INTEGRATING TRADITIONAL LEADERS AND CONTEMPORARY LOCAL GOVERNANCE IN SOUTH AFRICA: A CASE STUDY OF THE NORTHERN PROVINCE

By

Felix Christopher Fankomo

UNIVERSITY *of the* WESTERN CAPE

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DEDICATION

To my family, my wife Zenzile and my three sons Nhlanhla, Nkosinathi, Bonginkosi and my three daughters Nonhlanhla, Nomakhosi and Nqobile. Also, to Duduzile my second wife, who I met in Cape Town and who has inspired me to further my academic studies. This thesis is further dedicated to Dr Nazeem Ismail who I met at Parliament in search of a document related to indigenous leadership. I finally dedicate this thesis to my parents *"tibongo tita kuwe Munyayi Ngwababani, ntfombi yaka Mnisi Matfonsi Mvuleni nawe Bejalibalele, lijaha laka Fankomo, Nkomondze nkomotimahawu yingwe ledla ngemabala"*

May God Bless You All

DECLARATION

I the undersigned hereby declare that the work contained in this dissertation is my own original work and has not been submitted at any tertiary institution for a degree.

UNIVERSITY *of the* **WESTERN CAPE**

F.C. Fankomo

May, 2000

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At the completion of this dissertation, I would like to thank all my teachers, lecturers, and professors. This study is a result of several influences and contributions too numerous to mention here. At a great risk I will mention just a few and apologies for any oversight on my part.

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May God reward you all.

ABBREVIATIONS

ANC	African National Congress
CODESA	Congress for Democratic South Africa
CONTRALESA	Congress for Traditional Leaders for South Africa
IDASA	Institute for democracy in South Africa
IMPD	Institute for Multi Party Democracy
KAF	Konrad-Adenauer Foundation
MP	Member of Parliament
MPL	Member of Provincial Legislature
NA	Native Authority
NDI	National Democratic Institute
NGO	Non-Governmental Organisation
NP	National Party
NPLGOL	National, Provincial and local Government Officials and Legislators
PAC	Pan African Congress
SANCO	South African National Civic Organisation
TLC	Transitional local council
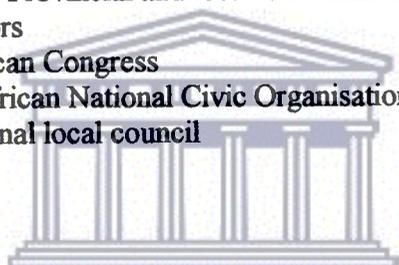
Abstract

Integration of indigenous leaders into modern political structures and process of local government has been a source of contention for several decades on the African continent. This study describes, analyses and assesses efforts made by postcolonial, apartheid and the liberal democratic government to incorporate indigenous leaders in their governmental structures and processes. Based on this examination, the study presents elements of a model on how a democratic South Africa could integrate indigenous leaders into the current liberal democratic structures, especially in rural municipal authorities of the Northern Province.

Data used for the study was collected from government documents, articles, law books and anthropological sources. In the discussion and analysis, attempts were made, wherever appropriate to cite experiences of other African countries. Such experiences were designed to inform certain aspects of this study, especially in the manner in which traditional leaders were integrated into local government. Further, data regarding current attitudes among stakeholders were collected from questionnaires administered to women, youth, traditional leaders, national, provincial and local government officials and legislators.

The study revealed several aspects of leadership such as the system employed by French and British colonizers (i.e. 'direct' and 'indirect' rule system). These colonial powers both identified traditional rulers as a link between their governments and indigenous communities. To confirm this, both appointed puppet traditional rulers and deposed authentic traditional rulers who were opposed to colonial rule. Since traditional leaders form part of indigenous people's background, colonial powers subjected indigenous rulers to different circumstances at different places. If traditional rulers were conquered, their powers were drastically reduced, suppressed, their power-base was weakened and authority on land and matters of justice were usurped. On the other hand, those traditional rulers who signed treaties with the colonial government received favours such as sending their family members abroad to further their education and the traditional ruler retained

the status of 'King'. The British government introduced a policy of indirect rule. This rule had echoed even in South Africa after the British rule through to the days of apartheid. This rule prescribed that each tribe was to be supervised by a Paramount chief for centralized authority with sub-chiefs who were in charge of regions. This system continued through the apartheid era.

The current democratic government has entrenched in the constitution a provision for the recognition of the institution of traditional rulers, but it lacks clarity on the role and function of traditional leaders at local government level. Thus, chiefs ought to be genuinely engaged in modern governance and face realities of change and adapt to the new order for their future existence and continue serving their communities in the northern province in particular and South Africa in general.

CHAPTER 1

INTRODUCTION

The problem of the study

The current South African constitution, Act 108 of 1996, section 211 gives traditional leaders some guarantees of recognition even though they have been denied genuine powers. The constitution makes provision for houses of traditional leaders at provincial government level and a council of traditional leaders at national government level to deal with matters relating to traditional leadership, customary law and the customs of communities observing a system of law. There are no provisions for traditional rulers' *ex officio* membership of municipal councils. According to section 212, their role in the new dispensation relates only to matters affecting traditional leaders, customary law and the customs of communities observing a system of customary law.

On the other hand, democratically elected councillors have been given responsibilities for community development even though responsibility for land in trust remains with chiefs. Thus chiefs have been stripped of many functions, which they used to perform in the past. This state of affairs has resulted in clashes between traditional leaders and elected councillors, which consequently impact on the smooth development of local governance. The exclusion of chiefs from local government restricts them to the administration of customary law. However, they may stand for elective office on an individual basis, an option that most traditional leaders would not wish to pursue unless they were very popular and respected by their subjects. The fear results from the fact that, any electoral loss would be tantamount to a vote of no confidence in their hereditary leadership.

Indigenous rulers once were very prominent in South Africa and elsewhere on the African continent. But, colonialism soon eroded their prominence and rule. The colonizers enlisted different styles of governance that conflicted with those of indigenous rulers. Thus, since the introduction of western type of governance, a question of how to

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integrate indigenous rulers and western type of governmental structures has proven to be very problematic. Different colonial powers attempted to resolve this question according to their own policies and realities of local circumstances they operated in (Ismail, 1999). Throughout the African continent, other states simply recognized indigenous democratic values and practices for symbolic reasons. Very often colonial powers suppressed and subjugated indigenous potentates, and created 'warrant suzereigns', especially in acephalous societies, to facilitate their models of governance (Gann, 1964). Thus indigenous rulers were marginalised and in some cases were merely retained as symbolic institutions.

After 1948, the apartheid government tolerated indigenous rulers only to the extent that they did not pose any serious challenges to their rule. A major project to restructure and further subordinate traditional leadership took place during those years, further weakening and marginalising indigenous rulers. This institution, however, has shown an amazing degree of resilience over the years. More recently, the institution has once more attracted attention as its adherents demand clearly defined roles in the current system of governance (Ismail, 1999). Among other things, indigenous rulers in the new dispensation bring to the fore the question of status and their role in governance.

In the northern province, like in certain other provinces within South Africa, it has become apparent over the last couple of years that democratic structures cannot succeed in the absence of indigenous institutions. There is thus a need for co-existence between indigenous and contemporary local governance to ensure effective service delivery, particularly in rural areas. A worrying factor, however, is the position of the current democratic government, which is underpinned by a hesitant ambivalence. This causes uncertainty, yet the recognition of indigenous rulers can significantly contribute to effective local governance in South Africa. There are indigenous leaders who still enjoy the support of their subjects. This same support is seldom enjoyed by democratically elected concillors.

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Indigenous rulers are aware that they can no longer attain powers they used to enjoy prior to colonialism, and that they should be educated. It should be appreciated that democratic elected structures cannot deliver services without effective involvement of indigenous rulers. This study addresses this contentious issue. It identifies and analyses a number of critical issues as basis for advancing a model, which could hopefully be an effective and realistic model of engaging indigenous leaders in contemporary local governance. The essence of the model is that discriminatory practices in the selection of chiefs and chiefly succession should be removed, and those powers over land allocation should be moderated and magisterial powers over customary laws should be strengthened.

The literature reflects a lack of clarity in the terms indigenous values and practices and authors indigenous governance refers to leadership, structures practices and values of a governmental system of pre-colonial African society. Succession in the Balobedi society, for example, is based on the matrilineal system while in the Bapedi, Vatsonga and Vavhenda it is based on the partrilineal system. Thus, African Kingdoms cannot be equated to the Western culture since African culture is much more differentiated and complicated largely as a result of the extended families and polygamous marriages of rulers. "Kingmakers" following a specific principle of hereditary rule choose the right candidate. Such a principle requires that the mother of the chief should be born from a family, which had royal blood. Chieftainship has different characteristics in different ethnic groupings, Anthropologists and historians, thus sometime confuse this aspect with the result that indigenous governance becomes much more difficult to be integrated with contemporary governance.

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Aims and objectives of the study

This study seeks to critically analyze the importance of integrating indigenous rulers and contemporary governance, with specific reference to the northern province. It reviews attempts made by past regimes to integrate indigenous rulers and their institutions with contemporary forms of local governance and the successes and failures that have arisen from such efforts. It looks at ways, which could be employed for the successful integration of indigenous rulers and contemporary local governance. The study proposed a model of how traditional rulers could be integrated, to ensure harmonious co-existence between indigenous and contemporary local governance in the Northern Province. Finally, the study makes policy recommendations that could assist politicians and practitioners in the northern province as well as in other provinces involved in attempts to integrate indigenous rulers and contemporary local governance. A percentage is recommended for securing seats for indigenous leaders in municipalities in rural areas and other mechanisms to be followed to this effect.

First hypothesis

Integrating indigenous and contemporary local governance is a sine qua non for effective democratic local governance in the northern province.

The advantage of mixing indigenous governance and liberal democratic governance is that such a synergy will form a base from which a strong, transplanted system of local government can take firm rooting in the Province, particularly at grass-root level.

They, thus become structurally one with the indigenous regime. Adopting such an approach in the realm of governance and politics can be understood and appreciated by all stakeholders. Problems that face both indigenous and liberal democratic governance are the result of disjunctive and uncoordinated modes of operation between the two structures. A consequence of such inconsistency and uncoordinated operation to undermine both the efficacy of the western political institutions and their values and

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credibility at rural local governance level. Integrating the two structures would also alleviate the mutual suspicion of politicians and traditional leaders who fear the erosion of their respective structures.

Second hypothesis

An appropriate integration of indigenous leaders and local governance, will take cognizance of the primacy of the modern constitutional liberal democracy and of the reality that an effective process of local economic development requires negotiations among key stakeholders in the Northern Province.

Integration will not re-introduce the pre-colonial status of indigenous governance and leadership. Integration rather will involve selective adoption and modification of indigenous governance to fit the theory and practice of a contemporary liberal democratic state. Most importantly, this requires removing discriminatory practices relating to chiefly succession, and moderating power over land allocation, while simultaneously increasing magisterial powers dealing with customary laws. In the manner of operation, courts of traditional leaders should comply with almost all the demands of an open democratic constitutional order. In addition to the procedures followed in these courts of transparency and an open examination, cross-examination by adults, the litigants and their witnesses' members of municipality should be accorded the full rights to participate as ex-officio members. These courts should be equipped with modern facilities to keep the records of all proceedings and evidence for future references.

Over the past five years there have been several conflicts between local democratic elected councillors and traditional leaders, largely resulting from the fact that traditional leaders were excluded or marginalized in the local governance. It was found that traditional leaders command considerable support in the northern province. Thus, for effective governance at rural local government, negotiations with stakeholders is

required to integrate both institutions so that one structure could be produced which will work effectively and harmoniously.

Methodology

The study employed a combination of methods. Basically, existing literature on traditional leaders and their role in the northern province and other provinces in South Africa was reviewed and critiqued. The study also reviewed current legislation on traditional leadership in South Africa and in other African countries to gain a comparative perspective. The researcher also conducted some unstructured interviews with both traditional rulers and policy makers in South Africa to gauge perceptions and feelings toward the institution and its integration in current democratic governance. A special effort was made to obtain details of the particular types of chieftainship in the Northern Province such as matrilineal chieftainship, which also permit women to occupy the throne. The research was mainly conducted among the societies of baPedi, vaTsonga and vaVhenda in the Northern Province. Some critical review of anthropological and historical literature was necessary for constructing profiles of indigenous forms of governance. Opinion polls were also consulted to gauge the views of political parties, women organizations and the youth. For comparative purpose the study included traditional rulers from other African countries.

Related studies

The political changes that began to emerge in 1992 and the subsequent election in 1994 of South Africa's first democratic parliament injected new urgency into the local government restructuring debates. These debates emanated from the concern to implant sustainable democratic governance at grassroots level. Thus, the question of the future of the institution of traditional leaders came to the fore because for many years traditional institutions have been the form of local government closest to the majority of the rural population.

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The subject of engaging traditional leaders in post-apartheid South African government has received considerable attention from both academic and public discourse (Ismail, 1999). Several conferences have been held by NGOs like the Institute for Democracy in South Africa (IDASA) and the Institute for Multiparty Democracy (IMPD) at which academics, policy makers, and traditional rulers have shared views on the future of chiefs in the governance of the country. Debates on how to integrate indigenous rulers into contemporary local governance in South Africa, however, began before 1994. Some of the authors who discussed this issue included Mokgoro (1994), Vorster (1991), Bekker (1993) and McIntosh (1990). But these authors simply raised issues and made statements regarding the future role of traditional rulers. In fact, they made no mention of how to achieve this goal of the integration of traditional rulers and local government.

