



**Fifteen Year Review on Traditional Leadership  
A Research Paper**

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**Pearl Sithole  
Thamsanqa Mbele**

**Submitted by  
Human Sciences Research Council  
Democracy and Governance  
750 Francois Road  
Cato Manor  
4041  
Project Leader: Dr M.P. Sithole  
(031-242 5614)  
[psithole@hsrc.ac.za](mailto:psithole@hsrc.ac.za)**

## **1. Introduction**

The Office of the Presidency has commissioned a review of traditional leadership for the past fifteen years. The review is specifically intended to look into the level of integratedness of traditional leadership into the governance systems of the South African State. The main objective of the review as outlined in the study's Terms of Reference is:

To assess whether reforms aimed at integrating institutions of traditional leadership into the democratic system of governance have been successful

There are also sub-objectives in the Terms of Reference which stress the necessity to look into measures taken by government in the past fifteen years to transform traditional leadership institutions to align with democratic principles. These were stated as:

- To review the measures that have been taken by government to integrate institutions of traditional leadership into our democratic system;
- To assess the extent to which such measures have either succeeded or failed, and to explain the reasons for either success or failure;
- To investigate the implications for governance and development of the co-existence, even in transformed form, of democratic and traditional institutions.

This study has therefore looked at policy and legislative issues as reflected in the government processes in the past fifteen years with reference to traditional leadership. It has looked at this through a review of policy documents, through interviews with key stakeholders in the process and through an examination of scholarly debates on traditional leadership in South Africa. The scholarly debates are quite crucial as they tend to assess current government processes as well as influence the different paradigms of the thinking on traditional leadership.

As can be discerned from the key objective of the study there is no question on the association of the State regime with democracy, but there is perhaps less certainty on the

question of associating democracy with traditional leadership. This is one of the key issues informing the debates in the past fifteen years both in academic circles and in the debates between government and some of the civil society organizations. Hence, while the question of integration can be tracked without dissenting voices, the issue of whether the integration is decidedly about encapsulation of traditional leadership into a more democratic system is something that traditional leaders, in particular, raise a question about. The research team started out being cautious on both the issue of integration and the question of which institution is more democratic. Energy was spent in framing questions in a somewhat neutral fashion when it comes to these key issues affecting the main objective of the study. However, there seemed to be no fundamental questioning of the move to integrate the two institutions amongst many interviewees. As will be articulated below some of the academic literature shows indirect questioning of the integration of the two systems in so far as there is an argument about incompatibility of these two systems of governance, but some of the literature took integration for granted as the best way forward simply deliberating on strategies for achieving it.

The HSRC understood the brief to essentially require analysis that is threefold:

- 1) reviewing government efforts that are based on policy initiatives, ascertaining resources, capacity and strategic thinking invested in development of an integrated governance system including both traditional leadership and government;
- 2) ascertaining how these efforts are received by different stakeholders and why; and
- 3) ascertaining the operational mechanisms adopted to implement policy initiatives and any impacts that have taken place.

This paper presents the findings of a review conducted through a combination of research methods:

- 1) A literature review
- 2) A policy review

- 3) Interviews with government stakeholders, representatives of traditional leaders and academics. Budgetary constraints in this regard required that careful sampling be made in targeting interviewees. Whilst this was the case, care was taken that reliability and representivity of data was broadly achieved.

The report is structured into four sections: Introduction, Literature Review, Key Challenges for Policy and Intervention, and Conclusion. The logic is to first outline the key paradigms of thought informing the possible approaches and debates on traditional leadership. The report then deals with analysis of policy transformation in the last fifteen years with reference to traditional leadership. This also portrays challenges related to the implementation of policy from various perspectives – civil society, government and traditional leaders. The key issue is an examination of integration and alignment with the Constitution. Conclusions and recommended areas for progressive attention are then put forward.

This research has been exploratory but not basic – it has been exploratory in testing a specific progression of change: integration between two political forms within a defined timeframe. There is scope for more in-depth research on a number of issues on this subject, not the least of which are: 1) qualitative perceptions of community members on rural governance issues, and 2) participatory research on the link between traditional leadership, the branding of communities through heritage and sustainable communities. As the Conclusion articulates the reason why these two areas are essential to pursue further is that results from such research work is likely to influence direction of how traditional leadership roles are to be defined, structured and resourced, as well as how performance can be measured in future. This report simply looks at the integration patterns as well as the democratization issue generally as per the directives of the terms of reference.

## **2. Literature Review**

For purposes of this paper a separation between two schools of thought is made from literature review on traditional leadership. The first is seen as a school of democratic pragmatism; the second being labeled a school of organic democracy. This separation is borne out of the basic differences in the manner in which scholars approach the question of traditional leadership as one of the institutions of governance within the modern political systems.

### **2.1 Democratic Pragmatism**

In South Africa traditional leadership has been debated quite extensively by academics. At the core of the debate is the compatibility of traditional leadership with democracy and human rights. Amongst the democratic pragmatists, democracy and human rights are essentially defined from a liberal tradition that prioritizes the rights of the individual human being to choice and freedom. Reference to the South African Constitution as underpinned by the same definition of democracy and human rights is often made by academic scholars that scrutinize traditional leadership's compatibility with democratic governance. In the light of this an assessment of national legislation that deals directly with traditional leadership has also been made by academics of the school of democratic pragmatism. The two main culprits in this regard are: The Traditional Leadership Governance Framework Act of 2003 and The Communal Land Rights Act of 2005.

In 2005 Thomas Koelble wrote a working paper entitled 'Democracy, Traditional Leadership and International economy of South Africa' which summarises a dominant approach in the analysis of traditional leadership in South Africa. When one reads this paper, it is clear that Koelble purports to be articulating what he sees as two different approaches in explaining what he invariably describes as 'the resurgence of traditional

leadership' in South Africa. However on close analysis these approaches are a variation of the same paradigm of analysis on traditional leadership. At the core of the arguments of this paradigm is that:

- Traditional leadership as a system that allows for inheritance of leadership is incompatible with democracy
- Traditional leadership should be becoming extinct, but it continues to thrive both because the institutional local governance changes in rural areas are lagging behind and because government is mistakenly supporting this system despite that it contradicts democracy
- An infiltration of the democratic values and economic models propounded by the global discourse will help the local establishment of democracy that will eventually displace the undemocratic forms of governance such as traditional leadership
- Despite the cultural relativism of those who support traditional leadership the objective and rational principles of democracy demand that the State ensures access to democracy as a commodity to which all humans are entitled

Although Koelble differentiates between a 'scientific approach' to analysis of traditional leadership (that illustrates conditions in which traditional leadership resurges despite democracy being universal and objective) and a 'conceptual approach' (that emphasizes words and meaning) the premises outlined above are taken for granted as informing the analysis of difficulties in realizing the elimination of traditional leadership as an option in political governance systems. Like other prominent writers in this school (Ntsebeza 1999, Cousins 2007), Koelble's writing is informed by the basic assumption that traditional leadership is crucially about apartheid's manipulative measures that sought to legitimize separate development. Traditional leadership should therefore not be sustained in a political democracy as it contradicts the core values of freedom and choice.

There is also an assumption that can be attributed mainly to Mahmood Mamdani (1996) that rural citizens under traditional authorities are not true citizens. They are

subjects of undemocratic authority that does not have systems of accountability to the people. Issues informing this are that: traditional leadership does not give everyone a chance to be elected, and it does not appear to have systems for recourse against unfair exercise of power. With regards to the former, women are specifically discriminated by a system that favors men via patriarchy in the system of inheritance – the primogeniture that is practiced in succession. Traditional leadership is therefore detrimental to women's rights to equality in rural areas. This is articulated in detail by Bentley (2005), as well as by other democratic pragmatists. Despite them not articulating the gap between the situation of women in urban areas and that of women in rural areas in terms of rights, vis-à-vis property or other social entitlements, the overriding implicit argument is that women in rural areas under traditional leadership (presumably all poor and docile) are abused in terms of their constitutional rights being constrained.

In recent writing there is also an assumption that “ traditional leaders have re-inserted themselves into the political discourse in South Africa in fundamental ways. To ignore the issues that arise from this re-insertion into the body politic is to imperil any comprehensive analysis of South African democracy...” (Koeble, 2005: 12). Even some of those not falling entirely in the school of democratic pragmatism such as de Jong (2006) also propound this self “re-insertion” of traditional leadership into political governance of South Africa. De Jong cites the overthrow of the anti-traditional leadership thinking within South African government as a result of “traditionalist constituencies reasserting themselves” (2006: 11). Oomen also describes her book as being about “the surprising resurgence of traditional authority and customary law in post-apartheid South Africa” (2005:2)

This last assumption is perhaps the most illustrative of how formal discourse can be self-centred. It is surprising why it is something noteworthy that when government processes make an issue of something that government wants to formally rationalize in terms of policy, those affected will react, respond, and lobby for their interests. Besides, it has always been a conventional government and the elites' attitude to trivialize local politics until it matters directly to the elites. Does 're-insertion' mean that traditional

leaders have consciously plotted re-entry into a domain that they had exited? Or does it mean that they have been let to re-enter the discourse of political debate as soon as the elite saw it fit to deal with them? (Sithole, 2006 demonstrates elitism of discourse with an emphasis on why historical material, especially archives are prone to elitist interpretation and must be used with critical caution). How one measures the claim of ‘resurgence’ of traditional leadership when they have always been there during colonial (and even pre-colonial) times needs to be elucidated a bit more than is currently done. What is indeed evident is that traditional leadership is receiving more attention from the government, the media, and from academics lately. Whether this means that before this, traditional leadership had been dormant or fading away within the so-called “traditional communities” is a question that should be open to scrutiny.

