefore that the current constitutional order has overturned power relations between politicians and traditional leaders in favour of politicians. Effectively, traditional leaders, at provincial and national levels, do not have power. Bennet, (1998) makes the following observation about the powers of the houses of traditional leaders:

... the new organs have only limited powers. They may propose legislation; they cannot generate statutes of their own accord. They may advise and they may insist on being consulted about bills concerning customary law, but they can do no more than delay the passing of an act.

This arrangement has seen traditional leaders crossing swords with politicians. The feeling of most traditional leaders is that on matters that concern them they should have the final say – meaning that they need to have veto power on these issues (Keulder, 1998). Disagreement over this provision has also served to strain the renewed relations between the ANC and traditional leaders, triggering some traditional leaders to move from the ANC to join other political organisations (like the United Democratic Movement) that have opportunistically taken advantage of the grievances of traditional leaders

The constitution gives expression to point (b) of Resolution 34 (as reflected above) by providing for the creation of local government structures across the country (see chapter

seven of the Constitution). However, the constitution (as it elaborates on local government structures) neither mentions the institution of traditional leadership nor its position within these structures of local government. This does not only do injustice to point (c) of Resolution 34, but also leaves traditional leaders in an awkward situation as their role at local government level remains undefined. Thus, an impression is created that traditional leaders are, at this level, dispensable such that they do not deserve a special mention in the elaboration of local government.

3.4 Other legislative frameworks dealing with the position of traditional leaders

Hendricks and Ntsebeza (1999) contend that, "*the confusion and lack of understanding of functions, powers, roles, processes and procedures, feeds into the tensions between elected councillors and traditional authorities*". This argument presupposes that the functions, powers, roles, processes and procedures are clear - only that traditional leaders and elected councillors have no understanding of these. The question therefore is: is there a legislative framework clarifying these processes? The Municipal Structures Act No. 117 of 1998 springs to mind once a question related to a local government legislative framework is posed. The Act basically deals with the categorisation of municipalities – a matter that is not necessarily the focus of this study. However, the Act does cursorily touch on issues related to the participation/interaction between elected local government structures and the institution of traditional leadership. Regarding this, the Act says:

... 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 a municipality... (Independent Projects Trust, 2002)

This provision seems to open doors for traditional leaders to take part in the processes of municipalities and *ipso facto* influence issues at local government level through municipal structures. However, it is important to shed some light on the meaning of participation as conceptualised by the Act, as the issue of participation is one of the bones of contention in as far as traditional leaders are concerned. The nature of participation would then clarify questions of power; who wields more power between traditional leaders and elected councillors? According to the Act, 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 ... 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.

Unfortunately, this provision does not address the concerns of traditional leaders in that the Act, at the same time, prohibits representation of traditional leaders at these municipal structures to be less than ten per cent of a particular council. This therefore means that the Act deliberately promotes a climate where elected councillors out-number traditional leaders and thus making the situation propitious for councillors to influence the proceedings of municipal councils more than traditional leaders. So the definitional clarity that the Act attempt to address does not seem to be of any substantial value as far as traditional leaders are concerned. Furthermore, this provision has some curtailing

effect on the participation of traditional leaders, in that it opens up participation “*in any debate on a matter*” only if the participant-traditional leader is a councillor. The fact that traditional leaders, according to the Act are not allowed to vote is also one of the aggravating trammels in the way of traditional leaders as far as their participation in municipal councils is concerned,

As pointed out earlier, this Act mainly seeks to deal with the categorisation of municipal structures, not the role of traditional leaders within these structures, hence the conspicuous elision of the latter subject. The Department of Provincial and Local Government (DPLG) indicated its seriousness about addressing the position of traditional leaders in 2000 by releasing a discussion document that specifically addresses itself to the institution of traditional leadership. This discussion document is very important for this research as it puts its fingers squarely on the role of traditional authorities in local government. In an attempt to create some clarity on this subject, the discussion document invokes the White Paper on Local government. The following are the functions of traditional leaders, according to the White Paper:

- *Acting as head of the traditional authority, and as such exercising limited legislative power and certain executive 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 of traditional leaders*
- *Convening meetings to consult with communities on the needs and priorities and providing information*
- *Protecting cultural values and instilling a sense of community in their areas*
- *Being the spokespersons of their communities*
- *Being symbols of unity in the community*