After 1994, many authors continued to write on this subject. Writers like De Villiers (1997) and Hofmeister and Scholz (1997) have advanced arguments that draw over-generalized conclusions. In a *"foreword"* in De Villiers, (1997: vi-x); chief Holomisa claimed that the advent of colonialism in Africa *"destroyed the social and the political system of the continent's nations"* and that *"Postcolonial African governments stepped right into the shoes of their masters."* These statements are not accurate since both colonial and post-colonial governments faced resistance when attempting to do away with the institution of indigenous rulers.

As such, indigenous rulers had to be recognized by colonial powers even in the past. According to Ismail, (1999) "Many post-colonial governments have been compelled to co-exist. However, uncomfortably or inconsistently, with indigenous rulers." Thus, Chief Holomisa projected an inaccurate picture as traditional institutions were never "destroyed". Donkers and Murray (1997:47) list several undemocratic elements of traditional rulers, which they argue differ from the norms of contemporary liberal democracy: -

➤ Hereditary as opposed to elected positions;
➤ Male dominated;
➤ Based on male primogeniture

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- Tribal as opposed to national character of institution
- Both colonial and postcolonial chiefs were often "puppets" of the government of the day.

These features are generally true, in many institutions in South Africa even though they are characterized more by variation in different provinces than by uniformity. Within South Africa, certain institutions were not entirely hereditary but were moderated by consultation and even by voting, in case of disputes. An example of such chieftainship in the Northern Province is the Majeje Tribe, amongst others. The arguments of male dominated and male primogeniture systems ignore the existence of matrilineal societies in which brothers and nephews from the maternal side contested for succession to the throne. Vavhenda and Vatsonga in the Northern Province practice this system more while among the Bapedi it is the mixture of matrilineal and partrilineal systems. For example, matrilineal societies allowed women to directly ascend the throne themselves as in the case of the Balobedo in the Northern Province and the Mwapeship in Zambia where only women could occupy the throne (Ismail, 1999). These cases shed light on how to relate the institution to the claim of gender equity in the current liberal democratic systems.

Currently, there is considerable support for indigenous rulers particularly in the rural areas of the Northern Province. Thus, for example, one author observes: "This province alone has a total number of no less than 194 traditional leaders with well over 1600 "*matona*" or "*gota*" or headmen" (Nthai, 1994). Thus it is important to note that traditional authorities in the Northern Province are the only form of rural local government that the vast majority of this province has ever experienced. According to (Ismail, 1999), recommendations for the incorporation of indigenous rulers fall short of a comprehensive defensible model since they are generic in nature. As such they offer mere guidelines for the future involvement of indigenous rulers in democratic governance. The present study has suggested specific ways through which traditional leaders could be integrated with contemporary local governance.

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Significance of the study

This study presents a model of indigenous rulers within contemporary local governance and critiques the previous attempts made to incorporate them into liberal democratic values and practices rather than integrating them with liberal democratic institution. The study identifies and critiques a number of issues as the basis for advancing the model. It engages indigenous rulers into rural municipal social and economic development for the benefit of the rural communities. It addresses discriminatory practices within the traditional institution. The study proposes gender equity within the traditional institution.

This study made a case of ensuring that indigenous leaders are integrated with the western system of democratic governance. The adoption of such a system will likely benefit people at grassroots level, particularly those who live in rural areas of the Northern Province and elsewhere in the country.

Limitation of the study

This study has been limited to integrating indigenous rulers and contemporary local governance with special reference to the Northern Province. This limitation has been dictated by the nature of the theme, time and space. The study considers general features of indigenous governance as feasible by acknowledging differences of chiefdom and systems of indigenous governance within the Province. The Northern Province comprises three major ethnic groups whilst two small groups also live in the Province. These are Basotho, Vatsonga, Vavhenda, Emaswati and Mandebele. Thus going into the analytical details of each group was not possible due to lack of time and space. Furthermore, an in-depth critique of the theory of contemporary liberal democratic states was not attempted.

Delimitation of key terms and concepts

Acephalous societies

Were those African societies that governed themselves without traditional leaders. However, colonial rulers imposed on these societies puppet chiefs so that they could administer their policy of indirect rule.

Traditional leaders (chief)

Is a term used by colonial regimes to refer to Amakhosi/Dikgosi. Applied to various categories of indigenous political leaders in Southern Africa. It was used to denigrate them because it was difficult to equate European monarchical rulers to African monarchical rulers. It was also partly because of genuine cross cultural equivalence problems, and partly because, if not largely, due to the Eurocentric view that African Monarchs could not be equated to European emperors and kings, even in cases where comparisons were close. Europeans assumed superiority of political institutions over those of the African "savage".
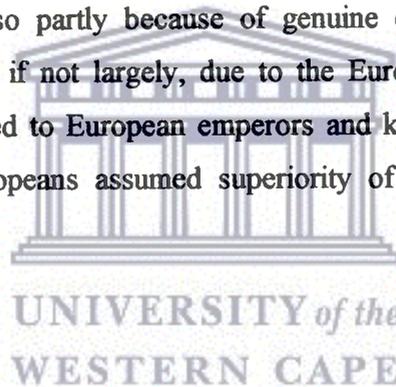
Indirect rule

Indigenous rule is a policy in which colonial governments were encouraged to rule indigenous (tribal) authorities, in British protectorates.

Direct rule

A policy which colonial government applied with a little recognition of the existence and the role of indigenous rulers and while the territory was run by the colonial administration in dependencies.

Integration of indigenous rulers into contemporary local governance

These are engagement of traditional rulers in a process of merging African monarchical institutions into modern liberal democratic system of governance. This refers to the engagement of indigenous rulers in several functions of governance at rural, local and municipal government processes by merging the African traditional institutions with the western institution with combined values and practices for the modern liberal democracy.

Local governance

In pre-colonial times African chiefdoms operated on levels that are now geographically close to local authorities in rural areas. This is a system of governing at the lowest tier of a country's political system.

Nortrhern Province

Northern Province refers to one of the nine provinces newly created in South Africa following the advent of the liberal democratic government of 1994. It is situated at the north of South Africa and south of Zimbabwe as well as northeast of Botswana and west of Kruger National Park as a border to Mozambique.

Suzerains (suzereigns)

Suzerain is a state or sovereign exercising some degree of domination over a dependent state, usually controlling its foreign affairs.

Warrant chiefs

Warrant chiefs are those chiefs (Rulers) imposed on African societies by colonial and apartheid rulers in order to further their policies such as indirect rule and separate development respectively.

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Organisation of the study

This study is organized into five (5) chapters including this one

Chapter Two: Reviewed the roles played by indigenous rulers in the colonial, in
                    the apartheid and post apartheid eras. Also, the chapter gauged the
                    perceptions of relevant stakeholders such as women's groups,
                    politicians, chiefs, and practitioners.

Chapter Three: Provided an overview of indigenous local governance in the
                    northern province. Also, it addressed attempts made to integrate
                    and engage indigenous rulers in contemporary local governance.

Chapter Four: Advanced a model for effective integration of indigenous leaders
                    and contemporary local governance. Also, it discussed the
                    implications and limitations of the model.

Chapter Five: Provided a summary, recommendations and conclusions based on
                    the assumptions made earlier in this chapter and further made
                    recommendations for future research and practice.

CHAPTER 2

INDIGENOUS RULERS IN THE COLONIAL, APARTHEID AND POST APARTHEID ERAS.

Before the introduction of apartheid in South Africa, the political status and roles of indigenous rulers were similar to those enjoyed by rulers in British colonial dependencies. They fell under the indirect rule system with considerably reduced powers. With the ascendancy to power of the Nationalist Party (NP) in 1948 and its new policy of apartheid, however, the situation was drastically altered. The change was to ensure that the realities of local circumstances were shaped to meet the requirements of apartheid policy.

Indigenous leaders under colonial rule

Indigenous leaders were identified as a link between colonial governments and indigenous people. They were used for a simple access to indigenous communities. Where there was non-existence of traditional leaders, they were appointed to create a link with the government. Historically, traditional rulers form part of indigenous people's cultural background. However, for this reason colonial powers subjected indigenous rulers in various circumstances at different places depending on different factors which favoured them. Ismail (1999) listed some factors that influenced the different circumstances as:

➢ Whether, or not particular traditional rulers were conquered through military subjections or entered into a diplomatic agreements for protection;

➢ Whether, the climatic condition was favourable for colonial settlement;

➢ whether the strength or structure of the ruler's kingdom was weak or strong, and

➢ whether the attitude of the colonising power toward African subjects was favourable.

The general attitude of colonisers towards conquered rulers was to deprive them of their powers or dilute them to an extent that they could not pose a threat of revolt against the

colonial government. For example, when the British South African Company through the Rhodesian government had brutally suppressed and reduced the powers of the dual revolt of the Ndebele and Shona in 1897 (Ranger,1968). On the other hand, when colonial officers had managed to secure agreements by signing of the treaties in the terms of colonial administration, they tend to be more favourable to the rulers. Unless subsequently received special protection and family benefits like sending their children for education abroad. Such Kings and Countries are the kingdom (King Letsile) of Lesotho,(King Sobhundza) of Swaziland and (King Khama) of Bechuanaland. This shows that rulers who were subjected to colonial rule through peaceful treaties were allowed a large measure of authority over their subjects because they co-ruled with colonial officers, except where traditional powers conflicted with those of the colonizer. Traditional rulers who were conquered were deposed and puppet or rival successors were enthroned with drastically reduced authority and powers. Well-organized and powerful indigenous rulers even if they were conquered were given better terms, an example is the kingdom of Kwa-Zulu which was militarily defeated by the British and yet recognised their status as 'king'. We can also sight the case of the Nguni of Eastern Zambia whose ruler was still given the tittle of Paramount chief after his crushing defeat by the British (Gann,1964). Indigenous rulers who were weak and posed no military revolt against colonial governments were treated with little regard.

Indigenous rulers and their subjects were targets of resettlement if an area was suitable for settler communities. For examples, the forced removal of *eMazazeni (*now known as Kiepersol*)* and *eManz'Amhlophe*(now known as White River) communities in the valleys of Drakensberg where British settlers rushed for best agricultural land and forestry and where the climate was cooler than most parts of Lowveld escarpment in the Transvaal. Most chiefs in these areas had lost jurisdictions over land and were pushed out to occupy less fertile and less productive areas. Such traditional leaders, among others, are chief Mhaule, Mokgane, Malele.

Hodgkin (1956) observed that policy of France towards its African dependencies was generally based on a more consistent desire to assimilate African subjects, whilst that of

the British was dictated by the practical considerations of the situation, using more precedent rather than principles. The attitudes of the French towards indigenous rulers were negative, but they were forced to acknowledge chiefs existence and allow some measure of autonomy because of difficulties. The difficulty was due to some resistance of indigenous people who forced French to recognize indigenous rulers. However, the French attempted to reduce the number of chiefs and eroded their powers in many of their African dependencies.

On the other hand, the British attitude towards indigenous rulers lacks a clear and coherent set of principles for colonization. They recognized indigenous rulers with a little hesitation where such recognition did not pose threats to British rule and enhance it in some instances. When British settler interests conflicted with those of the colonized "natives" colonial rulers resorted to direct if not brutal suppression of indigenous rulers, weakening their power-base and withdrawing their authority especially on land and in matters of justice.

Colonial history records that among the most consistent and lasting impact on the status and role of African indigenous rulers was the British policy of Indirect Rule. This policy set the authority parameters for indigenous rulers in British dependencies. This policy was even echoed in South Africa both during the apartheid and post apartheid eras.

The Indirect Rule prescribed that each tribe was to be supervised by an overall ruler referred to as Paramount Chief, when such a tribe had exercised strong centralized or military authority over their subjects. And even senior chiefs when they were loose federation or confederation. These chiefs were sub-chiefs of rulers who were in charge of regions or clans who were in turn assisted by village headmen/women. Tribal Native Authorities (NA) assisted paramount and senior chiefs. Administered tribal affairs subject to the supervision of British officers. Generally, all chiefs had a court for settling social and legal disputes according to tribal customary law, with some exception of some criminal cases and capital crimes, which were dealt with under British law. This system had continued until the apartheid and post apartheid eras. Indigenous rulers were only

allowed to operate within their area of jurisdiction of tribal land excluding areas, which were appropriated for white settlers. Within the ranks of paramount Chiefs those tribes like emaSwati of Swaziland, baTswana of Bechuanaland and baSotho of Lesotho whose political system had been very centralized, geographically extended over a considerable area were accorded special status in the dependencies. These tribes were further protectorates within protectorates, and their rulers could use indigenous titles of King. A further example is the kingdom of KwaZulu in South Africa even though this kingdom was a not protectorate of the British kingdom.

Recognition of chiefs under colonial powers was not uniform since when the choices of candidate (chief) conflicted with the expectations of colonial government alternative ways were employed in order to enthrone their favourite candidate (chief). The colonial government supplied funds for NA's, paid the chiefs allowances outside civil service, and supported secretariats with stationery and paid staff to man customary courts and for the collection of taxes by the chief for the colonial government. This was the way employed to encourage chiefs' involvement and participation in colonial governance. Cultural realities were ignored because they were regarded as obstructive to the policy. This policy was a reflection of rules that suited colonial governments and their needs.

Some of the indigenous rulers were opposed to colonial rule, even though some supported it. Those who were for, believed that their privileges were interfered with, within the system of indirect rule and others feared that independence would see the end of the institution of chiefs if they opposed the ruling government.

Indigenous rulers under the Apartheid rule

The Nationalist Party assumed power after defeating the United Party in the 1948 general elections. It was committed to changing and restructuring the society to fit its policy of separate development (more commonly referred to as apartheid). This shaped its approach to indigenous leaders whom it saw as potential allies in its experiments (Ismail 1999).

