

UNIVERSITY OF KWAZULU-NATAL

The Roles and Functions of Traditional Leaders (*Amakhosi*) in the Democratic South Africa with a Specific Focus on Those Falling Under Ingonyama Trust: A Case Study of Ugu District Municipality



By

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## Declaration

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## Abstract

The institution of traditional leadership remains one of the hotly contested topics in post-apartheid South Africa. This is despite the fact that Chapter 12 of the Constitution of the Republic of South Africa accords this institution status under the new political dispensation. What seems to be the bone of contention is the role traditional leaders should play in the present context. The roles and functions of *amakhosi* have been in constant flux, being redefined by different stages of history, from colonialism to apartheid and once again in the democratic South Africa. As such, *amakhosi* remain part of the present governance system.

This study was guided by several aims which included but were not limited to: establish and articulate the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, with a specific focus on *amakhosi* falling under Ingonyama Trust; evaluate the adequacy of resources allocated to *amakhosi* for achieving their directive; parallel legal requirements with work taking place at grassroots level; as well as compare and contrast the mandate of *amakhosi* against that of democratically elected councillors focusing particularly on those who fall under Ingonyama Trust. Empirical research using questionnaires and interviews was conducted in the Ugu District Municipality.

The findings revealed *inter alia* that the roles and functions of *amakhosi* have been in constant flux over a lengthy period of time. As such, *amakhosi* and their traditional leadership supporting structures have had to constantly evolve to pass the bar. Another finding was that *amakhosi* are still accorded status and relevance in society but need to be provided financial resources for them to be more effective. Lastly, the study revealed that at times *amakhosi* and elected councillors compete for supremacy. It is therefore recommended that further legislation is needed to ensure that these two leadership structures work in harmony to ensure community development.

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A special heartfelt thanks is extend to my supervisor, Dr Bheki R. Mngomezulu, for the dedication and professionalism that he has shown throughout this project. This dissertation would not be what it is without your guidance and encouragement.

## **Dedication**

This dissertation is dedicated to my beloved sister, Ntombenhle Bonita Luthuli. Even after her premature passing she has been and continues to be a great source of inspiration in all facets of my life. The times we spent together will forever be cherished and celebrated. We will forever love and miss you.

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## Acronyms

ANC	African National Congress
CLRA	Communal Land Rights Act
CoGTA	Department of Corporate Governance and Traditional Affairs
CONTRALESA	Congress of Traditional Leadership of South Africa
CPF	Communal Policing Forum
CPP	Convention People's Party
DTA	Department of Traditional Affairs
IFP	Inkatha Freedom Party
ITB	Ingonyama Trust Board
KITA	KwaZulu Ingonyama Trust Act
LGMSA	Local Governance: Municipal Structures Act
NHTKL	National House of Traditional and Khoisan Leaders
NHTLA	National House of Traditional Leadership Act
SAPS	South African Police Services
SPSS	Statistical Package for the Social Sciences
TAB	Traditional Affairs Bill
TLGFA	Traditional Leadership and Governance Framework Act
UK	United Kingdom
UW	University of Waterloo
WPLG	White Paper of Local Governance
WPTLG	White Paper on Traditional Leadership and Governance

# Chapter 1

## Introduction and Background

### 1.1 Introduction

Traditional leadership is a phenomenon that is not peculiar to the African continent. The majority of countries across the globe have experienced it in one form or the other. Its roots in Africa are as deep as they are in the rest of the world. However change in this institution has lingered in the air for quite some time. The political terrain that has been monopolised by traditional leadership has changed in the past century or so. The wave of representative forms of governance that has swept throughout the world has pushed traditional leadership to the brink. More recently, the pro-democratic movement in the wake of the Arab Spring has continued this trend in the Middle East. Be that as it may, traditional leadership has persisted, although in a constantly evolving state of being. An examination of the international stage reveals that the roles and functions that are bestowed upon monarchs in their respective countries differ markedly. Nonetheless, traditional leaders, the world over, bear similarities. Be it in Europe (d'Oliveira, 2012), Japan (Shillony, 2006) or Nepal (Pattanaik, 2001), they are considered as symbolic and ceremonial figures charged with the task of unifying their respective nations. Monarchs all over the world have this unifying figure-head effect.

In Africa the role of traditional leaders has been somewhat different. The effects of colonialism and apartheid have had significant, long-lasting impacts on the institution. The English ferociously subjugated the system of traditional leadership with the aim of weakening its political dominance. Thereafter, traditional leadership was retained in order to advance the interest of this colonial master. The French and Portuguese, on the other hand, chose a different style of colonization. These two nations attempted to either discourage or prohibit the African way of life since Africans were perceived as brute savages. As such, in continental Africa, traditional leadership has played a dual role 'between traditional obligations to redistribute wealth and protect people from misfortune and colonial demands to collect taxes, sell land, recruit labour, and enforce a plethora of new regulations' (Spear, 2003:09). As a result of this contamination that has reduced the credibility of this institution, countries such as Ghana, Namibia and Botswana have gone through the same phases of suspicion, ambivalence and embrace of traditional leadership' (Sithole, 2010: 58). South Africa is currently undertaking the same journey.

In many parts of Africa the institution still remains in a position of strength owing to its dexterous ability to manage the rural population. Before, during or after the period of colonialism, apartheid or the democratic era, the roles and functions of traditional leaders in Africa have remained the same. Tradition leaders have been and continue to be assigned the task of improving the quality of life of people living in rural areas by assisting government to stimulate development, facilitating achievement of service delivery so as to enhance the social welfare of the rural communities, improving morality of society by serving as fundamental

tools of reasoning, deepening and enriching democracy using bureaucratic institutions belonging to the democratic state, and functioning as administrative and judicial tools in the countryside. Furthermore they administer customary law, adjudicate tribal conflict, enforce order, act as a primary representative tribal symbols, and defend custom and the local way of life.

Although the South African Constitution recognises traditional leadership it is inarticulately vague on this subject. According to some commentators this inarticulation of the Constitution is a feature that was built-in on purpose. Policymakers, during the drafting and finalising of the Constitution purposely omitted to make the roles and functions of traditional leaders (hereafter referred to as *amakhosi*) in democratic South Africa clear, precise and without ambiguity (Williams, 2009). Levy and Tapscott (2001) maintain that uncertainties within the African National Congress (ANC) are what led to the Constitution being ‘vague’ on the roles and functions of *amakhosi*. It was an attempt by the ANC to accommodate both critics and advocates of *amakhosi*. In a way, this should not come as a surprise. Initially the ANC and its alliance partners had no intention of retaining traditional leaders or according *amakhosi* recognition under the new political dispensation. It was only later that there was a change of plan which saw *amakhosi* being accorded a place. This is what Mngomezulu and Simelane (2010) refer to as ‘forced marriage’. It is on these grounds that the present topic is being investigated as a contribution to the discussion/debate.

The title of this research study is: ‘The Roles and Functions of Traditional Leaders (*Amakhosi*) in the Democratic South Africa with a Specific Focus on those falling under Ingonyama Trust: A Case Study of Ugu District Municipality’. In addition to the above, the rationale behind this research study is provided below. This chapter will unfold as follows: A brief overview of the physical location and demographics of the study area is provided as a point of departure. Thereafter, the research problem central to this study is articulated and refined, context is provided, and then the research hypothesis is postulated. This chapter outlines the objectives that were considered during the conceptualisation of the study. The same objectives are also utilised during the testing of the hypothesis. The framing of the research issues in a broader context and the provision of social significance of the study is discussed during the penultimate subsection. And finally, a brief overview of each chapter of the study is highlighted as a way of preparing the reader’s mind-set.

## 1.2 Physical Location and Demographics

As the topic suggests, this study was conducted within the bounds of Ugu District Municipality, located on the South Coast of KwaZulu-Natal, South Africa. The study area is bordered by uMgungundlovu Municipality to the north, eThekweni Municipality to the north-east, the Indian Ocean to the East, OR Tambo Municipality in the Eastern Cape to the south-west, and Sisonke Municipality to the west (CoGTA, 2015). The total area of Ugu District Municipality is 5 046 km<sup>2</sup>. Its population as of 2007 was estimated to be 709 918. Ugu District Municipality can be divided into six local municipalities. These are: Umzumbe, Umuziwabantu, Vulamehlo, Hibiscus Coast, Ezinqoleni (previously known as Ezingolweni), and uMdoni, with respective areas and population as of 2007 of 1 259 km<sup>2</sup> and 176 284, 1 088 km<sup>2</sup> and 104 530, 973 km<sup>2</sup>

and 74 022, 839 km<sup>2</sup> and 224 281, 649 km<sup>2</sup> and 56 370, and 238 km<sup>2</sup> and 74 440. Ingonyama Trust Board (ITB) owns an estimated 1 911 km<sup>2</sup> or 37.87% of land scattered throughout the rural KwaZulu-Natal (ITB, 2015).

The ITB (2015), likewise, divides the Ugu District Municipality into six local municipalities namely, Umzumbe Bhekani, Umuziwabantu, Vulamehlo, Hibiscus Coast, Eziqoleni, and uMdoni. The latter, uMdoni Local Municipality, has three tribal authorities falling within its boundaries, namely, Emalangeni, Cele and eZembeni Tribal Authorities. Vulamehlo Local Municipality has ten tribal authorities. Umzumbe Bhekani Local Municipality has twelve tribal authorities within its borders. On the other hand, the combination of Umuziwabantu, Eziqoleni and Hibiscus Coast Local Municipalities contain a total of fifteen tribal authorities. Hence, the total number of tribal authorities falling within Ugu District Municipalities is forty. Some tribal authorities such as EmaThulini, Isibonda/Machi, Nyavini, eZembeni, and Lushaba transverse more than one single geographic area, divided by either farmland, woodland or land belonging to the local municipality. Isibonda/Machi and Jabulani Beshwayo, both falling Umuziwabantu Local Municipality, are the largest and the smallest tribal authorities respectively.

### 1.3 Background and Outline of Research Problem

The role of *amakhosi* is in constant flux, being redefined by different stages of history, from colonialism to apartheid and once again in the democratic South Africa. Advocate Nthai, chairperson of the Task Team on the White Paper on Traditional Leadership and Governance (WPTLG), argues that indeed the majority of South Africans are of the opinion that traditional leadership is a vital component in ‘deepening and enriching democratic governance at the local level’ (WPTLG, 2003:03). An estimated 4 million people live in areas administered by Ingonyama Trust Board (ITB Annual Report, 2014), constituting 40% of the total population of KwaZulu-Natal (Census, 2011). These people are affected, directly and indirectly, by legislation enacted to regulate the traditional institution. The view held by Advocate Nthai and many others is one of many reasons the drafting of legislation pertaining to *amakhosi* has gathered momentum since the recognition of the institution of traditional leadership by the Constitution of the Republic of South Africa (Constitution of the Republic of South Africa 1996, Chapter 12).

The Constitution is the supreme law of the land. As such, any law that contradicts it or is not aligned to the Constitution can be invalidated in a court of law. Moreover, obligations imposed by the Constitution must be fulfilled by the State and all its subjects. Chapter 12 of the Constitution accounts for *amakhosi* and customary law. The Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA), which will be repealed by the Traditional Affairs Bill 2013 (TAB) if and when it becomes law, provides for matters connected with *amakhosi* in South Africa. Both are specific pieces of legislation that are aimed at, amongst other things, recognising traditional communities, providing a statutory framework for the positions of *amakhosi*, and providing for the functions and roles thereof. Even though more than a handful pieces of legislation concerning *amakhosi* have been enacted, this study hypothesises that this role has not been clearly delineated and that it can and should be further

redefined to ensure that there are no ambiguities. The somewhat unique status of areas falling under Ingonyama Trust makes this undertaking more significant.

The Constitution and the abovementioned legislation are sufficient for, and have been pivotal in, the task of legitimising *amakhosi* in the democratic South Africa. As such, the topic of legitimacy will not be discussed in detail; it will only be evaluated using available sources of literature. On the other hand, vagueness exists regarding the scope and significance of traditional leadership in terms of duty – their moral and legal obligation – as well as their absolute role in governance within the democratic South Africa. These two components – duty and role – are open to interpretation and as such they will be key components scrutinised by this study. Other key issues that will be discussed will include the disparity between legal reference and what occurs at grassroots level, the adequacy of resources allocated for achieving the mandate bestowed on *amakhosi* by the constitutional imperatives, and the contrasts between the roles and functions of *amakhosi* versus those of democratically elected councillors.

This study uses the legal framework as a key source of information pertaining to the role and functions of *amakhosi*. It can be argued that legislation provides a comprehensive answer to this research question. Be that as it may, there are three main obstacles that are encountered with that line of thought. First, there is no eloquently expressed single source of information that deals with the subject; material is scattered and possibly not comprehensive enough from existing literature. Second is resource allocation and access; *amakhosi* are supposed to play a pivotal role in local governance considering their roles, however resources which *amakhosi* are supposed to utilise to achieve their mandate are evidently and conspicuously insufficient. Third, there is possible lack of understanding as to what *amakhosi* do. The role of *amakhosi* in relation to democratically elected councillors could be better articulated taking into consideration the abovementioned legal references. Confusion pertaining to the third point means that the role of *amakhosi vis-à-vis* democratically elected councillors is muddled. Ntsebeza (2006) also suggests this confusion. It is on these grounds that the present topic was conceptualised and proposed as a contribution to the discussion/debate.

## 1.4 Research Problems and Objectives: Key Questions

The research objectives of this study are to:

- i. Establish and articulate the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, with a specific focus on *amakhosi* falling under Ingonyama Trust;
- ii. Evaluate the adequacy of resources allocated to *amakhosi* for achieving their directive;
- iii. Parallel legal requirements with work taking place on the ground; and,
- iv. Compare and contrast the mandate of *amakhosi* against that of democratically elected councillors focusing, again, particularly those who fall under Ingonyama Trust.

If and when these objectives are achieved this study will contribute to the school of thought dedicated to solving a fundamental, complicated, and longstanding concern surrounding the institution of traditional leadership in post-apartheid local governance. Simultaneously, in achieving these objectives, it is hoped that this research will assist in bridging the gap between policy and practice. Hendricks and Ntsebeza (1999) agree that the assortment of government

departments influencing policy on traditional leadership has failed to help the institution but in fact has caused great discrepancy between policy and practice.

The research questions which the study set out to address are aligned to the objectives outlined above. They are as follows:

- i. With a specific focus on those falling under Ingonyama Trust, what are the roles and functions of *amakhosi* in post-apartheid South Africa and local governance?
- ii. Are resources allocated to *amakhosi* for their achieving their directive adequate?
- iii. What are the differences and similarities between *amakhosi*'s legislative directive and the work taking place at grassroots level?
- iv. Again, with a specific focus on those falling under Ingonyama Trust, what are the differences and similarities between the mandate of *amakhosi* and that of democratically elected councillors?

## 1.5 Research Problems and Objectives: Broader Issues

Traditional leadership as an institution has the ability to make an immense contribution to the 'reconstruction and development' of society in the democratic South Africa (WPTLG, 2003:10). This objective is achievable by, amongst other things, curbing 'poverty, homelessness, illiteracy, and the promotion of good governance' (WPTLG: 2003:03). This overambitious view of traditional leadership begs the question: what resources ought *amakhosi* to use in transforming the lives of an estimated 4 million people living on land administered by Ingonyama Trust Board? Higgs (2007), evaluating a range of topics, concludes that people living in South Africa's rural areas, those that have been historically deprived of various basic services, are experiencing the poorest 'quality of life'. Likewise, Makiwane and Kwizera (2009) demonstrate the low 'quality of life' embedded in racialism, negatively affected by the AIDS pandemic, and compounded by high unemployment rates, dynamics that greatly impact the quality of life of those living under *amakhosi* in rural KwaZulu-Natal. *Amakhosi* can make great strides towards the 'reconstruction and development' of society if they are able to maximise available resources or if they are able to gain access to other essential resources. Such strides would promote social well-being for no less than forty percent of the population of KwaZulu-Natal.

The more recent TAB, which will repeal both the TLGFA and the National House of Traditional Leaders Act (NHTLA), is mute regarding the direct role that traditional leaders can play in improving the 'quality of life'. Instead this role is placed in the care of the Department of Traditional Affairs (DTA) and the National House of Traditional and Khoi-San Leaders (NHTKL). Consequently, views held by these two parties are at present more directly responsible for role determination. The distinct difference between the previous and the current state of affairs is that views, in contrast to legislation, are more malleable. On the contrary, the White Paper on Local Governance (1998:62) and the WPTLG (2003:32) are more explicit on this issue. These white papers respectively assert the following: The institution of traditional leadership can facilitate community development by 'lobbying government and other agencies for the development of their areas'. Furthermore, traditional leaders can enhance the 'quality of life' of people living in rural areas by assisting government stimulate, amongst other things,

‘socio-economic development’, ‘service delivery’, ‘preservation of the moral fibre and regeneration of society’, and ‘social well-being and welfare of communities’. Undoubtedly, changes brought about by TAB will have major repercussions. It is for these reasons, therefore, that a study of this nature is both timely and relevant in the South African context.

## 1.6 Structure of the Dissertation

### **Chapter One: Introduction and Background**

This chapter provides the background to the study. It rationalises how the topic was chosen and provides the aim, objectives, outlines research questions, and frames broader issues addressed in the study. Lastly, the chapter presents an overview of all the other subsequent chapters as a way of preparing the reader’s mind-set.

### **Chapter Two: Literature Review**

Chapter two will review existing literature on the theme of the study. It will summarise and engage with the various sources used in the study. The strengths and weaknesses of the existing literature will be identified. Importantly, the chapter will indicate what is missing from the literature as justification for the present study.

### **Chapter Three: Theoretical Framework**

The theoretical framework on which the study is based will be the focus of this chapter. After presenting a general discussion on the role of theoretical framework in research, the chapter will introduce the chosen theory and justify its relevance to this study.

### **Chapter Four: Research Methodology**

The methodology used to collect data for the study will be discussed in this chapter. Moreover, the reasons for using such methods will be provided. Any challenges experienced during data collection shall be discussed here and information provided as to how those challenges were resolved during the data collection process.

### **Chapter Five: Research Results**

The primary focus of this chapter will be to present the results obtained through the various research methods discussed in chapter four. In a nutshell, the purpose of this chapter will be to report on what was found by this study as a contribution to existing knowledge on the theme or subject of this dissertation. Where possible and/or necessary, graphs, tables, charts, bars, etc. will be used to present the results. In the main, the results will be presented in the form of a discussion or narrative.

### **Chapter Six: Discussion and Analysis of Results**

Research results presented in Chapter Five will be analysed and given meaning by linking them to the broader discussion presented in other chapters, especially the literature review chapter



(Chapter Two). This chapter will demonstrate how the researcher has understood the issues which emerged from the study by ensuring that there is ease of understanding of the results by readers – including those who might not be conversant with the subject of this dissertation.

### **Chapter Seven: Summary, Conclusion and Recommendations**

This chapter will pull the study together by reiterating key discussion points. Importantly, drawing from the findings, the chapter will make recommendations for the future and identify other areas of further research on the theme of this study.

# Chapter 2

## Literature Review

### 2.1 Introduction

Having introduced the topic and provided a brief background in the previous chapter, the aim of this chapter is to review existing literature pertaining to the roles and functions of traditional leadership in democratic South Africa with a specific focus on *amakhosi* that fall under Ingonyama Trust. This chapter will summarise and engage with the international, continental and then South African literature on the subject of this study. The use of these different interlinking spheres to review traditional leadership literature will ensure that the aim of the study is achieved through a cogently calculated process of interrogating the research questions. Literature reviewed herein will provide the backdrop which is used to locate this study whilst affording an opportunity to engage with a variety of perspectives on traditional leadership from different geographical contexts. Literature detailing views on the institution of traditional leadership and various other components that impact on or are impacted upon by *amakhosi* will be reviewed. After this section has taken these perspectives into account, this study will endeavour to outline the strengths and weaknesses of these information sources as demonstration that the aim was not simply to summarise these sources but to engage them more critically as should be the case in a literature review chapter.

As far as reasonably practicable, this chapter will indicate what is missing from the literature as justification for the present study. Although the study will attempt to fill some of the voids that will be uncovered some gaps may require further inquiry to ensure that they are addressed in an appropriate manner. Hence it is acknowledged that some gaps may fall outside the purview of the current study but will still be highlighted for the benefit of the reader. It should be noted that questions that will be investigated in detail concern the roles and functions of traditional leadership in a democratic South Africa with a specific focus on those that fall under Ingonyama Trust. A holistic way of addressing questions that pertain to roles and functions of traditional leadership is to conduct a detailed investigation of the four research questions outlined in Chapter One above. These research questions have been specifically formulated with the sole purpose of addressing the primary aim of the study. This analytical approach is regarded as the most suitable strategy for facilitating the identification of strengths and weaknesses in the existing literature.

The first objective that will be addressed in this chapter, subsequent to the provision of the backdrop, is to establish from existing literature and thereafter articulate the roles and functions of *amakhosi* in post-apartheid democratic South Africa and local governance. Policy documents and legislation pertain to the institution of traditional leadership will be central to this first objective. After this objective has been realised the next step will be to interrogate these documents to expedite the evaluation of resources that *amakhosi* are supposed to utilise in achieving their directive. The issue of the adequacy of resources will be the second objective

to be addressed by this chapter. Primary data also addresses this objective. Likewise the third objective of comparing and contrasting legal requirements with work taking place at grassroots levels can and will only be investigated halfway in this section. This section will investigate legal requirements conferred upon *amakhosi*. However, work taking place on the ground will only become clearer following discussion and analysis of primary data in Chapter Six. An association, correlation and contrasting of primary and secondary data can only be undertaken hereafter. The final objective of comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors with a specific focus on those that fall under Ingonyama Trust will also be deliberated upon in this chapter.

These four objectives are analysed using existing literature with the intention of systematically addressing the aim of the study as indicated above as well as testing of the hypotheses that have been proffered herein. One of the hypotheses is that the roles and functions of *amakhosi* are sometimes ambiguous. This means that they should be further redefined to ensure that there are no ambiguities. Refining of the roles and functions will also eliminate ambiguities pertaining to what *amakhosi* can achieve utilising resources that have been provided for their mandate. Likewise uncertainties of roles and functions have a potential to occur between *amakhosi* and democratically elected councillors. The second hypothesis that will be tested is that resources that have been provided to ensure that the mandate of *amakhosi* is achieved are evidently and conspicuously insufficient. In the meantime, the role of traditional leadership on the international stage provides a point of departure in this chapter whilst simultaneously giving this study a panoramic view of this institution.

## 2.2 Traditional Leadership and the International Stage

On the international stage, the roles and functions that are bestowed upon monarchs in their respective countries differ markedly. Differences in roles and functions are as diverse as the term by which monarchs are referred which ranges from kings to emperors to tsars to kaisers. Nevertheless, monarchs throughout the world do bear similarities. For instance, the European monarchs (d'Oliveira, 2012), Japanese monarchs (Shillony, 2006) and Nepalese monarchs (Pattanaik, 2001) are considered as symbolic and ceremonial figures charged with the task of unifying their respective nations. In reality all monarchs have this unifying, figure-head effect. Europe is home to some of the most politically diverse nations that have been united by monarchs. In fact more than a quarter of the European Union member states are monarchies. They are the kingdoms of Belgium, Denmark, the grand duchy of Luxembourg, The Netherlands, United Kingdom of Great Britain and Ireland, Spain, and Sweden. European monarchs are also said to enjoy more status than most around the world. For instance, Shillony (2006: 01) notes that in contrast to the Queen of England, the Japanese monarch 'is neither the sovereign, nor the head of state, nor the commander in chief of the armed forces, nor the head of a national church, nor the apex of aristocracy, nor the owner of big land estates'.

The British monarch is perhaps one of the most prominent, symbolic and ceremonial of all monarchs globally. None has been more successful in unifying diverse nations under a single flag. The British monarch has been able to unify fifty-three nations under the banner of the Commonwealth of Nations. Queen Elizabeth II, the reigning British monarchy, is still the

constitutional monarch of the sixteen member states belonging to the Commonwealth realm. This makes the British monarch the most prominent representation of traditional leadership anywhere in the world, owing its longevity to adaptability, evolutionary characteristics and reverence (Hunt, 2011). These features have allowed it to gain popular support in all corners of the world as well as inside the United Kingdom (UK). Two of the largest political parties in the UK, the Conservative and Liberal Parties, are both supportive of this institution hence they avoid endorsing potentially damaging legislation (Brazier, 2007).

Even though, on the one hand, there is plenty of reverence towards the institution of traditional leadership, leftist on the other hand tend to highlight the shortcomings thereof instead of emphasizing positive characteristics. Leftists' attacks on traditional leadership often target patrimonial succession (Shillony, 2006; d'Oliveira, 2012) and, in a fewer number of cases, religious norms (Brazier, 2007; Hunt, 2011). Patrimonial succession is central to the majority of monarchies on the world stage. On the other hand, religious norms are especially significant in England where only Protestants can ascend to the throne. Leftist attacks have forced monarchies to re-evaluate their *modus operandi* in order to remain resolute and relevant. Monarchs have had to transform both by decentralising power and also by taking into account the will of the masses. In Europe this has led to major decrease in the number of subjects under monarchical rule. Roobol (2011) argues that the consent of monarchical powers to transform from 'patrimonial' to 'bureaucratic' rule in Europe have eroded its power leading to a sharp decrease from 99 percent to 20 percent between 1815 and 2008 the number of subjects under monarchical rule. Hence, the power of monarchies in Europe has been in sharp declined for two centuries.

In the Middle East, Bank *et al* (2014:164) claim that Arab monarchies are 'durable, yet different' owing to their abilities to resist external and internal threats in the midst of the Arab Spring. The Arab Spring refers to the pro-democratic revolutions that have swept through the Arab world in Tunisia, Egypt, Libya, Yemen, Syria, Bahrain, Saudi Arabia, Morocco, Algeria, Jordan, Oman, and Kuwait in recent years, caused by disgruntlement over economic suppression of the masses along with autocratic rule and corrupt activities of the political elite (BBC, 2015). It is noteworthy that only Qatar and the United Arab Emirates have been able to avert the Arab Spring. Durability and persistence of such Arab monarchies is credited to their 'divide-and-rule' tactic achieved through balancing 'political' costs – underlined by homogeneity – against 'administrative' costs – emphasized by heterogeneity (Frisch, 2011:177). The divide-and-rule tactic is mostly effective in combating internal threats. To garner external support the Middle Eastern monarchies have had to use a combination of strategies. They have had to be more diplomatic, use their rich oil reserves strategically, create a close-knit group of elite members that are vital in political decision-making, and utilise a combination of long standing religion and rich tradition as cornerstones. What is clear from this section is that the issue of traditional leadership is indeed a global phenomenon. Secondly, the institution of traditional leadership as outlined above has some variations from country to country. Thus, Africa is no exception.