Some of the writers in this tradition attribute this perceived ‘resurgence’ to the political trade-offs that were made between government and traditional leadership for purposes of national and local elections to be held. Lungisile Ntsebeza in his book with quite a telling title: *Democracy Compromised*, tracks these trade-offs very vividly and how traditional leaders were able to strategically influence policy and legislative processes to their end. His articulation of these events shows strategic lobbying during the policy formulation processes, use of government resources, as well as political coercion being used by traditional authorities in order to reassert themselves. He argues that:

[Traditional leaders] have waged concerted campaigns and lobbied government, including .... bypassing official channels, to ensure a place in the emerging South African democracy. Ironically, traditional authorities have used resources the government has made available to them to achieve their objectives. For example the government has established Houses of Traditional Leaders in all six provinces that have traditional authorities, as well as the national Council of Traditional Leaders. Traditional authorities have used these resources to consolidate their position. Those who are in Parliament, for example, chiefs Holomisa and

Nonkanyana, have also ensured that they use their positions as Members of Parliament of the ANC to advance the interests of their constituency.

In addition, the collaboration between traditional authorities, CONTRALESA and Inkatha has further strengthened their positions. The ANC finds itself in a position where it has to nurse the relationship with CONTRALESA in order not to lose the support of traditional authorities in this organization, and presumably their followers. At the same time, the ANC seems reluctant to strain relations with Inkatha especially given the history of political violence in KwaZulu Natal in the 1980s and early 1990s ... (Ntsebeza, 2006: 289-290)

At an abstract level the debates about traditional leadership have centered around whether or not democracy is objective and universal following a liberal tradition, whether the cultural relativist approach is at the core of what the approach to democracy should be, or whether there is a mid-way approach that encourages relative discussion on rights on a case-by-case basis. Even those who tentatively suggest the third approach (see Bentley, 2005) remain convinced that an objective human rights 'tolerance' by an 'autonomous' individual is key to protection of human rights within any form of governance. Traditional leadership is still seen as antithetical to this orientation of human rights as even the appointment of the leadership is not open to all and to anyone to be appointed. It is then taken for granted that the system cannot in turn honor the needs of the individual for freedom and choice. It does not encourage the balance between tolerance and autonomy that is fundamental to the universal human rights approach. In addition, ambivalence cannot be wished away from the co-existence of individual human rights and group rights over whom traditional leaders preside. However, following analysis of all three approaches and to what degree they are informed by 'tolerance' and 'autonomy', Bentley ends in an optimistic note:

In the absence of an objective method or scale for weighing these two core values against one another, this paper can only conclude that the choice between the two is entirely in the (moral) "eye of the beholder." However the legislation on

traditional leadership [in South Africa] seems to create a unique opportunity to try the middle road and adopt creative deliberative methods in holding traditional leaders to the aim of the progressive realization of the equal rights of women in their communities. By allowing for some concessions in the direction of tolerance (as the Constitution clearly does) South Africa may perhaps be able to provide a working “best practice” model of how deliberative democracy can operate in a way that honors both individual (equal) rights, and the claims of cultural communities to equal recognition (Bentley, 2005: 65)

After articulation of all the practical issues that constrain land administration in rural areas which government has to identify and make necessary resources to resolve, Cousins and Claassens (2004) conclude:

In relations to land rights, one view is that only land titling (that is, private ownership) provides adequate tenure security – but forms of group title must be made available, as well as individual title, given strong rural demand for a community based form of tenure. Interest groups in favour of titling include emergent commercial farmers, businessmen, chiefs (on condition that titles are issued to themselves or traditional councils), and occasionally women (some of whom feel that freehold can best provide land rights free from the constraints of patriarchal conditions). The strongest demand from the ground, however is for security of rights of families and individuals, within a system that secures access to common property.... This need not take the form of titling.

Of course, given the fact that most *amakhosi* confessed being facilitators of land use rights in the context where families already do land transactions between themselves, *amakhosi* would be puzzled by what novelty this argument brings. Even though when pushed for suggestions the democracy pragmatists bring little that is far from current realities, there is a lot of conceptual squabbles that they bring to out in their arguments. Proponents of this school have created an image of traditional leaders as people who were given power by an illegitimate regime, who have orchestrated political strategies to keep

that power, and who have been successful in coercing the docile rural masses and government in doing this despite the conceptual anomaly that they are within modern forms of governance. For this reason those of this school who even engage in any thinking at all around integration of traditional leadership with the State institutions, do so with an ambivalent feeling and a sense of compromise.

## **2.2. Organic Democracy**

While the pragmatists are working on the puzzle of how to fit traditional leadership and elected governance system together, and some of them quickly declaring traditional leadership ‘unfitting’, another body of thought which sees traditional leadership as different and unique democracy in eclectic conditions also exists. The proponents of this school of thought do not see traditional leadership as an ‘anomaly’, a ‘compromise of democracy’ or a ‘contradiction’ that exists within a more legitimate setting of modern more generically applicable governance. They see traditional leadership as a system of governance that fulfills different needs towards people who understand more than one type of democracy. A compromised understanding of this thinking sees traditional leadership as an institution that fulfills a governance gap where conventional democracy has not fully extended itself. Of course, this version of the thinking attempts to minimize the endorsement for what is seen as a less democratic system by posing traditional leadership merely as a ‘manifestation of destitution for proper governance’.

It is tempting to brand academics of this school of thought as conservative or at best as cultural relativists. However, there are basic premises in their thinking that distinguish them from the simple cultural relativism which is often portrayed as locking people up in cultures without recourse to critical rationalization of their rights and circumstances. The assumptions of this school of thought are as follows:

- Despite the abuse of power and the manipulation of traditional leaders by apartheid, traditional leadership as a form of governance predates and has

persisted over the governance practice based on State democracy in Africa. There never was a time since European colonialism where traditional leadership disappeared and therefore as a system of governance it was not 'invented' by apartheid. It has been abused and manipulated and the extent to which it was abused needs careful analysis.

- Whilst the human universalism that democratic pragmatists propound via reification of individual human rights is undisputed, organic democracy proponents believe that traditional leadership offers unique attributes of leadership that fulfill specific social and governance needs of people as communities. Communities operate in different ways; the generic institutional packages of the Western form of democracy to which those who need must help themselves, are not the only form of democracy that people may wish to have. Some studies show (see Hughes, 1969, discussed briefly below) that people value different qualities in leadership and governance (if those terms could be conflated to mean the same thing, in the first instance), and co-existence of these options is relevant in the current historical epoch. More studies need to be done in this regard.
- The location of traditional leadership within communities both physically and culturally serves a specific unique purpose that people must be entitled to. This is over and above the often paternalistically expressed view on the inadequacies of local government efficiency in many rural communities – a gap that traditional leaders are seen to supplement.
- Western democracy is often caught up in how it is elected and what institutions extend it. It is informed with principles which must play themselves out in order for justice to all to be accessible and visible. Traditional leadership should perhaps be seen as an alternative form of democracy that places less emphasis on how governance comes into being, but more emphasis on the rationalization of justice based on cultural-moral principles, and expressed human feeling, all of which will be under vigorous negotiation on a case-by-case social issue basis. Traditional leadership is therefore a facilitatory democracy more focused on issues than rigidified processes.

- Cultural relativism is not mutually exclusive of individual human rights and relativism must not be interpreted to mean disabling of people's ability to rationalize and change culture continuously and with reference to specific circumstances. This has always been the case with traditional leadership and customs.
- Culture and custom, which is what traditional leadership roles are often aligned with, must not be blanketly assumed to be hindrances to universal democratization, without differentiation. The interconnectedness of culture and custom must not be trivialized as something that can be changed by mere proclamation of legislation. For example while the argument against gender imbalances to succession are legitimate, it is not possible to legislate against the whole patrilineal kinship and marriage system that is practiced widely in rural and urban areas in order for identity-tracking to allow for women to be legitimate heirs to traditional leadership. Such punitive tendencies will relegate government towards not being taken seriously by people. A cumulative or progressive and negotiated approach is therefore seen as best.

