

**INTERGOVERNMENTAL RELATIONS AND COOPERATIVE
ENVIRONMENTAL GOVERNANCE
IN KWAZULU-NATAL:
THE RURAL CONTEXT AND CHALLENGES**

BY

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ABSTRACT

After an extended period of apartheid and its inherent ills, the first democratic elections were finally held in 1994 in South Africa. Major changes in governance issues had to be effected in order to improve the well-being of millions of South Africans living in abject poverty. One of the major structural changes made by the democratic government with regards to governance was to introduce a three-sphere governmental structure comprised of national, provincial and local spheres. Through the system of intergovernmental relations and cooperative governance, powers and functions of the three spheres are defined as well as the inter-relationship between them.

Local government has been identified as the sphere closest to the people and therefore critical to service delivery. Over the last five years, local governance issues have been receiving increasing attention as it has been realized that in order for the government to improve human well-being, local governments have to be efficient and competent. However, there is an impasse within the sphere of local government which is posing a serious challenge to service delivery, especially in rural areas. This impasse is related to roles and responsibilities of traditional leadership vis-à-vis municipal councillors. This problem is more noticeable in the former homeland areas where considerable power used to be in the hands of traditional leaders during the apartheid era.

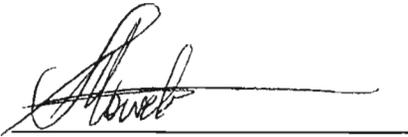
This study used case study evidence from the Department of Social Welfare and Population Development led poverty alleviation project, the Imbothimuni Flagship Programme, to investigate the role of Environmental Impact Assessment (EIA) as a catalyst for improving the state of intergovernmental relations and cooperative environmental governance. The project was implemented in the rural village of Imbothimuni at Mid-Illovo in KwaZulu-Natal. The findings of the study showed that there remains a lack of cooperation between traditional leadership and municipal councillors. The democratic government's initiatives to strengthen local

government and enhance service delivery are not realized where there are conflicts and ambivalence over who should exercise the leading role in rural development. A myriad of legislative provisions have been drafted to legitimize the institution of traditional leadership, but they still fail to provide a legislative framework within which traditional leaders and municipal officials can cooperate. As a result of this lack of cooperation, developmental imperatives continue to be compromised and environmental degradation persists. The in-depth analysis of the legislative provisions relevant to traditional leadership shows that the government has resolved to legitimize the institution, in spite of the controversial debate on this notion. What is needed as a matter of urgency is a succinct legislative framework within which traditional leaders and municipal councillors can operate without conflict. The study revealed that the role of EIA in bringing together stakeholders, including traditional leaders and municipal councillors, is invaluable. The study also revealed that there is an urgent need for environmental awareness campaigns aimed at municipal officials, grass roots communities and most importantly, the traditional leaders.

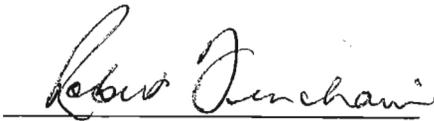
PREFACE

This mini-dissertation was carried out at the Center for Environment and Development, University of KwaZulu-Natal under the supervision of Prof. Robert Fincham (supervisor) and Ms Marita Thornhill (co-supervisor).

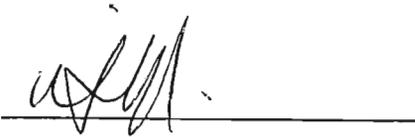
This mini-dissertation represents the original work of the author and has not otherwise been submitted in any form for any degree or diploma at any university. Where use has been made of the work of others it is duly acknowledged in the text.



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LIST OF ACRONYMS

ANC	African National Congress
CARA	Conservation of Agricultural Resources Act (Act No. 43 of 1983)
CG	Cooperative Governance
CME	Compliance Monitoring and Evaluation
CONTRALESA	Congress for Traditional Leaders of South Africa
DEAT	Department of Environmental Affairs and Tourism
DPLG	Department of Provincial and Local Government
DLGTA	Department of Local Government and Traditional Affairs
DSWPD	Department of Social Welfare and Population Development
ECA	Environment Conservation Act, Act 73 of 1989
ECMS	Environmental Compliance and Monitoring Section
EIA	Environmental Impact Assessment
EIP	Environmental Implementation Plan
EMP	Environmental Management Plan
IPT	Independent Projects Trust
IDP	Integrated Development Plan
IEM	Integrated Environmental Management
IFP	Inkatha Freedom Party
IGF	Inter-governmental Forum
IGR & CEG	Intergovernmental Relations and Cooperative Environmental Governance
KITA	KwaZulu Ingonyama Trust Act (Act 3 of 1994)
LGMS	Local Government Municipal Structures Act (Act No.117 of 1998)
LGMSA	Local Government Municipal Systems Act (Act No. 32 of 2000)
MHA	Maseko, Hlongwa & Associates
MLM	Mkhambathini Local Municipality
NEMA	National Environmental Management Act (Act No. 107 of 1998)
NFIGR	National Framework for Intergovernmental Relations
NP	National Party

PGDS	Provincial Growth and Development Strategy
PRC	Presidential Review Commission
RDP	Reconstruction and Development Programme, A policy Framework , 1994
RDS	Rural Development Strategy
SACA	South African Constitution Act of 1909
TLGFA	Traditional Leadership and Governance Framework Amendment Act 2003
WPLG	White Paper on Local Government, March 1998
WPTLG	White Paper on Traditional Leadership and Governance, July 2003

CHAPTER 1

INTRODUCTION

The democratic dispensation ushered in by the first democratic elections held in 1994 in South Africa marked an end to an extended period of racial discrimination and oppression of African people. The new government was faced with an extremely complex task of uprooting the well orchestrated system of apartheid and introducing a new government order which would make certain that every citizen has access to all necessary services on an equitable basis. In order to do so it became imperative for the new government to endeavour to remove traces of the old government system that sought to undermine certain population groups whilst giving priority to others, directly or indirectly.

One of the major structural changes made by the democratic government with regards to governance was to introduce a three-sphere government structure comprised of national, provincial and local spheres. One could argue that a system like this was already in existence long before democracy, however the new structure differs from the previous especially with regards to devolution of powers. Through the system of intergovernmental relations (IGR) and cooperative governance (CG), powers and functions of the three spheres are defined as well as the inter-relationship between them. Each sphere exists in its own right, and it is the final decision-maker on a defined range of functions and is accountable to its constituency for those decisions (RSA 1998a). On the other hand, as it will be explained in the next chapter, before 1994 power was not equally distributed amongst the different spheres of government. The local government tier was entirely dependent on the provincial and central government and it had very limited powers over a number of governance issues.

Within the local sphere exists an institution of traditional leadership, which for some time has not received sufficient attention in terms of explicitly defining what

its role should be in the democratic South Africa. Traditional leadership continues to exist alongside democratically elected local government officials in the form of municipal councillors. This scenario has led to a bitter conflict between traditional leadership and elected officials and, on various occasions, threatened violence. For example, in the run up to the second democratic local government elections in December 2000, traditional leaders demanded that municipalities be scrapped in the former Bantustans in favour of traditional authorities as the primary local government structure. To achieve this, the government would have had to amend the Local Government Municipal Structures Act (Act 32 of 2000) (LGMS), which provides information regarding the representation of traditional leaders in local government. In response to this demand, the government presented a Bill to amend the Municipal Systems Act (MSA). However, the Bill failed to address the central demand of traditional authorities as it was silent on the issue of scrapping municipalities in rural areas. As a result, the Bill was rejected by traditional authorities and in addition, they threatened that there would be violence in their areas if their demands were not met (Ntsebeza, 2004c).

In the former Bantustans, KwaZulu in particular, the conflict is further fuelled by the bitter past shared by the two major political parties, the Inkatha Freedom Party (IFP) and the African National Congress (ANC). History has dictated that most of the traditional leaders are aligned with the IFP and the municipal councillors with the ANC. The government has, to a certain extent, endeavoured to resolve this conflict through legislative measures. These include the Constitution of the Republic of South Africa, Act 108 of 1996, hereafter referred to as the Constitution; The White Paper on Local Government, March 1998 (WPLG); The White Paper on Traditional Leadership and Governance, July 2003 (WPTLG), and the Traditional Leadership and Governance Framework Act, Act No. 41 of 2003 (TLGFA). However, all these pieces of legislation have not managed to bring absolute clarity with regards to the roles of traditional leaders and elected councillors operating in the same area of jurisdiction. In this

dissertation it will be argued that as a result of this ambivalence around the issue of traditional leadership, development and environmental management imperatives have been seriously compromised.

1.1 Problem Statement

With the ushering in of the democratic dispensation as mentioned above, local governments were to play a pivotal role in service delivery. Given the historical background and the unhealthy relationship that existed between the IFP and the ANC this was to be a challenge for the new government from the onset. The existence of the democratic local government structures side by side with traditional authorities especially in rural areas, where the IFP draws its large constituencies, brings a myriad of complications and challenges which tend to cripple government's initiatives with regards to the environment and development. Some development projects initiated by the ANC-led government have not been welcomed or supported by the IFP-aligned leaders and this has led to their failure (*Pers. obs*). In some instances it remains unclear as to how the flow of information and resources from the national and provincial spheres to local government should be.

Whilst the roles and responsibilities for the elected local government officials are clearly defined in terms of the LGMS and the Municipal Systems Act (Act No. 32 of 2000) (LGMSA), there are no clearly defined roles and lines of accountability for traditional authorities. The ANC originally took the position that traditional authorities would undermine democracy and that elected local government should be extended to rural areas. (ANC 1994). The Constitution also does not give clarity about the role of traditional authorities. In one chapter it gives them an *ex officio* status whilst in another it states that local government must be democratically elected (RSA 1996). Despite the provisions of the LGMS that allow for their participation in council meetings, traditional authorities are still in conflict with municipal councillors about who legitimately represents rural people and which structures are responsible for their well-being. Until some local

accommodation is reached and the current tensions replaced with co-operation, it is unlikely that local government will be able to deliver on rural development (Ismail, 2003).

It is assumed for the purposes of this dissertation that there is a huge backlog with regards to development as well as persistent environmental degradation in rural areas. These challenges can be linked directly to problems relating to intergovernmental relations and cooperative governance, in particular the complications and lack of cooperation between the democratic local government structures and traditional authorities at local level.

1.2 Aim

The research aim is to explore the challenges of establishing successful intergovernmental relations and cooperative environmental governance (IGR and CEG) as well as to assess the potential impact of these challenges on the environment and development in the province of KwaZulu-Natal, with particular reference to the local government sphere in rural areas.

1.3 Objectives

Specific to this study, the objectives are:

1. To explore the challenges related to IGR and CEG in the rural areas of Kwa-Zulu Natal within the historical and political contexts;
2. To investigate the government's stance on the issue of traditional leadership in the democratic South Africa by reviewing relevant legislation and policies as well as the literature on current debates on this issue; and
3. Make recommendations on measures to resolve conflicts relating to IGR and CEG with the aim of accelerating development and preventing environmental degradation.

1.4 Research Questions

The study aims to answer the following questions:

1. What are the challenges of establishing successful IGR and CEG in the local sphere of government in the rural areas of KwaZulu-Natal?
2. What policies and legislation are there in place to guide IGR and CEG and local governance in the rural areas of KwaZulu-Natal?
3. What proposals / recommendations can be made to improve IGR and CEG in order to promote sustainable development and environmental protection in the rural areas of Kwa-Zulu Natal?

1.5 Structure of the Dissertation

Subsequent chapters in the study will be structured in the following manner:

Chapter 2

The historical and legislative account of the intergovernmental relations and cooperative governance will be explored. Specifically, governance in the pre-1994 as well as in the post-apartheid dispensation will be described. The environmental aspect of the study will be introduced by explaining the concept of cooperative environmental governance.

Chapter 3

This chapter will broadly discuss the issue of traditional leadership and democracy within both national and international contexts. Thereafter, arguments for and against the continued existence of traditional leadership in the democratic South Africa will be weighed. The chapter will close by expounding on the two proposed contrasting approaches / solutions to the impasse of traditional leadership and democracy.

Chapter 4

Chapter 4 will provide a longitudinal account of the government's response to the issue of traditional leadership. Of particular importance will be the question of roles and responsibilities of both the traditional leaders as well as the municipal councillors in development and environmental issues. This will be done by evaluating the selected pieces of legislation that are specifically designed to expound on this issue.

Chapter 5

This chapter will discuss the issues of local government and traditional leadership in the rural context of the KwaZulu-Natal province. The history of the institution of traditional leadership and how it has changed with the impact of colonization and apartheid will be considered. This will be followed by a brief account of the present state of local government in the rural KwaZulu-Natal. Lastly, a brief review of KwaZulu-Natal specific legislative provisions around the issue of traditional leadership will be provided

Chapter 6

This chapter will describe and justify the methods used to set the historical context of intergovernmental relations and cooperative environment governance. Data collection methods for this study will be identified and justified. This will be followed by a brief description of the case study.

Chapter 7

In this chapter key research findings will be presented. These will be divided into four subsections namely: local government and development, provincial government departments, environmental awareness and political influences.

Chapter 8

In this chapter key research findings will be analyzed and discussed.

Chapter 9

Recommendations on how to address challenges identified by the study will be tabled. This will be followed by a conclusion.

CHAPTER 2

INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNANCE: The Historical and Legislative Context

The notion of intergovernmental relations and cooperative governance has over the past twenty years become an integral part of the South African constitutional, political and administrative theory and practice (de Villiers, 1997). In terms of Chapter 3 of the Constitution, government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated. All spheres of government must observe and adhere to the principles of cooperative governance and intergovernmental relations (RSA 1996). In this chapter a brief historical and legislative account of intergovernmental relations and cooperative governance is provided.

An analysis of governance in the pre-1994 era as well as in the post apartheid era is underlined. Specific reference is made to the rural context of KwaZulu-Natal, an area of focus for this study. Thereafter, the notion of intergovernmental relations and cooperative governance as enshrined in the Constitution is explained. This is followed by an explanation of the concept of cooperative environmental governance. Finally, a brief account of the Environmental Impact Assessment (EIA) process is provided. This has been considered crucial as the study will make use of an EIA project to demonstrate how an EIA can be used as a tool to improve intergovernmental relations and cooperative environmental governance.

2.1 Governance in the Pre-1994 Era

The system of government used in the two British colonies of the Cape and Natal in the 19th century was based on the Westminster model, comprising of central and local government under a governor appointed by the British government in London. The Boer Republics of the Transvaal and the Orange Free State

comprised unitary states with less structured forms of local government (Green 1957 in Levy and Tapscott, 2001). When the South African Constitution Act of 1909 (SACA) came into effect in 1910, the Boer Republics and the British colonies were united into one sovereign state. This Act set in motion a series of legislation that effectively excluded Blacks from the legislative process and culminated in the racial separatism of apartheid. Prior to this, 'the Act of Westminster of 1909 had already institutionalized, for all purposes, a system of white political domination, and effectively disenfranchised blacks in South Africa' (Terreblanche 2002:247). With regards to government structure, the SACA introduced a shift away from the two-tiered Westminster system and interposed a tier of provincial government between national and local government (Levy and Tapscott 2001). Although a three-tier government existed, intergovernmental relations were very poor and full of conflicts especially between the provincial and local spheres.

Provincial powers were limited in that no ordinance passed by provincial council would be of any effect before it received the assent of the Union cabinet (Boulle, Harris and Hoexter 1989). The provincial administrators were appointed by the State President and since 'he was a political figure and had to see to it that the political policy of the government of the day was implemented in his province, it usually followed that he was of the same political party as the members of the government' (Basson and Viljoen 1988:286). As a result, tensions between central and provincial government were minimal.

On the other hand, the relationship between provincial and local government was problematic. This was due to the fact that the local government had very limited powers over a number of governance issues. The local government tier was entirely dependent on the provincial and central government. 'Local government consisted merely of local authorities entrusted to Provincial Councils to administer' (Meyer 1997:10). Operating under an *ultra vires* doctrine, local authorities had no original powers and were prohibited from carrying out any

activity that was not specifically defined by central or provincial government (Den van Winsen *et al* in Levy and Tapscott 2001).

Furthermore, Municipal councils were largely dominated by individuals who were opposed to the government system. To entrench its apartheid policies the central government further proscribed local responsibilities and de-concentrated its own authority through regional offices. As a result, local government was rendered even more powerless and was perceived by public as a service agency rather than a tier of government. This was reflected in the extremely low participation in what was supposed to be grassroots democracy. In the ten self-governing Black homelands, one being KwaZulu, the situation was even bleaker. Although formally there was a division into central, regional and local tiers of government all political and administrative powers were vested and exercised in the centre. The structure of intergovernmental relations was poorly defined and in the closing stages of apartheid these relations were characterized by autocratic central rule, increasing administrative inefficiency, growing corruption and minimal popular legitimacy (Levy and Tapscott 2001).