## 2.3 Traditional Leadership and the African Continent

In Africa, the traditional leadership institution has played a dual role ‘between traditional obligations to redistribute wealth and protect people from misfortune and colonial demands to collect taxes, sell land, recruit labour, and enforce a plethora of new regulations’ (Spear, 2003:09). The White Paper on Traditional Leadership and Governance (WPTLG, 2003) states that traditional leadership has experienced a variety of oppression in Africa depending on the ruling style imposed upon each country by the colonising nation. The English ferociously subjugated the system of traditional leadership. The main purpose of this undertaking was to weaken political dominance perceived to be monopolised by traditional leaders at that time. Thereafter, traditional leadership was retained in order to advance the interest of the English. The French and Portuguese chose a different style of colonization. These two nations attempted to either discourage or prohibit the African way of life. The rationale behind this was to ‘civilise’ Africans who were perceived as brute savages.

Due to contrasting roles the institution has had to play owing to the style adopted by the colonising country as well as the resulting significant divisions within and outside the institution, traditional leadership has had to change in order to remain relevant. Becker (2006) attributes some of the ‘resilience’ of this institution to the shifts in gender politics, granting women access to chieftaincy. Lindgren (2005) elucidates this gender relation, citing the case study of Sinqobile Mabhena as the first female Ndebele chief in Zimbabwe. Although the institution has had to endure some changes it has remained fundamentally similar regarding the role it plays in society in many parts of Africa including Ghana (Owusu, 1996), Namibia (Becker, 2006), Botswana (Holm and Botlhale, 2008), and Mozambique (Obarrio, 2010). Its role has been to administer customary law, adjudicate tribal conflict, enforce order, as well as act as a primary representative tribal symbol.

In Ghana, the Convention People’s Party (CPP) led by Kwame Nkrumah initially repressed chieftaincy in attempts to reduce its significance, a strategy that was later abandoned after realising the institution’s functionality as an administrative and judicial tool in the countryside (Rathbone, 2000; Spear, 2003). Sithole (2010: 58) argues: ‘Countries such as Ghana, Namibia and Botswana have gone through the same phases of suspicion, ambivalence and embrace of traditional leadership’. Likewise, South Africa (as shall be seen below) is currently undertaking the same journey. Nevertheless, in many parts of Africa the institution still remains in a position of strength. Fanthorpe (2006) argues that, discounting continuing internal jostling for political dominance, chiefs in Sierra Leone are in a stronger position in comparison to their counterparts in West Africa or even democratically elected officials, owing to their defence of custom and the local way of life. In Nigeria the same could be said although with a slight yet key difference. Prominent as chieftaincy may be in Nigerian socio-politics from the 1970s onward, Nigerian chieftaincy is fundamentally different in that it may not necessarily be hereditary as is the case elsewhere on the continent (Harneit-Sievers, 1998).

Traditional leadership in Africa still plays more than a single part in discharging its role and function. The changing nature of the state ushered in by the advent of democracy has forced traditional leadership in Africa to adapt to these changes. Customary obligations to ensure the

wellbeing of the people, and to preserve and be custodians of customs and tradition still remain. But due to the changes that have occurred, these customary obligations have been supplemented by an array of democratically inclined obligations. As the next section will show, democratic South African and local governance traditional leadership is regarded as an essential component of ‘deepening and enriching democratic governance at the local level’ (WPTLG, 2003:03). This institution is able to make immense contributions towards reconstruction and development of society through governance that is easily accessible to the local populations. The WPLG views traditional leadership as an instrument that can play a pivotal role with regards to lobbying government and other developmental agencies so as to ensure the development of rural areas and increased societal wellbeing. Utilisation of traditional institutions by external forces at the expense of the native population can only be regarded as an unfortunate aspect of Africa’s history.

Due to the comparable nature of historical impacts that countries on the African continent have experienced it is to be expected that there will be consistencies pertaining to the general roles and functions of traditional leadership. To put it differently, the roles and functions of *amakhosi* in post-apartheid democratic South Africa and local governance will be similar to the roles and functions of traditional leaders in other African countries. In a nutshell, the *raison d’etre* for traditional institutions throughout Africa is to improve the quality of life of people living in rural areas by assisting government to stimulate development, facilitate achievement of service delivery so as to enhance the social welfare of the rural communities, improve morality of society by serving as fundamental tools of reasoning, deepen and enrich democracy using bureaucratic institutions belonging to the democratic state, and to function as administrative and judicial tools in the countryside. Taking into consideration these roles and functions the rationale behind a democratic state advocating traditional institutions as key instruments of governance is obvious. However, the efficacy of these institutions in achieving the desired end is open to debate. The desired end is idyllic in the sense that it is perhaps difficult to achieve, both in South Africa and in the continent as a whole. South Africa fits within this broader spectrum and should not be seen as an isolated case.

## 2.4 Traditional Leadership in South Africa

In South Africa, as is the case on the international stage and in other parts of Africa, *amakhosi*, traditional supporting structures and traditional institutions do play a vital role in unifying rural communities and indeed the South African population. The White Paper on Local Governance and the White Paper on Traditional Leadership and Governance, issued in 1998 and 2003 respectively, both envisaged this end as part of the roles and functions of *amakhosi* in post-apartheid South Africa and local governance. Suffice it to say that *amakhosi* are regarded as key symbolic and ceremonial figures, a view that is enshrined in other policy documents including the Constitution. The annual celebration of the royal reed dance hosted by the King of the Zulus (hereafter referred to as *iSilo*) Zwelithini Goodwill kaBhekuzulu, at Enyokeni royal palace is one of the foremost ceremonial celebrations on the calendars of observers of the Zulu custom. It is a traditional celebration attended by thousands of people across the country and beyond. On the other hand the celebration of Heritage Day is one observed by millions

throughout South Africa. Heritage Day, formerly known as King Shaka's Day, is a holiday whose roots belong to the symbolic celebration of the founding father of the Zulu nation.

Traditional leadership falling under Ingonyama Trust may not be as prominent as the British monarchy is on the international stage. However the former, in much the same way as the latter, also owes its longevity to adaptability and a characteristic ability to evolve under different periods of South African history. The role of *amakhosi* has been in constant flux, being redefined by different stages of historical periods, from colonialism to apartheid and once again during the democratic period. The ability to change as circumstances demand entails both positive and negative aspects with regards to garnering popular support. Traditional leadership in South Africa has been quite fluid, with devastating consequences. On the one hand, *amakhosi* were tools used by colonialism and the apartheid regime, and arguably still continue to be used by the current democratic government, to achieve political ends not aligned with the population under direct rule of the *amakhosi* concerned. On the other hand, *amakhosi* have remained relevant in today's political terrain because of their ability to evolve as historical and political circumstances demand. These two binary views continue to be at the heart of discussions pertaining to *amakhosi* in South Africa. Consequently, they have prevented the traditional institution from garnering popular support in South Africa compared to how the British monarch has in the United Kingdom and the Commonwealth.

Religious norms that are central to the British monarch's controversy have no palpable bearing on South Africa's traditional institutions. Religion is indeed a concept that was shipped in during colonialism and, on the whole, has failed to completely displace African traditional and age-old customs or even negatively influence these with great vigour. Tradition, one of the key concepts belonging to conservatism, a theoretical framework used in analysing this study, is a treasured magnetic piece that is able to bind and rationalise traditional leadership anywhere in the world. In South African tradition, it is very difficult to uncover a steadfast, longstanding bond between religion and traditional leadership. Traditional leaders can and do become great religious leaders but there is no necessary link that directly flows from one concept to the next or that has great impact caused by one institutions on the other.

A factor that increasingly impacts on traditional institutions from one historical period in South African history to the next is that of increasing bureaucracy that has been experienced by this institution. No longer are traditional institutions patrimonial in nature. In modern day South Africa there seemingly is an increasing number of bureaucratic institutions that have had, and continue to have, a vested interest in the operations of traditional leadership. These include the Ingonyama Trust Board (ITB), the Department of Corporate Governance and Traditional Affairs (CoGTA), National House of Traditional and Khoisan Leaders (NHTKL), and the Congress of Traditional Leaders of South Africa (CONTRALESA), amongst others. The increasing amount of bureaucratic institutions with a stake in traditional leadership has increased the complexity and inflexibility of this institution. It is no longer the case that *amakhosi* are strictly patrimonial in terms of their day-to-day operations and governance of people under their direct rule. The concept of absolute power residing solely with *amakhosi* cannot be associated with the institutions in the modern-day democratic South Africa and local governance. It remains to be seen to what extent Roobol's argument of the institution changing

from a patrimonial system to a bureaucratic institution, as outlined above, erodes the power of *amakhosi* in democratic South Africa and local governance.

## 2.5 Traditional Leadership and Local Government in South Africa

*Amakhosi* are key components who can influence policy of the South Africa local governance structures. Political influence with a positive frame of mind will benefit the rural population living in areas under their jurisdiction. This function is outlined in chapter 7, section 152 of the Constitution. By the same token, these are the exact same functions that are mandated to democratically elected councillors by virtue of them being components of the local municipality. As such, roles outlined by this section of the Constitution overlap between *amakhosi* and democratically elected councillors. Roles and functions that should be executed in tandem by *amakhosi* and democratically elected councillor as components of local governance as outlined in chapter 7, section 152 of the Constitution are:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and,
- to encourage the involvement of communities and community organisations in the matters of local government.

It is absolutely imperative for the two parties to work together for the sake of development of rural areas. This will enable local government to flourish. Similarly, democratically elected councillors have a marked influence. Hence the synergy between *amakhosi* and democratically elected councillors serves to benefit society as a whole. The two parties should work together with each party feeding of positive energy emitted by the other. The benefits of this synergy are a democratic and accountable form of government, delivery of basic services aimed at development which are usually scarce in rural areas, a sustainable form of economic development that does not impact negatively on the physical environment nor posterity, and a community that partakes in activities that impact upon their livelihoods.

Objectives of the municipal council as stipulated in Section 19 of the Local Government: Municipal Structures Act, 117 of 1998 (LGMSA) are aligned with Section 152 of the Constitution as quoted above. Alignment of the two policy documents serves to further solidify the need for *amakhosi* and democratically elected councillors to work together for the benefit of rural communities. According to Section 19 of LGMSA, a municipal council, consisting of democratically elected councillors within a local municipality, has the following duties:

- i. A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
- ii. A municipal council must annually review –
  - the needs of the community;
  - its priorities to meet those needs;
  - its processes for involving the community;



- its organisational and delivery mechanisms for meeting the needs of the community; and,
  - its overall performance in achieving the objectives referred to in subsection (1).
- iii. A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

Even though the Constitution and the LGMSA make attempts to shed light on the roles and function of *amakhosi vis-à-vis* democratically elected councillors, the two roles are muddled. This lack of understanding as to what *amakhosi* do in relation to democratically elected councillors could be better articulated taking into consideration the policy document. Ntsebeza (2006) also suggests this confusion. This study will make attempts to resolve this confusion in latter chapters.

## 2.6 Policy Documents on Traditional Leadership

The Constitution is the supreme law of the land and an unquestionable cornerstone of the recognition of the traditional institution in democratic South Africa. Chapter 12 of the Constitution accounts for *amakhosi* through recognition thereof and outlining their roles and function. Section 211 of the aforementioned chapter makes provisions for the recognition of the institution, status and roles of traditional leadership subject to applicable legislation and customary law. This section also seeks to recognise customary law and application thereof by the courts as observed by respective traditional authorities. Section 212 states that further legislation dealing with the subject may be enacted and allows for the establishment of houses and respective councils of traditional leaders to cater for roles of traditional leadership as an institution at local level of governance on matters connected with, and affecting, local communities observing a system of customary law.

Traditional leadership is recognised by the Constitution, albeit in an inarticulately vague manner. According to some commentators this characteristic of the Constitution was undertaken purposefully. Williams (2009) argues that during the drafting and finalising of the Constitution, policymakers purposely omitted to make the roles and functions of *amakhosi* in the democratic South Africa clear, precise and without ambiguity. Levy and Tapscott (2001) maintain that uncertainties within the ANC are what led to the Constitution being ‘vague’ on the roles and functions of *amakhosi*. It was an attempt by the ANC to accommodate both critics and advocates of traditional institutions. This is hardly surprising considering the fact that, to begin with, the ANC and its alliance partners had no intention of retaining traditional leaders or according *amakhosi* recognition under the new political dispensation. It was only later that there was a change of plan which saw *amakhosi* being given a place in the new constitution. This is what Mngomezulu and Simelane (2010) refer to as ‘forced marriage’.

Mngomezulu (2015) puts forward a five-pronged argument for the reasons which the ANC embraced *amakhosi* in a paper entitled *Why did the African National Congress Embrace the Institution of Traditional Leadership in the 1990s?* The first reason for this embrace is that traditional leadership is considered well capable of facilitating the needs of local governance. Secondly, *amakhosi* are governmental tools that are in the best position for ensuring rural development. Thirdly, if *amakhosi* are aligned to the ANC then they can be using by the ruling

party to ensure that it remains in power by mobilizing support during local, provincial and national elections. Fourthly, they are a tool that will increase the understanding by the local population of government policies so as to encourage popular support of those very policies. Finally, *amakhosi* are a vital link between local communities and national government. As a matter of fact, these factors continue to ensure that traditional leadership is not overtly antagonized by the ruling party more than two decades after the first democratic elections in South Africa.

Legislation and various other policy documents enacted under section 212 of the Constitution are key information sources that inform the roles and functions of *amakhosi* in post-apartheid democratic South Africa. Although legal references make great strides in outlining these, in certain instances the language used within these documents tends to be vague and inarticulate. That is one of the reason why there are more than half-a-dozen policy documents detailing the roles and functions of *amakhosi*. The downside is that there is no eloquently expressed single source of information that deals with the subject. Material on the subject is scattered. Another issue is that policy documents make reference to resources that *amakhosi* are supposed to use in order to fulfil their mandate. However resource allocation and access which will allow *amakhosi* to play a pivotal role in local governance are evidently and conspicuously insufficient. The question of resource adequacy will be deliberated in detail in latter chapters. At the moment this chapter will deliberate the roles and function of *amakhosi* as outlined in various policy documents.

In South Africa half-a-dozen pieces of legislation addressing the subject of *amakhosi* have been enacted since 1994. They include the following pieces of legislation, in chronological order: KwaZulu Ingonyama Trust Act, 3KZ of 1994, as amended; White Paper on Local Government (WPLG), issued in March 1998; Traditional Leadership and Governance Framework Act (TLGFA), 41 of 2003; White Paper on Traditional Leadership and Governance, issued in July 2003; National House of Traditional Leaders Act (NHTLA), 22 of 2009; and, Traditional Affairs Bill, 2013 (TAB), issued in September 2013. Both the TLGFA and the NHTLA will be repealed by the TAB when it is enacted. These policy documents aim to articulate the post-apartheid roles and functions of *amakhosi* in South African local governance, a subject on which the Constitution is vague. As far as policy documents are concerned, articulation of the roles and functions of *amakhosi* in post-apartheid South Africa and local governance can be found in the abovementioned. These documents will play a fundamental role in addressing this objective. The documents can also be used to understand the roles and functions of *amakhosi* in relation to democratically elected councillors. Moreover, these will be used as reference documents with regards to the objective of parallel legal requirements with work taking place on the ground.

The KwaZulu Ingonyama Trust Act, 3KZ of 1994 (KITA) will be the first policy document to be reviewed. The KITA aims to provide for the establishment of, and for certain land to be held in trust by the Ingonyama Trust. The Ingonyama Trust is responsible for the administration of the said land for ‘the benefit, material welfare and social well-being of the members of the tribes and communities living on the land’ (ITB, 2015). From this statement it can be deduced that the role and function of *amakhosi* as envisaged by the KITA is to use land as a resource

that will enhance the livelihoods of the people living on that land. It is, however, not clear how this can be done and what resources ought to be used. Primary data will shed further light on this issue.

The second policy document pertaining to *amakhosi* is the White Paper on Local Government. Section 4.1 of the White Paper on Local Government (WPLG, 1998: 62) outlines the roles and functions of traditional leadership at local governance level. These functions include, amongst others:

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

The WPLG (1998: 162) goes on to outline the roles of *amakhosi* in the development of their traditional authorities and respective communities. Developmental duties include the following:

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

The third policy document is the Traditional Leadership and Governance Framework Act of 2003. The roles and functions of traditional leadership are deliberated in chapter five, section 19 of this TLGFA (2003: 19). As stated in this section, '[a] traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation.' The role and function of traditional leadership may, according to TLGFA (*ibid.*), also be provided for by national or provincial government in respect of the following:

- Arts and culture;
- Land administration;
- Agriculture;

- Health;
- Welfare;
- The administration of justice;
- Safety and security;
- The registration of births, deaths and customary marriages;
- Economic development;
- Environment;
- Tourism;
- Disaster management;
- The management of natural resources
- The dissemination of information relating to government policies and programmes; and,
- Education.

Section four of the TLGFA goes further to outline the functions of councils that traditional leaders are by *de jure* heads of. Traditional councils should be established by all traditional authorities. Kingship or queenship councils should be established by territories under the rule of kings or queens. Traditional sub-councils should be established by traditional authorities whose territory transcends two or more geographic areas within a province. Principal traditional councils ‘should be formed by traditional leaders ‘under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law’ (TLGFA, 2003: 07). Roles and functions of traditional sub-councils are aligned to those of traditional councils as well as kingship or queenship councils, as outlined below.

Members of the traditional council are selected by the respective senior traditional leaders concerned who are *ex officio* members and chairpersons thereof. The term of the traditional council is five years, aligned to the term of office of the National House of Traditional Leaders. A third of the members of the traditional council must be women. The functions of traditional councils as outlined in section four of the TLGFA (*ibid.*) are:

- Administering the affairs of the traditional community in accordance with customs and tradition;
- Assisting, supporting and guiding traditional leaders in the performance of their functions;
- Supporting municipalities in the identification of community needs;
- Facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
- Recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
- Participating in the development of policy and legislation at local level;
- Participating in development programmes of municipalities and of the provincial and national spheres of government;

- Promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- Promoting indigenous knowledge systems for sustainable development and disaster management;
- Alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;
- Sharing information and co-operating with other traditional councils; and,
- Performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.

Further to the above the provincial legislature should ensure that the traditional council has an effective record-keeping, is audited financially, gifts given to the members are declared, there is a code of conduct in place, and that the traditional council meets at least once a year with the traditional community. The latter is aimed at ensuring that the traditional council gives feedback to the traditional community about the activities and finances of the traditional council.

The TLGFA also makes provision for the establishment of the kingship or queenship council. Members of the kingship or queenship council are determined by the minister subsequent to consultation with the concerned king or queen. Three fifths of the members of the kingship or queenship council must be composed of the king or queen concerned, traditional leaders and members of the traditional community. The remaining percentage is composed of members who are democratically elected. The functions of kingship or queenship councils as outlined in the TLGFA (2003:19) are as follows:

- Administering the affairs of the kingship or queenship in accordance with customs and tradition;
- Assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the kingship or queenship concerned in the performance of their functions;
- Assisting the king or queen in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
- Mediating in disputes between senior traditional leaderships falling within the jurisdiction of the kingship or queenship;
- Promoting unity between traditional communities falling under the jurisdiction of the kingship or queenship; and,
- Assisting the king or queen in performing his or her roles and functions conferred upon him or her by the President.

Much like the traditional council, the kingship or queenship council is expected to exercise decent record-keeping, have audited financial statements, declare the receipt of gifts, have a code of conduct regulating members, be impartial and not aligned to any political party, and must provide assistance to all traditional councils within the territory of the said king or queen.

The White Paper on Traditional Leadership and Governance (WPTLG) is the fourth policy document that will be reviewed here. The view held by this document is that traditional leaders ‘can improve the lives of the people living in traditional communities by influencing and being consulted during drafting of government policy and legislation pertaining to traditional leadership, and they play an advisory role to government on issues that influence custom and tradition at local, regional, provincial, and national levels to aid rural ‘development and service delivery’. The WPTLG (2003: 18) asserts that traditional leaders can impact positively on the quality of life of the people living in rural areas by acting to:

- 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 fibre and regeneration of society;
- Promote and preserve the culture and tradition of communities; and,
- Promote the social well-being and welfare of communities.

The WPTLG and the TLGFA, as discussed above, are aligned with regards to their views of the roles and functions of traditional leadership. Most of the elements mentioned in the TLGFA are given more substance in the WPTLG (2003: 21-22) thus:

- i. **Arts and Culture**
  - promote indigenous knowledge systems, music, oral history and commemorative events;
  - promote the preservation of heritage resources;
- ii. **Land and Agriculture**
  - play a role in land administration;
  - advise government on agricultural development and improvement of farming methods;
  - promote sustainable use of land;
  - advise government and participate in programmes geared to prevent cruelty to animals;
- iii. **Health and Welfare**
  - advise and play a role in traditional health practices and rituals including initiation schools;
  - advise and participate in nation-wide health campaigns, e.g. cholera, HIV/AIDS, tuberculosis, etc.;
  - facilitate community access to pensions and social grants;
  - promote the protection of the vulnerable, including children, the elderly and the disabled;
- iv. **Justice, Security and Home Affairs**
  - play a role in the administration of the traditional system of justice;
  - play a role in the provision of safety and security to traditional communities;
  - play a role in the registration of births, deaths and customary marriages;
  - act as authorities for the administration of oaths;
  - play a role in the restoration of peace in rural areas;
- v. **Economic Development**

- support local economic development initiatives;
- vi. **Environment and Tourism**
  - promote environmental management;
  - promote sustainable use of cultural resources within communities;
- vii. **Natural Resource Management**
  - promote sustainable traditional approaches to water resource management; and,
- viii. **Communication and Information**
  - play a role in communication and information dissemination of government policy and programmes.

The fifth policy document that will be examined is the National House of Traditional Leaders Act. The National House of Traditional Leaders (NHTL) is composed of three senior traditional leaders. The House may play an advisory role to the government in relation to that impact upon traditional leadership, the roles thereof, tradition and customary law and communities observing a system of customary law, it may investigate, be consulted the aforementioned, and must be consulted in rural development programmes (NHTLA, 2009: 12). The House may exercise appropriate record-keeping, have its finances audited, uphold a code of conduct, and facilitate community between itself and the provincial houses, amongst others (ibid.). Furthermore, the NHTLA (2009: 12) stipulates that the NHTL should enhance relations between provincial houses and execute the following responsibilities.

- [Promotion of] the role of traditional leadership within a democratic constitutional dispensation;
- Nation building;
- Peace, stability and cohesiveness of communities;
- The preservation of the moral fibre and regeneration of society;
- The preservation of the culture and traditions of communities;
- Socio-economic development and service delivery;
- The social well-being and welfare of communities; and,
- The transformation and adaptation of customary law and custom so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by—
  - preventing unfair discrimination;
  - promoting equality; and,
  - seeking to progressively advance gender representation in the succession to traditional leadership positions.

The role and function of traditional leaders, according to the Traditional Affairs Bill, 2013 (TAB, 2013:42), the sixth and final policy document to be reviewed here, is the performance of duties according to national and provincial legislation that has been enacted. The establishment and composition of the kingship or queenship traditional council, principal traditional council, or traditional sub-council according to the TAB is similar to that outlined in the TLGFA above. Moreover, there are no substantive changes from the TLGFA to the TAB regarding the aforementioned. Hence the function of the said councils as expressed by the TAB is analogous to that outlined in the TLGFA. The kingship or queenship council, traditional council, or principal traditional council are still headed by the king or queen, traditional leader,

or principal traditional leader respectively. The only addition is that it must now contain a maximum of five members of the royal family elected by the royal family. The forum is still to be composed of a maximum of twenty senior traditional leaders. It is still recommended that the forum contains one woman for every three members, and that it also contains three traditional leaders for every five members.

These are the key policy documents that should be borne in mind whenever the institution of traditional leadership in South Africa is discussed. As can be seen from the brief summary of these documents above, gaps and silences exist on various issues. Part of the reason for these gaps is that when the documents were crafted some of the realities and everyday experiences on the ground were not clear at the time. Through the present empirical study on the traditional leaders that fall under Ingonyama Trust, the aim is to uncover the reality on the ground and thus influence some of the government's policy decisions on the institution of traditional leadership going forward.

## 2.7 Chapter Summary

The focus of this chapter has been on the review of the existing literature on traditional leadership. It began by reviewing traditional leadership from the international perspective and discovered that at this level monarchs are still considered as symbolic and ceremonial figures charged with the task of unifying their respective nations. The British monarch was revealed as the most prominent representation of traditional leadership anywhere in the world, owing to its longevity, adaptability, evolutionary characteristics and reverence. These features have allowed it to gain popular support throughout the world and in the home front. However, it has been noted that the institution has been attacked by leftists because of religious norms. In England only Protestants can ascend to the throne. However the leftist attack on patrimonial succession is applicable to the majority of monarchs throughout the world. Another observation made in this chapter is that in recent years monarchical powers have transformed from 'patrimonial' to 'bureaucratic'. In Europe this has eroded its power immensely. In the face of this change the Middle Eastern monarchs have remained fairly patrimonial, using the divide-and-rule tactic which has allowed these monarchs to remain 'durable yet different'.

In Africa, the literature revealed that the traditional leadership institution has played a dual role. Due to these contrasting roles the institution has had to change to remain relevant. Some changes have resulted in shifts in gender politics, granting women access to chieftaincy, a move that is contrary to popular African tradition. The roles and functions of African monarchs have remained similar throughout different periods of history. Before, during or after colonialism, apartheid or the democratic era, the roles and function of traditional leaders in Africa have been to improve the quality of life of people living in rural areas, i.e. to enhance the social welfare of the rural communities, improve morality of society by serving as fundamental tools of reasoning, deepen and enrich comradery, function as administrative and judicial tools in the countryside, administer customary law, adjudicate tribal conflict, enforce order, act as a primary representative tribal symbol, and to defend custom and the local way of life.