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In 1951, the apartheid government passed the Bantu Authorities Act, a piece of legislation, which had far-reaching implications for indigenous rulers in South Africa. The Act marked an important departure from the previous policy of applying the principles of indirect rule to tribal life in the Reserves. Thus the Act helped to consolidate the policy of separate development. Tapscott (1997), observes that this Act was one of the key building blocks of apartheid policy. It increased the powers of chiefs over their subjects by allowing them to enforce compulsory resettlement schemes known as 'betterment schemes'. Chiefs were allowed to resettle the entire community in certain areas against their will. For example, in 1966 people who were living in Richmond, Sandford, Diepdrieft, Waterfall, Wales and Boshoek east of Graskop on the valleys of the Drakensberg were forcefully resettled at Madras (*Goromani*). This Act also gave power to the government to create and recognise new chiefs. For example, in 1975 the Gazankulu Government created the Hoxane tribal authority at Bushbuckridge (*Mhala district*) and in 1990 the Majeje tribal authority at Ritavi district was created in the same manner. These chiefs and many others in the Northern Province had no legitimate claim or basis because they were created in a manner similar to colonial "warrant chiefs" elsewhere on the continent. The apartheid regime, through this Act, further resorted to abolishing certain paramount chieftaincies and raising some village headmen to the ranks of chiefs. One example is the paramount chieftaincy of Sikhukhuni.

The imposition of the Bantu Authorities Act not only changed the relationship between the chief and his subjects,but it also upset the balance within the "tribal" hierarchy. In Sekhukhuneland and in numerous other regions, the Native Affairs Department undermined the position of existing chiefs by breaking the power of the paramount chief. Subordinate headmen were offered recognition as chiefs if they accepted the establishment of tribal authorities. This scheme resulted in a proliferation of chieftaincies. Initially, Sekhukhuneland counted nine chieftaincies, but by mid 1970s more than 50 chiefs had been officially recognised. The doubtful origins of many chiefs served to further weaken their legitimacy, as many of them were considered to be only "headmen" who had usurped chiefly power (van Kessel and Oomen, 1997). The Bantu Authorities

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Act further brought the chiefs under the Department of Native Affairs by allowing the Minister concerned to dictate terms for recognition as the high chief and allowing the government to recognise the chief more than popular support for the indigenous structure itself. Thus chiefs ruled under the discretion of the government of the day. Some legitimate indigenous rulers lost their chieftainship if they failed to follow the line of the government.

In 1951, another draconion law was passed. This was the Prevention of Illegal Squatting Act, which compelled Africans to live in Homelands. In addition, the 1952 Native Laws Amendment Act also limited the right of Africans to live permanently in urban areas. In 1959, the apartheid government passed the Bantu Self-Government Act, which resulted in the creation of Bantu Homelands. Ismail (1999) observed that this Act had important effects on the role of indigenous rulers. Among other things, indigenous rulers were given powers to control the movement of their subjects through the granting of passes. Each Homeland was required to create a chamber for chiefs.

According to Ismail (1999), each member of these chambers received a car and a sitting allowance in addition to the chief's salary. Officially appointed chiefs as well as *Mantona* or headmen under the Homeland system were all paid salaries and they were allowed to exploit their subjects by forcing them to pay a certain fee as a contribution toward buying a chief's car or building his or her house. Chiefs were made to support the Nationalist Party and made to believe that the rule under a black man could not survive. Thus this strategy was employed to weaken the basis of the African political parties, for example, the ANC and PAC. The creation of Homelands according to ethnic grouping was a divide and rule tactic to prevent alliances developing between Africans. According to Tapscott (1997), the creation of eight Bantu Homelands at the time was intended to reinforce tribal / ethnic differences and to put an end to any alliances between urban workers and rural peasants. By setting urban workers against migrant workers (through influx control laws), Zulu against Xhosa and so on, the Bantustan system was able to break up African resistance to white domination. The NP was able to achieve this objective with the

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support of a small collaborating elite in the Homelands, and with the help of compliant traditional leaders (Tapscott, 1997).

The Homeland constitution stipulated that 50% of legislative assembly seats were to be reserved for traditional rulers as *ex-officio* members and the other 50% reserved for the general public to elect their representatives. This would ensure that chiefs would became agents of apartheid rather than bringing genuine independence to their people. In addition, the chiefs were assigned legislative, judicial, and administrative powers. Land was entrusted to them and they had powers to allocate land to groups or individuals and spearhead rural development in their jurisdiction. However, the low salaries of chiefs and lack of development skills led to corruption, unaccountable behaviour, and general authoritarianism. "Until the 1990s, it was common practice in most Homelands that applications for land were accompanied by payments of alcohol, poultry, sheep or even an ox where competition for land was high." (Tapscott 1997: 295).

The uprising of 1986 resulted in the abolition of the pass laws and requirements that migrants present themselves at the chief's office in their home village. This led to the loss of income for chiefs from registration fees. To cover these losses, new taxes were imposed on communities. For example, paying the chief's house, car, reporting of any case, use of grazing field, tribal levies used for building community infrastructure but were in effect for the chief's personal use and the demand for free labour from subjects, were imposed on the people. Furthermore, chiefs became more vigilant against political activities in their areas. They formed vigilante groups to combat the rebellious youth,and refused permission for village meetings in order to prevent the influence of civic movements in townships (Ismail, 1999).

Chiefs and resistance movements

In 1910, South African whites established the Union of South Africa excluding blacks from government. Some traditional rulers joined their subjects in forming a resistance movement against white rule. As a result, chiefs were amongst the founding members of

the African National Congress (ANC) which was established in 1912. After 1948, when the apartheid regime restructured rural society to fit its aims, some traditional rulers actually revolted against the regime and were subsequently removed, sent into exile or marginalised in homeland politics (Lodge, 1983; Delius, 1989). Not all-traditional rulers, however, accepted or collaborated with the apartheid regime and their homelands. After the proclamation of the Bantu Authority Act in 1951 some chiefs were perceived as being no longer supportive of the liberation movement, even though others remained active in its support. Chief Albert Luthuli was elected President of the ANC in 1952. In 1987, CONTRALESA was formed against the background of some chiefs resisting and opposing independence for KwaNdebele in 1986. Ismail (1999) identifies the aim underlying the formation of CONTRALESA by indigenous leaders as:

➤ to organise and unite all traditional leaders in our country;

➤ to make the demands of our communities jointly with them;

➤ to fight against tribalism, ethnicity and all apartheid instigated conflicts amongst our people;

➤ jointly with all our people to win back the land of our forefathers and share it amongst those who work it in order to banish famine and land hunger;

➤ to fight against the destruction of family life through the bantustan system and all related unjust laws;

➤ to fight for the eradication of the homeland system and the restoration of South African citizenship to all the people;

➤ to build, develop and deepen the spirit of free exchange of cultural activities among all our people in pursuance of the building and development of a true South African culture and national talent;

➤ To run projects and self-help schemes together with other progressive organisations that advance our communities and enhance the good image of contralesa, also to accommodate chiefs who have been forced to leave their homes (CONTRALESA constitution cited in van Kessel and Oomen, 1997).

Founders of CONTRALESA were basically 38 chiefs based in the KwaNdebele homeland. Many more chiefs joined this organisation after the unbanning of political

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parties in 1990, in order to safeguard their interests in the future ANC government. The existence of CONTRALESA created an opportunity for the ANC to prevent the continuation of the alliance between the NP and chiefs, and for the ANC to gain ground politically it was expedient to engage or include traditional leaders on their side. The inclusion of traditional leaders in the ranks of the ANC was not an easy one since it brought about resistance from the ANC Youth League, the ANC Women's League and the South African National Civic Organisation(SANCO). The reason for this resistance was that chiefs had harassed and tried to prevent them from mobilizing communities to support the freedom struggle. However, chiefs from all over South Africa continued to negotiate their way into the new democratic South Africa through CONTRALESA and other indigenous structures.

Indigenous rulers lost knowledge of authentic indigenous values and practices when the apartheid regime applied indirect rule tactics and re-engineered these to new heights of perfection. Thus, chiefs were subsequently integrated into structures of autocratic rule in the Homelands. Democratic forces then accused traditional rulers of being undemocratic, since they were engaged in pursuing traditional policy and recognising ethnicity rather than recognizing mere differences between their various indigenous systems and combining them to form a united front for the benefit of African societies. One area where indigenous rulers were losing influence was among the Bapedi, Vavhenda and Vatsonga in the Northern Province who were increasingly inter-marrying with the result that ethnicity was perceived as just a symbol of separate development. Culturally, amongst these groupings there were no major differences. Homelands were there only to exploit and cause confusion amongst blacks.

Thus when chiefs were engaged in modern governance without adequate remuneration and skills their roles were undermined. Hence, these chiefs ended up becoming corrupt and ineffective. Indigenous rulers, however, adapted to the prevailing wind. This is evident in many chiefs' opportunistic desires to relate to political movements merely for their own interests and survival, rather than pursuing a genuine desire for political alliance (Ismail 1999). During the apartheid era they were forced to comply or face

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extinction and in the democratic era they were given an opportunity to negotiate their way in, or be left behind. Based on the apartheid experience, it appears likely that some chiefs will accept a change in their roles while others will reject it. As a result, many chiefs in the northern province rejected the new roles in the post-apartheid era. It should be noted that indigenous rule cannot vanish even if rulers are antagonistic to norms of modern governance. It is a structure that has shown an amazing degree of resilience over the years in South Africa and elswhere on the continent.

Indigenous rulers in the post-apartheid era

In1990, when Nelson Mandela was released from prison as a member of a Democratic movement, he addressed indigenous rulers thus:

> I greet the traditional leaders of our country - many of you continue to walk in footsteps of great heroes like Hintsa and Sekhukhune. The role and place of traditional leaders in our society has in the past been systematically undermined by successive racist regimes, which sought to reduce their role to enforce repayment apartheid politics. Today's meeting should be seen in society (Mandela, 1995, speech).

This statement indicated that the democratic movement recognised, and respected the existence and survival of the traditional institution such that traditional rulers should take their rightful place in society. This means that chiefs should exercise their authentic customary leadership and be respected as symbols of unity and as religious symbols among communities rather than be exploited by politicians.

During the Congress for Democratic South Africa (Codesa 1&11) negotiations, however, the subject of chiefs and their future role in the post-apartheid era featured less. in January 1990, the National Executive of the ANC issued a statement, part of which said:

A special tribute is due to the traditional leaders who have combined themselves into the congress of traditional leaders. Having broken away from the state of those who help to administer the apartheid system, these leaders have gained the respect of the people and

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are a valuable and indispensable component of the genuine forces of change (ANC, 1990).

The women's organisations took the ANC to task over CONTRALESA and in particular over the issue of customary law which to them appeared to be sexist in several respects and, therefore, not consistent with the principle of non sexism and equality. Women thus threatened to pull out of the Codesa negotiations, if the ANC was bent on placating chiefs at the expense of the rights of women. Their main concern was the recognition of customary law that seemed to be contradictory to the Bill of Rights, which gave equal rights to both women and men. Under several systems of customary law, women had no rights to property, or even to life and liberty except under the guardianship of their husbands or fathers. Van Kessel and Oomen (1997) summarise this opposition of the inclusion of chiefs in the new dispensation as follows: "The institution of chieftainship is not in accord with the precept of democracy on its twentieth century version. Chiefs are not elected, but hereditary. Secondly, chiefs are mostly men, which go against the principle of non-sexism. Thirdly, only Africans can become chiefs, which goes against the grain of having a non-racial society. Fourthly, chieftancy serves to accentuate the forces of ethnicity, which had become thoroughly discredited in the apartheid years when it was used as the organizing principle in the divide and rule strategy of ethnic homelands.

Authors like Sachs (1992) on the other hand wrote in support of including chiefs in the new dispensation arguing that chiefs could play a positive role in the new South Africa. He said that there was a potential and dignified constitutional role for chiefs in a democratic South Africa. As a result of these debates in Codesa, chiefs were then recognised in the interim Constitution. Section 26 of the interim Constitution stipulated that all-traditional leaders who were functioning in that capacity at the time of negotiations would be recognised for duration of five years. Thus chiefs received a government salary, adjudicated in matters concerning indigenous law and customs and were represented at various levels of government. The provisions went further to establish a house of traditional leaders in provinces where chiefdoms had existed and a

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council of traditional leaders at national level. These chambers were created merely for advisory purposes on matters related to their jurisdiction only. Their advice could only delay but not reject or amend bills passed by the National Parliament. More importantly, though, the role of traditional rulers in local government remains unstated /unclear.

The northern province situation

Although the interim Constitution stipulated that there ought to be houses of traditional leaders and the national council of traditional leaders before the final constitution was passed, the Northern Province had internal disagreement on how to proceed since the province had three different historic Bantustans. The problem here was that various cultural groups differed on equal versus proportional representation in the chamber. The northern province was established out of three former homelands: Gazankulu, Lebowa and Venda. The following table shows the ethnic breakdown of the provinces' rural population according to the 1993 census.

State of Percentage on ethnic population grouping

TABLE 2.1

Ethnic group	Percentage
Vatsonga/Machangana	23%
Bapedi	66%
Vavhenda	8%
Whites	3%

These percentages exclude the urbanized population of the Northern Province, which is less than 1%. Both urbanized and rural populations in the northern province generally consider indigenous rulers to be important to the successful operations of local government. Finally, for the sake of establishing the House of Traditional Leaders the different cultural groups had agreed to establish the house without following the above two routes by compromizing their positions.