- *Being custodians and protectors of the community's customs and general welfare*

Specifically, the role of traditional leaders in the development of the local government area and community is said to be:

- *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 traditional licences in their areas in accordance with the law.*

Whether or not these functions are ideally correct is a question that will be dealt with at length in the next chapter. For, now attention will be focused on the practical implications of the above functions as provided for by the White Paper. Some of these functions are not a source of contention as far as traditional leaders are concerned. The provision that traditional leaders should exercise limited legislative and executive roles is one of those that infuriate traditional leaders. They think that this provision strips them of effective powers and thus reduces them to a mere ceremonial status. This led Hendricks and Ntsebeza (1999) to conclude that traditional leaders are “trying to resuscitate a form of Bantu Authorities where they are primary instruments of local government”.

Perhaps a bone of contention is on the role of traditional leaders in development issues. As it can be seen, the White Paper seems to favour a situation where traditional leaders are considered on issues of development as mainly advisors to the government and mobilisers of their people to support government's developmental projects. This does not

go down well with traditional leaders as they think that local councillors have usurped their powers. Actually, the source of this disempowerment of traditional leaders is the constitution as it assigns a developmental responsibility to elected local government structures (see chapter seven of the Constitution). This tempers with what traditional leaders see as their rightful role. For example, it is said that, “*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 ...*” (Independent Project Trust, 2002: 99). Therefore, most traditional leaders view the fact that the White Paper gives traditional leaders an advisory status on issues of land allocation as anathema. Dabengwa (1998), for example, argue that, “*The traditional chief is inextricably tied to the land. He cannot be a leader if he has no land to preside over*”. If traditional leaders are tied to the land, it would mean therefore that taking away their powers to allocate land is tantamount to demolishing the foundations of their being leaders.

So, what are the overall implications that the White paper has for traditional leaders? As pointed out above, some of the provisions of the White Paper (such as traditional leaders being symbols of communal unity; convening community meetings; being custodians of the culture of their communities, etc) are not really problematic, as they do not touch on issues of power. Basically, the White paper has adverse implications insofar as it reduces traditional leaders to an advisory status on matters of land allocation. The fact that traditional leaders are called upon by the White Paper to lobby government also serves to reduce traditional leaders to a status of an interest group – meaning that they are not part of government but just a lobby group. A lobby group has no control over the resources of

the lobbied (government in this case). It can only get its interests through only if government decides to become positive about the demand made by the lobby group. The government has the powers and rights to disregard whatever demands any lobby groups makes.

3.5 Conclusion

This chapter sought to analyse the position of the institution of traditional leaders in post-apartheid South Africa. It is clear from the analysis that the role that traditional leaders play in the current dispensation has been crafted out of a conflict of opinions. Considering the extent of the anti-chief attitude that characterised the ANC during the apartheid era (as it has been shown in chapter two), the new constitutional order appears to be a serious compromise on the part of the ANC and a major achievement to traditional leaders, as the current constitution recognises the latter's existence. However, traditional leaders have a lot to cry for as the constitution has effectively striped them of the powers they used to wield during the homeland system. The institution of traditional leadership is integrated into the current politico-constitution order at a level below that of elected politicians. At both provincial and national levels, traditional leaders are basically advisors of politicians – a role they resent strongly.

The substantial reduction of the powers of traditional leaders has not left the local government untouched. The constitution strengthens the position of elected councillors by providing that democratically elected local government structures must take political

responsibility for development issues. This has effectively driven traditional leaders out of the process that used to be basically theirs in the colonial and apartheid eras. Existing legislation also serves to disempower traditional leaders by giving them a ceremonial role to play at local government level.

It can be said, on the whole, that the current government tried under difficult circumstance to incorporate an institution that is not really compatible with democracy into constructional rule. However, issues of power between traditional leaders and politicians continue to push the government into war with traditional leaders. It is for this reason that different propositions regarding the position of traditional leaders will be dealt with in the next chapter.