In South Africa, this chapter has shown that half-a-dozen pieces of legislation addressing the subject of *amakhosi* have been enacted since 1994. They are the KwaZulu Ingonyama Trust



Act, White Paper on Local Government, Traditional Leadership and Governance Framework Act, White Paper on Traditional Leadership and Governance, National House of Traditional Leaders Act, and, Traditional Affairs Bill. These policy documents have been reviewed to tease out the roles and function of traditional leadership in post-apartheid democratic South Africa. Review of the said documents was aimed at addressing the first research question as stated in Chapter One of this study. The second research question resource adequacy was also deliberated to a certain extent. The fourth research question concerning the differences and similarities between the mandate of *amakhosi* and that of democratically elected councillors was also addressed by reviewing the Local Government: Municipal Structures Act, 117 of 1998. Having reviewed relevant literature and articulated the roles and function of *amakhosi* this study now turns to the introduction and discussion of the conservatism as a theoretical framework which guides this study.

# Chapter 3

## Theoretical Framework

### 3.1 Introduction

The purpose of this chapter is to introduce and discuss the theoretical framework which guided the study. Conservatism as a theoretical framework was used to analyse four key objectives of this study as follows. Firstly, elements of conservatism were used to better illuminate the roles and functions of *amakhosi* in the democratic South Africa, specifically those falling under Ingonyama Trust. Secondly, this theory was utilised to evaluate the adequacy of resources allocated to *amakhosi* for their directive. Thirdly, the theory was used to parallel legal requirements with what *amakhosi* actually manage to achieve at grassroots level. And, finally, elements of conservatism were employed in comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors, again, with a specific focus on those falling under Ingonyama Trust. It is important to note, however, that not all four objectives may be applicable to each and every component of conservatism. Hence they are discussed in so far as they are applicable to the component in question.

Heywood (2007: 49-50) outlines seven elements of conservatism. These are the elements that were utilised for the abovementioned objectives:

- i. **Tradition:** Willingness to preserve wisdom that has accumulated over generations;
- ii. **Organicism:** Belief that society is a system that is distinct, interconnected yet harmonised;
- iii. **Hierarchy:** Understanding that each person in society occupies a vital but unique role augmented by respective social responsibilities that must be fulfilled in order to preserve the whole;
- iv. **Authority:** Vital for guiding the interests of the social whole and ensuring social stability;
- v. **Pragmatism:** Utilisation of practical structures;
- vi. **Human imperfection:** Understanding that humans require guidance to maintain an orderly state of being; and,
- vii. **Property:** An element that affords freedom from the state and a sense of ownership.

Before these elements of conservatism are analysed in the context of this study, it is important to note the following subtle differences – as a matter of semantics. Throughout this chapter, the term ‘*amakhosi*’ (singular is *inkosi*) may be used interchangeably with the terms ‘traditional institutions’ or ‘traditional leadership’. As a matter of fact, *amakhosi* are an inherent part of traditional institutions and traditional leadership. However, traditional institutions or traditional leadership have various components including, but not limited to, headmen or headwomen (*izinduna*), traditional councillors (*amakhansela*), traditional police officers (*amaphoyisa enkosi*), a governmental department whose mandate includes the aforementioned – such as the

Department of Cooperative Governance and Traditional Affairs (COGTA), Ingonyama Trust Board (ITB), National House of Traditional Leaders, and so forth.

## 3.2 Tradition

The concepts of ‘tradition’ and ‘culture’ are intertwined to the extent that some use them interchangeably. The former can be defined as ‘a belief, custom or way of doing something that has existed for a long time amongst a particular group of people’ and the latter is defined as ‘customs, beliefs, art, way of life and social organizations of a particular country or group’ (Hornby, 2005). There are many similarities between definitions of these two concepts. However, a key difference is that the former remains constant whereas the latter changes over time. Tradition is refined by cultural changes which occur due to various phenomena that impact upon a particular society. In other words, tradition is cultivated by culture. It is vital to understand that tradition cannot be comprehended in a vacuum devoid of society. As will be shown below, the royal reed dance ceremony and the celebration of the Heritage Day fulfil certain portions of legislative recommendations of ‘reconstruction and development’ of society, as envisaged by the White Paper on Traditional Leadership and Governance (WPTLG) (2003). Moreover, the White Paper on Local Governance (WPLG) (1998) envisages the protection of cultural values as well as heritage of the indigenous communities and the general welfare thereof. At a certain level, both these ceremonies aim at cultivating tradition within society.

A royal reed dance is an annual celebration hosted by *iSilo*, at Enyokeni royal palace. The significance of the reed dance ceremony is still relevant to many (Thathiah, 2014) to the extent that other races have started participating in the annual celebrations to the dismay of members of the Nomkhubulwane Culture and Young Development Organisation and Professor Sihawu Ngubane of the University of KwaZulu-Natal (Hans, 2013). Ayeleru (2012), imploring Africans to protect their cultural values from foreign dominion, has argued that ‘imposition’ of foreign languages, whether it be English, French or Portuguese, has resulted in the desertion of African culture. In line with this argument, if the trend of allowing other races to participate in the reed dance ceremony continues Zulu culture will be further deserted, which at best will lead to the dilution and at worst domination of both culture and tradition.

In the following instance quite the opposite is taking place. A Zulu traditional of celebrating King Shaka’s Day, a holiday that was originally used to commemorate the founding father of the Zulu nation, King Shaka, has permeated to, and is celebrated by, the whole of South Africa. At the objection of Inkatha Freedom Party (IFP) to the proposed Public Holidays Bill, parliament agreed to observe King Shaka’s Day as a national holiday (Khumalo, 2013). However, the name of the holiday was changed to Heritage Day to prevent alienation of those that are not considered, or that do not consider themselves as part of the Zulu nation. The theme for the 2014 Heritage Day was ‘Celebrating 20 Years of Democracy’ (South African Government, 2015). This Day was celebrated by, among other things, a new five Rand coin (Theyise, 14), a cricket test match between South Africa and Australia (South African Government News Agency, 2014), and a soccer match between South Africa and Brazil (South African Government News Agency, 2014). This is just one example of how a Zulu King,

Shaka, plays a role in triggering a traditional and cultural tide that has swept throughout the entire nation in a positive manner.

Regarding the conservatism element of tradition and culture the following is evident. Firstly, roles and functions of traditional institutions include cultivating heritage, enhancing the general welfare of the indigenous communities, and reconstruction and development of society. Traditional institutions are tasked with achieving these ends as part of an all-encompassing democratic South Africa. The role of *iSilo* in safeguarding the Zulu tradition in the case of the royal reed dance ceremony cannot be overstated. As the centre of the celebrations and the vanguard to the protection of Zulu culture and tradition, it is the function of *iSilo* to ensure that the dilution and domination do not occur, especially at the celebrations convened by him in his capacity as the Zulu King. It is also noteworthy that guests during the celebration are invited through his blessings. Secondly, resources for cultivating heritage, enhancing the general welfare of the indigenous communities, and reconstruction and development of society using cultural and traditional celebrations require only a measure of creativity. For instance, the calling of *imbizo* to celebrate culture and cultivate tradition produces the desired result. Thirdly, traditional celebrations that occur during the royal reed dance ceremony and Heritage Day are perfect examples of how legislative recommendations can be implemented. Fourthly, democratically elected councillors can play a key role in facilitating these desired traditional and cultural ends, however traditional leadership is – arguably – in pole position.

In the words of Heywood (2007:49), ‘tradition reflects the accumulated wisdom of the past, and institutions and practices that have been tested by time’. Preservation of cultural traditions for current generations and posterity by traditional authorities, whilst incidentally meeting their legal obligations, will encourage a sense of social, political and cultural belonging for all aligned with, and those that revere traditional institutions. Nevertheless it is crucial to note subtle cultural variations even within the Zulus as a ‘people’. It is vital for those who belong to the group as well as those looking in from the outside to comprehend these subtle differences. Nortje and Albertyn (2015), for example, use pain and suffering in the health care sector to show why health care practitioners should not exhibit cultural bias because key issues may be overlooked in attempts to understand and minimise pain and suffering of people of other cultures. The warning of cultural bias hints at differences within the organic whole, differences that, however, do not undermine the whole. Variations exhibited within a nation such as the Zulu nation that partakes in similar overarching traditions – contrary to intuition – further ensure coherence of the organic whole. Organicism, a theoretical component of conservatism that will be discussed next will first illustrate this point and then clarify that one of the key features of any society is diversity, which further serves to unify society.

### 3.3 Organicism

Organicism is a concept that views the community as a system of distinct yet harmonised parts organised in such a manner that they form an organic whole. Aristotle postulated in his book entitled *Metaphysics* more than two millennia ago, and much more recently the Gestaltian way of thinking also holds the view that, the whole is greater than the sum of parts. This inference applies to everything that has distinct sub-components. In this view society is more than a

collection of individuals. It is a complex, dynamic organic system. Clearly individuals living in areas administered by *amakhosi* conform to this theory. It necessarily follows that clans that make up the Zulu nation also conform to the notion of culture and tradition as a complex, dynamic system. In the early nineteenth century King Shaka forged what is today known as the Zulu nation by assimilating different clans conquered using cutting-edge military tactics (Wylie, 2011). *Amakhosi* must be mindful and considerate of the theory of the community as an organic whole if they are to effectively administer their areas of jurisdiction. Furthermore, *amakhosi* should be cognisant of the influence of and the impact that various institutions and organisation may have on the organic system.

Management of the indigenous population living in rural KwaZulu-Natal is not solely influenced by *amakhosi* but also by an array of institutions and individuals ranging from local municipalities to the national legislature, COGTA to ITB, and traditional councillors to *iSilo*. Families, learning institutions, religious organisations, law enforcement agencies, and even local communities also have discernible influence. Factors that influence these people are limited only by one's imagination. This influence creates what Buckley (1968) refers to as a 'complex adaptive system'. Buckley brought together two disciplines, that of Systems Science and of Sociology, in attempts to understand how socio-cultural systems function as a 'complex adaptive system', noting that these systems adapt as changes to the environment occur. Buckley (1968: 490) further notes that '[t]rue feedback control loops make possible not only self-regulation, but self-direction or at least adaptation to a changing environment, such that the system may change or elaborate its structure as a condition of survival or viability'.

Herbert Blunt, reviewing Ferdinand Tonnies's book *Gemeinschaft and Gesellschaft: Community and Society*, sums up the principle of organicism as a feature that is inherent to any community. Blunt frames his argument as follows:

Men have part and lot one in another. They are knit one to another through bonds of blood, through a common dwelling-place and common tilth, or in a mystical union of spirit. Kinsman is bound to kinsman, neighbour to neighbour, friend to friend. In household, village-commune and city-state alike, no man lives to himself and none dies to himself. From the deepest human relation of child to mother, and secondarily from that of child to father, to brothers and sisters, or to kinsmen generally, the organic solidarity of primitive human groups arises. From the household, which is as it were the organic cell of communal life, community of existence spreads in widening circles, and we get, perhaps, masters and lords, and prentices and servants, but still in organic connexion with one another. Lordship arises as much from augmented duties and rights as from the diminution of these duties and rights, and it long remains relative, communal and shared, or finally representative. Again, with the more complex developments of the commune exchange arises, and in particular that between town and country; but this, too, remains communistic, and no man is a self-seeker as dealer, merchant or usurer. And the happy commune is perfected by arts as well industrial as esthetic, resting equally, as Goethe says, on a kind of religious sense, and finally by religion itself (Blunt, 1888: 490).

David Lutz, in an article entitled *African 'Ubuntu' Philosophy and Global Management*, investigates the African philosophy of *ubuntu* in global business management. Lutz posits that in African culture there is no contradiction between individual and communal good. He writes:

In a true community, the individual does not pursue the common good instead of his or her own good, but rather pursues his or her own good through pursuing the common good. The ethics of a true community does not ask persons to sacrifice their own good in order to promote the good of others, but instead invites them to recognize that they can attain their own true good only by promoting the good of others. (Lutz, 2009: 314).

Lutz goes on to discuss the striking difference between African and European philosophies. However, he notes that traditional African philosophy is more comparable to traditional European philosophy and less comparable to modern European philosophy. He concludes that:

African *ubuntu* philosophy is capable of playing a central role, together with the traditional philosophies of Asia and Europe, in developing the needed theory of global management, one with which it may be possible to achieve globalisation for the common good' (Lutz, 2009: 325).

At a certain level, it is the role and function of traditional institutions to observe the subtle differences of the people within the group whilst ensuring that their needs are achieved. There must be a realisation that a good pursued by certain components of traditional institutions, as David Lutz reasons above, is a common good pursued for the entire community; the individual cannot pursue the common good instead of his/her own good but instead pursues his/her own good through pursuing the common good. In traditional areas *amakhosi* are arguably one of the most important resource for facilitating organicism. Undoubtedly, democratically elected councillors are part of this organic system, and thus should be assimilated accordingly by, and along, traditional institutions without allowing one part of the organic system to negatively impact upon the other or indeed the whole. At the end of the day it is the entire community that will reap the benefits. According to Buckley's 'complex adaptive systems' theory, the roles and functions of *amakhosi* will change as the dynamics of the environment that they operate in change. Resources allocated for their directive will also have to be adapted. Legislation enacted for implementation and realisation of this directive may also need to change to adapt. Last but not least, traditional institutions must not stray far from the concept of *ubuntu*. *Ubuntu* will serve as a good guide for rules of etiquette where none may exist or in contested areas. This theoretical framework analysis will now turn to the component of hierarchy.

### 3.4 Hierarchy

Traditional communities are hierarchical in nature as are most societies. Moreover traditional communities are managed by individuals that differ in the hierarchical ranking – *iSilo*, *amakhosi*, headmen or headwomen, traditional councillors, traditional police officers, and so forth. Rubin (2000) advocates two types of social hierarchies – 'dominance hierarchies' and 'production hierarchies'. The former refers to access to resource required for human survival, whereas the latter refers to various institutions and organizations such as business firms, government and universities. Both these types of hierarchies are relevant to traditional communities and *amakhosi* are responsible for managing them. *Amakhosi* are predominantly responsible for resource management – mainly land – and day-to-day administration of rural traditional communities. Furthermore *amakhosi* are part and parcel of a wider governmental management structure or hierarchy. What is more is that they are direct custodians of resources within their communities as well as indirect custodians of wellbeing of their communities.

Hierarchically, one who manages resources on behalf of the community should, when making decision that have a potential to impact upon the greater community, take into consideration interests and desires of the organic whole to avoid tensions within the community and to facilitate the wellbeing of the entire community. Likewise, they should be aware of social strategies that may have a detrimental impact upon a particular community, group, family or members thereof. Decision-makers should be aware of how social status, for instance, may influence the dynamics of the community, both positively and negatively. Langner *et al* (2012) suggest that ‘emotional suppression’ is a strategy used by individuals of low social status to avert conflict, a strategy that has negative implications for their mental wellbeing. Legislation requires *amakhosi* to promote the social wellbeing of their communities. Achieving this end requires them to be aware of strategies such as ‘emotional suppression’ that may be utilised by the people of low social status to their detriment, thus negatively impacting on their wellbeing. Chareusnsy (2012), utilising rural southern Laos People’s Democratic Republic as a case study, concludes that a social hierarchy tends to exclude the needy and marginalised. The ultimate result is exclusion from economic benefits that will alleviate poverty, thus hindering the trickle-down effect.

There are many types of theories on social power that may be used to understand the relations taking place within ‘power hierarchies’ between the powerful and the powerless (Brauer and Bourhis, 2006). These theories suggest key differences between the two groups. Approach Inhibition Theory of Power suggests that the powerful tend to use others as means to their own ends, break the rules more often, and act in an extroverted manner, whereas the powerless view themselves as tools for achieving others’ ends, react positively to re-enforcements such as punishment and threats, and act in an introvert manner. The Asymmetrical Outcome Dependency Theory suggests that the powerful can afford to disregard the interest and characteristics of others and have an internal desire to remain in power by falling back on information that justifies their positions of power. Conversely, the powerless people attempt to acquire or restore control over their destiny by analysing the social environment in a problem-solving manner. It is often the case that the powerless cannot change the predictability of their situation, in which case they revert back to being used as means by the powerful. And the Social Dominance Theory suggests that the powerful ‘command disproportionately large quantities of valued resources such as material goods, wealth and health’ whilst the powerless ‘are allocated negative social values such as poverty, poor health and lack of control over their destiny’ (Brauer and Bourhis, 2006: 605).

It is important for *amakhosi* to consider and account for the three social theories of power expounded above if they are to achieve social wellbeing either as part of the ‘dominance hierarchy’ or ‘production hierarchy’. Understanding and utilising these theories will ensure that they do not act out of self-aggrandisement but instead act out of interest of the entire community. Although they may wield the most power within the traditional communities they are, after all, servants of the very same communities. ‘Indeed, as a person’s station in life is determined largely by luck and the accident of birth, the prosperous and the privileged acquire a particular responsibility of care for the less fortunate’ (Heywood, 2007: 50). In the same breath, those dealing with *amakhosi* have to be cognisant of these theories as well, theories

which attempt to explain the behaviour of the powerful, or even those that are conceived of, or conceive themselves, as powerful. Understanding how one may act under certain situations influences and improves one's angle of approach, whoever that person may be. Alleviation of poverty, improving health of community members and allowing community members to take control of their destiny are dynamics that may be positively influenced by a greater understanding of the social undercurrents present in society.

Traditional institutional hierarchies, be they dominance or production, are protagonists for ensuring that the good of the community is not undermined by the good of a few, particularly taking into consideration the vagueness of the legal framework on the issue of resource allocation within traditional communities by *amakhosi*. The issue of land as a resource is an important one and will be discussed in detail below, under the element of 'property'. It is the responsibility of *amakhosi* to ensure that social status plays no role in resource allocation and that communal benefits trickle down to the needy. In short, impartiality is part of *amakhosi*'s roles and functions. Resources allocated in a fair and impartial manner will no doubt bear more benefits. Furthermore, this is a way of rooting out social ills such as 'emotional suppression' which have a potential to increase social costs and decrease wellbeing. The Approach Inhibition Theory of Power, the Asymmetrical Outcome Dependency Theory and the Social Dominance Theory are good indications of how social ills may escalate to undesired levels. It will undoubtedly benefit both the powerful and the powerless groups to understand how these theories can be utilised to interpret social behaviour. These theories further underline the need for *amakhosi* to ensure that resources allocation and assistance are provided in a fair and impartial manner.

Furthermore, there is a need to ensure close cooperation between *amakhosi* and democratically elected councillors. Some resources may target rural populations via *amakhosi*, and others via democratically elected councillors. In other words, both 'dominance hierarchies' and 'production hierarchies' should and can work in tandem to benefit traditional communities. At dominance hierarchical level, resources that allow traditional authorities to flourish should be allocated in a much more impartial manner. At production level, there should be an understanding of how different layers of accountability and governance interact with the aim of benefitting traditional communities. Such an interaction would cease to exclude the needy, the vulnerable and the marginalised, eventually including them in economic benefits that will alleviate poverty, enhance the trickle-down effect, ultimately facilitating the wellbeing. Synergy between the two hierarchical structures would also enhance traditional institutions as structures of good governance and also show a measure of accountability. Authority, which this theoretical framework analysis now turns to, would be another beneficiary.

### 3.5 Authority

Political naturalism is a political ideology that advocates the state (*polis*) as a natural entity. On this view, development and flourishing of human beings are objectives thought to be dependent on, and facilitated by, the state. The concept of a state is an idea that rational human beings can seldom do without. One of the foremost political naturalists was Aristotle. The following quote from his book *Politics* substantiates this view: 'Hence it is evident that the state is a creation of



nature, and that man is by nature a political animal' (Adler, 1993: 446). On this view, desires that society wants to fulfil are best fulfilled under the watchful eye of a state, and since men are naturally social it follows that the state is naturally required to maintain authority and social order. On these grounds, it is unreasonable to reject political institutions and the authority of the state. The influence of political institutions is also evident on consideration of the concept of utilitarian harm. Piazza *et al* (2013: 270) 'found that many people find the right or wrongness of utilitarian harm to be dependent on the normative position of an authority', especially in cases where 'the forecasted benefits of the harm have not yet been obtained.' Therefore the position advocated by authority matters when it comes to influencing the views of the people.

Authority is the right to use legitimate power to influence the behaviour of the people who, in reciprocation, have the duty to obey (Heywood, 2007). South Africa has a dual system of authority, namely 'legal-rational' and 'traditional'. One system is rooted in legislation as a system of coherent rules regulating behaviour, whereas the other is time-honoured traditions, norms and customs. The two systems have converged under the new political dispensation owing to Chapter 12 of the Constitution which accounts for *amakhosi* and customary law. The Traditional Leadership and Governance Framework Act, which will be repealed by the Traditional Affairs Bill 2013 if and when it becomes law, also provides for matters connected with *amakhosi* in South Africa. Both are specific pieces of legislation that are aimed at, amongst other things, recognising traditional communities, providing a statutory framework for the positions of *amakhosi*, and providing for the functions and roles thereof. *Amakhosi* are recognised by the abovementioned pieces of legislations as important, authoritative political institutions for achieving certain objectives of the state.

In *The Bounds of Authority*, Dick (1978) argues that political authority has two aspects. Firstly, the authoritative entity is entitled to resolve disputes in a manner it sees fit. Secondly, a person with authority does not have licence to do as they please. Procedures must be followed to guide both dispute resolution and the actions of the authoritative entity. Customary law, by its very nature, lends itself to the first aspect but it cannot lend itself fully to the second. In other words, *amakhosi* can and, in most cases, do resolve conflicts under customary law in a way they see fit. However *amakhosi* have few disincentives preventing them from acting as they please. The latter is caused by the fact that customary law is, by and large, not codified. Lack of codification of customary law may be one of the fundamental reasons why it is not on equal terms with common and/or statutory law even though it is recognised by the Constitution. The Constitution favours common law over customary law, '[t]his is evident in section 8(3) of the Constitution which limits the development of customary law, rules and principles by making specific reference to common law to the exclusion of customary law' (Ntlama, 2012: 32). Although the intent may not have been there, the Constitution does in fact discriminate against customary law.

As mentioned above, the one dynamic that has a potential to undermine *amakhosi* and the application of customary law is the fact that customary law, by its very nature, is not codified. It is constantly evolving as beliefs, customs and traditions change, and as it is passed down from one generation to the next. Moreover, Section 211 (2) of the Constitution gives the right to *amakhosi* to amend and repeal customary law as they see fit. Hence there are obvious

weaknesses regarding the interpretation and implementation of customary law. First, interpretations may vary leading to lack of objectivity. Sometimes it may seem like the authority is adopting a stance of ‘we will cross that bridge when we get to it’. Rights protection is another issue that lack of codification may disadvantage. ‘Traditional institutions, especially in Southern Africa are often accused of gender inequality in their nature...[especially on matters such as] land allocation practices, property inheritance patterns, [and] the division of labour within the household’ (Sithole, 2010: 60-61). The protection of the rights of women and other vulnerable groups may be difficult to implement. Regardless of these setbacks, the following three factors were fundamental in the recognition of customary law by the state, as Sibanda (2010: 32) has articulated:

Firstly, there was the need to incorporate on an equal basis a legal system rooted in African cultural traditions. Secondly, a majority of South Africans identified and conducted their lives in accordance with customary law. Thirdly, there was already a functioning customary legal system that could become part of the state’s justice and administrative infrastructure.

The hierarchy of the traditional institution – *iSilo, amakhosi*, headmen or headwomen, traditional councillors, traditional police officers, and so forth – is an authority on whom the development and flourishing of society depends. Achieving this end is an inherent part of their roles and functions. A stance that they advocate with regards to utility – greatest happiness for the greatest number of people – has a marked influence on social behaviour. Furthermore, they have rights, even obligations, to use legitimate power and authority to further influence the behaviour of the people. However this should be done within the bounds of the law. A legal framework under Chapter 12 of the Constitution has been developed to guide actions of *amakhosi* regarding the use of legitimate power. The efficacy of implementation of this legal framework at grassroots level obviously varies depending on resources that are accessible as well as interpretation of legislation. Democratically elected councillors also influence development and flourishing of society. Again, on the issue of development and flourishing of society, the synergy between *amakhosi* and democratically elected councillors serves to benefit the whole. However, the role of democratically elected councillors is minimal with regards to the use of legitimate power. Instead, they either turn to statutory law, common law or customary law.

Another role and function of the hierarchy of traditional institutions is the utilisation of customary law to settle customary disputes. Since the limits of customary law have been noted above, the concepts of being fair, impartial, consistent, commensurate, and rational are fundamental to guiding the actions of traditional leaders, in fact as important as overarching legislation. The traditional institutional hierarchy also has at its disposal common law in the form of precedents set not only by the traditional institution in question but also by others. Even though there are obvious gaps within customary law it is still regarded by the state no less as a functional system. As such it is more or less given equal footing with statutory and common law. It is recognised as a system that influences the conduct of many South Africans, and it is regarded as part of the state justice and administrative components. Customary law may not be perfect but it is a perfect example of the utilisation of trusted, time-honoured practical structure.

The subsection below further expounds on the utilisation of practical structures. On that note, this analysis now turns to pragmatism.

### 3.6 Pragmatism

Conservatism views human rationality as limited since it is unable to fully comprehend the intricacies of the world in which we live. Humans have to rely on practical institutions to guide their behaviour and practical circumstances to influence their thinking. ‘Abstract principles and systems of thought are therefore distrusted. Instead, faith is placed in experience, history, and above all else pragmatism’ (Heywood 2007: 49). Traditional institutions are considered as practical institutions that have been adapted by time to assist humans better achieve their goals. They have the relevant understanding of their roles and functions with regards to the people they serve, have been sculpted by historical events and are well adapted to the real-world. On the other hand, man-made institutions ‘create problems of myopia, risk aversion, self-interest, materialism, dishonesty, preference, falsification, fraud, cheating, promise breaking, credible commitments, uncertainty, lack of information, and transaction or decision costs.’ (Lichbach, 2010: 310). Some of the uncertainties associated with man-made institutions can be negated by utilisation of practical institutions. Traditional institutions are a natural extension of practical institutions, conservatists argue, and are essential systems of governance.

Even modern political science, a discipline that should be primarily aimed at aiding political institutions, is condemned by this conservatism stance. Donovan and Larkin (2006: 15) maintain that, ‘modern political science, in whatever form it takes, does not lend itself to practical impact simply because its shared focus is on understanding, explanation, conceptualisation and classification’. The fissure between social science and practicality is evident even for Lewis (2003: 197) who argues that, ‘the effort to develop and refine theory...can become so internally focused that it becomes hopelessly remote from common sense and real experience.’ One these views, the impact of modern political science and, in general, social science on practical political institutions such as traditional leadership can at times be minimal. Modern political science fails to ‘explain’, ‘conceptualise’ and ‘classify’ traditional institutions at a level that is pragmatic, understood and accepted by *amakhosi* who are the subjects of these institutions as well as indigenous people who are subjected to them.