"The institution of traditional leadership is rooted in the soil of Africa and in the hearts and minds of all ordinary Africans who take pride in their history, culture, origin and identity"(Donkers and Murray 1997:39). Many citizens in the northern province, whether urbanized or rural, recognise their indigenous rulers. They take pride in their cultures. For instance, many still adhere to indigenous customs of lobola even though they proceed to marry their wives for the second time following western culture for the sake of a marriage certificate. Many more are married through customary law including some policy makers who are married to more than one wife. Urbanized people are not subjected to chiefs, but they are not divorced from the socio-cultural aspects of traditional custom. The Constitution adopted in 1996 recognises chiefs and their roles in dispensing justice under customary law, but all this is subject to the principles of the Constitution and subsequent laws passed under it. The Constitution stipulates that a council of traditional leaders may be instituted while the interim constitution used the term shall be, "implying that the National government is under no obligation to establish the national body." (Ismail,1999).
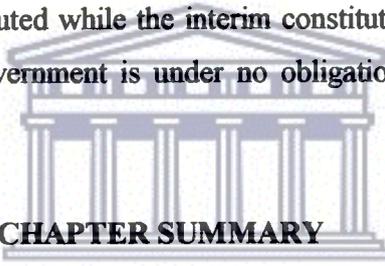
CHAPTER SUMMARY

This chapter has reviewed the status and role of traditional leaders under colonial and apartheid regimes in South Africa generally. The colonial focused on the British system of Indirect Rule, which other powers had more or less adopted in varying degrees in their colonies. It has been observed that treatment of traditional leaders was dependent on numerous factors. Such factors included attitudes towards imposition of colonial rule, the relationship, the relative strength/weakness of the indigenous institution the policy of the colonizing power and the suitability for settler populations. Tribes that co-operated with the colonizing power were treated warmly than those who resisted. On the other hand those kingdom that were relatively strong but were defeated militarily, were left more or less intact in their structures and processes and constrained only by the requirement of the colonial policy and justice. Less united traditional rulers were organized and a chief was appointed so that the policy of indirect rule could be facilitated.

The apartheid era witnessed a steady decline of traditional authority. Following the attainment of independence and decolonisation process, most African states have undergone profound changes. The introduction of democracy created the need for changes in the structure of African society. Ever since the advent of democratization, the institution of traditional leadership has not been entirely impervious to this process of change. Thus, South Africa like any other African country had to undergo change in the traditional structure to make it more or less relevant to developing circumstances. Obviously, some of these changes will clash with long held values and notions "sanctified" by history or other factors.

The main obstacles towards change in Africa have come from customary society, particularly in traditional rule. Colonialism did a lot of damage to the customary African society and the ancient institutions that it would be difficult to successfully carry out corrections to the damage done over many centuries in a short time.

Traditional rulers were discouraged or even prohibited form living their own ways of life. The institutions of traditional leadership were used or abused to advance colonial interests. This was achieved through the use of the policy of "indirect rule". This policy was imposed on traditional leadership. Under this policy traditional leaders were offered limited leverage to "govern" themselves in accordance to their customs and traditions provided that these did not offer the principles on which the system of colonialism was grounded.

Traditional rule in some instances were incompatible with democratic rule but are violative of some of the basic rights and freedoms, which form the basis of modern society. These violations of basic rights ranges form the principles of succession to the throne (male dominant), their role in public administration at local government and fail to satisfy the principle of equality.

The advent of democracy in South Africa has forced traditional leaders to rethink about the future of this institution. The established CONTRALESA as an arm to fight for the

incorporation of traditional leaders into democratic governance and for their right to co-exist with contemporary governance. This organisation had managed to negotiate for their existence. The interim and the new constitution recognize the existence of traditional institution even though their role and function are not clear, especially at local government level.

Finally, this chapter reviewed the situation of the Northern Province regarding the establishment of the House of Traditional Leaders. A problem was found for the delays that took place as a result of ethnic grouping in fights among the vaVhenda, vaPedi and vaTsonga. The problem was on numbers of representative on the House of Traditional Leaders.

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CHAPTER 3

ROLE OF TRADITIONAL LEADERS IN THE NORTHERN PROVINCE

The point of departure of this chapter is that the institution of traditional leadership is anchored in the hearts, minds and souls of the people of the northern province; a province that is largely inhabited by people who live under indigenous rule in rural areas. Ordinary people of the northern province take pride in their history, culture, origin and identity. Indigenous governance, before colonialism, catered for the needs of all communities. This system also protected land rights and addressed issues pertaining to law and order. The basis of the regulation of people's lives was custom, traditions and cultural practices. The cornerstones of the economic life of the people were defined by territorial boundaries and communally owned land. As in other African states, the northern province's traditional leaders reasserted or maintained their influence in the face of attempts by colonialists to limit their roles.

Indigenous rulers and authorities have a significant role to play in the northern province. For example, in speeding up the constitutional development processes. Liberal democratic structures must therefore not fail to understand and accommodate traditional norms and practices. Failure to do so may precipitate a major crisis and fuel the ongoing conflict between indigenous and democratically elected leadership at local level. It is widely accepted that traditional leaders and their councils render an important service, which is a crucial element of the northern province reality. The population of the Northern Province according to the 1996 Census, is as follows:

TABLE 3.1

Area they live in	Total number per voting age	Percentage
Rural population	4 388 067	88.1%
Urbanised population	541 301	11.9%
Total population Rural and Urban	4 929 368	100%

The table shows that many people in the Northern Province live in rural areas, because of the majority rural population. The total number of indigenous rulers (chiefs) is approximately194 and 1600 headmen (*Tinduna*). In a paper presented *by Benny Boshielo* at a conference on local government held at Pietersburg, entitled *A draft paper discussion document towards a white paper on traditional leadership and institutions* revealed that in the former Lebowa there were 128 officially appointed chiefs (*Makgoshi*) and over 900 headmen (*Matona*) who are not officially appointed and they do not receive remuneration. Under the authority of the chiefs and headmen there are also clan headmen (*Borakgoro*). They are responsible for the administration of the tribe, while headmen are responsible for their respective wards or villages. There were 12 community and 12 regional authorities, which were headed by either chiefs or elected chairmen amongst the 128 traditional authorities. In the former Venda there are 28 officially appointed chiefs (*Mahosi*) and their equivalent number of traditional authorities. 374 are officially appointed headmen (*Vhamusnnda*) and 248 officially unappointed headmen (*Vhamusanda*) as well as petty headmen (*Vhakoma*). In the former Gazankulu there were 33 officially appointed chiefs (*Tihosi*).

Table 3.2

Categories of headmen	Number of headmen	Remuneration
Officially appointed and independent headmen	47	They are remunerated and are not under a chief
Officially recognized headmen appointed by chiefs	106	They are remunerated and appointed by chiefs
Non-officially recognized headmen appointed by chiefs	385	Not remunerated
Petty headmen (xamugaga)	248	Not remunerated

(A draft discussion document (toward a white paper on traditional leadership and institution) Department of Provincial and Local Government 11 April 2000)

All these headmen are responsible for the administration of their respective villages.

Therefore the correct figure of the total number of chiefs in the northern province is 189 and not 194 and the total number of headmen is approximately 3 440 including non remunerated headmen. This chapter attempts to highlight problems faced by indigenous leaders and elected councillors. It emphasises the need for cooperation, tolerance and coexistence in service delivery as well as the need for indigenous leaders to adapt to the liberal democratic principles of governance and in terms of the need for democratic governance to accept indigenous institutions, norms and practices.

The advent of democratic government has brought drastic change in the northern province. As indicated some were in this thesis that the northern province was divided into four governments being Gazankulu, Lebowa, Venda and the central administration this then was to be reversed by the formation of one single provincial government. The restructuring involved the redemarcation of the whole province into seven (7) districts, thirty eight (38) rural councils / transitional local councils (TLC) and two hundred and sixteen (216) wards. The total number of democratically elected councillors was three hundred and thirty eight (338) including proportional representatives (PR) and the total number of ward representatives was equivalent to the total number of the wards demarcated. However, according to the 1995 northern province, provincial Gazette no 73, volume 2 on land, housing and local government, total number of democratically was three hundred and thirty eight (338). The statistic of the chiefs and headmen show that there are more traditional leaders in the northern province as compared to democratically elected councilors. However, all of these representatives are there to serve the needs and demands of communities they live in. The coming to being of the new dispensation, forces that a new way of governing at the local level should be created. This means that traditional leaders and elected councillors should to work together as a unit. The problem is that there is no clear demarcation of duties and that the number of traditional leaders including their headmen far exceeds the number of elected councillors.

Table 3.3 Demarcation of elected wards in rural council of the northern province.

No	Districts	Rural Councils	No of wards	Proportional Seats	Total seats
1	Central	6	31	18	49
2	Northern	5	32	18	50
3	Lowveld	9	58	33	91
4	Southern	8	46	24	70
5	Western	3	15	8	23
6	Bushveld	4	14	8	22
7	Bushbuckridge	3	20	13	33
Total		38	216	122	338

Source: The province of the northern Transvaal: Provincial gazette 31/July/1995 volume 2, no. 73.

Change in indigenous leadership style

Before colonialism, the system of indigenous governance followed hierarchical structure. Together these structures formed a tribal authority, headed by the chief. The chief and the council dealt with legislative functions. At all levels of the structures decision-making processes were aimed at consensus and permitted general participation of any male members of the relevant community. The main function of the indigenous leaders was the right to declare wars and to convene meetings of councils and ritual ceremonies. This situation, however, changed when whites came to South Africa and introduced their western style of leadership. In 1927 the Union of South Africa promulgated an Act called the Black Administrations Act. This Act made the Governor General of the country the supreme chief of all blacks in South Africa. Thereafter all traditional leaders and communities fell under central government control.

As alluded to in an earlier chapter, the Nationalist Party government in 1951 further formalized the control of blacks, promulgating the Black Authorities Act (No 68 of

1951). This Act made traditional leaders and their councillors' part of the South African government's administration system. In terms of these Acts community authorities were established for communities that lacked traditional leaders. Thus, artificial traditional communities and leaders were created.

Further, every black person was designated on the basis of an ethnic group to be a citizen of a self-governing territory. Such self-governing territories in the northern province were Lebowa, Venda and Gazankulu. These changes affected hereditary traditional leadership by subjecting it to unknown political practices that did not reflect the essential values and practices of the people involved. These also opened opportunities for traditional leadership to be attained by appointment or recognition rather than birth right. Any chief was subject to disposition if the government had specific grounds, whereas in the past the position was held for life. Thus legislative powers of traditional leaders in this sense were abolished, judicial powers were curtailed, and administrative powers were adopted and extended. Thus, chiefs were expected to render service rather than to reign over their people (Vorster 1991).

Relationship between indigenous rulers and local councils in the northern province

The power base, traditional, political, economic balances and the socio-economic character of traditional leaders have changed over the years. What is of importance is that their influence has remained and that it must not be underestimated because they have survived colonialism and apartheid rules to the extent that they are still an essential part of the social fabric in many rural areas. Donkers and Murray *in the rights of indigenous people: A quest for coexistence* edited by De Villiers, 1997, define the special nature of traditional leaders and authorities as follows:

> Traditional leaders/authorities are social leaders and systems rather than actual government institutions. Their primary functions are to regulate and control *relationships and behaviors* within a traditional community. They are in essence people oriented and not service oriented as government structures are. (De Villiers, 1997:40)

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A traditional leader is *hosi I hosi hi van'wu* (a chief is a chief through his people). This authority is therefore personalized and vested in the people of the traditional leader. There is a *de facto* leadership institution with a traditionally defined role to play in traditional communities. The authority of traditional leaders is derived from tradition and is exercised in consultation with senior advisers without being regulated by provisions. A traditional leader is a leader by birth. The above definition makes a clear distiction between roles of traditional leaders and their powers. It shows that the existence of a chief is based on the people that he/she leads and that there exist a problem with regard to social development devolving from the lack of financial resources and technical and administrative knowledge.

Most traditional leaders, as leaders by right of birth, are often unskilled and cannot render services that are associated with local government. However, because of their close relationship with the rural people and their coherence and consistency of style of leadership at local level, social cohesion, stability and development is dependent largely on these leaders. Tradition is still strong in the rural areas. Here, traditional authorities function like a local authority. Thus the province is faced with a challenge to maintain these authorities within a democratic dispensation, foster cooperation between these authorities and local government structures and create an environment where a balance is struck between the expectation of democratic and indigenous governance.

The issue of democratic local governance in rural areas has been largely affected by urban local government concerns throughout the local government transition process in South Africa. However, bread and butter issues in rural local government have not been thoroughly looked into. There are shortcomings, including the integration of indigenous governance and contemporary local governance. In deep rural areas, the function of local government is limited by the availability of resources such that the local government function is not visible. Thus, integrating indigenous and contemporary governance may contribute notably to improve service delivery. Cross-sector planning and control for

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service provision at this level is quite important, since in this context the role of traditional leaders and their authorities is crucial.

Current role of indigenous leaders

The role of indigenous leaders currently ranges from the provision of services to the preservation of law and order, to the allocation of land held in trust. Allocation of business sites to individuals is subject to consultation with rural development committees and the transitional local government. Both indigenous authorities and TLC's are subject to provincial governments, and provide a system of localized government to rural communities. The current role of indigenous rulers and their authorities is as follows:

➢ Allocation of land held in trust for small-scale farming, grazing and residential purposes;

➢ Preservation of law and order and the adjudication of minor disputes of a civil nature;

➢ Social welfare administration, the processing of applications for social security benefits;

➢ Promotion of the interests of the tribal community;

➢ Promotion of education, the erection and maintenance of schools and clinics

➢ Support, encouragement and initiation of measures for the material, moral and social well being of their people (white paper on local government RSA, 1998:75-76)

The above-mentioned functions fall directly under the national, provincial and local governments as provided for by the present Constitution. Needless to say, this shows the need for co-existence of liberal democratic governance and indigenous governance. The integration of indigenous democratic values and practices and contemporary local governance can lead to a strong sustainable local government. What does the Constitution provide regarding traditional leadership? Section, 229 of the Constitution provides that all laws in force before the commencement of the new Constitution will continue to be in force, subject to any appeal or amendment of such laws by the competent authority. This provision thus, had the effect of prolonging the various laws relating to traditional leaders and authorities and their functions, which were in existence in any part of South African

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territory, including those applicable to the former self-governing states (homelands). In this case of the Northern Province, it includes laws that were applicable to the Lebowa, Venda and Gazankulu governments. Such laws are:

➢ Black Administrative Act (38 of 1927)

➢ Black Authorities Act (68 of 1951) and Regulation 2779 of 1991.