The proponents of organic democracy do not argue against the need to democratize traditional leadership, but they contest the basic assumption that traditional leadership is fundamentally undemocratic in the first instance. In an article ironically titled 'The Secular basis of Traditional Leadership in KwaZulu-Natal', Sithole (2005), for example, traces what is 'traditional' about traditional leadership as something that ties their pragmatic social responsibilities towards their citizens with the notions of identity and moral responsibilities to their people – 'their people' essentially meaning the interconnectedness of people and the shared responsibility for each other in ways that would be vulgarized as nepotism in Western contexts. The African setting seeks to be tied by identity rather than shying away from it, to a point where joining a new traditional authority jurisdiction (*ukukhonza*) is regarded as expressing a wish to be honorary related to its people. After examining the operational circumstances of traditional leadership, Sithole concludes then that "an appropriate approach" to traditional leadership would be:

- to support traditional leaders with relevant tailor-made education and procedure/protocol formation
- establish forums of dialogue and good relations between them and elected counsellors
- prioritise issues of land management with respect to forming core focal areas for traditional authorities...
- establish a good working relationship between these leaders and the various other departments whose work overlaps with roles of traditional leaders – even while the unresolved legislative matters around inheritance of position and democratic election are pending, and
- attempt to establish a provincial system of accountability in the traditional leadership system and procedural means of accountability with various departments (Sithole 2005: 120)

The issue of training and empowerment with education and information on policy, legislation and various models of democracy is very important as identified by development practitioners (see Wimbley 2006), some academics and by traditional leaders themselves. However, care should be taken not to confuse training and education as implying a need for a ‘civilizing process’ on the part of traditional leaders. People follow traditional leaders as traditional leaders not as upgrades towards bureaucratically oriented politicians. In 1969 in the context of Mexico, Daniel Hughes analyzed people’s differentiation of traditional qualities from qualities of new leadership altogether. His research shows that whilst intelligent and experienced leaders are important both in traditional and completely new form of government, people had different expectations of the attributes of people holding these positions. Those holding positions in traditional leadership were expected to be ‘father to the people’, ‘to have patience’, and ‘to have an ability to foster co-operation’. Those in elected political positions were expected to have distinct capability in legislation and to display education-informed merit. In as much as intelligent, exposed and experienced traditional leaders are highly desirable, traditional leadership is something different from elected political leadership and there is a need to intensively analyze what purpose it serves for the communities under it. Of course, there

is a need (as Bentley 2005 argues) to understand to what degree individuals can opt out of it, but the same may be asked of State, particularly when it is not seen as fulfilling the needs of some of its citizens.

One of the important issues that is lacking especially amongst the advocates of the democratic pragmatism is the recognition of continuity of life between the rural and the urban. The situation of land rights, that are not so legally secure in rural areas under traditional leadership, is often portrayed as if it is a phenomenon of its own; there is no attempt to define security of land tenure together with security of livelihoods - the totality of security on assets that could be spread between the rural and the urban spaces. This sectionalism on a rather historically complicated colonial reality that affects the Black population in South Africa makes the idea of democracy and human rights a matter of expensive principles pondered upon by those who can afford. Many people, who were affected by forced labor and whose poor socio-economic status continues to be prescribed by the socio-economic exigencies that they cannot control, would find this promise of their legal status being improved if ownership rights were strengthened a bit idealistic than reality proves to be.

There is a sum total of converging elements of the life of the Black South African 'living in rural areas':

- the meager wages that can only be accessed via being locked up at the squalor of informal and low cost housing,
- lack of social investment towards social mobility via impact-driven education,
- reliance on extended family and social capital in rural and urban areas, as well as
- a base of human disposal in the form of retirement or burial space (or perhaps a social safety net) back in the rural areas

All these elements of this life combine to give rise to an inseparable reality for most Black people who cannot afford the luxury of matching the theory of democracy and rights directly with their lived reality. It is difficult for a democratic pragmatist to accept this reality as a norm to contend with and then to depart from addressing this from its current reality. What they rather depart from are the principles of how 'things

democratic' and informed by rights should work ideally. Anthropologists have realized that in most rural areas the social relations underpinned by a socio-economic reality that has a specific colonial history is such that there are multiple-site-households whose members try to hold together via a sum total of economic and social capital support to each other. These households have sites in both urban and rural settings. The extent to which townships, informal settlements and the low-cost housing sites serve merely a purpose of holding together a social unit partly based in the rural areas in search of socio-economic survival must be established and recognized (see for example de Wet and Holbrook's work, 1997).

Research conducted by the Provincial Planning and Development Commission in KwaZulu-Natal (2005) illustrates the level of these linkages. The report argues that the link between the rural and the urban is so strong that the flow of things from urban to rural areas is such that the rural is a social safety environment for people who are open to a range of vulnerabilities in the urban context. The linkages between the rural and the urban involve transfer of people, goods and money. Human mobility is variable, ranging from being circular and being long-term occasional linkage sometimes ending in retirement or burial at the rural area while one has spent most of their life in the urban setting. The definition of security, not only of tenure, but also of livelihoods needs to be looked at in this holistic manner. However the approach of pragmatists that looks at the theoretical legal security of ownership of land as the ultimate security that all people desire misses the complexity of the lives of the Black rural masses whose economic means are not stable especially at the urban context. One wonders which part of the insecurity is stronger – the urban squalor or the rural communal life?

### **2.3. The critical difference**

On the question of traditional leadership directly, the idea of a “middle road”, to use Bentley's phrase, comes up as if to tally with the ideas of a progressive (accumulative) approach towards dealing with traditional leadership in South Africa. One would assume that the pragmatists and the advocates of organic democracy are moving towards

consensus. However, the pragmatists focus on their arguments for a ‘middle road’ on the basis that traditional leaders should be useful for as long as the extension of democratic local governance is not sufficient towards the rural areas. The proponents of organic democracy on the other hand see traditional leadership as occupying its own space in governance – one that attends simultaneously to the social, the cultural as well as the everyday survival issues of the communities. The two approaches therefore sometimes propose what might appear as moving towards the same solutions but imply a different legal and resource attitude for traditional leadership.

### **3. Key Challenges for Policy and Intervention**

#### **3.1. Policy initiatives dealing with Traditional Leadership and Governance**

It is interesting to note that the *Ten Year Review on Government Programmes* (2003) avoids the analysis of traditional leadership. In that review, traditional leadership is absent. From the interviews it became clear that government was as divided on the issue of the approach on traditional leadership as the camps that exist in the academic sphere. Not even in its articulation of the social and governance challenges does the *Ten Year Review* make specific statements about traditional leadership (Presidency 2003: 114). The silence on traditional leadership could be received as a good sign by some democratic pragmatists but many would probably prefer an assessment of how far the government has gone with an assisted extinction of traditional leaders. However, the policies, particularly of the last five years are showing elements of an organic approach but there are specific issues of difficulty and the integration is not unproblematic at all. The question of a progressive (accumulative) approach is not something far from the thinking of government though as it usually informs debates on socio-economic rights. However, there are difficult questions on the adequate rate of progress that would enable judgment on whether government is fulfilling its obligations (see *Ten Year Review*, Presidency 2003: 86-87), but there is recognition that some matters are more complicated than the feasibility of simply making a proclamation in legislation.

The advent of democracy in South Africa in 1994 brought about many challenges for the post-apartheid government with regards to the role of traditional leaders. The newly elected democratic government had to contend with the imperative for the establishment of an integrated democratic system of government in which the institution of traditional leadership is historically an integral part.

South Africa is not unique in this, as several other African countries have also recognised the significant role of traditional leaders after liberation from colonialism.

These include Botswana, Zimbabwe, Ghana, Namibia and Uganda among others. In the case of Ghana, which the main thrust of South Africa's legislation is modeled alongside with, for instance, their Constitution, as the White Paper on Traditional Leadership points out, "recognises the institution of traditional leadership" and provides for the "establishment of national and regional houses of traditional leadership"; whereas "traditional leaders have a role to play in issues of development although they are forbidden from active participation in party politics" (DPLG, 2002: 16).

Although the institution had continued to exist under apartheid, the thrust for recognition of the need to formalise the role and legitimacy of traditional leaders in the democratic system of government is the acknowledgement that the institution had been significantly undermined and manipulated by the previous colonial and apartheid administration. To this end, the 1996 Constitution of the Republic of South Africa set the tone for the recognition of traditional leaders in a democratic dispensation. The Constitution, particularly section 211 (1), provides for the recognition of the "status and role of traditional leadership, according to customary law, subject to the Constitution"; while section 212 (2) also outlines the role of traditional leaders as consisting in dealing with "matters relating to traditional leadership, the role of traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law".

Subsequent pieces of legislation have been enacted by the post-apartheid government. These include, more significantly, the National House of Traditional Leaders Act (1997), the Municipal Structures Act (1998), the White Paper on Traditional Leadership and Governance (2003) and the Communal Land Rights Act (2004), as well as a number of provincial statutes. The National House of Traditional Leaders Act, on the other hand, provides for the formation of the National House of Traditional Leaders, whose function is to "promote the role of traditional leadership within a democratic constitutional dispensation". In the context of local government legislation, section 81 and subsections (1) – (4) of the Municipal Structures Act makes provisions for the consultation of

traditional leaders in decision making in those local municipalities presiding over areas that fit the definition of a “traditional community”.

The Traditional Leadership and Governance Framework Act of 2003 is one of the most pertinent pieces of legislation aimed at outlining the roles and functions of the institution of traditional leadership within the broader thrust of the post-1994 democratic dispensation in South Africa. In this regard, section 2(1) (a) of the Traditional Leadership and Governance Framework Act defines a “traditional community” as any community which “is subject to a system of traditional leadership in terms of that community’s customs”, and accordingly “observes”, what the Act defines as “a system of customary law”. Section 3.2 (b) of the White Paper on Traditional Leadership and Governance, on the other hand, emphasises the role of traditional leaders as “custodians of culture, tradition and custom”. In addition to this, section 3 (1) and (2) of the Act provides for the establishment of traditional councils by a “recognised traditional community”. Section 2 states that such a traditional council should be constituted of 40% of democratically elected members of the traditional community, and that “at least a third of the members of the council must be women”. The accumulative aspect of transformation (i.e. incremental alignment with the Constitution) is in the wording itself – ‘at least a third’.