In what Sithole (2010) calls *The ‘Mamdaniisation’ of African Governance Systems*, she argues that the idea of regarding traditional institutions as undemocratic might be one that scholars such as Mahmood Mamdani have perpetuated. The idea perpetuated by Mamdani assumes that indigenous people reject traditional institutions because these institutions do not operate in a manner that is beneficial to them. On this view, firstly, indigenous people are considered as docile since they are incapable of positively influencing these institutions to achieve their own ends. Secondly, traditional institutions are regarded as having shown passive submission to colonialism and other external influence. Mamdani’s argument lacks substance. Traditional institutions have continually evolved over different eras of South African history, from colonialism to apartheid and once again in the democratic South Africa. The ability to evolve as circumstances demand is a sign of their practicality and their resilience to external forces. Evolution and resilience has enabled them to survive. Despite that, a problem that continues to

plague traditional institutions is that multiple disciplines of social science and various academic scholars interpret them, effectively shaping articulation thereof.

Advocate Nthai, chairperson of the Task Team on the WPTLG reasons that the majority of South Africans are of the opinion that traditional leadership is a vital component in ‘deepening and enriching democratic governance at the local level’ (WPTLG, 2003:03). Traditional leadership cannot be challenged as an institution. It has proven its worth over eons of Southern African history as a practical tool for governance of indigenous people and achieving local developmental needs. It continues to prove itself as a vital tool for governance in democratic South Africa and in Africa. Countries such as Ghana, Namibia and Botswana are said to ‘have gone through the same phases of suspicion, ambivalence and embrace of traditional leadership’ (Sithole, 2010: 58). South Africa is also walking the same path. It can only be considered as unfortunate the fact that traditional institutions have been utilised by external forces to achieve ends which are not beneficial for the very population they are intended to serve.

The Conservatism argument that strictly espouses traditional institutions and shuns man-made institutions is utopian at best. Suffice to say that throughout the world and in today’s governance seldom do traditional institutions exist devoid of support of man-made institutions; in states that have monarchic representation or leadership, man-made institutions are required to manage other aspects of governance. Since these traditional institutions exist alongside man-made, in countries that recognise or are led by the former, synergy is required between the two. Similarly synergy between *amakhosi* and democratically elected councillors is required in areas of KwaZulu-Natal that fall under Ingonyama Trust Board. Various disciplines of social science and their respective scholars have predominantly failed to articulate traditional institutions in practical terms understood by people whom they impact on the most. These include *amakhosi*, headman or headwoman, traditional councillors, traditional police officers, as well as the people living in rural areas subjected to traditional institutions.

Understanding, explanation, conceptualisation, and classification of traditional institutions by social science or scholastic thinking should not be regarded as an end. Rather it should be seen as means to achieve the following: to engage with traditional institutions and indigenous people; to benefit traditional institutions and indigenous people by allow them to frame their world; and to facilitate government engagement with traditional institutions and indigenous people. Even these cannot be regarded as ends in themselves. Alleviation of poverty, improving health of community members, cultivating heritage, enhancing the general welfare of the indigenous communities, and reconstruction and development of society are some of the ends sought. To achieve these ends social science and scholastic thinking can be positively influenced by the objectives of this study which are to: understand the roles and functions of *amakhosi* in local governance; evaluate the adequacy of resources allocated to *amakhosi* for their mandate; parallel legal requirements with work taking place on the ground; and, compare and contrast the mandate of *amakhosi* against that of democratically elected councillors.

Multi-disciplines of social science and various academic scholars effectively shape how traditional institutions are articulated. However, they fail to ‘explain’, ‘conceptualise’ and ‘classify’ traditional leadership at a level that is pragmatic, understood and accepted by them

and indigenous people. Sadly this does not benefit these traditional institutions or the indigenous people. History, experience and pragmatism of traditional institutions have allowed them to persist in the face of colonialism, apartheid and democracy. The ability to evolve is a sign of their practicality as well as their ability to be resilient in the face of external forces. This has made challenging traditional institutions difficult in democratic South Africa. It is, however, important to note that although traditional leadership as an institution cannot be challenged, a specific individual holding office may be if he/she fails to fulfil his/her duties. Duties for which they can be challenged include failing to uphold the rights of the people or failing to meet their legal obligations. Implicitly it can be said that it is the imperfection of office-bearers that cast the entire institution in bad light. Human imperfection thus seems the next logical component to analyse.

### 3.7 Human Imperfection

Heywood (2007) posits that morality of human beings is debased by ‘selfishness’, ‘greed’ and an insatiable hunger for power. These vices cloud the intellectual ability of humans to make objective decisions and to act in a rational manner. They create boundaries to human reason causing humans to act out of instinct. Muller (1997: 10) argues the same point, stating that conservatism ‘has typically emphasized the imperfection of the individual, an imperfection at once biological, emotional, and cognitive.’ Other factors such as the natural environment, social interactions, coincidences or twists of fate, cases of good and bad fortune, historical events, and so forth, also have a discernible impact on human imperfection. Muller goes on to postulate that humans are heavily reliant on other members of society for their survival, and thus they hold the ability of social institutions to lead and give direction in high esteem (ibid.). Traditional institutions fit into such a category. Their ability to give direction is articulated in a number of policy documents.

The WPTLG holds the view that traditional leadership has the ability to make an immense contribution to the ‘reconstruction and development’ of society by promoting good governance. The WPLG points to the responsibility and ability of traditional institutions to lobby government and other agencies which will assist in development of rural areas. The desired end to this is to improve the quality of life of people living in rural areas by assisting government stimulate development, achieve service delivery, improve morality of society, and enhance the social welfare of the entire community. The vision of deepening and enriching democracy by empowering traditional institutions will no doubt be realised. This is a highly desirable state considering that people living in rural areas are regarded as some of the most vulnerable in South Africa. Factors that contribute the most to this vulnerability include lack of sufficient access to resources and inadequate exposure to opportunities, thus perpetuating an already dire state of being. The influence of vices – postulated above under the element of pragmatism – has to be eliminated if not minimised from the operations of all parties concerned. Therefore errors in judgement for all institutions, not just the traditional ones, have to be minimised.

As posited above, human beings are imperfect. They are prone to making errors of judgement in all aspects of life. Examples of errors in judgement can be found in railway operations (see

Kim *et al*, 2009), manufacturing and mining environments (see Liu *et al*, 2008; Ruckatt and Burgess, 2007), shipping industry (see Martins and Maturana, 2010), health care systems (see Dhillon and Rajandran, 2003), construction industries (see Atkinson, 1998; Atkinson 1999), and in delivering service quality (see Stewart and Chase, 1999), amongst others. Since all aspects of life are susceptible to human error, traditional institutions are not exempt, nor are indigenous people living under these institutions, nor are governmental departments tasked with overseeing and/or assisting these institutions. Dhillon and Rajandran (2003: 99) define human error as ‘failure to perform a prescribed task (or the performance of a prohibited action), which could result in damage to equipment and property or disruption of scheduled operations.’ We have to understand that traditional institutions, indigenous people living under these institutions, and governmental departments tasked with overseeing and/or assisting these institutions all require some form of guidance to maintain an orderly state. The conservatism component of ‘human imperfect’ implies exactly this; these institutions are headed by humans who err from time to time.

Although poor judgement may lead to human errors, which in turn may prevent prescribed or desired tasks from being performed or even lead to the execution of undesired or prohibited tasks, we should steer clear of labelling all system or institutional errors as ‘human errors’. ‘[T]here remains an overuse of *human error* attributed as the root cause. This overuse represents lost opportunities to reduce future issues by identifying the true root cause of a deviation’ (Schniepp, 2013:16). There has to be an understanding that human errors are more often than not symptoms of other underlying causes. If we dwell on these symptomatic causes we will not succeed in addressing key areas of concern. Successful root cause analysis lies in looking past the human error to deduce the causal chain of events that directly or indirectly led to the error. If the root cause is rooted out then the problems ceases to occur or recur, or the impacts thereof are greatly reduce.

The following is a realistic illustration of how we can apply the concept of root cause analysis with regards to *amakhosi*. To answer the question, for example: what led an *inkosi* to deviate from fulfilling his/her role and function? One would have to consult three elements of root cause analysis: documentation, training and performance/execution (adapted from Schniepp, 2013). Firstly, there should be clear and concise policy documents and legislation articulating roles and functions with sufficient detail so as to eliminate grey areas. Secondly, *amakhosi* need to be trained and/or groomed appropriately to fulfil their roles and functions, both legislative and inherited. Training, and possibly grooming, is a continuous process taking into consideration the dynamic nature of real-world application. Thirdly, performance of the role and functions has to be continuously monitored to identify areas of concern and to allow for recommendations for improvement to be made. The making of recommendation is the duty of all parties concerned. As has been suggested earlier, this root cause analysis methodology can also be applied to issues that plague institutions – governmental, traditional or otherwise – aimed at assisting *amakhosi*.

Traditional institutions are not exempt from making errors of judgement, nor are indigenous populations, nor are democratically elected councillors. Human imperfection impacts on everyone. Allowing human vices to impact on decision-making of traditional authorities will

impact negatively on the indigenous people living under them. Furthermore it may impact on the vision of deepening and enriching democracy, improving the quality of life of people living in rural areas, stimulating development, achieving service delivery, improving morality of society, and enhancing the social welfare of the entire community. Consulting the elements of documentation, training and performance/execution can be used to understand implementation problems associated with the roles and functions of *amakhosi*, evaluating resources utilisation by *amakhosi* for achieving their mandate, identifying and solving the gaps between policy and practice, and understanding the mandate of *amakhosi vis-à-vis* democratically elected councillors. Such a root cause analysis will facilitate the process of finding the source of the problem, because labelling all errors as human cannot achieve this.

### 3.8 Property

The final element of conservatism that will be analysed is property. Property is an asset that affords individuals a sense of ownership as well as freedom from over-reliance on the state. The term property may refer to an array of goods. But perhaps the most important form of property, in the context of this study, is land. Ownership of land affords people many opportunities. This is especially true for an agrarian society. The issue of land ownership under traditional authorities is complex and unique. The indigenous land tenure system is not equivalent to the Western concepts of ‘property’ and ‘ownership’, as will be shown below. Not all people living in rural areas have land rights access secured by title deeds. Cousins (2005: 500-501) identifies the following as fundamental characteristics of indigenous land rights tenure:

- Land rights are embedded in a range of social relationships and units, including households and kinship networks, and various forms of “community” membership;
- Land rights are inclusive rather than exclusive in character, being shared and relative, but they are also generally secure;
- These rights are derived from accepted membership of a social unit, and can be acquired via birth, affiliation or allegiance to a group and its political authority;
- *Access* to land (through defined rights) is distinct from *control* of land (via systems of authority and administration);
- Control is concerned with guaranteeing access and enforcing rights, regulating the use of common property resources, overseeing mechanisms for redistributing access (for example, trans-generationally), and resolving disputes over claims to land;
- Control is often located within a hierarchy of nested systems of authority, with decision-making powers in relation to many functions being located at local levels. A key but variable aspect is the degree of accountability and responsiveness of authority structures to the holders of land rights;
- Social, political and resource use boundaries are usually clear but often flexible and negotiable, and sometimes the source of tension and conflict;
- Both land rights and authority systems are politically embedded, and power relations and political processes are often key to determining the distribution of rights and benefits;
- Discourses of “custom” and “tradition” are key resources for political actors, including men and women, traditional authorities, and emerging elites, and the meaning of these terms is often highly contested; and,

- The balance of power between men and women, competing groups or “communities”, land administering authorities and rights holders, and levels of socio-political authority (for example, chiefs and headmen) is subject to shifts and changes, with consequences for the content and strength of rights and the degree of accountability of authority structures to rights holders.

Colonialism and apartheid managed to pervert the indigenous land tenure system along with the concept of communal rights as understood by the indigenous population. This was done as a form of political, economic, cultural, and social subjugation of the people. The Black Land Act of 1913, primarily aimed at restricting land ownership and free movement of the indigenous population, is a cornerstone act that paved the way for a segregationist state (Mhlangeni, 2013). The Act ensured that indigenous people remained in a state of poverty by denying them access to land and other essential resources, in effect denying them economic development. Even though there have been fundamental changes after the advent democracy a lot is yet to change. There are still numerous negative implications for an estimated 4 million people living in areas administered by Ingonyama Trust Board, constituting 40% of the total population of KwaZulu-Natal (Census, 2011). The Constitution of the Republic of South Africa attempts to address some of these past imbalances through various policies under the auspices of land reform, land redistribution and land restitution.

Section 25 (6) of the Constitution deals with the issue of insecure tenure rights, stating that:

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

The Communal Land Rights Act (CLRA), promulgated under clause 25 (6) of the Constitution, aims to, *inter alia*: provide security of tenure to communities, allow for redress of past injustices, and account for democratic administration of communal land by communities. However, this Act vested too much power on government and traditional institutions thus undercutting the interests of the people, more so women (Claassens, 2005). Furthermore, women face numerous challenges in their attempts to access environmental resources perpetuated through policies and various other practices (Bob, 2008). It appears that black women have suffered the most due to cultural and social practices as well as traditional land ownership approaches that discriminate against them (Turner and Ibsen, 2000; Moyo, 2013). These are just some of the dynamics that *amakhosi* grapple with on regular basis as part of their role and function in relation to resolving issues pertaining to land ownership that negatively impacting upon women.

Even the Department of Rural Development and Land Reform’s Quality of Life Report found that women headed households had few and smaller plots of land than male (Cross and Hornby, 2002: 34). Many rural women face social barriers when attempting to acquire land. Some women have a low self-esteem and are fearful and unwilling to challenge the authority of men. These factors converge to ensure that fewer women are involved in land rights movements. Some of those involved are not even prepared to voice their opinions in meetings especially if this is counter to the opinion held by the men. There is an obvious need to empower women. There are various ways in which this could be done. In order to empower women, skills transfer



should occur and women should be targets of awareness campaigns, they should be pro-active, stakeholders should engage with them, networking with others should be encouraged, and women should diversify their land-generated income (Moyo, 2013). Traditional institutions should use their position of privilege enshrined in the CLRA to play a key role and ensure these empowerment strategies are realised.

Even though the CLRA has its critics, it was a significant improvement on the Bill which preceded it. Cousins (2002) argued against the Bill stating that it would not provide adequate solutions. In fact he argued that it could possibly even worsen that *status quo*. Using Kenya as an example of how the Western-style of ‘absolute’ and ‘exclusive’ property rights have failed, Cousins showed how availability of credit to small farmers hoping to use land as leverage had not materialised, land registers had become out-dated, inequalities had been perpetuated, and rural-urban migration had increased. The South African deeds registry also faces obstacles in registering titles pertaining to communal land. Communal land is excluded from the registry because either it has not been assessed accordingly or because assessment of individual access rights to communal land is impossible to achieve (Pienaar, 2006). Cousins went to argue that the Bill placed too much weight on land titles, a stance which could have ‘disastrous’ consequences (ibid.). Land titles do not take into consideration the fluid nature of the African-style access and rights to land, a style that continually changes to adapt thus suit the prevailing social and economic conditions. Individualising rights of access to communal land does not only have a potential to disrupt the community it has a potential to escalate into serious communal conflicts.

Colonialism and apartheid denied socio-economic prosperity for many black South Africans. They were deprived of owning plots of land in designated areas thus essential hindering certain strategies they could use to improve their livelihoods. Segregationist policies had a detrimental effect on land ownership, a resource that is essential for people living in rural areas. Traditional institutions have to play their role in redressing past injustices. In fact this is part of their roles and functions. The power vested by the CLRA on the *amakhosi* and government has to be used cautiously. Both these institutions have to utilise their position of power for the benefit of the whole community, without bias. Otherwise if they fail to ensure commensurate benefits for all they are effectively perpetuating the injustices of the past. Furthermore women have been recognised as a vulnerable group and thus should be given special attention. Ensuring equity will be especially tricky considering the patriarchal nature of indigenous communities. Nevertheless, traditional institutions and structures of government – in other words, *amakhosi* and democratically elected councillors – should be at the forefront of strategies aimed at empowering women.

### 3.9 Chapter Summary

This chapter has attempted to use conservatism as a theoretical framework to analyse the four key objectives of this study. Firstly, elements of conservatism were utilised to better illuminate the roles and functions of *amakhosi* in the democratic South Africa, specifically those falling under Ingonyama Trust. Secondly, they were employed to evaluate the adequacy of resources allocated to *amakhosi* for their mandate. Thirdly, elements of conservatism were used to

compare legal requirements with what *amakhosi* actually manage to achieve on the ground. And, finally, they were employed during the comparing and contrasting of the mandate of *amakhosi* against that of democratically elected councillors, again, with a focus on those falling under Ingonyama Trust. However, as mentioned in the introduction of this chapter, not all four objectives of analysis were applicable to each and every component of conservatism. They were discussed in so far as they were applicable. The following chapter entitled Research Methodology will articulate the research design that was used to further address these objectives.

# Chapter 4

## Research Methodology

### 4.1 Introduction

Chapter three introduced and discussed conservatism as a lens through which this study is viewed and evaluated. Due to the process of globalisation and the accompanying exchange of ideas there is an increasing amount of external exposure experienced by a particular people at any given time and place. Conservatism, to a certain extent, attempts to ground and shield a people from undue exposure from diametrically opposed theories. As outlined in the previous chapter, conservatism is a political theory that advocates, amongst other things, the retention of traditional social institutions. It sees traditional institutions and accompanying practices as valuable since they provide a sense of stability and a shared point of reference to the past. The chapter presented conservatism as a form of adhesive that binds a people. For the purposes of evaluating this theoretical framework, it was broken down into seven elements. These elements were then used to analyse and better articulate the four key objectives of the study in so far as the research objectives were applicable to the respective elements, it was reasonably practicable to do so and the discussion introduced the reader to the theory and justified the theory's relevance to the study.

Several issues were observed with regards to the elements of conservatism. Firstly, it was observed that cultivating heritage and safeguarding tradition falls squarely within the purview of the roles and functions of *amakhosi*. In the execution of this task *amakhosi* need the assistance from traditional leadership supporting structures in order for their job to be effective. In the same breath, democratically elected councillors may and should play a role in cultivating heritage and safeguarding tradition. However, it was observed that the impact of democratically elected councillors is limited in this regard. Society was discussed as a distinct, interconnected yet harmonised entity. It was posited that *amakhosi* ought to use their societal position to benefit the whole by discharging their roles and responsibilities in an accountable manner and, furthermore, guide the interests of the social whole whilst ensuring social stability. After all *amakhosi* are regarded by various policy documents as practical structures which are vital for facilitating the developmental needs of the rural people of South Africa. In saying this it is understood that, like most humans, they require guidance in the form of training alongside clearly articulated roles and functions. Finally, land as a form of property that affords freedom from the state was discussed in addition to how the marginalised and the vulnerable may be assimilated.

With that goal achieved, attention now turns to this research methodology chapter. It has been divided into two parts. The first part aims to articulate and justify the research design deemed appropriate for this study. The chosen method of data collection is rationalised and the details of the questionnaires used to collect primary data are discussed. The logic behind the use of two distinct questionnaires as primary data collection tools is explained and linked to the

respective objectives of the study. One thing that will become apparent to the reader is how conservatism as a theoretical framework that permeates this research was an influencing factor in choosing the research design. Sampling is also dealt with during the latter parts of the first subsection. This is where the first subsection rationalises the selection of the study sample.

The second part of the research methodology chapter details data analysis methods employed in the study. It discusses the methodology that was used to source primary and secondary data. Reasons for using questionnaires and document analysis respectively as primary and secondary data gathering techniques to realise the four key objectives of this study will also be provided. Furthermore, this chapter will deliberate on the challenges experienced during data collection and subsequently provide information as to how those challenges were resolved in order to ensure that the study achieved its set goals despite such challenges which had not been anticipated at first.

In order to ensure that the hypotheses forwarded in this study was sufficiently tested and a valid conclusion reached, an appropriate research methodology had to be chosen. From a general perspective, the role of a research methodology is to ‘reach a valid conclusion through scientific inquiry’ (Dunn *et al*, 2003:870). Research methodology describes the manner in which the study was undertaken, details how the data was collected, and rationalises how the participants were chosen (Knight, 2010). In order for valid conclusions to be reached research bias should be reduced or altogether eradicated from a study. Yet in certain cases it may be impossible to totally eradicate bias. Dunn *et al* (2003:870) define research bias as ‘a systematic deviation from the truth which can potentially take place in the design, implementation, or analysis of a study’. Designing, implementing and analysing the study using an appropriate research methodology will expedite the minimisation and/or elimination of bias in any research study rendering the study objective and credible. This renders the study’s results acceptable to the research community.

## 4.2 Research Design

The study adopted the qualitative research paradigm which is deemed common in the social sciences. This decision was informed by the fact that the data to be collected was qualitative in nature as opposed to being quantitative using statistical data or numbers. Two types of data sets were collected for this study, primary and secondary data. Primary data was collected using questionnaires. Questionnaires were informed by the following approach. The first was analysing secondary data. Secondary data analysed pertained to the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, resources allocated to *amakhosi* for achieving their directive, and understanding the mandate of democratically elected councillors as contained in various written documents. Preliminary interviews were also conducted to assist in gathering valuable data that would contribute positively towards addressing the research objectives of the study and ultimately testing the research hypotheses. Questionnaires were considered as an appropriate means of gathering primary data since they are useful tools for eliciting information in a structured manner for smooth administration and analysis. They also allow ease of data quantification by means of data analysis software.

Two types of questionnaires were used to ensure that all aspects of the four research objectives of the study were addressed in a reasonable manner. The first type was used for gathering data from *amakhosi* and their localised traditional leadership supporting structures. Localised traditional leadership supporting structures are composed of headmen or headwomen (*izinduna*), traditional councillors (*amakhansela*), traditional police officers (*amaphoyisa enkosi*), and so forth. These people frequently interact with and provide assistance to *amakhosi* on a day-to-day basis. Hence, in the context of this study, they were regarded as key informants. Traditional leadership supporting structures also provided vital information from a different vantage point which is an important element in attempts to avoid the unintended consequence of the study being one-dimensional.

The questionnaire for *amakhosi* and localised traditional leadership supporting structures was divided into seven sections as a matter of logic and also to facilitate the interview process and analysis thereof. The first section of the questionnaire dealt with the respondent's background. This part of the questionnaire was included so that it would be easier for the researchers to link the respondent's answers/responses to his or her background which might have influenced the kind of response(s) provided on each question. This section is composed of ten closed-ended questions aimed at acquiring background-related information. The second section is made up of a combination of twelve closed-ended and open-ended questions aimed at addressing the administrative aspects of traditional authorities. The third section contained ten closed-ended and open-ended questions aimed at elucidating issues pertaining to tradition and heritage. It was accordingly entitled *Custom and Customary Law*. The fourth section entitled *Roles and Resources* aimed at gathering appropriate information solely by means of open-ended questions. Section E, termed *Programmes*, dealt with issues pertaining to programmes belonging to respective traditional authorities, and is deliberated solely by means of open-ended-questions. The penultimate section accounted for *Community Assistance and Interaction* through a blend of closed-ended and open-ended questions. The final section, called *Politics*, also contained a mixture of closed-ended and open-ended questions which, as the title suggests, delved into political issues impacting upon traditional leadership.

The second type of questionnaire was aimed at gathering data from Ingonyama Trust Board (ITB) and the provincial Department of Corporate Governance and Traditional Affairs (CoGTA). These two institutions have a potential to inform the study whilst simultaneously providing answers to the research objectives. It was hoped that responses provided by these institutions would play a great role in the testing of the hypotheses. Unfortunately, primary data could not be elicited from CoGTA. After numerous failed attempts of patiently endeavouring to engage CoGTA, this institution deliberately and consistently frustrated these attempts. The only way to overcome this challenge and to expedite this research was to altogether eliminate CoGTA as a source of primary data from the study.

The questionnaire used to acquire primary data information from ITB was composed of three sections. The first one focussed on the *Roles, Responsibilities, Resources and Programmes*. The second one was on the *Administration and Allowances* while the third one was called *Party Politics and Benefits*. All three sections were solely composed of open-ended questions. In this case, open-ended questions were chosen intentionally because of the advantages they provide.

Open-ended questions are well adapted to surveying a small number of respondents. Analysing ‘a small number of open-ended questions [is] manageable, whereas hundreds [is] not’ (McBurney and White, 2002: 240). Hence these open-ended questions, whose advantages have been detailed below, were chosen carefully to ensure that the hypotheses of the study was tested, all researched objectives were addressed, and that bias was minimised.

The two basic types of survey questions are open-ended and closed-ended questions. The former ‘permits the respondents to answer in their own words’ whereas the latter ‘limits the respondents to alternatives determined in advanced’ (McBurney and White, 2002: 239). The Faculty of Environment at the University of Waterloo (UW) suggests the following with regards to the advantages of open-ended and close-ended questions (UW, 2014). Close-ended questions expedite the interview because they are easier and quicker to answer. Manual analysis or statistical software analysis is also easier and quicker to achieve using closed-ended questions. Additionally, it is practically impossible for respondents to provide irrelevant answers to these questions, and even respondents that are illiterate are not disadvantaged by these types of questions. Finally, closed-ended questions allow for ease of replication of the study. On the other hand, open-ended questions were chosen to allow ITB the freedom to qualify their answers and clarify their responses. Some of the issues raised in the study are complex and cannot be framed adequately within close-ended questions, hence open-ended questions enhanced the richness of detailed.

Questionnaires pertaining to *amakhosi* and localised traditional leadership supporting structures as well as the ITB as authoritative institutions dealing with traditional leadership were used for realising the first objective of the study which is establishing and articulating the roles and functions of *amakhosi* in post-apartheid democratic South Africa and local governance. ITB plays an imperative role with regards to shedding more light on the critical issue impacting on millions of South Africans. Again, both questionnaires were additionally used in attending to the second objective of evaluating the adequacy of resources allocated to *amakhosi* for their directive. Although *amakhosi* would no doubt provide fundamental information with regards to realising the first objective, it was the view held in this study that the ITB is a key institutions that can clarify the resources available to *amakhosi* to ensure that their mandate is realised.