And other laws relating to the above mentioned homelands. Various constitutional principles also relate to or have an effect on the application of indigenous laws and customs and traditional leaders. One of these is principle xiii, which provides that the institution, status and role of traditional leadership, according to indigenous law, will be recognized and protected in the Constitution. Further recognition is accorded to common law as applied by courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically with such rights.

Constitutional provisions relating specifically to traditional authorities and institutions are as follows: -

➢ At national level where previously no provision was made for representative or executive structures for traditional leaders, a representative institution, namely the Council of Traditional Leaders, has been introduced with advisory competence (section 184 of the constitution)

➢ At provincial level, a representative House of Traditional leaders with advisory functions replaces the elaborate and highly autonomous legislative and executive structures that previously existed within the self governing territories and independent states (section 183).

➢ At local government level, structures, which in the past often exercised considerable administrative authority, exist alongside and have representation in and access to local government structures and district councils. Section 182 provides for *ex-officio* membership of local government for traditional leaders under certain circumstances. (Constitution Act 108 of 1996: Chapter 12)

Irrespective of the above-mentioned provisions, democrats, youth and women organisations criticize traditional leaders and their authorities and allege that these institutions do not operate in accordance with the principles of democracy.

These structures cite examples such as: -

➢ A traditional leader's position is hereditary and not elected;

➢ Traditional leaders are generally male, succeeding on the basis of male primogeniture, which is in conflict with the idea of a non-sexist society;

➢ Traditional leaders are from one specific clan, which is in conflict with the notion of non-racial society;

➢ The institution of traditional leadership perpetuates tribalism, which is seen as fundamentally divisive and is accordingly in conflict with the effort to create a unitary state.

➢ Other traditional leaders are not authentic traditional leaders. They were appointed by colonial and apartheid regimes at the expense of deposed traditional leaders as agents of those governments.
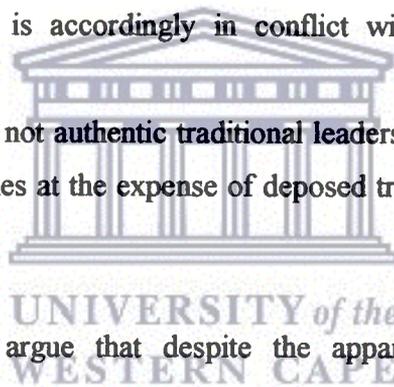
Others like Mokgoro (1994) argue that despite the apparent contradiction in the protection of the undemocratic government system of traditional leadership in the Constitution that aims to establish a non-racial and non-sexist democracy, it makes sense in the current socio-political circumstances in South Africa to provide such protection. Learning from the experience of the past five years, Premier Ramatlodi said, that the system of traditional leadership cannot be abolished; that democratic local government is here to stay with the support of traditional leadership. He further suggested that traditional leadership institutions should be reformed to fit into democratic structures. He acknowledges that traditional leaders need to adapt to the new order that their position should be recognized and respected (Holomisa, 2000)

Factors that undermine the legitimacy of traditional leaders

Donkers and Murray (1997) observe the following factors, which undermine the legitimacy of traditional leaders:

➢ The manipulation of traditional leaders to achieve constitutional and political goals;

➢ An extensive list of local government functions were assigned to traditional leaders without giving them access to the necessary skills and knowledge to perform the functions;

➢ A similar situation pertained in respect to their judicial powers;

➢ Some traditional leaders had no real control over communal land and land tenure, while others used their powers to allocate land to their own advantage;

➢ Traditional leaders were not given executive powers or a financial base and they therefore did not have the resources to function effectively;

➢ The local magistrates, acting as the representative of the central or homeland government, exercised veto powers over the activities of traditional leaders and authorities;

➢ Traditional leaders played a subservient role as instruments of government;

➢ Membership of legislative assemblies placed traditional leaders in the political arena, which affected their status in their communities;

➢ Traditional leaders were seen as ignoring their accountability to people they served; and

➢ The absence of checks and balances on their powers often rendered their system of traditional leadership vulnerable to corruption and abuse of power (Donkers and Murray, 1997;47).

Traditional leaders in the northern province are faced with the challenge to adapt to the changing circumstances in order to be cleared from negative these factors, which have severely damaged their image and status.

Problems facing indigenous rulers

The term indigenous leader is a vague term since it does not draw a line between chiefs and headmen. As was shown in the introduction to this chapter, the total number of chiefs and headmen is 194 plus 1600 respectively. The national government has taken a position to recognise indigenous leaders and thus pay salaries. The problem is that headmen are not catered for in the Remuneration of Traditional Leaders Act (29 of 1995). This Act provides that the President determines the remuneration and allowances payable to traditional leaders from the national revenue fund after consultation with the Council of Traditional Leaders and the Commission on the Remuneration of Representatives as provided for in section 207 of the Constitution. This provision excludes headmen (*Tinduna*) who serve at village level. Each tribal authority pay headmen wages out of funds collected as tribal levies. These headmen are sometimes not paid if the tribal levies are insufficient in any particular month. They then serve the community voluntarily.

Previously, all headmen (*Tinduna*) were remunerated by the three self-governing states of Lebowa, Gazankulu and Venda because they were seen to render an important service to their respective communities and played a stabilising role in the country to the benefit of the whole South Africa. This remuneration excluded some village headmen depending on the ethnic group. The unfortunate reality, however, is that if all indigenous leaders, including *Tinduna* are remunerated, their numbers would far exceed the total number of public servants. Thus, further burdening the taxpayer.

Most democratic structures within the province do not consult indigenous leaders on matter related to community development. Sometimes transitional councils allocate sites without the authority of the indigenous leadership even though this function has been assigned to the traditional authority. Sometimes, this occurs despite the fact that such areas have been put aside for other important purposes by the tribe.

CHAPTER SUMMARY

This chapter has addressed the government treatment of traditional rule, attitudes of stakeholders and status of traditional leaders. The colonial, apartheid and post apartheid used traditional leaders for the own political interests. The apartheid used them for advancing their policy of separate development and the democratic government recognises the institution but the is no clear function given to traditional leaders with regard to developmental issues. The traditional leaders have been inherited from apartheid regime by the democratic government. Therefore, for the five year in democratic government there is little that has been done to integrate traditional leaders and contemporary local government. It is significant for the northern province to integrate indigenous leaders because the total population is 4929 368 of which 4 388 067 live under traditional leaders areas and only 541 301 live in urban areas. Thus, for sustainable service delivery to local communities there is a need for traditional leaders to play a role. However, from the interviews of numerous stakeholders, its was suggested that traditional leaders should be included in the governance at local level, that traditional leaders should face change and adapt to the new system of governance as provided for in the 1996 Constitution. The next chapter provides a model for addressing some of the issues referred to in this study.

CHAPTER 4

TOWARDS A MODEL FOR EFFECTIVE INTEGRATION OF INDIGENOUS RULERS AND
CONTEMPORARY LOCAL GOVERNANCE

Since the advent of colonial rule in South Africa attempts were made to incorporate indigenous rulers into field of administration. In the post-apartheid era, however the new constitution recognizers the institution of traditional leadership at National and Provincial levels. As a result provincial Houses of Traditional Leaders have been established through in the nine provinces as well as the National Council of Traditional Leaders. The constitution is silent with regard to the role and functions of traditional leaders at local government level. This is the area of concern since the majority of traditional leaders and communities co-exist. This is the point where service delivery should take its effect. Thus, co-existence, co-operation, effective communication, tolerance and working together of stakeholders are required to benefit local communities. Therefore, integrating indigenous leaders into contemporary local governance is important. This should be done through training of traditional leaders and elected councillors in all levels of development. The aim and objective of the study is to propose a model of integration capable of achieving to this end, the organic coherence. This chapter presents elements of a model to integrate indigenous governance and leadership and contemporary local governance. The model is based on the assumption that the integration of traditional leaders into contemporary local governance will enhance service delivery in the local government sphere to the benefit of rural communities.

Current perceptions about indigenous rulers

1. Views of the fieldwork

In order to assess attitudes of some key stakeholders, the researcher selected and interviewed representatives from the following bodies/groups: Provincial departments, local authorities, traditional leaders, Members of Parliament, Members of Provincial legislative Assembly, and relevant NGO's. National, provincial and local government officials as well as legislators expressed their current views on traditional leadership and governance. Sets of six questions (see Appendix A) were posed to officials at the above levels. These questions were aimed at finding out the national, provincial and local government's vision about indigenous rulers within the northern province, under the new dispensation, including how these leaders are and should be formally recognized, supported and capacity building programmes for them, chief's salaries and whether chiefs should or should not actively participate in party politics.

Responses to the interview questions

The government's vision of the future role of indigenous leaders was that chiefs should play a role as being custodians of values and practices of their communities. Also, they should administer customary law to combat criminal acts and other social problems within their communities and should facilitate and coordinate rural development projects and programmes, especially infrastructure projects in consultation with the elected structures. Thus, the chief's role will include the acquisition and processing of land applications, presiding over development structures like village and ward development committees and lobbying for infrastructure projects for their areas (South Africa, 1998; Department of Provincial and local government official, 2000). With regard to political activities, chiefs are expected to play a role in all the three spheres of government including all the chambers they are represented in provincially and nationally. Their involvement at all of these levels is thus meant to ensure that they consult and promote community participation in various rural development programmes.

The provincial government official interviewed spoke of the need to start various skills and capacity building programmes to equip indigenous rulers, to adequately play their development roles. For example, the northern province has created a support service for indigenous rulers to provide advice on various aspects of customary law and culture. This operates through the directorate of anthropological services in the Premier's office. With regard to salaries the NPLGOL indicated that the department of Provincial and local government had proposed the scale of R72 000,00 per annum for indigenous rulers and excluding budgets for other items needed to make royal palaces and courts operational (Ismail,1999).

The NPLGOL indicated that with regard to the issue of the partisan involvement of indigenous rulers, government policy envisages that they should fulfill their community duties in a non-partisan manner. However, the Constitution, Act 108 of 1996 entitles them to exercise their political rights. But if any chief is elected to any public office paid by the state, he/she ceases to receive their chiefly salary. The NPLGOL further indicated that with regard to the issue of recognition of indigenous rulers communities must follow their own customs in deciding who should be recognised as the tribal chief and in the same vein inform the Province so that it can gazette accordingly. Also, the NPLGOL indicated that on the issue of chiefs who were imposed on communities by the apartheid government, that unless there is claim to remove such chiefs the province will leave them to continue as if they were genuine indigenous leaders. Thus the provincial government officially recognizes indigenous rulers and has created support services to enable them to fulfill their constitutional requirements.

2. Views of Traditional Rulers

Views of indigenous rulers were obtained from two primary sources, merely, personal interviews from each of Bapedi, Vatsonga and Vavhenda ethnic groups, including members of the house of traditional leaders in the Northern Province, and position papers submitted by the house of traditional leaders from the Northern Province. The questions

posed to various chiefs (see Appendix C) ranged from the roles chiefs saw themselves playing in the new democratic South Africa to their views on active membership of political parties.

Reactions to these questions were closely related. They suggested that at local level at least two positions at each transitional local government should be reserved for traditional leaders and that such traditional leaders should be elected in a joint tribal meeting of all tribes within the jurisdiction of such local authority. They believe that such leaders would be representing the constituency of the indigenous rulers rather than being given an *ex-officio* status without voting powers. These chiefs interviewed rejected the idea of election when they are to occupy the throne, arguing that royalty is inherited and not created through the ballot box. On the question of recognition and removal of chiefs who were created by the apartheid government, the views of some chiefs was that this was not an easy matter and should be investigated thoroughly. The majority of chiefs felt strongly that independent consultants should be employed to investigate and that only authentic chiefs should be recognized.

With regard to active participation in party politics, most of the Northern Province suggests that all indigenous leaders should refrain or be neutral since they believe that Chiefs are above politics and canvas against their subjects. Members of CONTRALESA expressed themselves as follows:

> "We are of the view that party politics are divisive by their nature and in view of the fact that our societal organisation is based on communalism and consensus-driven participatory democracy rather than political ideologies, there should be no role for party politics at this level in traditional communities. We cherish the notion of social solidarity" (Simmunye!) (Nonkonyana, 1998:6).

On the question of who should determine and pay their salaries, all chiefs from the Northern Province accepted the notion that their salaries should be paid at national level to avoid disparities amongst them. With regard to women ascending the throne, chiefs indicated that each ethnic group should follow its own culture and, where the culture

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condones such behaviour, in cases where no other closely related person can hold power for a certain period, wives of the chiefs should take responsibilities of their husbands in leading the communities. Keulder (1998:6) observes, "On the gender issue, some traditionalists agree with the feminists that women's positions in rural areas should be improved."

Bekker (1995) found that chiefs in Namibia were willing to concede to some feminist demands that women should not be discriminated in any position of leadership, be it chieftancy or otherwise. He refers to Linchwe 11's (1988) observation in Botswana that chiefs took the lead in encouraging women and youths to attend the meetings of the liberalized Kgotla.

According to Holomisa (1994:38), speaking as president of CONTRALESA, "Traditional authority is notorious for being in the hands exclusively of men ... our constitution, however, commit us all to building up a non-sexist society." These statement shows that some South African chiefs are ready to adapt to the changes brought about by the new liberal democracy. At Bushbuckridge, the Jonkilonga Tribal authority has for sixteen years, recognised women as heads of the villages and the same is now true in many other tribal authorities within the Northern Province.