While driven by a quest to deal with the locally-specific issues, the provincial acts also serve to reinforce the provisions of the Framework Act, particularly pertaining to matters of recognition for the institution of traditional leadership, and its roles, powers and functions, as well as those of traditional leaders, among others. The three provinces examined here have enacted their own provincial acts, in conformity with the requirement of the national legislation, more importantly the Traditional Leadership and Governance Framework Act, in addressing the question of traditional leadership, and matters relating to customary law and the administration of communal land and customary law within traditional communities.

All three provinces which the review used as case studies, namely KwaZulu Natal, Eastern Cape and Limpopo have successfully established various provincial-specific

versions to comply with the provisions of the national Framework Act. These Acts take the intentions of the National Framework further by – the recognition of traditional leadership, traditional institutions and communities through the “establishment and recognition” of traditional councils, to provide guidelines for the operation of traditional institutions, clarifying the roles and functions of traditional leaders and other related matters, as well as lay out the codes of conduct for officials of traditional leadership institutions.

The National Act and the provincial counterparts make it the duty of such a traditional community to, subject to recognition as such by the Premier of a province, establish a “traditional council in line with principles set out in provincial legislation” (Section 3 of the National Act). Traditional councils should have partnerships with municipalities “based on the principles of mutual respect and recognition of the status and roles of the respective parties” (Section 5). Such a traditional council, according to the Act, should consist of no more than 30 members “depending on the needs of the traditional community concerned”. The Act further stipulates that [a] t least a third of the members of a traditional council must be women and a further 40% of members be elected democratically within the traditional community. According to the Act, the traditional councils are new institutions that are aimed at replacing the old tribal authorities of the previous years (p. 10).

The functions of Traditional Councils as stated in Section 4 of the Act, are outlined as, in subsections (1) (a) “[a]dministering the affairs of the traditional community in accordance with customs and tradition”, (1) (c) “supporting municipalities in the identification of community needs”, and (1) (h) “promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery”, amongst others.

In the perspective of national government, traditional leadership has a central role to play particularly in local governance, development and service delivery. This vision is best captured in the observation made by the Minister for provincial and local government, Mr

Sydney Mufamadi. Mufamadi writes in the foreword to the Draft White Paper on Traditional Leadership and Governance that:

It is the Department's considered view that the institution has a place in our democracy, and has a potential to transform and contribute enormously towards the restoration of the moral fiber of our society and in the reconstruction and development of the country, especially in rural areas. It is also important that conditions for democratic governance and stability in rural areas are created so that accelerated service delivery and sustainable development can be achieved. This will only be possible if measures are taken to ensure that people in rural areas shape the character and form of the institution of traditional leadership at a local level, inform how it operates and hold it accountable (DPLG, 2002:4).

The above observation serves to emphasise the government's stance on traditional leaders: the necessary integration of the institution of traditional leadership in governance within the democratic dispensation, more particularly in rural areas.

### **3.2. Provincial legislation: Limpopo, Eastern Cape and KwaZulu Natal**

In keeping with the prescription of the national legislation, the Limpopo province's Traditional Leadership and Institutions Act was promulgated in 2005. The thrust of the Limpopo provincial legislation is very similar to that of the Traditional Leadership and Governance Framework Act, in terms of women representation in traditional councils, as well as the prerequisite that 40% of all the members of the councils be democratically elected. In addition to this, section 25 (3) of the Provincial Act empowers traditional councils to collect levies from "any taxpayer" who resides within the area of jurisdiction of a traditional council.

This is in sharp contrast with the provisions in both the Eastern Cape and KwaZulu Natal provincial legislation. For instance, section 30 of the Eastern Cape's Traditional Leadership and Governance Act of 2005, on the other hand, clearly states that "traditional

council may not impose any levy on any member of the traditional community or on any section of the traditional community”. Section 31 goes further to state that “[a] traditional council may request members of a tribal community, or any section of a traditional community, to make voluntary contributions.” The KwaZulu Natal Traditional Leadership and Governance Act of 2005, however, is silent on the issue of tax and levies although it largely also conforms with the provisions of the Framework Act alongside other cited provincial acts.

However, not all the stakeholders share government’s accommodation of traditional leaders. This is evidenced by the amount of bickering that has emerged from some quarters of civil society over what they see as government’s susceptibility to being influenced by the traditional leadership lobby. One of the reasons behind opposition to the recognition of traditional leaders is the perceived undemocratic nature of the institution of traditional leadership in its entirety, which is felt to be not conducive to promote democracy and equality as well as gender parity in accordance with the dictates of the Constitution. To register their opposition to the integration of traditional leaders within the democratic system of governance, a number of land rights activists who are attached to the Programme for Land and Agrarian Studies (PLAAS) as well as the National Land Committee are currently locked in a litigation against the government over what Lungisile Ntsebeza (2006:287) refers to as the “retreat from democracy”, which in the view of the litigants is represented, among a number of grievances, by the recognition of traditional councils.

In our interaction with stakeholders from KwaZulu-Natal two conflicting scenarios appeared to emerge. From the perspective of traditional leaders, the stance taken by the above-mentioned civil society organisations is a mockery of the efforts made by traditional leaders because they feel that the government has not gone far enough in entrenching their role in matters of governance under the democratic dispensation. The complexity of the legislative operational context is articulated by government stakeholders from practical experiences as captured below.

### **3.3. Government's dilemma**

The ideological standoff between the organic democratists and the democratic pragmatists unfortunately gets transposed to the social intervention field. On the one hand, the NGO sector together with some of the academic thinkers (of the democratic pragmatism school) is challenging government on a number of issues relating to traditional leadership and land. On the other hand, the traditional leaders are posing a challenge on government about what they see as continued ambiguity and alienation of traditional leadership in the South African politics. Both camps have voiced serious concerns about their interests or the interests of those they claim to represent, and both camps blame government for the difficulties they proclaim. From the point of view of the interested NGOs the issue seems to be fundamentally about the stifling of people's rights in favor of traditional leadership, while from the point of view of traditional leaders the issue is the ambiguity of legislation about their existence and operation and the manner in which legislation places them at the mercy of National and Provincial Administrations. It is useful to scrutinize both sides of the critique to government in a review of the last fifteen years of government on the question of traditional leadership.

### **3.4. The role of traditional leaders**

All interviewees were engaged on the question of what they perceive to be the role of traditional leaders in the current era. There were responses that articulated this question in the democratic pragmatism tradition, i.e. the role is context specific depending on the degree to which government has efficiently extended itself in various areas, especially local government. This implied that if local government were to be successful in bringing the services and their maintenance, and if people were conversant with democratic processes, they would not need traditional leaders. Their role is therefore defined in a phasing-out manner by the pragmatists.

In engaging both the traditional leaders and government officials an impression is given of the unexplored potential of recognizing and investing in the role that can be played by traditional leaders; but there is also an acknowledgement that little has been done beyond the political debates about the status of traditional leadership vis-à-vis that of government. Besides the technocratic responses of those influenced by democratic pragmatism, most government officials responded to the question of the role of traditional leaders by suggesting that:

- Traditional leadership is a holistic form of leadership that attends to community's issues as they come. The issues may be urgent, such as when there is a natural disaster; or they may be social such as how to deal with HIV/AIDS or the moral degeneration; they may be administrative such as assisting with certification of residence for their citizens or they may be about lobbying or co-ordination of voices to influence service delivery prioritization.
- They were seen as having a unique role in jurisprudence – one that 'tries people' not to punish them but to repair relationships between them. The manner in which negotiations are facilitated in courts was cited as an example of how traditional courts are not about analysis of the sum total of fact to reach a verdict but about ensuring that the accused and the aggrieved come to terms with the ills of their relationship. Different strategies are used depending on the personalities involved and the issues involved.
- Traditional leaders were also seen as the centre point of the value system of their areas. Through the traditional council system that is decentralized within their jurisdiction it is possible to facilitate a socio-cultural life that makes sense to all people. People in a specific area understand why one tolerates the noise from *umlindelolo* (a night vigil before a funeral) and not the noise from a tavern. If there would be issues associated with these occasions an *induna*, *umnumzane* or *iphoyisa* would be able to deal with them working from a communal value system of what should be happening. In some areas during times of death, it is disrespectful for neighbours to work in the fields before the funeral has taken place, but where there is long dispute between relatives of the deceased and

someone cannot be buried for some time, *umnumzane* may negotiate an understanding to free people from observing the taboo.

- Traditional leadership is not responsible for the emergence of value systems that operate, but it moderates and facilitates mutual existence amongst people who have a whole range of cultural choices. Traditional leaders have made it possible for Christianity to develop in their areas; those who retain a more traditional moral scheme have not been made to feel out of place – all of this with various degrees of mix in the communities.
- Most interviewees spoke of the traditional leaders ‘as closer to the people’ because of these kinds of social nuances that they attend to. However, one of the respondents from one of the government departments spoke about ‘traditional leaders being there for the people from time immemorial’. He saw them as part of a unique social order that must not simply be erased and replaced simply because the government wishes to do that. It must be let to live its cycle.

Legislation is sometimes criticized for not being specific on the role of traditional leaders. But given the above articulation of their role, it is difficult to judge whether being specific about the role of traditional leaders (something that is a subject of debate) would be good or bad for traditional leaders and the communities of their jurisdiction. Dealing with customary matters could be more cross-cutting than a possibility of the roles being narrowly defined in terms of local government-type roles. As part of what they do, traditional leaders have cited social welfare type of interventions, development, heritage, judicial responsibilities and, of course, ritual and moral responsibilities. It is possible that there is a disjuncture between the government’s sectoral approach and the manner in which traditional leadership structures its operation around being holistic within localized boundaries. It is legitimate to ask the question whether what is being aligned is the same or whether it is amenable to alignment? Mr Bheki Nkosi of the Department of Local Government and Traditional Affairs in KwaZulu-Natal revealed that there is a conceptual debate in KZN government corridors that might see the term ‘indigenous leadership’ gaining more potency (Interview: 01/2008). These conceptual issues that remain unresolved might be hindering a resolved sense of direction on the part of government.