2.2 Governance in the Post Apartheid Era: The New Structure

With the demise of apartheid and the advent of democracy in 1994 a myriad of changes had to be effected in the government system. The crucial goal for these changes was to redress the ills of the past by ensuring that the previously marginalized masses would be empowered. All the deep-rooted evils that had been well orchestrated by the previous government system had to be eradicated and a new order ushered in. Indeed, this was to be extremely difficult.

As indicated in the previous section the structure of intergovernmental relations in the apartheid era had been designed in a way that it could serve to entrench apartheid, divide (in the name of culture and ethnicity) and rule, and grant excessive power to the state. Grassroots development and democracy were non-existent. Against this backdrop, the new government, through the

Constitution, specified the configuration of the state and stipulated that there be national, provincial and local spheres of government and that these be distinctive, interdependent and interrelated (RSA 1996). The decision to describe the different levels of government as 'spheres' rather than 'tiers' was a conscious attempt to move away from the notion of a hierarchy with all the connotations of subordination (Levy and Tapscott 2001).

The National Framework for Intergovernmental Relations (undated) describes South Africa as a unitary state with limited decentralized characteristics (RSA undated). Whilst it was imperative for the new government to decentralize power and resources, some caution had to be exercised to ensure that the central government retains some control over regional and local matters. There was 'fear that the devolution of too much power to the provinces could lead to a situation where the national government's efforts to overcome the legacy of apartheid and to build a new national identity would be thwarted by political intransigence at lower levels' (Levy and Tapscott 2001:5). Indeed these fears were confirmed when in the Western Cape Province, the ruling National Party (NP) attempted to manipulate municipal boundaries to exclude Black communities and in KwaZulu-Natal, where the IFP government initially expressed its intention to establish a Zulu Kingdom (Levy and Tapscott 2001). Diamond (1999) concurs with the notion of limited decentralization when he argues that in a democracy, the vertical checks on abuse of power afforded by decentralization must be reciprocal. Only if political power over certain issues and government functions is devolved to lower levels of authority that are democratically elected can government be truly responsive, representative and accountable .

2.3 Intergovernmental Relations and Cooperative Governance

The principles of intergovernmental relations and cooperative governance are established in Section 41 of the Constitution. The Constitution requires all spheres of government and all organs of state within each sphere to exercise powers and perform functions in a manner that does not encroach on the

geographical, functional or institutional integrity of government in another sphere; and cooperate with one another in mutual trust and good faith by:

- fostering friendly relations;
- assisting and supporting one another;
- informing one another of, and consulting one another on matters of common interest;
- co-ordinating their actions and legislation with one another;
- adhering to agreed procedures; and
- avoiding legal proceeding against one another. (RSA 1996:25,26)

Of importance in this regard is the fact that the Constitution requires cooperative governance and intergovernmental relations not only between the spheres of government but also within each sphere. In Section 239 of the Constitution an organ of state is defined as 'any functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation' (RSA 1996:132). Traditional leaders are granted recognition and their roles vaguely stipulated in Section 211 of the Constitution. Furthermore, the WPLG defines intergovernmental relations as 'a set of formal and informal processes as well as institutional arrangements and structures for bilateral and multilateral cooperation within and between the three spheres of government' (RSA 1998d: 38). In this definition, again, intergovernmental relations are defined to include cooperation 'within' the spheres of government.

With regards to environment-specific issues the legal framework provided by the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) is critical. Section 2 outlines principles that must guide decision making and activities of all organs of state that may significantly affect the environment. Of particular importance here is principle 4(l) which states that there must be intergovernmental co-ordination and harmonization of policies, legislation and

actions relating to the environment (RSA 1998c). This co-ordination is crucial in achieving cooperative environmental governance. Chapter 3 provides for the establishment of environmental implementation plans (EIP's) and environmental management plans (EMP's), as instruments that can be used to improve cooperative environmental governance. Through the EIP's and EMP's organs of state whose activities have the potential to negatively impact on the environment are supposed to identify these activities and put in place measures to prevent, mitigate and monitor these impacts. This is done to ensure that development takes place in a sustainable manner. Section 11 (1) mentions that every province must prepare the EIP as a framework for the implementation of cooperative environmental governance in the province (RSA 1998c). The EIP publication, Notice 862 in the Provincial Gazette of KwaZulu-Natal, July 2004 acknowledges that traditional leadership is an institution recognized by the Constitution at local government level (KZN 2004). It is acknowledged that traditional leaders have an important role to play in land allocation and management in terms of the KwaZulu Ingonyama Trust Act of 1994 and the KwaZulu AmaKhosi and Iziphakanyiswa Act (No. 9 of 1990). In this regard, traditional leadership is one of the organs of state whose activities have the potential to harm the environment and as such the EIP process can not afford to exclude them.

Traditional leadership is one of the institutions operating mainly within the local sphere of government, and recognized by the Constitution. Owing to the extracts from the Constitution and the WPLG above, it can be concluded that other spheres of government as well as other organs of state are legally required to cooperate and maintain good relations with this institution. This study focuses on the relations between traditional authorities and municipal councillors who both fall within the local sphere of government and are required by legislation to cooperate.

2.4 Cooperative Environmental Governance

Having expounded on the concept of intergovernmental relations in general, the definition of the term 'cooperative environmental governance' as it relates to this study remains pertinent and will be discussed. Sustainable development requires the integration of social, economic and environmental factors in planning, implementation and evaluation of decisions to ensure that development serves present and future generations. Sustainable development implementation is a concurrent functional area of national, provincial and local legislative competence, therefore it is imperative that all spheres of government and all organs of state must cooperate with, consult and support one another (RSA:1996). The definition of intergovernmental relations and cooperative governance taken from the WPLG can also be adopted for cooperative environmental governance except that the effective institutional arrangements referred to in the definition are specifically meant to address environmental matters ((RSA 1998d). These matters include coordination of decision-making processes, and the establishment of mechanisms and processes to ensure effective public participation in environmental governance (Thornhill *et al*, 2002). The following illustration explains the co –relationship that is required between and within the spheres of government with regards to environmental governance:

Parliament was responsible for the promulgation of the National Environmental Management Act, (Act No. 107 of 1998) (NEMA) in order for it to become a binding law. DEAT is responsible for the enforcing of NEMA and also for the administration of various aspects of the Act. Other organs of state, including the municipalities must exercise powers and perform duties under NEMA. For example, officials must apply the NEMA principles in environmental decision-making (land-use applications) and are under duty of care not to cause harm to the environment (DEAT 2003:3).

Du Plessis (2004) argues that the new government dispensation inherited a fragmented bureaucracy, which divided government departments amongst different environmental media (water, soil, environment, minerals etc). He believes that the fragmentation of departments dealing with different elements of the environment resulted in fragmented application of environmental policies and legislation. Even ten years into the new dispensation these departments are still struggling to rid themselves of past practices of non-cooperation and turf wars (Du Plessis 2003). Against this backdrop and for environmental sustainability reasons, cooperative environmental governance is obligatory.

The overall purpose of NEMA is to 'provide for cooperative environmental governance by establishing principles for decision-making matters affecting the environment as well as the institutions that will promote cooperative governance' (NEMA, 1998c:2). 'Without this cooperation, there can be an exercise of powers in a manner that encroaches on the geographical, functional or institutional integrity of another sphere of government, lack of sharing of information, duplication of functions, poor accountability and lack of coherence amongst and within government spheres' (DEAT, 2003:3).

2.5 Environmental Impact Assessment (EIA)

In order to integrate environmental concerns to every developmental plan the South African government has made EIA mandatory. With the enactment of the Environment Conservation Act, Act 73 of 1989, a provision was made to determine environmental policy to guide decision-making and to prepare environmental impact reports (Sowman *et al*, 1995 in DEAT 2004). The publication of the document Integrated Environmental Management (IEM) in South Africa by the Council for the Environment in 1989 marked the introduction of the IEM in the field of environmental management. In 1997 the government gazetted the regulations enforcing EIA, in terms of the Environment Conservation Act, Act 73 of 1989. Through the EIA process all Interested and Affected Parties (IAP's) and relevant authorities have an opportunity to submit comments

regarding any proposed development. This is in line with Principle (4) (f) of NEMA which states that, 'the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation' (RSA 1998:12). Worth noting here is the fact that all people, including traditional leaders have a right to comment about any development activity that might affect them positively or negatively. What could be a point of contention in this regard is whether traditional leaders should be regarded as one of the authorities or just an ordinary interested and affected party. However, whatever the case may be, in terms of the above mentioned NEMA principle traditional leaders need to be provided with skills and capacity necessary for achieving meaningful and effective participation.

Conclusion

In this chapter the concept of intergovernmental relations and cooperative governance within a South African legislative and historical context has been provided. This has been achieved by underlining an analysis of governance in the pre-1994 era as well as in the post-apartheid era. This analysis has revealed that the government structure in the pre-1994 era was designed in such a way that power was concentrated in the hands of the white people whilst the majority of the non-whites were deliberately left out. When the democratic government took over in 1994 it became imperative for it to establish a new political order based on non-racial principles. Equally important was the restructuring of government in such a way that the three spheres enjoyed more autonomy over their areas of jurisdiction. In order to do this, a legal framework for intergovernmental relations and cooperative governance between and within the three government spheres was established in the Constitution. The concept of cooperative environmental governance in terms of the NEMA was also explained as well as the EIA process. This chapter has revealed that the institution of traditional leadership is recognized by the Constitution, although their duties are

not spelt out in explicit terms. Cooperation between the organs of state within the local sphere is a legislative requirement. This includes cooperation between municipal councillors and traditional leaders. Most importantly, under the NEMA, traditional leaders have responsibilities towards the environment as their activities, particularly the allocation of land, have the potential to either promote or cause harm to the environment.

CHAPTER 3

TRADITIONAL LEADERSHIP IN THE DEMOCRATIC SOUTH AFRICA

In the previous chapter the notion of intergovernmental relations and cooperative governance within a historical context was explained. It was also highlighted that the presence of the elected councillors alongside the traditional leadership is problematic and it poses a serious threat to environmental management and development in rural areas. In this chapter the issue of traditional leadership within the democratic South African context will be explored by considering two broad perspectives to this issue, the one in support of and the other against this form of leadership. Prior to that, it will be critical to review the democratic government's stance regarding traditional leadership. In this regard, the Reconstruction and Development Programme Policy Framework (RDP) will be scrutinized. The RDP is defined as 'an integrated, coherent socio-economic policy framework which seeks to mobilize all people and the country's resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future' (ANC, 1994:1). For the purpose of this study focus will be on how the government planned to deal with the issue of traditional leadership versus the democratically elected councillors / officials in order to achieve what the RDP was meant to achieve and as depicted in the above definition.

3.1 The Reconstruction and Development Programme: A Policy Framework

It is worth noting that at the dawn of the democratic era the new government had adopted a radical stance against the institution of traditional leadership. One of the first and profound policies to be enacted by the new government towards the final eradication of apartheid, with all its inherent ills, was the RDP policy framework. Section 5.12.5 of this policy explicitly states:

Elected local government, with responsibility for the delivery of services, should be extended to rural areas, including traditional authority areas; rural district councils that incorporate a number of primary local councils must have a key role in rural local government (ANC, 1994:129).

The policy acknowledges that local government is of critical importance to the RDP and therefore it should be structured on a democratic, non-racial and non-sexist basis (ANC 1994). The three attributes for the local government as proposed by the RDP policy are significantly incompatible with the institution of traditional leadership especially 'democratic' and 'non-sexist'.

With regards to the environment Section 2.10.4 states thus:

Development strategies must incorporate environmental consequences in the course of planning. Measures such as land reform, provision of basic infrastructure, housing and targeted rural assistance (including extension services), and the maintenance of food security should ultimately reduce pressure on the natural environment (ANC 1994:39).

It is apparent that at this stage the government had adopted an unequivocal stand on the issue of traditional leadership and environmental management. Although no further clarity was provided at this stage as to what would happen to traditional leadership, it can be concluded that the institution would not be easily tolerated, given that for decades it had been associated with apartheid, autocracy and sexism.

3.2 Perspectives on Traditional Leadership

There are two major standpoints regarding the issue of traditional authorities. On one hand there are those who are convinced that traditional authorities have been with Africans since time immemorial. They argue that the institution of traditional leadership is one of the characteristics that define African societies. In

the context of South Africa, they maintain that there is no need whatsoever to regard or perceive traditional authorities to be in contradiction with the new democratic order. Proponents of this standpoint include politicians, researchers, community members and traditional leaders themselves.

On the other hand, there is a group who strongly feel that traditional leadership and the democratic order are totally incompatible. Their argument is that the mere fact that traditional authorities are not elected renders them undemocratic and unaccountable. They are of the opinion that traditional authorities were instrumental in perpetuating the legacy of apartheid in South Africa by collaborating with the past government (Sparks:2004). They also argue that since traditional authorities are not elected it is almost impossible to hold them accountable or to dismiss them in the event of non-performance. The traditional leader remains in power for as long as they are physically fit to do so, irrespective of whether they are productive or not. In their view, meaningful development and improved well being can never be achieved whilst governance is in the hands of traditional leaders (Sekhukhuneland ad hoc Committee on Land: 2003).

In this chapter the two points of view mentioned above will be explored. Thereafter, the two approaches that can be adopted in resolving the issue of traditional authorities and democracy will be elucidated.

3.2.1 A Pro-Traditional Authority Perspective

The main proponents of this stance are the traditional leaders. They have been quite vocal and unequivocal in support of their opinions. The gist of their argument is precisely captured in the following statement articulated by INkosi Mwel0 Nonkonyana whilst presenting a paper at the National Summit on Rural Local Government in Johannesburg, 1995:

We firmly believe that from time immemorial the traditional rule was the most democratic rule in Africa which was and is still characterized by its transparency and accountability to the community... In rural areas the supreme governing body was and is still a gathering of all the members of the community in a forum known as 'imbizo' or 'kgotla'. In those gatherings the members of the communities discuss all matters pertaining to their affairs under the chairpersonship of 'iNkosi' or 'Morena' i.e. a traditional leader. A traditional leader does not deliberate, he allows the people to discuss freely... After all the people have deliberated and come to a resolution a traditional leader would stand up and pronounce the resolutions adopted by the people (Nonkonyana 1995:3).

Other prominent supporters of traditional leadership include iNkosi Phathekile Holomosa, the leader of the Congress of Traditional Leaders of South Africa and iNkosi Mpiyezintombi Mzimela the leader of the National House of Traditional Leaders. They argue that traditional leadership existed long before colonialism. However, with the settlement of the Whites in South Africa the whole order was disturbed. The colonial administrators variously sought to manipulate, demean, exile, jail and/or kill this country's traditional leaders as they saw them as a stumbling block in their path to exerting hegemony over the land and its people (Holomisa 2004). Holomisa goes on to assert that 'the British would not even allow traditional leaders to be referred to by their proper titles such as king, prince, counts and so on, as such titles were the reserves of whites and the aristocracy of the English in Europe' (Holomisa 2004:1). Instead titles such as chiefs, paramount chiefs and headmen were introduced. It is further argued that the Afrikaners, successors to the British colonial administrators continued, 'to seek to denigrate traditional leaders in the eyes of their people. Under the pretext of restoring their dignity and powers, they set up the Bantustans with the underlying government structure set around traditional leaders. Those who refused to comply were once again deposed, demoted, jailed, exiled or killed. They were substituted with pretenders who were prepared to tow the line' (Holomisa 2004:1).

There seems to be some concurrence between the supporters and the opponents of traditional leadership on the issue of traditional leadership being used by the apartheid government to proliferate their system as iNkosi Nonkonyana admits '.....and in the course of that, the regime used some of us as the vehicle to propagate its obnoxious policies' (Nonkonyana, 1995:4). INkosi Holomisa also states that 'for considerations of survival and the need to provide leadership to their people even in conditions of adversity, the great majority of traditional leaders chose to remain with their people by agreeing to work under the apartheid government' (Holomisa 2004:1). In this statement Holomisa provides some justification for what seems to be the worst form of betrayal in the eyes of those who advocate for the complete removal of the system of traditional leadership in the new democratic era.

The proponents of traditional leadership do warn against blanket statements that are often uttered with regards to traditional authorities. In a conference held in Durban in October 2004, iNkosi Holomisa cautioned; 'Judgement of the institution of traditional leadership should not be based on the actions of the few who happened to act as political leaders and functionaries of the system' (Holomisa 2004:2). He argues that there are traditional leaders who took part in the liberation movement and as a result suffered persecution from the government. These include leaders such as King Sabatha Dalindyebo, who died in exile having run away from prosecution by his junior cousin Kaizer Matanzima, as well as iNkosi Albert Luthuli who lost his position as traditional leader when the government persecuted him (Holomisa, 2004). Over and above, the following are some general views held by the proponents of traditional leadership regarding the nature of governance provided by traditional leaders:

- *Traditional leaders are transparent, democratic and accountable to their communities. Rural communities should be enjoying the benefits of elected and traditional leaders and the government should have, from the very beginning, promoted the legitimacy of both forms of leadership;*

- *Regardless of what the law may say, tribal land belongs to the tribe and its traditional leaders in an inextricable way. Trying to separate the two might lead to violent conflict; and*
- *Traditional Leaders are indispensable to successful rural development. As cultural symbols of the people and “owners” of land they can advance or hamper development depending on how one deal* (Nonkonyana 1995 and Holomosa 2004).