For the third objective of paralleling legal requirements with work taking place on the ground questionnaires were used in conjunction with document analysis. Document analysis was used to tease out key information that served to further enlighten this study. Documents in the form of policy documents and legislation were used as key references. Data that has been written on the subject of *amakhosi* also served as a crucial point of reference. Seale (2012) states that sources for documentary analysis include legislation, newspaper clippings, letters and memoirs, and other information that was circulated when the events occurred or much later. Relevant published and unpublished articles and books were also analysed. May (2011) warns that document analysis as a research method and its interpretation has to be situated in a particular context so that it provides comprehensive and coherent information. Henning (2004) recognises the importance of context but goes a step further postulating that historical value

provides valuable information. Both context and historical value are components that were accounted for during the analysis of relevant documents.

Document analysis was also used for the fourth objective of comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors. On the one hand, the mandate of democratically elected councillors was acquired through document analysis. On the other hand, the mandate of *amakhosi* was acquired through document analysis in addition to primary data gathered from interviews. Thereafter the two sources of information were contrasted to get to grips with the similarities and to tease out the differences. The gap between policy and practice was achieved by comparing answers provided with the requirements of the legal framework. The legal framework was limited to statutes, bills and white papers that specifically deal with, or make an explicit reference to traditional leadership institutions. The need to realise this objective was rooted in the fact it is absolutely essential for the two parties to work together. There is a pressing developmental need to ensure close cooperation between *amakhosi* and democratically elected councillors. Democratically elected councillors influence developmental projects and consequently the flourishing of society. Likewise *amakhosi* have the same influence. Hence the synergy between *amakhosi* and democratically elected councillors serves to benefit society as a whole.

To ensure that all the objectives of the research were satisfactorily addressed and the hypotheses tested in an effective manner, the research was designed to employ elements of both qualitative and quantitative analysis. In one instance, the questionnaire designed to collect data from *amakhosi* and their localised traditional leadership supporting structures contained a mixture of closed-ended and open-ended questions. These were specifically designed to provide qualitative and quantitative data. In the other instance, the questionnaire designed to gather data from ITB as an institution dealing with traditional leadership was composed of open-ended questions. These were specifically designed to, by and large, acquire qualitative data. Further to the above, document analysis added further weight in both data divisions – qualitative and quantitative.

The research design that was utilised in this study also contained the following properties. It was an empirical study employing both primary and secondary data. Non-probability sampling was preferred since, according to Fink (2003), it is suitable for surveys that target specific populations. Purposive sampling is the non-probability sampling method that is used to select the most appropriate population which, according to Davies (2007), is ‘typical’ of the entire population that is the subject of study. In this study, *amakhosi* and their traditional leadership supporting structures are the most appropriate target population. They were targeted as the population that could best disclose the roles and functions of *amakhosi* within the democratic South Africa and local governance. Consideration was only given to *amakhosi* falling under Ingonyama Trust. Furthermore, the two institutions dealing with traditional leadership in KwaZulu-Natal, ITB and CoGTA, were also targeted since they were considered as appropriate in terms of attaining the research objectives and testing of the hypotheses.

This study is designed to target *amakhosi* which fall within the bounds of Ugu District Municipality, located on the South Coast of KwaZulu-Natal, South Africa. Since isiZulu is the

mother tongue of *amakhosi* falling within this study area the questionnaires were translated from English to isiZulu for the purposes of data collection and, subsequently, the interviews were also administered in isiZulu. Translation of collected data from isiZulu to English was done in a cautious and calculated manner, utilising appropriate reference dictionaries to minimise information loss that has a potential to take place during translation. Choosing the mother tongue of the respondents to administer interviews minimised any potential misunderstandings during this process and afforded respondents the opportunity to answer questions in a language they are most comfortable with. The interview of ITB was conducted in English as a language that is widely used and well-understood within this bureaucratic institutions.

In practice, *amakhosi* do not act in isolation when it comes to the management of their respective traditional authorities. They act in conjunction with localised traditional leadership supporting structures including headmen or headwomen (*izinduna*), traditional councillors (*amakhansela*), traditional police officers (*amaphoyisa enkosi*), and so forth. Localised traditional leadership supporting structures fall anywhere within the continuum of being confidants or advisors. They are well acquainted with activities that *amakhosi* attend to on a day-to-day basis, the problems they experience during management and leadership of traditional authorities as well as respective strategies used to overcome issues. Since these people are closest to *amakhosi* they have an intimate knowledge of the activities thereof, hence they were in the best position to furnish answers that were both factual and informative.

Sampling commenced in the following manner. At the outset, four *amakhosi* as heads of tribal authorities were sampled using purposive sampling. Furthermore, four informants from respective tribal authorities were chosen using the snowball sampling technique, achieving a total sample of twenty respondents. This was deemed to be a manageable sample given the time and resources available to the researcher. Snowball sampling, also a non-probability sampling technique, lent itself to this study since it was used to increase the study sample by allowing *amakhosi* as easy-to-identify, initial respondents to recommend other potential respondents. *Amakhosi* are in the best position to point out people who, firstly, know their roles and functions in post-apartheid South Africa and local governance and, secondly, who fundamentally understand the adequacy of resources allocated to *amakhosi* for their directive.

ITB and CoGTA were also targeted since these two institutions are at the core of issues pertaining to traditional leadership. Visions of both institutions are aligned with this study. The ITB aims to become a ‘leader in sustainable communal land management’ (ITB, 2015) whereas CoGTA aims to facilitate an ‘effective and efficient institution of traditional leadership that enhances sustainable development and service delivery’ (DTA, 2015). Answers provided and views expressed the ITB, as the only institution to participate, shed further light on two fronts. Firstly, they articulated the question of roles and functions of *amakhosi* in post-apartheid South Africa and local governance differently. Secondly, the adequacy of resources allocated to *amakhosi* for achieving their directive were also discussed in a manner that availed a different, yet vital, vantage point. Combined with the responses provided by *amakhosi*, responses provided by the ITB served to, first, further articulate the roles and functions of *amakhosi* in



post-apartheid South Africa and local governance and, second, provided further evaluation of the adequacy of resources allocated to *amakhosi* for their achieving directive.

More than half-a-dozen pieces of legislation concerning *amakhosi* have been enacted since 1994. Legislation does make strides toward clarifying the first, third and fourth research objectives of this study. In other words, the legal framework does establish and outline the roles and functions of *amakhosi* in post-apartheid democratic South Africa and local governance. It provides a solid legal reference for comparison with what is taking place on the ground, and it provides another key reference for comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors. This study, however, hypothesises that this role can and should be further redefined because legislation does not comprehensively address all relevant research questions posed in this study. Further analysis ensured that ambiguities are articulated and grey areas are illuminated. This is even more important for areas which fall under Ingonyama Trust given their somewhat unique status compared to other areas outside of this space.

Convenience sampling was used to select the most appropriate population that typifies the whole. Important to note is that social science is a discipline that is well accommodated within convenience sampling provided its limitations are acknowledged (Davies, 2007). Also known as purposive sampling, it is a method that allows the researcher to choose a sample composed of individuals that are easily available to the researcher (Fink, 2003; Davies, 2007). In this case the sample that best fits this description is that of *amakhosi* falling under Ugu District Municipality. This Municipality is located on the South Coast of KwaZulu-Natal, South Africa. It is bordered by uMgungundlovu Municipality to the north, eThekweni Municipality to the north-east, the Indian Ocean to the East, OR Tambo Municipality in the Eastern Cape to the south-west, and Sisonke Municipality to the west (CoGTA, 2011). Ugu District Municipality is divided into six local municipalities, namely, Hibiscus Coast, Umzumbe, Umuziwabantu, Vulamehlo, uMdoni, and Eziqoleni.

### 4.3 Data Analysis

Data analysis comprises ‘methods for manipulating the data to enable the research question to be answered, usually by identifying important and relevant patterns’ (Perri 6 and Bellamy, 2012). During this process raw data is converted into useful information. This information is then used to attend to the fundamental components of the research such as suggesting conclusions and uncovering important patterns. Collected data can also be interpreted so as to facilitate the answering of vital questions, addressing key objectives, and eventually testing the hypotheses brought forward in the research study. There are various methods which can be employed during data analysis. This study, to some extent, utilised statistical software as a data analysis tool. The tool that was used to analyse closed-ended questions and quantify patterns pertaining to this analysis was Statistical Package for the Social Sciences (SPSS) software. SPSS was then used to graphically present findings which belong to closed-ended questions.

The majority of the questions belonging to the questionnaire used to collect data from traditional leadership supporting structures are closed-ended. Closed-ended questions are appropriate for this type of software analysis and subsequent graphical presentation. Charts

generated from this data are then explained using a short narrative which ensures that the research findings are linked to the research objectives, ultimately assisting in hypotheses testing. The remainder of the questions posed to traditional leadership supporting structures, which were open-ended questions, were coded within broad categories. Data collected through these open-ended questions was analysed using these broad categories thus improving and refining ways in which this data was interpreted. A similar method of data categorizing and analysis was used during scrutinising the data collected from the traditional leadership institution since all of the responses pertaining to this exercise were collected using open-ended questions. Categorization of data collected from the traditional leadership institution was simple, taking into consideration the fact that only one respondent was engaged.

Quantitative data analysis was supplemented by thematic analysis. Thematic analysis included the manipulation of data so as to ascertain answers to important questions whilst yielding crucial patterns. The questionnaire used for gathering data from *amakhosi* and their localised traditional leadership supporting structures was divided into seven sections. An overview of these sections is given above. It is from these sections that the overarching themes were conceived. Themes deliberated included and were limited to the respondent's background, administrative aspects of the traditional authority, *Custom and Customary Law*, *Roles and Resources*, *Programmes* concerning traditional authority, *Community Assistance and Interaction*, and *Politics*. The questionnaire that was used to gather data from ITB as was composed of three sections. The first was *Roles, Responsibilities, Resources and Programmes*, the second was *Administration and Allowances*, and the third was *Party Politics and Benefits*. Themes belonging to these sections were also devised to aid data analysis.

#### 4.4 Chapter Summary

In conclusion, this research methodology chapter has been divided into two parts. The first part, attempted to articulate and justify the research design. The chosen method of data collection was rationalised and the details of the questionnaires used during primary data collection were discussed. The reasoning behind the use of two distinct questionnaires as primary data collection tools was explained and associated with the objectives of this study. Sampling was also discussed during the latter parts of the first subsection. The second part of this chapter justified data analysis methods employed. This was done by discussing the methodology that was used to source primary and secondary data. Reasons for using questionnaires and document analysis respectively as primary and secondary data gathering techniques to realise the four key objectives of this study were also be provided. Furthermore, this chapter has touched on the challenges experienced during data collection. It has provided information as to how those challenges were overcome.

The findings obtained using the abovementioned research methodology and data analysis techniques will now be presented in the next chapter which tables the results obtained from both empirical work and an analysis of various documents mentioned above. Data is presented using various methods to ensure ease of interpretation as well to facilitate validation of results. These include graphical representation of data and a short narrative pertaining to the graphics used. Data that cannot be interpreted into charts is analysed and discussed in detailed narratives.

Results are presented in such a manner that they are easy to understand and, more importantly, assist in answering the research objectives of the study. The overarching roles and functions of *amakhosi* in the democratic South Africa with a specific focus on those falling under Ingonyama Trust is what this study is burdened with. Moreover, the adequacy of resources allocated to *amakhosi* for their directive, the paralleling of legal requirements with work taking place on the ground, and comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors received specific attention in this study and became the primary objectives guiding the presentation of results and were, furthermore, used during the testing of the hypotheses proffered at the beginning of this dissertation.

# Chapter 5

## Research Results

### 5.1 Introduction

Chapter Four, the Research Methodology chapter, detailed data analysis methods employed in this study. It deliberated on the data collection methods, explained the rationale behind the use of questionnaires as primary data gathering techniques, and it explained the aim of using two types of questionnaires to collect this data. The chapter stated that the first type of questionnaire was used for gathering data from *amakhosi* and their localised traditional leadership supporting structures. Results of this data will be discussed first. The second type of questionnaire was designed to gather data from Ingonyama Trust Board (ITB) and the provincial Department of Corporate Governance and Traditional Affairs (CoGTA). The previous chapter continued to describe the manner in which the study was undertaken, detailed how the data was collected, and rationalised how the participants were chosen. Furthermore, it took account of the challenges experienced during data collection and subsequently provided strategies that were utilised to overcome those challenges.

Having explained the groundwork for the primary data collection techniques, this dissertation will now turn to the task of reporting the research result. The primary focus of this chapter is to present the results obtained through the various research methods discussed in Chapter Four. For the purposes of this study, four *amakhosi* as heads of tribal authorities were sampled using purposive sampling. Furthermore, four informants from respective tribal authorities were chosen using the snowball sampling technique, achieving a total sample of twenty respondents. In a nutshell, the aim of this chapter is to report the results of this study as a contribution to the existing body of knowledge on the subject of the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, with a specific focus on *amakhosi* falling under Ingonyama Trust. Where possible and/or necessary charts will be used to present the results. In the main, the results are presented thematically in the form of a discussion or narrative under broad thematic topics similar to those used in the questionnaires. Hence research result presentation will be arranged in a structured manner that emulates the themes utilised in the questionnaires that were used for data gathering.

### 5.2 *Amakhosi* and Traditional Leadership Supporting Structures

#### 5.2.1 Respondents' Background

The first section of the questionnaire dealt with the respondent's background. The primary aim of employing this subsection as the first part in the questionnaire, excluding the fact that it was aimed at breaking the ice and putting the respondents at ease by asking questions they were well acquainted with, was that it would facilitate the process of linking the respondents' answers to their background, a dynamic which might influence the responses provided. More often than not, factors such as gender, age and employment status influence the viewpoint of the respondents with regards to factors such as matriarchal or patriarchal succession, their

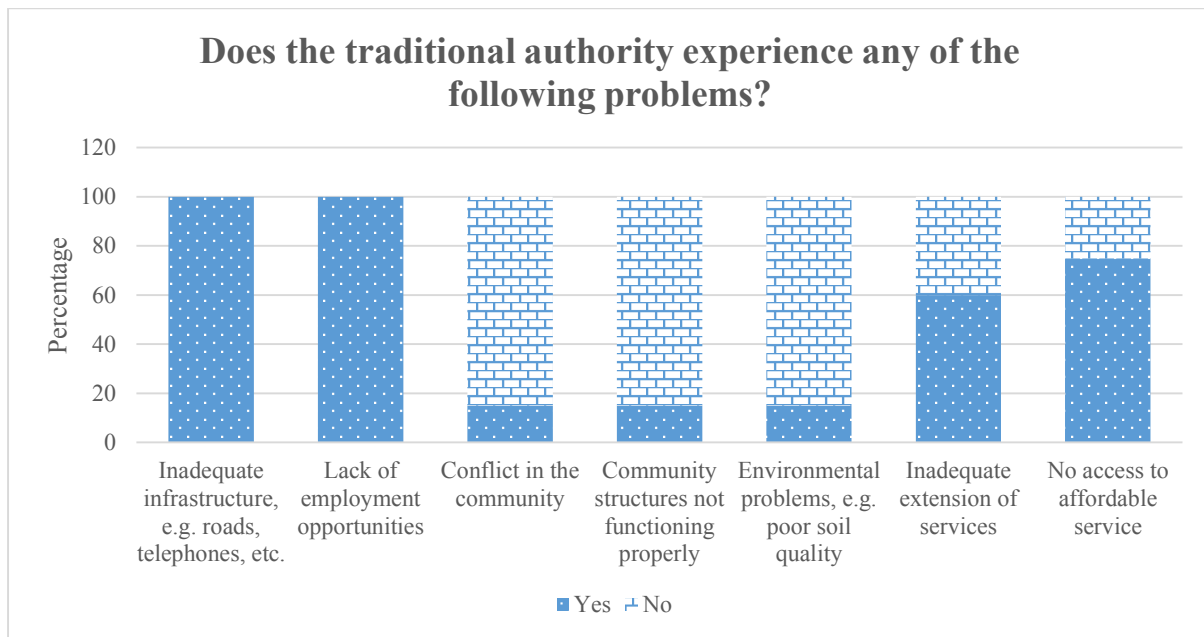
subjective outlook caused by life's experiences along with individual bias, as well as their socio-economic stance and tools used to overcome the resultant difficulties.

As the stereo-type would suggest, traditional leadership and their human resource supporting structures that were interviewed were predominantly males. The ratio of males to females was nine is to one. Women representation was found only at emaThulini Tribal Authority, one of the four traditional authorities included in the study. With regards to the age of the respondents, seventy-five percent were fifty years or older, whereas fifty percent were sixty years and above. This was viewed as a prominent indicator of experience that inhered in the respondents as to the roles and functions of *amakhosi* in post-apartheid South Africa and local governance. Undoubtedly experienced people will provide more meaningful answers, thus effectively informing and enriching the study.

The abovementioned observation with regards to the experience of respondents is augmented by the fact that sixty-five percent had been residing in their respective tribal authorities for a period longer than twenty years. Therefore during this period they had acquired intimate knowledge of the issues pertaining to their tribal authority and even how those issues could be overcome. Experience, more often than not, is a great teacher. All things considered, this type of patriotism is a good indicator of the social stance and psychological disposition of the respondents. Patriotism was in evidence subsequent to seventy percent of the respondents indicating that they are unwilling to relocate to another area even if such an opportunity availed itself.

Such patriotism is commendable taking into consideration the fact that respondents at EmaThulini, kwaNdelu, Oshabeni, and EZembeni Tribal Authorities all agreed that their tribal authorities experienced challenges of inadequate infrastructure in one form or the other. Employment opportunities were also an area of concern. In fact seventy-five percent said that they experienced problems in their attempts to access affordable services, whereas sixty percent said there was an inadequate extension of such services within the communities. However, soil fertility, internal social conflict and the functionality of community structures were all elements that many respondents deemed as satisfactory. Accordingly, eighty-five percent stated that tribal authorities generally had fertile soil, were devoid of conflict and respective community structures were functioning properly. The column graph below summarises this information.

**Figure 1: Columns showing problems experienced by traditional authorities. Source: Author's Compilation**



### 5.2.2 Administration of Tribal Authorities

Having acquired data pertaining to the background of the respondents in the first section of the questionnaire the second section required respondents to identify individuals whose responsibility is general administration of the tribal authority. The respondents were of the view that *inkosi* as opposed to *izinduna* was responsible for land allocation, with a respective split of fifty-eight percent against forty-three percent. Land allocation to business persons aiming to trade within the tribal authority was also seen as the prerogative of these individuals. Hence traditional councillors and traditional police officers were said to play a limited role in this regard. According to the informants, that latter two also play no direct role in day-to-day administration of the tribal authorities. Secretaries are the individuals that play a central role regarding day-to-day administration according to eighty percent of the respondents. Over and above, secretaries are tasked with storage, retrieval and disposal of records belonging to respective tribal authorities. The logic behind secretaries being central to records management is the fact that they administer the authority on a day-to-day basis.

Prominent as secretaries are concerning day-to-day administration and records management they were said to play no direct role whatsoever when it comes to settling land disputes in the area. The parties responsible for fulfilling this responsibility are, expectedly, *amakhosi*. *Amakhosi* are prominent individuals responsible for the settling of land related issues within a tribal authority as stated by seventy-two percent of the informants. Second in command in this task are *izinduna*. They fulfil this responsibility in less than a quarter of the instances chosen. Administration of a tribal authority means occasionally having to deal with business persons aspiring to acquire land and in some cases expand the land under ownership. As is the case on the subject of land allocation, *inkosi* and *izinduna* featured prominently in the discussions. As can be expected land allocation and administration are fundamental roles and functions of

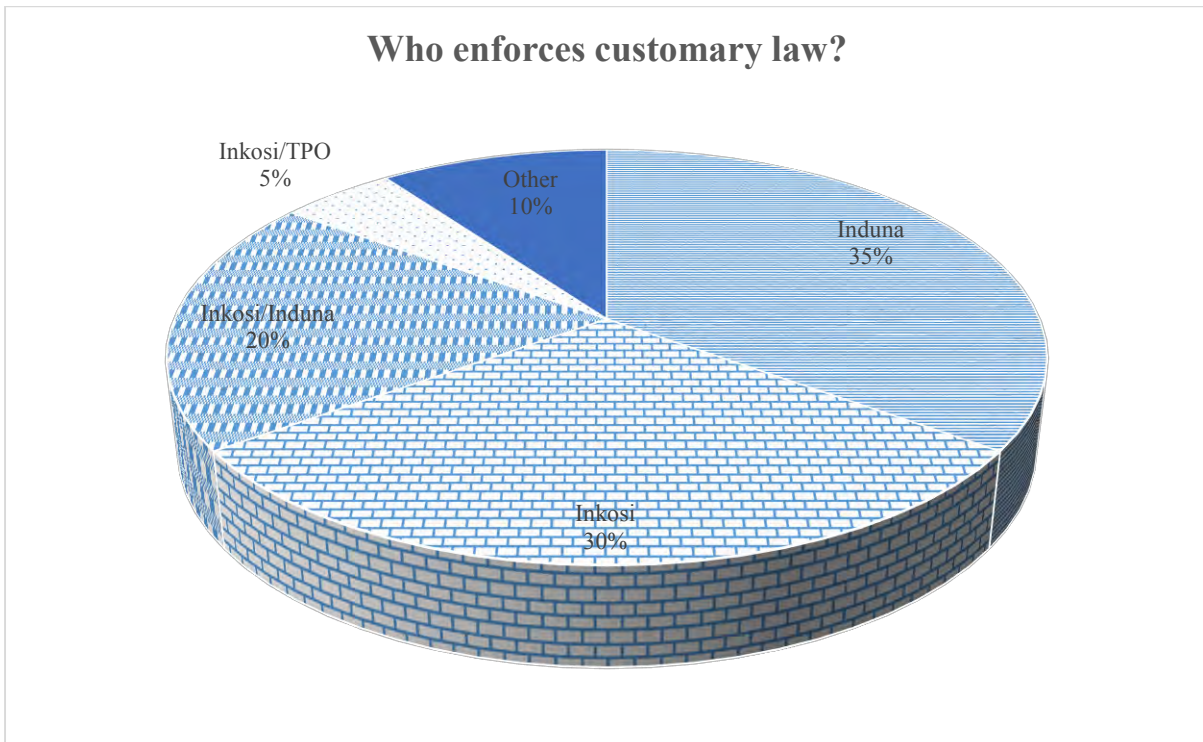
*amakhosi* in post-apartheid democratic South Africa. The entire sample attests to this since the informants indicated that *inkosi* is the person that exercises the most legislative power. Further to this *amakhosi* are acknowledged by ninety-three percent of the sample as individuals who preside over customary courts.

In a nut shell, the following is observed with regards to general administration of tribal authorities. *Amakhosi* are the primary persons responsible for land allocation to individuals and business, they are prominent individuals responsible for the settling of land related disputes, and they are responsible for presiding over customary courts. *Izinduna* are secondary in the execution of these tasks. Traditional councillors and traditional police officers play a limited role during land allocation, the settling of land related disputes, and presiding over customary courts. They also play no direct role in the day-to-day administration of the tribal authorities. Instead the duty of day-to-day administration as well as records management belongs to the secretaries. From the aforesaid it can be seen that *amakhosi* are the persons that exercise the most legislative power within tribal authorities.

### 5.2.3 Customary Law and Cultural Values

Customary law is by its inherent nature uncodified. It is passed down from one generation to the next. Consequently, it came as a surprise when fifty percent of the respondents affirmed that customary law within their tribal authorities is codified in one form or the other. The most popular form of dissemination of customary law is during *izimbizo* and other community meetings and the second most popular dissemination method is during land allocation and also in documentation pertaining thereto. The aim of the first form of dissemination is to ensure that incumbents are well acquainted with the changes that may take place in customary law as revised. The aim of the second form of dissemination is to ensure that new members of the community are, from the onset, aware of what other community members expect of them, moreover what traditional leadership demands from them. The figure below, Figure 2, shows the persons responsible for enforcing customary law.

**Figure 2: Pie showing persons responsible for enforcing customary law (*where multiple answers were provided a weighted percentage was used*). Source: Author’s Compilation.**



The duty of ensuring that customary law is enforced is that of *izinduna* and thereafter *amakhosi*. Forty-five percent of the sample said that it is the prerogative of *izinduna* to enforce customary law, forty-three percent said it was *amakhosi*, and a measly three percent chose traditional police officers as enforcers of this legislation. As to how those that deviate from customary law are reprimanded the responses availed varied. Forty-five percent said that culprits are fined, twenty-five percent said that *inkosi* reprimands them, twenty percent said a formal trial ensues, and the balance of ten percent stated that the means of reprimanding vary depending on the scenario and circumstances peculiar to each case. Nonetheless, there was a formal process in place to ensure that customary law is enforced and that those that deviate from it are dealt with accordingly, commensurate with the crime that has been committed.

Legislation, codified or otherwise, needs to be reviewed from time to time to ensure that it accounts for changes occurring within the community to which it relates. Of those respondents that confirmed that customary law is codified in their tribal authority, a third said that it is reviewed annually, a quarter said its changes are aligned to changes that take place in customs. Another quarter said that it is not reviewed, and the remainder stated that it is seldom reviewed. Efficacy and fairness of customary law are other elements that were interrogated. Half of the respondents reported that customary law was efficient and fair because it was essentially aligned to other legislation and policies that are codified and a quarter said it is the various community meetings and *izimbizo* that ensure the interrogation of customary law to ensure efficacy and fairness. The remaining quarter was equally split three-ways, suggesting that efficacy and fairness is guaranteed by the fact that it has functioned over a long period of time,



or that it achieves the needs of the community, or that it achieves efficacy and fairness through the fact that it is tailored to induce good behaviour.

Every community has cultural values that it protects, showcases and disseminates. There are various ways in which this can be done. A community that is able to achieve this tends to have a sizeable cultural impact on other communities. Members of the community living under traditional leadership in democratic South Africa were asked questions to determine the strategies that they use to protect, showcase and disseminate their cultural values and preserve indigenous knowledge. Forty-five percent indicated that they do this through cultural ceremonies and the wearing of traditional clothing during such traditional ceremonies. Thirty percent said that cultural values are protected, showcased and disseminated through *izimbizo*, and the remaining twenty-five percent made direct reference to virginity testing as a tool for achieving these goals.