### **3.5. The critique of policy and its implementation: key experts input**

There are specific operational challenges on the issue of traditional leadership transformation that have been articulated by stakeholders that were interviewed. One of the fundamental dilemmas for some analysts is the question of legislation underwriting the rigidification of custom and culture. In an interview, Aninka Claassens expressed a view that whilst traditional leaders provide for some organic form of governance that is closer to the people, and they could keep records and be responsive to people's issues instantly; there is no need to make law out of customs and the fluidity of social change at a local level. An argument is advanced that current laws do not only guarantee power for traditional leaders but provide for some contradictions. She gave examples relating to the question of levies that the Limpopo Traditional Leadership Act allows for. Instead of protecting people from the collection of levies by traditional leaders the Act has opened an opportunity for the collection of levies to be done by an undemocratic form of governance from the people who have no choice but to oblige if they wish to live in their current boundaries.

The fundamental issue that contradicts democracy is the fixed boundaries traditional leaders now rule over and a contention that those who find themselves in these boundaries must adapt to the customs of these authorities. Who makes these customs should be an important question to ask. Claassens thinks that the context of fluidity that traditional leaders continue to have to contend with<sup>1</sup> is testimony of the fact that the law is imposing rigidity on people who have been negotiating their rules and customs over generations. The current laws are solidifying the power of traditional leaders, thus constraining space for negotiability of customs. Whilst traditional leadership is an important institution in the context where local government is overstretched, it is important to allow the specifics of what their role should be to be defined by local people.

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<sup>1</sup> Examples were given by Claassens: Single mothers are now allocated land in some rural areas under traditional leadership; daughters do inherit property; women do become chiefs.

This idea that locals must define the future of traditional leaders was also echoed in an interview with Professor Ben Cousins who has also written that “the most appropriate approach to tenure reform in South Africa is to make socially legitimate occupation and use rights, as they are currently held and practiced, the point of departure for both the recognition in law and for the design of institutional frameworks for mediating competing claims and administering land” (Cousins 2007: 282). Put in this way, one wonders as to what would be done with the influence of patriarchy in defining “socially legitimate occupation” in rights that are “currently held and practiced”. It seems that that which is local and current is expected to be automatically without the bad influence of patriarchy and chauvinism which are associated solely with the traditional leadership institution.

In their critical reflection the skeptics of traditional leaders pose important questions:

- Whilst traditional leaders may not be legislated away overnight it seems that their role can best be defined by locals in relation to their pressing issues. In some contexts traditional leaders have a very important role in dispute resolution, in manifesting visibility of authority and security, and in doing some administrative tasks for which they are currently hugely under-resourced. However, definition of their roles should be a function of organic processes. As Claassens put it in an interview, “their role should come from their legitimacy, and their legitimacy should come from their actions at a local level”. For Cousins, history should inform the understanding of traditional leadership and the changes in types of accountability that informed the pre-colonial and the current times as well as being wary of colonially derived legitimacy and roles of traditional leadership. Currently it would seem that true security of tenure would create the basis for people to hold traditional leadership accountable to them (Interviews: 01/2008).
- The consultation processes held during the formulation of traditional leadership legislation leave a lot to be desired – both technically, and especially in terms of being socially skewed. It was alleged that there was an over-consultation of traditional leaders. It was also argued that the processes by which the Communal

Land Rights Act adopted certain clauses were not transparent. There is no evidence of proper consultation of interest groups such as women, the youth, councilors or even general community meetings specifically on the Communal Land Rights Bill. Legislation therefore gave excessive powers to traditional leadership by such prescriptions as the proclamations that the traditional leader may become Land Administrative Committees (LAC) when the Bill had suggested a minimum of 25 percent of the constitution of the LACs to come from the traditional leadership structures.

- The apartheid-influenced patronage of current law in bolstering the authority of traditional leaders at the expense of local systems has been observed in the way the Nhlapho Commission interpreted its mandate. Whilst a body that deals with disputes in the traditional leadership institution is useful, the manner in which the commission began by wanting to confirm paramountcy is typical of the colonial era missions to create hierarchies out of local governance systems. Cousins (in an interview), saw a body with such a mandate as needing to devise a strategy around how to manage facilitation of local processes for communities to resolve their issues of leadership. Democratically facilitated processes involving communities are the main method to resolve issues on leadership.

As a way forward, the critics on South African traditional leadership policy saw a serious review of the Communal Land Rights Act and the Traditional Leadership Framework Act as a necessary step. Also research-based acknowledgement of the current role of traditional leadership needs to be achieved and resources need to be allocated for the enhancement of those roles. Some of these roles must include some of the roles that local government should be fulfilling but is currently constrained to fulfill.

There are academics that have worked with government and in sympathy with traditional leaders on transforming traditional leadership. When traditional leaders expressed suspicion around their constitutional status during the time of the Interim Constitution of 1993, a group of academics began to follow the process of transformation of traditional leadership quite closely to a point where they also made submissions to the

processes leading to the 1996 Constitution and the White Paper on Traditional Leadership. These academics came from the universities of Zululand, the North, Bophuthatswana, Potchefstroom and Natal-Pietermaritzburg. (Interview 12/2007). They were involved in negotiation of the specifics of changes and recognition of traditional leaders – some of their concerns colliding with those of traditional leaders while some did not. They were important in sustaining the focus on the issue of traditional leadership in the policy processes to a point where they were instrumental in negotiating for an increase from 10 percent to 20 percent of *ex officio* representation in local government structures in the Municipal Structures Act. They are also instrumental in recognition of traditional leaders as public office bearers. Recognition of internal community procedures with respect to things like the succession procedure was a result of broad acknowledgement of customary processes that was debated by such stakeholders.

Amongst the specific issues which one of the experts (interview 12/2007) has highlighted that have informed the policy processes and policy debates at intervention level in the past fifteen years are:

- The recognition of traditional leadership in the constitution and the difficulties of the specification of their roles. Various stakeholders debated whether the criminal and civil jurisdiction should be granted to traditional leadership courts.
- The recognition of the traditional leaders in Chapter 12 of the Constitution is still felt not to be binding on the part of government about making sure that the institution is legally secure and it works.
- The role of traditional leaders in local government has also been debated with the bone of contention being their *ex officio* representation in local government as per the prescriptions of the Municipal Structures Act
- The Inter-Governmental Relations legislation does not enforce practices of including traditional leaders in IGR forums despite the fact that they are recognized as public office bearers
- Issues of investing on traditional leaders need to be made clear. For example, is President Mbeki taking forward the intimation he has made around

pondering on an idea of a separate Department of Traditional Affairs at National level? Are the Provinces of the Northern Cape and Gauteng going to establish fully-fledged Provincial Houses?

- There is need to establish systems to monitor traditional leadership properly – as public office bearers there is a need to make sure they have codes of conduct and mechanisms to monitor compliance. A performance appraisal system for traditional leaders has not been instituted yet.
- There are specific issues of contention related to the Communal Land Rights act CLaRA: Whilst the government has been criticized for imposing traditional leadership on the communities by suggesting in CLaRA that the Land Administration Committee could be Traditional Councils, this does not seem to be an absolute expectation of CLaRA. CLaRA does not force this on communities. Perhaps CLaRA has a void in that it does not apply itself to the actual processes leading to the community making an appropriate decision for itself on what structure it wants to be its authority on matters of land. There is scope to prescribe a process according to which this decision making could be done – e.g. making this a process with external supervisors in order to enhance its neutrality could be useful.

Reports on the early engagements reflecting consultative processes on CLaRA, the Constitutional debates and the White paper processes are difficult to track partly because of the looming court proceedings that some of the NGOs have instituted on CLaRA specifically. However it was not difficult to find both the sympathizers and the skeptics of traditional leaders to illuminate the issues. The Centre of African Renaissance Studies at the University of South Africa (UNISA) has a memorandum of understanding with the National House of Traditional Leaders to analyze issues relating to traditional leaders and develop critical input to processes that link traditional leaders with government. Some of the issues illuminated above were also discussed with Prof Ghutto of the Centre of African Renaissance Studies and there is some overlap of ideas. Ghutto (interview: 12/2007) also addressed himself briefly on the issues of tenure and traditional leadership

and the criticism that is often leveled at government on the question of CLaRA. He argues that the “...individuation of ownership of land is not African, it is a colonial imposition; we have to live with it today. There is nothing in the Constitution which is really saying the only form of property is the individual private property”

### **3.6. Traditional Leaders’ Perspective**

The engagement of traditional leaders on the review did not reveal the satisfaction that one would assume exists from what the democracy pragmatists say about the successful agenda of traditional leaders in re-asserting themselves through government. The issues raised by traditional leaders show that in fact the “achievements” have been tokenistic compared to their expectations of engaging a government oriented towards African Renaissance and open to creating models that include indigenous systems. There is a level of disappointment that engagement with government has not matched such expectations. Issues that the chairpersons of selected Houses highlighted include:

- A ‘superiority complex’ of government in engaging traditional leadership which is conveniently underpinned by the way legislation is framed – from the Constitution to other related pieces of legislation,
- In some instances, there is contradiction between legislation and actions of government,
- Interference with traditional procedures even to the point of not following legislation,
- Ignoring attempts initiate by traditional leaders to negotiate issues pertaining to traditional leaders,
- Poor remuneration of traditional leaders, and
- Gender equity in political participation versus attention solely on placement of women in social ideology of communities i.e. practice versus theory of voice in decision-making.