3.2.2 The Anti-Traditional Leadership Perspective

The proponents of this viewpoint strongly feel that the institution of traditional leadership can never be compatible with the principles of democracy. Several reasons are put forward in support of this position, the most important is that traditional leaders are not elected but they get into positions because of heredity. It is strongly disputed that traditional leadership is based on pre-colonial African institutions and therefore has to be retained to maintain peace and stability. The prominent opponents of traditional leadership in the democratic South Africa, dispute the notion that traditional leadership is part of the pre-colonial African regime. Ntsebeza (2004c) argues that despite claims by the apartheid architects that this form of rule was based on pre-colonial African institutions, the reality is that the institution of traditional leadership, in the form of apartheid created Tribal Authorities, was incorporated into the structures of government as an extended arm. He further argues that traditional authorities were created by the architects of apartheid to be highly authoritarian and despotic, as a result they were discredited, hated and feared. Sparks (2004) also question the view that for time immemorial traditional leaders served as guardians and custodians of their people’s land and freedom (Holomisa: 2004). He asserts ‘the colonial regime took over the network of traditional leaders to use as tools for imposing a system of indirect rule and subjugation of the tribes and this perverted the ancient system and stripped the chiefs of the traditional basis of their legitimacy’. On the claim that traditional authorities played an important role in development among their communities, there also seems to be discontent.. According to Ntsebeza (2003)

no evidence is adduced to support this statement, instead existing evidence shows that traditional authorities were never directly involved in development projects. These projects were implemented by government line-departments. Where traditional authorities acted as a link between government departments and their communities, research has shown that they have been corrupt. Even if the traditional authorities may choose to democratize by promoting local participation, the fact that they are hereditary limits the possibility of rural residents to elect or reject them, as they deem necessary (Ntsebeza 2003).

Adding to this argument, Terreblanche (2002) states that successive white governments succeeded in diffusing African radicalism until the 1970's through indirect rule in the 'native reserves' and with the co-operation of chiefs who collaborated with them. For these reasons, the institution of traditional leadership cannot be compatible with the principles of democracy. In response to iNkosi Holomisa's assertion that traditional leaders have served from time immemorial as the guardians and custodians of their people's land and freedom, Sparks (2004) echoed, 'well they may have been so during the wars of resistance against colonial settlement in the 19th century, but in modern times, the great majority of traditional leaders, with the exception on the few honourable exceptions, were servants of the apartheid system' (Sparks, 2004:1). Evans (1997) contends that the main function of traditional authorities under the apartheid government was to contain and discipline the reserve army of African labour. 'Those Africans prevented by law from departing to the urban areas, the "idle or disorderly" evicted from the urban areas, and the "excess labour" skimmed off the white farming areas' (Evans 1997: 260 in Ntsebeza 2004c).

Beall *et al*, 2004 argue that during the colonial period in Natal the secretary for the Native Affairs, Sir Theophilus Shepstone introduced a system whereby both appointed and hereditary chiefs became agents of the colonial government and totally dependent on it for resources. They conclude that colonialism changed the nature of traditional leadership in the territory of the present day KwaZulu-Natal.

In his book, *The Peasants Revolt*, Govan Mbeki points out that traditional leaders served the apartheid government as “baas boys” and tried and convicted in “bush courts” those who fell foul of the regime’s regulations (Mbeki 1984)

Another point put forward in argument against traditional leadership is that this institution was part of the system orchestrated to divide and rule the Africans. This was done by dividing Africans along the line of ethnicity and then by dividing between rural and urban, an order which has persisted to date. Describing the situation in KwaZulu, Mare and Hamilton (1987) argue that Inkosi Buthelezi cleverly adopted a ‘loyal resistance’ strategy. They argue that Buthelezi combined the resources in his office, his power and an appropriation of many of the symbols of Zulu culture to challenge the supremacy of the ANC at the national level. He also mounted a serious struggle for control of Natal and KwaZulu at the regional level. Mare and Hamilton (1987) argue that Buthelezi was able to do this because of his support base among KwaZulu Amakhosi and Izinduna who both bought into and gave credence to his use of Zulu ethnic identity for political purposes. Mamdani (1996) contends that the African was ‘containerized’ not as a native or indigenous African, but as a ‘tribespersion’. He believes that this was done by colonialists in order to enforce their dual policy of ethnic pluralism and urban-rural division.

The institution of traditional leadership was not instrumental in orchestrating ethnic divisions, but it also divided people along gender and racial lines. Only ‘black’ (usually) men belonging to a particular ethnic group could be considered for chieftainship. According to Bekker 1993 and Moloka 1996 this had a potential to fuel racial, ethnic and gender divisions given the violent history of KwaZulu-Natal.

The role of traditional leaders on issues related to land and women is also problematic. Because of their ties with the colonial and apartheid government, traditional leaders were instrumental in dispossessing black people of their land.

Some issues related to traditional leaders and land are highlighted in the comments submitted by the Sekhukhuneland Ad Hoc Committee to the Provincial Portfolio Committee on Agriculture and Land Affairs on the Communal Land Rights Bill. The committee contends that historically, chiefs have not been fair and accountable to communities and therefore they can not be relied on to deliver land rights to the rural poor. It is argued that rural people still 'buy' land from chiefs; in return people receive receipts which are not recognised as guarantee of ownership. In some cases land is allocated to 'outsiders' without proper consultation with the community. Commenting specifically on women issues related to land, the committee argues that under traditional leadership women, in particular unmarried women have no rights to land. Residential and/or ploughing land is only allocated to women over the age of forty years who have children (Sekhukhuneland ad hoc Committee on Land: 2003)

Bank and Southall (1996) add to the argument by pointing out that there is a conflict between the patriarchal values of traditional leadership and gender equality that is entrenched in the Constitution. This notion was also explicitly voiced by the rural women delegation at A SPEAK-OUT session held a day before the Rural Local Government Summit in 1995. They resolved that chiefs should not be accorded automatic positions in local government but should stand for elections along with other candidates, in line with the principles of democracy. They also reported that many traditions and tribal authorities were still hostile to women (National Land Committee 1995).

3.3 Proposed Solutions: Unravelling the Stalemate

From the above discussion of the issue of traditional leadership in the democratic South Africa, it is apparent that there is general acknowledgement that the impasse warrants urgent attention. It is one of the issues that has a great potential to undermine the principles of democracy upon which the new South Africa is founded. Researchers in the field have suggested several approaches and at this stage it appears as if finding common ground on this issue is very

difficult. Ntsebeza (2004b) identifies two schools of thought on this matter and he refers to them as the co-existence thesis and a common citizenship approach. For the purposes of this study only these two approaches will be expounded.

3.3.1 A Common Citizenship Approach

Proponents of this viewpoint include Mamdani (1996), as well as Ntsebeza (2003, 2004c), with Mamdani being the foremost. In his thesis Mamdani (1996) makes an analogy of the 'clenched fist' to explain the power concentration in the hands of traditional authorities. In his view, the chief, a pivotal figure in the local state, had his authority rooted in the fusion of various powers, judicial, legislative, executive and administrative, in his office, rather than the classic liberal democratic notion of separation thereof. He goes on to state that traditional authorities were protected from any external threat and their officials were appointed from above and never elected. A study conducted in rural Mali revealed that the nomination of village chiefs is for an indefinite period of time and cannot be revoked. In all villages where fieldwork was undertaken the village chieftaincy is inherited (Messer 2001). Mamdani argues that traditional authorities were set up by the colonial government to divide and rule the Africans in the name of tradition, customs and ethnicism. He contends that the colonial state in Africa was 'bifurcated' with different modes of rule for urban 'citizens' and rural 'subjects'. He further argues that the colonial system was reproduced after independence. Post-colonial African governments, whether conservative or radical, de-racialised the colonial state but did not de-tribalise and democratize it. Because of the very nature and the history of traditional leadership as explained above, Mamdani calls for 'nothing less than dismantling' the 'bifurcated state'. 'This will entail an endeavour to link the urban and the rural and thereby a series of related binary opposites such as rights and custom, representation and participation, centralization and decentralization, civil society and community in ways that have yet to be done' (Mamdani 1996:34). This is what he calls the 'common citizenship' for all, urban and rural, Africans.

3.3.2 A Co-existence Approach

The proponents of this approach are of an opinion that traditional leadership is one of those aspects that define the African society and doing away with them would be tantamount to rejecting African history. They argue that there is a possibility of having traditional leadership and the democratic system existing side by side in a harmonious manner. In his thesis 'The Premise of Mixed Government', Sklar (2001) makes an assertion that it is possible to build new government structures on political foundations that are traditional as well as modern. In this form of government, traditional authority is conserved as a political resource without diminishing the authority of the sovereign state (Sklar 2001). He argues that traditional polities can be the sources of immense moral authority in everyday life. He goes on to affirm, 'wisely used, it can help to maintain civic morale and social order during the current era of extremely difficult transitions to modern forms of economy and society' (Sklar 2001:6). Sklar (2001) acknowledges that sovereign states are built on legal foundations derived from principles of government; these include *inter alia*, citizenship, electoral representation, and the rule of law. This fact notwithstanding, he states that 'there is a second dimension of political identity and authority that is ordered by African traditions primarily, the two dimensions are likely to coexist for many years to come' (Sklar, 2001:20).

Ismail (1999:1-5) concurs with Sklar's concept of mixed government. He strongly argues that the issue of traditional leadership has not been addressed properly. He accuses those who dealt with this issue for making vague statements about the role of traditional leadership in the democratic South Africa. He argues that there 'has been a dramatic marginalization' of traditional authorities and 'their role' or 'a mere symbolic retention of the institution'.. He goes on to put forward what he considers to be an 'effective, yet realistic' proposal, where traditional authorities would be engaged in some aspects of indigenous governance in liberal democratic governance. He strongly argues that indigenous governance

has its 'democratic elements' that can strengthen, rather than weaken current efforts to build democratic culture among African people. He believes that this kind of engagement could lead to the democratization of the institution itself (Ismail, 1999, in Ntsebeza, 2004c).

Bank and Southall (1996) are strongly opposed to the notion of including the traditional authorities in political administration. They feel that traditional leaders do not have the capacity to contribute meaningfully in this regard. However, they do not support the idea of completely eradicating the institution of traditional leadership. Instead they propose that traditional authorities should be given a role confined to ceremonial functions. However, they do not give enough clarity as to how this should be executed in practical terms (Ntsebeza, 2003). Mashele (2003) shares the same view with Bank and Southall in that he believes that traditional leadership should be accommodated in the democratic South Africa. However, Mashele goes a step further by being more explicit in his attempt to provide the *modus operandi* on the issue of traditional leadership and democracy. He argues, 'what needs to happen is for the institution to be brought into harmony with the Constitution. Of critical importance is the separation of the institution from active politics; meaning that traditional leaders must not actively involve themselves in politics as that can dent the integrity of the institution as a whole' (Mashele, 2003:7). He envisages a situation where traditional leadership complements government efforts to improve the lives of rural people by advising on important customary issues relevant to development.

The stance of the traditional authorities themselves on the issue of co-existence is worth noting. Whilst the traditional authorities subscribe to the notion of co-existence, their perception, especially in relation to local governance, differs significantly from the co-existence as proposed in the paragraphs above. They are totally opposed to the idea of having their role confined to customary and cultural issues. They are also opposed to the notion of municipalities as primary structures in the rural areas and them having to play an advisory role. In his

recent speech Prince Mangosuthu Buthelezi stated, 'I have long been concerned that the government lacks the resolve to address the issue of the obliteration of the functions of Amakhosi through the imposition of municipalities in our traditional areas' (Buthelezi 2004:1). A similar sentiment is explicitly captured in the following statement by iNkosi Nonkonyana, cited in the *Municipality Talk* newsletter: 'we would like to make it clear that neither now nor in the future will we allow our institution to be destroyed and replaced by municipalities that are structures created in this country by colonists. Let us remember that the municipalities were introduced in this continent to impose a foreign system of governance' (Nonkonyana, 2003). In turn they propose the following changes to be effected in order to democratize the institution of traditional leadership:

- Traditional authorities must be transformed and must comprise democratically-elected councillors;
- Women must be members of these traditional authorities;
- Traditional authorities must be restructured and provided with necessary infrastructure to deliver a better life to communities; and
- The principle of cooperative governance should regulate the relationship between structures of traditional leadership and all spheres of government.

(Nonkonyana 2003 in *Municipality Talk*, May 2003)

Conclusion

In this chapter the issue of traditional leadership in the democratic South Africa has been investigated. The investigation has revealed that there are two broad perspectives on the issue, the one in support of and the other against traditional leadership. The proponents of the pro-traditional leadership view believe that this institution has been with the African societies since time immemorial. They contend that the institution is vital in maintaining peace and stability within the African societies. On the other hand, the opponents strongly argue that the

institution of traditional leadership can never be compatible with the principles of democracy because of two main reasons. Firstly, it is argued that traditional leadership is hereditary and therefore undemocratic. Secondly, it is contended that traditional leaders collaborated with the colonists during the apartheid era and as a result they should not be recognized in the democratic South Africa. Two solutions to the question of traditional leadership have been proposed: the common citizenship approach whereby the institution of traditional leadership is dismantled and one form of government established for both rural and urban citizens. On the other hand, the co-existence approach seeks to incorporate traditional leadership within the democratic government structures.

CHAPTER 4

THE GOVERNMENT'S RESPONSE: ROLES AND RESPONSIBILITIES

Time has seen a remarkable change in the government's stance on the issue of traditional leadership. Experience throughout the African continent and abroad has proven that democratization after extended periods of colonialism has never been a trouble-free process. Handelman (2000) defines liberal democracy as 'a political system in which most of the country's leading government officials are elected; there is nearly universal suffrage; elections are largely free of fraud and outside manipulation; opposition-party candidates have a real chance to be elected to important national offices; and minority rights as well as civil liberties generally are respected' Handelman (2000:253). If one of the prerequisites of liberal democracy is that most of the leaders have to be elected, then South Africa, a country where substantial powers were in the hands of traditional authorities especially in the former Bantustans, is faced with an intricate task of upholding the democratic principles. This has been demonstrated by ambivalence on the issue of traditional leadership since the advent of democracy. In this chapter a longitudinal account of the government's response to the question of traditional leadership will be provided. Particularly, sections which specifically reflect on the role of traditional leadership in development and environmental issues will be analysed. The roles and responsibilities of the elected government officials will also be considered briefly by analysing the relevant legislation. Only policies and legislation that relate specifically to development and environmental roles and responsibilities will be analysed and these will be arranged in a chronological order.

4.1 The Reconstruction and Development Programme: A Policy Framework

As already reflected in the previous section, at the dawn of the democratic era the new government had adopted a radical stance against the institution of traditional leadership. The policy explicitly stated that only elected officials would be responsible for service delivery in rural areas, including traditional authority areas (ANC 1994). The policy however did not clarify as to what would happen to traditional leadership. Neither did it explain how the elected officials would co-exist with traditional leadership.

4.2 The White Paper on Local Government (WPLG) – March 1998

A major shift in the government's position on the issue of traditional leadership is evident in this White Paper. It is argued that since the end of 1997, the pendulum seems to have swung in favour of traditional authorities (Ntsebeza 2004d). At this stage there was an acknowledgement by government that excluding traditional authorities in rural governance would be politically suicidal. In Section 4.2 of the policy it is stated:

There is no doubt that the important role that traditional leaders have played in the development of their communities should be continued (RSA 1998d: 77).

In Section 4.3 it is also recommended that traditional leadership should play a role closest to the people. On this Ntsebeza (2003) argues that this recommendation flies in the face of that of the 1994 ANC election manifesto, the RDP, which was emphatic that the democratically elected local government structure should play this role. He concludes that the White Paper marks a major shift in government policy, and has grave consequences for the possibility of democracy in rural areas (Ntsebeza 2003). However, the policy does not

elaborate on what exactly the 'important role' played by traditional authorities is/was/should be.

Therefore the WPLG recognizes both the elected government structures and the traditional leadership as important entities with regards to rural development. This is clearly reflected in the following statement:

There is no reason why African customs and traditions should be seen to be in conflict with the demands of modern governance. What is required is an innovative institutional arrangement, which combines the natural capacities of both traditional and elected local government to advance the development of rural areas and communities (RSA 1998d: 78).

The paper, however, is silent on the environment-specific roles for both the elected officials and for traditional leadership.