3. Views of NGOs

The Konrad Adenhauer Foundation (KAF), the National Democratic institute (NDI) and the Institute for Multi-Party Democracy (IMPD), are among the international and national NGOs, which were actively engaged in funding academic and public debates on various aspects of democratic governance. This was for the post-apartheid South Africa and other African states, particularly with regard to local government reforms. The KAF had an interest in the subject of traditional leadership in Africa particularly because it was involved in local government development. In the predominantly rural provinces like the northern province, one cannot expect development without the involvement of rural

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people and traditional leadership. Members of the KAF, said in the proceedings of the Nairobi conference:

> Traditional African heritage was given a special platform at this conference. Autochthonous forms of local self-government have been systematically eroded since the beginning of colonial rule. This process continued in the unitorist states after independence. Large parts of the population however still identify themselves with their traditional leaders. The large number of contributions and discussions on this particular subject confirms that in many regions it is necessary for modern and traditional rule to work together at local level in order to make development comprehensive and suitable to human needs (Hofmeister and Scholz, 1997:8).

The motive behind NGOs was a desire to assist other people to make positive transitions toward their political systems, and to promote an aspect of good governance in their creation of a new political sphere.

Further views of the NGOs like the National Democratic institute (NDI), was reflected in their involvement in the drafting process of a White Paper on traditional leaders published in 1999/2000. The NDI was invited by the government to contribute to the formulation of the White Paper and supply a internationally accepted definition of traditional leadership. The NDI further provided an international perspective on how traditional leaders have been handled and incorporated into modern democratic governance in countries like Botswana, Zimbabwe, Papua New Guinea and the United States of America (USA). The organisation also produced a paper entitled "The role of traditional leaders in a democratic dispensation," An international survey in the American perspective is that traditional leadership is protected by the federal system while the Canadian perspective is that traditional leadership is being recognized like in any other African state. The above mentioned NGOs have provided insightful perspectives on how other countries have integrated traditional leaders which enables South Africa to be aware of and consider more models than would otherwise have been possible. These findings

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have enabled key stakeholders to meet face to face and discuss issues of common concern. From this close contact, elected politicians and traditional leaders are more knowledgeable and better informed. This will create a firm base for any decisions they take and the future would be based on an informed decision regarding traditional rulers and contemporary local government.

4. Views of women

Appendix B contains six questions, which were posed to establish the position of women towards the continuation of the existence of the institution of indigenous leadership. The position of women with regard to traditional leadership in the Northern Province, particularly with respect to the continuation of the institution and its integration in a post-apartheid South Africa was supported with a provision that it should be reformed. Among the women interviewed, it was found that rural areas suggest that indigenous democratic values and practices in South Africa should continue and that chiefs should be included in local authorities as participants in decision-making. They further suggest that chiefs should be co-opted rather than to be elected. They indicate, however, that traditional rulers need to adapt to democratic values and practices.

With regard to customary marriage there is a conflicting opinion among the women in the province. Some women support the notion of one man one women while others support the notion of one man and a minimum of not less than two or more than three spouses. The latter argument is based on the fact that even though a man may claim to have one wife, in reality he has other women outside of the marriage. These women suffer the burden of supporting children born without fathers, even though their fathers are still alive, so they argue. They further indicate that those women, who favour one man one wife, are driven by jealousy that they are possessive and ignorant of the reality. Interviewees on the question of women taking the throne as traditional leaders, were found to have less interest on this subject saying that the question is irrelevant to them as women and that to them there is no need to change culture in order to suit western values. They further suggested that they would support the issue of increasing the number of

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women as heads (headwomen) at the tribal level in order to assist in taking decisions on matters affecting women in the villages. There are some authors, like, Walker (1994) who does not endorse integration of traditional rulers but rather favours a radical reform of traditional institutions and practices in rural areas.

In order to address these advantages, not only do key institutions in rural society have to be radically transformed, including the institutions of local government (The Chiefs and traditional and tribal authorities) customary law, polygamy, the male-dominated homestead, but also the legitimating discourses of "tradition", custom and "African culture". Nevertheless, as the women's movement needs to keep insisting, having been refashioned in the past, "custom" can be refashioned again to better fit contemporary goals of a non-sexist and non-racial society. Here it is the principle of gender equality that needs to be reaffirmed (Walker, 1994: 349).

Other authors like Mokgoro (1994), argue that there should be more representation of women in traditional structures. Becker, (1995) observes that some traditional leaders are willing to reform their institution and include women in their structures and revise customary law as seen in the above discussion and as a constitutional requirement. To confirm this, chief Holomisa on behalf of members of CONTRALESA, has been recorded calling for women's involvement in traditional authorities (Holomisa 1994: 38).

Proposed Model

Many authors debate the issue of traditional leaders and ignore or request a very important issue of indigenous values and practices as a system of governance. Ismail(1999) observes that both policy document and scholarly books, which attempt to address the issue of incorporating traditional governance with the current liberal democracy, deal with chiefs, rather than the issue of integrating indigenous democratic values and practices and contemporary governance. Thus far, the Department of Justice has attempted to address the issue of customary law. Thus customary marriage has been

brought to an equal footing with civil marriage and that customary marriage is recognised by the law. Under the homeland system, tribal authorities and local government created institutions like village development forums, which were used to integrate indigenous values and practices into democratic governance.

Other African countries created such institutions as the village councils in Ghana, Ujama Villages in (Tanzania under Nyerere), Village productivity committees (in Zambia during the early 1970s). These institutions referred to by Ayittey (1992), Ake (1991) and Lungu and Ismail (1999) was a practice of allowing individuals to speak freely and even oppose views of the chief and plans at village forums without fear of, reprisal from chiefs.

This practice of tolerance of opposing views in public debates is one that needs to be incorporated into contemporary local governance. Presently, there is a high degree of intolerance amongst liberal democratic representatives towards indigenous leadership. This behaviour contradicts the practice of tolerance to opposing views in many indigenous systems. With regard to decisions on business sites, stakeholders like tribal councils, village representatives and applicants should sit jointly to decide whether the application inquisition is appropriate in the area applied for and then make a joint statement that an application is being approved in the presence of a transitional council. The issue of recognizing and paying the chiefs whose traditional governance values and practices does not bear upon contemporary governance is meaningless in this researcher's opinion. The proper role of indigenous ruler therefore needs to be identified in accordance with the practice, which operated under indigenous leadership (Ismail. 1999).

Nyerere (1967) and Kaunda (1968) after independence introduced democratic aspects of participation by the general public at village level through what is called Village Forums and consultation. Elders were represented in these forums. In the northern province, before independence of 1994, the then Venda, Lebowa and Gazankulu governments operated in a similar way establishing what they called Village Development Committees. These structures were open and allowed any person present in a meeting to give his/her personal view on any matter related to development. Any person had,

furthermore, a right to openly oppose the views of the chief without any fear of reprisal. This institution of an open village forum was relatively widespread in pre-colonial societies across the continent (Oliver, 1969; Davidson, 1970; Vansina, 1975; Ayittey, 1991; Lungu & Ismail, 1999). Tolerance of opinions expressed by various speakers in any meeting is a value associated with open village forums and constitutes a form of popular participation in indigenous governance. There are parallels in the system of provincial governance; for example, before any Provincial bill is passed by the legislature it is taken to a relevant portfolio committee to be discussed. The portfolio committee invites relevant stakeholders and interested groups to participate and contribute their views before a discussion is taken on such a bill. Thus indigenous values and practices with regard to the above norm relate to the value of freedom of speech, which is recognised in the new constitution. Freedom of expression was an important element of village assemblies. Any one-even those who were not members of the tribe-could express his/her views freely. Sensible proposals or ideas were often applauded, and inappropriate ones were vocally opposed. Dissent was open and free, with due respect shown to the chief, of course. Dissidents were not harassed, arrested or jailed. If a dissident made an intelligent argument, he/she was praised for having offered an idea that could help the community. If he/she made a silly remark, he/she set himself up for ridicule (Ayittey, 1992). Such freedom and tolerance have been found in all systems of indigenous governance of the Northern Province even long before the advent of apartheid. Freedom of expression and tolerance of differences in opinion are among the central tenants of liberal democracy (Ismail, 1999).

The norm of equality with regard to ordinary people was regarded as free and enjoyed equal rights with other citizens. Headmen/head-women or members of the chief's council of elders were generally chosen from among the commoners. Villages were permitted to choose freely any man or women who could represent them in a tribal authority. This system of choosing the *Induna* is related to the system of democratic election of the present councillors, *MPL's* and *MP's* of South Africa. The only difference is the period of serving in the institution once an *Induna* (Headman/headwomen) has been elected. He/she cannot be deposed until he/she retires or dies. This implies that period of serving

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as or representing the villages should be adjusted in order to fit into the liberal democratic principle of retaining the position at village level. The issue of gender equality was approached differently in various societies particularly regarding chieftancy and the principle of succession. In matrilineal societies, such as the Balobedo, generally women had more right to property and child custody than in patrilineal societies. The fact that there are women leaders in the northern province societies is important for contemporary governance that seeks to enhance the participation of women in all spheres of life. Although most chiefs in the Province are males, the kingmaker should consider adjustment to meet this requirement in future when choosing a chief. To give effect to the principle of equality, chiefs should be chosen on the basis of whom was born first whether male or female.

The administration of justice, according to indigenous norms, followed procedures that resemble those in several legal systems. Cases were tried following a process of collecting and weighing evidence, opinions and allowing the presentation of a defense to provide the accused a fair trial. Councillors and any person present for the hearing were able to ask questions and cross-examine both the accused and accuser in the indigenous court. The chief spoke very little. Basically announcing the verdict largely decided by the strength or weakness of the evidence presented by the accusers and the accused. Most of the cases were concluded through negotiations between the parties, and those found guilty paid a small fine, which was determined by the nature of the crime. The main concern was to bring peace and respect among the residents. The identification of the positive and negative aspect of indigenous governance is to strengthen liberal democratic governance. Incorporating those aspects which are regarded as positive and de-emphasizing or eliminating those which are considered negative, such as co-opting headmen/women without involving villagers in the exercise of their right to choose their own village leadership.

1. Integrating indigenous rulers and contemporary local governance

Why a need to integrate indigenous rulers and contemporary local governance? It is because of the high population of the people who live in rural areas under traditional leaders. The northern province population is 4 929 368 of which 88.1% live under traditional leaders and only 11.9% live in urbanised areas. Integrating indigenous leaders and the present system of liberal democratic governance requires determining which chiefs are legitimate? why are they recognised and on which basis are they said to be legitimate? Elsewhere in this study it was pointed out that both colonialism and apartheid interfered greatly with the appointment of chiefs, for example, by deposing the Sekhukhune Kingdom and the appointment of many headmen who are presently recognised as chiefs. To undo the mess created by the colonial and apartheid regimes, a genuine process must now be undertaken to authenticate indigenous rulers. This requires setting a cut off date for recognition of historic indigenous rulers and reducing the status of all colonial and apartheid appointed chiefs to that of headmen under the leadership of a previously existing ruling king who was deposed to the status of chief. This will address the issue of those who have become legitimate chiefs in particular periods and have later been accepted as chiefs by their societies.

An alternative process of recognising chiefs would be to conduct a review according to the classification of clans on the basis of their customs, thus, creating kings through elections among such group. This will address the issue of succession to the throne and establish procedures that should generally be followed in the future. These electorates should be members of the royal families of the candidates, including tribal councillors of such groupings who are of recognised voting age. Period of tenure on the throne should be for the life of the person selected. Such an approach would introduce an element of a popular election and the institution would thus be democratized. Further, women in such selections should be included so that they can have an equal opportunity with men of succession to the chiefly throne. This would obviously moderate the indigenous custom of patrilineal and matrilineal divide.

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The White Paper on Local Governance (South Africa, 1998: 75-76) permits indigenous rulers to carry out the following roles:

- Acting as head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers;
- Presiding over customary law courts and maintaining law and order;
- Consulting with traditional communities through Imbizo/Lekgotta;
- Assisting members of the communities in their dealings with the state;
- Advising government on traditional affairs through houses and council of traditional leaders;
- Convening meetings to consult with communities on needs and priorities and providing information;
- Protecting cultural values and providing a sense of community in their area through a communal social frame of reference;
- Being the spoke-persons generally of their communities;
- Being symbols of unity in their community; and
- Being custodians and protectors of the community's customs and general welfare;

New roles that are being envisaged include: -

- Making recommendations on land allocation and the settling of land disputes;
- Lobbying government and other agencies for the development of their area;
- Ensuring that the traditional community participates in decisions on development and contributes to development costs; and
- Considering and making recommendations to authorities on trading licenses in their area in accordance with law.(white paper on local government RSA,1998:75-76)

Regarding the role of chiefs as the custodians and protectors of customs and culture, there is a big contestation from democrats and women's organisations. There is therefore a serious need for clarification and adjustment. A proper definition is required in order to justify such a role in relation to liberal democratic principles. Thus, all stakeholders who

are contesting this feature need to be involved in the debates so that consensus could be reached after consultation. This consultation should involve women organisations as they had serious questions with regard to the inclusion of chiefs in the new democratic government. The role of traditional leaders in the municipality is for reticulation services directly to residents. Thus the integration of traditional leaders will ensure that the municipal council inform and consult with traditional leaders regarding municipal projects or programmes within the traditional leaders area. Their role in the allocation of land, setting of marital conflicts under customary law and certain civil cases, such as witchcraft, should be continued in a reformed manner in order to fit into the current situation of governance. Guarding against previous mistakes for sidelining chiefs in democratic governance, it would be best to integrate indigenous rulers into liberal democratic governance. This should be, such that people are not denied their right to customs and culture, especially when they do not conflict with the operation of other current laws (Lungu, 1996).