It is not a relationship of equality yet; it continues to be a relationship of State superiority over traditional leadership – the Constitution underpins this by suggesting in section 211.2. that “A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs”. It does not say that traditional leadership may function according to applicable legislation and customs, because there is no presupposition of such policy and legislation being communally done with traditional leaders. It appears that it is expected that traditional leadership must operate in its own cocoon and simply make sure that it aligns with the broader legislation. This attitude may be justified by citing the other communities in South Africa that are not under traditional leadership. It may also be justified by noting that the above quote speaks specifically about “a traditional authority” that must observe both the applicable legislation and customs. This phrase was therefore never directed at positioning traditional leadership in some way in relations to government.

However, having said this most Chairpersons of Houses of Traditional Leadership that were interviewed in this research, including the National Chairperson, spoke about lack of a peremptory command in the Constitution on the question of recognition of traditional leaders. Section 212 in particular was cited in this regard:

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

The issue is not simply semantics ('may' instead of 'shall'). It was argued that there were serious constraints in how the now established houses can function. Because the government has no sound legal obligation to provide for operational viability of these structures, the Houses operate in dire constraints or are simply at the mercy of the Provincial level politicians. Inkosi Holomisa, speaking as Chairman of CONTRALESA painted the picture of 'no decency' in the manner in which the Houses are resourced – from national, provincial to local levels. They are at the mercy of national, provincial and local government respectively and it is observable that 'the mercy' is variable depending on the specific relationships. Inkosi Buthelezi, Chairman of the House of Traditional Leaders in KwaZulu-Natal argued that legislation was not passed in good faith and indeed has created deep vulnerabilities for traditional leaders. Referring at an odd venue for the interview we held with him and the executive members of the KwaZulu-Natal House he argued:

The reason why to me this was not legislation passed in good faith is that it is not peremptory. Which answers why we meet in a Hotel instead of at our own Offices. We do not have them. Quite clearly, both the national legislatures and the Provincial legislatures are not obliged to provide these facilities. We exist at the mercy of legislators at each level. (Interview: 01/2008)

He continued to illuminate his point:

Why should we be surprised that nothing has been provided for us as a House of Traditional leaders of this Province? There is no compelling legislation that these facilities should be provided. This is the case despite the fact that the provincial House of Traditional leaders is listed as a Provincial entity in the Public Finance Management Act (Act 1 of 1999 as amended by Act 29 of 1999).

Over and above this, the roles of traditional leaders have not been recognized sufficiently as integrated and demanding the mutual co-operation of a range of departments and sectors. Despite the fact that the Law Commission has recommended that traditional courts be included in an integrated system of justice that recognizes the role traditional leaders perform in Judicial matters, these recommendations have not been

taken forward. Inkosi Holomisa argued that the role of traditional leadership involves looking at social issues such as mobilizing intervention on HIV/AIDS, lobbying for and coordinating service delivery for communities, agriculture and land affairs. This integration demands that various departments should be working with traditional leaders on a range of issues. For him the main department that has taken initiatives to consult traditional leaders in any significant way has been the Department of Land Affairs.

In KwaZulu-Natal members of the EXCO of the House articulated numerous contradictions in government action. They argued that while they informed drafters of legislation that traditional leadership recognition must include the whole regime of leadership in rural context including headman, ‘tribal’ policemen, youth headmen (*izinduna zesinsizwa nezintombi*), they refused to feature this in the KwaZulu-Natal Traditional Leadership Act No.5 of 2005. However, without involving *amakhosi* and headman the department organized a conference of youth headmen. The traditional leaders were not consulted and as a result they do not know what resolutions were taken and how those will be effected. The EXCO members also cited instances where the department had gone against the prescriptions of legislation by installing traditional leaders before the Royal family was of one mind about which candidate it was choosing for the position. Related to this matter EXCO expressed amazement that in such important matters of traditional leadership such as succession the provincial department has not work with the House to find ways of involving the House. They argued that the arrogance of government on matters to do with traditional leadership is seen especially in the central role it has on installations. The KwaZulu-Natal House EXCO members wondered why the House was not allowed to play a central role on installations than what is happening where the Minister decides which installation will receive the official stamp of public approval via his presence. Even deposition of traditional leaders is not something that government sees as requiring the involvement of the Provincial House of Traditional Leaders in KwaZulu-Natal. For the EXCO the thin line between the facilitatory role and the ‘big brother’ role of government on matters of traditional leadership was particularly demonstrated when during the inauguration of the House the rules governing elections and procedures of electing members were announced to

traditional leaders on the same day of the proceedings. They also cited the refusal of the KwaZulu-Natal government to listen to *amakhosi* when they wanted to point issues of concern in the drafting of the KwaZulu-Natal Traditional Leadership Act.

The Chairpersons of the Houses also saw a contradiction in government regarding the Houses of Traditional Leadership as part of the Public Entities that are accountable to the Auditor-General for use of public funds and yet they are not given any public funds to administer for themselves. Traditional authorities are taken as public servants and yet they are not treated in the same way public servants in the way they are remunerated. On the issue of remuneration the issue was firstly, the discrimination of traditional leaders from other public servants in terms of there being no benefits to their 'salary package' (Interview with Inkosi Holomisa: 01/2008 and Interview with Inkosi Buthelezi (01/2008)). Secondly there is no remuneration of headmen and other officials that are in the structure of traditional leadership. While recent legislation provides for remuneration of headmen, the issue is complicated by the fact that these headmen must be part of the Traditional Councils (in big traditional communities not all headmen can be part of the traditional council since 40% of the traditional council must be constituted by community elected members), representing other sectors. Therefore some headment will not be remunerated.

*Amakhosi* that were interviewed were appreciative of the fact that the Traditional Leadership Framework Act obliges all traditional councils to have elected membership and prescribes gender representation. It was argued that women were represented in certain traditional councils but there were no prescriptions on this matter and therefore some traditional councils were prone to male domination. In KwaZulu-Natal the EXCO of the House was keen to point out that women are not taken as minors in local politics and making them part of decision making processes had been done from time immemorial. From their perspective it seems the issue is not lack of political participation for women; is it perhaps that women participate as women in politics? It was *inkosi* Buthelezi, in his position ion the old KwaZulu Government who instituted a practice whereby women can become regents for their sons and now there are many women

*amakhosi* in KwaZulu-Natal. But e pointed out that, even before this, the prominence of women participation in Zulu politics is well documented.

### **3.7. The Government Perspective**

Generally government's attitude towards traditional leadership is one of 'an emerging approach'. Currently there is policy and legislation that has been crafted but which is not definitive about the approach. At the moment one would be tempted to assume that the statements that traditional leadership are criticizing as being too broad and loose show government's policy to be flexible and open to innovative crafting of operational mechanisms by traditional leaders. While the traditional leaders have used the capacity constraints argument to defend themselves from any suggestion that points to them not being proactive with developing policies and models of operational linkages with government, government on the other side has certainly not resolved its stance on the question of strengthening the traditional leadership system. This criticism may not be taken well by government given that the last five years have seen a lot of policy and legislation on traditional leadership. This work must be acknowledged. It has been necessary work which not all stakeholders agree with and which has not happened without huge effort.

The reason why the government can still be characterized as being trapped at a state of 'an emerging paradigm' is that the conflicting conceptual paradigms that exist on traditional leadership at academic level have also influenced government. Media reports of the early 2000s reflect a suspicion that the African national Congress did indeed have an intention to at least, sideline or precipitate an alienation of traditional leaders. *Amakhosi*, in particular were very critical of the work of the Demarcations Board that created municipal boundaries that were wall-to-wall and whose wards did not recognize traditional community boundaries. De Jong (2006) who writes about his experience of being an observer during the White Paper development process on traditional leadership argues:

It became clear, almost at the outset that the government was inexorably intent upon stripping traditional leaders of all true functions of governance and placing jurisdiction over their community ('tribal') land in the ambit of the new, larger municipalities (p12).

With respect to the role of traditional leaders, de Jong describes the language used in the White Paper process as having been filled with phrases such as: “‘advise’, ‘complement’, ‘promote’, ‘recommend’, ‘support’, ‘participate in’, ‘contribute to’”.... (p13). De Jong's observation was also that “[t]he explicit (or implied) distinction between ‘governance’ and ‘custom’ throughout the White Paper was not only contrived but also inaccurate” (p13)

The issue of the extent to which government is open to emerging models of operation from traditional leadership side is also worthy of scrutinizing. Traditional leadership custom are varied in different spaces whether they be the provinces, district municipality or spatial units informed by cultural landscapes, which it is argued, were ignored by the Demarcations Board. The idea of flexibility is crafted in speeches of political will and in the idea of the intergovernmental relations, but it is not clear whether it is not overpowered by the entrenched sectoralism in government. However besides whatever doubt that may be cast over whether the inter-governmental relations legislation is effective, it prescripts did not extend to traditional leadership in the first instance. Amongst one of the policy criticisms mentioned in interviews is the fact that the inter-governmental relations legislation does not cite traditional leaders as one of the public sector stakeholders that must be part of intergovernmental forums.