It can be seen that tribal authorities that have codified customary law are quite common. In instances where it is codified customary law is disseminated through *izimbizo* and other community meetings or during land allocation and document pertaining thereto. The duty of ensuring that customary law is enforced is that of *izinduna* and thereafter *amakhosi*. Those that deviated from customary law are reprimanded, fined, or a formal trial ensues. Hence those that deviate from customary law are dealt with commensurate with the crime that has been committed. Revision of customary takes place annually during *izimbizo* or its changes are aligned to changes that take place within customs. Consequently, customary law is made efficient and fair since it is aligned to other legal documents, further to this *izimbizo* are used to interrogate customary law to ensure efficacy and fairness. Protection, showcasing and dissemination of cultural values and preserving indigenous knowledge is executed through *izimbizo* and through cultural ceremonies and the wearing of traditional clothing during such traditional ceremonies

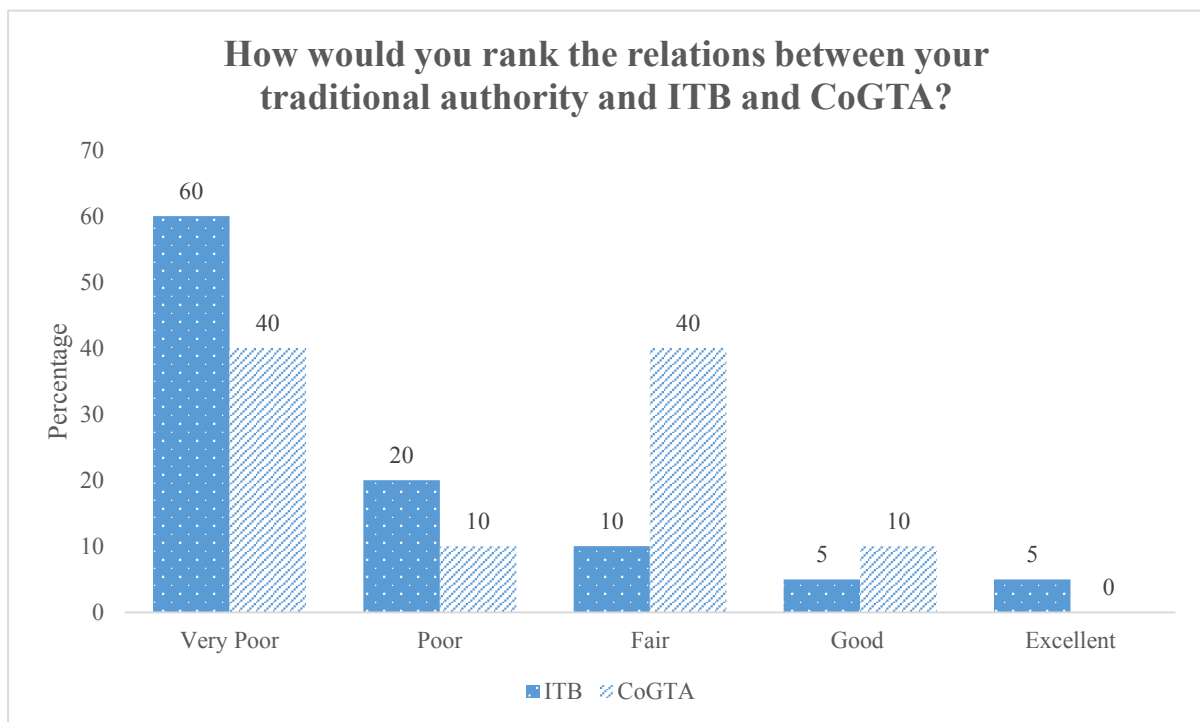
#### 5.2.4 Traditional Authorities' Internal and External Reappraisal

*Izimbizo* are convened by traditional authorities with the main aim of information sharing between the tribal leaders and their respective communities. To facilitate this information sharing Oshabeni, emaThulini and kwaNdelu Tribal Authorities confirmed that they hold *izimbizo* once per annum, whereas the eZembeni Tribal Authority holds *izimbizo* once every three months. As stocktaking occurs between the community and tribal leadership through *izimbizo* there is another form of stocktaking that occurs between the tribal authority and traditional leadership institutions. All four tribal authorities had been, at one stage or another and with varying degrees of frequency, subjected to an audit by CoGTA as a stakeholder in this institution. This audit was however very peculiar and unnerving in the sense that post-audit results were not made available to the auditees. Ninety-five percent of the respondents indeed agreed that an audit had been conducted at some stage or the other but they also denied having received an audit report detailing the findings of the audit.

The peculiar nature of the abovementioned audit somehow manifested as a sense of resentment from the respondents towards traditional leadership institutions. Respondents were asked if

they felt that Ingonyama Trust Board is administered for the benefit and social well-being of the traditional authorities. Thirty percent of the respondents are of the opinion that administration of the Ingonyama was beneficial to their social well-being, whereas sixty-five percent had a negative disposition towards it. The other five percent hold no opinion. Subsequently, respondents were asked to rank the relationship between their respective tribal authority and ITB as well as the CoGTA on a scale of one-to-five, where one was ‘very poor’ and five was ‘excellent’. The relationship between ITB and the traditional authorities is on average very poor according to sixty percent of the respondents. The second largest group, composed of twenty percent of the population, felt that this relation is poor. Likewise, the relationship between the tribal authority and CoGTA, is ranked by two groups composed of forty percent each as either very poor or fair. Figure 3 below indicates the ranking of the relation between tribal authorities and the ITB and CoGTA.

**Figure 3: Columns showing ranking of the relations between tribal authorities and ITB and CoGTA. Source: Author’s Compilation.**



Over and above understanding the relationship between the tribal authorities and ITB or CoGTA it is important to understand the relationship between the tribal authority and government as an entity. To facilitate this end respondents were asked a series of questions aimed at gauging the adequacy of resource provision by government to ensure that certain programmes were feasible and thus within reach of the communities. Programmes that received the most favourable reviews will be revealed first. A hundred percent of the sampled population felt that the government is doing enough to protect the vulnerable, including children, the elderly and the disabled. Eight-five percent felt that government is doing its level best to provide adequate resources to ensure safety and security of the community. Eighty percent of

the respondents agreed to the enquiry of whether or not government provides adequate resources to ensure availability of the healthcare system. Sixty-five percent held the view that the government provides adequate resources to ensure receipt of social grants and other social services. And the question of whether the government provides adequate resources to ensure sustainable use of cultural resources was affirmed by fifty percent.

In descending order, programmes that received unfavourable reviews were as follows. Forty-five percent agree to the question that government provides adequate resources to ensure sustainable use of cultural resources. In respect of all three questions, a paltry ten percent held the view that the government provides adequate resources to promote environmental management, or that the government provides adequate resources to support socio-economic development, or even that government provided resources are adequate in terms of facilitating communication and information dissemination. An insignificant five percent was of the view that there are enough government resources to ensure sustainable traditional approaches to water resources management. And finally with regards to resource adequacy for government programmes, there were no respondents who agreed with the view that government provides adequate resources to prevent animal cruelty. In a nutshell, these findings show that the relationship between tribal authorities and governmental institutions is poor, uncoordinated and not the best interest of the tribal authorities.

#### 5.2.5 Politics and Remuneration

The Constitution of the Republic of South Africa gives all South Africans authorisation to belong to any political organisation of their choosing [The Constitution of the Republic of South Africa, Chapter 2 Section 19(1)]. Although the liberties enshrined in the Constitution cannot be repudiated views held by the sample population took a completely different stance with regards to *amakhosi's* involvement in party politics. Ninety percent of the respondents held the view that traditional leaders should not be involved in party politics. Furthermore, when asked whether democratically elected councillors undermine or assist traditional leaders in discharging their mandate, eighty-five percent were of the opinion that democratically elected councillors undermine traditional leadership. There is inherent association between these two.

Inductive reasoning, the ability to associate two premises to obtain a conclusion, suggests that people are tentative as to the role that traditional leadership should adopt in party politics. The two predominant views in this regard tend to contradict each other. Respondents were asked to present their views on how the institution of politics affects the institution of traditional leadership. Forty-percent held the view that *amakhosi* should play a reconciliatory role that would facilitate communal unity and peaceful management thereof. Another forty-five percent said that they should not play any role in politics. The balance of ten percent said that *amakhosi* were natural politicians, moreover legislation allows them to partake in politics. When the question was posed to *uNdlunkulu* (the *inkosi's* wife) of emaThulini Tribal Authority her response was 'by nature amakhosi are politicians so they are involved, moreover they get themselves aligned to parties that fight for their rights'.

Naturally, very few individuals can perform their duties with vivacity if they are not remunerated commensurate to their perceived worth. The vigour of performing one's duties is undermined by remuneration that is regarded as disproportionate with the work done. Respondents were asked if the remuneration of traditional authorities' office bearers was commensurate with the work undertaken. An emphatic ninety-five percent of the sample population answered this question in the negative. Traditional leaders and traditional leadership supporting structures attach more financial worth to the duties bestowed upon them than what government views as economically viable. This discrepancy undoubtedly leads to resentment of government structures by traditional leadership.

#### 5.2.6 Tribal Authority Trends

Having simultaneously described trends pertaining to all four traditional authorities above, the following narrative will now address trends that are persistent in each. eZembeni Tribal Authority, the northerly most of the four tribal authorities that were subjected to this study, disseminates customary law through *izimbizo* and other forms of communal meetings. Oshabeni, the southerly most and the smallest tribal authority, has no codified customary law. Those that deviate from customary law are reprimanded through a fine or charge at kwaNdelu Tribal Authority. Another noticeable trend is that eZembeni and Oshabeni Tribal Authorities both choose only to assume the role of communicating with the appropriate government departments the plight of the disaster hit community members. No further action besides this is assumed, predominantly due to lack of resources.

Showcasing, protection and dissemination of cultural values and preserving indigenous knowledge is largely executed through cultural ceremonies held annually at emaThulini Tribal Authority, through *izimbizo* and Cultural Day celebrations at eZembeni Tribal Authority, and via virginity testing at kwaNdelu Tribal Authority. Moreover, eZembeni Tribal Authority is of the opinion that traditional leaders should play a reconciliatory role in politics and that women can be granted chieftaincy in modern day democratic South Africa. On the other hand, kwaNdelu Tribal Authority feels that traditional leaders should play no role whatsoever, nor should women be granted chieftaincy. In addition, both tribal authorities played no role with regards to the lobbying of government and other agencies for development.

KwaNdelu has no traditional leadership members who assist local community members when dealing with the state or attending to state affairs. In contrast, community members in Oshabeni Tribal Authority are assisted by members of the traditional council in this regard. KwaNdelu and Oshabeni Tribal Authorities regard open channels of communication and frequent workshops as the most efficient way to improve the relation between the authority and ITB and CoGTA as traditional leadership institutions. EmaThulini and eZembeni Tribal Authorities both have thirty members in the traditional council each. And, kwaNdelu and Oshabeni Tribal Authorities only have nine members per authority.

#### 5.2.7 Communal Roles of Traditional Leaders

Traditional leadership is requested to play a multitude of roles by different stakeholders. As outlined above, adopted roles are directly affected by the resources available for such a role. With the above serving as a backdrop, information pertaining to the roles of traditional leaders

in the local education system was posed to *amakhosi* and traditional leadership supporting structures. Moreover, resources for ensuring that these roles are achieved were also queried. Forty percent of the respondents said that the role of traditional leaders in the local education system is to address, advise or reprimand pupils. This role is assumed when there is upheaval in the local education institutions or when the results of the schools drop uncharacteristically. The other sixty percent provided an assortment of open-ended answers.

In addition to the above responsibility traditional leaders have to play a role in restoring or preserving communal peace within tribal authorities and, once more, resources have to be in place to ensure that this objective is achieved. Thirty-five percent said that traditional leaders play a role by interacting with and assisting the South African Police Services (SAPS) personnel. Facilitating discussion between grieving parties and preventing political upheaval as a result of land disputes is advocated by thirty percent of the respondents. Protection of communal rights was selected by a one-fifth of the respondents. And fifteen percent said that this role is played by traditional leaders in conjunction with Communal Policing Forums (CPFs). *Inkosi* R Shinga of kwaNdelu Tribal Authority said that, to restore and/or preserve communal peace ‘we request the help of SAPS and CPF if the need arises’.

All respondents were in concerted agreement that the needs and priorities of the tribal authority as a community were ascertained by and communicated through *izimbizo*, other community meetings and/or through other consultative means. These are seen as the most effective tools for engaging the community and unlocking open discussion pertaining to issues that are central to the tribal authority. According to *Inkosi* MJ Mqadi of eZembeni Tribal Authority, ‘community meetings give one a good idea as to what the community needs’. However all respondents posited that, first, the roles and functions bestowed upon traditional leaders are not achievable with the current available resources and, second, that government support is inadequate at local level. *UNdunankulu* (the chief headman) of Oshabeni Tribal Authority simply responded ‘there are no resources’. Indeed this seems to be the prevailing notion.

With regards to lobbying, seventy percent said that there is no form of lobbying that traditional leaders undertake to ensure development within their communities. Instead of undertaking formal and intense lobbying of government, traditional leaders serve as a point of communication between government and the tribal authority. In fact sixty-five percent of the informants stated that the role of traditional leaders in disaster management was to communicate with government, municipality, or other relevant departments. Essentially traditional leaders attempt to provide whatever assistance they can taking into consideration the resources that available at their disposal. In any case, sixty-percent of the time *amakhosi* and members of the traditional council undertake to assist the community when dealing with the state or attending to state affairs.

The stance of respondents with regards to women and their role in traditional affairs was also ascertained. On the topic of whether women should be granted chieftaincy half of the respondents said yes and the other half said no. And on the topic of women representation in traditional councils, it is recommended that one in three members be women. Representation

of women was found to be sufficient at respective traditional councils in eZembeni Tribal Authority, Ndelu Tribal Authority and Oshabeni Tribal Authority. However, at emaThulini Tribal Authority the percentage of women in the traditional council was below twenty-eight percent. Of those, eighteen members were chosen by *inkosi*.

## 5.3 Traditional Leadership Institutions

### 5.3.1 Roles, Responsibility, Resources, and Programmes

The ITB as a traditional leadership institution has roles and responsibilities to execute for the benefit of traditional authorities. The ITB has to allocate resources to traditional authorities with regards to achieving various programmes. One such programme is that of realising sustainable farming. The narrative below is according to the Knowledge Pakkies who was interviewed on behalf of the ITB. Pakkies maintained that the ITB as an institution largely focuses on land management. It has introduced agricultural programmes to augment the programmes that the Department of Agriculture and Rural Development has encouraged. Furthermore the ITB has employed an agriculturalist to identify projects that have a potential to impact highly both economically and socially, ultimately benefitting local communities.

The ITB makes provision for concessions on rental for all Sate Domestic Facilities including health clinics and hospitals on Ingonyama Trust land to assist the Department of Health improve the health care system. As far as supporting socio-economic development of local communities is concerned, the ITB facilitates this process by driving local-economic development programmes and availing land for these programmes to flourish. The impact of such programmes will vary from one community to the next. Ingonyama Trust will grant requisite rights to land using a lease through the local traditional council.

Ingonyama plays a limited role regarding the following programmes: preventing animal cruelty; protecting the vulnerable, including the children, the elderly and the disabled; ensuring safety and security of the community; promoting environmental management; ensuring sustainable use of cultural resources; ensuring sustainable traditional approaches to water management; and, facilitating communication and information dissemination of policies and programmes meant to uplift the community. Intra-tribal authorities' disputes, resolution of succession disputes, and ensuring execution of responsibilities allocated to tribal authorities also fall outside the purview of ITB. Furthermore, the ITB has no view with regards to delineation of roles of traditional leaders versus democratically elected councillors, nor does it hold a view pertaining to the ideal role of women in the functioning of the traditional authorities.

### 5.3.2 Administration and Allowances

The second part of the interview dealt with administration and allowances. The ITB was of the view that ensuring that traditional authorities are held accountable, ensuring that traditional authorities are not biased during service provision, and terminating the services of traditional leadership within a particular traditional authority were all the responsibilities belonging to

CoGTA. Moreover, the ITB plays no role in the administrative responsibility of auditing traditional institutions, auditing financial statements, and ensuring adequate records management by traditional authorities.

In the opinion of this institution, literacy levels, available support and experience are factors that impact upon adequate administrative and judicial skills. Moreover, there are factors that determine whether traditional leaders require external intervention and oversight. It was conceded that the current arrangement does not allow ITB to intervene with the quest of ensuring that justice is administered accordingly within traditional authorities. The administrative responsibility of safeguarding and being a custodian of community customs and general welfare within traditional authorities primarily resides with the *Isilo* and the institutions of *ubukhosi*. And the adequacy of legislation dealing with the traditional authorities is dependent on governance and land issues being addressed concurrently so as to circumvent lack of accountability by traditional leaders.

### 5.3.3 Party Politics and Benefits

Finally, involvement in party politics by traditional leaders and the impact of this involvement on their ability to achieving their mandate could not be commented on. The view was that capacity building as a democratic processes is currently lacking in the political sphere. Hence it posited that it would be unfair to provide a response if the base is not aligned to the common principles of the deciding factor. The same stance was adopted with regards to adequacy of salaries, allowances and benefits of traditional authorities. Any response to this, it was stated, would be subjective since the qualification of the adequacy factor has not been determined by CoGTA. To close, the ITB conceded that there was currently no system in place nor the capacity to monitor and implement a declaration process to ensure that gifts received by office bearers of traditional institutions are declared.

## 5.4 Chapter Summary

This chapter sought to present the results obtained through the various research methods discussed in Chapter Four. The main objective was to report the results of this study as a contribution to existing body of knowledge on subject of roles and functions of *amakhosi* in post-apartheid South Africa and local governance, with a specific focus on *amakhosi* falling under Ingonyama Trust. Charts have been used to augment the extensive narrative presentation of results. Results above were presented in a form of a discussion or narrative utilising broad thematic topics akin to those employed in the questionnaires.

The respondents' background was the first subsection that was presented. Background analysis assisted in facilitating the process of linking the respondents' answers to their background. It was found that traditional leadership structures are patriarchal. However, representation of women was found to be sufficient at respective traditional councils in three of the four traditional authorities. Patriotism was also in evidence according to the number of respondents that had resided in respective tribal authorities for a many years, a good indication of the experience with regards to traditional leadership and its operations. Respondents also indicated

that infrastructure was inadequate and employment were lacking. On a positive note, it was confirmed that the soil is fertile, there is lack of conflict within the respective communities, and community structures are functioning as they should.

With regards to the administration of tribal authorities, general administration was shown to be mainly the responsibility of the secretary. The same persons are responsible for storage, retrieval and disposal of records belonging to their tribal authorities. *Amakhosi* on the other hand were shown as prominent individuals responsible for the settling of land related issues. Furthermore, they allocate land as well as preside over customary courts. Second in command in the execution of these tasks are *izinduna*. Traditional councillors and traditional police officers play little role with regards to the abovementioned.

Customary law and cultural values is the next subsection that was presented. Contrary to popular belief it was discovered that customary law is codified in one form or the other. Dissemination of customary occurs during *izimbizo* and other community meetings and during land allocation and also in documentation pertaining thereto. Culprits that deviate from customary are fined, reprimanded by *inkosi* or a formal trial ensues. Customary law is shown to be efficient and fair because it is essentially aligned to other legislation and policies, it is reviewed annually, and any changes that take place within it are aligned to prevailing custom. To ensure efficacy and fairness of customary law it is interrogated through *izimbizo* and various community meetings.

Under the heading dealing with traditional authorities' internal and external review, respondents indicated that *izimbizo* are convened by traditional authorities with the main aim of information sharing. It is a form of appraisal between traditional leaders and the community. Another form of assessment occurs between the tribal authority and traditional leadership institutions in the form of an audit by CoGTA. Quite peculiar and disheartening is the fact that post-audit results or findings are not made available. Hence these audits somehow manifested as sense of resentment from the respondents towards traditional leadership institutions as indicated by the gauging of the relationship between institutions and the traditional authorities. This relationship between ITB and traditional leadership was rated as very poor, and that between the tribal authority and CoGTA fared better, but only incrementally.

Although the Constitution of the Republic of South Africa gives all South Africans authorisation to belong to any political organisation the views held by the sample population took a completely different stance with regards to *amakhosi's* involvement in party politics. It was clear that people are tentative as to the role that traditional leadership should adopt in party politics. It was also found that democratically elected councillors undermine traditional leadership. Moreover traditional leaders are undermined by their remuneration which is incommensurable with the work they do. The result was lack of vigour in perform their duties.

Primary data shed further light on the communal roles and functions of traditional leaders. It was found that traditional leaders are requested to play a multitude of roles by an array of different stakeholders. This is so in the education system. They play a role in restoring or preserving communal peace. They have a role to play in disaster management. And they assist



the community members when dealing with the state and attending to state affairs. Resources, financial or otherwise, that would allow them to perform these duties with vigour and efficiency are conspicuously inadequate. This is one of the fundamental challenges that traditional leadership faces.

Finally, Ingonyama plays a limited role regarding some programmes. Its current arrangement does not allow intervention with the quest of ensuring that justice is administered accordingly within traditional authorities. The ITB indicated that, with regards to roles, responsibilities, resources, and programmes, it makes provision for concessions on rental for all State Domestic Facilities including health clinics and hospitals. This is an important factor in driving local-economic development programmes. The ITB is of the view that ensuring that traditional authorities are held accountable, ensuring that traditional authorities are not biased during service provision, and terminating the services of traditional leadership within a particular traditional authority are all the responsibilities belonging to CoGTA. Unfortunately CoGTA consistently failed to engage to the extent that it had to be excluded from the study. Its failure is an indication of total disregard for, and animosity towards, the institution of traditional leadership and this field of research.

Having presented the primary data collected in this study this research will now turn to the task of analysing these results. Research results presented above will be analysed and given meaning by linking them to the broader discussion presented in other chapters, especially Chapter Two: Literature Review. Primary data presented above and secondary data presented in Chapter Two will be synthesized. The aim is to allow an informed conclusion to be made and educated conclusions to be drawn in Chapter Seven. Chapter Six will demonstrate how the issues which emerged from the study have been understood by ensuring that there is ease of understanding of the results by readers – including those who might not be conversant with the subject of this dissertation.

## Chapter 6

# Discussions and Analysis of Results

### 6.1 Introduction

This chapter aims to analyse and give meaning to the results present in the previous chapter, Chapter Five, Research Results, whilst simultaneously giving meaning to the research results by linking them to the broader discussions presented in other chapters, especially Chapter Two, Literature Review. Furthermore, it will demonstrate how the issues which emerged during the study were interpreted and understood by ensuring that there is ease of understanding of the results by readers – including those who might not be conversant with the subject of the roles and functions of *amakhosi* in post-apartheid South Africa and local governance. As has been stated earlier, this dissertation has a specific focus on *amakhosi* falling under Ingonyama Trust.

### 6.2 Roles and Functions of *Amakhosi*

This research has shown how the roles and functions of *amakhosi* have been in constant flux, being redefined by different stages of South African history, from colonialism to apartheid and once more during the current democratic dispensation. The dynamic nature of the political space means that these roles and functions are constantly being shaped and re-shaped by a multitude of stakeholders. An additional dynamic is that these interested and affected parties have different requirements, expectations and demands. *Amakhosi* and their traditional leadership supporting structures have had to constantly evolve to pass the bar. Although traditional leadership as an institution is in a constant state of evolution it has shown a tremendous ability to acclimatize to a variety of political and historical circumstances.

One of the key stakeholders that influence the institution of traditional leadership are policymakers. It has been shown that during the drafting of the Constitution this influence had negative undertones. Williams (2006) argues that policymakers purposefully omitted to make the roles and functions of *amakhosi* in democratic South Africa clear, precise and unambiguous. This dynamic has not helped traditional leaders fulfil their mandate. Instead the roles and functions have been incrementally defined and re-defined through more than half-a-dozen policy documents attempting to bridge the gap caused by the inarticulate Constitution.

Levy and Tapscott (2001) go a step further by placing the blame squarely at the ANC's doorstep. They hypothesise that the aim of this omission by the ruling-party-in-waiting was to ensure that both advocates and critics of traditional leadership were simultaneously accommodated within the new political dispensation. The ANC wanted to ensure that it received political support from all corners of South Africa by concurrently accommodating proponents and opponents of this institution. Meanwhile Mngomezulu and Simelane (2010) refer to this dilemma as a 'forced marriage', advocating that the ruling party was compelled by prevailing political dynamics into the acceptance of traditional leadership as legitimate institution. The open-ended nature of the Constitution has spawned more half-a-dozen pieces

of legislation, which in turn has spawned an increasing amount of bureaucracy surrounding this institution.

The seemingly ever increasing bureaucracy pertaining to traditional leadership has had a marked impact on this institution. The institution was previously patrimonial. This feature has since been removed. The ITB, CoGTA, NHTKL, and CONTRALESA are some of the institutions that regulate the activities of *amakhosi* and their traditional leadership supporting structures. Be that as it may, these institutions have taken away with one hand what they have given with the other. These institutions have set the arena for increased governance and accountability, yet they have simultaneously increased complexity and inflexibility of traditional leadership. Whether this change galvanises or undermines traditional leadership remains to be seen and is open to further deliberation.

Section 212 of the Constitution left the door open for further legislation dealing with the institution of traditional leadership to be enacted. Resulting policy documents make great strides in their attempts to articulate traditional leadership. However, they are still regarded as vague and inarticulate. This fissure has in fact provided the setting for this research. During the reporting of the research results in the previous chapter it was shown that some of the legislative roles and functions inherently belong to this institution, whilst others are difficult or impossible to achieve under the prevailing conditions of scarce resources and economic deprivation. Suffice it to say that it is clear from both primary and secondary data sources that some of the roles and functions bestowed upon *amakhosi* cannot be divorced from the institutions. What is also clear, a notion that is further elaborated upon below, is the fact that resources that will ensure that these roles and functions are fulfilled as intended by the policymakers are insufficient.