On the issue of chiefs' roles in land distribution, which has now been transferred to municipalities, the function should be performed jointly so that both indigenous leaders and municipalities can take a joint decision in providing land. This will avoid situations in which one structure takes a decision which might be reversed by the other structure, or in which two different individuals are allocated the same portion of land thus, creating disputes among residents. A good example is the system used in Botswana. Under this, the function of allocating land was reallocated to land boards of which chiefs are members. In the case of the Northern Province, this function should be reallocated to a joint business committee consisting of traditional authorities and municipal councils. This new structure should have powers to give permission for new comers to settle and farm in their area of jurisdiction. This structure should also have powers to approve applications for tittle deeds from land prospectors in their areas. The advantage of this proposal will be that all residents within the province; rural or urbanised, will have equal opportunity to acquire land rights. Rather than rural residents merely receiving permission to occupy land through allowing such individuals to own the land they have developed, or are living in contrast to urbanised residents. Further, communities should be consulted by the joint

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authority to ensure that any piece of land be used for such a purpose by residents before even being allocated to individuals so that such piece of land does not disadvantage the local communities. When such agreements have been made the chief and councillors can then proceed to develop such areas and offer deed of grants. This involvement of chiefs and municipal councillors in consulting their communities over land allocation is an aspect of rural democracy that will ensure that land allocation does not harm the interests of the local communities.

Further, Integrating indigenous leaders, values and practices might assist in initiating community projects and managing in consultation with democratic structures. Thus from indigenous governance it becomes clear that chiefs could mobilize people to work together, do important work and do a host of other activities. Local government councillors might discharge their functions appropriately if indigenous leaders could be involved in mobilizing and creating community projects at village level. Advisors, experts and democratic local councillors are needed to advise indigenous leader to undertake any functions, which today have been, assigned to be performed by local authorities.

The Local Government Transition Act (209 of 1993) is intended to link the service delivery responsibility of elected local councillors with the promotion of the material, spiritual and social welfare of the inhabitants of the areas of a traditional authority. To implement this Act effectively, requires a good relationship between traditional leaders and elected councillors since traditional authorities previously performed most of the functions allocated to elected councillors. Also, the use of land must be decided jointly in a joint meeting of the two governance structures.

Traditional leaders are faced with a challenge to play an active role in the newly constituted local councils. Indigenous leaders, local councillors and district councillors should ensure that their respective communities receive their fair share of government funding, infrastructure development and rural development in general. To reach this objective, traditional leaders and elected councillors have an opportunity to promote

consensus on local government mattrs, which could promote stability, social equity and upliftment. Both indigenous leaders and elected councillors can actively participate in shaping an environment in which various communities can develop and prosper if Indigenous leaders are supportive to the establishment of a strong local government.

2. Institutional integration

Currently, the South African government has attempted to integrate indigenous leaders and contemporary local governance by creating a position of *ex-officio* member at municipal level, also by establishing a Provincial House of Traditional Leaders and the Council of Traditional Leaders at national level. The roles of traditional leaders at all these levels are advisory on matters pertaining to customary law and culture.

At local level it has been suggested that traditional leaders become *ex-officio* members of municipalities without voting rights.. There are problems at this level because the number of democratic elected councillors may be in the minority if the term traditional leaders include headmen (*Tinduna*). Therefore this researcher has suggested that 10% of the seats in each municipal council be reserved for traditional leaders. This means that a democratic process of election will be followed leaving aside 10% of the seats. This 10% of the seats should be occupied by traditional leaders who will be elected on a semi-democratic process among voters, who are members of the different tribal authorities being the chiefs and their *Tindunas*. Such indigenous rulers should occupy the seats for a period equivalent to the term of such democratically elected councillors. Once such seat has been occupied. A period of occupation of such indigenous leaders should be restricted to a prescribed period for elected council. They should be elected on an alternate basis to avoid occupation of the seat for a longer period by chiefs who have greater numbers of village headmen or head woman. The above statement is an alternative way of incorporating indigenous leaders, norms of governance and leaders and contemporary governance. Also at the lowest level itself the village headmen/women should be appointed to chair a village council or forum, to deal with developmental matters and social problems. This was the case in Tanzania, Zambia as well as in the then

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Gazankulu homeland. Elected councillors then only consult with such structures through the headmen, who are apolitical and serve the community as a whole. In this way it will be relatively easy to create participatory structures and procedures that will ensure input from members of the community like development forums. Thus, the study proposes a co-operative model of rural local government in accordance with the constitution. The current South African constitution recognises the institution, role and status of traditional leadership according to customary law, but subject to the constitution. For example, chapter 12 of the constitution specifically provides for the recognition of the institution of traditional leaders. However, the constitution falls short of providing for their specific role. It merely states that the status and the role of traditional leadership, according to customary law, are recognised, subject to the constitution (section211) and that national legislation may provide the role of traditional leaders at local government level (section 212). Thus, the model proposes that elected local government in areas falling under traditional leaders be constituted in such a way that they are represented and has a specific role to play in the municipal council. This suggests that traditional leaders need to be integrated into rural local government structure. The model further proposes that in each and every rural municipality where traditional leaders are many within the municipality ten percent (10%) of the total seats of the municipality should be reserved for traditional leaders. Procedures to be followed on their elections have been described above. The elected representative of the traditional leaders should be accorded voting rights. But the *ex-officio* status should be accorded to the remaining traditional leaders who should be allowed to attend and participate in all municipal council meetings and advice them on the needs and interests of their communities. Thus the voting rights of traditional leaders in the municipal council will offer them an opportunity to influence decision-making and the process of development and administration.

3. Formal Training in Management

Following the introduction of democracy in 1994, South Africa is characterised by rapid change in almost every area of society. These changes needed structural change of the South African society including the rural institutions. Thus, traditional leaders are also

faced with the issue of change in order to face the new challenges ahead of them. As traditional leaders could not escape the effects of change, a new machenism is needed to ensure that traditional leaders keep in pace with the new developments of the democratic dispensation. To advance democratic interests, the constitution provides for the establishment of municipalities in all areas of South Africa including areas occupied by of traditional leaders. It further provides that local government should be democratic and accountable to local communities, to ensure sustainable provision of services to communities, to promote social and economic development and encourage the involvement of communities and community organisations in matters of local government. To attain these goals, traditional leaders need training. Even though chiefs and their tribal councillors lack formal training in management, development and judicial matters, they play an important role with regard to community development and Management. Tapscott and Ismail (1995) argue that chiefs and their councillors need basic training. This will enable traditional leaders to effectively perform their tasks. This training will assist in ensuring that their legal powers do not contradict modern law as it is currently practiced and understood. The tensions between traditional leaders and elected councillors can be minimised if not eradicated by taking traditional leaders for formal training. Training of traditional leaders should be in the form of periodic training progammes and workshops. The training programmes and workshops should be directed to skills training on legal interpretations, administrative powers, presiding over customary law courts, maintaining of law and order, lobbying government and other developmental agencies for community development, modern ways of addressing community crisis based on negotiation and consensus and channel of communications with other stakeholders.

4. Limitation of the model

The model presented here has several constraints to reckon with. Among these are: the problem of warrant chiefs, Some objections from traditionalists and chiefs themselves, lack of adequate and systematic knowledge on indigenous rulers and governance in general and financial implications.

4.1. The problem of warrant chiefs

The problem of the presence of the warrant chiefs provides a problem of the realization of this model. The northern province has a large share of chiefs who were imposed by colonial and apartheid governments on communities. These illegitimate rulers have ruled over a considerable length of time and communities has begun to accepted them slowly. Thus to remove them can create a problem from supporters and incumbents themselves. The second problem concerns the future of deposed chiefs: the government does not have a clear plan whether to reinstate them or to remove illegitimate chiefs. Another problem concerns the anthropological data on the current chiefdom as provided by anthropologists who participated in research even during the apartheid era. Thus for genuine anthropological data on clans and succession, would require that the anthropological unit be restructured. The new unit should provide new data so that this matter should be put strait once and for all even if it has political implications.

4.2. Objections to the model

Some objections could be expected from either chiefs or their supporters and traditionalist within their communities. For example, the suggestion that the element of election should be introduced when dealing with successions that are muddled. Similarly, the suggestion that women be given equal chance may be seen by traditionalists in partrilinial societies as an attempt to undermine their culture. Chiefs may ague that they are born for the throne and not elected and that historically women cannot be given an equal status with regard to traditional leadership.

4.3. Lack of knowledge on indigenous rulers and governance

One of the main obstacles to integrating indigenous rulers and governance with a modern liberal democracy is lack of adequate knowledge about the indigenous rulers. Over a long period of time distortions and prejudices have been manifested. Genuine knowledge about these institutions and practices is scatted and inadequate. There are no codes

written down regarding customary law. Some of the chiefs and traditionalist simply praises everything that was indigenous practices and refuses to accept any shortcomings in the system.

4.4. Financial implications

In the northern province the total number of chiefs and headmen including sub-headmen is over four thousand by estimation. Can then the maintenance of traditional rulers and institutions be financially justifiable? The question of the estimation comes because of the growing number of villages and new headmen being appointed by the chiefs. In South Africa a popular opinion is generally in favour of maintaining traditional rulers, but if they are to be incorporated in the way suggested by this model, then the process will inevitably involve less costs than reverting to the old system. Looking at the total number of traditional leaders in the northern province, questions are likely to be raised whether it is worthwhile to maintain the institution of traditional leadership at high cost compared to their actual role in the nation.
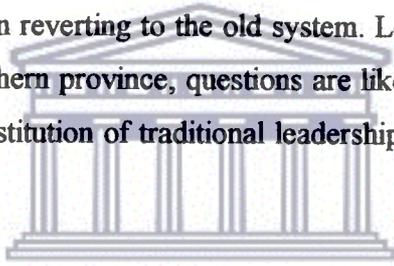
CHAPTER SUMMARY

This chapter has presented a model for integrating indigenous leaders and contemporary local governance. It is assumed that the northern province as part of South Africa, and the majority of its people accepted that it form part of liberal democratic government and that the principles of the Constitution will guide the process of integration.

The integration model is based upon assigning developmental and customary duties to traditional leaders. These developmental and customary functions were attempted during colonial and apartheid eras with a little success. The failure resulted from the fact that colonial and apartheid rulers were abusing traditional leaders. Thus, the success of this model can be achieved only if it is accepted politically, training and developing traditional leaders. Traditional leaders can fulfil their tasks if they are trained and capacitated to do their functions. Capacity building should be on skill training,

organisational, negotiating skills and participative management. These are all important for development programmes and projects. Therefore, integration of indigenous leaders and contemporary local governance is recognised because of the high population of people who live in the rural area as against those who live in urban areas. In the northern province 88.1% population live under traditional leaders and 11.9% live in urban areas.

CHAPTER FIVE

FINDINGS, CONCLUSION AND RECOMMENDATIONS

This study was based on three objectives: to analyze and locate indigenous democratic values and practices within the contemporary local governance context with specific reference to the Northern Province; to review attempts made to integrate indigenous democratic values and practices and contemporary forms of local governance and the problems that have arisen from such efforts; and develop a model of good governance at local level that would ensure harmonious co-existence between indigenous and contemporary local governance.

Findings

The study has explored a number of points, which are important regarding the institution of traditional leadership and their values and practices in the Northern Province generally.

In chapter Two it was found that the apartheid government introduced policies that had a direct effect on indigenous rule. These policies were promulgated in such a way that the institution of traditional rule formed part of the government structure, falling directly under the minister's powers as a supreme chief. The powers of indigenous leaders were elevated above the rights of their subjects. On the other hand, the institution was demoted to an administrative branch of the government. The government used traditional structures as an outlet to sustain their vision of traditional communities. The various discriminatory Acts promulgated also gave powers to the government to create and recognize new chiefs. The government recognized these chiefs as legitimate while communities never recognized their legitimacy and their ruling.

This created conflicts between genuine and legitimate chiefs and the created illegitimate chiefs. Some legitimate chiefs and paramount chiefs were deposed from their thrones and certain village headmen were promoted to the ranks of chiefs. The minister dictated the terms for exercising powers as a chief and ensured that government recognition of the chiefs was more important than popular support of the indigenous structure itself. Chiefs ruled at the pleasure of the government of the day. Further, some legitimate chiefs who failed to follow the dictates of the government lost their chieftainship. Chiefs were moreover, given powers to resettle a whole community even if it meant going against the wishes of the community. Following this action chiefs were used to segregate people on the basis of ethnic grouping. This made it easy for the apartheid government to create self-governing states (Bantu Homelands). In this way chiefs were given powers to control the movement of their subjects through the granting of passes. Indigenous rulers were no longer serving the interest of their communities but serving their own interests and those of the government.

During the 1986 Uprising, the abolition of the pass laws changed the direction of rule by chiefs and some chiefs became vigilant against political activists in their areas. Findings showed that indigenous rulers had lost knowledge of authentic indigenous values and practices during the apartheid period. A review of the apartheid government revealed several attempts to enlist, modify, eliminate and manipulate indigenous rulers in pursuit of government policy. To a certain extent, the apartheid government succeeded in subduing indigenous leaders and their subjects to their control. For the fact that some indigenous leaders were strong to succumb to apartheid rule in the 1930's the government introduced the policy of indirect rule as part of recognizing indigenous political system, as it could not be abolished.