Several factors could have led to this realization and change of perception. Butler (2002) believes that there have been various pressures on the ANC to grant greater status to traditional authorities. He states, 'in the interests of the broader national democratic process, the ANC was determined to broker deals with the IFP to secure peace and greater political stability in the province of KwaZulu-Natal; there has also been a re-emergent realization that the advantage is to be gained by securing political support from traditional leaders (who can, in turn, deliver a voting constituency) (Butler 2002:4). Many reasons can be put forward for this change of perception regarding traditional leadership. For KwaZulu-Natal, the element of the fear of bloodshed and victimization can not be ruled out.

4.3 The National Environmental Management Act (NEMA), (Act 107 of 1998)

The overall purpose of NEMA is to provide for cooperative environmental governance by establishing principles for decision-making matters affecting the environment, institutions that will promote cooperative governance and processes for coordinating environmental functions exercised by organs of state: and to provide for matters connected therewith (RSA 1998c:2). As already discussed in Chapter 2, the NEMA principles apply to municipal councillors as well as traditional leaders. In Chapter 3, specifically, the Act provides the basis for cooperative environmental governance through the system of Environmental Implementation Plans (EIP's and Environmental Management Plans (EMP's) which specifies procedures for cooperative governance.

Section 16 (4)(b) states that each provincial government must ensure that municipalities adhere to the relevant environmental implementation and management plans in the preparation of any policy, programme or plan, including the Integrated Development Plans (IDPs) and land development objectives (RSA, 1998c). This is a clear requirement to the municipalities with regards to the environment. On the other hand, there is lack of clarity regarding duties and responsibilities specified for traditional leadership. However, it can be argued that they do have environmental duties when one considers sections such as Section 28 (1) which states that 'every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring...' (RSA 1998c:40). A study conducted by Luckin in 2004 on behalf of the Provincial Planning and Development Commission to evaluate the relationship between planning and environmental management in the Hibiscus Coast Municipality revealed that the dominant form of land allocation is through the Traditional Authorities (Amakhosi). This is done through the Zulu customary law system where community members are allocated rights to occupy and use

land for the building of homesteads, subsistence cropping and grazing. The other system of allocation occurs through the "permission to occupy" (PTO) procedure which does not only involve the traditional authorities but other relevant line department officials such as health and extension officers (Luckin, 2004). All of the activities mentioned above for which land is sought have a potential to cause environmental degradation, therefore, traditional leaders have duties and responsibilities towards the environment. The difference between traditional leaders and municipal officials is that the municipalities have Integrated Development Plans (IDPs) which, by law, have to include information on the environment and therefore can be used to assess environmental performance, whereas no such document exists for traditional leadership, as yet.

4.4 The Local Government Municipal Structures Act (LGMS) (Act No.117 of 1998)

Part 6 of this act makes provision for the participation of traditional leaders in municipal matters. The act allows traditional authorities to attend and participate in any meeting of the council through their traditional leaders. These traditional leaders must be identified by the Member of the Executive Council (MEC) for local government in the province and their number must not exceed 10 per cent of the total number of councillors in that council (RSA 1998b). The crucial provision is made in Section 81(3) where it states that 'before a municipal council takes a decision on any matter affecting the area of a traditional authority, the council must give a leader of that authority the opportunity to express a view on that matter' (RSA 1998b: 56). It is also important to note that the issue of participation of traditional leaders in municipal matter is almost entirely in the hands of the MEC for local government.

Schedule 5 makes provision for the code of conduct for councillors and in Section 15(1) and (2) it is stated that traditional leaders are subject to the provisions of the code of conduct applicable to councillors.

4.5 The White Paper on Environmental Management Policy (WPEM), April 1999

The Policy opens by acknowledging that South Africa is a developing country and therefore it needs growth and development to improve the quality of people's life. The policy goes on to mention that it is also realized that South Africa can only guarantee democracy and good governance if there is a sound economic and social framework, which is environmentally sustainable. Most importantly the policy includes a section on integrated environmental management and planning under which the following pledge is made:

- The government will not approve any activities that could have an adverse impact on the environment, unless there has been an Integrated Environmental Management (IEM) approach;
- Local governments will have to add IEM to their integrated development plans and land objectives;
- IEM will be compulsory so that the government can give decision makers at all levels adequate information on any possible environmental effects of the activity; and
- Economic policies and strategies and spatial development plans all have an impact on the environment. They must therefore be dealt with in the context of IEM.

(RSA 1999:107)

Explicitly, the elected government officials are implicated by the requirement which states that local governments will have to add IEM to their IDP's and land objectives. Following the recognition of traditional leadership by the democratic government as reflected in the legislative provisions in sections above, traditional leadership forms an integral part of local government and therefore, by implication, they also have an obligation to include the principles of IEM in their activities.

4.6 The Local Government Municipal Systems Act (LGMSA), (Act No. 32 of 2000)

Chapter 5 of this Act provides specifications regarding the drafting, adoption and the implementation of the integrated development plans (IDP's). IDP's are defined in the same Act as 'development (meaning sustainable development) plans that include integrated social, economic, environmental, spatial, infrastructural, institutional, organizational and human resources upliftment of a community aimed at improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and ensuring that development serves present and future generations' (RSA 2000:14).

In Section 4 it is stated that municipal councils have the duty to do the following:

- strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
- promote a safe and healthy environment in the municipality;
- contribute, together with other organs of state, to the progressive realization of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution; and
- promote and undertake development in the municipality.

(RSA 2000:20)

Important to note is the fact the term 'environmentally sustainable' is defined in the definition section of this act as a service provision aimed at ensuring that:

- a) the risk of harm to the environment and to human health and safety is minimized to the extent reasonably possible under the circumstances;
- b) the potential benefits to the environment and to human health and safety are maximized to the extent reasonably possible under the circumstances; and

- c) legislation intended to protect the environment and human health and safety is complied with.

(RSA 2000:14)

4.7 The White Paper on Traditional Leadership and Governance (WPTLG), July 2003

This policy marked a remarkable step by government in favour of traditional leadership. It served to realize the government's intentions to re-instate the institution of traditional leadership, as expressed in the White Paper on Local Government, 1998. The foreword states that South Africans have overwhelmingly expressed a view that the institution of traditional leadership has an important role to play in deepening and enriching democratic governance at a local level. It is further stated that traditional leaders must constitute part of the cadre of leadership that should continue the struggle for a better life for all in the democratic South Africa (WPTLG, 2003). Traditional leadership is recognized as an institution which has a role to play in the fight against poverty, homelessness, illiteracy, and the promotion of good governance throughout the country.

This White Paper is premised on the notion that traditional leadership and South Africa's present democratic order are not mutually exclusive. The policy states: 'traditional leadership has to function in a manner that embraces democracy and contributes to the entrenchment of a democratic culture, thus enhancing its own status and legitimacy amongst the people' (RSA, 2003 (b): 25). However, there seems to be a lack of precision when it comes to the definition of roles of traditional leadership with regards to environment and development. As a result, one can expect conflicts between traditional leadership and democratic structures to persist as this has been a situation since the advent of democracy. Basically, traditional leaders are expected to play a 'supportive' role to the government and even on these roles there seems to be little decisiveness and compulsion to perform these. This assertion is based on the material from the WPTLG. It states 'the following are the roles that that the institution *can* play:

- 'Promote socio-economic development;
- Promote service delivery;
- Contribute to nation building;
- Promote peace and stability amongst the community members;
- Promote social cohesiveness of communities;
- Promote the preservation of the moral fiber and regeneration of society;
- Promote and preserve the culture and tradition of communities; and
- Promote the social well-being and welfare of communities'.

(RSA, 2003b:32)

These are the roles that traditional leadership 'can' play, the use of the word 'can' already opens up the system to all kinds of abuse as it fails to stipulate functions as a matter of obligation as well as to attach measures to evaluate performance.

With regards to the environment the White Paper states that 'national and provincial departments, through legislation or other means, shall provide for the traditional councils and their leadership, among others to:

- 'Promote environmental management;
- Promote sustainable use of cultural resources within communities; and
- Promote sustainable traditional approaches to water resource management'.

(RSA 2003:37)

Again, these functions are stated in an open-ended manner and they are not tied to any legislative provision. For instance, the LGMSA discussed above makes a direct reference to the Constitution in stipulating the functions of municipal officials with regards to the environment. For traditional leadership this kind of reference is lacking.

Conclusion

In this chapter a longitudinal account of the government's response to the issue of traditional leadership has been given. Specifically, the roles and responsibilities for traditional leadership vis-à-vis the municipal councillors have been identified. With regards to legitimacy of traditional leadership, it has been revealed that the government's stance has changed dramatically since the advent of democracy. Around 1994 it was strongly argued that only the elected officials would be responsible for local governance. However, the government's attitude has since changed in favour of traditional leaders. Since 1998 there has been a gradual acknowledgement that traditional leadership should play an important role especially at local government level in rural areas. With regards to roles and responsibilities, however, there is still a lack of clarity as to what exactly should be done by traditional leaders. Where 'possible' roles are mentioned, they do not seem to be obligatory and no performance measures are put in place. On the other hand, the cooperative environmental governance framework provided by the NEMA provides more clarity on the environmental roles and responsibilities of the municipal councillors and traditional leaders. Both parties perform activities which might cause harm to the environment and therefore, should be bound by the legal provisions of the NEMA.

CHAPTER 5

TRADITIONAL LEADERSHIP AND LOCAL GOVERNMENT IN KWAZULU-NATAL

Having explored the historical perspective regarding traditional leadership as well as the current debates on the issue, it becomes imperative to focus on these aspects within the context of KwaZulu-Natal. It must be acknowledged that there are certain peculiarities regarding traditional leadership in KwaZulu-Natal, as compared to the rest of South Africa, that have to be recognized if practicable and lasting solutions are to be found. This chapter provides a historical review of local governance in KwaZulu-Natal with the objective of understanding current issues in local government. Furthermore, a brief review of certain KwaZulu-Natal-specific pieces of legislation will be provided with the aim of understanding the legislative mandates guiding the organs of state responsible for traditional and local government. Critical is the legislation emanating from the Department of Traditional and Local Government Affairs. In addition, this legislative review will help to establish the provincial government's general perception of the institution of traditional leadership as well as the responsibilities that are entrusted upon the traditional leaders directly or by implication.

5.1 The Homeland System – The Historical Context

As a result of the Native Land Acts of 1913 and 1936 the homeland / Bantustan system was introduced in South Africa. These Acts were directly aimed at dispossessing South African Black people of their land. Through the homeland system only about 13% of land was allocated to African people. The Bantustan policy was formalized in the Promotion of the Bantu Self-Government Act of 1959, which relegated African political and land rights to the 'native reserve territories' called Bantustans (Khosa and Muthien 1998). The homelands were designed according to ethnicity and language and marked by territorial fragmentation and underdeveloped economic infrastructure. All political rights,

including voting, held by an African were restricted to the designated homeland. The idea was that they would be citizens of the homeland, losing their citizenship of South Africa and any right of involvement with the South African Parliament which held complete hegemony over the homelands (Stanford: online 2004). All homelands were thwarted by large-scale underdevelopment, poor services and very poor economic development. With regards to governance, limited local government was established. Traditional leaders were given powers over land allocation and development matters in areas with communally owned land. Some small rural towns, the so called R293 towns were given their own administrations, but these lacked real powers. (RSA 1998d)

5.2 Governance in the KwaZulu Homeland

'The KwaZulu homeland consisted of some 72 parcels of land scattered across Natal' (Khosha and Muthien 1998:69). In 1972 the KwaZulu Legislative Assembly (KLA) was established with Chief Mangosuthu Buthelezi as the chief executive officer. In 1977 KwaZulu was established as a self governing territory with Buthelezi as chief minister. Buthelezi commanded tremendous authority over the KwaZulu homeland and he always maintained that KwaZulu was not a creation of apartheid. 'All chiefs and local authorities were directly under the control of his office and he had power to dismiss any chief, as well as to 'redefine the boundaries of any tribe or community' (Khosha and Muthien 1998:71). The Inkatha Freedom Party (IFP), established in 1975, was the only political party in the KwaZulu Assembly. Although KwaZulu did not opt for independence and elected to remain part of South Africa, the KwaZulu government still exercised considerable territorial control over the people and areas under its jurisdiction and commanded substantial control and material patronage (Khosha and Muthien 1998).

With regards to development there were huge disparities between South Africa and KwaZulu and these have been carried over to the new democratic dispensation. The abject poverty that presently thwarts the province is

remarkably high in the former homeland areas. For example, according to the KwaZulu-Natal Subregional Prioritization Study (KZNSPS), conducted by Smit and Brown (1995) in collaboration with the Human Sciences Research Council in 1995 the weighted mean income for Nkandla, the former homeland district, was between 0 and 750 rands per month far below the provincial average of about R2700 per month. In a paper, *The development of the homelands with special reference to KwaZulu*, Maasdorp (1976) identifies several factors that hindered economic growth in KwaZulu. Firstly, for communication and transportation purposes KwaZulu was dependent on South Africa. The Natal ports, Durban and Richards Bay as well as the other major road and rail connections were excluded from the homeland. Secondly, most of the major natural resources of Natal with the exception of some game reserves were excluded from KwaZulu. Lastly, the homeland itself was highly fragmented and as a result the process of moving to South Africa was too cumbersome. Large-scale commuting was also the major cause of substantial leakage of earnings and thus the multiplier effect with the homeland was extremely weak (Masdorp 1976). All the above factors contributed towards retarding economic growth in the homeland and later the new democratic government would have to find ways and means of dealing with this backlog.

5.3 The Present Situation

Traditional authority currently exists uncomfortably side by side with democratic institutions (Jacobs, 2000 in Butler, 2002). With the new government having established new municipal areas and the new form of local governance in the form of municipal councillors, the institution of traditional leadership was not excised. Despite the democratic government's ambivalence on the issue of traditional leadership, the institution is as strong as ever in the rural areas of KwaZulu-Natal. KwaZulu-Natal traditional leaders have been remarkably vocal on their stance on the issue of traditional leadership and the elected local government structures. The Independent Projects Trust (IPT) reports the views of an *inkosi* from the South Coast of KwaZulu-Natal who maintains that "the local

people did not know the elected councillors and that it was difficult to hold them accountable for their actions and omissions” (IPT 2002:35 in Butler 2002). It is the argument of the *amakhosi* that traditional leadership should be the first tier, representative of local government. This notion is accurately captured in Inkosi Mzimela’s statement:

“Our view is that traditional authorities should serve and perform all functions of local government in rural areas within the area of jurisdiction of traditional leadership. That is, they should serve as primary local government responsible for development projects as this has been the case since time immemorial” (Inkosi Mzimela 2001 in Butler 2002:40).

Just as there has been a remarkable change in the government’s stance on traditional leadership, as it has been highlighted in the previous chapter, there has been a similar change of perception from the side of traditional leadership itself. This has been articulated by the present chairman of the House of Traditional Leaders, KwaZulu-Natal, Prince Mangosuthu Buthelezi in recent statements. In a recent visit to Embumbulu District Buthelezi expressed his concern about the future of the institution of traditional leadership in the new South Africa. He went on to state, ‘Whilst our hereditary positions are enshrined and recognized in the Constitution, it is far from clear what that recognition means in reality. The powers and functions of Amakhosi have not yet been clarified to give meaning and expressions to that recognition.’ (Buthelezi, 2004:1).

In spite of these unresolved issues regarding the recognition of the institution of traditional leadership and the meaning thereof, there seems to be a realization even from the side of traditional leaders that co-existence with the democratic local government is the way to go and it is inevitable. In the same meeting Buthelezi called upon the traditional leaders and councillors to find the *modus operandi et vivendi* to prevent a clash or conflict between themselves. He is of an

opinion that the present discordant situation between traditional leadership and councillors will test the leadership skills of Amakhosi and councillors. Traditional leaders and councillors were then urged not to play in the hands of those who are bent on eliminating the institution of Ubukhosi by succumbing to the temptation of crossing swords, when they work for and serve the same people (Buthelezi, 2004). Although there has been an acknowledgement by both the traditional leadership and the democratic government that there should be co-existence between the two entities, no proper mechanisms or framework has been put in place to guide this co-existence. According to the 2003/04 to 2006 strategic plan for the Department of Traditional and Local Government Affairs (DLGTA) there still exist a need to develop a strategic programme of functional interface between traditional authorities and municipalities in order to ensure sustainable integrated development within KwaZulu-Natal (DLGTA, 2004).

5.4 KwaZulu-Natal Specific Legislative Framework

5.4.1 KwaZulu Act on the Code of Zulu Law Act, Act 16 of 1985

This Act amongst other aspects deals with the functions of Inkosi within the framework of customary practices and provides guidelines for inheritance and succession with specific reference to Ubukhosi.