Pieces of legislation, in chronological order, that are used to extract and synthesize these roles and functions are the following: KwaZulu Ingonyama Trust Act, 3KZ of 1994, as amended; White Paper on Local Government, issued in March 1998; Traditional Leadership and Governance Framework Act, 41 of 2003; White Paper on Traditional Leadership and Governance, issued in July 2003; National House of Traditional Leaders Act, 22 of 2009; and, Traditional Affairs Bill, issued in September 2013. Although the TLGFA and the NHTLA will be repealed by the TAB when it is enacted, these documents still provide a key frame of reference. Using these policy documents and primary data discussed in the previous chapter, with the aim of clarifying and articulating what has been previously considered vague and inarticulate, the roles and functions of *amakhosi* in post-apartheid democratic South Africa are as follows. *Amakhosi* are tasked with:

- Acting as heads and primary spokespersons of their respective traditional authorities whilst at the same time being symbols of unity within their communities;
- Land administration, including making recommendations on land allocation, settling of land disputes and ensuring sustainable use of land;
- Administering justice, playing a role in provision of safety and security, and acting as authorities for the administration of oaths;

- Presiding over customary law courts and thus ensuring that law, order and peace are maintained within the traditional authority;
- Ensuring that customary law complies with the Bill of Rights in the Constitution particularly the prevention of unfair discrimination, inequality and improper gender representation;
- Using izimbizo to consult with the traditional community and to ensure information dissemination;
- Ensuring that the traditional community participates in decision-making pertaining to development and that the traditional community contributes to developmental costs;
- Lobbying government and other agencies for the development of their areas;
- Assisting members of the community in their dealing with the state;
- Advising government on traditional affairs through the Houses and Council of Traditional Leaders;
- Ascertaining the needs and priorities of the community and providing such information to interested and affected parties;
- Protecting cultural values, sustainable use of cultural resources, and providing a sense of community in their areas through a communal social frame of reference;
- Being custodians and protectors of the community's customs and general welfare;
- Considering and making recommendations to authorities on trading licences in their areas in accordance with law;
- Promotion and preservation of heritage resources and indigenous knowledge systems;
- Advising government on agricultural development;
- Advising government and participating in programmes geared towards prevention of cruelty to animals;
- Advising and playing a role in health campaigns, traditional health practices and rituals including initiation schools;
- Facilitating community access to pension and social grants;
- Promoting the protection of the vulnerable, including children, the elderly and the disabled;
- Supporting local economic development initiatives and socio-economic development programmes;
- Promoting sustainable environmental and natural resources management
- Promoting social cohesiveness, welfare and nation building;
- Registration of births, deaths and customary marriages;
- Disaster management;
- Ensuring a functional education system; and,
- Promoting service delivery.

In addition to the comprehensive roles and functions of *amakhosi* detailed above, *amakhosi* are symbolic and ceremonial figures charged with the task of unifying their respective tribal authorities. They act as, and are considered as primary representative tribal symbols. Essentially, they have to unify diverse people that reside within their tribal authorities. The

manner in which this may be done may differ from one tribe to another but the outcome has to be the same. Hence *amakhosi* have to adapt to different circumstance to achieve the goal of unifying the tribe, a key objective of their function. The annual celebration of the royal reed dance hosted by the *iSilo*, an occasion that is attended by thousands of people across the country and beyond, and celebration of Heritage Day (formerly King Shaka's Day), a holiday observed by millions, are two prime examples.

*Amakhosi* must endeavour to improve the quality of life of people living in rural areas by using various strategies aimed at assisting government stimulate socio-economic, cultural and political development. The latter is somehow very tricky to ensure. Although *amakhosi* should endeavour to encourage political development and awareness within and between the traditional authorities this has to be undertaken in a manner that is within the bounds of the Bill of Rights in the Constitution so as to prevent unnecessary friction which has a potential to have detrimental effects. According to primary data and with regards to the roles of *amakhosi* in politics, the majority of the respondents were of the opinion that traditional leadership should either refrain from politics or play a reconciliatory role. Hence benign political development is encouraged.

Finally, *amakhosi* should facilitate service delivery so as to enhance the social welfare of the rural communities who, as primary data has indicated, lack basic services. All respondents agreed that their tribal authorities experienced challenges of inadequate infrastructure in one form or another. Employment opportunities were also an area that requires special attention. Moreover, seventy-five percent of the respondents pointed out that they experienced problems with regards to gaining access to affordable services, and sixty percent experienced issues pertaining to inadequate extension of services within the communities. Be that as it may, the realisation of these basic services and rights is rather idyllic. It is hampered by lack of resources, a concern that will be discussed next.

### 6.3 Resources Adequacy

According to primary data, resources for ensuring safety and security of the community, availability of the health care system, receipt of social grants and other social services, and sustainable use of cultural resources are regarded as sufficient. As such these are objectives that require less attention according to the views expressed by the respondents. On the other hand, there was perceived inadequacy of resources for ensuring sustainable use of cultural resources, promotion of environmental management, supporting socio-economic development, facilitating communication and information dissemination, enabling sustainable approaches to water resource management, and preventing animal cruelty. Hence government should invest more energy and time on these programmes to ensure that resource adequacy is attained, and to change public perception. Additionally, government should redefine the roles and functions of traditional leadership so as to eliminate ambiguities pertaining to what *amakhosi* can achieve.

*Amakhosi* will, without a shadow of a doubt, be daunted just by contemplating their roles and function as articulated above. Consequently, this may lead to non-performance of their delineated roles and functions. As such the three elements of root cause analysis:

documentation, training and performance/execution (adapted from Schniepp, 2013) are fundamental to encourage performance of these roles and functions. This strategy will elucidate resources aimed at ensuring performed of *amakhosi's* roles and functions. Firstly, there should be clear and concise policy documents articulating roles and functions and resources to be utilised. Secondly, *amakhosi* need to be appropriately trained or suitably groomed to fulfil their roles and functions, both legislative and inherited. Thirdly, performance of the roles and functions has to be continuously monitored and evaluated to identify areas of concern and facilitate improvement. These three components of root cause analysis are interrogated further below to tease out some of the resources available to *amakhosi* for performance of their roles and functions.

One part of the first component of this causal chain, which is clear and concise policy documents articulating the roles and functions of *amakhosi*, is in place. It can, nonetheless, be improved by the sanctioning of a single yet comprehensive point of reference. At the moment there are more than half-a-dozen policy documents serving as sources of reference. As has been showed in the subsection above, this dissertation is a document can serve as a comprehensive, one-stop source for one seeking knowledge of the roles and functions of traditional leadership in South Africa. The second part of the first component, which is resources, is shown not to be in place. Resource adequacy is what this subsection is deliberating and subsequently repudiating.

The second component of the causal chain is to ensure and encourage competency, facilitate and motivate training, and create awareness amongst traditional leaders, traditional leadership supporting structures, traditional communities, as well as institutions aimed at working with traditional leadership. KwaNdelu and Oshabeni Tribal Authorities regard open channels of communication and frequent workshops as the most efficient way to improve competency, training and awareness between the tribal authority/leaders and traditional leadership institutions. The same strategy may be used to create awareness amongst other stakeholders. Whereas competency, training and awareness of the traditional leaders so as to understand the perspective of the community is done through *izimbizo*. Primary data concurs. *Izimbizo* are used to communicate and ascertain the needs of the community, preserve indigenous knowledge, disseminate cultural values and customary law, ensure efficacy and fairness of customary law, and as a general information sharing tool. The majority of tribal authorities hold *izimbizo* at least once per annum to achieve these ends. Be that as it may, resources for training, competence and awareness can be further refined and redefined.

The third component of the causal link is to undertake constant and consistent monitoring and evaluation. Again, this materialises either between traditional leadership and traditional leadership institutions, or between the community and the traditional leadership. On the one hand, the former is undertaken through *izimbizo* and through customary law and courts thereof. Undertaking monitoring and evaluation in this manner is quite fruitful taking into consideration the amount of factors addresses or that have a potential to be addressed in this manner. On the other hand, the latter is executed through traditional authority audits. Monitoring and evaluation using audits has failed dismally. Tribal authorities are subjected to an audit by CoGTA. The audit is however very peculiar and unnerving since post-audit findings are not

made available to the auditees. Hence although monitoring and evaluation takes place, constructive feedback is not given, rendering the entire exercise and the accompanying resources base wasteful and fruitless.

The space in which *amakhosi*, localised traditional leadership supporting structures, tribal authorities, as well as institutions aimed at working with traditional leadership act is not static. It is dynamic and in a constant state of evolution. As such it is complex and difficult to grasp if one fails to engage with it frequently and in a suitable manner. Buckley's (1968) 'complex adaptive systems' theory concurs. The theory suggests that the roles and functions of *amakhosi* will change as the dynamics of the environment in which they operate change. Hence all stakeholders will have to adapt to this change. Furthermore, resources allocated to *amakhosi* for achieving their directive will also have to be adapted to these changes. Otherwise they will fail to keep up with the changing times, thus render the system redundant.

Rubin (2000) advocates two types of social hierarchies – 'dominance hierarchies' and 'production hierarchies'. Dominance hierarchy refers to access to resource required for human survival, whereas production hierarchies refers to various institutions and organizations such as business firms, governments and universities. These types of hierarchies are relevant to tribal communities and *amakhosi* responsible for managing them. With regards to dominance hierarchy, it is clear that *amakhosi* and the traditional leadership supporting structures are predominantly responsible for resource management and day-to-day administration of tribal communities. Regarding productions hierarchies, *amakhosi* are part and parcel of a wider governmental management system and are direct custodians of resources within their communities. Since *amakhosi* are responsible for resources management and are custodians of resources in their respective tribal authorities they must ensure that resources access is experienced equally and fairly by all individuals residing in their tribal authorities.

The Social Dominance Theory suggests that the powerful 'command disproportionately large quantities of valued resources such as material goods, wealth and health' whilst the powerless 'are allocated negative social values such as poverty, poor health and lack of control over their destiny' (Brauer and Bourhis, 2006: 605). In a tribal hierarchy, any individual that manages resources on behalf of the community should, when deliberating decision that have a potential to impact upon the entire community, take into consideration interests and desires of the entire community. This simply has to be done in order to avoid tensions and favouritism within the community. If and when this is done it will ensure a cohesive community. One of the factors that hampers this is the exclusion of the needy, vulnerable and marginalised groups in society. Hence these people are excluded from socio-economic and cultural benefits that will alleviate poverty, increase a sense of belonging. They therefore experience resource inadequacy disproportionately more than the powerful groups.

The legal framework is vague with regards to the issue of resource allocation within traditional communities by *amakhosi*. Hence traditional institutional hierarchies, whether they are dominance hierarchies or production hierarchies, play a leading role in ensuring that the good of the community is not undermined by the good of a few. The issue of resource allocation is an important one. Results show that it is the responsibility of *amakhosi* to ensure that social

status plays no role in resource allocation and that communal benefits trickle down to the needy, vulnerable and marginalised groups in society. In short, impartiality of *amakhosi* is part of the roles and functions that is fundamental in ensuring that the entire community benefits from resources belonging to, as well as those aimed at helping, the community. Resources allocated in a fair and impartial manner will no doubt bear more benefits for more people more often.

Women are by and large regarded as part of the needy, vulnerable and marginalised groups in society. They face numerous challenges in their attempts to access resources, a factor that is perpetuated through policies and numerous other practices denying women equitable access to resources within the community. Women have suffered widely due to cultural and social practices alongside traditional land ownership approaches that discriminate against them (Turner and Ibsen, 2000; Moyo, 2013). *Amakhosi* and *izinduna* play a leading role with regards to land allocation and the settling of land disputes. Ingonyama also plays a central role in how land management is undertaken by *amakhosi*. Land related issues and concerns are just some of the dynamics that *amakhosi* grapple with on regular basis as part of their roles and functions including issues pertaining to land ownership and the negative impacts on women, including the needy, vulnerable and marginalised groups.

The ITB concurs that the administrative responsibility of safeguarding and being a custodian of community customs and general welfare of traditional authorities primarily resides with the *iSilo* and the institutions of *ubukhosi*. However, resources allocation and access that will facilitate *amakhosi* in their quest to fulfil their mandate are evidently and conspicuously insufficient. In the main, resources that will aid traditional leadership and localised traditional leadership supporting structures in achieving their mandate have not been clearly articulated or afforded sufficient financial backing. It is however important to note that resources are supposed to be utilised need not be financial. They can take various forms. Resources for cultivating heritage, enhancing the general welfare of the indigenous communities, and reconstruction and development of society using cultural and traditional celebrations require only a measure of creativity.

The calling of *izimbizo* to celebrate culture and cultivate tradition produces the desired result. These are resource that may be used to by the community for a variety of objectives that require minimal funding and achieve a great deal. *Izimbizo* as a resources should be reinvented to ensure that full advantage is taken of *izimbizo* as a resources for meeting the many roles and functions mandated to *amakhosi*. To add to this, traditional celebrations that occur during the royal reed dance ceremony and Heritage Day are two perfect examples of how legislative recommendations that mandate *amakhosi* to protect cultural values and sustainable use of cultural resources may be implemented. Finally, democratically elected councillors and all other stakeholders can and should play a key role in facilitating these desired traditional and cultural ends, however traditional leadership still plays the leading role.

## 6.4 Legal Requirements vs. Groundwork

Two objectives of the present empirical study on traditional leadership falling under Ingonyama Trust have been discussed and analysed in the sub-sections above. The third objective to be discussed and analysed intends to uncover the reality on the ground and



subsequently contrast this to government policymaking and accompanying decision-making pertaining to *amakhosi*, localised traditional leadership supporting structures, tribal authorities, as well as traditional leadership institutions. The following policy documents are utilised as reference documents regarding the objective of paralleling legal requirements with work taking place on the ground. They are, in sequential order, KwaZulu Ingonyama Trust Act, White Paper on Local Government, Traditional Leadership and Governance Framework Act, White Paper on Traditional Leadership and Governance, National House of Traditional Leaders Act, and Traditional Affairs Bill.

KITA mandates *amakhosi* to use land for ‘the benefit, material welfare and social well-being of the members of the tribes and communities living on the land’ (KITA, 1994). The ideal outcome is that *amakhosi* must use land as a resource that will enhance the livelihoods of the people living on that land. Nonetheless, it is unclear how this can be done. The issue of land as a resource has been discussed above. In addition to this discussion it should be noted that land is not only allocated to individuals, it is also allocated to businesses within the tradition authority. It can also be noted that *izinduna* play a secondary role to *amakhosi* where as traditional police officer, traditional councillors and tribal secretaries play a limited role. The latter play a key role in day-to-day administration of the tribal authority. All these stakeholders, at ground level, come together to ensure that land benefits material welfare and social well-being of tribal members.

*Amakhosi* will find it difficult to execute the mandate outlined by the KITA. Primary data clearly indicated that traditional leaders and their localised traditional leadership supporting structures have little faith in the Ingonyama Trust as an entity. Sixty-five percent of the respondents had a negative disposition towards Ingonyama. They were of the opinion that this institution was not administered for the benefit and social well-being of the traditional authorities. In such a case it becomes quite difficult to execute a mandate of an institution one does not believe in. The likelihood is that when and if the majority of *amakhosi* use land for the benefit, material welfare and social well-being of the community members living within their tribal authorities they will be doing so out of duty and not because it is a mandate necessitated by the KITA.

Furthermore, the use of land by *amakhosi* for ‘the benefit, material welfare and social well-being of the members of the tribes and communities living on the land’ as recommended by KITA is rather ambitious judging by the amount of roles the ITB refrains from engaging. The ITB plays a limited role regarding the following programmes: protecting the vulnerable, including the children, the elderly and the disabled; ensuring safety and security of the community; promoting environmental management; ensuring sustainable use of cultural resources; ensuring sustainable traditional approaches to water management; and, facilitating communication and information dissemination of policies and programmes meant to uplift the community. Resolution of intra-tribal disputes, succession disputes, and ensuring execution of responsibilities allocated to tribal authorities also fall outside the purview of ITB according to Pakkies.

Moreover, the ITB was of the view that ensuring that traditional leaders are held accountable for the material welfare and social well-being of the members of the tribes and communities living on the tribal land, ensuring that traditional authorities are not biased during provision of basic services, and terminating or suspending the services of traditional leadership and their localised supporting structures within a particular traditional authority were all responsibilities falling outside its purview. Pakkies went on to further concede that the current arrangement pertaining to traditional leadership and their localised supporting structures does not allow the ITB to intervene with the quest of ensuring that justice is administered accordingly within traditional authorities. In short there is a huge gap between what the KITA requires and what the ITB is able to achieve.

The WPLG outlines the roles and functions of traditional leadership at local governance levels. A majority of these roles and functions parallel those on the comprehensive list articulated above. However, at grassroots level, two of these roles and functions were quite difficult to execute, hence they were largely omitted from execution. The roles and functions in question are, first, assisting members of the community in their dealings with the state and, second, lobbying government and other agencies for the development of tribal areas. Regarding the first issue, in kwaNdelu Tribal Authority there was no traditional leadership structures in place to assisting local community members when dealing with the state. Alternatively, community members in Oshabeni Tribal Authority are assisted by members of the traditional council in this regard. With regards to the second issue, seventy percent respondents said that there is no form of lobbying that ensures development of their areas.

The TLGFA and the WPTLG are the third and the fourth policy documents respectively. These two documents are discussed in tandem because they are aligned with regards to their views of the roles and functions of traditional leadership. Most of the elements mentioned in the TLGFA are given more substance in the WPTLG. Again, a majority of the roles and functions outlined in both these legal references parallel those on the comprehensive list articulated above. All the same, primary data indicated that the roles and function associated with the following programmes were unfavourable. Government support was perceived to be lacking in respect of the following programmes: ensuring sustainable use of cultural resources; promotion of environmental management; ensuring support of socio-economic development; facilitating communication and information dissemination; sustainable traditional approaches to water resources management; and, adequate resources to prevent animal cruelty. As far as the TLGFA and the WPTLG, these are the programmes that should receive special attention.

The TLGFA recommends that a third of the members of the traditional council be women. As far as primary data is concerned, representation of women was found to be sufficient at respective traditional councils at eZembeni, kwaNdelu and Oshabeni Tribal Authorities. On the other hand, at emaThulini Tribal Authority the percentage of women representation in the traditional council was below twenty-eight percent of the eighteen members chosen by *inkosi*. Hence, by and large, there is compliance with the TLGFA as far as women representation is concerned in the traditional councils. With regards to women holding the chieftaincy position, opinion was split. The split opinion at grassroots levels does little to sway the opinion of the

Ingonyama. As far as the role of women in the functioning of the tribal authority is concerned, the ITB does not hold a view even though women representation is a legal requirement.

The NHTLA and the TAB are, respectively, the fifth and the sixth policy documents to be discussed and analysed. The latter is by and large aligned to the legislation document discussed above, namely the TLGFA. Whereas the former deals with duties that should be executed by traditional leaders through the National House of Traditional Leaders. Once more, a majority of the roles and functions outlined in NHTLA parallel those on the comprehensive list articulated above. Moreover, it states that the NHTL should exercise appropriate record-keeping, have its finances audited, and uphold a code of conduct. Essentially tribal authorities should follow suite and implementation appropriate records management, open their books to auditors as and when required, and abide by a code of conduct that does not bring the institution of traditional leaders into disrepute.

Primary data interrogated these three aspects – records management, audits and the code of conduct. Regarding the first aspect, it was ascertained that tribal secretaries are responsible for storage, retrieval and disposal of records belonging to their tribal authorities. With regards to the second aspect, ninety-five percent of the respondents concurred that CoGTA audits had been conducted on the tribal authorities. It was also discovered that the ITB plays no role in the administrative responsibility of auditing traditional institutions, auditing financial statements, and ensuring adequate records management by traditional authorities. And regarding the third aspect, both the ITB and respondents concurred that gifts declaration – as an indication of a code of conduct – was not a formalised process. In fact there was no codified code of conduct mentioned by any of the respondents.

Although there is misalignment between legal requirement and events at grassroots level at some level, certain other aspects are properly aligned. The following are characteristics of legal requirements and groundwork that are aligned good and proper. Firstly, the entire study sample indicated that *inkosi* is the person that exercises the most legislative power, and *amakhosi* are acknowledged as individuals who preside over customary courts. Secondly, there was a formalised process to ensure that customary law is enforced and deviants are dealt with commensurately. In addition, *amakhosi* are required by legislation to act as heads and primary spokespersons of their respective traditional authorities whilst at the same time being a symbols of unity in the community, to administer justice, provide for safety and security, act as authorities for the administration of oaths, presiding over customary law courts to maintain law and order, and promote and preservation of heritage resources and indigenous knowledge systems. Primary data found this to be the case.

One last aspect concerning legal requirements contrasted against grassroots events that is worth a mention is that of politics and traditional leadership involvement. Ninety percent of the respondents hold the view that traditional leaders should not be involved in party politics, whereas forty-five percent said that *amakhosi* should not play any role in politics. This view has a measure of rationale behind it. If *amakhosi* or localised traditional leadership supporting structures are politically inclined they may fail to apply customary law or distribute tribal resources objectively. Politics will influence them negatively. This view is, nonetheless,

contrary to the Bill of Rights as articulated in the Constitution of the Republic of South Africa. This is a conundrum that has to be evaluated, each case on its merits, because it cannot be that all politically inclined traditional leaders cannot be, at all times, objectives when dealing with the affairs of the tribal authority. In any case, *amakhosi* will incessantly interact with politically elected official, as is shown below, thus they will always be expose to political bias in one shape or the other.

## 6.5 The Mandate of *Amakhosi* vs. Democratically Elected Councillors

The mandate of *amakhosi* against that of democratically elected councillors is quite similar at one level and fairly dissimilar at another. Hence there is potential for uncertainties to occur in the execution of respective roles and functions. Chapter 7, Section 152 of the Constitution of the Republic of South Africa outlines objectives of local government. Both *amakhosi* and democratically elected councillors are an inherent part of local governance. As such this mandate is applicable to both parties. Quite frankly the roles outlined in this section of the Constitution overlap. As such they should be executed by *amakhosi* and democratically elected councillor in tandem, as components of local governance.

Under this clause of the Constitution, roles that should be executed by both parties are expressed as follows. *Amakhosi* and democratically elected councillors should provide a democratic, accountable and non-partisan system of government for local communities. They should provide requisite services to the local communities in an appropriate manner that will allow the community to thrive. One such way is to develop and encourage opportunities that facilitate socio-economic development whilst at the same time encouraging involvement of communities and respective organisational structures in matters of local governance. *Amakhosi* and democratically elected councillors should also promote a healthy and safe physical and cultural environment.

*Amakhosi* are not elected by a system of popular democratic vote. However, certain members of the traditional leadership supporting structures assist *amakhosi* discharge of their mandate. Such democratic and accountable structures working alongside *amakhosi* will ensure that service provision is executed in a sustainable manner, simultaneously promoting socio-economic development. Traditional leaders and democratically elected councillors must undertake to encourage involvement of tribal communities and community organisations in matters of local government. The Constitution also requires that the two parties put measures in place to promote a safe and healthy environment. There is a recognition that they are merely custodians of the natural environment for posterity.

*Amakhosi* and democratically elected councillor should, for the benefit of the greater population, work towards similar communal goals. Working together of *amakhosi* and democratically elected councillors is vital. The two parties have a marked influence at local levels of governance. Working in tandem is an absolutely imperative requisite for warranting economic and culturally success of local governance and respective local communities. Legislatively, the Constitutional requirements of the two parties are clear and unambiguous.

Traditional leadership and democratically elected councillors should serve as democratic and accountable structures for local communities.

This objective of comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors is also addressed by the Local Government: Municipal Structures Act, 117 of 1998. Section 19 of the said act is aligned with section 152 of the Constitution as deliberated above. Alignment of the two policy documents serves to further solidify the need for *amakhosi* and democratically elected councillors to work together for the benefit of rural communities. These policy documents are aligned regarding local governance. Section 19 of the LGMSA stipulates that a municipal councillor must annually review the needs of the community, priorities that may be utilised to meet those needs, its ability to engage the community and community organisations, its organisational and delivery mechanism for meeting the needs of the community, its functions and the exercising of its powers, and its overall performance in achieving the said objectives.

The LGMSA implores that the above measures be observed. Furthermore, it mandates the municipal council, whose membership includes democratically elected councillors, to develop a mechanism to consult the community. Such consultation is aimed at assisting the continual assessment and review of the needs of the community, the municipal council's abilities to meet those needs, the processes that are put in place for communal involvement, and the municipal council's general performance in its attempts to realise these objectives. Traditional leadership likewise must have mechanisms in place to achieve such needs. Traditional leadership achieves corresponding objectives through *izimbizo* and other such communal meetings as instructed by the WPLG, which instructs *amakhosi* to consult with local communities on a regular basis through *izimbizo*.

Although the Constitution and the LGMSA do make attempts to shed light on the roles and functions of *amakhosi vis-à-vis* democratically elected councillors, the two roles executed by these parties can seem muddled at grassroots level or during day-to-day execution of these tasks. And although the roles and functions of traditional leadership and democratically elected councillors can at times seem muddled there are certain incremental steps that can be undertaken to ensure that rural communities benefit and are allowed to flourish by an alliance between the two. These steps are outlined in the Constitution and LGMSA. Even further, lack of understanding that can materialise as to what each entity does in relation to the other can definitely be curtailed by better articulated policy document. Confusion that occurs between the roles of *amakhosi* and democratically elected councillors is also observed by other commentators on the subject – Ntsebeza (2006) also suggests such a dilemma.

In rural communities, *amakhosi* are certainly one of the most important components for facilitating social belonging, facilitating cultural and traditional belonging, and encouraging the community to consider itself as part of the organic system. Democratically elected councillors are likewise part of this organic system. As has been mentioned, there is a need to ensure close cooperation between *amakhosi* and democratically elected councillors. Some resources reside with *amakhosi* where as others reside with democratically elected councillors. For the benefit of the entire organic system resources that allow traditional authorities to

flourish should be allocated in an impartial manner. Different layers of accountability and governance interact to benefit traditional communities, the needy and the marginalised, ultimately alleviating poverty, enhancing the trickle-down effect and facilitating the wellbeing.

Democratically elected councillors have a measure of influence with regards to development and flourishing of society. Even though the role of democratically elected councillors is minimal with regards to the use of legitimate power, the synergy between *amakhosi* and democratically elected councillors has an impact upon all interested and affected parties. The needs of women and underprivileged groups should not be relegated to the side-line. Structures of local governance, whether elected or otherwise, should be at the forefront of strategies aimed at empowering women, marginalised social groups, and greater society in general. Clearly the mandate of *amakhosi vis-à-vis* democratically elected councillors is quite similar although their absolute spheres of influence may differ. The relationship between the two structures has to be nurtured, although this may at first seem difficult to achieve.

## 6.6 Chapter Summary

This chapter has analysed and attempted to give meaning to the results presented in the previous chapter whilst simultaneously giving meaning to the research results by linking them to the broader discussions presented in other chapters. Furthermore, it has demonstrated how the issues which emerged during the study were interpreted and understood by ensuring that there was ease of understanding of the results by readers. To achieve and simplify this task, the present chapter analysed and subsequently gave meaning to primary and secondary data through discussing the two sources of data using broad topics meticulously aligned to the study's research objectives: roles and functions of *amakhosi* in post-apartheid democratic South Africa; resources adequacy allowing *amakhosi* to achieve their directive; legal requirements *vis-à-vis* events taking place at grassroots level; and, the mandate of *amakhosi vis-à-vis* the mandate of democratically elected councillors.