During the 1950's mechanisms were worked out to co-opt some and grant concessions to others in order to enlist them as allies in the apartheid government. The apartheid rule had mixed impacts on indigenous governance. The introduction of native authority was in a way of confining indigenous rulers to local government of their tribes. It was also a way of keeping them out of the highly pro-settler policy settlement. Apartheid rule also led to

the deposition of legitimate kings and chiefs and their replacement by puppet rulers. The apartheid era also introduced the systematic gradation of traditional rulers into senior, ordinary and sub-chiefs and village heads. These rulers were given remuneration through allowances made according to the gradations. It must be noted that village heads did not receive any remuneration or allowances for the services they rendered. They depended on fines, which they collected from trying minor cases, and performed these tasks on weekends when they were not at work. They also gained some income by attending tribal hearings and prosecutions and occasionally the tribal authority gave them some allowance if there was enough money in the coffers of the tribe. Alongside gradation of chiefs was the creation of a dual system of courts. Chiefs and headmen presided over indigenous courts while modern courts were presided over by magistrates. Modern courts took the bulk of judicial responsibility for major criminal and civil cases and justice for settler groups.

The apartheid government's incorporation of indigenous leaders was politically motivated. The incorporation of chiefs was to sustain the apartheid vision of racial segregation. Chiefs were used as leaders in homelands. The results were that the democratic government elected in 1994 inherited many illegitimate chiefs, more than 59%of which were created under apartheid. Chiefs were favoured in many ways during the apartheid era, 50% of seats in homelands legislative assemblies were reserved for them. It must be noted that some legitimate chiefs did not agree with or accepted the policy of apartheid. Some prominent freedom fighters were chiefs, like Albert Luthuli, Sabatha Dalindyebo and others. During this era traditional leaders were abused to pursue enemies of the regime without really being accorded genuine recognition and respect as leaders.

The democratic government of South Africa has inherited chiefs recognized by the apartheid regime, putting aside the issue of legitimacy of chiefs in 1994. The issue of chiefs' incorporation into democratic governance was given a period of grace in 1994. Provinces were required to create chambers for chiefs and the national government to create the National Council of Chiefs so that they must be allowed to have a

representation in the formation of customary cultural Laws of the country. In the homelands chiefs were accorded recognition at the expense of their followers and now that the apartheid structures have been abolished, the position of chiefs is unclear. During elections, political parties included chiefs in their election lists to ensure support of their followers. Here the history repeats itself that politicians, while the real position of chiefs in the political sphere remains unclear once again used chiefs for political purposes.

The experiences of the apartheid and post apartheid regimes has essentially been a continuation of the colonial practice of engaging chiefs in modern governance turning a blind eye to indigenous governance systems as if they had nothing to do with western type of governance. The apartheid and democratic governments had made a very shallow attempt to understand indigenous leadership and governance. To manage the affairs of chiefs has been a continuation of the same attitude toward the subject by this regime. The information they had was collected from anthropologists, in reality they did not get in to details of the institution. Some other information that highlighted practices of good governance had not been written down because of the fear that Blacks in South Africa could claim knowledge of modern skills. An example of this is the discovery of Mapungubye collection in the Northern Province. Presently the government is attempting to invent roles for chiefs rather than to learn from what they did and how they were organized in the past to inform the present.

South Africans show support for the continuation of the institution of traditional leaders in the current period. The problem is that there is no indication of how chiefs should be incorporated into the current modern form of governance at local levels. Almost all different stakeholders interviewed agreed that chiefs should continue to exist and that their status and roles should go alongside the provisions of the Constitution. But the urban youth are less supportive of the institutions. Some women insist that the institution should be transformed and that its current form of male domination should be done away with and allows women equal access to the chiefly throne. Other women suggested that

the institution should be elective with members of the community voting for candidates and that women should be encouraged to stand for chiefly positions.

The White Paper on Local Government published in 1998 listed a number of roles for chiefs in rural areas. This shows that the government wants to retain the institution and that the government wants to engage chiefs in developmental roles. Further, the government had attempted to resolve the problem of salaries for chiefs by providing Kings/ Paramount chiefs with annum salaries of R330 000 and chiefs with R72 000, headman, however, are not catered for.

The interviewed traditional leaders strongly expressed the need for the government to recognize them. They could not be incorporated in the new system of governance.
They were not clear on how women could became chiefs and others objected to the suggestion that in the future chiefs should be subjected to the electorate in order to occupy the throne. Generally, they agree that the institution should be modified.

Recommendations

The findings in this study have several implications for policy management in the area of traditionall leaders and their integration with the current democratic governance. A careful examination by stakeholders of the proposed model provided in chapter four needs to be done before any action can be taken. Elements provided in the model are meant to address several existing gaps and unresolved issues regarding traditional leaders. Policy makers should draw on traditional policies and practices in considering a framework for this model and taking account of the concerns of various stakeholders. To determine priorities, structures and processes of integrating traditional leaders and modern governance, workshops and deliberations should be undertaken. Gauging from the considerable support of those studied and consulted that the institution should continue to exist. The sufficient consensus among stakeholders is that the institution should continue and be modified according to the provisions of the liberal democratic Constitution published in 1996. These form the basic foundation on which to work on.

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The Department of Provincial and Local Government may start the process of integrating indigenous leaders, values and practices by instituting the following actions:

➢ Create realistic deadlines for receiving inputs from various task teams and forums and for implementing decisions;

➢ Re-organize the anthropological research unit to enable it to conduct more extensive and relevant research on the subject of chiefs and indigenous governance;

➢ Establish one office to co ordinate issues related to traditional leaders at the national level and corresponding units at provincial levels;

➢ Create representative task teams to deal with specific issues raised in the model presented in chapter four;

➢ Create a forum, unit body to deal with the identification and integration of indigenous democratic elements with modern governance; and

➢ Provide a formula that will allow at least 10% of the ward representation in each municipality to be set-aside for indigenous leaders.

These leaders should be placed in an election list for a proportional representation after having been democratically elected amongst themselves within their indigenous constituency. To encourage a positive contribution by the public to use indigenous democratic institutions, especially in rural areas, the government should use the unit or forum to distribute pamphlets and posters inviting their opinions.

The government should introduce ward and village development committees with the involvement of chiefs as heads or chairpersons of these bodies. Training programmes should support these roles for traditional leaders and active members to equip them for those and other responsibilities in modern governance. A genuine attempt must be made to de-institutionalize illegitimate chiefdoms and reduce the current number to a manageable level.

Integrating indigenous leaders, values and practices might assist in initiating community projects and managing in consultation with democratic structures. Thus from indigenous

governance it becomes clear that chiefs could mobilize people to work together, do important work and do a host of other activities. Local government councillors might discharge their functions appropriately if indigenous leaders could be involved in mobilizing and creating community projects at village level. Advisors, experts and democratic local councillors are needed to advise indigenous leader to undertake any functions, which today are assigned to be performed by local authorities.

The Local Government Transition Act (209 of 1993) is intended to link the service delivery responsibility of elected local councillors with the promotion of the material, spiritual and social welfare of the inhabitants of the areas of a traditional authority. To implement this Act effectively, requires a good relationship between traditional leaders and elected councillors since traditional authorities previously performed most of the functions allocated to elected councillors. Also, the use of land must be decided jointly in a joint meeting of the two governance structures.

Traditional leaders are faced with a challenge to play an active role in the newly constituted local councils. Indigenous leaders, local councillors and district councillors should ensure that their respective communities receive their fair share of government funding, infrastructure development and rural development in general. To reach this objective, traditional leaders and elected councillors have an opportunity to promote consensus on local government, which could promote stability, social equity and upliftment. Both indigenous leaders and elected councillors can actively participate in shaping an environment in which various communities can develop and prosper. Indigenous leaders were opposed to the establishment of a strong local government system in which they felt that their ruling power would be removed. They had feelings of insecurity concerning their positions.

On the other hand, elected councillors also opposed the notion of including indigenous leaders in democratic local government, fearing the power base of some traditional leaders. Integrating indigenous leaders and elected councillors at local council and district councils could have a considerable influence on local affairs. Traditional authorities

could be expected to fulfil the judicial, dispute resolution, cultural and religious roles peculiar to their communities as well as some of the administrative roles they perform presently. Elected local councillors and councils should respect traditional leaders in exercising their functions and activities as traditional leaders within a kinship-based structure. For good governance, there should be goodwill and co-operation of both indigenous governance and democratic local governance for effective development at local level in the rural areas. The establishment of the council and houses of traditional leaders by the national government was to ensure that they allay the uncertainty and fears of traditional leaders and their authorities. These structures are there to advise and identify and address issues with the view to obtaining legal clarity at national, and provincial level as well as promoting negotiations on behalf of traditional leaders at local level.

Conclusion

The colonial, apartheid and democratic regimes attempted to deal with indigenous institutions in ways, which best suited their agendas. However, these actors had not adequately understood indigenous governance. Colonizers and missionaries who had interfaced with chiefs, while the apartheid and democratic governments tolerated chiefs only because the alternative- that of abolition- would have had unforeseen consequences for their grip on political power.

This has led to an inappropriate engagement of chiefs in modern governance throughout almost all provinces in South Africa as well as in other African states with the possible exception of the kingdoms of Lesotho and Swaziland.

The birth of democratic government in South Africa as a constitutional governance and the concern for human rights, cultural rights and civil society, compelled constitutional writers to examine the subject of engaging traditional leaders in modern governance more carefully and critically. Therefore this study is part of the effort to examine the nature and possible future role of indigenous leaders in emerging Western type of liberal

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democracies in the Northern Province in particular. Most stakeholders support the continuation of the institution of indigenous leaders provided that the institution is subjected to modification that goes in line with the provisions of democratic governance. These indigenous leaders can be engaged in modern democratic governance. It was found that support sentiments expressed by stakeholders are not adequately informed about the different aspects of indigenous political leaders and governance. They are not accompanied by a clear vision of how the institution should be integrated in modern governance before engaging traditional rulers in modern governance. The government and stakeholders must be adequately informed about indigenous leadership and political institutions of indigenous rule in particular.

The study was based on a survey and analysis of a number of features of indigenous governance in the apartheid and post apartheid eras. It was noted that several democratic features relevant to the present liberal democratic state do exist indigenous governance which could be taken for future use in the engagement of traditional leaders. These features show that indigenous governance has an important role to play in the democratic project.

The present government must define the scope of engaging indigenous leaders within accommodable parameters of the Constitution and the Provincial budget. Finding shows that indigenous leaders should not expect to regain their pre-colonial and apartheid authority and status. The expectations of traditional leaders must be confined within the limits of being integrated and assigned modified roles in a new liberal and sovereign state. Further, the numbers of existing chiefs in the northern province should be decreased. An independent commission to deal with this issue must be set by the provincial government, without the interference of the House of Traditional Leaders as they have an interest as stakeholders. Illegitimate so-called traditional leaders have to be demoted and be placed in their rightful positions of headmen.

The study also noted that the level most appropriate for engaging traditional leaders is at local government especially rural authority levels. Thus indigenous leaders could best be deployed as part of rural Municipal Councils.

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WESTERN CAPE

APPENDIX A.

INTERVIEW QUESTIONS

QUESTIONS FOR GOVERNMENT OFFICIALS AND LEGISLATORS OF THE THREE SPHERES OF GOVERNMENTS

1. How can we integrate indigenous rule and contemporary local governance in rural areas?
2. What are your attitudes towards illegitimate chiefs created by the apartheid government? Should they be left to continue to exist or be abolished?
3. What skills and orientations do traditional leaders require to effectively participate in the democratic governance?
4. Should chiefs be allowed to belong to political parties? Why?
5. Who should pay salaries of chiefs?
6. What support should be given to traditional leaders?
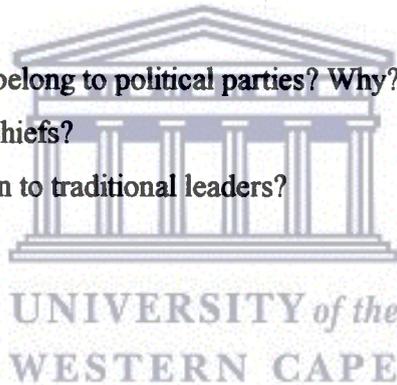
APPENDIX B

INTERVIEW QUESTIONS

QUESTIONS FOR WOMEN

1. What is your opinion regarding the institution of Lobola? Should it be abolished, modified or retained?

2. Should the institution of indigenous rule be retained in the current government?

3. Are there any elements that are relevant to the new government structure that need to be modified for its existence?

4. Should women be allowed to be chiefs?

5. Does the institution of indigenous rule pose problems to women? If yes, what are these problems?

6. Do you see any relationship between lobola and the status of women in indigenous culture?
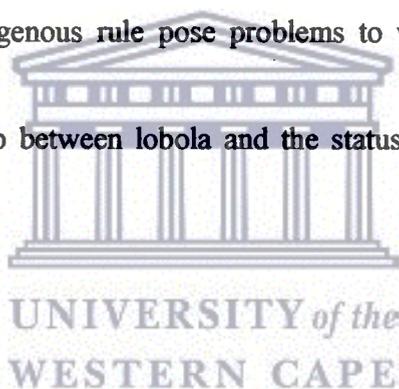
APPENDIX C

INTERVIEW QUESTIONS

QUESTIONS FOR CHIEFS

1. Do you think the institution of indigenous rule can co-exist with the new liberal democratic governance?

2. Does you culture allow women to become chiefs? If not, would you be opposed to them becoming indigenous leaders in the new dispensation?

3. With regard to political parties, would you suggest that indigenous leaders should be affiliates of political parties?

4. Do you think that chiefs should be involved in development of their communities?

5. What would be your suggestion regarding land control and its use? Would you suggest that it be jointly controlled between indigenous rulers and municipal councils?

6. What role do you see yourself playing in the new democratic dispensation?

7. Which skills do you need to perform the above roles?

8. Do you think that chiefs should be elected into their position as indigenous rulers?

9. Would you suggest that chiefs who where created by apartheid government should be dissolved or continue to exist? Why?

10. Who are the participants in decision-making processes in the indigenous governance?