---Chapter 4---

Pragmatic coexistence

4.1 Introduction

As it has been shown in the previous chapter, there is disagreement over the manner in which the institution of traditional leadership is integrated into the governance structures of post-apartheid South Africa. As a result, divergent proposals are put forward in terms of the role that the institution should play in a democratic framework. This chapter analyses some of the proposals made in this regard with the aim to ultimately propose a way forward.

4.2 Can traditional leaders be politicians at the same time?

The issue of whether traditional leaders should be allowed to be politicians while holding their traditional positions at the same time is a conundrum. Rendering it even more vexing is the fact that traditional leaders themselves are divided over the issue. However, a majority of them think that traditional leaders should not be prevented from actively taking part in politics. This view is clearly articulated by Contralesa in its argument that:

Traditional leaders have the right to put their names forward for the election to public office, provided that once they are elected, they must vacate their position as traditional leaders. (cited in Keulder, 1998)

This argument is in line with Section 19 (3) (b) of the constitution guaranteeing all citizens the right to stand for election at all levels of government. The implication of this is that traditional leaders can join political parties of their choice under whose name they would like to campaign for election.

The question therefore is: what should happen to traditional leaders who stand for election and lose? According to Contralesa, such traditional leaders should be allowed to retain their positions as traditional leaders. The silence of the constitution in this regard seems to concur with Contralesa's position. It would seem that the reason why the constitution is silent on this matter is because of the fact that it does not discriminate the country's citizens in as far as standing for election is concerned. On closer analysis, this situation appears to have severe implications for the integrity of the institution of traditional leadership. It promotes a situation where the institution of traditional leadership would be entangled in the web of politics and thereby subjected it to an abuse by both opportunistic traditional leaders and politicians. Some traditional leaders could use the institution of traditional leadership to promote a political party to which they are affiliated. If such traditional leaders lose election, they would then go back to their positions as traditional leaders.

In this context, it is extremely difficult to draw a distinction between a traditional leader and a politician. Furthermore, people can no longer see a traditional leader who has lost election as someone who transcends political barriers, as it will have been clear to them that this particular traditional leader is a member of that particular political party. What

this means is that people would now be divided over their traditional leader. In this case it would not only be the integrity of the traditional leader concerned on the line, but also the integrity of the institution of traditional leadership as a whole. Besides, allowing traditional leaders to actively participate in politics fertilises the ground for political parties to fight over traditional leaders. It is for this reason that Professor Thabo Sebelo observes that:

... 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 (cited in IPT, 2002:62).

It would appear that the best way to avert this quagmire would be for the constitution to strictly prohibit traditional leaders from participating in politics by affiliating to political organisations and standing for election at any level of government. Some may argue that this would amount to unfair discrimination. No, it won't be as the institution of traditional leadership is a distinct system of leadership as opposed to the political one. In this context their traditional leaders will have a choice to make: either they remain traditional leaders or become politicians. If they chose to remain traditional leaders they will be treated as such by the constitution, but if they chose the political path they would have to be treated like any other politician. The question of how do they influence government policies while insulated from active politics – as it appears to be one of their central concerns – will be dealt with later.

4.3 Traditional leaders as sources of communal unity.

Having been insulated from active politics, the institution of traditional leadership would serve as a source of communal unity. It would then be possible for people to view the institution as a credible instrument of unity that cuts across party political lines thus bringing the people together on matters of cultural importance. As Hammond-Tooke (1962) observes, the chief in pre-colonial African communities was the embodiment of the culture of the community. Thus if chiefs involve themselves in politics they would be compromising this important role. Realistically, traditional leaders need to understand that it is not possible to go back to the "good old days" where they used to be the sole bearers of all political power. They need to appreciate the fact that modern democracy is a reality of contemporary times. It is for this reason that Govan Mbeki argued that when people have developed to a certain stage that discards certain institutions "*to force them is not liberation but enslavement*" (cited in Mzala, 1988). Escaping this enslavement is not impossible. It takes a conscious decision informed by honesty. As Ndebele (1972) aptly argues:

... customs and culture are man-made, therefore they can be changed according to whether man continues to find value in them. ... When customs no longer cater for proper development of adequate human expression, they should be removed.