5.4.2 The KwaZulu Amakhosi and Iziphakanyiswa Act, Act 9 of 1990

This Act makes provision for the recognition, appointment and condition of service, discipline, retirement, dismissal and deposition of Amakhosi. It provides for the establishment of tribal, community and regional authorities. A tribal authority is established by the minister in accordance with the Zulu law in respect of a tribe or two or more tribes. A community authority is established in respect of a community or two or more communities. A regional authority is established in respect of any two or more areas for which tribal or community authorities have been established (KwaZulu 1990:553). The Act also provides for the settlement of disputes and hearing of criminal cases by Amakhosi and

Iziphakakanyiswa (people not from a royal family but, appointed to be Inkosi). Provision for Traditional Leaders to preside on cases held in Traditional courts is also made (RSA 2003). Important to note is the fact that the Act identifies the function and duties of regional authorities established under this Act as *inter alia* to provide for:

- Construction and maintenance of roads, bridges, drains, dams, furrows, and any works which it may consider necessary for purposes of sanitation or for ensuring satisfactory water supplies or for preventing or combating soil erosion;
- The improvement of farming and agricultural methods generally; and
- Afforestation

(Section 8 (B) (ii) (v) (vi))

The list of duties mentioned above is an indication that traditional leaders in KwaZulu-Natal, even before the advent of democracy, have had environmental and developmental duties assigned to them.

5.4.3 The KwaZulu-Natal House of Traditional Leaders Act, Act 7 of 1994

This legislation provides for the establishment of the KwaZulu-Natal House of Traditional Leaders, hereafter referred to as the House. It describes various processes for election of members, tenure of office for various bodies, broad functions of the House and establishment of the secretariat office. The Act makes provision for the secretariat to serve a functional interface between DTLGA and the House.

5.4.4 The KwaZulu Ingonyama Trust Act (KITA), Act 3 of 1994

Perhaps this is the most critical piece of legislation with regards to land administration. The Act creates a Trust to hold the land, formerly vested in the

name of the Government of Kwa-Zulu, for and on behalf of the members of the clans and communities residing on such land. It also provides for Traditional Authorities to grant consent for the use and development of such land (RSA, 2003).

Conclusion

From the brief legislative review above it can be deduced that there is a strong determination to legitimize and preserve the institution of traditional leadership in KwaZulu-Natal. It is also worth noting that this legislation, the KITA in particular, was passed just before the first democratic elections. This suggests that there was a strong resolve from the side of KwaZulu to consolidate and retain power over the former homeland region. Also intriguing is the fact that under the homeland system there was some clarity with regards to the roles and responsibilities of traditional leadership on matters relating to development, the environment and land administration. Whether these roles and responsibilities were carried out appropriately, is another question.

CHAPTER 6

METHODOLOGY AND CONTEXT

This chapter will describe and justify the methodologies used to set the historical context of intergovernmental relations and cooperative environment governance. Data collection methods for this study will be identified and justified. This will be followed by a brief description of the study area as well as the project.

6.1 Methodology

The literature reviewed has revealed that there is still an impasse around the issue of traditional leadership and municipal structures in rural areas. A series of policies and pieces of legislation have been enacted to address this issue but these are also marred by ambivalence especially on the issue of roles and functions of traditional leadership in the democratic South Africa. In KwaZulu-Natal the problem is worsened by a highly politicized ethnicity that characterized the provincial political atmosphere for a long time.

In this study, qualitative research methodology was used. Rubin and Babbie (1997) define qualitative research methods as those methods that emphasise depth of understanding and deeper meanings of human experience, and that are used with the aim of generating theoretically richer, albeit more tentative observations. These include participant observations, unstructured interviews and historical research. Qualitative analysis is a non-numerical examination and interpretation of observations for the purposes of discovering the underlying meanings and patterns of relationships. This method was utilised in order to analyse and interpret responses given in an interview environment and draw on observations.

The research question was explored by conducting a case study of a poverty alleviation project led by The Department of Social Welfare and Population

Development (DSWPD), the Imbothimuni Flagship Programme. This project was selected as it seeks to address one of the key development issues in South Africa, poverty. In the State of the Nation Address (2004) Thabo Mbeki states 'at the core of our response to all challenges is the struggle against poverty and underdevelopment'. This project is a representation of numerous government-initiated projects aimed at improving the lives of people. The components of sub-projects of this initiative as will be listed below are of a diverse nature in such a way that for the project to succeed it would be important to draw expertise from different government departments. For this reason, this was a good opportunity to illustrate how cooperative governance can ensure success and impact of government initiatives. Specifically, the study focused on the issues related to the conflicts between traditional leadership and elected councillors as well as the resultant problems regarding the environment and development. Furthermore, the study was used to investigate the role of EIA as a catalyst in the state of intergovernmental relations and cooperative environmental governance. Key individuals were interviewed to get in-depth information on the current issues relating to the existence of traditional leadership alongside the elected councillors in rural areas. In particular, the effects of the conflict between traditional leadership and elected councillors on environment and development concerns were investigated. Interviewees were selected from senior management staff of the DSWPD, the Department of Agriculture and Environmental Affairs (DAEA), the municipality, traditional leadership as well as community leaders. The research will primarily employ qualitative data collections and analysis techniques. Below is a brief justification of the choice of methodological techniques is provided.

6.1.1 The Case Study

A case study refers to the collection and presentation of detailed information about a particular participant or small group frequently including the accounts of subjects themselves. As a form of qualitative descriptive research, the case study looks intensely at an individual or small participant pool, drawing conclusion only

about that participant or group and only in that specific context. Researchers do not focus on the discovery of a universal, generalizable truth, nor do they typically look for cause-effect relationships; instead, emphasis is placed on exploration and description (CSU 2004, Online). Case studies have been used by researchers in many disciplines to build upon theory, to produce new theory, to dispute or challenge theory, to explain a situation, to provide a basis to apply solutions to the situation, to explore, or to describe an object or phenomenon (Palmquist 2004, Online). The nature of this research as reflected in its aim is exploratory; therefore the case study method has been selected to explore a phenomenon and to provide a basis to apply solutions to situation. The shortcomings of the case study as a research method with regards to the issues of validity, reliability and generalization are acknowledged. Critics of this method often argue that case studies are difficult to generalize from because of inherent subjectivity and because they are based on qualitative subjective data, generalizable only to a particular context (CSU 2004, Online).

6.1.2 Semi-structured Interviews

In semi-structured interviews, subjects, sample sizes and questions to be asked are predetermined. This helps to minimize bias and omission of key issues. The researcher ensured that consistency and focus is maintained across the interviews. Semi-structured interviews require the researcher to have an in-depth knowledge of the topic being investigated. This was overcome by the fact that the researcher, at the time of writing was working for the DAEA: Impact Assessment as an assessing officer. Therefore the researcher was able to get enough information by probing on questions that were not adequately answered. Open-ended questions were asked and the interviewer was able to follow up on the clues about the topic (Rossouw 2003). Semi-structured interviews helped the interviewer to get an insight into the subject under investigation and to reflect on personal perceptions and attitudes. Cognizance was taken of the possible errors associated with interviews. These include errors relating to asking questions

when additional information is required, errors in recording the answers and cheating (Martins *et al*, 1999).

6.1.3 Documentary Analysis

Rubin and Babbie (1997) distinguish between two broad types of data collection sources i.e. primary and secondary sources. A primary data source is the first hand encounter provided by someone present at the occurrence of the event. Examples include minutes of meetings, diaries and organisational laws. Secondary data sources include information that is analysed or reported on, on the basis of primary sources, by someone who was not present during the occurrence of the event. They further state that organisations generally document themselves, and they therefore suggest an examination of official documents, such as charters, policy statements, speeches and so on.

Various documents were used in this study in order to gather detailed information on legislations, policies, debates around the IGR issues in South Africa and specifically within the KwaZulu-Natal Province. Specific to the case study, an EIA application file and the supporting documents included were reviewed. At the time of writing the dissertation the researcher was processing the EIA application. This allowed the researcher to gain more insight about this EIA and to access key individuals through the EIA process. The documentary analysis provided detailed and in-depth information that would potentially not be feasible to gather from interviews. Documents reviewed through the EIA process include: the application form with thorough details of the applicant and the description of the proposed project, project background information document, layout plans, specialist comments from the Department of Water Affairs and Forestry and the Department of Agriculture and Environmental Affairs.

6.1.4 Sample Frame

The nature of the topic under investigation requires that subjects have knowledge and experience in the fields of intergovernmental relations and cooperative governance. A non-probability judgmental sampling was applied in selecting the subjects. Using her own discretion, the researcher chose people to be interviewed and documents to be analysed. Interviewees selected included officials from the Umkhambathini local government offices, local traditional leader/s, senior officials from the Department of Social Welfare, project steering committee member/s, community members and the officials from the Department of Agriculture and Environmental Affairs. The potential problem with this sampling method is that the quality of data collected depends on the skills of the researcher and the level of insight he/she has into the topic.

6.1.5 Ethical Considerations and Implied Constraints

It is acknowledged that the subject of investigation is a sensitive one. South Africa is a diverse country in terms racial, political and ethnic groupings. This diversity is highly notable in the province of KwaZulu-Natal which is known for its volatile political atmosphere. In interacting with interviewees, the following principles of social research were applied:

- Where necessary privacy, confidentiality and anonymity was be guaranteed; and
- Undesirable consequences to research subjects were detected and removed

6.2 The Context: Study Area

In this section the demographic profile of the Mkhambathini Municipality, Ward 5 in particular, where the case study is located will be provided. Statistics for selected variables that are considered pertinent in giving indications related to the socio-economic profile will be utilized to justify why the dilemma around the

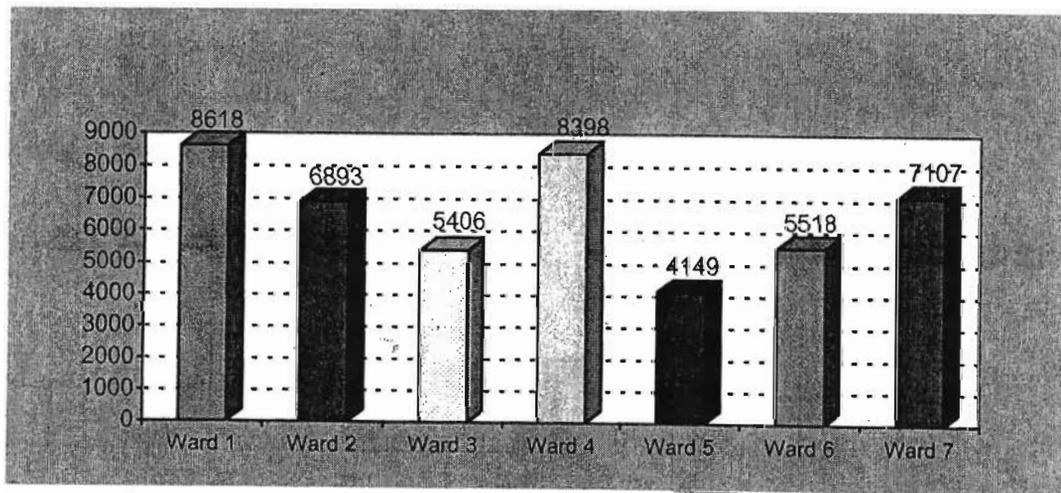
issue of intergovernmental relations and cooperative environmental governance at local government level has to be resolved in order to expedite development.

6.2.1 Geography and Municipal Boundaries

Mkhambathini Local Municipality (MLM) was established in terms of Section 155 (1) (b) of the Constitution following the 2000 local government elections. It is one of the seven (7) category B municipalities in the Umgungundlovu District (see *Map 1 and Map 2*). It is located in the south-eastern boundary of Umgungundlovu District and adjoins to Richmond and Msunduzi Local Municipalities to the west, Mshwathi Municipality to the north and Durban Unicity to the east. It covers an area of approximately 917 square kilometres and is the second smallest municipality within its district (Maseko Hlongwa and Associates, 2002). The MLM consists of 7 wards and the case study is located in Ward 5.

6.2.2 Population

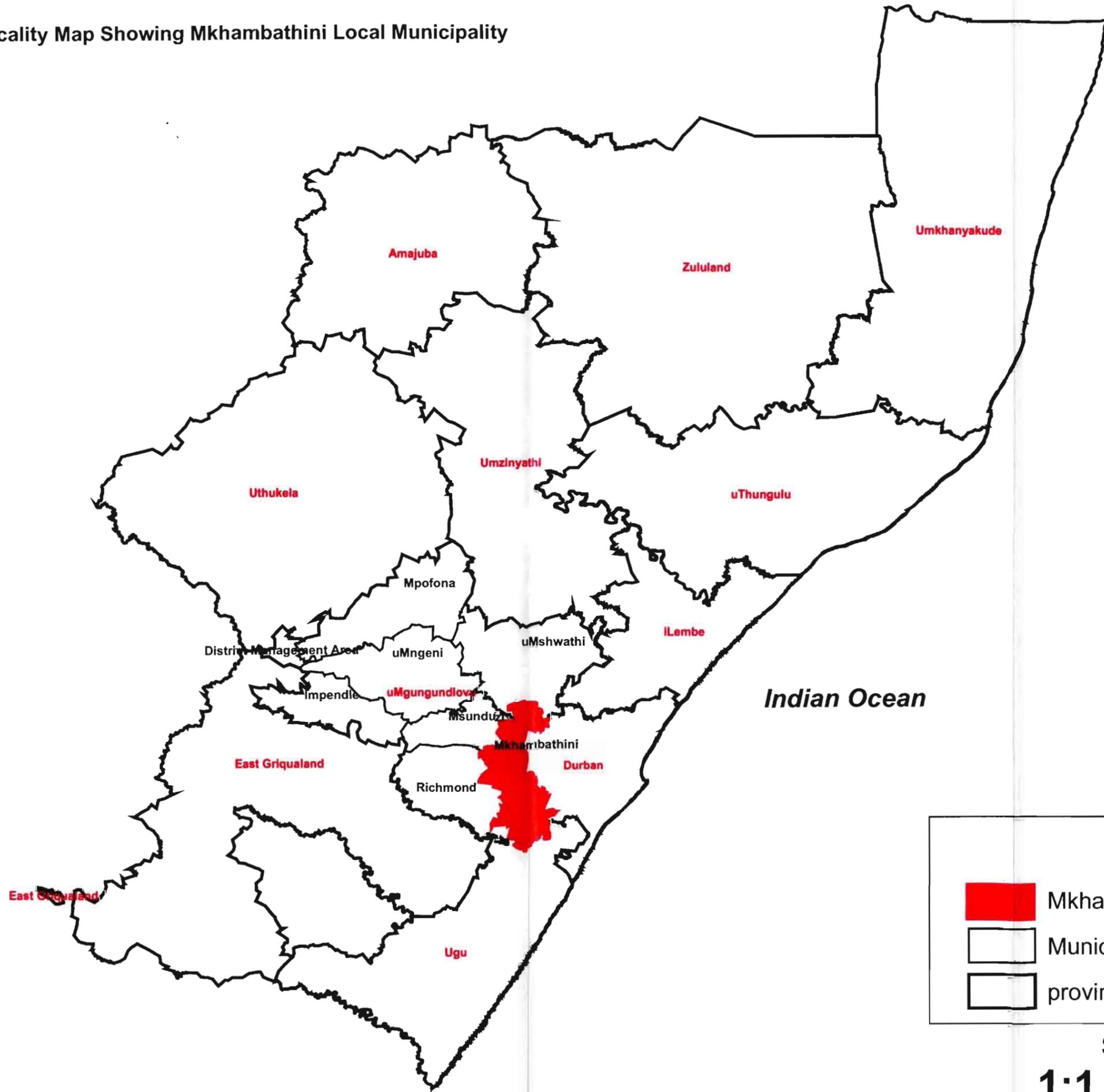
According to the 1996 census the population of Mkhambathini is estimated to be 46089 people. Ward 5 is the least populated ward due to the fact that commercial farms cover a significant portion of land in this ward.



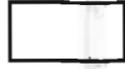
Source: 1996 Census as published by the Municipal Demarcation Board.