Having accomplished what this chapter initially set out to achieve as enunciated above, this dissertation now turns to the closing chapter. This chapter will perform three fundamental tasks as a final step in this dissertation. Firstly, it will summarise key arguments as well as steadfast concerns by reiterating key discussion points that are central to this research. Secondly, it will draw conclusions from the findings of both primary data as well as key literature used during review and analysis of secondary data. Finally, it will make recommendations for future research on the topic deliberated herein, and also identify other areas of further research on the theme of the study. The final chapter will duly be called Summary, Conclusion and Recommendations as indicated in the chapter outline given at the end of Chapter One.

# Chapter 7

## Summary, Conclusion and Recommendations

### 7.1 Introduction

The aim of the current chapter is to, first, summarise the main discussions of the study. The summary of this study will briefly discuss the main points of this research. To facilitate ease of understanding, the summary will be discussed in a manner that mirrors the manner in which the chapters have been ordered and deliberated above. The second aim of this chapter is to put forward a conclusion. In this subsection, the study will reiterate key points and at the same time show that the study has indeed accomplished what it initially set out to achieve. This subsection will recapitulate the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, adequacy of resources that will allow *amakhosi* to achieve their directive, events taking place at grassroots level contrasted against legal requirements, and also the contrasts regarding the mandate of *amakhosi* against that of democratically elected councillors. Thereafter the study will put forward recommendations. This concluding chapter will pull the study together and proffer some recommendations pertaining to the way forward.

This research, as its first objective, has established and articulated the roles and functions of *amakhosi* in post-apartheid South Africa and local governance, with a specific focus on *amakhosi* falling under Ingonyama Trust. Ugu District Municipality was used as the case study. Roles and functions were exhaustively articulated allowing this research to serve as a key point of reference for any reader interested in this subject. The second objective was to evaluate the adequacy of resources allocated to *amakhosi* to enable them to achieve their directive. On the whole, these were found to be insufficient for attaining the mandate bestowed upon *amakhosi*. The third objective was to parallel legal requirements with work taking place on the ground. This was done by contrasting primary data against secondary data, thereafter analysing the result. The final objective was aimed at comparing and contrasting the mandate of *amakhosi* against that of democratically elected councillors particularly focusing, again, on those who fall under Ingonyama Trust. The mandates of both these stakeholders were found to be aligned at certain levels and not others.

### 7.2 Summary

This research has shown that the roles and functions of *amakhosi* are in constant flux, being redefined by different stages of South African history, from colonialism to apartheid and once again in the democratic South Africa. The political terrain which this institution has monopolised has experienced tremendous changes in the past century or so. The effects of colonialism and apartheid have had significant, long-lasting impacts on the institution of traditional leadership. The English, French and Portuguese colonial masters demanded that traditional leadership play a dual role between traditional obligations to redistribute wealth and protect people from misfortune and the colonial demands to collect taxes, allocate land, recruit labour, and enforce a plethora of new regulations. However, in many parts of Africa the

institution still remains in a position of strength owing to its dexterous ability to effectively manage the rural population – something modern democratic governance structures epitomised by councillors struggle to achieve.

Furthermore, the research posited that *amakhosi* are symbolic and ceremonial figures charged with an array of roles and functions. These roles and functions have been articulated and discussed exhaustively. The holistic and impartial execution of these roles and functions will allow traditional leaders to, *inter alia*, act as primary representative tribal symbols saddled with the responsibility to unify respective tribal authorities, improve the quality of life of people living in rural areas by assisting government to stimulate development, facilitate achievement of service delivery, enhance the social welfare of the rural communities, improve morality of society, and deepen and enrich democracy. Such positive impacts will contribute a great deal to the 4 million people, constituting 40% of the total population of KwaZulu-Natal, living under land administered by Ingonyama Trust.

It was revealed that customary obligations have been supplemented by an array of democratically inclined obligations enforceable through various pieces of legislation. This has served to increase traditional leadership's sphere of influence. However, this increasing influential impact has led to an increased amount of bureaucracy surrounding the institution. Nowadays, traditional institutions are no longer patrimonial in nature. Throughout the country, an increasing number of bureaucratic institutions have a vested interest in the operations of *amakhosi*, traditional leadership supporting structures, traditional communities, as well as institutions aimed at working with traditional leadership. Effectively, the traditional institution has experienced increasing bureaucracy, and these bureaucratic institutions have increased the complexity and inflexibility of this institution.

The literature engaging the international, continental and then the South African context on the subject matter was reviewed. The use of these different interlinking spheres aimed at interrogating the primary research questions. Literature reviewed provided the backdrop used to locate the study whilst engaging with a variety of perspectives from different geographical contexts. The British monarch was found to be perhaps the most symbolic and ceremonial of all monarchs globally, making it the most prominent representation of traditional leadership anywhere in the world. In Africa, the traditional leadership institution was found to be still in a position of strength even though it was a tool used against the local population by colonial and apartheid masters. Utilisation of traditional institutions by external forces at the expense of the native population is regarded as an unfortunate aspect of Africa's history. Whilst in South Africa *amakhosi* are recognised by the Constitution, their roles and functions are vague and inarticulate, leading to the enactment of more than half-a-dozen policy documents detailing these roles and functions of *amakhosi* in the democratic order.

Conservatism was utilised as a theoretical framework to analyse the four key objectives of this study. It was broken down into seven elements listed below, which aimed to facilitate the analysis. The first element is tradition, willingness to preserve wisdom that has accumulated over generations. The concept of culture is central to this element. The second element is organicism, the view that traditional authorities are systems that are distinct, interconnected yet



harmonised. Hierarchy, understanding that each person in society occupies a vital but unique role augmented by respective social responsibilities that must be fulfilled in order to preserve the whole, was examined as the third element. Authority, an element that is vital for guiding the interests of the social whole and ensuring social stability, was the fourth element to be analysed. The fifth was pragmatism, which is utilisation of practical structures such as *amakhosi*. Human imperfection, understanding that humans require guidance to maintain an orderly state of being, was scrutinised as the sixth element. The final element was property, more specifically land, since it affords freedom along with a sense of ownership.

The Research Methodology chapter was divided into two parts. The first part was aimed at articulating and justifying the research design deemed appropriate for this study, whereas the second part discussed in detail data analysis methods employed in the study. It was mentioned that the study adopted a qualitative research paradigm which was deemed common in the social sciences. For the purposes of ensuring that all primary research objectives were realised, the chapter mentioned that two types of data sets were collected, primary and secondary data. Primary data was collected using two types of questionnaires. The first type was used for gathering data from *amakhosi* and their localised traditional leadership supporting structures. It was also mentioned in that chapter that this was translated from English to isiZulu for the purposes of data collection and, subsequently, the interviews were also administered in isiZulu. The chapter stated that the second questionnaire was aimed at gathering data from Ingonyama Trust Board. The interview of ITB members was conducted in English as a language that is widely used and well-understood within such bureaucratic institutions.

It was mentioned that in order to ensure that all the objectives of the research were satisfactorily addressed and the hypotheses tested in an effective manner, the research was designed to employ elements of both qualitative and quantitative analysis. Non-probability sampling was preferred, and the non-probability sampling method that was used to select the most appropriate population was purposive sampling. As discussed in that chapter, convenience sampling was used to select the most appropriate population that typifies the whole, which is *amakhosi* falling under Ugu District Municipality. To analyse closed-ended questions and quantify patterns pertaining to this analysis SPSS software was used. SPSS was then used to graphically present findings which belonged to closed-ended questions.

After the research methodology was articulated and justified the study then turned to the task of presenting the research results. The primary focus of the Research Results chapter was to present the results obtained through the various research methods discussed in preceding chapters. Where it was possible and/or necessary to do so, charts were used to present the research results. For the most part, the results were presented thematically by means of a discussion or narrative utilising broad thematic topics aligned to those in the questionnaires. The main objective of this chapter was to report the results of this study as a contribution to the existing body of knowledge on the subject matter. Primary data presented here was able to shed further light on the roles and functions of *amakhosi*, the resources they must utilise to achieve their mandate, and also establish events taking place at grassroots level. The latter was synthesised with policy documents to achieve the third objective of the research.

The penultimate chapter, Discussion and Analysis of Results, as the name suggests, analysed and attempted to give meaning to the results presented in the previous chapter whilst simultaneously giving meaning to the research results by linking them to the broader discussions presented in other chapters, especially the Literature Review chapter. Furthermore, this chapter demonstrated how the issues which emerged during the study were interpreted and understood to ensure that there was ease of understanding of the results by readers, even those who might not be conversant with the subject. To achieve and simplify this task, primary and secondary data were analysed by discussing the two sources of data using broad topics meticulously aligned to the study's research objectives: roles and functions of *amakhosi* in post-apartheid democratic South Africa; resources adequacy allowing *amakhosi* to achieve their directive; legal requirements *vis-à-vis* events taking place at grassroots level; and, the mandate of *amakhosi vis-à-vis* the mandate of democratically elected councillors. This concluding chapter pulls the study together and proffers some recommendations on the way forward.

### 7.3 Conclusion

Section 212 of the Constitution of the Republic of South Africa left the door open for further legislation dealing with the institution of tradition leadership to be enacted. More than half-a-dozen pieces of legislation concerning *amakhosi* have since been enacted. They are, in chronological order: KwaZulu Ingonyama Trust Act, 3KZ of 1994, as amended; White Paper on Local Government, issued in March 1998; Traditional Leadership and Governance Framework Act, 41 of 2003; White Paper on Traditional Leadership and Governance, issued in July 2003; National House of Traditional Leaders Act, 22 of 2009; and, Traditional Affairs Bill, 2013, issued in September 2013. These policy documents make great strides in their attempts to articulate traditional leadership in post-apartheid democratic South Africa and local governance. However, they are still regarded as vague and inarticulate. This study, however, hypothesises that these can and should be further redefined because they do not comprehensively address the relevant research questions posed in this study.

Up until the present moment, there was no eloquently expressed single source of information dealing with the subject of the roles and functions of *amakhosi* in post-apartheid South Africa and local governance. Literature that dealt with the subject matter was scattered and possibly not comprehensive enough. The scope and significance of traditional leadership in terms of duty – their moral and legal obligation – as well as their absolute role in governance within the democratic South Africa was considered as vague and inarticulate. The roles and functions of *amakhosi* were sometimes ambiguous. It is a view held in this study that they should be further redefined to ensure that there are no ambiguities. It is on these grounds that the present topic was conceptualised and proposed as a contribution to the discussion/debate. It is for these same reasons that a study of this nature is both timely and relevant in the South African context.

Using these abovementioned policy documents and primary data, with the aim of clarifying and articulating what has been previously considered vague and inarticulate, the roles and functions of *amakhosi* in post-apartheid democratic South Africa were systematically and comprehensively articulated. After this goal had been achieved, it was discovered that due to

the amount of interested and affected parties that have a stake in traditional leadership, *amakhosi* are requested to play a multitude of roles by these stakeholders. Traditional leadership is required to enhance the quality of life of people living within rural areas by assisting government to stimulate socio-economic development, service delivery, preservation of the moral fibre and regeneration of society, promotion of social well-being and welfare of tribal communities, unifying their respective tribal authorities, and acting as primary representative tribal symbols.

With regards to primary data pertaining to the traditional leadership institutions the following was observed. It was revealed that Ingonyama plays a limited role regarding some programmes that have a potential to greatly impact on *amakhosi*, localised traditional leadership structures, and traditional communities. The fact that CoGTA consistently failed to engage to the extent that it had to be excluded from the study is a clear indication of the disposition of this institution towards traditional leadership. Its failure is an indication of total disregard for, and animosity towards, the institution and this field of research. At the present rate CoGTA will fall short of achieving its mission statement of promoting traditional affairs and supporting associated institutions by *inter alia* 'creating enabling mechanisms for communities to participate in governance'.

The second key question that was interrogated in this research was the evaluation of resource adequacy that *amakhosi* have access to in order to achieve their mandate. *Amakhosi* are supposed to play a pivotal role in local governance by improving the social welfare of their tribal communities. Policy documents have stipulated the roles and functions that are supposed to be enacted by this institution. However, realisation of these roles will be hindered by lack of access to resources. These resources – financial, institutional or otherwise – which *amakhosi* are supposed to utilise to achieve their mandate, which would in fact allow them to perform these duties with vigour and efficiency, are evidently and conspicuously insufficient. It is noted that the vigour of performing one's duties is undermined by remuneration that is regarded as disproportionate with the work done. The institution of traditional leadership is facing this dilemma. As things stand traditional leaders and traditional leadership supporting structures attach more financial worth to the duties bestowed upon them than what government views as economically viable.

Even though key institutional resources may be lacking, *amakhosi* can make great strides towards the reconstruction and development of society if they are able to maximise other available resources. Indeed financial resources may be conspicuously inadequate. Even under this demanding state of affairs *amakhosi* should endeavour to adopt an open-minded stance. There are a number of roles and functions that can be achieved devoid of substantial financial resources. Traditional leaders have been and continue to be assigned the task of improving the morality of society by serving as fundamental tools of reasoning, deepening and enriching democracy using bureaucratic institutions belonging to the democratic state, and functioning as administrative and judicial tools in the countryside, administering customary law, acting as primary representative tribal symbols, and defending custom and the local way of life. These are some of the roles and functions that can be achieved with minimal financial resources.

The third key question that this research evaluated was the differences and similarities between *amakhosi*'s legislative directive and the work that is taking place at grassroots-level. KwaZulu Ingonyama Trust Act (KITA) is regarded as ambitious because, as a matter of fact, it is unclear as to how the mandate of KITA should be achieved, especially judging by the amount of roles the ITB refrains from engaging. The institution plays a limited role regarding protecting the vulnerable, ensuring safety and security of the tribal communities, promoting sustainable environmental management and water resource management, ensuring sustainable use of cultural resources, and facilitating communication and information dissemination of policies and programmes meant to uplift the community. As for the WPLG, TLGFA and WPTLG, the majority of the roles and functions expressed parallel those on the comprehensive list articulated above.

However, at grassroots level, some of these roles and functions are quite difficult to execute, hence they were largely omitted by traditional leaders. Primary data found that these programmes include, but are not limited to, ensuring sustainable use of cultural resources, promotion of environmental management, ensuring support of socio-economic development, facilitating communication and information dissemination, sustainable traditional approaches to water resources management, and adequate resources to prevent animal cruelty. Moreover, TLGFA recommends that a third of the members of the traditional council be women. At grassroots-level this was found chiefly to be the case. There is compliance with the TLGFA as far as women representation is concerned. However, there is a concern pertaining to the NHTLA and the TAB. Appropriate record-keeping takes place and a code of conduct is upheld. However, the manner in which auditing is undertaken is deeply concerning. In short, there is misalignment between legal requirement and events at grassroots level at some level, nevertheless certain aspects are appropriately aligned.

The final objective of this research was to evaluate the role of *amakhosi* in relation to democratically elected councillors. It was hypothesised that the roles of the two parties could be better articulated taking into consideration the key roles that they play in respect of traditional communities. Confusion pertaining to this point means that the roles and functions of *amakhosi vis-à-vis* democratically elected councillors are muddled. Even though the Constitution and the LGMSA make attempts to shed light on the roles and function of *amakhosi vis-à-vis* democratically elected councillors, at grassroots-level there are problems. There is lack of clearance as to how each party is supposed to execute its roles and functions in relation to the other. In areas where this happens it is the tribal community members that suffer. As such, this misunderstanding as to what *amakhosi* do in relation to democratically elected councillors could be better articulated than is currently the case. It is in this context that the study reached the conclusion that there is room for improvement in current legislation pertaining to the roles and functions of traditional leaders.

## 7.4 Recommendations

For the closing, the following recommendations are in order. The foremost recommendation relates to resources articulation. On the one hand, resources – financial, institutional or otherwise – that will allow *amakhosi* to achieve their directive of increasing well-being and

utility of their tribal authorities should be redefined and further articulated. The resources which *amakhosi* are supposed to utilise to achieve their mandate, which would in fact allow them to perform these duties with vigour and efficiency whilst simultaneously allowing the tribal communities to flourish are currently inarticulate. On the other hand, although institutional resources may be lacking, *amakhosi* can make great strides towards the reconstruction and development of society by maximising the use of other available resources. *Amakhosi* should endeavour to adopt an open-minded stance. Some roles and functions bestowed upon traditional leaders can be achieved devoid of substantial financial resources. This includes the roles traditional leaders used to play long before colonialism and apartheid came into the picture. These include acting as primary representative tribal symbols and improving morality of society.

Primary data indicated that CoGTA conducted audits of tribal authorities with varying degrees of frequency and intensity. This should not be the case. There should be consistency in the types of audits that are undertaken. It will benefit all interested and affected parties including *amakhosi*, traditional leadership supporting structures, traditional leadership institutions, and tribal communities if audits were undertaken in a consistent manner. It will be easier to compare and contrast the results and findings of the audit from one tribal authority to the next and within one tribal authority over an extended period of time. Primary data also indicated that CoGTA and ITB should engage tribal communities on a regular and benevolent basis since these institutions were regarded as not being administered for the benefit and social well-being of the tribal communities; respective programmes were mostly lacking.

Through the present empirical study on the traditional leaders that fall under Ingonyama Trust, the aim was to uncover the reality on the ground and thus influence some of the government's policy decisions on the institution of traditional leadership going forward. Although the study has attempted to fill some of the voids presented above some gaps may require further inquiry to ensure that they are addressed from a different angle and in an appropriate manner. This research acknowledges that some of the gaps fall outside the scope of the current study, nonetheless these gaps have been highlighted for the benefit of the reader and the researchers that may endeavour to further interrogate these important aspects of the institutions of traditional leadership. The present study focused primarily on those traditional leadership structures falling within Ingonyama Trust. Future studies could go beyond this research focus.

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# Appendices

## Appendix A: Questionnaire used to collect data from *amakhosi* and traditional leadership supporting structures.

Name: \_\_\_\_\_ Place of Interview: \_\_\_\_\_

### A. Respondent's Background

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1. Gender

Male	Female
1	2

2. Marital status

Single	Married	Divorced	Widowed	Other
1	2	3	4	5

3. Age

<20	21-29	30-39	40-49	50-59	60+
1	2	3	4	5	6

4. How long have you been living in this tribal authority?

<5 years	6-10 years	11-20 years	20+ years
1	2	3	4

5. If you were given an opportunity to move to another area would you do that?

Yes	No	Do not know
1	2	3

*(If the answer is No or Do not know, go to 6)*

5.1. If **Yes**, where would you choose to move? \_\_\_\_\_

5.2. Why would you choose that area? \_\_\_\_\_

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6. Are you employed?

Yes	No
1	2

*(If No, go to 7)*

6.1. In which sector?

Formal	Informal	Self-Employed	Other (specify)
1	2	3	4

*Specify 4:* \_\_\_\_\_

7. Does the traditional authority experience any of the following problems? (*multiple responses*)

Inadequate infrastructure, e.g. roads, telephones, etc.	1
Lack of employment opportunities	2
Conflict in the community	3
Community structures not functioning properly	4
Environmental problems, e.g. poor soil quality	5
Inadequate extension of services	6
No access to affordable service	7
Any other problem (specify)	8

Specify 8: \_\_\_\_\_

## B. Administration

8. Who is responsible for land allocation in this area?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

Specify 5: \_\_\_\_\_

9. Who is responsible for day-to-day administration of the TA?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

Specify 5: \_\_\_\_\_

10. Who settles land disputes in this area, and how?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

Specify 5: \_\_\_\_\_

11. How often are *izimbizo* convened?

Months		Weeks	
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12. Has the traditional authority ever been audited?

Yes	No	Do not know
1	2	3

(If the answer is **No** or **Do not know**, go to 15)

13. Who executed the audit?

Ingonyama Trust Board	1
Department of Traditional Affairs	2
Other stakeholders (specify)	3

Specify 3: \_\_\_\_\_

14. Was the audit report made available?

Yes	No	Do not know
1	2	3

15. How do you ensure storage, retrieval and disposal of records?

\_\_\_\_\_

16. How do you ensure that office bearers disclose/declare gifts?

\_\_\_\_\_

17. Does the traditional leader play a role in the issuing of trading licences?

Yes	No	Do not know
1	2	3

(If the answer is **No** or **Do not know**, go to **19**)

18. Define the role?

\_\_\_\_\_

19. Do you feel that the Ingonyama Trust Board is administered for the benefit and social well-being of the traditional authorities?

Yes	No	Do not know
1	2	3

20. Explain. \_\_\_\_\_

## C. Custom and Customary Law

21. Does the traditional authority have a codified customary law?

Yes	No	Do not know
1	2	3

(If **No**, go to **25**)

22. How is it disseminated?

\_\_\_\_\_

23. How often is it reviewed/amended and under what circumstances?

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24. How do you ensure that customary law is fair and effective?

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25. Who exercises the most legislative power?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

*Specify 5:* \_\_\_\_\_

26. Who presides over customary courts?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

*Specify 5:* \_\_\_\_\_

27. Who enforces customary law?

Inkosi (Chief)	1
Induna (Headman)	2
Traditional councillor (Ikhansela)	3
Traditional police officer (Iphoyisa lenkosi)	4
Other (specify)	5

*Specify 5:* \_\_\_\_\_

28. How are people who deviate from the law reprimanded/punished?

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29. How are cultural values showcased, protected, and disseminated?

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30. What programmes are in place to preserve indigenous knowledge (e.g. farming)? Are these sufficient? What improvements can be made?

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## D. Roles and Resources

31. What is the role of traditional leaders in the following? And what resources are available for facilitation thereof?

i. Local education system?

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ii. Restoration/preservation of communal peace?

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iii. Disaster management?

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32. Are roles and functions bestowed upon traditional authorities achievable with the current available resources? If not, what is lacking?

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## E. Programmes

33. Does the government provide adequate resources to ensure the following programmes are feasible?

Response	Yes (1)	No (2)	Do not know (3)
i. To ensure sustainable farming?			
ii. To prevent animal cruelty?			
iii. Healthcare system?			
iv. Receipt of social grants and other social services?			
v. Protection of the vulnerable, including children, the elderly and the disabled?			
vi. To ensure safety and security of the community?			
vii. To support socio-economic development?			
viii. To promote environmental management?			
ix. To ensure sustainable use of cultural resources?			
x. To ensure sustainable traditional approaches to water resources management?			
xi. To facilitate communication and information dissemination?			

General comments (if any): \_\_\_\_\_



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## F. Community Assistance and Interaction

34. Does your traditional authority lobby government (and other agencies) for development?  
How? If yes, is the lobbying effective?

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35. Who assists local members of the TA when dealing with the state (or attending to state affairs)?

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36. In your opinion, is government support adequate at local level?

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37. How would you rank the relationship between your traditional authority and...?

i. Ingonyama Trust Board

Very Poor	Poor	Fair	Good	Excellent
1	2	3	4	5

ii. Department of Traditional Affairs

Very Poor	Poor	Fair	Good	Excellent
1	2	3	4	5

38. How would you improve relations in 37 above?

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39. How are needs and priorities of the TA as a community ascertained and communicated?

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## G. Politics

40. What role should traditional leaders play in politics?

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41. Should traditional leaders be involved in party politics? Why or why not?

Yes	No	Do not know
1	2	3

Comments: \_\_\_\_\_

42. In your opinion, do democratically elected councillors undermine or assist traditional leaders in discharging their mandate?

Assist	Undermine	Do not know
1	2	3

Comments: \_\_\_\_\_

43. Should women be granted chieftaincy? What is your opinion with matriarchal succession?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

44. What is the representation of women on traditional councils (is it the recommended 33%)? If it is below, why?

\_\_\_\_\_  
\_\_\_\_\_

45. How many headmen does the traditional authority have? Are they remunerated? By who?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

46. Is the remuneration for traditional authorities' office bearers commensurable with work undertaken?

Yes	No	Do not know
1	2	3

Comments: \_\_\_\_\_

## Appendix B: Questionnaire used to collect data from Ingonyama Trust Board

Name: \_\_\_\_\_ Place of Interview: \_\_\_\_\_

### **A. Roles, Responsibilities, Resources, and Programmes**

1. What resources have been allocated or accessible to traditional authorities with regards to the achieving the following programmes?

i. Ensuring sustainable farming?

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ii. Preventing animal cruelty?

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iii. Improving the healthcare system?

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iv. Protecting the vulnerable, including children, the elderly and the disabled?

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v. Ensuring safety and security of the community?

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vi. Supporting socio-economic development?

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vii. Promoting environmental management?

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viii. Ensuring sustainable use of cultural resources?

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ix. Ensuring sustainable traditional approaches to water resources management?

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- x. Facilitating communication and information dissemination of policies and programmes meant to uplift the community?

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- 2. What roles does the institution play in the resolution of intra-tribal authorities' disputes? Is this effective?

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- 3. What role does the institution play in the deposition of traditional authorities?

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- 4. What role does the institution play in the resolution of succession disputes?

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- 5. How does the institution ensure that responsibilities allocated to tribal authorities are executed?

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- 6. Does the institution feel that roles of traditional leaders versus elected councillors are clearly delineated?

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- 7. In the view of the institution, what is the ideal role of women regarding the functioning of the traditional authority?

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## **B. Administrative and Allowances**

- 8. How it is ensured that traditional authorities are held accountable?

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9. How does the institution ensure that traditional authorities are not biased in service provision?

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10. How many traditional leaders have had their services terminated? On what conditions? Was the successor accepted by the community?

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11. Are traditional authorities ever audited by this institution? What were the results/findings and recommendations of the audit?

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12. Does the institution audit financial statements of traditional authorities?

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13. What role does the institution play in records management of tribal authorities? How is it ensured that records are stored, retrieved and disposed?

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14. In the opinion of the institution, are traditional leader's adequate administrative and judicial tools or do they require constant external intervention and oversight?

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15. How does the institution ensure that justice is administered in traditional authorities?

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16. Who does the institution regard as a custodian and protector of community customs and general welfare in traditional authorities?

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17. Does the institution feel that legislation dealing with the traditional authorities is sufficient?

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## **C. Party Politics, Matriarchal Representation and Benefits**

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18. Does involvement in party politics by traditional leaders bear an impact the achieving of their mandate? Is this impact positive or negative?

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19. Are salaries, allowances and benefits of traditional authorities adequate? Why or why not?

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20. How do you ensure that gifts received by office bearers of traditional institution are declared?

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