In the same vein, the institutional expression of customs and social values can never be developments in society. Therefore, if traditional leaders insist that their institution of leadership must have the powers it used to wield in pre-colonial era that would be

tantamount to being impervious to change. However, to suggest some change in the expression and expression of the customs is not to suggest that the institution of traditional leadership must cease to exist. As Skweyiya (1993: 8) observes the institution will continue to exist.

4.4 The need to transcend ethnicity

South Africa is a multiethnic society. This reality has been abused first, by the colonial government and later by the apartheid regime. While the liberation movement worked arduously to bridge ethnic frontiers that served to weaken the unity of the South African people, the apartheid regime, on the other hand consistently engineered strategies to cement the tribal divide so as to ensure that the African majority do not constitute a formidable united force against the regime. As Mamdani (1996: 90) observes, the colonial and apartheid regimes saw tribalism as an instrument that would dissolve the majority into several tribal minorities and thus substantially reducing their political strength.

Unfortunately, as it has been shown in chapter one, chiefs were used in cementing ethnic division. Inevitably, traditional leaders had to be seen by forces of African unity as a major hindrance and thus an enemy. It is for this reason that Mzala (1988: 40) argues that:

... the enemy of the African people has since those days been identified primarily as one who attempted to counter this feeling of fellowship and

brotherhood among the people, by sowing seeds of disunity whether based on tribalism, regionalism or other factors.

It is understandable, therefore, that traditional leaders were generally looked at as the planters of disunity among the African people. One of the biggest challenges that confronted the new South African democratic regime after 1994 was the issue of nation building. This meant that the South African society needed to rebuild the necessary bridges to facilitate ethnic integration so as to demolish the tribal edifice created by colonialism and apartheid over a long period of domination. Although the constitution of the country provides a good framework for nation building, it would be unrealistic to conclude that the goal of nation building has now been fully attained. Neither would it be correct to conclude that the feeling that traditional leadership epitomises tribalism is no more in South Africa today. Most people still see traditional leaders as constituting a serious threat to the efforts of building a united post-apartheid South Africa. It is for this reason that Skweyiya (1993: 9) warned that, "The democratic process should not be allowed to be subverted by the demands of ethnic identity".

The view that some traditional leaders still serve to fuel ethnic divisions does not seem to be far-fetched. As Tom Lodge (2001) observes, some Shangan traditional leaders tried to mobilise people of Malamulele in Limpopo Province not to agree to be incorporated into the Greater Thohoyandou municipality whose administration was perceived to be an affair of the Bavhenda people. In this light, it would appear that the call by traditional leaders that their role should be defined clearer than it is in the current constitutional dispensation must begin with themselves coming to grips with the fact that things have

changed in the country today. They need to deal with the challenge of transcending ethnic divisions and become part of the broader process of nation building.

It is imperative for traditional leaders to be seen to be promoting ethnic tolerance and integration without necessarily having to compromise the cultural identity of their people. Striking a balance between nation building and cultural identity is a delicate balance traditional leaders must demonstrate willingness to do. This is not an impossible exercise. As Thomson argues, ethnic loyalty is not necessarily antagonistic to national integration (cited in Nwomonoh, 1994). If traditional leaders do not rise to this challenge, their relevance to the current democratic order will justifiably be questionable.

4.5 The role of traditional leaders in government

As it has been shown earlier, the way in which traditional leaders are fitted into the current jigsaw of the South Africa's governance system has forced politicians and traditional leaders to lock horns with each other. A meticulous analysis of this conflict reveal that traditional leaders are not satisfied with the current status quo in terms of power relations. The question, therefore, is: is there a way other than the current constitutional arrangement to locate the role of traditional leaders?

4.5.1 the national and provincial level

The national and provincial levels of government are surely strategic tiers of governance. These are the levels from which important decisions affecting the life of the country and the provinces are taken. Given the strategic importance of these levels, it is understandable why it is proper for traditional leaders be represented so as to exert some influence over government policy at the two levels. The kernel of contestation is how to define the kind of influence traditional leaders need to exert and how they should go about doing that. As it has been shown earlier, traditional leaders are not discontented with the existence of houses of traditional leaders as the lever through which they can influence policy at both national and provincial levels. They are primarily concerned with the powers that these houses have. It is for this reason that Contralesa proposes that,

The powers of the provincial Houses of Traditional Leaders should in general be strengthened and expanded – the same applies to the National Council of Traditional Leaders. The fact that the houses ... have only advisory powers and that their advice can be ignored by the provincial legislature and parliament, undermines their credibility and legitimacy. The respective Houses of Traditional Leaders should at least have a veto regarding those matters pertaining to the powers and functions of rural local governments, the demarcation of rural areas, the organisation of district councils and matters that directly affect the culture, customary laws, communal land, conventions and usages of communities served by traditional authorities (cited in Keulder, 1998).