Figure 6.1: The distribution of population per ward (Extracted from MHA: 2002)

Map 1 : Locality Map Showing Mkhambathini Local Municipality



Legend

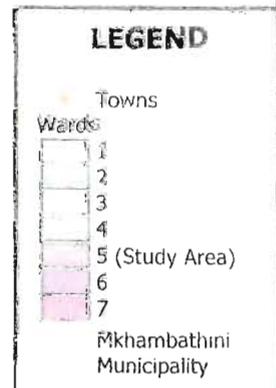
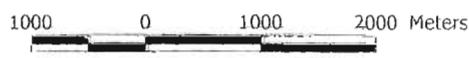
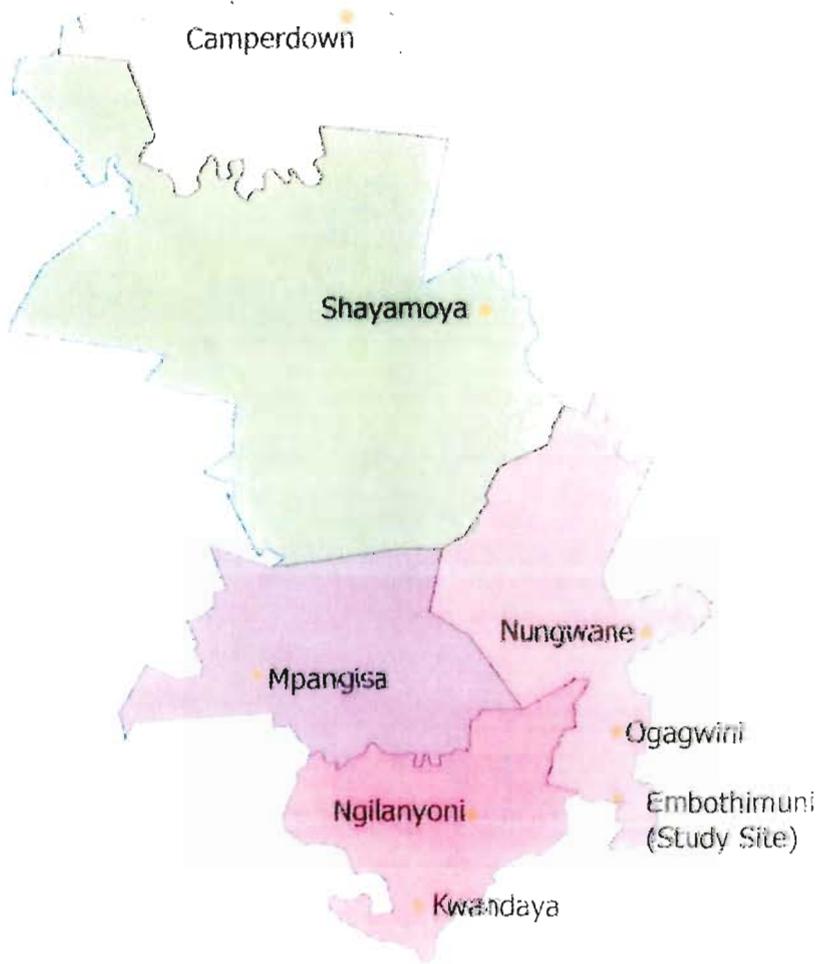
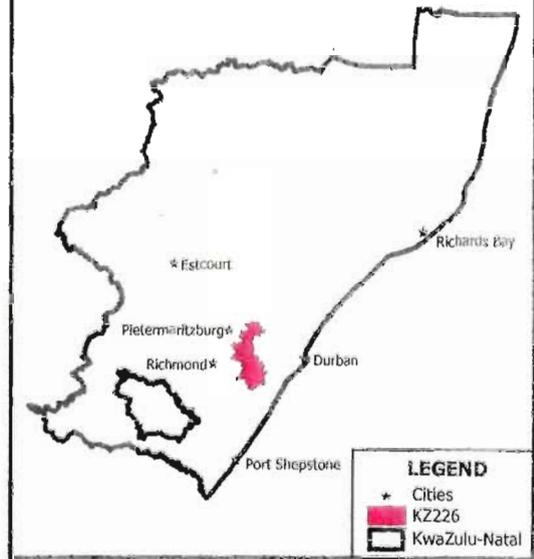
-  Mkhambathini Local Municipality
-  Municipal Boundaries
-  provincial Boundaries

Scale
1:1,800,000

Map 2

A map showing the study area located within the Mkhambathini Municipality

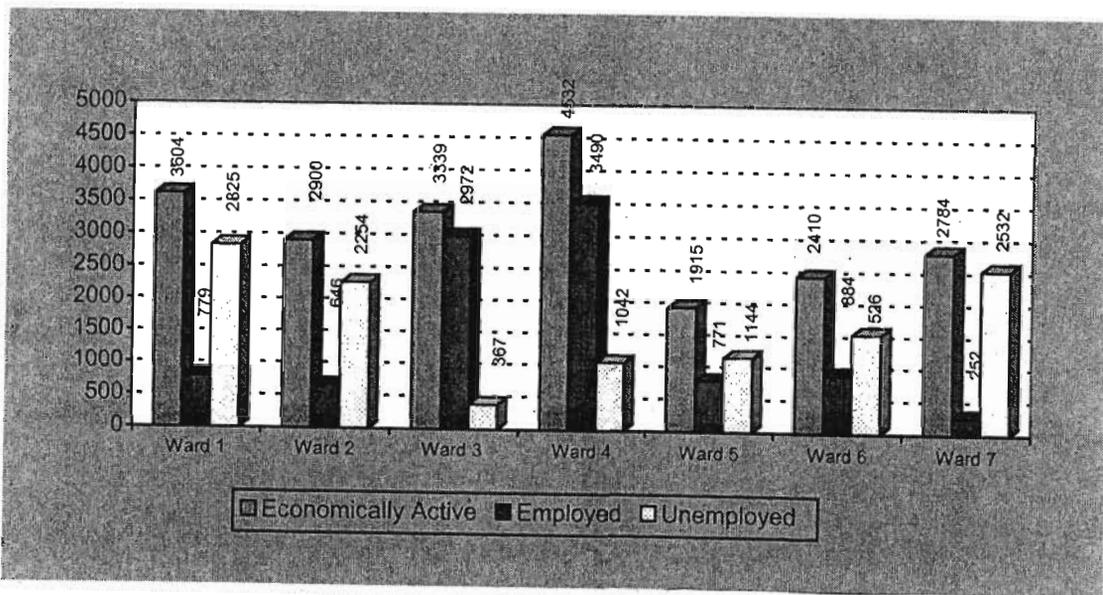
LOCALITY MAP



The population is estimated to be approximately 4149 people (see figure 6.1). The average household size within the whole municipal area is 5 people per household, however, ward 5 has an average of 4 people per household and is thus below average. With regards to gender distribution there are about 2071 women as apposed to 2073 men in the ward (MHA, 2002).

6.2.3 Socio-economic Profile

It is estimated that 47% of the municipal population fall within the economically active group but of this group, an average of 65.6% is in full time employment. In ward 5 out of 1915 economically active people only 771 are employed (see Figure 6.2). The majority of households in the entire municipality (about 5728) earns less that R3000.00 per annum, and are regarded as living below the poverty line (MHA, 2002)



Source: 1996 Census as published by the Municipal Demarcation Board.

Figure 6.2: The Employment Profile of the Mkhambathini Municipality
(Extracted from MHA: 2002)

6.2.4 Basic Infrastructure

About 5026 households make use of pit latrines for sanitation and 5260 do not have access to electricity. About 2031 households derive water from natural sources such as rivers and streams.

6.2.5 Land Allocation

A considerable amount of land in this ward falls under the Ingonyama Trust Land administered in terms of the Ingonyama Trust Land Act of 1997. This implies that land rights are allocated using traditional systems. People living in Ingonyama Land cannot use the land as collateral nor can they encumber their land without the consent of the traditional authorities (MHA 2002).

An analysis of the demographic profile for the study area depicts that there is a need for development and service delivery in this area. With the unemployment rate of approximately 40%, the dependency ratio is likely to be very high. The presence of large commercial farming land in this ward could be an indication of high potential agricultural land. As a result, poverty alleviation projects are likely to be inclined towards agriculture. For this reason, the issue of land allocation is crucial.

6.3 The Project

In this section a description of the case study will be provided. Firstly a brief background on the poverty alleviation project, the Imbuthimuni Flagship Programme will be given. Thereafter, a summarized account of the EIA process and results will be given.

The Imbothimuni Flagship Project was an initiative of the Department of Social Development (national) and subsequently, the Department of Social Welfare and Population Development (DSWPD). The aim of the project was to provide empowerment to women with children under the age of 15 years through skills

development and facilitation of income-generating activities. As already explained in the socio-economic profile above, the area is in deep rural areas and is characterized by high unemployment levels. The project had a membership of 146 women and it was envisaged that the figure would increase when the identified activities commenced. The project would comprise the following activities:

- Provision of early childhood development services;
- Production and processing of fresh vegetables for consumption and sale;
- Broiler and egg production for consumption and sale;
- Handcraft and pottery; and
- Production of peanuts for the manufacture of peanut butter.

The above activities are identified in terms of Schedule 1 (2) (d) and (3) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), as activities which may have a substantial detrimental effect on the environment and therefore need to undergo an EIA process.

The application was received by the Department of Agriculture and Environmental Affairs: Environmental Management Section on 29 October 2003. By this time the development had already commenced, the area had been selected, fenced off and cultivation had taken place. Several stakeholders and government departments were consulted by the assessing officer and requested to provide specialist comments about this development. These included Ezemvelo KwaZulu-Natal Wildlife, Department of Water Affairs and Forestry and the Department of Agriculture. All these stakeholders concluded that the site selected was unsuitable for the activity / project and the reasons for this conclusion are listed below:

Soils

The site was found to be on *Fernwood* or *Cartref* soils which tend to be very sandy and highly erodable. These soils have a characteristic bleached A horizon underlied by a diagnostic E subsoil horizon which has also undergone reduction and removal of iron. The texture of the topsoil is less than 15% and is therefore low in organic matter. When the site was visited, the cabbage which was fully developed had a purplish colour which, according to the report compiled by the Department of Agriculture, was an indication of phosphorous deficiencies.

Slope

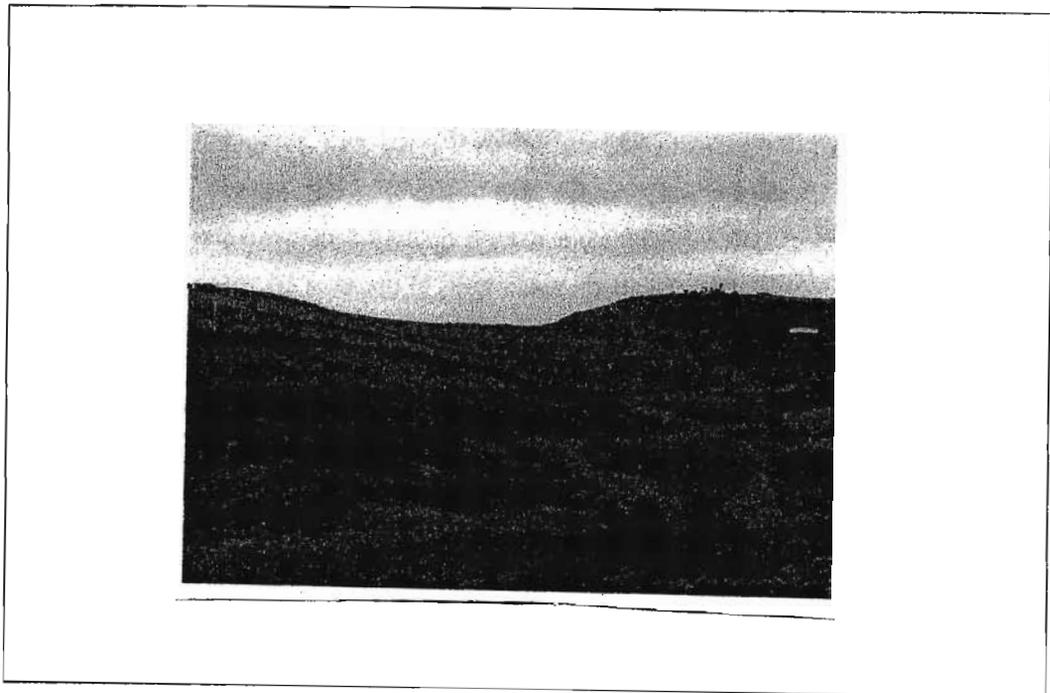


Figure 6.3: Project site- slope exceeds 12%

The slope gradient as depicted in Figure 6.3 exceeds 12% which is the permissible gradient for annual cultivation. The steep gradient and the fact that the soils in this are highly erodable increase the risk of erosion in this area.

Water

The source of water was very limited; the current source could not even sustain the crop that is planted. There was no way that other sub-projects which also required a substantial amount of water could be supported by the same source.



Figure 6.4: Water Depth



Figure 6.5: Ruptured Pipe

The height of the weir constructed as depicted in Figure 6.4 indicates the depth and the amount of water available to sustain the project. The level of expertise and technical assistance provided to the community was also questionable.

During the site visit the pipe that had been laid to transfer water from the river to the project site was exposed to the ground and had ruptured (see Figure 6.5). Attempts had been made to repair it using cement, but the repaired part remained uncovered and therefore exposed to the trampling by humans and animals.

Wetland

A considerable amount of land designated for cultivation was in a depression. This strengthened the concern of soil loss due to continual tillage. A natural wetland occurred in a depression and this was clearly shown by the presence of hydromorphic soils as well as water-logging at the time of the site visit.

(Dlamini, Mabika & Zuma 2003).

The authorisation that was issued recommended that all cultivation be stopped and only poultry related activities be considered. In addition, it was advised that further detailed studies would have to be conducted if it was insisted that cultivation should continue and no other site could be identified for the project. The copy of the Record of Decision for this EIA application is attached as ***Appendix A.***

Conclusion

In this chapter a brief account of the methodology to be employed has been given. These included semi-structured interviews, and the documentary analysis. In choosing these methods cognizance of certain constraints has been taken, the most important being time constraints and the sensitivity of the topic. This was followed by a brief background to the study area focusing on selected socio-economic and demographic indicators. Finally, the EIA application process followed by the DAEA for the Imbothimuni Project was explained.

CHAPTER 7

7. RESEARCH FINDINGS

After the literature review as well as the documentary analysis conducted through the EIA process for the project, semi-structured interviews were conducted with key informants. These included local government officials, senior management staff from the Department of Social Welfare and Population (KwaZulu-Natal), Department of Agriculture and Environmental Affairs, members of the local traditional leadership (Induna) for the Ngilanyoni Area and the community members. Following are the key research findings, which will be divided into four sub-sections namely: local government and development, provincial government departments, environmental awareness and political influences.

7.1 Local Government and Development

The present municipal councillor for the area had not been elected when the project started in January 2001. The respondent from the DSWPD reported that when they arrived in the area they approached the Inkosi and Induna of the area as this was the only form of leadership available at that particular time (Mhlanga 2004 *Pers. comm.*). To date traditional leaders still carry out the function of allocating land. The Induna confirmed that he is the one who identified the project site in consultation with the Inkosi. In identifying the site no environmental considerations were taken into account and at that particular stage even the DSWPD was not aware of any EIA requirements (Mhlanga 2004 *Pers. comm.*). Communication with the community members confirmed that the institution of traditional leadership is still widely used in various governance matters. Most of the governance issues and community problems are still brought to the attention of the Induna through the traditional councillor (*ikhansela lenduna*) (Kweyama, V. 2004 *Pers. Comm.*). However, according to Induna Kweyama, no capacity building programme has been provided to empower traditional leaders to carry

out the duties they currently perform, most of which they have been performing since time immemorial. According to the acting municipal manager for MLM and the community services manager, traditional leaders have been invited to attend the IDP and the Land Use Management Systems meetings and the response has been positive (Ndlela & Pillay 2004 *Pers. Comm.*). However, none of these invitations could be recalled by Induna Kweyama. With regards to the project, traditional leadership does not play any active role except for the allocation of land which took place at the inception phase. The only time they were requested to come in was when there was a crisis when contract workers who are presently constructing poultry structures were harassed by some community members demanding to be employed. The induna was in the process of resolving that issue. (Kweyama 2004 *Pers. Comm.*).

Local government officials were only notified about the project when there was a need for water supply and the access road for the project. The letter submitted by the MLM to DAEA as part of the EIA process confirmed that the municipality would assist in the provision of water for the project. However, the technical manager for MLM had no knowledge of the letter. In his opinion, it is not even their duty as a local municipality to supply water but the duty of the district municipality. A letter dated 7 September 2004 was written to the district municipality to request water supply, but no response had been received (Jenssen, 2004 *Pers. Comm.*). From the side of the community, very limited knowledge about the local government structures and functions was displayed. Interaction with the councillor has been very limited and they are not familiar with the ward committees. The ward councillor did admit that there has been challenges regarding cooperation with traditional leadership, but these were identified by the development worker responsible for the project and they are presently being resolved (Msomi 2004 *Pers. Comm.*). With regards to the project itself, it was reported that there was not much the council could do about the project since the municipality was not part of it when it started (Msomi & Ndlela 2004 *Pers. Comm.*). Asked about environmental management issues, EIA in

particular, it was reported that environmental issues are considered through the services of extension officers of the Department of Agriculture and Environmental Affairs (Directorate: Agriculture).