An inkling of a flexible paradigm can be discerned in President's Nelson Mandela's speech which De Jong quotes as having been given on the occasion of the inauguration of the Council of Traditional Leaders in 1997:

The respect and recognition of the institution of traditional leaders require more than fine-sounding declarations in the constitution. They should reside in our hearts, and the launch of this Council today is one vivid expression of that.

*We believe that in many ways, the fact that both the constitution and the law establishing the council, do not set out rules and regulations in detail is an opportunity to be exploited rather than a disadvantage to decry* (emphasis added, de Jong 2006: 11)

A decade later the variety of experiences on the structure and operation of the institution shows that there was scope for tighter pronouncements on recognition and operational mechanisms. However, being too specific about roles, especially at national level legislations was perhaps a good approach.

The Department of Provincial and Local Government Affairs is aware of the various provincial models on traditional leadership. Even though there may be justifiable variety the department acknowledges that there is a need to systematize certain things. Location of the function of Traditional Affairs, for example, is under the Premier's offices in some provinces and it is tied with Departments of Local Government and/or Housing in other provinces. (Interview with Prof Wellington Sobahle, 12/2007). Beyond the question of the approach (as to whether to define narrowly the roles or not), there are difficult issues related to funding. DPLG has very limited funding that simply enables it to support provinces in their own efforts at dealing with Traditional affairs. Prof Sobahle did not see the issue of funding as simply entailing provision of funding to the traditional affairs sphere but a question of crucial decisions needing to be made around investing public funds in rural areas under traditional leadership. This is about infrastructural investment which could enhance the lives of people in rural areas and create space for their inclusion in economic planning. This challenge entails engaging with other stakeholders to achieve a paradigm shift in thinking about rural areas so as to challenge the rigid separation of the first and the second economy. The other challenge that DPLG faces is to enhance the participation of people in rural areas in policy processes. Policy processes are varied. However, maximum participation not only of NGOs and academics, but also of communities affected must be sought.

The Department of Land Affairs sees traditional leaders as a very important stakeholder in their work. They are working with traditional leaders via numerous pieces of legislation old and new, while they rationalize issues on land reform in South Africa. Shabane (in an interview, 01/2008) painted a complex picture of legislative contexts that the department works with; contexts which made them interact with traditional leaders quite often. The department deals with tenure has over the last fifteen years devised specific legislation that deal with tenure which is applicable in different provinces. The Interim Protection of Informal Land Rights Act of 1996 is applicable in some provinces excluding Kwazulu-Natal. The Ngonyama Trust Act is an important Act that has shaped the outline of operational issues informing CLaRA. The Communal Property Associations Act governs forms of communal property governance in land reform projects and this has impacted on deliberations of the department with traditional leaders on land reform.

DLA seems to adopt a stance of ‘pragmatic encroachment’ of democracy defined in a neo-liberal sense on traditional leadership. This is clear in the way they describe the intentions of CLaRA. CLaRA enables the restoration land rights to people to whatever state of security they choose via enabling people’s decisions to be recognized and formalized. The two staged process that is outlined in CLaRA allows for the external boundaries to be transferred to a community that has established itself as such. As part of the next stage people are empowered to decide how they want the land to be administered out of the range of options that exists, which include the freehold option. DLA has therefore opted to wield a heavy legislative directive on people by dictating what is most secure for them, but leaving them to progressively transform their tenure arrangements. However, it is clear that DLA’s definition of secure tenure is a continuum of technical options that have private ownership at the extreme end as the most desirable form. Shabane’s articulation of the notion of ‘dead assets’ in the form of land in rural areas, shows this thinking.

In some provinces more localized attempts have been made to establish working relationships between local government councilors and traditional leaders. In KwaZulu-Natal the Department of Local Government and Traditional Affairs has invested a lot of energy in what it calls establishing ‘synergistic partnerships’ between traditional leaders and government. Based on this work, the memorandums of agreement between councilors and traditional leadership are now being signed at pilot municipalities. The problem that made be envisaged and which continued to plague some traditional leaders is the overlap of municipal boundaries over certain traditional communities. Although demarcations of municipal boundaries was seen as based on some objective formulas, lack of consideration of traditional leadership jurisdiction shows a level of indecision about what was to become of traditional leadership as an earlier attitude of the democratic dispensation. This lack of boundary non-alignment continues while the processes of democratic alignment also continue. This has bearing of municipalities move to formulate land use management systems with sensible institutional arrangements for wall-to-wall municipalities.

### **3.8. Commission on Traditional Leadership Disputes and Claims (“Nhlapho Commission”<sup>2</sup>)**

The creation of the Commission on Traditional Leadership Disputes and Claims is done in section 25 of the Traditional Leadership Framework Act. The commission is charged with the responsibility to resolve application or claims that may be placed before it by any person who will support the application with relevant information on, acting on his/her behalf or on behalf of his/her community, on positions of traditional leadership and status of traditional communities. The Commission is meant to resolve claims with the period after the 1<sup>st</sup> of September 1927 being the main focus, with exceptional cases being possible to entertain for a period before this date. According to DPLG (interview:

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<sup>2</sup> At the time of this research Advocate Nhlapho had recently announced his resignation from the Commission. However the Commission is currently popularly known by his name.

12/2007), the work of the commission is quite complex considering the varied constructs, succession principles and different methods of colonial manipulation. It is part of the Commission specific mandate to also look at paramuncies in accordance with their description and recognition in Section 9 of the TLFA. The Commission is popularly known for that part of its work.

On the question of the Commission on Traditional Leadership Disputes and Claims, CONTRALESA revealed its hand in the making of the idea. According to Inkosi Phathekile Holomisa (interview 01/2008), CONTRALESA knows that traditional leaders were affected by the manipulative colonial government, and being aware of the sensitivity of the matter of possible illegitimate appointments to traditional leadership and colonially-engineered disputes, a neutral commission was proposed as the best way to deal with those issues. However, the Commission failed to define its role properly and the government failed to anticipate the volume of work this entailed. The Commission is thus seen to be failing both on defining its role and on operations. It failed to define its role because from the beginning it became too conscious of itself as a body emanating for government, to a point where it was unsure about whether or not to formally introduce itself to a body like CONTRALESA, lest it be seen colluding with one body of traditional leaders. Unfortunately, this led to its failure to enlist buy-in from traditional leaders on the principles of its work. CONTRALESA's view is that had the Commission met all stakeholders and engaged them on its looming work, the Commission would have been aware of the operational implications of its work. Inkosi Holomisa argued that CONTRALESA already knew that the method of operation was not matching with the huge amount of work that the Commission is to do.

In other traditional leadership circles the Commission is viewed with suspicion in terms of its neutrality. Its mandate was seen as good, but while it is resolving the traditional leadership issues its association with government was associated with the upper hand of government. At the least, government was placed at a structurally superior position to traditional leaders because historical facts may be less important than their fiscal implications, even before the former are known. The worst view on the Nhlapho

Commission from the point of view of some traditional leaders is that it is a set up by government to systematically eliminate traditional leaders by encouraging unrealistic aspirations to power in the traditional leadership sector.

As mentioned above Cousins was of the view that the Nhlapho commission could be an independent body facilitating local processes of dispute resolution. Claassens was critical of the approach adopted by the Commission as it tended to prioritize hierarchies, something which she considered as a creation of the colonial past in the first instance.

## 4. Conclusions

- 1) There are clear signs that after a long period of uncertainty on the approach towards traditional leadership, government is now adopting the view of organic democracy proponents. This makes government do slightly more than tolerate traditional leaders, which is better than the confusion of the last decade (1993 – 2002). Policies seem to indicate that government is seriously considering an integration of traditional leadership within the South African system of governance. However, this is at an early stage as there is still uncertainty as to whether government sees itself as having superior authority over traditional leaders or see traditional leadership as a parallel governance system. This is very clear in the way the mandate of the Commission on Traditional Leadership Claims and Dispute is framed and in the manner in which government positions itself in legislation such as the Communal Land Rights Act, the Municipal Systems Act and the Traditional Leadership Governance Framework Act and its provincial versions.
  
- 2) South African intellectuals are not in agreement about the relevance of traditional leadership in the South African political system. They are therefore generally ambiguous about traditional leadership core areas of operation and about their proposals on policy direction on traditional leadership. Within this generality there are those that are clear about the need to phase out traditional leadership from the South African political system and those who are adamant traditional leaders must be given administrative support and a flexible, mutually agreed, policy environment in which to work.
  
- 2) Traditional leaders are at a very early stage of establishing their own systems of analysis and negotiation of a range of social issues at a national scale and using the administrative bureaucratic support afforded by legislation. Whilst they are convinced that their role is critical in the South African political system and that they make real contribution at a local level, the Provincial and National levels

have been grappling with the question of their status and powers and not so much the question of operations and precise specification of their role. Traditional leaders need to make solid input as to whether specification of their role by government is desirable to them given the integrated functions that they currently perform.