Clearly, this is a matter of power. What the proposal implies is that traditional leaders must be given legislative powers on matters that concern them. If they have veto powers, as Contralesa proposes, it would mean that no bill would be pass into law without their approval, which effectively gives them law-making powers. This would have far reaching

implications for the entire legislature as it would practically mean that legislative powers would be split into two so as to create a situation where traditional leaders make their own law independent of politicians. If traditional leaders are not given law-making powers on relevant matters but only veto powers, this would lead to an impasse where the houses of traditional leaders and politicians hold sharply divergent positions. The question would be: where to go from here? Who has the authority to prevail? The logical recourse in this case would appear to be the court, but even then the court would not have the competence to resolve the impasse, as it cannot intervene to make law. Thus, it would appear that getting out of such a quagmire would almost be impossible as it seems that the only solution would be when either politicians or the houses of traditional leaders have a final say over the bill in question. If traditional leaders prevail that would occur to the dissatisfaction of politicians and, as such, the conflict between them and traditional leaders would inevitably be a political matter – meaning that traditional leaders would thus have entered the political fray. This therefore would imply the politicisation of the institution of traditional leadership. Against this background, it does not seem to be an ideal situation for the houses of traditional leaders both at national and provincial level to have veto power. Thus it seems reasonable for the houses to only have advisory powers.

4.5.2 the local government level

The local government is one level of governance that causes a deep sense of unease for traditional leaders. This is more so because traditional leaders, historically, have considered local government to be their exclusive terrain in rural South Africa. As it has

been demonstrated in chapter three, the creation of local government structures throughout the country has adversely impacted on the powers and functions of traditional leaders. This led traditional leaders to think that their role has been usurped by elected local government structures. It is for this reason that traditional leaders continue to call for the redefinition of their role in local government.

There are a number of possible concepts regarding the location of traditional leaders in local government. It is possible, for example, to have a system of local government where traditional leaders have more powers than elected structures. Articulating this kind of system, Zungu (1996) argues that elected councillors' main task should be to support the *induna*. Here traditional leaders are above elected councillors. However, it is not clear, under this system, why elected councillors are necessary as traditional leaders could simply appoint supporters of their own choice instead of having to rely on politicians for support. Furthermore, there does not seem to exist a convincing motivation why traditional leaders should be above politicians. It would seem that this kind of a system is not sustainable as politicians may not always be supportive of traditional leaders and thus could rebel against traditional leaders.

One other option would be to have traditional leaders completely subordinated to elected structures, meaning that they would need to account to politicians for whatever they do and thus politicians reserving the right to determine the life of traditional leaders. Here the existence of the institution of traditional leadership would be absolutely redundant, as politicians would have the power to get rid of it and supplant if they so wish.

The question remains: what kind of concept is ideal to serve as a good framework for the existence of the institution of traditional leadership within a democratic environment at a local level? Responding to this question requires a clear identification of the significance of the institution of traditional leadership in society. It is such significance that should inform attempts to locate the institution within local government structures. Many things are said about the role of the institution of traditional leadership in society, but what appears to be central is the idea that the institution is the custodian of African culture traditions and customs as well as the source of communal unity (Mbeki, 2001; Nwomonoh, 1994; Naudascher and Kgatlhanye, 1997). It would seem reasonable, therefore, to suggest that the location of traditional leaders within local government must aim to ensure that they properly play this role. However, it would be improper to attempt defining the role that traditional leaders should play in local government without taking into cognisance the developmental backlog that post-apartheid South Africa is facing at this level.