One of the critical issues identified through the research process is the absence of well-defined procedure to be followed by developers in areas where traditional leadership and municipal councillors exist side by side. For this particular project traditional leaders were approached first because had not been elected yet. In spite of this reality, when the municipal officials were informed about the project later they expressed their dissatisfaction about being the last to be informed and this created some tensions (Mhlanga 2004 *Pers. Comm.*). As a result of this lack of procedural guidelines the project has been left orphaned. Neither the traditional leadership nor the municipality is willing to take over. It is difficult at this stage to get support from the municipality with regards to monitoring and evaluation of the project. Ndlela explained: *'It is problematic for local government to get involved at this stage; we do not know how the community and the project location were decided upon. As a municipality we have a procurement policy and in this case we do not know how tenders were awarded, committees set up etc, so we feel left out* (Ndlela 2004 *Pers. Comm.*).

7.2 Provincial Government Department (PGD's)

Although the study particularly focused on the local sphere of government, findings regarding working relations between the PGD's reflected by this research are pertinent as these relations have a direct bearing on what happens at local government level. The study revealed that there is a remarkable lack of cooperation between the PGD's. Regulations enforcing EIA in terms of the Environment Conservation Act (Act 73 of 1998) were gazetted in September 1997 to make EIA mandatory. However, after four years some PGD's were still not aware of these regulations, in this case the DSWPD. The EIA application for

the project was only submitted to DAEA after DSWPD was notified by the service provider appointed to construct poultry structures about this requirement. Furthermore, the environmental authorization for the project was issued in June 2004, stipulating that cultivation should cease until further studies have been conducted. However, when the site was visited on 15 December 2004, it was discovered that cultivation had never stopped. Asked about the contents of the environmental authorization, the project committee member (treasurer) said that she did hear about it but was not sure about its contents (Nkosi 2004 *Pers. Comm.*).

The lack of cooperation was not only noted between PGD's, but also within the individual departments, with DAEA evidently appearing to be a house divided. First, it was reported that right from the onset an extension officer from DAEA (Agricultural Extension Services) was invited to provide technical assistance and advice on agricultural activities as well as to drive the agricultural authorization process in terms of the Conservation of Agricultural Resources Act (No. 43 of 1983). After some investigations the extension officer concluded that the site was suitable for cultivation. Notably, the extension officer did not inform DSWPD about the EIA regulations which are conducted by the same department the official worked for. In addition, the three officials from the Department of Agriculture, who conducted an agricultural assessment as part of the EIA process, produced a report which concluded that the site was unsuitable. Several reasons were provided in this regard (see Section 6.3). Without a doubt, this must have left the DSWPD in a state of confusion, as it was not known which of these two contrasting reports the appropriate one was.

7.3 Environmental Awareness

Presently, there is no environmental training program designed for traditional leadership. The Induna confirmed that he has never been to any training session for traditional leaders covering environmental issues (Kweyama 2004 *Pers.*

Comm.). Personal communication with personnel from DAEA confirmed that the DAEA has acknowledged that there is an urgent need to capacitate traditional leaders on environmental matters, but no program has been put in place for this purpose yet. She did mention though that regions such Durban have already started to focus on traditional leadership. For municipal officials there is an ongoing programme to capacitate them on environmental issues (Thornhill 2004 *Pers. Comm.*). The respondent from the DAEA Advisory services gave the assurance that there are plans in place aimed at intensifying strategies directed at capacitating traditional leaders on environmental matters (Cele 2004 *Pers. Comm.*). Limited awareness on environmental issues was also noted on the side of the community. In this regard it was highlighted that there are challenges in rural areas under traditional leadership. There are several causes for these, the most prominent being party-political divisions. The DAEA is currently led by an ANC aligned Minister, as a result, initiatives to increase environmental awareness in areas currently under traditional leadership has been met with reluctance. At some stage it was mentioned by one traditional leader that in tribal areas people do not have any 'rights' only the king / chief does (Cele 2004 *Pers. Comm.*).

7.4 Political Influences

Political influences were identified by several interviewees as the prominent hindrance to development. It was stressed that it is imperative for community leaders whether they are traditional leaders or municipal officials not to publicly align themselves with any political party (Ndelela & Kweyama 2004 *Pers. Comm.*). The respondent from DSWPD expressed that it is often very difficult to work together with municipal councillors. This is probably because her Department is headed by a leader who is aligned with the political party different from the one favoured by municipal officials. She noted that it is very unlikely to get municipal councillors in community meetings especially when they are to be addressed by the Minister of the DSWPD. This is seriously hindering the delivery of social services and development in general. It makes it very difficult for the DSWPD to

create a forum where they can table their program of action and the services they provide. In the end, it is the impoverished communities that suffer most (Mhlanga 2004 *Pers. Comm.*).

Conclusion

The research findings presented in this chapter have illustrated that despite the fact that local government structures were put in place in 2002, elected officials have not really taken up their leadership roles in rural areas. There are no clear guidelines to be followed by PGD's and other developers who want to implement development projects in rural areas. As a result, development is brought in a haphazard manner and no monitoring and evaluation systems are in place to measure the impact of these projects. Environmental awareness is critically low among the rural people. Political influences continue to mar development initiatives and as a result service delivery is very slow in rural areas.

CHAPTER 8

AN ANALYSIS OF FINDINGS AND RECOMMENDATIONS

In this chapter the findings presented in the previous chapter will be analysed in detail. This analysis will be divided into three sections namely: cooperative environmental governance, traditional leadership and environmental awareness.

8.1 Cooperative Environmental Governance

The principles of intergovernmental relations and cooperative governance are firmly established in the Constitution and other legislative provisions, such as NEMA. However, the implementation of these has been poor. Cooperative governance has not been fully realized both between and within the spheres of government. In the case of the intra-sphere relationship within the local sphere, the situation is further compounded by the tension between traditional leaders and municipal councillors.

The fact that the municipality only heard about the project when they were approached to supply water identifies some points of weakness in consultative processes of the municipality. According to the LGMSA, the process of drafting the IDPs is supposed to be broadly consultative and participatory. Through this process the local community must be consulted on its development needs and priorities. Also, other organs of state including traditional leaders must be consulted (RSA 2000). Projects that are already ongoing should be identified through the IDP process and measures to sustain these put in place. For sustainability purposes, it is imperative that municipalities take ownership and pioneer developmental projects conducted within their areas of jurisdiction. Sectoral departments such as the DSWPD can initiate projects, but it would be difficult for them to provide ongoing support as they have the whole province to service.

The refusal of the local municipality to take over and monitor this project is not justified. One of the important duties of the municipalities is to undertake and promote development in the municipality (RSA 2000). Ideally, municipalities should conduct a development audit to identify developmental activities already in place and wherever possible consolidate these by establishing the necessary monitoring and evaluation systems. Moreover, according to the Rural Development Strategy of the Government of National Unity (RDS), local government has to insist on the transparency of processes at provincial and national level, so that they may provide input into programs and projects that have environmental implications in their local area (RSA 1995). However, it is acknowledged that this may not be possible in places such as KwaZulu-Natal where differences in political ideology have led to so much conflicts and bloodshed. What is perceived to be a development audit can easily be perceived to be a fault-finding exercise or a witch-hunt.

On the side of the PGD's this project is a clear indication of poor project planning and management. During the inception stage of any project proper planning should be done, encompassing all stages in the project cycle, including monitoring and evaluation stages as well as the budget. If proper planning is done, consultation and consensus reached before implementation, projects should be viable, sustainable and effective.

The role of EIA's as a tool to improve intergovernmental relations and cooperative governance in a situation where there is poor cooperation between stakeholders is invaluable. In accordance with the NEMA principles all interested and affected parties and relevant authorities must be given an opportunity to comment about the proposed development prior to its commencement. Therefore, whether the point of contact is the municipality or traditional leadership either party will have an opportunity to contribute meaningfully towards development issues. If the implementing agent has by-passed other authorities or stakeholders, they will be

obliged to consult them through the EIA process. For example, in this project, water would be drawn from a river nearby for irrigation purposes. The Department of Water Affairs and Forestry (DWAF) is the only department with a legislative mandate to grant water use licenses in terms of the National Water Act of 1998. Through the EIA process the DWAF was invited to view the development site and submit comments.

The NEMA broadly defines the term 'environment' as the surroundings within which humans exist, these include land, water, the atmosphere, micro-organisms, plant and animal life, physical, chemical, aesthetic and cultural properties that influence human health and well being (RSA 1998c). From this definition it can be deduced that the term environment encompasses a wide spectrum of aspects therefore there will always be operational overlaps between the DAEA and other PGD's such as the DWAF. Moreover, it is rare to find a developmental activity which requires the expertise of only one PGD. Therefore it is imperative for the DAEA, through its norms and standards, as well as the strategic planning sections, to devise effective measures to deal with cooperative governance.

The administrative and political arrangement in the province of KwaZulu-Natal has placed agriculture and environment in one department and therefore under one minister. This arrangement poses some challenges in terms of prioritization and service delivery. The environment directorate is responsible for development regulation in line with the EIA Regulations and related environmental legislation. Developments applications from private and public entities, including agriculture, are processed by this directorate. On the other hand agriculture plays a pivotal role in the eradication of poverty through the provision of food security. This results in a situation where the development proponent (agriculture) and the regulator (environment) are in one department. In many instances the environment directorate which has to focus on environmental sustainability issues is perceived to be an obstacle to development. It is of utmost importance therefore for the DAEA to pay equal attention to both agriculture and environment. The

departmental vision is *'to optimize the vast agricultural potential and enhance environmental sustainability'* and the mission is *'to promote in partnership with relevant role players a prosperous community through sound agricultural and environmental practices'* (DAEA, 2004:2). Both the vision and the mission reflect equally on the department's main focus areas i.e. agricultural production and environmental sustainability. It is therefore essential that in every activity whether it is led by the agriculture or environment directorate, environmental sustainability principles are upheld. On the other hand, there is a need for the environment directorate to be innovative and come up with activities which encourage environmental sustainability and generate income at the same time. These could include activities such as waste recycling, donga reclamation, and alien weed control. Through these initiatives local community members should be utilized instead of bringing external service providers. In this way, the environment directorate can pursue its mandate whilst also responding to the community needs, particularly the eradication of poverty.

One of the DAEA shortcomings identified by the study is the inefficiency of the Compliance Monitoring and Evaluation component (CME). When the Record of Decision (ROD) is issued it normally has certain specific conditions to be adhered to by the applicant, in order to ensure that the environment is not adversely affected or to mitigate for the negative impacts. The main function of the CME is to monitor compliance with these and to take necessary legal action where non-compliance has been identified. In this case the applicant went ahead with the cultivation despite the fact that the ROD had stipulated that this activity should stop. All stakeholders consulted for this project unanimously agreed that the site was not suitable for the activity. If cooperative environmental governance is to be effective and meaningful the CME should improve its effectiveness. If this does not happen, the EIA process as a whole would be rendered useless and environmental degradation will persist. Furthermore, this will result in 'stakeholder fatigue' making the whole notion of cooperative governance undesirable.

In terms Section 28 of the NEMA, the DAEA is authorized to issue a directive and stop the activity where non-compliance has been identified. However, the Constitution stipulates that such legal proceedings should be avoided as they reflect negatively on the country's governance system as a whole. Nevertheless, it should be noted that the consequences of any form of irresponsible behaviour by any organ of state are often borne by the members of the community for whom development initiatives are designed.

8.2 Traditional Leadership

The findings of the study showed that the municipal system of governance had not been firmly established when the project was started. To date community members still widely recognize the *Induna* and *Ikhansela leNduna* as the form of authority. The community is still uncertain on how they should engage the municipal councillor in local governance issues. This scenario highlights the fact that traditional leadership continues to play a pivotal role in rural areas. Several factors can be cited as hindrances to the establishment of municipalities in certain areas. Relevant to this study, one major factor has been identified. Under the homeland system KwaZulu was predominantly led by traditional leaders under the leadership of Chief Buthelezi and the Inkatha (now called the IFP) was the only political Party in the KwaZulu Assembly (Chose and Muthien 1998). To this date, the IFP still has its strong base in the former KwaZulu homeland areas predominantly led by traditional leaders. The ANC draws its following predominantly from urban areas and service delivery through municipal structures has proven to be faster and effective in these areas.

On the other hand, development initiatives and service delivery in many rural areas is constantly thwarted by ideological differences between traditional leaders and municipal structures. As reflected in the previous sections, traditional leaders still maintain that they should be the only local government structure responsible for development projects. Against this backdrop, traditional leadership is likely to

continue to be the dominant, if not the only form of governance in many rural areas. Although the political atmosphere has changed dramatically after the 2004 election in favour of the ANC, the present scenario with regards to traditional leadership vis-à-vis municipal councillors will take some time to reach perfection. This implies that provincial departments will continue to liaise and work directly with communities or traditional leaders in implementing development projects, as it has been happening in the past. Where traditional leadership and councillors exist side by side the implementing agent might, at their discretion, choose any of the two. Legislative provisions such as the LGMSA give full recognition and define roles for municipal councillors. On the other hand, the WPTLG mentions that traditional leadership can play a role in promoting socio-economic development. Legally, the implementing agents can be fully justified, whether they choose to use traditional leaders or municipal councillors as a point of contact with the community.

There seems to be a realization from the side of government as well as other relevant stakeholders, including municipal officials that the institution of traditional leadership has an important role to play in rural development. This has been evident in the policies and legislative provisions analyzed in this research. Concluding a letter addressed to traditional leaders in 2000, the South African President Mr. Mbeki stated: "The challenge we are faced with at this moment in time is to find a way of stabilizing our system of governance in the rural areas by creating a climate within which the institution of traditional leadership and elected institutions of government can co-exist" (Mbeki 2000 quoted in Butler, 2002:4).

The important step after this realization is to provide a clear legislative framework that will guide the intergovernmental relations at local government level, particularly between traditional leadership and municipal councillors. At the moment mechanisms and structures established to promote and co-ordinate intergovernmental relations in general are not adequately effective. Commenting on the Intergovernmental Forum (IGF), the Presidential Review Commission

(PRC) states that the forum is an informal body and has no legal basis for the decisions reached by its members. The PSC further argues that the IGF largely depends on mutual trust, as there are no legal mechanisms to ensure the adherence of government departments to its decisions. From this observation it was recommended that a legislative framework be provided to guide and regulate intergovernmental relations (PRC, 1998:19).

The Intergovernmental Relations Framework Bill, of August 2004 is a significant step in terms of establishing an institutional framework to facilitate IGR and to provide for mechanisms and procedures to facilitate the resolution of IGR disputes. Not only does this Bill focus on inter-sphere and inter-provincial relations, it goes on to discuss the inter-municipality relations. However, no mention whatsoever is made of the institution of traditional leadership and how it should relate to the municipal structures or any other sphere of government. In KwaZulu-Natal 56.9% of the population lives in rural areas (Statistics South Africa, 2004) It is estimated that about 14 million people live in rural areas falling under the jurisdiction of traditional leaders (WPTLG 2003b). Therefore, one can strongly argue that an omission of the issue of traditional leadership vis-à-vis municipal structures is a serious error. This impasse has to be addressed as a matter of urgency in order to enhance service delivery and fight the abject poverty under which the masses of rural people live. This sentiment was also echoed by the Mkhambathini Acting Municipal Manager, when asked to comment on the relationship between his municipality and traditional leadership. He stated that 'the national and provincial governments must provide a framework within which to work so that we (the municipality and traditional leaders) can talk to each other within the ambits of the law, policies, regulations and procedures' (Pillay 2004 *Pers. Comm.*).

8.3 Environmental Awareness

The study showed that there is a critical need for increasing environmental awareness, starting from the municipal officials to traditional leaders, government officials and community members. Whilst some municipal officials have an idea of what EIA's are there is still a need to draw a difference between the agricultural permit process and the environmental authorization process. There are several programs in place organized by the Environmental Management Chief Directorate of DAEA to empower and guide municipal officials on environmental issues. In addition, it is a legal requirement that a section dealing with environmental issues be included in the Dip's to guide the municipality on environmental matters.

Targeting traditional leadership in proving environmental awareness programs might prove even more beneficial than focusing on the municipal officials. Generally, municipal councillors are in office for five years after which the new officials are elected. It has been strongly argued by the green movements that a five year term of office and the notion of sustainable development are not compatible. Sound environmental management often requires holistic and long-term planning. On the other hand, traditional leaders are in office for as long as they are fit to do so and for environmental purposes they might provide the kind of stability and continuity necessary for sustainable development. Crucial in this regard is the role of the KZN Department of Local Government and Traditional Affairs (DLGTA). The mission of this department is to foster good governance and promote sustainable development in KZN through traditional and local government structures (DLGTA 2004). Two strategic objectives identified in the Strategic Plan (2004-2009) are very critical as they relate directly to traditional leaders:

- To establish and support traditional authorities
- To advise and support Traditional Authorities on development processes. (DLGTA, 2004)

The two strategic outcomes clearly illustrate the provincial government's commitment to the institution of traditional leadership. It also shows that in terms of capacity building initiatives designed for traditional leaders the DLGTA should play a pivotal role. Therefore, it is imperative for other departments that aim at capacitating traditional leaders on specific issues to align their initiatives with those of DLGTA, for better coordination and maximum impact.