- 3) The fact that the State apparatus has every element of work that traditional leaders once performed is used to argue for their invalidity in addition to the argument of them being an anomaly in a specifically-defined form of democratic system. Specific issues are raised about their powers in collecting revenue from rural citizenry, their role in local government, in addition to questions about the meaning of them dealing with customary issue and how that affects women in particular.
- 4) Whilst the question of integration of traditional leadership with the State political regime is crucial and its delay has caused tension both at national and local levels, the approach of government and civil society is not one of co-operative crafting of a solution but one of confrontation on technical issues around synergies between State legislation and a customary political system. This stand-off is somewhat predicated on denial about the historical nature of the problem coupled with insistence on synergized democratic logic (with democracy defined exclusively in terms of representativity, and open procedural routines). Area-based approaches and area-based systems of democratic practices are not only inconceivable at this stage, but they are seen as unnecessary because they do not 'add up' with the broad and generic political discourse.
- 5) Participatory mechanisms need to be reviewed as there is a feeling that communities and civil society organizations have not been sufficiently consulted and where they have taken initiative to respond to policy making processes by making submissions, these submissions are being ignored. However this view of the pragmatists can be enhanced. Given the current stand-off between the organic

democracy proponents and the democracy pragmatists and how this is evidently influencing schools of thought in government, it is important perhaps to employ a variety of methodologies in eliciting the perceptions on rural governance. Methods could include: consultation with communities on matters to do with traditional leadership policy, land management policy, and gender issues in rural governance. But it is also important to employ participatory methodologies and to invite input from Indigenous Knowledge in developing Integrated Development Plans and Land Use Management Plans. It is also important to devise research that is carefully designed not to see rural governance in isolation from land issues, poverty alleviation and socio-cultural values.

- 6) There is a need to come to a resolution about the legitimacy of investing in an indigenous system with the view to make it work for the communities concerned. Both because traditional leaders operate in communities that are largely poor and because that which is indigenous is often relegated to heritage, merely in its aesthetic sense, there seems to be hesitation in investing energy to develop a systematic linkage between a traditional leadership system and government. There is also a hesitation in developing a systematic funding and operational system that works for all provinces. The hesitation of legislation is fundamental to all the ambiguities experienced currently. The African Renaissance thus becomes informal political rhetoric of ceremonial occasions.
- 7) Coupled with an urgent need to be precise about the legitimate existence of traditional leadership as part of governance of rural areas in South Africa, there is also a need to specify government obligations in ensuring smooth operations of the house. This must be complemented by the Houses of Traditional Leadership developing their own systems of operation and accountability within the systems and between traditional leadership and government.
- 8) Municipalities need to formulate institutional arrangements to work with traditional leaders on land use management, integrated development planning and

other service delivery issues. Even the loose terms of ‘advising’, ‘being consulted’, and ‘influencing’ policy that are directed at the local level relationships must be systematized with real working institutional mechanisms.

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## References

Bentley, K.A. (2005) 'Are Powers of Traditional Leaders in South Africa Compatible with Women's Equal Rights?: Three Conceptual Arguments' in *Human Rights Review* pp 48-68

Cousins, B. & Claassens, A. (2004) 'Communal Land Rights, Democracy and Traditional Leaders in Post-Apartheid South Africa' in Munyaradzi, S. (ed) *Securing Land and Resource Rights in Africa: Pan-African Perspectives* PLAAS South Africa

Cousins, B. (2007) 'More Socially Embedded: The Distinctive Character of 'Communal Tenure' Regimes in South Africa and its Implications for Land Policy' in *Journal of Agrarian Change* Vol 7 No.3. pp181-315

De Jong (2006) "'He who pays the piper...'", the Anomaly of Custom, Local Government and Traditional Leadership' in *Anthropology Southern Africa* Vol 29 (1&2) pp 8-16

De Wet & Holbrook (1997) 'The Regionalization of the Household'

Hughes, D. T. (1969) 'Democracy in a Traditional Society: Two Hypotheses on Role' in *American Anthropologist*, Vol 71 No.1 pp36-45

Koelble, T. (2005) 'Democracy, Traditional Leadership and the International Economy in South Africa' CSSR Working Paper No.114

Mamdani, M. (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* South Africa David Phillip Publishers (Pty) Ltd

Oomen, B. (2005) *Chiefs in South Africa: Law, Power & Culture in the Post-Apartheid Era* Pietermaritzburg University of KwaZulu-Natal Press

Ntsebeza, L. (2006) *Democracy Compromised: Chiefs and the Politics of Land in South Africa* Cape Town HSRC Press

Provincial Planning and Development Commission – KwaZulu-Natal (2005) *Women in Development: Urban-Rural Linkages* South Africa

Ray, D.I. & Reddy P.S. (2003) *Grassroots Governance: Chiefs in Africa and the Afro-Caribbean* Calgary University of Calgary Press

Sithole, M.P. (2005) 'The Secular Basis of Traditional Leadership in KwaZulu-Natal' in *Alternation: Interdisciplinary Journal for the Study of the Arts and Humanities in Southern Africa* No.2 pp102-122

Sithole, M.P. (2006) 'Rebellion or Uprising? Reinterpreting Impi Yamakhanda' in Magwaza, T. Seleti, Y. & Sithole, M.P. *Freedom Sown in Blood: Memories of the Impi Yamakhanda* Thohoyandou Ditlou Publishers

Wimble, K. (2006) 'Leadership – A Critical Need in Rural South Africa' <http://www.thevalleytrust.org.za> 03/12/2007

The Presidency (RSA) (2003) *Towards a ten Year Review: Synthesis Report on the Implementation of Government Programmes* Policy Co-ordination and Advisory Services

RSA. Provincial Gazette. (1992) Act No. 11. *KwaZulu Land Affairs Act*. As amended by Proclamation No. R.63 of 1998 KwaZulu Land affairs Amendment Act No. 48 of 1998, and the Land Affairs General Amendment Act No. 11 of 2000. KwaZulu Natal Provincial Legislation

RSA. Government Gazette. (1994) Act No. 3. *KwaZulu Natal iNgonyama Trust Act*. As amended by the KZN iNgonyama Trust Amendment Act No. 9 of 1997, as well as the Communal Land Rights Act No. 11 of 2004

RSA. Government Gazette. (1996) Act No. 31. *Interim Protection of Informal Land Rights Act*. Pretoria: Office of the President

RSA. (1996) Communal Property Association Act No 28. The Office of the President.

RSA. (1996) The Constitution of the Republic of South Africa.

RSA. Government Gazette. (1997) Council of Traditional Leaders Act No. 10 of 1997.

RSA. Government Gazette. (1999). *Public Finance Management Act*. Act No. 1, As amended by the Public Finance Management Amendment Act No. 29 of 1999. Cape Town: Government Printers

RSA DPLG (2000) 'A Draft Discussion Document Towards a White paper on Traditional Leadership and Institutions'.

RSA DPLG (2000) 'A Draft Discussion Document Towards a White paper on Traditional Leadership and Institutions'.

RSA. Government Gazette. (2000) Act No. 32. *Local Government: Municipal Systems Act*. Cape Town: Government Printers

RSA. (2000) Government Gazette. Local Government: Municipal Structures Act No 32 of 2000. Cape Town: Government Printers

RSA. (2002) Communal Land Rights Act No. 861. Cape Town: The Presidency

DPLG. Government Gazette. (2002) Draft White Paper on Traditional Leadership and Governance. Pretoria: Government Printers

RSA. (2003) 'Towards a Ten Year Review: Synthesis Report on the Implementation of Government Programmes', Policy Co-ordination and Advisory Services. Pretoria: The Presidency

RSA. (2003) Traditional Leadership and Governance Framework Amendment Act of 2003 No. 1838. Government Gazette. Cape Town: The Presidency

RSA. (2005) Eastern Cape Traditional Leadership and Governance Act No 4 of 2005. Bisho: Provincial Government Printers. Eastern Cape Provincial Gazette

RSA. (2005) Limpopo Traditional Leadership and Institutions Act No. 6 of 2005. Limpopo Provincial Gazette

RSA. (2006) KwaZulu Natal Traditional Leadership and Governance Act of 2005, Act No. 5. KwaZulu Natal Provincial Gazette. Also available at [www.lawsoc.co.za/kznprovince/index.htm](http://www.lawsoc.co.za/kznprovince/index.htm)

## **Interviews**

1. Inkosi Bhekisisa F Bhengu. Chairperson of the eThekweni House of Traditional Leaders, 20<sup>th</sup> November 2007.
2. Mr Mdu Shabane, Deputy Director General of the Department of Land Affairs (DLA), 21<sup>st</sup> November 2007.
3. Professor Sobahle, Chief Director of the Department of Provincial and Local Government (DPLG), 3<sup>rd</sup> December 2007.
4. Kgosi PF Kutama. Chairman of the National House of Traditional Leaders, 3<sup>rd</sup> December 2007.
5. Professor S. Ghutto. Director of the Centre for African Renaissance Studies (CARS) at the University of South Africa (UNISA), 5<sup>th</sup> December 2007.
6. Professor Nic Olivier, University of Pretoria, 6<sup>th</sup> December 2007.
7. Professor Ben Cousins, Director of the Programme for Land and Agrarian Studies (PLAAS) at the University of the Western Cape, 17 January 2008.
8. Ms Aninka Claassens. Independent Researcher and Analyst on land reform, 17 January 2008.

9. Mr Bheki Nkosi, General Manager for Urban and rural Development, Department of Housing Local Government and Traditional Affairs, 24 January 2008.
10. Inkosi Mangosuthu Buthelezi (with EXCO House members), Chairman of the KwaZulu Natal Provincial House of Traditional Leaders, 30 January 2008.
11. Inkosi Phathekile Holomisa, National Chairman of the Congress of Traditional Leaders of South Africa (CONTRALESA), 1 February 2008.