The advent of democracy has created expectations and hope on the part of rural people that the new political order will act urgently to tackle the challenges of underdevelopment. It becomes less unclear, therefore, that developmental issues are largely political. The question thus becomes: can traditional leaders play the role of being the source of communal unity while at the same time handling political matters? Van Kessel and Oomen (1997: 585), for example, argue that:

If traditional leaders are perceived as non-partisan they can play a valuable role in the local communities, e.g. in the sphere of conflict resolution and justice.

It would appear from this that it is not ideal for traditional leaders to be charged with the responsibility of dealing with issues of development, as these issues are political. The political nature of the issues thus subjects them to political contestation. If traditional leaders were to enter this political fray, it would mean that the institution of traditional leadership is now politicised. Against this background, it would seem sensible for the integration of the institution of traditional leadership to be integrated into local government in a manner that disentangles the institution from the political web. This does not imply the disempowerment of traditional leadership. It basically means that there must be some separation of powers or specialisation between politicians and traditional leaders. Traditional leaders, in this context, would specialise in matters of custom, culture and traditions while elected local politicians focus on matters of development. This would go a long way in resolving the conflict that characterises traditional leader-local councillor relationship almost all over the country.

The severity of the conflict between politicians and traditional leaders at local government level has manifested itself in instances where traditional leaders tried to “keep municipalities hostage, together with all their plans for hospitals, housing projects or roads” by refusing to give land (Oomen, 2000: 66). This underscores the extent of the dangerous problems that ensue as a result of traditional leaders’ involvement in political issues. One thing for sure is that rural people do want houses, hospitals, good roads, etc. So if traditional leaders block the implementation of programmes that are aimed at

bringing about development, they are likely to be portrayed as anti-development forces – a perception that is not good for the image and integrity of the institution of traditional leadership.

Considering the foregoing, it would appear that the proposal by Contralesa that, “*Traditional authorities should in their capacity as rural local government, render services to individuals residing in their areas of jurisdiction ...*” is not watertight as it pushes the institution of traditional leadership deep into the heart of politics (cited in Keulder, 1998). Furthermore, this proposal does not seem to address what Mamdani (1996) calls “the bifurcation of the state” created by the colonialism and apartheid. It appears like this proposal encourages the perpetuation of two systems of governance, the urban and the rural.

Most likely, traditional leaders will reject the idea that they need to disengage from the apolitical and occupy a socio-cultural space, as this appears to take away the “political powers” they used to wield during apartheid. However, traditional leaders need to understand that it is important for them to do this if they are really serious about safeguarding the integrity of the institution, otherwise the institution will remain a political football and thus continually subjecting its existence to question.

4.6 Conclusion

This chapter has analysed different proposals made regarding the role that the institution of traditional leaders should play in democratic South Africa. Out of the analysis, it appears that it would be good for the integrity of the institution of traditional leadership to be insulated from active politics and play a cultural role in society. Thus, the integration of the institution in governance structures – from local to national level – should be geared towards ensuring that the institution properly serves this purpose. However, it is clear that this cannot easily be attained without traditional leaders accepting the fact that the advent of democracy inevitably requires them to cede much of the powers they used to wield during apartheid to politicians.

---Chapter 5---

Conclusion

5. Conclusion

This study sought to investigate ways in which the institution of traditional leadership could be located within South Africa's new constitutional framework. The main objective was to contribute to the resolution of the ongoing conflict about the actual role that the institution should play in a democratic framework by proposing an alternative.

For this investigation to be possible chapter one of the study had to first attend to the important question of whether or not the institution of traditional leadership is compatible with democracy. When this was done, chapter two then made a reflection of the historical context of the institution of traditional leadership. This reflection was necessary to inform chapter three, which dealt with the current state of affairs in terms of the manner in which the institution of traditional leadership is integrated into the constitutional framework of democratic South Africa. The problematic areas of the current dispensation vis-à-vis the institution of traditional leadership were also highlighted in chapter three.

The discussion in chapter three has been an important one in informing chapter four as this chapter discussed the different proposition made in respect of what should be the

actual role of traditional leaders in post-apartheid South Africa. This discussion therefore, culminated in a recommendation of an alternative to the various propositions explored in this chapter.