The study also revealed that there is widespread ignorance on environmental issues amongst the community members. In this assertion cognizance is taken of the fact that traditional communities possess a wealth of knowledge regarding the management of natural resources. However, in an innovative society new sets of knowledge and skills are continually discovered through research. Therefore, it is important for traditional communities to acquire these in addition to indigenous knowledge. Most importantly, environmental legislation is relatively new in South Africa and it must be ensured that communities are provided with adequate knowledge on these. The DAEA through its advisory services component has the task of disseminating environmental information. In an emerging democracy like South Africa it becomes imperative to give particular focus on civil society when it comes to capacity building in order to encourage public participation and strengthen democracy. Civil society includes entities such as non-governmental organizations (NGO's), community based organizations (CBO's), faith-based organizations, labour unions and other community representative structures. In the light of the scarcity of resources and the vastness of rural areas, the DAEA can maximize its impact with regards to environmental awareness by targeting these structures so that in turn they can disseminate environmental information. Also, communities, through these structures can stand for their rights and challenge any form of non-compliance with environmental legislation in their respective areas.

Conclusion

The analysis of findings provided in this chapter has indicated that cooperative governance has not been fully realized both between and within the spheres of government. Traditional leadership is still the most dominant and widely recognized form of governance in the rural areas. Also, the need to increase environmental awareness among traditional leaders, government officials and the community at large remains critical.

CHAPTER 9

RECOMMENDATIONS

In order to address the problem highlighted in this study, the following recommendations can be considered:

- Having recognized the importance of the institution of traditional leadership, the government, in the proposed pieces of legislation on traditional leadership and intergovernmental relations must provide clarity as to how traditional leaders and municipal official should work together. *Each piece of legislation that assigns or acknowledges the roles of traditional leaders must be followed with a comprehensive plan to develop their capacity to carry out the assigned duties.*
- If traditional leaders are recognized and paid by the state, there must be a way to monitor their performance and increase accountability. In this regard, *traditional leaders must have job descriptions and enter into a performance contract with the state. Environmental performance should be an integral part of this agreement.*
- Provincial /sector departments must recognize the role of local government (elected and traditional leaders) as a sphere of government closest to the community and crucial with regards to the delivery of services on a sustainable basis. These departments must strengthen and capacitate local government to deliver on its mandate. The DLGTA has a specific mission to foster good governance and promote sustainable development in KZN through traditional and local government structures (DLGTA 2004). Therefore, *for better coordination and monitoring all training programmes must be done in collaboration /consultation with the DLGTA.*

- The Constitution requires all spheres of government and all organs of state within each sphere to avoid legal proceedings against one another (RSA 1996). To this end, *all organs of state must familiarize themselves with their own mandates as well as those of others. All points of interaction and overlap with regards to functions and geographic areas of operation must be noted and proper mechanisms put in place to manage these interfaces.* This must be done in a manner that will minimize conflict between the organs of state, improve service delivery and maximize positive impact to the communities /beneficiaries.
- *Other means such as memoranda of understanding and cooperation agreements must be utilized to improve cooperation between the organs of state. These must include steps to be followed where an agreement has been breached, to ensure that service delivery is not compromised.* Specific to environmental management Section 35 of the NEMA makes provision for the National and Provincial Ministers of Environment to enter into environmental cooperation agreements with any person or community for the purpose of promoting compliance with environmental legislation (RSA:1998c).
- The DAEA must put in place measures and systems to improve cooperative governance within the Department itself and with other organs of state. *Tools such as the Environmental Implementation Plan (EIP), Environmental Management Plans (EMP) and Strategic Environmental Assessments (SEA) must be utilized to improve and assist other organs of state with regards to environmental planning.* The Department must also be fully involved through all the development stages of the IDPs to ensure that environmental sustainability is integrated into the IDPs. This must be done within a well designed and user-friendly municipal support programme.

- *To improve cooperative governance within the DAEA, the department must put in place an effective internal communication strategy. The three departmental directorates i.e. agriculture, environment and veterinary services should know about each other's core businesses and these must be clearly communicated to every employee in the Department. Integrated service delivery must also be encouraged between these directorates. Cooperative governance must be achieved within the DAEA before it can be pursued with other organs of state.*
- *Environmental management must be included as one of the key performance areas in the performance agreements for the provincial heads of departments and municipal managers. This would ensure that there is commitment and accountability with regards to environmental issues.*
- *Political commitment to environmental matters must also be sought from the Honourable Premier, Members of the Executive Council (MEC's) and mayors with the KZN province. This will ensure that environmental issues get priority in the provincial and local government agenda. To this effect, the newly established KwaZulu-Natal Premier's Coordinating Forum that is fully aligned with the Intergovernmental Relations Framework Act can be utilized.*

CONCLUSION

In this research it has been argued, using a case study approach, that poor intergovernmental relations in the local sphere of government, particularly, between traditional leaders and municipal councillors have adverse impacts on development and the environment. First, the debates for and against the institution of traditional leadership were explored in their historical contexts. The new South African government's stance on traditional leadership was presented by making an analysis of relevant legislation. Thereafter, the present situation with regards to the local governance and traditional leadership was explored. This was followed by the presentation of the case study and the key findings, discussion of key findings and recommendations.

The democratic government, after an extended period of ambivalence, has finally acknowledged that the institution of traditional leadership has an important role to play in the democratic South Africa. What the government needs to do from here is to provide clear guidelines on how the traditional leadership and municipal structures should co-exist. A vigorous strategy to increase environmental awareness amongst the municipal officials, traditional leaders and the community at large has to be embarked on. Also, through inter-sectoral coordination an integrated poverty alleviation strategy needs to be formulated in order for different departments to join forces for maximum impact. In addition, the cooperative environmental governance legal framework provided in the NEMA, ECA and the Constitution should be utilized, wherever relevant, to strengthen intergovernmental relations and cooperative governance in general.

The ANC government, under the leadership of the present MEC for local government and traditional affairs, has embarked on a vigorous strategy to re-instate the institution of traditional leadership. Whilst there could be many reasons for this move, it is hoped that ultimately relations between traditional leaders and municipal councillors will improve and peace and stability restored in the province.

Most importantly, true development will be a reality for people in the province, through sound intergovernmental relations and cooperative environmental governance.

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Personal Communications (List of Interviewees)

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Technical Services Manager
Umkhambathini Municipality
Tel: 031 – 785 1668
15 December 2004

Ms. Sonja Britz
Secretary
Department of Technical Services
Umkhambathini Municipality
Tel: 031- 785 1668
15 December 2004

Mr. S. Cele
Assistant Director (Environmental Advisory Services) - Umgungundlovu District
Environmental Management
South West Region
Tel: 033 – 347 1820
21 December 2004

Mr. P. Kweyama
Induna – Ngilanyoni Area
Tel: 0824789873
15 December 2004

Mrs. V. Kweyama
Community Member
Ngilanyoni (Imbothimuni Area)
Tel: N/A
15 December 2004

Ms. T. Mhlanga
Deputy Director
Department of Social Welfare and Population Development
Private Bag 1044
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Mr. F. P. Msomi
Municipal Councillor
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Mrs. Ndlela
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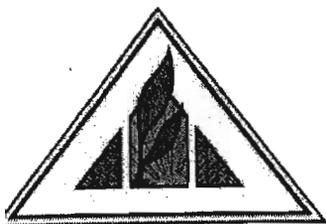
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Mr. D. Pillay
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Ms. M. Thornhill
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Appendix A

A Copy of the Record of Decision for the Imbothimuni Project



Department of Agriculture and Environmental Affairs

Departement van Landbou en Omgewingsake

Umnyango Wezolino Nezemvelo

KwaZulu-Natal

Private Bag:	X 9059	Telephone:		Telefax No.:	
Privaat Sak:	PIETERMARITZBURG	Telefoon:	033 – 355 9120	Telefax Nr.:	033 – 355 9122
sikwama Seposi:	3200	Ucingo:		Isikhahamezi:	
Enquiries:		Date:		Reference No.:	
Navrae	Ms S.J. Allan	Datum:	22/6/2004	Verwysing Nr:	EIA/ 4381
mibuzo:		Usuku:		Inkomba:	

ATTENTION: Ms T. Mhlanga
The Department of Social Welfare
Private Bag 1044
Umbumbulu
4105

Fax: 031 – 368 7752

Re: Authorisation and Record of Decision

The KwaZulu-Natal Department of Agriculture and Environmental Affairs hereby **authorises**, by virtue of powers delegated by the National Minister of Environmental Affairs and Tourism and in terms of Section 22 of the Environment Conservation Act, Act No. 73 of 1989, the project:

Proposed construction of three poultry structures with the size of 50 m² each at Jilafohlo Area, in Mid-Illovo, Province of KwaZulu Natal.

This authorisation is subject to the conditions contained in the Record of Decision.

The duration of the authorisation is **24 months**, i.e. if the physical work on the development has not commenced within this period, a new application will need to be submitted to this Department.

An appeal against the authorisation or conditions of this authorisation may be directed to Prof. Gabriel Ndabandaba, MEC for Agriculture and Environmental Affairs, Private Bag X9059 Pietermaritzburg 3200, within 30 calendar days of exemption, setting the grounds of appeal and including all relevant documentation as required by Section 35 of the Environmental Conservation Act, 1989.

Yours faithfully

Head of Department



Department of Agriculture and Environmental Affairs

Departement van Landbou en Omgewingsake

Umnnyango Wezolimo Nezemvelo

Private Bag: Privaat Sak: Isikwama Seposi:	X 9059 PIETERMARITZBURG 3200	Telephone: Telefoon: Ucingo:	033 - 355 9120	Telefax No.: Telefax Nr.: Isikhahlamezi:	033 - 355 9122
Enquiries: Navrae Imibuzo:	S.J ALLAN	Date: Datum: Usuku:	22/6/2004	Reference No.: Verwysing Nr: Inkomba:	EIA/4381

RECORD OF DECISION

Herewith the Record of Decision in terms of Regulation 10 (1) of the Government Notice No. R. 1183 of 5 September 1997 as amended by GN R. 672 of 10 May 2002 and as required by Section 22 (3) of the Environment Conservation Act, 1989, with regard to the undertaking of the activity described below. The Record of Decision must be made available to interested and affected parties on request.

1. Description of activity:

Proposed construction of three poultry structures with the size of 50 m² each at Jilafohlo Area, in Mid-Illovo, Province of KwaZulu Natal.

The proposed development comprises of the construction of three 50 m² poultry structures. Each of these structures has the capacity to accommodate 500 chickens. This development is part of the Imbothimuni Flagship Programme, an initiative of the Department of Social Welfare to alleviate poverty through women empowerment.

2. Location:

Province : KwaZulu-Natal
 Magisterial District : Richmond Municipality
 Name of Property : Imbothimuni, Jilafohlo Ward 7
 Extent of Property : 40 000 m²
 1:50 000 map : 3030 BA Dududu
 Coordinates : 30⁰ 35' 15" South and 30⁰ 33' 10" East

3. Applicant:

Name : Department of Social Welfare
Address : Private Bag 1044
Umbumbulu
4105
Tel : 031 – 336 8780
Fax : 031 – 368 7752
Contact Person : Ms T. Mhlanga
Private Bag 1044
Umbumbulu
4105
el : 031 – 336 8780
Fax : 031 – 368 7752

4. Site Visits:

The first site visit was conducted on 10 November 2003 by Siphumelele Nowele of the Department of Agriculture and Environmental Affairs (DAEA) in the presence of Ms Thulile Muthwa of the Department of Social Welfare and the community members. The second site visit was undertaken by Siphumelele Nowele and Kim van Heerden of DAEA in the presence of Carol Goge of Ezemvelo KwaZulu-Natal Wildlife; Nathi Mncwabe of the Department of Water Affairs and Forestry and Z. N. Dlamini, B. Mabika, S. Zuma of the Department of Agriculture.

Documentation assessed:

Document	Compiled by	Date
Application form	Applicant	23 September 2003
Site Evaluation Report	Department of Water Affairs	Undated
Site Visit Report	Z. Dlamini, B. Mabika, S. Zuma Department of Agriculture, Hilton	December 2003
Broiler Unit Structure Plan	Department of Agriculture and Environmental Affairs	Undated
Background Report on Imbothimuni Flagship Programme	Department of Social Welfare	Undated
Letter (confirmation of water supply)	Umkhambathini Municipality	03 May 2004

Letter (Alteration of EIA application)	Department of Social Welfare	03 May 2004
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7. Report

The application is made by the department of Social Welfare on behalf of the Jila-Fohlo Community at Mid-Illovo to establish a Flagship Programme comprising of the early childhood development centre, vegetable garden, poultry farming and peanut production. A site visit was conducted on 10 November 2003 by Siphumelele Nowele of the Department of Agriculture and Environmental Affairs in the presence of Ms Muthwa of the Department of Social Welfare and Imbothimuni Project Members. During this visit it was discovered that cultivation had already commenced prior to an environmental authorisation being issued. Furthermore, the land that had been used for cultivation seemed to be unsuitable for this activity because of the steepness of the slope as well as the proximity to the wetland and a stream. As a result of these concerns specialist comments were sought from the Department of Water Affairs (DWAF), Ezemvelo KwaZulu Natal Wildlife (EKZNW) and the Department of Agriculture. Reports from DWAF and the Department of Agriculture confirmed that the land that had been used for cultivation is unsuitable. The main reasons cited were: the slope that exceeds 12%; highly erodable soils; unreliable supply of water, water logging during wet seasons because of the wetland and poor nutritional status of soils. For the sake of progress the applicant was advised to alter the initial application so that it focuses on the construction of poultry structures only. The applicant was advised that an application may be submitted for the cultivation of land provided a proper in-depth scoping exercise takes place, taking into account the constraints of the site.

8. Decision:

That approval be granted to the applicant for the Proposed construction of three poultry structures with the size of 50 m² each at Jilafohlo Area, in Mid-Illovo, Province of KwaZulu Natal.

9. Key Decision Factors:

- 9.1 The proposed development has a socio-economic benefit because it will provide employment opportunities for women in an area which is characterized by a high unemployment rate and a large number of female-headed homes.
- 9.2 The proposed site is suitable for the construction of poultry structures.
- 9.3 In a letter dated 21 April 2004 the Mkhambathini Municipality confirmed that they will assist in supplying water for this project.
- 9.4 Ezemvelo KZN Wildlife were consulted and represented in a site meeting held on 25/11/03 but no comments have been received to date.

- 9.5 No species of environmental importance were identified on site.
- 9.6 The requirements of section 24(7) of the National Environmental Management Act, 1998, have been met.

10. Conditions of approval:

Approval is granted on condition that:

- 10.1 The development must comply substantially with the plan specified as DAEA/SEP/01 submitted with the application.
- 10.2 The development platform must be suitably stabilized, to the satisfaction of the Department of Agriculture, in order to reduce possible soil erosion.
- 10.3 The Department of Health and Veterinary Services must be consulted by the applicant with regards to waste disposal and other health related issues.
- 10.4 Suitable ablution facilities must be made available for on-site employees. These must be in accordance with the requirements of the Department of Health.
- 10.5 The Permission to Occupy (PTO) must be granted by the Department of Local Government and Housing and Traditional Affairs before the commencement of construction.
- 10.6 The applicant is responsible for compliance with the provisions for Duty of Care and Remediation of Damage contained in section 28 of the National Environmental Management Act, 1998.
- 10.7 This Department retains the right to inspect the property during its development and operational phase.
- 10.8 This authorisation is granted in terms of Section 22 of the Environmental Conservation Act, 1989 (Act No. 73 of 1989) and does not exempt the applicant from compliance with any other applicable legislation.
- 10.9 Any further development will be subject to an application in terms of the Environmental Conservation Act of 1989 and associated Regulations.
- 10.10 Failure to comply with the conditions of this Authorisation will render same invalid and the applicant liable to legal action under section 29 of the Environment Conservation Act, 1989.

11. Validity:

This authorization is valid for a period of **24 months** from the date of issue, that is, if physical work on the development has not commenced within this period then this authorisation is deemed to have lapsed and is no longer valid.

12. Appeal:

An appeal against this authorisation or conditions of authorisation may be lodged with the MEC for Agriculture and Environmental Affairs, Prof. Gabriel Ndabandaba, Private Bag X9059, Pietermaritzburg, 3200, setting out the grounds of appeal and including any relevant documentation and certified copies, within **30 calendar days** of the date of authorisation in accordance with Section 35 of the Environment Conservation Act, 1989.



13. Assessing officer:

I hereby declare that this application was assessed to the best of my ability, based on the information provided to me by the applicant and his consultant, and that which I could acquire during the site visit.


Signature

Siphumelele Nowele
Name

17 June 2004
Date

Authorizing Officer:

Comments
.....
.....
.....
.....

APPROVED / ~~NOT APPROVED~~


Head of Department
Department of Agriculture & Environmental Affairs

22/6/2004
Date