The findings of this study are that:

- ◆ The pre-colonial era represents an epoch where the institution of traditional leadership can be said to be in its pristine form. This is so as this is the stage where traditional leaders were the only authority responsible for the leadership of African polities. Here traditional leaders provided leadership in most aspects of the lives of their subjects, for example, cultural religious, economic, etc. thus, the institution of traditional leadership embodied the life of society in general and thereby mirroring society's norms and values. For this reason, the nexus between the people and their leadership was very strong.

- ◆ There was a drastic change in the above state of affairs occasioned by the arrival of colonialists on the African continent. South Africa is one of the many African countries that came under the grip of British colonial rule. Thus it could not escape the policy of indirect rule that the British applied to their colonies on the African continent and beyond. This policy was based on the philosophy that the colonised indigenous peoples could be best governed through their own institutions. The first application of this

policy in South African was in the mid-nineteenth century when Sir Theophilus Shepstone experimented it in Natal. The policy was later given concrete expression through the passage of the Native Authorities Act of 1927 where the institution of traditional leadership was made to be accountable to the colonial government. This had adverse implications for the integrity of the institution and its relationship to the people it served. The institution of traditional leadership no longer had to advance the interests of the indigenous peoples, but those of the colonisers.

- ◆ The advent of apartheid in 1948 served to deepen the denting of the image of the institution of traditional leadership by creating a Bantustan system meant to solidify tribalism, with traditional leaders serving as the pillars of this system. The role that the institution of traditional leadership played during apartheid widened the gap between them and their people even further. As a result, traditional leaders increasingly became targets of anti-apartheid struggles as it became clear that most of them served as instruments of the apartheid regime.

- ◆ The fact that ascendancy to leadership is based on heredity puts the traditional system of leadership out of tune with democratic values in many respects. People who do not belong to the royal family are excluded because of this kind of procedure. As a result, it even becomes difficult to determine the legitimacy of traditional leaders, as the system does not

provide a room for people to choose their leaders. Furthermore, the institution of traditional leadership is largely an exclusive preserve of males, notwithstanding the fact that there are a few communities that accommodate women in leadership. This constitutes a breach of the principle of equality on which democracy is based. The institution of traditional leadership also flouts this principle by creating propitious conditions for traditional leaders to use customary law in an unaccountable way and in a manner that promotes venality.

- ◆ The undemocratic nature of the institution, coupled with its cooperative role under colonialism and apartheid partly explains why the ANC became ambivalent about the role of the traditional leaders in post-apartheid South Africa. An explanation of the general division of society over this matter can also be drawn from these circumstances. It is for this reason that the existence of the institution in the current constitutional dispensation is subjected to the constitution. In this sense, the institution of traditional leadership is compelled to base its existence on the democratic values enshrined in the constitution. On the whole, the current constitutional framework substantially reduces the powers that traditional leaders used to have during apartheid, at all levels of government, by giving them an advisory role. It is for this reason that most traditional leaders are calling for the redefinition of their role and that their powers should be strengthened.

Despite the fact that the institution of traditional leadership is in character incompatible with democracy, it is still relevant to most South Africans, especially those who live in rural areas. Based on the findings of this study the following recommendations could be helpful in the efforts to locate the institution of traditional leadership in the new democratic South African:

- ◆ Traditional leaders must not actively participate in politics, as that may not be good for the integrity of the institution of traditional leadership as a whole;
- ◆ Traditional leaders should mainly focus their efforts on preserving the customs of their respective communities;
- ◆ Traditional leaders must make efforts to transcend tribal/ethnic barriers and contribute to nation building;
- ◆ The institution of traditional leaders should make some strides to promote the participation of women;
- ◆ The provisions of the Constitution in respect of both the national and provincial houses of traditional leaders should be respected, meaning that

traditional leaders should continue to play an advisory role at these levels of government; and

- ◆ At local government level, the developmental role of democratically elected local government structures, as per chapter seven of the Constitution, should be respected. Traditional leaders should advise these structures on issues pertaining to culture, tradition and custom.

In conclusion, this thesis responds to the question of how best can the institution of traditional leadership be located within the institutional framework of South Africa's new democracy by proposing that the institution needs to be integrated in a manner that enables it to play a cultural role, thus leaving political matters to politicians. This will not only help politicians and traditional leaders unlock horns, but will also serve to strengthen the integrity of the institution of traditional leadership and thus put a stop to the continued questioning of its relevance in democratic South Africa.

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